

Irish
Association
of
Corporate
Treasurers

29 April 2009



Michael Murphy

**Corporate Recovery &
Examinership**

***What a Corporate Treasurer Needs
to Know***

Examinership

- 1 January 2007 to 31 December 2007 : 29
- 1 January 2008 to 31 December 2008 : 70
- 1 January 2009 to date: 15
- High failure rate: 30%

Why Examinership?

- Liquidation/receivership- destruction in value
- Informal consensual restructuring- difficulties
- Examinership- reasons

Requirements

- A company
- Not in liquidation
- No receiver for more than 3 days
- Insolvent or likely to become insolvent
- Reasonable prospect of survival as a going concern

Report of Independent Accountant

- Reasonable prospect of survival as a going concern
 - conditions
 - potential investment
- Statement of assets and liabilities
 - going concern values
 - liquidation values
- Funding during period of examinership and sources of funding

Procedure

- Petition and affidavit
- Costs
- Objections
- Interim examiner

Meaning of protection

- Legal stay- 100 day period
- Guarantees can be called (no enforcement)
- Bank cannot appoint a receiver
- Retention of title creditors and leasing companies
- Directors in control
- Pre-petition liabilities

Consideration of Proposals

- Scheme of arrangement
- Guarantees- voting
 - must offer voting rights to guarantor, if offer not made, **guarantee unenforceable**
- Meetings of each class of creditors
- Confirmation hearing
 - proposals unfairly prejudicial

Ocean Bar Decision

- Security rights unchanged
- Secured debt written down
- Balance treated as unsecured
- Consent- why?

Ocean Bar

- Only alternative to failed examinership is liquidation/receivership
- Written down to market value – right to challenge
- Ongoing support of the bank/refinancing – reasonable prospect of survival?
- Disaster- failed examinership

Administration

- Irish registered company can be subject to administration order
- *Examinership v Administration*

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Impact

- Company
- Directors
- Employees
- Creditors

Ongoing Trading

- Debtor in Possession
- Examiner “Oversees”
- Creditors – New Debt
- Section 10 Certification

Ongoing Trading

- Secured Lender
- Landlord
- Leasing
- Retention of Title

Ongoing Trading

- Cashflow/Funding
- Revenue Commissioners
- Redundancy
- Management Accounts

Examiner's Scheme

- Joint effort
- New Funding – Old debt
- New Funding – Working Capital
- Current/New Investor
- Due Diligence
- Corporate Entity Continues

Examiner's Scheme

- Notice to Creditors/Shareholders
- Copy of Scheme
- Approval of Scheme

Examiner's Scheme

- Classes of Creditors
- Dividend – Conflict
- Voting
- Unfairly Prejudicial

Examiner's Scheme

- Section 18 Report
- Court Hearing
- Objections
- Examiner's Costs
- Effective Date

Post “*Effective Date*”

- Payment Schedule
- Change in Shareholding
- Balance Sheet Restructured
- No monitoring role

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