

Affordable Restructuring for Small Businesses

Q&A

GOT SOMETHING ON YOUR MIND?

Do you need some expert advice? Email your question in complete confidence to hcrsolutions@jemma.ie. Names and identifying details will be withheld in published queries.

Q: We operate a small hotel and restaurant business which we need to restructure. We have noticed that some of the larger hotels have gone into examinership but we have been told that this is a very expensive option. Is there a more affordable route we can take and, if so, how does it work?



A: You are indeed correct, examinership can be a very expensive process as it requires devising and presenting a petition to the High Court and any and all High Court time, and its legal entourage, is very costly. We have also seen in some high profile cases last year, such as with the Liam Carroll group, that the

Court is not happy to accept a poorly prepared Independent Accountant's Report (IAR) or examinership petition and will strike out such requests. This can result in even greater expense if the business owners attempt to address the concerns of the Court and resubmit their petitions. This is what happened in the Carroll case, but the High Court decision had to be appealed to the Supreme Court and this is far beyond the resource level of all but the biggest players.

In a nutshell examinership is a corporate rescue mechanism (enshrined in the 1990 Companies Act, as amended) which gives a limited company a breathing space to put a rescue package together. The company is placed under the 'protection' of the Court for 70 days during which time its creditors cannot call in their debts. The IAR – which is basically an analysis of the business illustrating how it would benefit from examinership, reverse its solvency issues and continue to trade profitably – needs to demonstrate to the Court that there is a reasonable prospect for survival so the Court can confirm the appointment of an examiner.

A far more cost-effective option, and one that shares much of its methodology with examinership, is an 'Informal Scheme of

Arrangement'. Informal schemes are not just limited to companies – unlike the examinership process – any business (partnership, sole trader, family-owned business) can put an informal scheme of arrangement together. While you do not have the legal protection of the Court your accountant or business rescue practitioner can still implement a 'scheme of arrangement' which is essentially a financial rescue plan for your business similar to an IAR. A relatively unknown and unutilised section of the Companies Act 1963 is Section 279 which deals with informal schemes of arrangement. It allows for a minority of creditors (less than 25%) to be crammed down if the 75% plus majority of creditors approve a scheme of arrangement. Thus you can avoid the necessity of going to Court.

The entire area of business rescue and insolvency is quite complex and if you act in a preferential manner towards any creditors you can end up in serious trouble at a later date

Generally for an informal scheme to succeed it needs to detail how the business plans to pay its creditors within a realistic timeframe and frequently is founded upon the introduction of a limited amount of new capital to fund the business's operations once restructuring has occurred. Management must also be fully on board and willing to act on the accountant's advice and

implement sometimes difficult policies to ensure the business's survival.

The first step to implementing an informal scheme is to map it out in consultation with an experienced rescue practitioner – this may be your existing accountant or you may need specialist advice. The entire area of business rescue and insolvency is quite complex and if you act in a preferential manner towards any creditors you can end up in serious trouble at a later date (company directors are regularly restricted or disqualified for acting without due care and attention and this is not to be glossed over). If your accountant is not familiar with informal schemes it is worth speaking with an experienced rescue specialist. They will be able to look at restructuring the balance sheet, ►

SOLUTIONS

renegotiating leases, arranging debt refinancing with banks and financial institutions, sourcing new capital, advising on working capital investment and utilisation, and devising new business strategies (which may include new product development, management reorganisation etc).

For an informal scheme to succeed and be approved it needs to be as comprehensive as possible and cover the above areas at the very least – and also advise if there is a realistic prospect for survival.

The key criterion I use to determine if there is sustainability to a business is as follows:

Are the products/services the right ones for the markets being supplied?

If the answer is no, then almost regardless, the business should be severely downsized or in more extreme cases wound up. If the answer is yes and the business is struggling, then it is likely there are other problems such as leadership issues, inappropriate sales and marketing strategies etc.

Here are some tips I often give my clients for doing business in the most difficult commercial environment most of us have ever experienced:

1. Profit is the Queen but Cash is King – ask employees to cut waste and inefficiency. In this environment job retention should be sufficient motivation;

2. Ensure you stay close to debtors and cash management – bringing in cash is vital, thereafter preserving it becomes a priority;
3. Foster good relations with your bank – goodwill will be vital. Communicate frequently with your bank, even more so when there's bad news. Let them know in advance when you need their support;
4. Where possible renegotiate loans to interest only to preserve cash balances;
5. If you are a tenant, seek appropriate rent reductions, they are commonplace in this environment;
6. Sell non-performing assets to generate cash at every opportunity;
7. As payroll is going to be one of the largest costs, review it for surplus numbers and also see if a pay cut is appropriate or necessary.

The value of Court protection may be expensive but often necessary where proceedings are being issued against the business. In other instances where the threat of legal action is not imminent or where the business is unable to afford the examinership process then informal schemes are the most appropriate option. ♦

– **Brian McEnergy**,
Rescue and insolvency partner, Horwath Bastow Charleton,
president of the Association of Chartered Certified
Accountants and NAMA board member.
brianmccenery@hbcl.ie



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