

Enterprise Ireland

Finance 4 Growth

Examinership Lite

December 2013

Cormac Mohan

FM Accountants & Business Advisers

www.fmaccountants.ie

Contact Details :

Cormac Mohan

FM Accountants & Business Advisers

1st flr . Suite 5 , The Avenue ,
Beacon Court , Sandyford , Dublin 18.

email: cmohan@fmaccountants.ie

www.fmaccountants.ie

Tel: 01 2135910

Agenda / Contents :

- Introduction
- What is Examinership
- Effects of Examinership
- The Process
- Action
- Conclusion

Examinership

- A procedure unique to Ireland, examinership is a rescue process designed to help businesses recover from insolvency
- Ireland's formal corporate recovery mechanism in Ireland.
- The appointment of an examiner is an option that has been available to companies in Ireland since 1990 ó Goodman case.

Background - What is Examinership ?

Examinership rules are closer to **US Chapter 11** (Delta Airlines).

In UK a similar process is known as **Administration** (Leeds United).

Ireland - Shamrock Rovers F. C.

- A formal process to restructure the debts of an Irish insolvent company under the protection of the High Court for up to 100 days.
- Normally the High Court grants 70 days to the Examiner - Protection period can be extended by the High Court by a further **30 days**.

What is Examinership ?

- During Examinership period - Management remain in control
- Under the direction of the examiner
- Coocons the insolvent company with comprehensive protection from its creditors.

Examinership :

- É Typical scenarioí leasing companies are not allowed to repossess their assets without the approval of an Examiner
- É The High Court must be satisfied that there is a reasonable prospect of survival of the company ó Independent Accountants Report

Examinership is a process í .

- Examinership was introduced to enable insolvent companies explore all opportunities for their survival
- Its an inclusive process that involves the appointment of an examiner (usually a practicing accountant) to shepherd the company through a breathing-space restructuring period of up to 100 days.

Effect on the Company on the Appointment of an Examiner

“Protection”

- No winding up can be instituted /no Receiver can be appointed.
- A Receiver appointed within three days prior to Examinership must cease to act.
- It is not possible to seek to enforce debts or security against the company's property, to repossess leased/hire purchase goods or to exercise retention of title agreements without the Examiner's consent.

Protection Period :

- Secured creditors cannot take steps to realise their security e.g. Bank or Building Society will have placed charges on the company assets in return for their loans.
- Two Types : Fixed Charges & Floating Charges. ó Floating Charges that were in place within a period of 12 months prior to the petition are usually void.
- No personal guarantees can be enforced e.g. Trade Creditors such as a drinks company in an Examinership or a Bank usually obtain personal guarantees from the company's directors for supplies or for loans.
- Within the protection period, they are not allowed to take any legal action against the company or its directors to call in these PGs.
- No proceedings may be taken against the company, a good example is Notices of Attachment. Notice of Attachment allows the Revenue to pursue the company's debts without going through the company themselves. Under the protection of the High Court, the Notice of Attachment is immediately revoked by the Revenue.

Independent Accountants Report

A petition presented under section 2 shall be accompanied by a report in relation to the company prepared by a person (referred to as "the independent accountant") who is either the auditor of the company or a person who is qualified to be appointed as an examiner of the company.

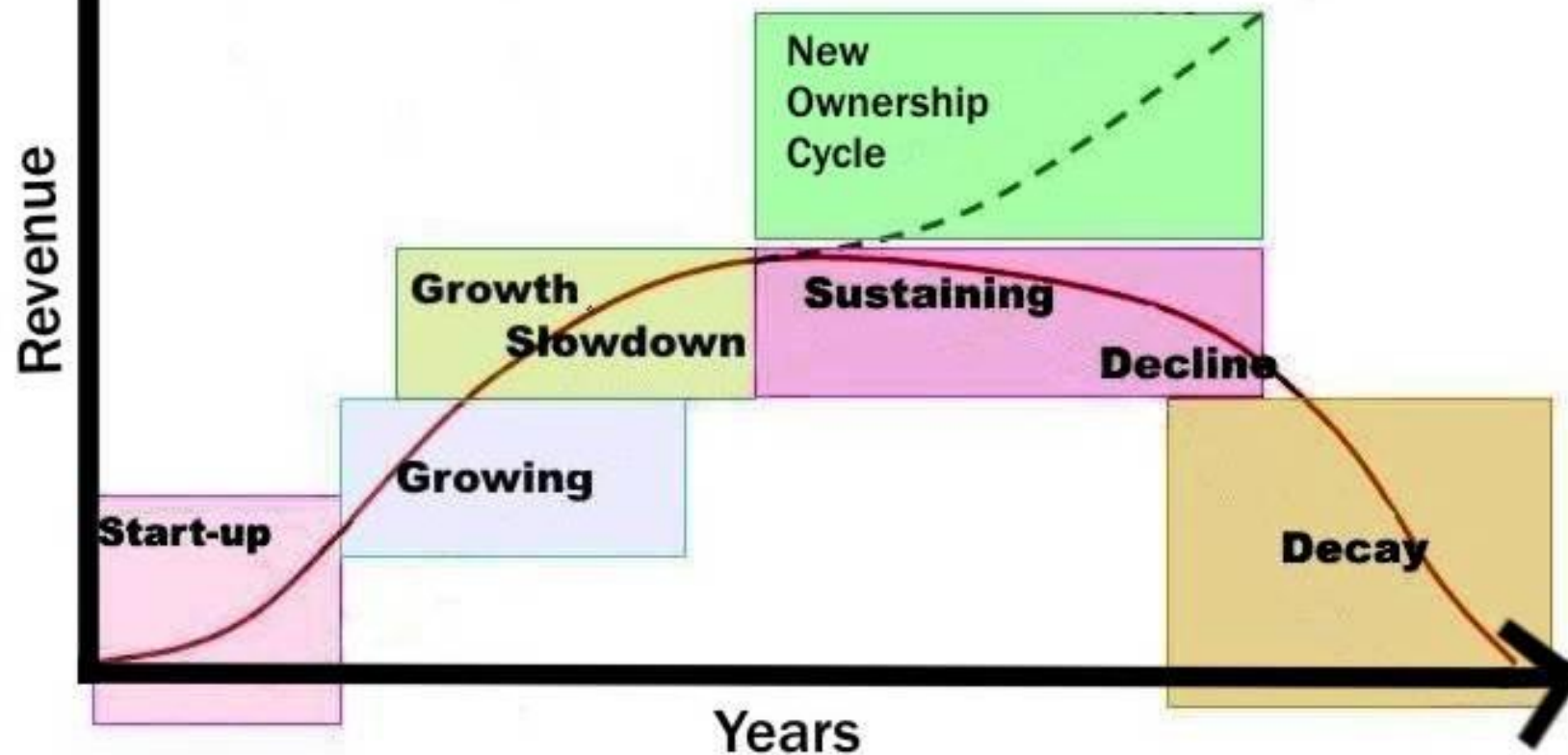
Assess business's current position



Operational Efficiency í .

- Cost structure
- Profitable business lines
- Employment
- Management structure
- Appropriate level of debtors
- Debt to Equity capital mix

Business Ownership Lifecycle



Cash flow Management ó 100 days :

- Monitor the cash flow of the company throughout the **protection period** to ensure the company trades in accordance with projections furnished to the Court at the petition stage.
- The Examiner has a right to access all books and records of the company and a right to attend all board meetings.
- The Examiner does not usually take over the executive function of the board of directors. For example, it is unusual for the Examiner to become a signatory on the company's bank account.

Examinership Process - Most Important demonstrate that the business can be repositioned to remain solvent / profitable

**Examinership
Key
Ingredients /
Considerations**

Growth Prospects

Employment

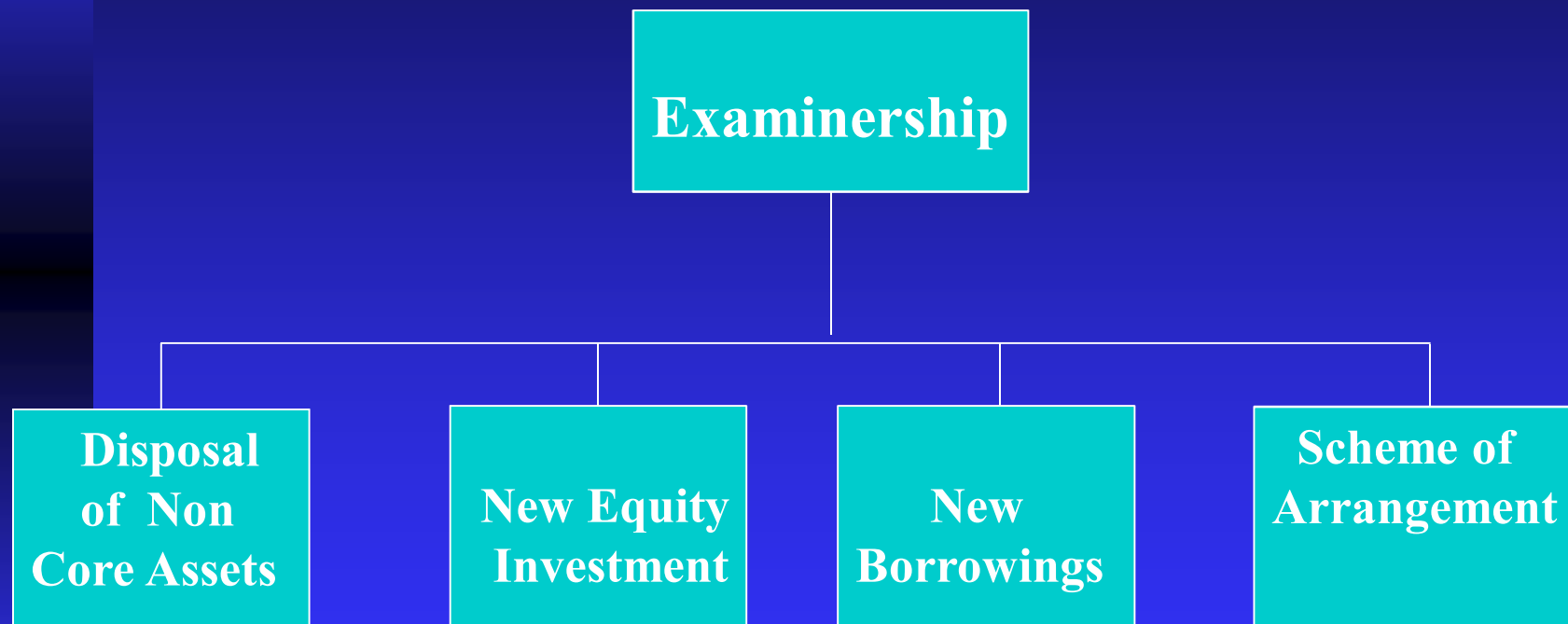
Profitability

Private Equity / funding

Strong management Team

**70-100
days
Max .**

The Examinership Process :



High Court Approval :

The Court cannot confirm a Scheme unless:

- ◆ It has been accepted by at least one class of creditors whose interests would be impaired by their implementation (in practice the scheme must enjoy some form of popular support)
- ◆ They are fair and equitable in relation to each class of members or creditors
- ◆ They are not unfair to anybody prejudicial to any interested party and are not designed for the principal purpose of the avoidance of tax
- ◆ If the court confirms the proposals, they become legally binding

Proposals for a Scheme of Arrangement:

- Split the members and creditors into different classes for example unsecured, preferential etc., and balance the competing claims of each class over what is usually a limited fund.
- Provide for the implementation of the proposals, the disposal of any non-core assets, specify any necessary changes to the management or direction of the company and include such other matters as the Examiner deems appropriate.
- Included are a **Statement of affairs** of the company and describe the estimated financial outcome of a winding up of the company for each class of members & creditors.
- A majority in value of the claims in each class represented at the meeting is required for the proposals to be carried by that class.

Advantages for the Company:

- Promoters can still retain control
- The Company maintains intangible assets (supplier certifications, leasehold interests, brands etc)
- Comprehensive Protection for the company
- A Receiver cannot be appointed by a debenture holder
- A Petition cannot be presented to the High Court to have an official liquidator appointed

New Examinership – Circuit Court

- The Companies Act 2014 enactment estimated July 2014
- Oireachtas Committee stage ó Coøß Bill completed - Report stage Jan.14
- The coøß (miscellaneous Provisions) Bill 2013 ó the ÷øLittle Bill ÷ø : -
 - ◆ Enacted in Law in December commence Jan.2014
 - ◆ **The companies (miscellaneous provision bill) 2013 will be consolidated into the Companies Act 2014.**

Examinership : New Provisions

■ *Part 10 : Sections 509 -559*

- ◆ Claimed that circuit costs 30% lower than the High court
- ◆ Accessible to the SME sector
- ◆ Filing of an equity civil bill (petition)

The Companies (Misc.Provs.) Bill 2013 ó the ÷Little Bill ÷

- ◆ Section 2 amend section 2 of Companies (Amendment) Act 1990
- ◆ Provides for small private companies to apply directly to the circuit court to have an examiner appointed
- ◆ Small Private companies satisfy TWO of the following :

Balance Sheet not over € 4.4 m
Turnover not exceeding € 8.8m
No. of Employees not exceed 50

The New Specialist Judges

All fully commenced into law provide for the appointment of up to 8 specialist bankruptcy judges of the Circuit Court to be known in future as Specialist Judge of the Circuit Court to deal with the increased workload in the various circuit courts, they will probably be assigned the new Examinership Cases.

The Likely Circuit Court Office í .

Dublin ó Dublin Circuit Court (civil) Office,
Cork ó Cork Circuit Court Office,
Monaghan ó Northern Combined Court Office,
Tullamore ó Midland Combined Court Office,
Trim ó Eastern Circuit Court Office,
Kilkenny ó South Eastern Combined Court
Office,
Ennis ó South Western Combined Court Office,
Castlebar ó Western Combined Court Office,

Circuit Court Procedures

The Circuit Court protection is instantaneous when the new **Civil Bill** is filed in the local circuit court office.

The company must make an urgent ex parte application on the day of presentation and these applications could take an hour or two before circuit court judge and must be given priority!

The Circuit Court Procedure

Proofs:

1. An Equity Civil Bill
2. Verify affidavit
3. Affidavit of fitness of the proposed examiner
4. Independent accountants report - (expert report)

Case Study: Hotel in County Wicklow

- This Company was involved in the operation of hotel, night club and bar in County Wicklow. The Company's business commenced in 1984 and the hotel traded profitably for a number of years.
- However, the following difficulties for the company became apparent at the end of 2009:
 - ◆ Difficulties in the Hotel Sector as a whole, including over supply of hotel rooms as a result of tax incentives in the sector.
 - ◆ Management issues.
 - ◆ Significant contingent liabilities as a result of third party claims against the Company.

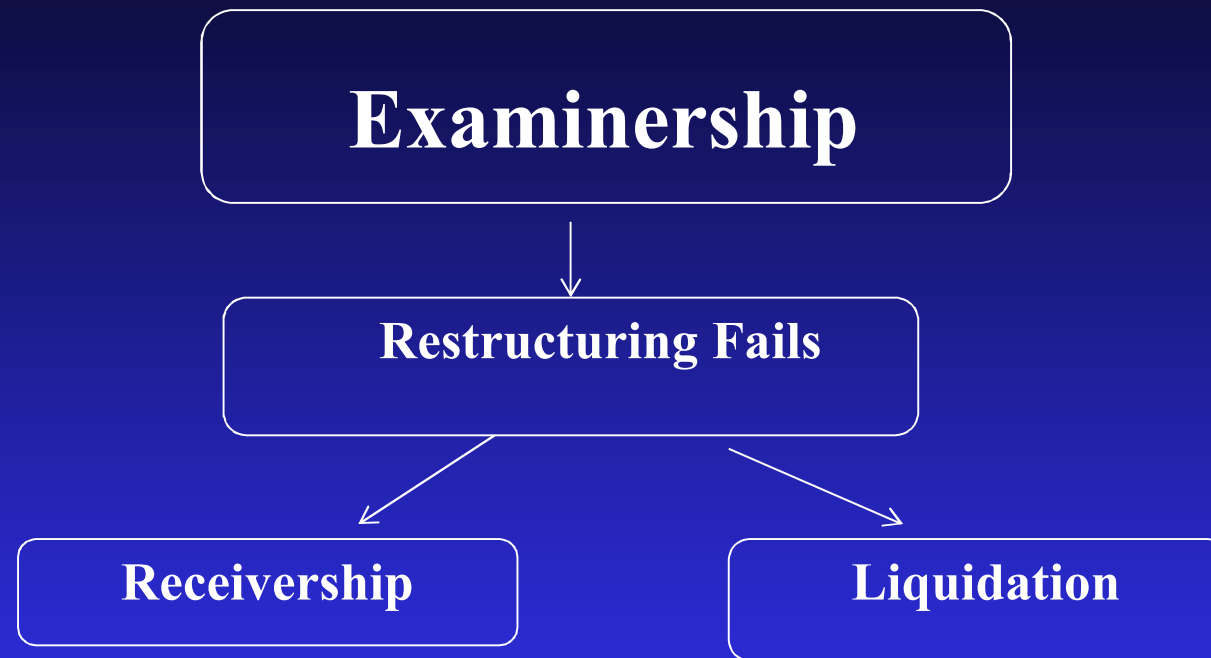
Case Study :Hotel in County Wicklow

- The company became insolvent and entered examinership in February 2010.
- Over the course of the 100 day protection process, new investment was secured.
- The Company reduced its costs, secured a tax clearance certificate and returned to profitability.

Case Study :Hotel in County Wicklow

Result : scheme of Arrangement

- Emerged from examinership in May 2010 after reaching agreement with its creditors : 10% dividend on their debts. Revenue paid 20% in full and final settlement of arrears.
- Scheme approved by High Court and the company exited the process - 45 jobs intact and all historic creditors fully discharged through the scheme of arrangement.



- ✓ Its an Option ó Not suitable for all Coø
- ✓ Fits well with trading companies ó employment / order book
- ✓ Upward only leases : exit strategy if all avenues exhausted

Examinership - Liteø- Conclusion:

For a company in financial difficulties, Examinership option provides:

- ✓ Time / Protection from creditors;
- ✓ A framework to agree a compromise with creditors.
- ✓ Reposition the business model with fresh equity
- ✓ Is there a core sustainable / viable Business.
 - ✓ Impact of New legislation will be tested
 - ✓ Dept. of Jobs & Enterprise : expect an uptake