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Hope for ailing companies in these difficult times

With all the negative news regarding the economic slowdown, credit crunch, job losses, gloomy pre-budget predictions, high energy prices and low consumer sentiment, many business owners could be forgiven for thinking that there are few options available to them other than to liquidate.

Business owners are often reluctant to face facts and to make hard decisions thus losing valuable time in plotting their survival. Early and decisive actions by management are crucial. Seeking advice from an experienced firm of accountants at an early stage to identify and address the critical issues is essential.

There are several options available for distressed companies, including:

- ❑ Informal schemes of arrangements
- ❑ Examinership
- ❑ Liquidation

Informal schemes of arrangements

During previous economic downturns the fate of insolvent companies was liquidation. However, we have found that stakeholders and creditors of companies facing insolvency today are more open to informal schemes of arrangements. The financial consequences for creditors are comparatively larger today because, this time far more credit has been extended by the banks, directors, creditors and others.

Informal schemes of arrangements are organised between a company encountering financial difficulties and its creditors and are done outside the ambit of the court. They are particularly suitable for situations where there are a handful of large creditors.

Key to ensuring success is timely and effective communication. It is important at the outset that the financial difficulties are communicated with all major creditors and an outline of the proposals for a scheme of arrangement is given.

Under such schemes all the creditors of the debtor company must also be prepared to cooperate with each other and provide sufficient time to the debtor to devise a recovery plan.

Informal schemes of arrangements can enable a company in financial difficulty to remain in business and pay a higher dividend to unsecured creditors than what they would receive in liquidation.

Examinership

It would appear that, after 18 years in existence the message regarding examination is starting to sink in with the decision makers of Irish business. However the percentage of companies here that go into examinership is quite low. Only 2% of (insolvent) companies here use examinership as opposed to 22% in the US

The 1990 Companies Act introduced the process of Examinership. In order for a company to be suitable for Examinership, the High Court has to be satisfied that the company, and the whole or any part of its undertaking, would have a reasonable prospect of survival. In essence, there must be a business that is either viable, or can be made viable.

The process itself begins with a petition presented to the High Court. The process provides business with a defined period of time, to enable it to deal with its debts and focus on what is the best way forward.

Under the legislation, once an Examiner is appointed to a Company, the Company is under the protection of the High Court whilst the Examiner (i.e. the individual who "examines" the Company) formulates a Scheme of Arrangement with the Company's creditors.

In practice the Examiner will work closely with the directors to re-assure creditors, employees and staff. Unlike liquidations, the directors are responsible for the day to day management of the company.

Given current sentiment and indicators regarding the Irish economy it is likely that we will see more companies and their advisors giving serious consideration to embarking on the examinership process.

3. Liquidations

When the Company reaches the end of its life, or becomes insolvent, one of the options open to it is to be formally wound up by a liquidation process.

Liquidation is a process by which the assets of a company are realised and the proceeds distributed to the creditors and members in the order of priority as determined by company legislation.

Liquidations may be voluntary or compulsory (under court management following petition to the court). Voluntary liquidations may be a members' liquidation or a creditors' liquidation. The former implies solvency, the latter implies insolvency.

There are three types of liquidations

1. court liquidation
2. creditor's voluntary liquidation,
3. members voluntary liquidation.

1. Court Liquidations

A Court Liquidation is a means by which creditors of a company determine that it can no longer continue to trade and have a liquidator appointed. This process can be initiated by creditors sometimes against the will of the shareholders of the company. It can also be used by shareholders or company directors. In order to have a company placed in a court liquidation a petition must be made to the High Court.

2. Creditors Voluntary Liquidations

Creditors Voluntary Liquidations are initiated by the directors where a company is insolvent. The liquidator's appointment is confirmed at a subsequent meeting of the creditors. In a Creditors' Voluntary Liquidation, the liquidator is primarily concerned with the interest of the creditors.

3. Members Voluntary Liquidations

Where the life of a company is to be brought to an end, and that company is solvent, a 'Members Voluntary Liquidation' is the most often used approach.

The members are the ones who control the winding-up, and not the creditors. As all creditors will be paid in full, they have no interest in how the winding-up is conducted. It is, therefore, the members who appoint a liquidator and he then lays his annual and final accounts before members only.

How can Crowleys DFK help?

Crowleys DFK has an experienced team of advisers who can provide the following services:

- ❑ Advise the directors of their statutory responsibilities
- ❑ Advise the Company
- ❑ Advise the Creditor
- ❑ Provide assistance with preparing a recovery plan for the creditors' agreement
- ❑ Prepare proposals for the bank
- ❑ Advise on the suitability of Examinership
- ❑ Act as the reporting Independent Accountant
- ❑ Act as the Examiner
- ❑ Assist the company in meeting the procedural requirements for placing it in liquidation
- ❑ Accept appointment as liquidator of a company and dealing with the realisation of assets, the payment of creditors and finalising the company's affair

Colette Nagle

cnagle@crowleysdfk.ie

For more information, please contact us at: marketing@crowleysdfk.ie

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www.crowleysdfk.ie



16/17 College Green
Dublin 2

Tel: **01 6790800**
Fax: **01 6790805**

5 Lapp's Quay
Cork

Tel: **021 4272900**
Fax: **021 4277621**