



# POST PANDEMIC FINANCIAL SOLUTIONS: HOSPITALITY, RETAIL AND SERVICE SECTORS



# Post Pandemic Financial Solutions: Hospitality, Retail and Service Sectors



## Sharing the Pain is a Gain for All – A Small Company Rescue Process

The hospitality, service and retail sectors are at the coalface of the Irish economy, moving in step with it as it expands or contracts. The COVID pandemic has seen these sectors take the brunt of restrictions in an unavoidably lopsided way when compared to other sectors. Without assistance this lopsided impact will persist. To date the pandemic has cost the tourism sector over €13bn and 100,000 jobs (ITIC).

2022 will be make or break for many. Protecting and repairing viable but distressed businesses will require the involvement of all stakeholders. Resolution requires the assistance of appropriate professionals. Solutions are multi-faceted and can comprise several options including capital raising, asset or business disposal, bank debt restructures, owner/creditor arrangements and liquidations.

Moore delivers on all of these options. Here we outline one of those options – the owner/creditor arrangement. Businesses who are depleted but viable and looking for the most effective option for survival should consider the owner creditor arrangement given that most stakeholders and creditors will have been affected due to the prolonged nature of the disruption.

Moore issued a circular in 2020 called Restructuring After the Storm ([link here](#)) which covered the use of Schemes of Arrangements and Examinerships as means of rebooting a good business which has been affected. The key criteria is that with the assistance and agreement of creditors the prospects of survival are better with the twin goals of preserving both the business and employment. These can prove effective but can be costly and as a result suit larger companies. A more streamlined alternative for smaller companies would help recovery faster.

### “SCARP”

This third option is now available following the Companies (rescue process for Small and Micro Companies) Bill 2021 which was enacted on July 22 2021.

Its administrative process, exclusively for small and micro companies, is modelled on the scheme of arrangement and designed to avoid the financial cost of an Examinership which is a one size fits all process in theory, but beyond the scope of most companies in practice.

The Small Company Administrative Rescue Process (SCARP) is available to companies who satisfy the following criteria:

	Turnover		Balance Sheet		Average Employees
Micro	<€700,000		<€350,000		<10
Small	<€12,000,000		<€6,000,000		<50

It is reliant on lender/creditor cooperation and where third party funding is less likely to be available.

## SCARP Process



## Conditions for SCARP:

1. The company is unlikely to pay its debts.
2. There is no resolution or order to wind up the company or petition for examinership or examiner appointed.
3. There has been no resolution by the directors to appoint a PA in the previous 5 years.
4. If a receiver has been appointed for less than 3 days or provisional liquidator has been appointed at the time of resolution to appoint a PA, the PA may apply to the court as to whether a receiver or liquidator shall continue to stand appointed.
5. No automatic protection is afforded and the company must apply to the court for protection.
6. Repudiation of onerous contracts is possible but requires a specific process to be followed.
7. The viability status during the process is kept under constant review. In the event that there is no longer a reasonable prospect of survival the directors must take steps to protect the interests of employees and creditors.
8. The PA may convene and preside over meetings of the board of directors, set agenda and propose motions. They retain the powers to prevent any such actions that have implications for the income, assets or liabilities of the company unless those actions facilitate the survival of the company as a going concern.
9. Excludable debts exist where there are outstanding returns, an existing tax audit, a history of non-compliance with tax obligations and liabilities in respect of the Revenue Commissioners and Department of Social Protection.
10. On conclusion the PA files all orders of court with the CRO.
11. In the event of any misinformation or fraud within 180 days of the confirmation of a rescue plan an application to the court can be made to revoke that confirmation with further notification to the Director of Corporate Enforcement.

## MOORE BANKING

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## RESTRUCTURING

At Moore we have been involved in a number of successful restructures involving bank debt, creditor schemes of arrangement and Examinerships across a number of industries but particularly the hospitality, retail and services industries.

There is no better time than now to start the process of resolving financial issues and eliminating distress by engaging all parties with an interest in the outcome.

If you think you need these solutions or simply want to test your systems for resilience the Moore Banking and Recovery team could play a significant role in protecting your business and building endurance for the longer term. Please contact a member of our team:

## CONTACT US

### Moore – Dublin

Ulysses House, Foley Street,  
Dublin 1, Ireland  
T +353 (0)1 888 1004

Pearse O'Donovan  
**Head of Banking & Restructuring**  
[pearse.odonovan@mooreireland.ie](mailto:pearse.odonovan@mooreireland.ie)  
021 4275176

Ned Murphy  
**Managing Partner**  
[ned.murphy@mooreireland.ie](mailto:ned.murphy@mooreireland.ie)  
021 427 5176

### Moore – Cork

83 South Mall, Cork,  
Republic of Ireland  
T +353 21 427 5176

William Fawcus  
**Banking & Corp. Finance**  
[william.fawcus@mooreireland.ie](mailto:william.fawcus@mooreireland.ie)  
021 427 5176

John Coulston  
**Insolvency Partner**  
[john.coulston@mooreireland.ie](mailto:john.coulston@mooreireland.ie)  
01 888 1004

Or email:

[marketing@mooreireland.ie](mailto:marketing@mooreireland.ie)



[www.mooreireland.ie](http://www.mooreireland.ie)