Increase In Number Of Insolvencies 'Inevitable'

While the predicted tsunami of restructuring and insolvencies hasn't materialised, experts expect increased activity as the extended Revenue deadline looms, writes Robert O'Brien

orporate insolvencies increased 22% year-on-year in the first quarter of 2023, though the total for the period was down on the previous quarter. Taking 2019 as a previous 'norm', David Van **Dessel** at **Deloitte** remarks that we are not yet seeing a material fallout from the economic impact of Covid, or that of increased interest rates and elevated inflation.

Creditors' Voluntary Liquidations (CVLs) accounted for two-thirds of Q1 insolvencies, in line with the average quarterly number in 2022. For the six months from October 2022 to March 2023, the insolvencies total was just under 300. "Assuming this level of insolvency activity continues for the remainder of the year, we are likely to have in the region of 600 corporate insolvencies," says Van Dessel. "The totals were 768 in 2018 and 568 in 2019."

It's clear that the insolvency tsunami predicted by some economists has yet to materialise. Revenue's decision in October 2022 to extend the date for warehoused tax debt repayment agreements from May 2023 to May 2024 is one reason why insolvencies haven't spiked. It's also the case that the economy is humming along nicely, with record employment, tax cuts and pay rises lifting disposable income.

Despite increased input costs, service providers have also been able to raise their prices consistently since 2020. AIB's latest Services PMI reports that prices charged by service providers rose sharply in May, extending the current sequence of inflation to 27 months.

That strategy may be running out of steam, as the rate of selling price inflation dipped to an almost two-year low as firms finally encountered consumer resistance. Overall though, the Services Business Activity Index for May was 57.0, down on April but still well-above the 50.0 no-change threshold separating growth from contraction.

KPMG partner Shane McCarthy observes that Q1 insolvency statistics are below where most advisors in the restructuring industry expected them to be. "In our view, many companies don't have stretched balance sheets, save where they are continuing to benefit from the continued support and forbearance from key creditors like Revenue," McCarthy adds.

"That said, the full impact of interest rate increases has yet to be felt, along with energy costs increases. This may only begin to impact the viability of businesses towards the end of 2023 or early 2024."

McCarthy has over 20 years' advisory and restructuring experience and was recently announced as head of



KPMG's Turnaround & Restructuring practice. The practice includes partner Cormac O'Connor, and James O'Neill, who joined in April to lead the firm's Northern Ireland restructuring practice.

ith regard to warehoused tax debt, McCarthy's view is that companies currently in a stressed financial position are more focused on dealing with increasing interest rates, operational costs, and energy costs.

"For companies and their key stakeholders such as secured charge holders, the repayment in 2024 of warehoused Revenue debt is not receiving sufficient focus," says McCarthy. "There are a sizeable number of companies that do not have credible plans in place to deal with this challenge. For these companies and their creditors, it's important that they put plans in place to ensure their viability."

Timing and seeking the right advice will be important for companies in a stressed position, McCarthy adds. "Those who take the time to evaluate their business, seek out the correct advice, assess what changes need to be made, and act to implement these changes will be best placed to weather the turbulence that lies ahead," he explains.

'Many businesses have kicked the tax debt can down the road hoping for the best'

BP SURVEY



Michael Fitzpatrick, Fitzpatrick & Associates

"The companies that are likely to come through are those that have directors who act as leaders and forward thinkers. These individuals seek out the right advice now on what their options are to protect their business."

McCarthy notes there are a considerable number of alternative lenders willing to provide facilities to assist companies finance. However, availing of these facilities is dependent on the security that can be provided, the current financial position of the company, what the projected financial performance will be over 12/18 months, and what actions need to be taken in the short term to restructure the company to protect and ensure its recovery and future viability.

"A key requirement for these funders is having visibility on how any facilities provided can be repaid, and ensuring the companies have the financial capabilities to meet the monthly interest and capital repayments," he adds.

hartered accountant **Michael Fitzpatrick** is also an experienced insolvency practitioner. He trained with PwC and after a few years working as financial director in industry he established **Fitzpatrick & Associates** in 1995.

Fitzpatrick believes inflation, increased interest rates, and the cost of rental accommodation have all contributed to a shrinking of disposable income for discretionary spending. This together with blended home/office working has significantly reduced spending for hospitality and retail.

"There are many small firms attempting to pay a week's overheads with only the equivalent of three days' turnover," he says. "In order to qualify for Revenue debt warehousing, businesses must maintain current taxes up to date. While many are proving to be resilient, this is a huge challenge.

"I am finding that some businesses have managed their affairs to deal with repaying the warehoused tax liabilities when the time comes. However, there are many who have kicked the can down the road hoping for the best but without any concrete plan to address repayment of the liabilities. It is inevitable in my opinion that there will be an increase in restructuring and insolvency over the next 12 months."

In Fitzpatrick's opinion, rising interest rates have diminished the appeal of alternative lenders. "We have a number of clients who availed of non-bank finance providers to restructure and settle liabilities to so-called vulture funds. What we are seeing now is that while these alternative lenders provided a solution, these clients are now looking to refinance again with the main banks at lower interest rates."



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Take Advice Early And Reset To Identify Opportunity

or the business director whose company has a stretched balance sheet and dwindling cash reserves, turning for counsel to a restructuring advisor is "a difficult conversation to have". according to Paddy O'Connell, who leads the Restructuring Advisory service in RSM Ireland.

O'Connell has had many such chats, as he has been advising on restructuring for quarter of a century, across the real estate, construction, manufacturing, motor, IT, and retail sectors. He is an experienced receiver and liquidator too, and he knows how tough it can be for entrepreneurs to grasp the nettle.

"The issues are real and people are involved," he says. "Directors will be concerned about the impact on shareholders, employees, the Revenue, creditors they have traded with for many years, and indeed for themselves as officers of the company who are accountable for their actions. The earlier they engage, the more time the advisor will have to formulate an appropriate strategy. If the last few years have taught us anything it is that the world is unpredictable and timely responses are crucial."

In most cases, short-term losses can be absorbed if the business has adequate reserves to see it through a difficult period. However, if the underlying business is not profitable, there could be a rocky road ahead, O'Connell says.

"If inflation and high interest rates persist — which they are likely to do and result in some level of global recession, these problems will only increase. Waiting for quarter-end or year-end balance sheets will be too late. Directors who bury their heads in the sand and believe they can trade through the difficulties could find themselves explaining their actions or inaction to their creditors and a liquidator."



O'Connell's mantra is that restructuring can point the way forward to a profitable future. "Those directors who are proactive and strategic will take advice early and review and reset their business model to not just mitigate but to identify opportunity," he says.

Resetting a business model as part of a restructuring will often require strengthening the balance sheet, and that could mean looking at alternative funding options. O'Connell cautions that non-bank lenders operate to strict terms which need to be actively monitored, as a breach of a loan covenant will result in penalties and/or

'The world is unpredictableand timely responses are crucial'

increased interest charges.

O'Connell believes there is no prospect of an amnesty in respect of €2.2bn in warehoused tax liabilities. "The extension of the deadline to agree payment arrangements to May 2024 has the effect of kicking the can down the road. It has not encouraged businesses to take proactive steps to address the very significant liabilities. For companies with substantial warehoused tax debt, working capital management will be critically important in the coming period. Directors need to engage with their business advisors to ensure they have an appropriate model, or risk cashflow insolvency."

hough uptake by small firms of the SCARP rescue process has been underwhelming, O'Connell notes that the availability of SCARP has assisted advisors in persuading creditors of distressed firms to participate in alternative restructuring solutions.

"These creditors recognise the reality of the impact of Covid and the current economic climate and are prepared to take a pragmatic approach in dealing with historical liabilities, outside of a formal process," says O'Connell. He adds that embarking on a SCARP does not guarantee a positive outcome, with a potential for the process being brought into court by dissenting creditors.

"A small or micro business requiring a restructure will be challenged in securing new finance without the promoters taking on additional personal borrowing, topping up their mortgage, or seeking investment from family and friends. Some smaller companies are insolvent, and having struggled through the last few years do not have the resilience of complying with a SCARP scheme for potentially several years, with some giving in or liquidating and starting afresh."

Resilience and Headwinds in Irish Businesses

ames Anderson, Turnaround & Restructuring partner at Deloitte, advises that despite unprecedented disruption, inflation in energy costs, commodities and rising interest rates which transpired post-Covid and the illegal invasion of Ukraine, Irish businesses have proven to be more resilient than anticipated in the last few years. In 2022, Irish formal restructuring activity levels returned to a normalised level following an artificially low activity level in 2021.

Whilst the restructuring activity levels highlight the resilience of Irish businesses, there is no doubt that the vital introduction of Revenue debt warehousing and government supports, along with a pragmatic approach from lenders, landlords and suppliers, helped many businesses navigate through the last few years.

Although the Covid years appear to be behind us, there are many headwinds facing enterprises, including inflation, energy costs, rising interest rates and supply chain disruption. All of these are impacting margins and over time will lead to profitability and cashflow issues if not addressed.

Symptoms of stressed financial performance and practical steps for Directors to navigate through

Symptoms of stressed financial performance include a sudden or irreversible deterioration in profit margins, narrowing liquidity, continued cash burn, governance issues, Revenue compliance challenges, covenant breaches, and a deterioration in relationships with stakeholders, lenders and creditors.

Practical steps to assist businesses in navigating through periods of stressed financial performance include critically assessing their business model and operations, keeping appraised of current cashflows, mitigating cash burn to build liquidity buffers, continuing to utilise available government supports, and engaging with key stakeholders and creditors.

Whilst company directors are rightly concerned about the position of creditors in a period of stressed financial performance, recent changes to restructuring legislation call out the need for directors to take all reasonable steps to try to turnaround performance and return to profitability, as this leads to a better outcome for all stakeholders if successful. The changes also highlight that directors should be appraised of the supports available to help businesses through challenging times.

Extension of warehoused debt until May 2024

Last October, Revenue further augmented its support to businesses by extending the repayment deadline for warehoused debt until May 2024. The extension provides businesses with the option to either pay off their warehoused debt by then or to agree a phased repayment plan, with many businesses likely to pursue a phased repayment plan.

The phased repayment plan has an interest rate of 3% p.a. and a repayment period of up to five years depending on the circumstances of the business. Revenue has been very



Keep appraised of cashflows and mitigate cash burn

pragmatic in working with businesses on the repayment of warehoused debt. However, both the eligibility to continue to avail of the warehousing and the modest 3% rate is dependent upon businesses keeping current tax affairs up to date.

What should I do if my business is experiencing financial difficulties?

Acting early and seeking the right advice when experiencing financial difficulties affords businesses more time and options. Given the many headwinds, understanding the current financial position and the available informal and formal options is critical to navigating a period of financial volatility.

Turnaround through informal negotiations should always be the preferred option, as this should create positive engagement with stakeholders and creditors and facilitate a successful restructure. However, there are times when this is not possible despite protracted discussions. Given the heightened liquidity challenges faced by struggling businesses, it is important to recognise when informal negotiations may not achieve the desired outcome, as protracted discussions can lead to a weaker financial footing.

Both Examinership and the SCARP process afford businesses the opportunity to restructure and reach a binding agreement with creditors. Both processes are commercial, flexible and designed to facilitate a formal restructure of viable businesses in a very short period of time. Whilst both processes are flexible, getting the right advice prior to and guidance throughout is critical to a successful outcome.



James Anderson is a Turnaround ♂ Restructuring Partner at Deloitte Ireland. For further details visit www.deloitte.ie



Multiple Headwinds Could Impact Cashflow And Profits

ames Anderson, Turnaround & Restructuring partner with **Deloitte**, has significant recent experience advising and working with companies in the retail, hospitality, manufacturing, and construction sectors. He has been active in the restructuring area for 20 years, with Deloitte for the last 10 years and before that in a boutique restructuring firm.

In Anderson's view, the headwinds facing enterprises include inflation, energy costs, rising interest rates and supply chain disruption. "All of these are impacting business margins and over time causing profitability and cashflow issues if not addressed," he says. "Whilst there is no immediate surge expected, insolvency activity levels in the 2020-2022 period appear to have been artificially low due to the availability of supports and the resilience of Irish businesses."

Anderson says the extension of Revenue's debt warehousing scheme until May 2024 is a common theme in the firm's discussions with clients. "Revenue has been very pragmatic in



working with businesses on the phased repayment of warehoused debt. However, the eligibility to continue to avail of the warehousing, and the 3% interest rate, is dependent

upon businesses keeping current taxes up to date."

He notes that the SCARP process is definitely picking up momentum. "SCARP is very much a second chance for viable businesses as opposed to an investment opportunity which examinership usually affords. Hopefully we will see continued take-up as awareness of the process improves."

Anderson advises that company directors should be aware of the EU's Preventive Restructuring regulations transposed into Irish law in 2022. There is now a statutory duty on directors to have regard for the interest of creditors where a director believes that a company is or is likely to be unable to pay its debt.

"The transposition also introduced the concept of early warning mechanisms intended to warn directors of a potential insolvency, and that directors should appraise themselves of the options available to support companies in this position, which includes both examinership and SCARP," he adds.

OVER 5,000 FIRMS HAVE CHUNKY TAX LIABILITIES

In March 2023, €2,200m of tax debt was categorised by Revenue as warehoused. The tax debt warehousing scheme was introduced by Revenue in 2020 as a response to the Covid crisis and provided massive liquidity assistance to businesses.

Taxpayers have until 1 May 2024 to agree a phased payment arrangement with Revenue for the warehoused debt. Interest has been accruing on this debt at 3% p.a. from January 2023.

According to latest available data, 63,600 businesses are availing of debt warehousing. Revenue says that 13,000 businesses have been 'revoked' from the debt warehouse scheme, and the €285m they owe (average of €22k) is collectable immediately. Companies are kicked out of the warehouse if current tax liabilities are not filed and paid on time.

Around two-thirds of the businesses with warehoused tax debt have liabilities under €5k. A cohort of 15,800 taxpayers have parked tax debt of €5k to €50k. The average tax debt for this group is €28k.

That leaves 6,460 taxpayers,

which includes 5,300 employers with 170,000 people on the payroll, owing individual tax debts over €50k, for a collective total €1,900m. The chunky average VAT and payroll tax debt of c.€300k for this group is the real looming pain point for the SME economy.

According to Revenue, as of March only 2,000 businesses had agreed a phased payment arrangement for €73m of warehoused tax debt, though 28,700 businesses left the warehouse after paying down balances outstanding for warehouse periods.

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Building Internal Resilience Keeps Wolf From The Door

usinesses are proving to be much more resilient than was expected — up to this point at least. That's according to Stephen Scott, head of Restructuring & Recovery Services at Evelyn **Partners.** Many of the reasons for this are well versed, says Scott, with factors that stopped a wave of post-Covid insolvencies still being relevant.

This includes government supports in a different guise, ongoing tax warehousing, or more generally creditor forbearance with more willingness to allow space and time for businesses to recover or to come to an informal resolution.

"In relation to the latter point, post-Covid and even after the last property recession there may be a culture shift in relation to formal enforcement generally, with all alternatives being fully explored before the button is being pushed on a formal process," Scott adds. "This is perhaps evidenced by the very low number of court liquidations in Q4 2022 and Q1 2023."

Scott's view is that building internal resilience is also important. "We are increasingly working with clients to ensure working capital management is run as efficiently as possible, that adequate financial information is available around key dashboard KPIs, and appropriate financing is in place to try to make sure balance sheets are as robust as possible. With these in place, any required corrective action can be taken early before the business potentially enters distress and the zone of insolvency."

Scott has almost 25 years of corporate recovery experience working on numerous liquidations, receiverships, examinerships and bankruptcies in addition to multiple non-formal restructuring assignments. He currently sits on Restructuring Insolvency Ireland's ruling Council and Law Reform Committee.



Stephen Scott, Evelyn Partners

He believes the full picture in relation to tax debt warehousing will take some time to unfold as company payment arrangements are put in place. "In a more general sense, the worsening economic environment in certain sectors such as hospitality and construction is also leading to more engagement with us regardless of the Revenue position," says Scott.

"The material balance of the warehoused debt relates to only a relatively small percentage of the total number of firms. Notwithstanding that, smaller companies with relatively modest levels of warehoused debt are going to face difficulties if they don't have sufficient cashflow to make realistic repayment proposals.

"Within the overall cohort of companies availing of the warehousing scheme, there will be a proportion of 'zombie' entities that are simply putting off the inevitable through to companies at the other end of the scale that have recovered well and will exit without much difficulty.

"In between there will be a

'Companies can't afford to put their heads in the sand'

significant number of businesses that will require professional restructuring advice, whether in relation to operational efficiencies, informal restructuring or potentially having to utilise rescue processes such as examinership or SCARP to remain operating as going concerns.

"Companies can't afford to treat the issue as the 'elephant in the room' with heads in the sand. They should be planning accordingly and early engagement with advisors leaves more options and a greater likelihood of a successful outcome."

n the March to May quarter, there were only 11 SCARP appointments. As companies have to face up to the Revenue warehousing unwinding and as the economic position potentially deteriorates. Scott expects the SCARP numbers to increase in the second half of the year.

"Recent engagement with a number of potential candidates strengthens my expectation that this will be the case," says Scott. "The slow initial uptake for SCARP was not surprising as this often is the case with any new process, and it mirrors the position in relation to the personal insolvency processes brought in a decade ago."

He explains that the factors that led to the slow uptake in both cases are similar in relation to:

- advisors and debtors becoming comfortable with the new procedures and a track record being established of how certain matters are dealt with, including Revenue debt
- the new process allowing a framework for informal agreements to be reached outside of the formal procedure
- external market forces and continuing creditor forbearance impacting on the requirement to push the button on the process.

ESTRUCTURING FOR GROWT REVIEW, RESET, REBUILD

To facilitate decision making, RSM Ireland work with business leaders and management to formulate objectives that provide direction and purpose, writes **Paddy O'Connell**, head of Restructuring Advisory

aving survived Covid and following the withdrawal of government support measures, companies must now deal with inflationary cost pressures, rising interest rates, continuing supply chain issues, and labour shortages. All these factors suggest the Irish economy faces challenges in the medium term, and many previously robust businesses are struggling to identify solutions to



Paddy O'Connell, **RSM Ireland**

these issues, which is undermining their viability.

At RSM we work with our consulting colleagues from Restructuring Advisory, HR Transformation and Change to Corporate Finance and Technology to assist clients in reviewing, resetting, and rebuilding their business model.

REVIEW

Companies must Review their performance to identify weaknesses in their business model and to set short and medium-term priorities. Many companies have encountered serious issues with contractual obligations, including delays to commencement of projects and inflationary pressures on fixed-price contracts. A reorganisation of the contractual base can address the losses and ongoing costs associated with problem contracts.

Many companies seem financially healthy — trade is picking up and they have cash in the bank. However, many firms have built-up significant creditor arrears, including rent and Revenue debts. Unwinding of these arrears and weaker trading performance will place strain on company cash flow. Many businesses are not equipped to prepare accurate forecasts to manage this process and inform their stakeholders.

RESET

To Reset your whole business or a particular division, it is important to understand the options available, the associated benefits, and the step-plan required to deliver changes, be that streamlining operations, reducing operational costs, exploiting new markets, or exiting-loss making contracts. Our approach at RSM includes identifying and evaluating potential strategies and understanding the interaction with the various stakeholders in the business. This includes looking at:

- Management incentives. A company's value may be affected by issues including the pandemic, a shift in the market, supply chain problems, or inflation. Aligning management interests to ensure these key stakeholders are motivated and their interests match those of shareholders is essential.
- Ringfencing liabilities or onerous contracts. This can reduce the associated drag on profitability and cash and

- can be implemented through negotiations or a formal restructuring process, and would typically form part of a wider reorganisation.
- Funding/Financing. A company's capital/debt structure may be undermined because of underperformance, or a change in the investors' or lenders' strategic direction. It is worth considering the appropriateness of the funding structure required to support short- and long-term ambitions.
- *Implementation of cost reduction processes*. Certain changes can be made swiftly, allowing management to deliver additional value.

REBUILD

Despite the uncertain economic climate, businesses must continue to develop and Rebuild. This is necessary to incentivise and reassure staff and stakeholders, but should also ensure that businesses are well placed to take advantage of improving and evolving economic trends.

To facilitate decision-making, RSM work with business leaders and management to formulate objectives that provide direction and purpose. These objectives help both to motivate employees and to set targets that can be used to measure progress. A project plan is required outlining a company's goals, the specific tasks required to achieve the goals, and making clear what a successful outcome is. Workforce investment is needed to ensure the correct level of skills are created, and that employees are engaged and retained via appropriate incentives and clear career paths.

Professional advice can deliver real value across a variety of areas (including finance, strategy, business modelling, technology) and should be utilised where available. Too often, management teams try to go it alone and that results in otherwise avoidable issues.

Company stakeholders with a vested interest include owners, managers, investors, employees, customers, and suppliers. Their support must be obtained so that a company can return to healthy profit, by finding the right balance between the needs and incentives of the various stakeholders.

Leadership means bravely making the changes needed to operate in a vastly changed landscape. However, the decisionmaking process must be one of calculated risk taking, supported by careful deliberation and preparation which requires appropriate Restructuring professional support. RSM assist companies in reviewing, resetting and rebuilding their businesses in this challenging business environment.



Directors Should Be Alert To Insolvency Warning Tools

or many years the courts have acknowledged the existence of a duty on a director to have regard to the interests of creditors where a company is insolvent. Now that the EU's Preventive Restructuring Directive has been transposed into Irish law, that duty has been put on a statutory footing and expanded.

Jamie Ensor, a Restructuring and Insolvency partner in law firm **Dillon Eustace**, explains: "There is now a statutory obligation where a director believes, or has reasonable cause to believe, that a company is or is likely to be unable to pay its debts,

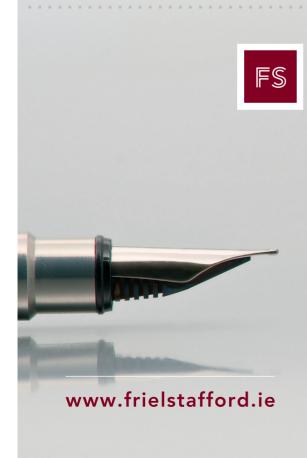
or becomes aware of its insolvency, to have regard to the interests of creditors, the need to take steps to avoid insolvency, as well as the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company."

Ensor points out that these duties are only owed to the company. "It is only the company — including the company acting through a liquidator but not the creditors that can bring a claim against a director for any loss or damage resulting from a breach of these duties."

Ensor adds that directors need

to remain constantly vigilant as to whether a company is or is likely to become insolvent and face the continuing practical challenge of identifying precisely when that point might be.

he transposition of the Directive has included certain early warning tools that directors can have regard to alert them to circumstances that may give rise to a future insolvency. To assist directors, the Corporate Enforcement Authority has published an information note on the early warning tools and restructuring frameworks.



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"Although it is not mandatory for directors to have regard to these early warning tools, it is always worthwhile being aware of what the CEA consider a responsible director should be regarding if faced with an increasingly difficult trading environment," says Ensor.

"For any director considering a restructuring through examinership, the changes introduced represent a significant departure from what had gone before.

"For example, there are new voting rules which mean that a higher threshold of creditors need to vote on an examiner's rescue plan than was previously the case."

The solicitor has led the Dillon Eustace restructuring and insolvency practice for over six years.

"One of the most rewarding aspects of my career to date has been overseeing our restructuring and insolvency offering grow into what is now a recognised go-to practice within the market, reflected by



the fact that the firm has been instructed on the majority of the largest recent restructurings in recent years," he says.

n Ensor's experience, the most common legal pain point is where directors leave it until the very last moment to consult with experienced legal advisors.

"At that stage the company may have reached the point of no return. Good and timely legal counsel is important because it allows directors to make fully informed decisions with the benefit of as much information and options available to them as possible," he says.

Ensor notes the trend in recent years of international private equity money being invested in Ireland through the arrival of specialist international corporate restructuring and insolvency firms. "They are betting on the Irish restructuring and insolvency market increasing significantly. Watch this space."



Restructuring & Insolvency Ireland, an organisation comprising of accountants, solicitors and barristers working in the insolvency profession in Ireland, was established in 2004.

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Expertise in Challenging Times

Creditors Stepping Up Pressure For Repayments

his year is seeing steady pick-up in companies being placed into liquidation, whilst the number of companies enquiring about SCARP has significantly increased since April 2023, according to Tom Murray, director at Friel Stafford.

Murray is an insolvency practitioner with over 25 years of experience and has acted as liquidator, receiver and examiner for over 1,500 companies. He is one of the few dual corporate insolvency and Personal Insolvency Practitioners in Ireland, and chairs the insolvency committee of the Consultative Committee of Accountancy Bodies Ireland, an umbrella group of the accountancy profession.

"Liquidations follow litigation or creditor pressure," says Murray. "In quarter 2 of 2023 we are seeing increased creditor activity in terms of debt collection including litigation, and this is a key indicator that more and more companies will face insolvency."

Murray adds that warehoused tax debt is the single biggest driver of concern amongst companies Friel Stafford advises. "Many companies with warehoused Revenue debt are struggling to keep up with current Revenue liabilities. The implication of falling behind with this is that



warehoused debt may be removed from the scheme and be immediately liable at a significant interest rate," Murray explains.

"Furthermore there is a realisation among some companies that trading performance is not strong enough to deal with this legacy debt even with a phased payment arrangement. As such, companies are considering SCARP before they fall into arrears on current tax liabilities, or are entering into liquidation on the basis that they cannot return to viability when the tax debt crystallises."

Though the SCARP process got off to a slow start, Murray says the process is beginning to have more traction. "There

is a clear and unambiguous sign that more companies are investigating it as an option. We have seen the traffic to our dedicated scarp.ie website and to our free confidential helpline increase incrementally in recent months. Companies that act early by taking the timely advice of an insolvency practitioner have a better change of formulating a plan to avoid formal insolvency appointments."

urray's view is that non-bank alternative finance in the right circumstances is as valid as traditional bank finance and may be the most appropriate source to address stretched balance sheets.

"This is particularly so now where traditional banks have an aversion to funding companies with a history of issues with tax compliance," says Murray, adding that as with all sources of debt and finance, company directors need to consider:

- personal liability of business owner
- security required and the implications of that security
- the implication and sustainability of high interest rates
- relationship between owner and finance and the implications for the raising of future finance
- alignment between owner's preferred direction for the business and that of the finance providers.

SMALL COMPANY ADMINISTRATIVE RESCUE PROCESS

The Small Company Administrative Rescue Process (SCARP) mirrors key elements of the examinership process and is available to companies with a turnover not exceeding €12m and a balance sheet not exceeding €6m, with no more than 50 employees.

The process is commenced by

resolution of directors rather than by application to court, and it requires that the rescue plan is passed by a simple majority (51%) in value of creditors.

SCARP does not require application to court for approval of the rescue plan, provided that no creditor objects. The process is overseen by an insolvency expert who is called the Process Advisor.

From commencement in August 2022 to the end of May 2023, 30 companies have availed of the SCARP process.

The Companies Office has received 23 notifications in respect of approved rescue plans.

Restructuring Activity is Artificially Low

More needs to be done to inform small and micro firms about their restructuring options under the SCARP process, writes Beauchamps partner Barry Cahir

n internet search for 'what is happening in the global economy' throws up some gloomy news. It is gloomy not just for those of us who are, in effect, counter-cyclical but for everyone if the predicted stagnation happens. Stagnation is not good news for anyone. The International Monetary Fund and the World Bank are predicting not just a drop in growth but a decline in growth prospects and appear to be warning that 2020 to 2030 could be a lost decade.

As against that, it is easy to find positive outlooks from various credible economists. Some are tracking purchasing managers' indices (PMIs) to support the view that global expansion is gathering steam. The picture is less clear when you factor in inflation and the response of central banks with regard to monetary policy.

What I do know is that the levels of restructuring activity in Ireland are still artificially low for several reasons, some of which are still linked to Covid measures. For example, the warehousing of Revenue debts has been extended to May 2024, and there is a view that this and other similar measures could be masking business failures.

As the current President of INSOL Europe, I have been attending more conferences than usual, and I can confirm that the relatively small number of insolvencies is similar in other countries. INSOL Europe is the leading European organisation of professionals who specialise in insolvency, business reconstruction, and recovery, with over 1,300 members in 50 countries.

It is a huge privilege to hold



Barry Cahir, President of INSOL Europe

the presidency, and one I take very seriously. It is also a fantastic opportunity to join with those such as Ireland for Law, the IDA, and the judiciary, who are promoting Ireland as a go-to jurisdiction for a range of legal, financial, and other professional services.

EUROPEAN INSOLVENCY LEGISLATION

Insolvency laws are not typically a hotbed of policy focus. Of late, however, the EU has been driving meaningful change to promote business rescue procedures and to harmonise insolvency laws throughout the EU. Overall, the theory is that harmonising insolvency laws within the EU aims to improve the efficiency, effectiveness, and predictability of insolvency proceedings across member states, particularly in cases involving cross-border elements.

The latest EU proposals include measures for restructuring small and micro businesses, which cannot afford a costly examinership or equivalent process. Ireland is ahead of most jurisdictions by having a specific

restructuring process (SCARP) for small and micro enterprises grappling with solvency issues.

SMALL COMPANY ADMINISTRATIVE RESCUE PROCESS

SCARP is modelled on examinership but aims to eliminate court hearings to a significant degree, thus making it cheaper. You can access SCARP if the company has a turnover less than €12m, a balance sheet under €6m, and/or an average number of employees fewer than 50. An independent Process Advisor is appointed by the directors to formulate a restructuring plan, and the whole thing can be done in under 70 days.

Take-up has been underwhelming, with fewer than 30 cases so far. This is probably due to issues such as debt warehousing and a lack of awareness. It is also the case that companies very often leave it too late to address the issues, which leaves them with fewer options.

Given the huge importance of small companies — they make up the vast majority of companies and employ a large section of the workforce — there is a job of work to be done to make sure they know and understand the options available to save a struggling business.

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