The Restructuring Review

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Editor
Peter K Newman

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THE RESTRUCTURING REVIEW

FIFTEENTH EDITION

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CONTENTS

PREFACE.......... v
Peter K Newman

Chapter 1 AUSTRALIA.......... 1
Peter Bowden and Peter Hession

Chapter 2 CANADA.......... 17
Michael Nowina, Eleanor Dennis and Jesse Kaminski

Chapter 3 CZECH REPUBLIC.......... 25
Michal Buchta, Jan Dudík and Kryštof Vrtek

Chapter 4 EGYPT.......... 39
Mohamed Hashish, Rana Abdelaty and Farida Rezk

Chapter 5 ENGLAND AND WALES.......... 45
Peter K Newman, Nicole Stephansen, Graham Dench and Raphaella S Ricciardi

Chapter 6 FRANCE.......... 69
Joanna Gumpelson and Philippe Dubois

Chapter 7 GERMANY.......... 82
Martin Tasma and Moritz Müller-Leibenger

Chapter 8 GREECE.......... 95
Dorotheos Samoladas, Sofrini Sideri and Danai Kyriakantonaki

Chapter 9 HONG KONG.......... 124
Eloise Matsui, Stephanie Poon, Rosy Chan and Vivian Lau

Chapter 10 INDIA.......... 141
Aniruddha Sen, Karishma Dodeja and Sakshi Singh

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Chapter 11 INDONESIA......151
Emir Nurmansyah and Kevin Omar Sidharta

Chapter 12 IRELAND......163
Barry Cahir

Chapter 13 JAPAN......173
Dai Katagiri, Ryo Kawabata and Takashi Harada

Chapter 14 LUXEMBOURG......183
Clara Mara-Marhuenda, Sébastien Binard and Grégory Minne

Chapter 15 MEXICO......197
Thomas S Heather

Chapter 16 NETHERLANDS......209
Paul Kuipers

Chapter 17 POLAND......223
Karol Tatara, Paweł Kuglarz, Anna Czarnota, Michał Masior and Mateusz Kaliński

Chapter 18 SINGAPORE......231
Kenneth Lim Tao Chung and Wong Pei Ting

Chapter 19 SPAIN......244
Fedra Valencia, Ignacio Buil, Rosa M Gual and Patricia Álvarez Alonso

Chapter 20 SWITZERLAND......262
Daniel Hayek and Mark Meili

Chapter 21 UNITED ARAB EMIRATES......272
Rahat Dar

Chapter 22 UNITED STATES......281
Lisa Laukitis, James J Mazza, Jr, Jason N Kestecher and Anthony Joseph

Appendix 1 ABOUT THE AUTHORS......295
Appendix 2 CONTRIBUTORS' CONTACT DETAILS......317

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PREFACE

I am very pleased to present this 15th edition of *The Restructuring Review*. Our intention is to help general counsel, government agencies and private practice lawyers, as well as other professionals, investors and market participants, to understand the prevailing conditions in the global restructuring market in 2021 and the first half of 2022. This edition seeks to highlight some of the most significant legal and commercial developments and trends during this period.

Two common themes pervade the contributions to this edition by leading practitioners from jurisdictions around the globe. First, the historic economic downturn experienced around the world in 2020 due to the covid-19 pandemic was met with significant state intervention, which cushioned some of the immediate impact of the pandemic. Indeed, many jurisdictions witnessed a bounceback during 2021 as the world eased out of the covid-19 pandemic. Widespread access to covid-19 vaccines allowed many countries to ease or lift entirely the lockdowns and travel restrictions that had been imposed in 2020. The opening of economies and continuation of government support measures allowed for rapid growth during this time. But the upward trajectory seems to have been short-lived, as a number of geopolitical and other factors have already started to slow growth and bring uncertainty to the next phase of post-pandemic life. The second theme is the continued development of restructuring tools to ameliorate and resolve insolvency and financial distress, with numerous jurisdictions introducing additional legislative reforms to facilitate restructurings or even beginning to 'road-test' tools introduced in recent years.

Following the initial onset of the pandemic in 2020, many jurisdictions witnessed only limited restructuring and insolvency activity throughout 2021. Temporary support measures implemented by governments to provide financial support and breathing space for companies to recover from the pandemic were successful in this regard. These measures seem to have offset (at least temporarily) much of the damage wrought by the pandemic for businesses, although most government support programmes have ended or are in the process of being phased out, and economies around the globe now face other challenges to economic recovery. These challenges include massive disruptions in global supply chains and historic levels of inflation in many jurisdictions. In addition, the war in Ukraine, which commenced with the Russian invasion in February 2022 and continues at the time of writing, has ushered in soaring energy costs, has exacerbated supply chain issues, and has been met with punishing economic sanctions from the EU, UK and US. An increased focus on environmental, social and governance concerns and metrics is also leading to changes in the corporate and investment landscape – changes to which businesses must adapt. Although 2021 was a record-breaking year for mergers and acquisitions deals activity, this began to slow in the first half of 2022. Companies are facing uncertain times on many fronts.

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Although levels of insolvency and restructuring activity have remained suppressed, many jurisdictions have in recent years put in place new or updated laws, rules and practices relating to business restructuring and insolvency, both in reaction to the covid-19 pandemic but also as part of a broader trend of reform. As you will see in the coming chapters, many of these new laws have already been tested over the past year and have helped businesses to restructure in an exceptionally challenging period. This continued development means that corporate debtors and their advisers will have increasingly robust toolkits to deal with financial distress and insolvency arising in the turbulent post-pandemic environment.

I hope that this edition of *The Restructuring Review* will continueedia to serve as a useful guide at a crucial moment in the evolution of restructuring and insolvency law and practice internationally. I would like to extend my gratitude to all the contributors for the support and cooperation they have provided in the preparation of this work, and to our publishers, without whom it would not have been possible.

Peter K Newman
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Chapter 12

IRELAND

Barry Cahir[1]

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

At the time of writing (June 2022), Ireland is bracing itself for what might come next. The range of support measures that the Irish government made available to businesses during the covid-19 pandemic are stopping, and negotiations for repayments of warehoused tax liabilities are beginning. Layered on to this are the inflationary pressures prevalent around the world and the uncertain impact of the ongoing invasion of Ukraine by Russia.

Brexit still looms large, and the very real threat of unilateral abandonment of the Northern Ireland Protocol has increased uncertainty for those trading with the United Kingdom.

In Ireland, the cross-border restructuring landscape has been quiet, but the conversation continues to be dominated by aviation, including the relatively recent examinership of Norwegian Air, the examinership of CityJet DAC and the Nordic Avaition Capital scheme (all of which are described in more detail below).

Domestically, the focus has been on small companies following the introduction of an out-of-court restructuring tool designed specifically for smaller companies.

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

Corporate restructuring and insolvency processes in Ireland are governed by a blend of statute, law and common law, the most important statute being the Companies Act 2014 (the Companies Act). Ireland has two highly effective forms of schemes of arrangement under the Companies Act: the examinership scheme and the Companies Act scheme.

i The examinership scheme

Examinership legislation was enacted in 1990 and is modelled in large part on US Chapter 11 proceedings. As such, it provides companies (large or small) that are temporarily unable to pay debts as they fall due the opportunity to explore options to ensure their survival. On filing a court petition, the company is protected from its creditors by an automatic moratorium for a period of up to 150 days.[2] An examiner is appointed and charged with examining the state of the company's affairs with a view to compiling a restructuring plan for the company's future viability (the examinership scheme).

1 Barry Cahir is a partner at Beauchamps.

2 This has temporarily been extended from 100 days to a 150-day period as a result of Section 13 of the 2020 Act.

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There is a strong focus on saving jobs, and the court requires an independent expert's report to the effect that there is a reasonable prospect of survival of the company (or a part of the company) as a going concern. The directors of the company will generally remain in control of and responsible for the day-to-day running of the business.

An examinership scheme is often achieved through new investment in the company, a write-down of debt, forced surrender or termination of property leases, or reformulated debt repayments. There are very few, if any, restrictions on the nature of the proposals that the examiner may formulate to achieve this.

Many well-known retailers[3] have used examinership to disclaim or repudiate onerous leases. There is a recently reported decision on the repudiation by Norwegian Air of some of its aircraft leases. The residual lease obligations can then be crammed down as part of the examinership scheme. Landlords facing disclaimer or repudiation may negotiate reduced lease obligations or dispute the terms on offer. Once the examiner has formulated a scheme, the creditors are invited to consider it. Creditors with similar economic and legal interests will be classed together for these meetings.

A majority in number representing a majority in value of the claims represented at each class meeting must accept the scheme. This is a significantly lower threshold required for comparable schemes in other jurisdictions. It is a statutory requirement that at least one class of impaired creditors has accepted the scheme proposals before the court can confirm it. The court will also consider whether the scheme proposals are fair and equitable to the creditors. Once approved by the court, the scheme will take effect. The examinership scheme is enforceable throughout the EU by virtue of being scheduled in the European Insolvency Regulation (EIR)[4] and EIR Recast.[5]

Eircom Limited remains a good example of the effective use of examinership in a cross-border restructuring of large financial obligations.[6] The Eircom group of companies owed €4.08 billion to financial creditors. Of that amount, €2.659 billion was fully secured first lien debt. The second lien debt amounted to €350 million. This was also secured but subordinated to the first lien debt. A further €350 million was owed to holders of floating rate notes secured on shares in ERC Ireland Holdings Limited. A further €699 million was owed to holders of payment-in-kind notes. In addition, there were significant trade and other debts.

Due to pre-filing negotiations, the examinership scheme writing €1.4 billion off the total debt was confirmed by the court within 54 days of the filing. It is reported[7] that the senior lenders took a 15 per cent write-down on their debt, the second tier received 10 per cent of the value of their debt and the last two layers were crammed down entirely. The senior lenders became the new owners of the business. There was no objection to the scheme.

3 Examples include Bestseller Retail Ireland Limited (Vero Moda and Jack and Jones), Debenhams, B&Q and CompuB.

4 Annex A and Annex C of Council Regulation (EC) No. 1346/2000.

5 Annex A and Annex B of Regulation (EU) 2015/848 of the European Parliament and of the Council.

6 [2012] IEHC 107.

7 *Financial Times*, 11 June 2012.

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ii The Companies Act Scheme[8]

The Companies Act Scheme is the primary alternative for solvent and insolvent restructurings. The essential features of the Companies Act Scheme may be summarised as:

a a compromise or arrangement is proposed between a company and its creditors or any class of them;
b directors may convene meetings of creditors without a court order;
c the court may order a moratorium for such a period as it sees fit;
d creditor approval requires a majority in number representing three-quarters in value (of each class); and
e there is a court sanction hearing at which the process and form of the scheme are determined and a 'fair and equitable' or 'reasonable person' test is applied.

The effectiveness of the Companies Act Scheme is highlighted in a recent judgment in which the Irish High Court sanctioned a Companies Act Scheme that aimed to restructure a company's reinsurance obligations and its outstanding indebtedness to enable the residual value in the company to be distributed to the scheme noteholders, despite a US creditor's objection.[9] The company, Ballantyne Re PLC, is an Irish registered PLC formed as a special purpose vehicle for the purpose of entering into a reinsurance agreement. The company applied to the High Court of Ireland to sanction a proposed scheme of arrangement between it and its creditors (the scheme). The sole objecting creditor, ESM Fund I LP (ESM), a limited partnership formed in the United States, opposed the company's application. ESM contended that the scheme was deficient in terms of the information it provided and the impression it created. It further claimed that the Irish court had no jurisdiction to sanction a scheme that provides for third-party releases and that its sanctioning would frustrate existing litigation that ESM had initiated in the United States.

The parties accepted that a special majority of creditors voted in favour of the scheme as required by the Act and that adequate notice of the passing of the resolutions in favour of the scheme was established.[10] The High Court endorsed *Re Osiris Insurance Limited*[11] and ultimately held that the scheme was reasonable, fair, and equitable to all creditors viewed from the perspective of an honest, intelligent and experienced person of business who is familiar with the scheme.

iii The Companies (Rescue Process for Small and Micro Companies) Act 2021

The Companies (Rescue Process for Small and Micro Companies) Act 2021 (SCARP) came into operation on 7 December 2021. This new rescue process is modelled on examinership but, due to the reduced role of the court in the process, should be a more cost-efficient process for small and micro companies.

A company can avail itself of SCARP as a small company if any two of the following conditions are satisfied:

a the turnover of the company does not exceed €12 million;
b the balance sheet of the company does not exceed €6 million; and

8 Part 9 of the Companies Act.
9 *Re Ballantyne RE PLC & the Companies Act 2014* [2019] IEHC 407.
10 Section 432(2)(a) of the Companies Act outlines the special majority requirements. Notification requirements are stipulated in Section 253(2)(b) of the Companies Act.
11 [1999] 1 B.C.L. 182.

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c the average number of employees does not exceed 50 people.

A company can avail itself of SCARP as a micro company if the following conditions are satisfied:

a the company must qualify for the small companies audit regime; and
b two or more of the following requirements must be satisfied in a financial year:
- the turnover of the company does not exceed €700,000;
- the balance sheet of the company does not exceed €350,000; and
- the average number of employees does not exceed 10 people.

In summary, the process is initiated when the directors prepare a financial statement confirmed by statutory declaration. This is then provided to the intended process adviser (PA), who determines whether there is a reasonable prospect of survival of the company as a going concern.

The company must then pass a resolution to appoint the PA without any need for a court application.

The PA must immediately begin preparing a rescue plan for the company and convene meetings of the creditors as soon as possible to consider the rescue plan not later than 49 days after the date of the passing of the directors' resolution.

The rescue plan will be deemed to be accepted once 60 per cent in number representing the majority in value of the claims represented at that creditor class meeting have voted in favour of the rescue plan.

The rescue plan becomes binding once 21 days have passed from a court filing of the notice of approval and if no objection has been filed.

Although many features of SCARP are similar to the examinership regime, it is a new and entirely untested process.

iv Receivership

Receivership is, in essence, the enforcement of security by the lender on default of a loan or security covenants by the borrower. The most common form of receivership is an appointment by the holder of security created by a mortgage, charge or debenture. Although the remedy of appointing a receiver is not truly a collective insolvency procedure, being a procedure of enforcement of rights under a charge, it is a procedure that may be used in many cases to achieve a sale on a going-concern basis of a company's entire assets and undertaking.

The appointment of a receiver does not, of itself, affect the legal status of the company. Rather, it affects the status of the charged assets. Most debentures contain specified fixed charges and a floating charge on all the assets and undertakings of the borrower company. Debentures typically provide for enforcement in the event of default by the appointment of a receiver with full power to take possession of and manage all of the secured assets and the power of sale of the assets. The powers and duties of a receiver are governed by the terms of the debenture itself and are supplemented by Part 8 of the Companies Act, which includes the following powers:

a to enter into possession and take control of the property of the company;
b to lease, let, hire, grant options over or dispose of such a property;
c to carry on the business of the company; and
d to execute documents, bring proceedings, and use the seal of the company (a new power) to engage or discharge employees, and to appoint professionals and agents.

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The Companies Act does not attempt to delimit the duties of receivers, but it does codify in Section 439 the obligation, in selling property of the company, to exercise all reasonable care to obtain the best price reasonably obtainable for the property at the time of sale.

v Liquidation

Liquidation is the ultimate collective insolvency procedure, being a winding up of a company leading to its dissolution. A liquidator assumes full power and authority over the company, realises the assets, and applies the proceeds in accordance with the rules set down by the Companies Acts, the Superior Courts Rules and a substantial body of case law.

Creditors' voluntary liquidation

The vast majority of liquidations are creditors' voluntary liquidations. These are commenced by ordinary resolution of the shareholders, prompted by a recommendation from the board of directors of a company to the effect that, by reason of its liabilities, the company should cease trading.

A meeting of all creditors of the company is convened on at least 10 days' written notice. If creditors representing a majority in value of those attending and voting at the meeting resolve to appoint a different person as liquidator from the person nominated by the shareholders, then the person so approved by the creditors shall be the liquidator. Generally speaking, on the appointment of a liquidator, the powers of the directors will cease and the liquidator effectively displaces the directors.

Compulsory liquidation

Compulsory liquidations are commenced on the basis of the jurisdiction of the High Court to order the winding up of a company and appoint a liquidator. The process commences with a petition to court. Creditors, members or the company itself may petition the court for an order for the appointment of a liquidator. Section 569 of the Companies Act 2014 provides for a number of circumstances in which the court may order a winding up, including when the company is unable to pay its debts as they fall due.

Provisional liquidator

After a petition to have a company wound up is presented, and before making the order for the winding up of a company, the court may order the appointment of a provisional liquidator under Section 573 of the Companies Act. The primary purpose of the appointment of a provisional liquidator is the preservation of assets pending the winding-up order based on a concern or requirement that the value, assets and business of the company are immediately preserved in the interest of creditors.

Functions of the liquidator

The principle function of the liquidator is to realise all of the assets of the company and then distribute the proceeds of the sale of the assets broadly in accordance with the following priorities:

a the discharge of the costs, fees and expenses of the winding up;
b payment to secured and preferential creditors;
c payment to unsecured creditors; and

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d payment of a distribution to members if there is a surplus available after (a), (b) and (c) above.

The liquidator conducts the liquidation independently of all parties and reports on the conduct of the liquidation to meetings of the members and creditors.

Directors' duties and responsibilities when a company is in financial difficulties

If a company becomes unable to pay its debts as they fall due, or if there is a prospect (whether based on the cash flow test or the balance sheet test) that creditors will not be paid in full, the duties owed to the shareholders become secondary to an overriding duty to act in the best interests of the creditors, including contingent or prospective creditors.

Failure by the directors to act in the best interests of creditors at such a point might result in personal liability for all or some of the debts of the company. In cases in which a company is unable to pay its debts as they fall due, it is difficult to justify continued trading unless the directors believe on reasonable grounds that the company can survive and that all debts will be paid. The critical point is that the duty to act in good faith and to exercise the utmost care, skill and diligence is a duty that, in those circumstances, is owed to the creditors.

Potential sanctions

The Companies Act sets out the sanctions of restriction and disqualification of directors and the circumstances in which a court may impose personal liability on the directors of a company.

Restriction

In every insolvent liquidation, the liquidator must bring an application for a restriction order before the High Court unless the liquidator is relieved from doing so by the Office of the Director of Corporate Enforcement (ODCE).[12]

The burden is on the directors to prove that they have acted honestly and responsibly in relation to the affairs of the company and that they have cooperated with the liquidator. The effect of a restriction order is that such a person may not act as a director or be concerned in any way in the management of another company for a period of up to five years unless that new company meets defined capital requirements.

Disqualification

Section 842 of the Companies Act provides for the disqualification of persons from acting as directors or officers or otherwise being concerned in the management of the company for a period of five years, or for such periods as the court may order. A disqualification order will be made only when culpable wrongdoing on the part of the director has been established. The grounds for making a disqualification order include when the person has been guilty of any fraud in relation to a company or guilty of conduct rendering such a person unfit to be concerned in the management of a company.

12 Section 819 of the Companies Act.

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Restriction and disqualification undertakings

If the ODCE believes that a person may properly be subject to a restriction or disqualification application, they will be invited to elect to give an undertaking to be subject to a restriction declaration or a disqualification order for the purposes of the legislation. Requests for undertakings can be given only by the ODCE and not by the appointed liquidator or receiver.

Reckless trading

Section 610 of the 2014 Act imposes personal liability for all the debts of a company on any person who, while an officer of the company, has been knowingly party to the conduct of any business of the company in a reckless manner or for any fraudulent purpose. There are a number of instances of conduct that are deemed to constitute reckless trading, including when the director in question ought to have known that their actions or those of the company would cause loss to the creditors of the company or to any of them.

Fraudulent trading

Section 722 of the Companies Act imposes criminal liability on a person who is knowingly party to the carrying on of the business of the company with intent to defraud creditors of the company.

Floating charges

A floating charge created within 12 months (two years if a connected party is involved) before the commencement of the winding up is invalid unless it is proven that the company was solvent immediately after the creation of the charge. This provision in Section 577 of the Companies Act does not apply in respect of money actually advanced or paid, or the actual price or value of goods or services sold or supplied to the company at the time of, or subsequent to the creation of, the floating charge, and is consideration for the charge.

Contribution by a related company

The High Court may order a related company to contribute to the whole or part of the debts of a company being wound up if satisfied that such an order is just and equitable.[13] In making such an order, the court must have regard to (1) the extent to which the related company took part in the management of the company being wound up, (2) the conduct of the related company towards the creditors of the company being wound up and (3) the effects that such an order would be likely to have on the creditors of the related company.

Pooling assets of related companies and effective consolidation orders

The grounds for a pooling order under Section 600 of the Companies Act are based on (1) the extent of involvement by one company in the management of the other, (2) the conduct of each company towards the creditor of the others, (3) the extent to which the circumstances giving rise to the winding up of the companies are attributable to the conduct of each other and (4) the extent to which the businesses of the companies have been intermingled.

13 Section 599.

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When a court makes a pooling order, it must respect the rights of secured creditors (both fixed and floating charge holders) in each company separately. Otherwise, the claims of unsecured creditors rank equally in the consolidated entity.

Unfair preference

Any disposal or other action by an insolvent company in favour of a creditor made with a view to giving that creditor a preference over other creditors is invalid as an unfair preference. Section 604 of the Companies Act applies if a winding up commences within a period of six months from the date of the disposal or other action in favour of a creditor. If the transaction is in favour of a party connected to the company, the six-month scrutiny period is extended to two years and there is a statutory presumption of intent to prefer.

Assets improperly transferred

A court may, under Section 608 of the Companies Act, order restitution against a disponee when the effect of a disposal of the property of a company is to perpetrate a fraud on the company, its creditors or its members. The test is whether the transaction has the effect of depriving the company or its creditors of assets that would otherwise have been available to them.

III RECENT LEGAL DEVELOPMENTS

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (the 2020 Act) was introduced to make temporary changes to the Companies Act in light of the operational challenges caused by covid-19. The 2020 Act applied until June 2021 but was extended to 31 December 2022. The 2020 Act increased the statutory debt threshold for the commencement of a winding up to €50,000, extended the period in which the examiner's report must be provided to 150 days and provided for some practical considerations, such as holding general meetings electronically, deferring annual general meetings and execution of documents.[14]

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

The first wave of insolvencies as a result of covid-19 were court liquidations of already distressed high street fashion chains, including Warehouse, Oasis and Debenhams. Construction and retail have been severely impacted by covid-19 as both sectors remained closed (except for essential services) for all of 2021 and much of 2020.

Reflecting the effects of covid-19 on travel and the aviation industry, CityJet DAC, Europe's largest provider of wet lease services, successfully exited examinership in August 2020. CityJet is a wet lease specialist airline operating regularly scheduled routes. It employed 1,175 people before the covid-19 crisis, 410 of whom were based in Dublin. CityJet had debts of €500 million and a net deficit of liabilities over assets on a going-concern basis of €186 million.

14 See Sections 5, 6, 13 and 14 of the 2020 Act.

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On 11 August 2020, the High Court approved the scheme of arrangement. Approving the examinership scheme, the High Court accepted that creditors would do better under the examiner's proposals than if the airline was liquidated, which the court was told was the only alternative to the scheme.

The High Court also approved Nordic Aviation Capital's (the world's largest regional aircraft lessor and a leader in commercial aircraft leasing) scheme of arrangement, which restructured more than €5 billion of its debt with over 85 lenders.

Most recently, on 26 May 2021, Norwegian Air exited examinership in Ireland. This allowed the business to raise over €500 million in new equity and capital and reduce its debt liabilities by over €1.5 billion. The business has refocused on short-haul business based primarily in northern Europe.

The hospitality sector has faced significant difficulties following recurring lockdowns, with some licensed premises having been closed since March 2020. In a recent test case taken by four publicans,[15] the High Court held that businesses that hold insurance policies providing for business interruption caused by an outbreak of an infectious disease are entitled to cover for the losses incurred by the national lockdown caused by covid-19.[16] This landmark decision, similar to the UK's Supreme Court decision,[17] is of significant importance and will indemnify relevant publicans for losses experienced during the national lockdown.

V INTERNATIONAL

i The EIR applies

Liquidations and examinership are enforceable throughout the European Union by virtue of being scheduled in the EIR[18] and now in EIR Recast.[19] Article 3 of EIR Recast allocates the jurisdiction to open main insolvency proceedings to the courts of the Member State where the debtor's centre of main interests is established. Article 19 provides for the automatic recognition of these proceedings in all Member States.

Chapter 15 of the Companies Act contains specific provisions to facilitate the operation of the EIR in Ireland, including provisions governing the publication of the opening of insolvency proceedings, court confirmation of the appointment of a liquidator in a voluntary liquidation, and provision for the translation of claims of creditors into the Irish or English language, as required by the liquidator in individual cases.

ii Brexit

The EU–UK Trade and Cooperation Agreement makes no reference to cross-border insolvencies, meaning that there is no longer an automatic recognition of insolvency proceedings between the UK and Europe. Article 67(3)(c) of the Withdrawal Agreement provides that EIR Recast shall continue to apply only to insolvency proceedings commenced before 31 December 2020. If UK proceedings are required to be recognised in Ireland, separate recognition proceedings must be brought before the Irish courts. Conversely, if Irish

15 Hyper Trust Ltd, t/a the Leopardstown Inn; Aberken, t/a Sinnotts Bar; Inn on Hibernian Way Ltd, t/a Lemon & Duke; and Leinster Overview Concepts Ltd, t/a *Sean's Bar v. FBD [*2021] IEHC 78.

16 Judgment of Mr Justice Denis McDonald delivered on 5 February 2021.

17 *Financial Conduct Authority v. Arch Insurance (UK) Limited & Ors* [2021] UKSC 1.

18 Annex A and Annex C of Council Regulation (EC) No. 1346/2000.

19 Annex A and Annex B of Regulation (EU)2015/848 of the European Parliament and of the Council.

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proceedings are required to be recognised in the UK, separate recognition and enforcement proceedings are required. Section 426 of the UK Insolvency Act 1986 might also be of assistance; it permits the UK courts to assist courts of certain designated countries in respect of insolvency and restructuring proceedings. Ireland is a designated country.

iii EU 'Second Chance' Directive

As of 15 May 2019, the EU Directive on Preventive Restructuring Frameworks[20] has been adopted. The Directive is based on and closely resembles examinership. It covers company debt and the debts of an over-indebted person who is or was carrying on a trade, business, craft or profession. The stated aim of the Directive is to provide increased access to preventive restructuring frameworks at an early stage for viable enterprises in financial difficulties.

iv UNCITRAL Model Law on Cross-Border Insolvency

The UNCITRAL Model Law provides a separate framework for cross-border insolvencies by way of cooperation and coordination between signatory parties. The Company Law Review Group (CLRG) is a statutory body established to advise the Irish Minister for Enterprise, Trade and Employment on the reform and modernisation of Irish company law. The CLRG published a detailed report[21] recommending that the UNCITRAL Model Law on Cross-Border Insolvency be adopted. The UK has adopted the Model Law, alongside Slovenia, Greece, Poland and Romania.[22]

The adoption of the Model Law in Ireland would provide greater certainty and predictability for companies to which the EU Regulation does not apply, including in the UK, and their creditors, as to how cross-border insolvencies are treated in Ireland, and would no doubt support further foreign direct investment.

VI FUTURE DEVELOPMENTS

Ireland is becoming a popular destination of choice for large-scale restructurings. The legislative framework, coupled with the Irish courts' demonstrated capability to deal with complex restructurings in an efficient and timely manner, is likely to mean a further increase in complex cross-border restructurings. In addition, as the UK no longer benefits from EIR Recast for proceedings commenced after 1 January 2021, Ireland is now the only English-speaking common law jurisdiction in the EU.

Domestically, it is hoped that SCARP will be availed of by many small and micro companies that might otherwise face liquidation.

Assessing the likely scale of insolvencies over the coming period, it is expected that in addition to large-scale formal insolvencies across many sectors, there will likely be an increased focus on turnarounds and informal arrangements with creditors, especially for small and medium-sized enterprises. Companies should focus their efforts on the most profitable parts of their business, seek legal and financial advice, and act early. A robust plan might enable viable companies to restructure and navigate their way out of difficulty.

20 (EU) 2017/1132.

21 http://www.clrg.org/Publications/.

22 Enacted via the Cross-Border Insolvency Regulations 2006.

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Appendix 1

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Barry Cahir heads the market-leading insolvency and corporate recovery team at Beauchamps in Dublin, where he advises a wide range of clients on contentious and non-contentious restructuring, insolvency and corporate recovery issues. Barry is incoming president of INSOL Europe and a fellow of INSOL International.

Barry previously chaired the Insolvency Law Committee of the statutory Company Law Review Group (CLRG), where he represented the Irish Society of Insolvency Practitioners. He chaired the report recommending the adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Barry is a past chair of the Irish Society of Insolvency Practitioners and an active member of the UK Insolvency Lawyers' Association.

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