

Full COVID-19 impact is yet to hit

We could be waiting some time to measure the effect COVID-19 has had on Irish business, but the Maples Group is well placed to assist

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We are living in unprecedented times and businesses across every sector have been affected by the fallout from COVID-19.

Offering legal, fund and fiduciary services to clients across its 18 offices around the globe, the Maples Group is well placed to help and Robin McDonnell, head of the Dispute Resolution & Insolvency team at Maples and Calder LLP, the Group's law firm in Dublin, says the effects of the pandemic may not be fully seen for months to come.

“As soon as the lockdown was brought into effect, people assumed that insolvency and restructuring related work would suddenly ramp up, but while so many businesses across various sectors of the economy have been adversely affected, the full impact of the crisis has yet to be seen,” he said. “For months, people and businesses were in a hiatus or holding pattern mode and while there has been a steady increase in insolvencies, there has not been a dramatic increase across the board. We remain very busy with existing client matters which include a general mix of litigation, restructuring and insolvency matters. However, we anticipate the pace is likely to pick up into 2021.

“Insolvency practitioners I have spoken to have generally agreed that the tsunami hasn't hit yet, and while there have been some high-profile retail casualties, the surge of distressed and possibly terminal events has yet to come. When the stimulus packages and government support structures run their course, the real damage will be revealed.”

McDonnell says there are a number of viable options available to clients. “In due course, we will undoubtedly be contacted by businesses which are unfortunately in distress and will either have to go into liquidation or, if there is hope for rescue, then a process like examinership or a debt restructuring through a scheme of arrangement may be available,” he said.

“Examinership, for those who are eligible, is a really useful restructuring tool which holds up very well internationally – the Chapter 11 process in the US is a similar procedure. The imperatives which underpin the process include the preservation of employment and enabling enterprise to continue in existence for the benefit of the economy.

“In the current uncertain circumstances, keeping businesses alive will be necessary to drive a recovery, as will keeping employees connected with those businesses during a period of economic hibernation.”

“The two real strengths of examinership are the automatic moratorium on enforcement against the debtor and the requirement that only one class of impaired creditors must approve an examiner's proposals before the scheme goes to the High Court for confirmation.”

However, examinership is not a good fit for every type of business and some smaller companies will be unable to avail of it due to the costs involved.

“There have been growing calls in recent months from participants in the insolvency space for some sort of alternative rescue process for SMEs as examinership isn't a viable option for every business,” says McDonnell, who has been with the Maples Group for a decade.

“It is an involved process which can be expensive and it is heavily court-supervised. In the current climate, it may be a good option for bigger businesses, in the leisure or hospitality sectors for example, or for high-growth innovation driven enterprises, assuming they have a reasonable prospect of survival.”

Until now, there has been a maximum 100-day limit on the protection period, but this can be extended up to 150 days in the current exceptional circumstances.

McDonnell says the possibility of using the Statutory Scheme of Arrangement process as a restructuring tool has come into sharper focus in recent months.

“This was an underutilised tool historically but there have been some recent developments which have shown that Ireland is emerging as a very attractive option for international businesses to have debt restructurings conducted by way of a Scheme of Arrangement.

“A number of high-profile and complex cases have shown that the Irish courts are willing to entertain scheme applications in respect of foreign companies and Irish schemes have been recognised and made effective in other jurisdictions.”

While the future remains uncertain across every sector, McDonnell says companies can take the first steps towards restructuring and a positive future by taking decisive action.

“A key driver towards affecting a positive change would be to obtain good financial advice straight away from a recognised insolvency practitioner,” he said.

“It's also vital to get legal advice on what potential options are available as it's only then you can meaningfully analyse and assess if the business has any prospect of success and whether a rescue or restructuring option can be availed of.

“So, if companies haven’t already done so, they should seek advice, be proactive and speak to legal and financial advisers with insolvency and restructuring expertise as soon as possible. Early engagement is essential.”