



# Using an examinership as a restructuring and insolvency solution for your business

2020 and 2021 will be remembered as the years when the normal trading levels for most businesses have been knocked so far off course and cash flow so impacted by COVID-19 as to threaten the very survival of these businesses, which were viable operations pre-pandemic.

The closure of many parts of the economy, coupled with reduced demand across many sectors and the additional costs of operating within COVID-19 restrictions, has left many businesses needing to reinvent their trading model to survive. In the face of reduced revenues, most businesses will need to reduce costs significantly. Many will need to make part of their workforce redundant, renegotiate leases or move premises to reduce rental and property overheads, and address the deferment of creditors, including the Revenue Commissioners and trade creditors, where payment in full is just unaffordable.

In addition, prior to the current crisis, businesses may have completed a recent acquisition or expansion project that has left them over-burdened with loans and creditors and now face a debt burden that could be difficult to sustain in the current trading climate.

Examinership is a process that can address these issues through a write-down of debt and the repudiation of onerous contracts or leases via the payment of a settlement dividend to the impacted creditors.



## What is an examinership?

Examinership, which was first introduced in 1990 as part of the Companies (Amendment) Act, is a process in Irish law whereby the protection of the court is obtained to assist the survival of a potentially viable company.

The process allows a company to draw a line under

current problems and gives the business time to reorganise and restructure around the remaining viable aspects of the business. The process turns an insolvent balance sheet into a solvent one.

The company must be able to show it is a viable business with the ability to attract fresh investment. The appointed examiner works with the business to ensure these requirements are met.

## How does it provide protection from creditors?

Under examinership legislation, a business can obtain the protection of the courts for up to 100 days to allow a rescue plan to be presented, which is then sanctioned by way of a court order.

During this period, creditors are precluded from litigating for pre-petition creditor balances or advancing claims for retention of title to goods, and the company is protected against any seizure actions by the Sheriff on foot of existing judgements.

Examinership allows for onerous leases, expensive payroll overheads, costly litigation from either suppliers or customers, Revenue debts, property rates, etc. to be extinguished by paying a dividend to creditors.

The examiner can also certify costs of critical suppliers during the post-petition period to help safeguard payment and the continuity of trade during the examinership period.

## What are the key areas of advantage of examinership for the company?

- Write-downs of debts
- Leases can be renegotiated/disclaimed
- Staffing levels can be reduced in a cost-efficient manner
- Company continues trading and the directors retain control during the process
- Gives the company time to be restructured
- Liquidation is avoided
- Protection from creditors – a receiver or liquidator cannot be appointed

## What are the key aspects of examinership?

The examiner is appointed following a petition to either

the Circuit Court or the High Court. The key criteria for the court approving the appointment of an examiner is that the business can show that it has a reasonable prospect of survival and that jobs in the business can be saved once restructured. The business must also be able to demonstrate it can trade during the protection period with positive cash flow from operations.

The examiner can use the rigid timeframe dictated by the legislation to arrange for a sensible rescue plan called a Scheme of Arrangement, which allows for new investment to be injected into the business in a safe and secure way. When an investment and rescue plan has been put in place, the Scheme of Arrangement will include creditor write-downs and result in a cleaned-up balance sheet.

While creditors will always be disappointed when faced with a write-down of their debts, the legislation requires that the outcome of an examinership be more advantageous than the liquidation of the company. This generally leads to support from creditors for the proposed scheme once the alternative is outlined.

Many examinerships involve the appointment of new board members who will add strength to the management. Alternatively, if the business is brought into another group of companies, it can benefit from synergies created by the combined entity.

There are many technical, monitoring and reporting requirements that fall to the examiner to complete. Management continue to operate the business but without distraction from the examinership process.

### Who might benefit from a successful examinership?

A number of stakeholders can benefit from an examinership:

- Directors who can rebuild the business and the value of their shareholding
- Creditors who are seeking to maximise their return

and further potential return from future trade with the business

- Investors who obtain investment in a company on a reduced risk basis
- Employees who retain their jobs
- The local economy that retains the benefits of the enterprise, which also often supports other local businesses

### Is an examinership affordable for all troubled companies?

Many company owners do not explore this corporate recovery mechanism, believing that their business is too small to avail of the process or that the costs of examinership will not be affordable. The reality is that the Scheme of Arrangement, which includes the new investment and write-down of creditors, will cover the cost of the examiner and ensure sufficient working capital is in the business so it can survive.

In truth, the ability of the business owners to reach out to their contacts, customers or suppliers to identify new investor(s) at the planning stage of the process can greatly reduce not only the period of the examinership but the costs as well. The cost of entering examinership is relatively low, and the main cost of the process is covered as part of the new investment raised to restructure the business and is paid at the end.

### How can Crowe help?

It is important that companies considering examinership as a potential solution start planning now so they have a business plan ready to go and can quickly commence the process to source new investment.

For further advice on whether a company is a suitable candidate to benefit from an examinership, please contact Aiden Murphy, Corporate Recovery Partner or any member of his team.

## About us

Established in 1941, Crowe is a leading accountancy and business advisory firm in Ireland. Throughout our 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.

We are also independent members of Crowe Global, one of the top 10 accountancy networks in the world, with colleagues in over 750 offices across 130 countries.

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