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Corporate Restructuring and Insolvency

In comparison to the law in many other European states, Irish corporate law and, in particular, 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 and procedure as well as, generally, regarding substantive legal principles to those accustomed to dealing with US and / or UK law.

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

- Ireland boasts a powerful, flexible, corporate rescue process, which international corporates will recognise as similar to the Chapter 11 procedure in the US, and to a lesser extent, to UK administration. Examinership is a court supervised process available to 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) put in place a scheme of arrangement to save 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 – 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 in insolvent company.

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- 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. Schemes can be used to implement the most complex of debt restructurings.

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

- 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. Two recent decisions in the restructuring space demonstrate the willingness and capacity of the Irish courts to deal with large global restructuring cases. In both instances the judges involved had been vastly experienced practitioners in the field of restructuring and insolvency prior to their appointment to the judiciary.

- In **Ballantyne Re plc** (Ballantyne) (2019) the Irish High Court approved of 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.

- In **Weatherford International plc** (Weatherford) (2019 the Irish examinership process was used in parallel with the US chapter 11 process. The restructuring of

the Weatherford Group 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.

- 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 has 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. In approving the scheme of arrangement, which received the support of over 90% of the different classes of Nordic Aviation group's creditors, the High Court was satisfied that it had the jurisdiction to make the order sought and that the scheme was "fair and equitable". The scheme includes 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.

How will BREXIT impact 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 will be the loss of automatic recognition and enforcement of UK restructuring and insolvency proceedings in other EU Member States after the end of the transition period. Similarly, as things stand, there is no guarantee that UK courts will automatically recognise restructuring and insolvency proceedings commenced in the EU27. Changes to the existing EU framework — and change is inevitable — could have serious consequences for the UK's legal services market for restructuring and insolvency. It is likely that any alternative framework — assuming one is, eventually, agreed — will add time and costs, thus reducing the returns to creditors and investors following cross-border restructuring and insolvency proceedings, and may lack certainty in terms of recognition and enforcement outside of the UK.