Corporate Restructuring and Insolvency

The Irish restructuring and insolvency regime is well-established and internationally recognised. The underlying principles have been heavily shaped and influenced historically by the common law system and in recent years have been integrated in the EU framework under the Recast Insolvency Regulation, augmented by the provisions of the Rome Regulation and Recast Brussels Regulation. In comparison to the law in many other European states, Irish restructuring and insolvency law is both creditor-friendly and flexible, featuring processes that facilitate rescue and restructuring of corporate groups with complex structures.

Why Choose Irish Law and Irish Lawyers for Corporate Restructuring and Insolvency Arrangements

- Ireland is an English-speaking jurisdiction with a strong and long-standing common law jurisprudence. This provides familiarity of process, procedure and substantive legal principles for those accustomed to dealing with US and / or UK law. The sector has benefited greatly from the significant expertise developed by the UK market in its capacity as a global leader in international restructuring. Tried and tested English case law and precedent, whilst not binding, has long been cited and accepted by the Irish judiciary.

- The main corporate restructuring and insolvency procedures available in Ireland in the event of insolvency are examinership, receivership, schemes of arrangement and liquidation.

  - *Examinership* - Ireland boasts a powerful and flexible corporate rescue process which international corporates will recognise as similar to the Chapter 11 procedure in the US, and, to a lesser extent, UK administration. Examinership is a court supervised process available to insolvent or potentially insolvent companies which have a reasonable prospect of survival as a going concern. Where a company is unable to pay its debts a petition may be presented to court to place the company under the court's protection for a period of up to 100 days. This period of protection from creditor action is intended to enable a court appointed examiner (usually an insolvency practitioner nominated by the petitioner) to formulate a scheme of arrangement to rescue the company. The directors retain control and executive power of the company – similar to the US Chapter 11 "debtor-in-possession" concept.

  - *'Pre-pack' receiverships* – Process whereby the sale of a distressed company's business / assets can be negotiated shortly before a receiver is appointed, and executed shortly thereafter. The aim is to minimise disruption and costs, and out-of-the-money junior creditors can be left behind in the insolvent company.

  - *Schemes of Arrangement* - Like in the UK, companies in Ireland can avail of a statutory scheme of arrangement, which can be used to implement a variety of arrangements between a company and its creditors or members. The Irish Courts have approved schemes to implement the most complex of debt restructurings in a timely manner.

  - *Liquidation* – Liquidation has its comparator in most developed jurisdictions and will be easily recognisable to international and multinational companies. The process essentially provides for the cessation of corporate activities, the realisation of assets and the satisfaction of creditor claims from available proceeds.

- *Merger* - Irish company law provides a statutory procedure allowing two private companies (of which at least one must be a private limited company) to merge so that the assets and liabilities of one transfer by operation of law to the other, after which the former company is dissolved. This is a relatively new procedure under domestic company law.

- Ireland is generally regarded as having a creditor-friendly and flexible corporate recovery and insolvency framework. The courts are nevertheless cognisant of balancing the need for certainty – in terms of creditors having effective enforcement rights – with the requirement for the rights of debtors to be protected, particularly when dealing with vulnerable debtors.

- Irish lawyers and the Irish judiciary are highly experienced in insolvency and restructuring cases, and Ireland is becoming an increasingly popular jurisdiction amongst the international restructuring community. Recent decisions in the restructuring space demonstrate the willingness and capacity of the Irish courts to deal with large global restructuring cases. The judges involved in these decisions had been vastly experienced practitioners in the field of restructuring and insolvency prior to their appointment to the judiciary.

  - In **Ballantyne Re plc** the Irish High Court approved a scheme of arrangement that restructured US$1.65bn of liabilities, demonstrating the effectiveness of an Irish law scheme of arrangement as a tool to implement complex, international debt restructurings. The Irish High Court case-managed the scheme process, including a contested hearing, which was concluded in less than six weeks. Recognition of the scheme of arrangement was also sought and obtained in the US under Chapter 15 of the US Bankruptcy Code.

  - In **Weatherford International plc** the Irish examinership process was for the first time used in parallel with the US Chapter 11 process. The restructuring of the Weatherford Group was one of the most significant global restructurings in 2019 and resulted in unsecured noteholders exchanging approximately $7.6 billion of senior unsecured notes for approximately 99% of the equity in Weatherford and $2.1 billion of new unsecured notes. The success of the Chapter 11 process was contingent on obtaining analogous orders in Ireland.

  - In July 2020, the High Court approved a scheme of arrangement for Irish-based lessor company **Nordic Aviation Capital**. The Nordic Aviation Group is the world's largest regional aircraft lessor and the world's fifth largest aircraft lessor and had been significantly affected by the COVID-19 pandemic. The aircraft lessor sought to enter into a scheme of arrangement with its creditors in light of the effects of the COVID-19 pandemic on the aviation industry. The scheme included a 12-month standstill and deferral of over €5bn of debt from Nordic Aviation Capital to its creditors. The proposed scheme re-affirmed, following the Ballantyne case, the ability to affect third party liabilities. It went one step further than the High Court in the Ballantyne case in that the company which proposed the scheme was the guarantor of the relevant liabilities and the third parties were the principal creditors. Subsequently in 2021 the Nordic Aviation Group completed its global restructuring by way of a Chapter 11 reorganisation in the United States.

  - The Irish examinership process was also utilised by **Norwegian Air** to effect one of the most innovative and complex restructurings in Europe. The Irish examinership was the lead process along with a parallel Norwegian Reconstruction used to restructure English and US law debt, repudiate English law contracts, reduce the group's fleet and

discontinue its long haul operations, and restructure the group's balance sheet by compromising debt of approximately €5 billion and raising new capital through share and debt offerings. Orders were sought and obtained recognising an Irish examinership for the first time under Chapter 15 of the US Bankruptcy Code.

- In 2022, the Irish High Court approved a scheme of arrangement in the examinership of **Mallinckrodt plc** (a pharmaceutical company run in the US with its holding structure based in Dublin, with $5.3 billion in long-term debt arising from lawsuits relating to its marketing of opioids). This scheme gave effect to a wider global restructuring of the group by way of a US Chapter 11 Plan and demonstrated the willingness of the Irish courts to recognise US Chapter 11 orders when necessary.

The impact of BREXIT on Corporate Restructuring and Insolvency Arrangements?

By far the most significant consequence of BREXIT for the UK's legal services market for corporate restructuring and insolvency has been the loss of automatic recognition and enforcement of UK restructuring and insolvency proceedings in other EU Member States. Similarly, the loss of automatic recognition in the UK of restructuring and insolvency proceedings commenced in the EU and the need to rely on the UK's domestic rules of recognition has led to a level of uncertainty with regard to cross-border insolvency and restructurings across the EU. Cross border restructurings involving a UK element are no longer as straightforward and, with the potential for additional court applications and procedural hurdles, will add time, costs and complexity, thus reducing the returns to creditors and investors.

Ireland is now the largest remaining English-speaking, common law EU member state and its restructuring and insolvency processes and court structure will be familiar to those accustomed to doing business in the UK. In addition, as a result of its historic ties with the UK Ireland is the only EU country that can avail of section 426 of the UK Insolvency Act 1986, which provides that the UK courts may give assistance to the courts of certain designated countries (which are essentially members of the Commonwealth, Hong Kong, and Ireland) in relation to insolvency matters. As a member of the EU, Ireland can benefit from the fact that it has a similar insolvency and restructuring regime to the UK that is automatically recognised and enforced across the EU.