

Opening Statement

Companies (Small Company Administrative Rescue Process) Bill 2021

Joint Committee Enterprise Trade & Employment

Tuesday 15 June 2021

Thank you, Chairperson and Members, for your invitation to discuss the forthcoming Bill to amend the Companies Act of 2014 and to provide for a Small Company Administrative Rescue Process.

The Companies (Small Companies Administrative Rescue Process) Bill is included as a legislative priority on the Government's Legislation Programme for the summer session. It delivers on a Programme for Government commitment to review the Companies Act to simplify and improve examinership laws in response to the Covid-19 crisis and follows on foot of proposals by the Company Law Review Group (CLRG) in response to the Tánaiste's request that it examine the issue of corporate rescue specifically for small companies and advise as to how such a process might be put in place.

We set ourselves an ambitious task in developing such a novel rescue process over a compressed period of time.

On 8 July 2020, the Tánaiste requested the CLRG to examine the issue of rescue for the sector. Membership of the CLRG, which is a statutory body, is wide and representative of a broad range of stakeholder experts, making it uniquely well positioned to advise on company law.

The CLRG submitted its report in October 2020 and recommended a rescue process for small companies which would be stand-alone and separate from the examinership process, but which would mirror key elements of the examinership legislation. Since receipt of that report the Department has worked closely with the Attorney General's Office in developing the CLRG's advice from both an operational and policy perspective.

Throughout this process we have also had strong engagement with the Revenue Commissioners, the Department of Social Protection and Department of Justice as well as other relevant stakeholders. In addition, my Department launched a public consultation earlier this year to inform development of the General Scheme. Minister Troy notified this Committee of the consultation and invited it to make submissions. An overview of all submissions made, the responses to them and the reasoning underpinning those responses are all available in a report on the Department's website.

In overall terms the Department has engaged in a process which has been transparent and accessible and has involved substantial submissions from representative bodies for employers and employees across all sectors and industry professionals in the field of company law and insolvency. As a consequence of this I am happy to say that the General Scheme of Bill has met with a generally positive response from industry and professionals in the field.

I would ask the Joint Committee to bear in mind the role of the CLRG in developing the Bill, the level of engagement with stakeholders and public consultation as it considers our request for a waiver of pre-legislative scrutiny.

As you know, the primary purpose of the Bill is to provide for a small company administrative rescue process - a process which can assist *viable* small and micro-sized companies to remain in business as the economy recovers and supports are phased out.

We know from years of experience that examinership works and saves both companies and employment. It is internationally recognised and is a successful tool for restructuring in its own right. However, examinership is overseen by the Court from beginning to end and because of this it can be an expensive undertaking – and thus potentially out of reach for the average small company, whether that be a local restaurant or hairdresser.

The small company administrative rescue process is designed to reduce these costs insofar as possible and provide access to an affordable and much-needed avenue of rescue and recovery for small companies in difficulty. It has limited court involvement where creditors are engaged in the process and positively disposed to a rescue plan.

The Bill replicates key provisions of the examinership model in an administrative context. While it provides for certain novel concepts, it does so by building on a tried and tested framework with the benefit of years of experience and jurisprudence. The proposals are founded on an existing bedrock of well understood and well-respected law and deliver an accessible, fair, and balanced process for the broad range of stakeholders impacted by corporate rescue.

The introduction of this legislation, or indeed any new legislation, is not without risk. For this reason, officials from my Department have engaged extensively with the Attorney General's Office to ensure the process is constitutionally robust and meets the required standards of procedural fairness. Therefore, the process incorporates robust safeguards, including court oversight where appropriate, and strikes a fair balance between the needs of the company and its creditors.

The main provisions of the Bill can be broadly summarised as follows:

- The Bill is designed to help small and micro companies (as defined by the Companies Act 2014) which represent 98% of companies in Ireland.
- The rescue process is commenced by resolution of directors rather than by application to Court.
- It is concluded within a shorter period than examinership.
- It is overseen and implemented by a qualified insolvency practitioner – which we refer to in the context of the bill as 'Process Advisor'.
- The rescue plan can be passed by a majority of creditors.
- The Bill provides for format of cross class cram down of debts designed to reduce costs.
- The process does not require an application to Court in circumstances where no creditor objects to the plan. Where creditors do object to the rescue plan the courts will then have a role in adjudicating the matter, as is currently the case in examinership.
- The Bill also incorporates safeguards against and penalties for irresponsible and dishonest director behaviour.

On foot of recommendations made by the CLRG in its first phase of work in the area of employee's rights as creditors during a liquidation and taking into consideration ICTU's minority report to the CLRG report, the Bill also amends the Companies Act to provide for a number of actions that can be addressed in the short term to improve the quality and circulation of information to employees as creditors. These amendments feature in the Plan for Action published last week by myself and Minister Troy and which contains a range of commitments, including amendments to employment law and company law, to enhance protections and ensure transparency for employees in insolvency situations.

Chairperson and Members, as we emerge from a sustained period of lockdown and as Government supports for businesses are gradually phased out, this is a Bill of the utmost importance and urgency.

We are all aware of the enormous pressure business owners currently face in terms of not only their immediate liquidity, but also the sustainability of their businesses into the future. This is particularly true of small and micro companies which employ 788,000 workers. 78% of small and micro companies operate in sectors which have been particularly challenged by the pandemic such as retail, hospitality, and the service industry.

The contribution small and micro companies make to our economy cannot be understated. These companies will be key to our country's economic recovery. It is for this reason the Government is so committed to providing a genuine alternative rescue framework for these companies.

This Bill is an integral part of Government's response to the economic impact of the pandemic. It provides for a rescue framework for small and micro companies, many of which have been significantly challenged by Covid-19.

Our response to the crisis has proven successful in mitigating the immediate impact of the pandemic on these companies. However, as the economy re-opens, we must have an appropriate regulatory response not simply planned but actually in place and available to small businesses - one which supports fundamentally viable companies to continue to trade, get themselves back on their feet and preserve employment.

It is our responsibility to ensure that this essential rescue process is implemented in time to make a difference to these companies.

To that end I am asking the Joint Committee to approve a waiver of pre-legislative scrutiny so that we may achieve enactment of this important piece of legislation before the summer recess.

I and my officials are happy to answer your questions and provide you with greater detail on the provisions of the Bill.

ENDS