

The International Comparative Legal Guide to:  
**Corporate Recovery & Insolvency 2009**

A practical insight to cross-border Corporate Recovery & Insolvency



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# Ireland

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### 1 Issues Arising When a Company is in Financial Difficulties

#### 1.1 How does a creditor take security over assets in Ireland?

Security can be taken by way of the following:

■ **Equitable Mortgage**

An equitable mortgage is a mortgage that passes only an equitable estate or interest; either because the form of transfer or conveyance is an equitable one or because the mortgagor's estate or interest is equitable only.

■ **Legal Mortgage**

A legal mortgage is a transfer of the legal estate or interest in land or other property. The borrower retains the right to redeem the legal title to the property charged on repayment of the debt. A legal mortgage of property of which physical possession cannot be taken (e.g., contractual rights under a life assurance policy) is effected by a security assignment. The assignment is subject to the repayment of the secured obligation.

■ **Fixed charge**

A fixed charge is a charge over specifically identifiable assets which have been offered as security but does not operate to transfer title in the secured assets to the creditor. On default by the borrower (and in accordance with the terms of the charge documentation) it provides the creditor with the right to receive payment from the proceeds on the realisation of the specific property. The borrower can generally only deal with the charged asset(s) with the lender's consent or following repayment of the secured obligation.

■ **Floating Charge**

A floating charge generally consists in a charge over all the assets of a borrower company as are acquired from time to time. The company remains free to deal with such assets in the normal course of its business. It does not attach to the assets charged until crystallisation, i.e., on the appointment of a receiver or the winding up of a company.

■ **Lien**

A lien is the right to hold the property of another as security for the performance of an obligation. A particular lien exists only as security for the particular debt incurred.

■ **Pledge**

A pledge arises where a pledgor transfers possession but not ownership of certain goods or documents of title to a pledgee as security for the discharge of a debt or discharge of some other obligation.

#### 1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

##### *Fraudulent Preference*

Any wrongful favouring of one creditor over others by a company which is unable to pay its debts is a fraudulent preference and is invalid. Where a company is put into liquidation, any preference of a creditor in the six months prior to winding up can be set aside as a fraudulent preference. Demonstrating an intention to prefer however is crucial and this can be difficult.

Where the creditor is a director of the company or a person connected with a director, any payment made to such persons in the two years prior to the winding up can be considered and set aside if deemed a fraudulent preference.

##### *Fraudulent Disposition*

On the winding up of a company, if shown that there has been a disposal of company property the effect of which was to perpetrate a fraud on the company, the court may order the return of such property or payment of a sum to the liquidator by the recipient of the proceeds on any transfer of the property.

##### *Invalid Floating Charges*

Where a company is being wound up, a floating charge created within 12 months before the commencement of the winding up shall be invalid unless proved that immediately after the creation of the charge the company was solvent. The charge remains valid in respect of money actually advanced or paid at the time of or subsequent to the creation of and in consideration for the charge.

The relevant period is 24 months in respect of any charge created in favour of a director or a person connected with a director on the undertaking or property of the company.

#### 1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Ireland?

Continuing to trade in times of financial difficulties does not of itself automatically give rise to directors' liability. However certain conduct in times of insolvency will give rise to directors' liability on a winding up of the company. Moreover, where an insolvent company is not being wound up and the principal reason is the insufficiency of its assets, certain provisions of company law that impose personal liability on directors will apply in the absence of a winding up.

Personal liability or other sanction will be imposed in the following situations:

*Fraudulent trading*

If in the course of a winding up of a company or an examinership, or where an insolvent company is not being wound up, any person that was knowingly a party to the carrying on of the business of a company with intent to defraud company creditors, or for any fraudulent purpose may be guilty of fraudulent trading. Irish company law provides for a maximum penalty of imprisonment for a term not exceeding seven years or a fine not exceeding €63,487 or both. In addition, any person may be held personally responsible, without limitation of liability for all or any of the liabilities of the company as the Court may direct.

*Reckless trading*

In the course of the winding up of a company or in the course of examinership proceedings or where an insolvent company is not being wound up, any officer of the company shown to have knowingly carried on any business of the company in a reckless manner may be personally liable for all or any part of the debts or other liabilities of the company.

An officer shall be deemed to be knowingly a party to the carrying on of any business of the company in a reckless manner if having regard to the general knowledge, skill and experience reasonably expected of such a person he ought to have known that his actions or those of the company would cause loss to the company's creditors, or he was a party to the contracting of debt by the company without honestly believing on reasonable grounds that the company would be able to pay its debt as they fall due.

It is a defence to show that a director acted in an honest and responsible manner.

*Restriction order*

If an insolvent company is wound up then, unless the Director of Corporate Enforcement relieves the liquidator from doing so, the liquidator must apply to the High Court for an order restricting each of the directors of the company from acting as a director or the secretary of any other company for a period of five years unless such other company is capitalised to the requisite level. The High Court must make such an order unless satisfied that the director has acted honestly and responsibly and that there is no other reason making it just and equitable that such an order should be made against him. The burden of proof is on the director. Although the Irish Supreme Court has recently described this regime as "draconian"; and in the relevant case, lifted a restriction order imposed by the Irish High Court, the statutory provisions in this regard are unchanged as yet.

*Disqualification*

A person convicted on indictment of any indictable offence in relation to a company or involving fraud or dishonesty may during the five year period from date of conviction or such other period as the court may order, be disqualified from acting as a Director or being directly or indirectly involved in the promotion, formation or management of any company. The onus is on the liquidator or other applicant to show that the director has committed conduct that would justify a disqualification order.

*Misfeasance*

Where in the course of a winding up, it can be shown that company money or property has been misapplied or wrongfully received by a director or other officer, such a director (or officer) may be compelled to repay or restore all or part of such money or property pursuant to misfeasance proceedings. Damages may also be payable in respect of some other breach of duty or misfeasance by a director or other officer.

Care should also be taken when making statutory declarations of solvency in connection with financial assistance for the purchase of shares in a company or with certain transactions involving

directors. If the company is wound up within twelve months after making the required statutory declaration of solvency and its debts are not paid or provided for in full within the period of twelve months after the commencement of the winding up it is presumed that the directors did not have reasonable grounds for making such a declaration and such directors can be made personally liable for the company's debts in full as they become due. The High Court can also consider whether any relevant arrangement with a director contributed materially to the company's inability to pay its debts, in which case, it may, on the application of the liquidator or any creditor or contributory of the company, declare that the beneficiary of the arrangement shall be personally liable for all or part of the debts and other liabilities of the company.

## 2 Formal Procedures

### 2.1 What are the main types of formal procedures available for companies in financial difficulties in Ireland?

#### Examinership

Examinership provides for a period of court supervised protection (a maximum of 100 days) during which a company is protected from creditors pursuing legal actions or remedies against it, thereby enabling the company and an appointed examiner to formulate and present proposals for a restructuring of the company.

#### Compulsory (Court) Liquidation

On application to the High Court, a liquidator, acting under the supervision of the court, is appointed to wind-up the company.

#### Creditors' Voluntary Liquidation

A procedure whereby the members of an insolvent company (usually on the recommendation of the board of directors) resolve to wind-up the company and appoint a liquidator for that purpose.

#### Receivership

A receiver is appointed to a company by either a debenture-holder or the High Court to take control of the assets of a company to achieve the repayment of the debt owing to the debenture-holder, either through receiving income or realising the value of the charged asset. Receivership is technically a method of enforcing a security but is often regarded as a form of insolvency procedure.

#### Statutory Scheme of Arrangement

This is a court supervised procedure which provides for the formulation and implementation of a compromise or arrangement between a company and its members or creditors. The compromise or arrangement with creditors is usually proposed when the company is in financial difficulties.

### 2.2 What are the tests for insolvency in Ireland?

There are two tests for establishing insolvency in Ireland, as follows:

- (i) the 'cash flow test' - is the company able to pay its debts as they fall due for payment?
- (ii) the 'balance sheet test' - do the value of a company's assets exceed its liabilities?

### 2.3 On what grounds can the company be placed into each procedure?

#### Examinership

Before the court will appoint an examiner, the petitioner must

satisfy the court that:

- (i) there is a reasonable prospect of the survival of the company and the whole or any part of its undertaking as a going concern;
- (ii) the company is unable to pay its debts or is likely to be unable to pay its debts as they fall due; and
- (iii) no resolution subsists and no order has been made for the winding-up of the company.

#### **Compulsory (Court) Liquidation**

The court has a discretionary power to order the winding-up of a company on a number of grounds, including:

- (i) the company resolves by special resolution to be wound-up in this way;
- (ii) the company is unable to pay its debts;
- (iii) the court is of the opinion that it is just and equitable; and
- (iv) the affairs are being conducted, or the powers of the directors are being exercised, in a manner oppressive to any member or in disregard of his interests as a member.

#### **Creditors' Voluntary Liquidation**

The members of the company can pass an ordinary resolution for the company to be wound-up on the grounds that it cannot by reason of its liabilities continue its business.

#### **Receivership**

The grounds on which a debenture-holder will be entitled to appoint a receiver to a company will be set out in the debenture document which provides for the appointment of the receiver.

#### **Statutory Scheme of Arrangement**

The court will supervise a scheme of arrangement on application to the court by the company or any member or creditor.

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### 2.4 Please describe briefly how the company is placed into each procedure.

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#### **Examinership**

A petition for the appointment of an examiner is presented by:

- (i) the company;
- (ii) the company's directors;
- (iii) any of the company's creditors (including an employee); or
- (iv) members of the company holding at the date of the presentation of the petition at least one tenth of the paid-up voting capital of the company.

The petition must be accompanied by a grounding affidavit; and an independent accountant's report containing an opinion as to the company's prospects of survival as a going concern and a statement of the conditions necessary to ensure its survival. At the hearing to have the examiner appointed every creditor of the company is entitled to be heard on the application.

#### **Compulsory (Court) Liquidation**

A petition for an order of the court to wind-up the company and appoint a liquidator (together with a verifying affidavit) is presented by:

- (i) the company itself;
- (ii) any creditor (this is the most common petitioner);
- (iii) any member;
- (iv) any contributory;
- (v) the Director of Corporate Enforcement; or
- (vi) the Registrar of Companies.

The petition must be served on the company at the registered office of the company and must be advertised in newspapers. A statement

of the company's affairs verified by one of the company's officers must be filed in court. The statement must set out certain information including a statement of the company's assets, debts and liabilities, details of the company's creditors and assets held by them. Every creditor, interested party and the company is entitled to be heard on the petition at the petition hearing.

#### **Creditors' Voluntary Liquidation**

The directors of the company convene a meeting of the members and a meeting of the creditors. At the members' meeting an ordinary resolution is passed to wind-up the company. The creditors' meeting is held on the same day as or the day following the members' meeting. At the creditors' meeting (which is presided at by one of the directors of the company) the creditors approve the members' choice of liquidator or propose their own. The creditors also consider the statement of affairs in respect of the company and appoint a committee of inspection.

#### **Receivership**

The debenture document itself will usually authorise the debenture-holder to appoint a receiver upon the occurrence of an event of default (as set out in the debenture document). The debenture-holder can designate a receiver once the conditions of exercising that power are satisfied.

Alternatively, the High Court has the power to appoint a receiver on application in certain circumstances.

#### **Statutory Scheme of Arrangement**

One of the following may apply to the High Court to propose a scheme of arrangement:

- (i) the company;
- (ii) any creditor of the company;
- (iii) any member of the company; and
- (iv) in the case of a company being wound up, the liquidator.

Following such application, the High Court will order meetings of the creditors and members to vote in respect of the scheme of arrangement.

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### 2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

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#### **Examinership**

The petitioner must deliver to the CRO a copy of the order appointing the examiner; and the examiner must advertise notice of his appointment in two daily newspapers and in an Irish official publication.

Once the examiner has formulated proposals for the scheme of arrangement for the company, he must convene meetings of the members and creditors of the company to vote on the proposals.

#### **Compulsory (Court) Liquidation**

The petition presented to the High Court must be advertised in an Irish official publication and two daily newspapers.

The petition must be served on the company and any creditor or contributory that requests a copy.

Notice of the winding-up order must be filed in the CRO and also advertised in an Irish official publication and two daily newspapers.

#### **Creditors' Voluntary Liquidation**

Creditors must be given at least 10 days' notice of the proposed creditors' meeting and the notice must be published in two daily newspapers.

Notice of the resolution to wind up the company must be published in the Gazette and a copy of the resolution must be given to the CRO.

See question 2.4 above for meetings of members and creditors.

#### **Receivership**

No meetings are required. The appointment of a receiver must be published by the debenture-holder in the Gazette and in one daily newspaper. Notice must also be given to the CRO.

A receiver appointed under a floating charge must notify the company of his appointment.

#### **Statutory Scheme of Arrangement**

See question 2.4 above as to meetings of members and creditors.

The order of the court sanctioning the scheme of arrangement must be filed in the CRO.

### 3 Creditors

#### 3.1 Are unsecured creditors free to enforce their rights in each procedure?

##### **Examinership**

During the period of an examinership, the company enjoys a “stay” during which creditors may not exercise their rights against the company. In addition no proceedings of any nature can be commenced against the company without prior leave of the High Court and subject to certain limited exceptions; any pending proceedings may be stayed. Certain specific procedures must be followed *vis-à-vis* guarantors and the enforcement of guarantees by creditors.

##### **Compulsory (Court Liquidation)**

No action or proceedings against a company which is the subject of a compulsory liquidation may be proceeded with or commenced without the permission of the High Court.

##### **Creditors’ Voluntary Liquidation**

Proceedings and actions against a company are generally not stayed in a voluntary liquidation and unsecured creditors remain free to exercise their rights in this regard. However, the liquidator of the company in voluntary liquidation may apply to the High Court for an order effecting such a stay.

##### **Receivership**

The appointment of a receiver to a company does not preclude unsecured creditors from enforcing their rights in respect of the debt owed to them.

##### **Statutory Scheme of Arrangement**

On application to the High Court to put in place a scheme of arrangement, that Court may stay all proceedings or restrain further proceedings against the company for a certain period. During such period, the rights of unsecured creditors against the company will be restrained.

#### 3.2 Can secured creditors enforce their security in each procedure?

##### **Examinership**

Once a petition for the appointment of an examiner had been presented, the rights of creditors to enforce their security are severely restricted: no action may be taken to realise the whole or any part of a creditor’s security except with the consent of the examiner (although regard should be had to the provisions of the Financial Collateral Arrangements Directive 2002/47/EC). Furthermore, the examiner has the right to use and dispose of a creditor’s security.

#### **Statutory Scheme of Arrangement**

The court is empowered by statute to stay all proceedings or restrain further proceedings against the company however this will not prevent the appointment of a receiver by a secured creditor during the process.

#### **Compulsory (Court Liquidation) / Voluntary Liquidation**

Commencement of a court or voluntary liquidation does not prevent a secured creditor from appointing a receiver.

##### **Receivership**

The appointment of a receiver to a company does not prevent other secured creditors from enforcing their security.

#### 3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

Generally, yes, where there is mutuality of debts. A company in liquidation cannot set off against its liabilities to a secured creditor unless he elects to prove in the liquidation.

### 4 Continuing the Business

#### 4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

##### **Examinership**

The directors continue to manage the affairs of the company subject to the examiner’s ability to convene, set the agenda for and attend board meetings. The court may order that only the examiner may exercise the powers of the directors; but in general, the directors and the examiner work together.

Shareholders may continue to attend and vote at general meetings however, the examiner also has the power to override any decision which is likely to be to the detriment of the company or any interested party. Existing shareholders’ interests will likely be diminished as part of the proposals in any event.

##### **Compulsory (Court) Liquidation) / Creditor’s Voluntary Liquidation**

In both compulsory and voluntary liquidations the liquidator takes control of the company. On the appointment of the liquidator the directors’ powers cease.

Shareholders similarly have no involvement beyond the initial approval of the liquidator’s appointment other than payment of any unpaid amounts on their shares or receipt of any distributions on a solvent liquidation.

##### **Receivership**

The directors will cease to have power over the assets which are secured by the debenture, under which the receiver is appointed and the debenture may authorise the receiver to manage the company’s business.

The appointment of a receiver has little effect on the shareholders as they remain entitled to the same voting powers as prior to the appointment; although shareholder value will have diminished.

##### **Statutory Scheme of Arrangement**

The directors continue to control the company and any effect on the shareholders will be dictated by the terms of the scheme.

#### 4.2 How does the company finance these procedures?

##### **Examinership**

If the scheme proposed by the examiner is approved by the High Court it will usually make provision for the examiner's fees, costs and expenses from the company's revenue or assets or from new investment.

The examiner's costs must be approved by the court and once approved must be paid before any other claim against the company.

##### **Compulsory (Court) Liquidation) / Creditor's Voluntary Liquidation**

The liquidator's remuneration and costs will generally be paid from the realisation of company's assets in priority to all creditors other than those secured by a fixed charge and an examiner's costs.

##### **Receivership**

The receiver's costs and expenses are funded from the realisation of the secured assets.

##### **Statutory Scheme of Arrangement**

Generally funded from the company's assets or revenue.

#### 4.3 What is the effect of each procedure on employees?

##### **Compulsory (Court) Liquidation**

A winding up order effectively terminates employee contracts.

##### **Creditors' Voluntary Liquidation**

A resolution to wind up a company voluntarily does not automatically terminate employee contracts although in practice a liquidator will often proceed to make most if not all of the employees redundant.

##### **Examinership & Statutory Scheme of Arrangement**

The appointment of an examiner does not immediately affect employees. The proposals put forward by the examiner or applicant in a statutory scheme may in practice affect employees particularly if the scheme for the survival of the company involves redundancies.

##### **Receivership**

Where a receiver is appointed, the company's employees are not automatically dismissed; however, in practice, the appointment of a receiver manager often results in redundancies. If the business of the company is sold the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 usually applies. This will be the case for any transfer of a business other than as part of a court liquidation.

#### 4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

##### **Examinership**

The commencement of the examinership procedure does not affect the contracts subsisting at the date of such commencement, unless express or implied provision to the contrary is made in the contract.

The general rule is that an examiner may not repudiate a contract entered into by company prior to the period during which the company is under protection except that the examiner may avoid certain provisions of a contract entered into by the company, in particular, 'negative pledge' clauses if the examiner is of the opinion that the provision would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern if enforced; and the company itself may apply to the

court to affirm or repudiate any contract under which an obligation other than payment remains to be performed.

##### **Court Liquidation / Voluntary Liquidation**

The terms of the contract may dictate the effect which the liquidation will have on the contract. Often a contract will provide that the appointment of a liquidator to the company will constitute a breach of the contract or trigger a forfeiture provision (where the contract is a lease).

Onerous contracts may be disclaimed by the liquidator with permission of the court and the other party to the contract or third parties suffering damage as a result will be entitled to be compensated for such damage and can prove the amount as a debt in the winding up.

##### **Receivership**

Those contracts entered into by a company prior to the appointment of a receiver to that company will generally remain enforceable by and against the company following the appointment of a receiver (unless the contract expressly or impliedly provides otherwise) and are not enforceable directly against the receiver.

##### **Statutory Scheme of Arrangement**

This will not result in automatic termination of contracts. However, contracts often provide that the occurrence of such an event will constitute a breach of the contract or trigger a forfeiture provision (where the contract is a lease).

## 5 Claims

### 5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

##### **Court Liquidation**

In compulsory liquidations the creditors must prove their debts. The liquidator or the court may fix a time by which written proof of debts must be lodged.

##### **Voluntary Liquidations**

Formal proof of debts is not essential in voluntary liquidations however submission of claims in writing may be required by the liquidator.

##### **Examinership**

Claims should be submitted in writing to the examiner.

##### **Receivership**

The receiver's main duty is to ensure the repayment of the debt of the secured creditor who appointed him. Preferential creditors should, nonetheless notify the company and the receiver of their claims in writing.

##### **Statutory Scheme of Arrangement**

Creditors should notify the company/applicant of their claims in writing.

### 5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

##### **Liquidations**

Any amount due to the holder of a fixed charge will be made out of the proceeds of sale of the charged asset and fall outside the statutory ranking of claims.

Outside of those claims secured by fixed charges the ranking of claims is as follows:

- fees, costs and charges of an examiner;
- costs, charges and expenses of the liquidation;
- certain social insurance contributions;
- preferential creditors (such as Revenue and employees);
- payment due to the holder of any floating charge; and
- unsecured creditors.

#### **Examinership and Scheme of Arrangement**

There are no legal rules governing ranking of claims in an examinership or a scheme of arrangement.

#### **Receivership**

Where a receiver is appointed under a fixed charge the holder's debt will be repaid to him and the receiver's costs and expenses rank with the debenture holder's debt.

#### **Scheme of Arrangement**

There is no general rule on ranking of claims and the arrangement itself will set out the terms of payment.

### **5.3 Are tax liabilities incurred during each procedure?**

Tax liabilities are for the most part incurred as normal under each procedure. For example corporation tax will accrue to the extent that any trading continues as will VAT. Capital gains tax will arise on all 'chargeable gains' on the disposal of assets and gains on distributions to shareholders as part of a liquidation will be taxable but as capital as opposed to income.

## **6 Ending the Formal Procedure**

### **6.1 Is there a process for "cramming down" creditors who do not approve proposals put forward in these procedures?**

'Cramming down' is possible in examinership and schemes of arrangement bearing in mind the level of approval necessary for such schemes.

'Cramming down' does not arise in liquidations or receiverships.

### **6.2 What happens at the end of each procedure?**

#### **Court Liquidations**

Having passed his final account with the Examiner, the official liquidator usually applies to court for directions regarding how the balance should be disposed of. Once disposed as directed, the liquidator will obtain an Order dissolving the company.

A compulsory liquidation ends when the Order dissolving the company has been notified to the Registrar of the CRO.

#### **Voluntary Liquidations**

As soon as the affairs of the company are fully wound up the liquidator prepares an account of the winding up and calls a general meeting. The liquidator must file a copy of the account with the CRO and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved.

#### **Examinership**

The court protection afforded to the company during the examinership process ceases when the examiner's proposals come into effect and the examiner is discharged. The High Court may direct that the process cease at an earlier date e.g. if the court refuses to confirm the examiner's proposals.

#### **Receivership**

The receiver will be discharged once he has realised the assets over which he has been appointed and the secured creditor (and any preferential creditors if appropriate) has been paid.

#### **Scheme of Arrangement**

This procedure will come to an end once the scheme comes into effect. The scheme takes effect once a copy of the High Court's sanction is filed with the CRO.

## **7 Alternative Forms of Restructuring**

### **7.1 Is it common to achieve a restructuring outside a formal procedure in Ireland? In what circumstances might this be possible?**

Informal schemes of arrangement are being considered more in recent times due to the perceived advantages of lower cost, the level of control which the board retains, the relative speed of the process and the privacy it affords. In such schemes corporate recovery is sought by the restructuring of the troubled company's finances by approaching the company's creditors to negotiate a private agreement.

The disadvantages which accompany such informal schemes are that they do not import the immediate protection which more formal schemes enjoy and there is a risk from those creditors who do not sign up to the informal arrangement as there is no mechanism by which to compel them to participate.

### **7.2 Is it possible to reorganise a debtor rather than realise its assets and business?**

In theory it is possible to reorganise a debtor if the requisite consent and co-operation is received from shareholders and creditors (if reorganising debts) or in the case of shareholders if the requisite control can be exercised e.g. by virtue of powers of attorney or other forms of security in place. In practice, the reorganisation of debt would require the consent of all creditors and the concern would be that approaching the creditors would result in insolvency proceedings being commenced by concerned creditors.

### **7.3 Is it possible to achieve an expedited restructuring of the debtor by means of a pre-packaged sale? How is such a sale effected?**

The pre-pack process is a process which is experiencing increased use in the United Kingdom however it has not to date achieved the same level of notoriety in Ireland. A 'pre-pack' is where a company is put into receivership/administration and then its business and/or assets are immediately sold under a sale which was arranged prior to the appointment of the receiver/administrator.

Prior to the appointment of the insolvency practitioner a range of activities are undertaken to prepare for an immediate sale on appointment. These include sourcing potential purchasers, seeking initial offers, undertaking due diligence and negotiating a contract, the contract is not completed until the insolvency practitioner is appointed.

## 8 International

## 8.1 What would be the approach in Ireland to recognising a procedure started in another jurisdiction?

Cross-border insolvency proceedings within EU Member States are governed by the EU Insolvency Regulation, Council Regulation

(EC) 1346/2000 (the "Insolvency Regulation"). This was adopted in Ireland in May 2002 and has the effect that irrespective of the jurisdiction of incorporation of the company, once insolvency proceedings have been commenced in one Member State, they must be recognised as having effect throughout the EU. Similar regulations have been brought into effect for banking and insurance undertakings.

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**TITLE:** Partner.

**PRACTICE AREA:** Corporate and M&A, Insolvency and Corporate Recovery.

**EDUCATION:** University College Dublin and the Law Society of Ireland.

**PROFILE:** Adrian joined Dillon Eustace in January 2005 and was appointed a partner in 2006. Adrian has extensive experience in mergers and acquisitions across a wide range of industries including IT, Energy, Food, Financial Services and Recruitment. Additional areas of expertise include corporate recovery and insolvency, shareholders' agreements and disputes, joint ventures, inward investment, equity fundraising and venture capital, corporate finance and corporate governance.

Adrian is a member of the Business & Commercial law committee of the Dublin Solicitors' Bar Association.

## DILLON EUSTACE

Dillon Eustace is one of Ireland's leading law firms focusing on financial services, banking and capital markets, corporate and M&A, litigation and dispute resolution, real estate and taxation.

Headquartered in Dublin, Ireland, the firm's international practice has seen it establish offices in Tokyo (2000) and Boston (2003) as well as a strategic alliance with Arendt & Medernach, a leading Luxembourg law firm. Most recently, the firm has also opened an office in Cork (2007).

In tandem with Ireland's development as a leading international financial services centre, Dillon Eustace has developed a dynamic team of lawyers representing international and domestic asset managers, investment fund promoters, insurers, banks, corporates, TPAs and custodians, prime brokers, government and supranational bodies as well as newspapers, wind energy companies, aviation and maritime industry participants and real estate developers.

We strive to develop our teams, to provide a sophisticated proactive service to clients and to deepen our understanding of each client's business and needs. We hope that the information provided on this site assists you firstly, as well as introduces us and our services to you.

Firm and individual partner endorsements appear over the following pages.

### Contact Details

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