Emerging trends in restructuring

Cumulative effect of distress levels to rise over 2024

As businesses face the reality of the macro-economic headwinds, cost inflation, higher interest rates and lower consumer discretionary spending, companies and their directors need to consider the risk of corporate insolvency and wisely navigate the uncertainties that will arise.

The impact of the changed economic landscape is hitting the food service businesses, especially the restaurant sector, and retail, where footfall and average spend is lower and online competition is eroding revenues at store level. More than half of company failures in 2023 came in the retail, hospitality and construction sectors and around 99% were small- and medium-sized enterprises (SMEs).

The construction sector is also seeing a number of company failures as margins have become eroded where jobs had fixed prices. This also creates issues for downstream sub-contractors who can often be badly burned in the failure of the main contractor on a project.

In 2023 the notable businesses that closed in these sectors were as follows:

Restaurant	Retail	Construction
Seafood General Stores Ltd t/a Saltwater Grocery	Argos	SIAC Construction Ltd
Loam Restaurant Ltd	Metron Stores Ltd t/a Iceland Ireland	Blacklough Construction Ltd
Nuremore Hotel	Gamestop	Killeen Engineering Fabrication Ltd
Pizza Cuisine Ltd t/a Apache Pizza Ardee	Joe Lynch Musical Instruments Limited t/a McCullagh Piggott	Mac Interiors Ltd

What is notable about many business closures in the restaurant and retail area is the predominance of companies which are small and have less than 50 full-time employees.

Many have survived to this point after the pandemic by utilising Revenue's tax warehouse scheme. However, availing of this forbearance on legacy Covid-19-period taxes required keeping up to date with current taxes. The pressure of this has in many cases had a detrimental effect on the business's cash flow to the extent that it becomes the straw that breaks the camel's back and leads to the business closing.

The deadline for entering a phased payment plan and commencement of repayments of these taxes is fast approaching in Q1 2024, and this will add pressure to the cash flows of many businesses that are already struggling. There may be a need for a strategic review of options available to determine if the business can be restructured. If restructuring is not an option, then an orderly winding up of the business will be required.

In all situations where the risk of insolvency and insolvent trading are identified, the directors' responsibility shifts from the interests of shareholders to the interests of all the business's creditors, so as not to take any action that would worsen the situation.

It is accepted that directors can take time to consider their options as to next steps, and the first task should be to seek advice from an insolvency expert. This person can give an unbiased view of the options available, which may include selling the business, seeking investment to enable a restructuring, merging with another business, or entering a SCARP process to right-size the business and its balance sheet and bring in some new working capital. If the above are not possible and the company becomes insolvent, a liquidation will be necessary.

The Small Company Administrative Rescue Process (SCARP) is really a game-changer for SMEs, which represent 99% of businesses in distress. Historically, examinership was the only restructuring option available to Irish SMEs, but this was often too expensive a route for most. The introduction of SCARP gives a very viable alternative, as it can be concluded at a cost level that is practical for most SMEs and in a shorter timeframe than generally applies in examinerships.

For companies grappling with the burden of warehoused tax debt and a more difficult trading environment, bringing in some new investment capital to pay down Revenue and other creditors and restore adequate working capital levels can be very rewarding.

In the example below, €70k in new investment is used to pay for SCARP costs of €18k, dividends to creditors of €42k and working capital of €10k. There is an assumed dividend to preferential creditors of 15% and unsecured creditors of 6%.

SCARP example	**Before**	**After 70k Investment**
Fixed assets	€50,000	€50,000
Debtors	€30,000	€30,000
Stock	€50,000	€50,000
Cash at bank	€1,000	€11,000
Trade creditors	(€120,000)	(€10,000)
Rent arrears	(€30,000)	€0
Revenue debts (current)	(€40,000)	(€23,000)
Revenue debts (warehoused)	(€380,000)	€0
Redundancy cost	(€25,000)	€0
New capital	€0	(€70,000)
Net position of company	**(€464,000)**	**€38,000**
Solvency status	**Insolvent**	**Solvent**

At Crowe we offer a free initial consultation for company directors so they can gain a fast high-level insight into the options and strategies that may best suit their situation.

For further details please contact Aiden Murphy or Declan Hanly.

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Established in 1941, Crowe is a leading accountancy and business advisory firm in Ireland. Throughout our 80-year history, we have developed an unrivalled understanding of the Irish business environment and built a national reputation in auditing, tax and business consultancy.

We work with a variety of clients across commercial and public sectors. Our services include Audit & Assurance, Tax, Corporate Insolvency & Recovery, Corporate Finance, Consultancy, and Outsourcing.

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