

Rebuilding after the Storm: Getting to grips with Restructuring

We are all caught in the storm together but we are not all in the same boat: Sharing the burden may be the best outcome for all

Once we begin re-emerging from the pandemic some boats will pull away, some will sink and others weakened but salvageable will need an overhaul to be made seaworthy again. This solution based document is aimed at those businesses which need relief and support from their creditors in order to get them back on an even keel again and fortify them for the next journey.

The current reality is that many businesses are in a state of animated suspension – on life support with subsidies and temporary deferrals, whilst debts mount up in the background. This is leaving many with concerns whether they can re-emerge and trade safely and profitably when the economy restarts again. If social distancing means a slower and more gradual return to previous levels of custom, how will they keep up with current obligations, let alone repay the amounts deferred?

Debt overhang, unpaid rent, Revenue and creditor overhang are all concerns for many businesses. These companies will have lost a significant period of time where many fixed and variable costs (wages/insurance/power etc.) continued but with reduced or no turnover to fund them. They also face a changed market where what worked before may be no longer viable. In addition when companies emerge from recession they are also exposed due to a lack of sufficient internally generated working capital (the product of continual positive trading) with the result that companies may not be able to meet their debts as they fall due. Therefore it is a company's existing creditors which need to be addressed as a priority.

The good news for these businesses and creditors is that there are solutions; from strategic change, to new funding to formal compromises; all of which have been employed successfully by Moore in the past. Compromises include Examinership, Examinership Lite, Formal Schemes of Arrangement and negotiated contractual compromises; all of which come under legislation in the 2014 Companies Act. These may involve a re-termining or formal write down of current and longer term liabilities while injecting fresh capital via debt or equity (or both). For that reason the business must demonstrate that it can recover once these measures are taken.

Some of the sectors where we anticipate a lot of this restructuring action needing to take place are areas where we have helped firms with restructuring in the past; such as:

- Manufacturers,
- Hospitality businesses,
- Retail,
- Construction,
- Alternative Energy and,
- Technology.



Scheme of Arrangement – A Snapshot:

Who can avail of formal restructuring?

All incorporated companies, with parameters surrounding turnover, balance sheet and employee numbers dictating which category is most relevant. There must be a viable business and in the case of Examinership it must result in employment being saved.

Who can apply?

The company itself, creditors, members.

Why apply and how does it work?

To re-enable the business to continue trading and structure it to meet the demands of a changing environment. A successful scheme binds the company and its creditors to a rearrangement of their rights and obligations. 75% in overall value of the creditors or creditors in each class or members in each class have to approve the scheme for all creditors or members to be bound by the terms of the scheme.

Are there any prerequisites?

There must be the existence of a viable core business. In the case of Covid-19 affected businesses this can mean demonstrating there was pre covid-19 demand, which still exists if the business adapt its processes or offering to serve its markets in a new way going forwards.

What are the benefits of a Scheme of Arrangement?

Schemes of arrangements are cost effective and less time consuming than the Examinership process. They can be more low-profile as they are completed in the Circuit Court rather than High Court, and they can be more flexible involving a lesser or greater degree of business intervention. Depending on the circumstances this can include a hive down, investment into the business, dilution, more favourable terms with creditors, and/or a write-down of some debt owing.

If you want to go early – Pre-Prepare:

Don't alarm creditors into hasty court action by telling them you want to restructure without a full plan in place first!

Pre Prepare Examinerships and Schemes: Where a company is facing financial difficulty but has a viable business, full business plans should be prepared well in advance of an application to court. Preparing these involves company due diligence and detailing the scheme proposals upfront to allow early engagement with creditors. This is strategically the best approach.

Now is the time to look at this before we exit the lock down. It can also be used to get court protection quickly to avoid attempts at receivership or liquidation from disgruntled creditors.

Each of the avenues of restructuring and recovery can yield significant benefit to all stakeholders, whereas the alternative, liquidation, can substantially reduce or wipe out the outcome for creditors of the business. Therefore it is often in creditors best interests to come to the table and engage meaningfully with the proposals to recast the business and operations in a sustainable way.

Post Covid-19 we expect there to be a substantial number of businesses seeking avenues of recovery requiring a restructure. We believe that for most of the small to medium size enterprises the most conducive route to recovery is through the formal scheme of arrangement. Not only is it more efficient and cost effective; it gets to a result much quicker for all concerned.

Examinership is a 70 - 100 day process through the High Court where there is an imminent threat to the survival of the company and the prospect of significant unemployment but where there is reasonable prospect of survival under court protection. Schemes of arrangement on their own could be done in half that time, and involves just one trip to the Circuit Court to preserve the outcome.

We expect that the impact of the Covid-19 Lockdown will result in 3 to 6 months lost revenue with lingering effects, including social distancing, lasting longer than that. The worst thing a business can do is to allow a legacy creditor tailback to develop which then prevents a business from recovering and which impacts working capital and funding efforts during the re-emergence period. We also believe that because almost all business will have been affected by the same crisis, where defaults were not caused by bad management decisions, there will be a willingness to negotiate and compromise by creditors.

In order to be successful in restructuring a viable core business will need to work out an achievable plan to adapt to the new business paradigm. This will mean establishing clear

routes to market, demand for the offering, and a cost effective way of delivering it. It will need to be backed up with credible business plan, financial projections and strategy showing repayment capacity resulting in more back to the creditor than they would receive in a company liquidation.

Here is where Moore's expertise comes into play. In the pause and rewind stage we can work with you to develop a feasible and achievable business plan, and in the reset and go stages steer the company through the following steps to achieve the scheme of arrangement, on its own or as part of an Examinership process if more suitable where we successfully petition the court on your behalf:

1. Determine viability and potential for solvent trading (this is required from an independent expert for Examinership cases).
2. If necessary, apply to court for a moratorium if creditors are aggressive.
3. Devise a workable business plan with the company, including projections which demonstrate profitability and repayment capacity.
4. Where necessary attract new investment/funding to the company to meet business plan requirements.
5. Negotiate write downs and/or re-arrangements of debt with all creditors, including bank and Revenue.
6. Confirm the compromise is better than liquidation for the various stakeholders, including the creditors.
7. Begin communicating with all creditors to lay ground for agreeing a compromise scheme.
8. Devise the scheme of arrangement/restructuring proposals and notify all parties with an Information Memorandum explaining scheme, context and subsequent longer term viability of the company.
9. Organise a meeting with members and creditors to discuss the scheme / proposals.
10. Organise a vote of the creditors with a view to passing a vote of the restructuring proposals.
11. Arrange to take the approved scheme before the court to seal the arrangements and bind all parties to ensure the debt is restructured for all creditors as outlined in the proposals.

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.
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