CREDIT MANAGEMENT INSTITUTE OF IRELAND

FACT SHEET

SMALL COMPANY ADMINISTRATIVE RESCUE PROCESS SCARP

The Small Company Administrative Rescue Process SCARP is a corporate rescue mechanism focused on SMEs. The Government recognised that the Examinership process was too costly for many SMEs. The primary objective of the Small Company Administrative Rescue Process to save a company and any jobs provided by it.

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- In order to be eligible for SCARP a company must satisfy two or more of the following three requirements:
    - Annual turnover of up to €12m.
    - A balance sheet total of up to €6m.
    - Up to 50 employees.

- Commencement of the process is by resolution of directors rather than a court application.
- 60% in number of creditors and a majority in value of at least one creditor pool is required to support the rescue plan.
- A cross cram down of debts is available as part of the restructure.
- Likely the rescue plan approved will not require an application to court, provided no creditors object.
- Safeguards against irresponsible and dishonest behaviour by directors that apply in liquidation will apply to the process.
- An insolvency practitioner is appointed by the company to begin engagement with creditors and prepare a rescue plan. His/her formal title will be “the Process Advisor”. The rescue plan must satisfy the ‘best interest of creditors’ test and provide each creditor with a better outcome than a liquidation. In additions, no creditor may be unfairly prejudiced by the plan.
- Creditors are invited to vote on the rescue plan by day 42 of the Process Advisor’s appointment.
- The rescue plan is approved without the requirement for Court approval provided that 60% in number and a majority of creditors in at least one creditor pool vote in favour of the proposal and no creditor raises an objection to the plan within the 21-day cooling off period which follows the vote. The approval mechanism is drawn from examinership and provides for a cross class cram down. This means that where one class of impaired creditor votes in favour of the plan, this decision can then be imposed on all classes of creditors
- Where an objection to the rescue plan is raised, there is an automatic obligation on the company to seek the Court’s approval. This acts as a safeguard for creditors

- Concluded within a shorter period than examinership (examinerships can currently run for up to 150 days, SCARP seeks to arrive at a conclusion within 70 days, subject to extension where necessary for Court applications)
- Has safeguards against irresponsible and dishonest director behaviour.
- Provides that State creditors, the Department of Social Protection and the Revenue Commissioners may be excludable from the process. This means they may determine to "opt out" of the process on the basis of statutory grounds, for example if the company has a poor history of tax compliance.
- It will allow Landlord's leases to be repudiated, but an application to court will be necessary if the landlord does not voluntarily agree.

What are the advantages of entering into a Small Company Administrative Rescue Process?

For most insolvent companies, the biggest benefits of a SCARP will be the core elements of the agreement itself: it will let the company pay its debts over time and write off a percentage of its total debts to creditors, improving cash flow in the short term.

Unlike liquidation, which could leave creditors with little or no money once a company is wound up, a SCARP guarantees creditors a certain amount of their debt over the repayment period.

What are the disadvantages of entering into a SCARP?

- Entering into a SCARP could have negative consequences for a company's credit rating. The company's website must carry a "prominent" notice that it has entered the SCARP process. A SCARP notice is also filed at www.cro.ie
- A SCARP may not be a short-term solution. A company could spend several years repaying its creditors before the SCARP is completed.
- Any personal guarantees that the directors provided to creditors will remain in place.
- Certain directors may remain personally liable for any PAYE that was deducted from their salaries, and which is written off in the SCARP.

Our thanks to Jim Stafford of Friel Stafford for producing this fact sheet. Friel Stafford provide practical support and advice to directors, shareholders, and advisors of Companies of all sizes.

Friel Stafford are based at 44 Fitzwilliam Place, Dublin 2. Website https://www.frielstafford.ie and telephone +353 1 6614066.If you have any questions at all you are invited to contact the authors directly or the Credit Management Institute of Ireland through our website www.cmii.ie or email info@cmii.ie

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