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Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Public Consultation Report

Companies (Small Company Administrative Rescue Process and Miscellaneous Provisions) Bill 2021

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1. Introduction

The Department of Enterprise, Trade and Employment launched a public consultation on the proposed Summary Rescue Process on 8th February 2021 to inform development of the General Scheme of the Summary Rescue Process (now known as ‘*The Companies (Small Company Administrative Rescue Process and Miscellaneous Provisions) Bill 2021*’). The consultation closed on 5th March 2021 and the Department received 17 submissions from a mixture of business representatives, insolvency practitioners and other stakeholders.

Given the urgency of the proposals and the pace at which legislation is being prepared, responses to policy questions were considered in the first instance while those which raised legal or technical issues are being considered in consultation with Advisory and Parliamentary Counsel during drafting. There were also several notable contributions received which, although not capable of progression in this Bill, have been noted to inform future policy development in the area. A summary of responses received and how they have been categorised by the Department is set out at Appendix 1.

2. Background to the proposals

As part of the Government’s medium-term stabilisation response to the economic challenges of the pandemic, and in keeping with commitments contained in the Programme for Government, it is proposed to provide for a stand-alone process outside existing frameworks for the rescue of small companies. In this regard, the Tánaiste wrote to the Company Law Review Group (CLRG) ¹requesting it to examine the issue of rescue for small companies and make recommendations as to how such a process might be designed.

The CLRG submitted its report in October 2020 and recommended a “Summary Rescue Process”, a standalone process separate from the examinership process, but one which would mirror key elements of the examinership legislation. Such a process would:

¹ Membership of the CLRG is representative of the broad range of stakeholders in company law and includes legal practitioners, insolvency practitioners, business and employee representatives, the Office of the Director of Corporate Enforcement, the Revenue Commissioners, the Attorney General’s Office, the Department of Enterprise, Trade and Employment and academics in the area.

- be designed for “small” companies (as defined by the Companies Act 2014) which represent 98% of companies in Ireland,
- be commenced by resolution of directors rather than by application to Court,
- be concluded within a shorter period than examinership,
- be overseen and assisted by insolvency practitioners,
- provide that the rescue plan be passed by a simple majority in value of creditors,
- provide for a format of cross class cram down of debts designed to reduce costs,
- not require application to Court for approval of rescue plan (provided no creditor objects), and
- have safeguards against irresponsible and dishonest director behaviour.

It is intended that this process will reduce the associated costs and regulatory burden for ease of access for small companies while also maintaining appropriate safeguards for creditors.

A full copy of the terms of reference referred and the CLRG’s report can be accessed at the following link: [the-company-law-review-group-s-special-report-on-the-rescue-of-small-business.pdf \(clrg.org\)](https://www.clrg.org/the-company-law-review-group-s-special-report-on-the-rescue-of-small-business.pdf)

3. Proposed policy responses

SUMMARY

Responses received concerned a variety of issues. The Department categorised responses as 1) policy issues, 2) legal or technical issues and 3) issues for consideration for future policy development.

Two issues emerged which significantly impacted the development of the General Scheme of the Bill.

Firstly, several respondents advocated for the inclusion of repudiation provisions. Repudiation is a legal mechanism which allows the Court to set aside onerous contracts in examinership. While the Department had initially considered this too complex for a simplified process, upon consideration of the responses received the Department concluded that this required providing for in the General Scheme.

Secondly, providing for ‘excludable creditors’ under the new process was strongly opposed by many respondents. Excludable creditors are a special class of creditor who may sit outside of the process. The Department considered there was merit in mirroring this concept in the General Scheme. However, following consideration of submissions received, the Department

developed a revised approach which is considered to address the points raised by respondents. Further detail is set out at question 2.

In relation to legal and technical issues, there was significant detail provided in relation to the information which should be included in the statement of affairs and creditors questionnaire. The majority of responses cited similar detail in this regard. Issues were also raised about how the new process would interact with existing and future EU law. These will be considered in the context of drafting.

There were also several notable contributions which were outside the scope of this Bill, but which have been noted to inform future policy development. These included developing a statutory definition of excludable creditors.

Set out below is a summary of responses received to the consultation in respect of each question and the policy response to same.

QUESTION 1 - KEY ELEMENTS OF THE PROCESS

Robust restructuring processes typically contain some or all of the following elements:

- the granting of a stay or moratorium;
- support for new and interim financing;
- support for negotiation with creditors and, where necessary, equity holders, through the introduction of cram down provisions which might include cross class cram down provisions;
- a final approval of a restructuring agreement through an official body - in Ireland, the High Court or in some cases, the Circuit Court.

Respondents were asked which of the above elements they consider most important in a simplified process for small companies and to provide reasons for their answers.

The majority of respondents cited several of the above-mentioned elements as being important in a simplified process for small and micro companies with particular emphasis on the ability to enforce a moratorium and cram down provisions. There were also a number of respondents who considered that the new process should provide for repudiation, a legal mechanism to deal with onerous contracts. While repudiation is often one of the more complex and expensive features of the existing examinership process, respondents considered it necessary in certain circumstances to facilitate the survival of a company. Further responses advocated for the process advisor to have the ability to assume the executive functions of the

director where he or she considered that their actions were designed to frustrate the process and contrary to supporting the survival of the company.

Policy response

The Department is supportive of providing for the ability to enforce a moratorium as part of the new process. As the process will commence without Court approval, the moratorium, or stay on proceedings, will not happen automatically as is the case in examinership. Instead, companies will have the ability to apply to Court for one should it be necessary. This ensures procedural fairness for creditors and other stakeholders.

The Department initially considered that repudiation should not be provided for in the summary rescue process (now titled the 'Small Company Administrative Rescue Process'). Court involvement would likely delay conclusion of the process and increase the cost of the process. It is typically the most contentious issue dealt with in an examinership and involves substantial Court fees. However, a significant number of responses to the public consultation highlighted that repudiation, where relevant and necessary, is key to the success of any rescue plan.

From a practical perspective, notwithstanding that the new process is intended to be a simplified one, small and micro companies may still be subject to onerous commercial contracts such as leases. In order for a successful restructuring plan to be put in place, it is desirable that such contracts be capable of renegotiation. Responses to the consultation highlighted that contracted parties are encouraged to renegotiate onerous contracts under examinership because of the possibility of a Court repudiating such contracts. As such, contracted parties may prefer to come to a mutually acceptable position. Repudiation is a last resort and provides a legal avenue where such mutual renegotiation fails. Therefore, the Department revised the approach to provide for it as part of the new process. It is thus pragmatic to mirror this provision in the new process. While its *use* adds costs to the process, such use is *optional* and its inclusion is influential on delivering successful restructuring outcomes.

Concerning the questions posed as part of the public consultation process with regard to the four bullet points above, the issues of cram down; and certain powers for the process advisor were raised in responses. It is intended that new process will provide for cram down provisions, drawing from the existing provisions of examinership. The Department does not support providing for the process advisor to have the ability to assume the executive functions of the director in the same manner as an examiner. A petition to the Court for the appointment of an examiner may be presented by the company or its directors, a creditor or contingent or prospective creditor (including an employee) of the company, or by the members holding not

less than one tenth of the paid-up capital. Therefore, there may be circumstances in which the directors of a company are not supportive of an examiner's appointment and seek to frustrate the process. This is not the case in the proposed new process. It is the directors of the company who pass the resolution to appoint the process advisor. It is a company-led process. The Department considers it unlikely that company directors, having passed such a resolution and paying the process advisor, would then seek to frustrate the process.

QUESTION 2 – EXCLUDABLE DEBTS

Respondents were asked whether there were any debts they considered should be excludable from the new process. With examinership, all debt is included – however, the examinership process provides for significant court oversight in this regard.

This is in contrast to the Personal Insolvency Act 2012² which specifies certain types of debt to be excludable for example, the Revenue Commissioners in respect of tax owed. Some respondents considered that the position under the Personal Insolvency Act 2012 should be mirrored, while others suggested that secured creditors be excludable.

Most respondents strongly advocated against the introduction of excludable creditors as part of the new process. Fundamental to the efficacy of *examinership* is the ability to impair *all classes of creditors in a fair manner*. Respondents highlighted that in keeping with examinership, *all* creditors should be included in the process.

Submissions also outlined that from a practical perspective there is a clear requirement to ensure all liabilities are dealt with when putting in place a rescue plan. This provides the certainty necessary for the investor, funder, company promoters and importantly other creditors.

² The Personal Insolvency Act 2012 provides that certain debt is explicitly excluded from being compromised as part of a Personal Insolvency Arrangement (e.g. child maintenance). It further provides that other debt is excludable (e.g. Revenue debt). Excludable debt can only be included in the process with the consent of the creditor.

Policy response

The Department considers it appropriate that the new process align with examinership insofar as possible. However, as the process will not be subject to ongoing Court supervision there is potential for unintended consequences for example some companies could use the process for the purpose of tax avoidance.

Taking into account the inputs received as part of the consultation, the Department proposes to provide for the Revenue Commissioners and Department of Social Protection to be excludable creditors. However, this will not directly mirror the position under the Personal Insolvency Act 2012 where excludable creditors are only included in the process if they decide to *opt in*. Instead, excludable creditors may only opt out on the basis of prescribed statutory grounds. This seeks to balance concerns around potential tax avoidance with businesses requirements for flexibility and certainty. The Department notes that the Revenue Commissioners opt in to over 90% of personal insolvency cases where they are in a position to quantify the debt. The Revenue Commissioners would similarly act as a constructive participant in the new corporate insolvency process.

The Department does not support the exclusion of secured creditors from the process. It is considered that such creditors are adequately protected by their ability to object to a rescue plan and seek the Court's direction in respect of the proposals.

QUESTION 3 – DISQUALIFICATION FROM ENTRY

Respondents were asked to consider were there are any automatic reasons why a company should be disqualified from entering into the new process. In examinership, entry to the process is at the discretion of the Courts³. The Court will appoint an examiner where it appears to the Court that:

- The company is or is unlikely to be able to pay its debts;
- No resolution subsists for the winding up of the company; and
- No order has been made for the winding up of the company.

³ Section 509, Companies Act 2014

The Court will not appoint an examiner until it has afforded every creditor who has indicated their desire to be heard on the matter an opportunity to do so⁴.

As entry to the examinership process is subject to Court approval, there are no criteria set out in the Companies Act which automatically preclude a company from presenting a petition to appoint an examiner to the Court.

The Personal Insolvency Act 2012 provides a mechanism through which individuals may propose a Personal Insolvency Arrangement for the resolution of debt with the help of a Personal Insolvency Practitioner. Entry to the process is not subject to Court approval. An individual may not avail of this process for several reasons, including if they:

- are an undischarged bankrupt;
- are a discharged bankrupt subject to a bankruptcy order;
- have already availed of a Personal Insolvency Arrangement; or
- are availing of any other debt resolution mechanism provided for by the Personal Insolvency Act⁵.

There was a mixed response in relation to this question. Some considered that there should be no automatic disqualification criteria because creditors are not impaired by virtue of a company entering the process as there is no automatic stay on proceedings. Others highlighted that repeated use of insolvency processes, including use of the proposed new process, should disbar a company from entry. Certain respondents also considered that companies which failed to disclose material facts to the process advisor or which did not have a reasonable prospect of survival should not be eligible for entry.

Policy Response

The Department considers that entry to the new process should be subject to the same requirements as those considered by the Court when appointing an examiner. A company must have a reasonable prospect of survival in order to utilise the process.

⁴ Section 515, Companies Act 2014

⁵ This list is non exhaustive, other criteria can be found in section 91 of the Personal Insolvency Act 2012. For further information in relation to personal insolvency, please see Insolvency Services of Ireland website at <https://www.isi.gov.ie/>

It is the responsibility of the process advisor, on the basis of the statement of affairs prepared and provided by the company, to determine whether or not the company has a reasonable prospect of survival. The information highlighted by many of the respondents as potential disqualification criteria will be considered in the context of drafting to provide statutory criteria for the process advisor to adhere to when making his or her decision as to the future viability of the company.

Following consideration of the responses received to the public consultation, the Department also considers it appropriate to limit entry to the process to once in a five-year period. There were respondents who considered that the process should be available to businesses as often as they wished to use it. Such respondents considered that the engagement or otherwise of creditors would determine whether or not repeated use of the process was appropriate. Furthermore, it was highlighted that companies are not precluded from repeated use of examinership. However, the Department considers that during examinership the Court would take repeated attempts at rescue into account when determining whether a company has a reasonable prospect of survival. Others considered that it was not appropriate for companies to repeatedly avail of debt write downs and that use should be limited to once in a three-year period. On balance, the Department considers access to the process once in a five-year period to be most appropriate.

QUESTION 4 – STANDARD FORMS

Respondents were asked to set out the information they considered should be requested from creditors by the process advisor upon his or her appointment. A creditor's right to be heard is of fundamental importance in any restructuring process. In examinership, the Court will not appoint an examiner until it has heard from any creditor who has indicated their desire to be heard on the matter.

To make the new process as accessible, flexible and simple as possible for all involved, the process advisor will send all creditors a prescribed form so they can inform him or her of any details they consider relevant to the process. This will be done immediately on appointment of the process advisor, before a scheme is devised.

The majority of responses to this question all referred to similar information such as:

- proof of debt,
- history and length of time trading with the company,
- concerns in relation to the process,
- details of any related party transactions,
- details of credit terms, and

- amount and class of debt securities held.

Policy response

The Department considers the responses to this question instructive, and they will inform the development of the initial creditor's questionnaire.

QUESTION 5 – PROPOSED USERS

Examinership is currently available to all companies. However, the commercial reality of the associated costs means it is typically utilised by medium and large companies.

The Department proposes to make the Summary Rescue Process available to micro and small companies as defined in the Companies Act 2014. Roughly 98% of companies fall into these categories and therefore may be eligible to avail of the process.

Respondents were asked for their views on the potential scope of the process.

The majority of responses indicated that the Department's proposed approach was acceptable and that the process should be available to small and micro companies. However, some suggested that the process be extended to medium companies in certain circumstances.

Policy response

The Department notes the overarching support for the process to be confined to small and micro companies and considers this appropriate. It considers that examinership is best placed to meet the needs of medium companies and notes that the majority of companies which utilise examinership are in fact medium sized.

QUESTION 6 – ADDITIONAL INFORMATION

Respondents were invited to provide additional comments to inform the development and direction of policy on the new process. Given the nature of the question, a variety of responses were received. While it was not possible to consider each one separately as part of this paper, a summary of responses is included at Appendix 1 for information. Set out below is a brief response to one response received which the Department considered important from a policy perspective.

The Preventive Restructuring Directive

Directive (EU) 2019/1023 (PRD) sets down minimum rules for Member State preventative restructuring frameworks, in order to remove barriers to effective preventive restructuring of viable debtors in financial difficulties across the EU. It is due to be transposed by June 2022.

One submission received strongly advocated for the summary rescue process (SCARP) to be fully PRD compliant, in particular with regard to workers claims.

The Department notes that the CLRG's report concerning a new process considered that Member States must provide for only one process which meets the minimum requirements of the Directive. The majority view of the CLRG is that SCARP is not required to be fully PRD compliant.

The PRD must be transposed by June 2022 and a detailed mapping exercise is underway to determine the most appropriate approach to the transposition. The Department therefore considers it premature to make policy decisions in relation to the PRD in this legislation. SCARP will be examined in the context of the transposition and should further alignment be considered necessary, amendments will be made at that point.

Appendix 1 – Summary of responses received

Categorisation

Policy issue – policy issues were considered in the context of the development of the General Scheme

Technical issues – technical issues will be considered further in consultation with Advisory and Parliamentary Counsel during drafting

Noted to inform future policy development – issues noted to inform future policy development will be considered as part of the Department’s periodical review programme on company law.

Question 1 – Key elements of a rescue plan

Respondent	Summary of response	Categorisation
Baker Tilly	- Ability to enforce a moratorium on enforcement by creditors.	- Policy issue
	- Implementation of a cross class cram down.	- Policy issue
	- Final approval of scheme through an official body, suggested via CRO filing.	- Technical issue - for further consideration with Advisory/Parliamentary Counsel
Barry Lyons	- Endorses CLRG recommendation in relation to stay on proceeding and cross class cram down.	- Policy issue
	- Repudiation of contracts that are onerous in nature and threaten the survival of the company.	- Policy issue
	- Process advisor taking over the executive functions of the Directors where their actions are calculated to prejudice the interest of the company and/or its creditors and employees.	- Policy issue

Question 1 – Key elements of a rescue plan

Respondent	Summary of response	Categorisation
Barry Donohue	- Provided observations on the CLRG's report as opposed to the questions posed.	- Noted to inform future policy development in the area
	- There should not be an automatic stay.	- Policy issue
BPMI	- Granting of a stay or moratorium.	- Policy issue
	- Final approval of the rescue plan through the High Court or an official body.	- Technical issue - for further consideration with Advisory/Parliamentary Counsel
	- Right of secured creditors to raise an objection/opt out in the initial stages of the process.	- Policy issue
Chambers Ireland	- Provided general observations and did not respond to the specific questions posed.	- Noted to inform future policy development in the area
Co-operation works	- Support for negotiation with creditors should be widened to other stakeholders including employees and customers so that they can protect their position by taking ownership.	- Policy issue
	- Where an agreement is straightforward, uncontested and Revenue is party to it, then Revenue should be competent authority for approving a rescue plan.	- Policy issue
Deloitte	- Immediate moratorium (automatic stay on proceedings).	- Policy issue
	- Cram down provisions.	- Policy issue
	- Support for new and interim financing.	- Policy issue

Question 1 – Key elements of a rescue plan

Respondent	Summary of response	Categorisation
	<ul style="list-style-type: none"> - Final approval of a restructuring agreement through an official body. - Fixed time period for formulating proposals. - Control of the company should be retained by the directors unless they are jeopardising its survival. 	<ul style="list-style-type: none"> - Technical issue - for further consideration with Advisory/Parliamentary Counsel - Policy issue - Policy issue
Eugene F Collins	<ul style="list-style-type: none"> - Supports the CLRG recommendation. 	<ul style="list-style-type: none"> - Policy issue
ICTU	<ul style="list-style-type: none"> - Did not respond to the question posed. 	<ul style="list-style-type: none"> - N/A
ISIP	<ul style="list-style-type: none"> - Generally endorses CLRG recommendations - Repudiation of onerous contracts where necessary to secure the survival of the business. 	<ul style="list-style-type: none"> - Policy issue - Policy issue
ISME	<ul style="list-style-type: none"> - As per Barry Lyons. 	<ul style="list-style-type: none"> - See response to Barry Lyon's submission
Kirby Healy Chartered Accountants	<ul style="list-style-type: none"> - Minimal court interaction to ensure simple and accessible for small and micro companies. 	<ul style="list-style-type: none"> - Policy issue
Rory Ardagh	<ul style="list-style-type: none"> - Process for quick and clear sale of elements of the business. - Repudiation of onerous contracts. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area - Policy issue

Question 1 – Key elements of a rescue plan

Respondent	Summary of response	Categorisation
SFA	- Stay on proceedings.	- Policy issue
	- Cross class cram down.	- Policy issue
	- Support for new and interim financing.	- Policy issue
SME Equity	- Stay.	- Policy issue
	- Support for new and interim financing.	- Policy issue
	- Cross class cram down.	- Policy issue
Vintners Federation Ireland	- Stay.	- Policy issue
	- Support for interim financing.	- Policy issue
	- Supporting flexibility in dealing with creditors.	- Policy issue
	- Should not require High Court approval.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
Whitney Moore LLP	- The granting of a stay or moratorium (including stay on termination of existing executory contracts) to apply from commencement of process unless or until Court orders otherwise.	- Policy issue

Question 1 – Key elements of a rescue plan

Respondent	Summary of response	Categorisation
	<ul style="list-style-type: none"> - Support for negotiation with creditors including cram down, and with Court (High Court or Circuit Court) having power to authorise repudiation of onerous contracts (S. 537 CA). - A final approval by a Court which opened proceedings in cases where it is relevant to avail of foreign recognition of a restructuring agreement or composition. 	<ul style="list-style-type: none"> - Policy issue - Technical issue - for further consideration with Advisory/Parliamentary Counsel

Question 2 – Excludable creditors

Respondent	Response	Categorisation
Baker Tilly	- No, should mirror examinership. Successful scheme requires all liabilities to be dealt with.	- Policy issue
Barry Lyons	- No, process will fail if any single creditor is allowed to exclude themselves.	- Policy issue
Barry Donohue	- Certain creditor classes such as secured creditors (maybe lease finance) and Revenue could have the right to be excluded if a substantial liability has built up in the 3 to 6 months before notice of a summary rescue process is filed.	- Policy issue
BPF1	- Employee entitlements in a redundancy scenario.	- Policy issue
	- Secured debt in the event SRP proceeds despite a secured creditor raising an objection.	- Policy issue
	- Where no debt is excluded consideration should be given to the issue of connected creditors.	- Noted to inform future policy development in the area
Chambers Ireland	- Provided general observations and did not response to the specific question posed.	- N/A
Co-operation works	- No debts should be excluded.	- Policy issue

Question 2 – Excludable creditors

Respondent	Response	Categorisation
Deloitte	- No debts should be excluded.	- Policy issue
Eugene F Collins	- No debts should be excluded.	- Policy issue
ICTU	- Employee claims should not be compromised.	- Policy issue
ISIP	- No debts should be excluded.	- Policy issue
ISME	- No debts should be excluded.	- Policy issue
Kirby Healy Chartered Accountants	- Considered this to be a policy matter for the Minister to determine.	- N/A
Rory Ardagh	- No debts should be excluded. Should mirror examinership.	- Policy issue
SFA	- No debts should be excluded.	- Policy issue
SME Equity	- Those debts which are excludable under the Personal Insolvency Act. However, these should be included where the creditor agrees.	- Policy issue
	- Debts in relation to family law, court awards, fraud or court orders arising from the proceeds of crime.	- Policy issue

Question 2 – Excludable creditors

Respondent	Response	Categorisation
Vintners Federation Ireland	- All legitimate business debts should be included in the process.	- Policy issue
Whitney Moore LLP	- It is considered that the following might be excludable debts if the Debtor agrees to them being excluded, but not on the basis that they be included only if the Creditor is asked and agrees or is deemed to have agreed to their inclusion:	- Policy issue
	- Secured debts (including those for which title to goods has been reserved).	- Policy issue
	- Debts arising from a loan (or forbearance of a loan) obtained through fraud or similar wrongdoing.	- Policy issue
	- Taxes, duties, charges or levies due to the State.	- Policy issue
	- Service charges owed to local authorities.	
	- Rates.	

Question 3 – Disqualification criteria

Respondent	Response	Categorisation
Baker Tilly	- Where the company does not have a reasonable prospect of survival.	- Policy issue
	- Where an application is not brought in good faith.	- Policy issue
	- Where material facts are withheld from the process advisor.	- Policy issue
Barry Lyons	- No automatic disqualification criteria.	- Policy issue
Barry Donohue	- Did not respond to the specific question posed.	- N/A
BPF1	- Company that has already availed of the summary rescue process/examinership/scheme of arrangement.	- Policy issue
	- Companies that have debt ratified by the court and where a judgement/court order is held.	- Policy issue
	- Companies that have not undergone or failed a viability test.	- Policy issue
	- Companies that have recently had a scheme of arrangement approved by the High Court and have failed to comply with its terms.	- Policy issue
Chambers Ireland	- Did not respond to the specific question posed.	- N/A

Question 3 – Disqualification criteria

Respondent	Response	Categorisation
Co-operation works	- The court should not appoint an examiner until it is ascertained whether or not a potential stakeholder buyout is an option.	- Noted to inform future policy development in the area
	- Where the company is an already existing cooperative then there must be an option of transfer of engagements to another cooperative.	- Policy issue
	- Court should not appoint an examiner where there is suspicion that a flat pack administration is planned.	- Policy issue
Deloitte	- Process should only be available once in a three-year period.	- Policy issue
	- No limitation on subsequent use of alternative processes.	- Policy issue
Eugene F Collins	- Did not respond to the specific question posed.	- N/A
ICTU	- Serious concerns re the repeated use of the process/other processes.	- Policy issue
ISIP	- Supports recommendations of the CLRG and considers directors should be subject to a good faith requirement.	- Policy issue
ISME	- As per Barry Lyon's submission.	- As per response to Barry Lyon's submission
	- Age of company, consideration should be given to limiting use of the process to companies at least two years old.	- Noted to inform future policy development in the area

Question 3 – Disqualification criteria

Respondent	Response	Categorisation
Kirby Healy Chartered Accountants	- Outstanding tax returns.	- Policy issue
	- Should only be available once in a 5-year period.	- Policy issue
Rory Ardagh	- No automatic reason for exclusion.	- Policy issue
SFA	- No automatic reason for exclusion on the basis that as per the CLRG's recommendations creditors are not compromised by mere entry to the process and court application is required for a stay.	- Policy issue
SME Equity	- Should only be disqualified from entry for the same reasons listed in the Personal Insolvency Act.	- Policy issue
Vintners Federation Ireland	- Prior or current bankruptcy.	- Policy issue
Whitney Moore LLP	- If the company is able to pay its debts.	- Policy issue
	- If a winding-up of the company is in process in Ireland or elsewhere which is recognised and enforceable in Ireland.	- Policy issue

Question 4 – Standard forms

Respondent	Response	Categorisation
Baker Tilly	<ul style="list-style-type: none"> - Initial creditors meeting 10 days after appointment of process advisor. - Information sought via form should include contact details (inc. email). - Copy of invoices and statement of accounts. - Copy of terms and conditions. - Details of any securities or charge held. 	<ul style="list-style-type: none"> - Policy issue - Technical issue – for further consideration with Advisory/Parliamentary Counsel
Barry Lyons	<ul style="list-style-type: none"> - Information sought via form should include outstanding balance owed. - Type of debt. - Documentation to support categorisation of debt. - Opinion as to whether the company is worth of survival. - Where considers the company is not worth of survival, detail as to why. 	<ul style="list-style-type: none"> - Technical issue – for further consideration with Advisory/Parliamentary Counsel
Barry Donohue	<ul style="list-style-type: none"> - Did not respond to the specific question posed. 	<ul style="list-style-type: none"> - N/A

Question 4 – Standard forms

Respondent	Response	Categorisation
BPFI	- All creditors should be notified.	- Policy issue
	- ICB credit check could be used as part of due diligence.	- Noted to inform future policy development in the area
	- Prescribed forms should include similar information to proof of debt in insolvency proceedings.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
	- Standard form to voice concern may not be sufficient. Would prefer a preliminary draft rescue plan be provided and confirmation that the company passed a debtor viability test at an early stage.	- Policy issue - Noted to inform future policy development in the area
	- Allow reasonable time for return of forms so creditors can fully review documents.	- Progressing as part of the General Scheme
Chambers Ireland	- Did not respond to the specific question posed.	- N/A
Co-operation works	- Form should identify stakeholders with a non-financial interest in the company.	- Policy issue
	- Form should identify vulnerable creditors whose business interests may be compromised by the write-down of assets.	- Policy issue
Deloitte	- History and length of time trading with the Company.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
	- Outstanding balance and date as to when the balance relates to.	
	- Details of credit terms.	

Question 4 – Standard forms

Respondent	Response	Categorisation
	<ul style="list-style-type: none"> - Details of any security held over the assets of the Company and any Retention of Title claims. - Details of any related party transactions with the Company. - Any concerns/issues or other relevant information. 	
Eugene F Collins	<ul style="list-style-type: none"> - Did not respond to the specific question posed. 	<ul style="list-style-type: none"> - N/A
ICTU	<ul style="list-style-type: none"> - Did not respond to the specific questions raised. 	<ul style="list-style-type: none"> - N/A
ISIP	<ul style="list-style-type: none"> - Amount and class of debt Securities held. 	<ul style="list-style-type: none"> - Technical issue – for further consideration with Advisory/Parliamentary Counsel
	<ul style="list-style-type: none"> - Detail of any objections to the process, restricted to statutory grounds. 	
ISME	<ul style="list-style-type: none"> - As per Barry Lyon’s submission. 	<ul style="list-style-type: none"> - As per response to Barry Lyon’s submission
Kirby Healy Chartered Accountants	<ul style="list-style-type: none"> - Company’s statement of account including all transactions in the previous 24 months. - Background on trading between the companies. - If the creditor believes the company has been responsible and honest in their dealings. - Any material information that impacts the proposal. 	<ul style="list-style-type: none"> - Technical issue – for further consideration with Advisory/Parliamentary Counsel

Question 4 – Standard forms

Respondent	Response	Categorisation
Rory Ardagh	- Did not respond to this question.	- N/A
SFA	- Forms typically sent to creditors in liquidation should be used.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
SME Equity	- Detail of debts and possible acceptable revised terms.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
Vintners Federation Ireland	- Outstanding debt. - Age of debt. - Recent payment history. - Efforts taken to recover debt to date.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
Whitney Moore LLP	- The name, postal address, e-mail address, if any, and the following on a non-compulsory basis : personal identification number, if any, and bank details of the creditor; - the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different; - if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest; - if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;	- Technical issue – for further consideration with Advisory/Parliamentary Counsel

Question 4 – Standard forms**Respondent****Response****Categorisation**

- the nature of the claim;
- whether any preferential creditor status is claimed and the basis of such a claim;
- whether security in rem or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and
- whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

Question 5 – Scope of Process

Respondent	Response	Categorisation
Baker Tilly	- Focus should be on companies who cannot afford to petition the High Court.	- Policy issue
Barry Lyons	- SMEs.	- Policy issue
Barry Donohue	- Did not respond to the specific question posed.	- N/A
BPFI	- Consider more appropriate to micro. Where a small company has significant or international debt then examinership is more appropriate.	- Policy issue
Chambers Ireland	- Did not respond to the specific question posed.	- N/A
Co-operation works	- Should apply to industrial and provident societies by way of amendment to the IP Acts.	- Noted to inform future policy development in the area
Deloitte	- Should also be available to medium companies.	- Policy issue
	- Should be scope for a group of Companies to avail of the proposed Summary Rescue Process (subject to meeting the required thresholds) where the continued existence of the respective Companies is dependent on other Companies within the group (shared services, customers and liabilities).	- Noted to inform future policy development in the area

Question 5 – Scope of Process

Respondent	Response	Categorisation
Eugene F Collins	- Did not respond to the specific question posed.	- N/A
ICTU	- Available to small and micro but should note that in doing so we are providing a process for the majority of companies.	- Policy issue
ISIP	- Small and micro companies.	- Policy issue
ISME	- As per Barry Lyon's submission.	- As per response to Barry Lyon's submission
Kirby Healy Chartered Accountants	- Small and micro companies.	- Policy issue
Rory Ardagh	- The Company definitions should be aligned with EU recommendation 2003/361. Small should be less than 50 employees, with either Turnover <€10m or Balance Sheet <€10m, Micro should be less than 20 employees, with either Turnover <€2m or Balance Sheet <€2m. - This would align with State Aid thresholds.	- Policy issue
SFA	- Do not consider the process should be restricted to companies below a particular size.	- Policy issue
SME Equity	- Micro and small companies.	- Policy issue

Question 5 – Scope of Process

Respondent	Response	Categorisation
Vintners Federation Ireland	- Micro and small companies.	- Policy issue
Whitney Moore LLP	- Micro and small companies.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
Baker Tilly	- The process advisor's ultimate responsibility should be to the creditors.	- Policy issue
	- Process advisor should be qualified in line with section 633 CA14.	- Policy issue
	- Creditors should receive more than they would in a liquidation or receivership.	- Policy issue
	- Repudiation should be facilitated, potentially through a mediator who can issue binding recommendations.	- Noted to inform future policy development in the area
	- An ability to apply to court for directions hearings.	- Technical issue
	- Where a rescue plan fails in the SRP, directors should be obliged to convene a meeting of creditors to appoint a liquidator or an examiner within 3 days.	- Policy issue
	- Process advisor should have ability to assume executive functions in line with examiner.	- Policy issue
Barry Lyons	- Development of SRP is fundamental to rebalancing the dynamic between SMEs and creditors.	- N/A
	- Currently business is wholly at the mercy of creditors.	
Barry Donohue	- Duration should be well within the examinership timeline, maybe 28 days from appointment with short notice periods and extensions.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
	<ul style="list-style-type: none"> - If it is not possible to save the company then there should be a way to save part of the viable enterprise (e.g., maybe a subsidiary). 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
	<ul style="list-style-type: none"> - Creditors can act as gate keepers in terms of the interaction between the proposed summary rescue process and existing insolvency processes. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
	<ul style="list-style-type: none"> - Important that a third party supports the directors view that the company is capable of survival. This might be achieved via a committee made up of Revenue, employees and creditors who approve entry to the process. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
	<ul style="list-style-type: none"> - The scheme should not be fixed on a single event return to creditors but allow and encourage directors to offer creditors upside. In particular if the company's position improves as a result of the creditors approving a scheme and the business grows. The best interests test should be considered or ratified by a committee of creditors who represent all creditors as at present there is little verification if the projected return on a liquidation/insolvency process would in fact be as bad as is usually portrayed in the comparative outcome statements. Some comparative analysis on this may be worthwhile after a review period. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
	<ul style="list-style-type: none"> - Considers there is merit in an initial meeting of creditors and perhaps the formation of a committee of inspection. 	<ul style="list-style-type: none"> - Policy issue - Noted to inform future policy development in the area

Question 6 – Any further comments

Respondent	Response	Categorisation
	- Does not consider an initial court filing necessary. Could be done with CRO instead as their register is more visible.	- Policy issue
	- This is an opportunity to codify classes of creditors.	- Noted to inform future policy development in the area
	- Committee could sanction classes.	- Noted to inform future policy development in the area
	- No issue with connected creditors voting so long as they do not carry the vote.	- Noted to inform future policy development in the area
	- There should be no issue so long as a cram down does not vary a secured creditors rights without its consent or it has voted for the scheme.	- Policy issue
	- The existence of a committee should reduce the need of a court to be involved in approving costs and expenses and could if necessary be used to vet or approve other costs incurred during the process.	- Noted to inform future policy development in the area
	- Best interest test requires further consideration to ensure that low figures are not suggested as being a better outcome than a liquidation where in reality debtors/stock have been excessively written down.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
	- Should be approved by a majority of classes. Current provision in examinership too low a bar.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
BPFI	- UK CVA should be considered.	- Noted to inform future policy development in the area
	- Guarantees.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
	- Disputed claims.	- Noted to inform future policy development in the area
	- SRP failure/termination.	- Noted to inform future policy development in the area
	- Set off.	- Noted to inform future policy development in the area
	- Valuation disputes.	- Noted to inform future policy development in the area
	- Powers of insolvency practitioner.	- Policy issue
	- Duties of insolvency practitioner.	- Policy issue
	- International recognition.	- Technical issue - for further consideration with Advisory/Parliamentary Counsel
	- Where there are applications to court these should be dealt with by the lower court.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
Chambers Ireland	- Decisions of the court should be binding.	- Policy issue
	- Independence of the insolvency practitioner should be guaranteed.	- Policy issue
	- Simplified means of registering objections/issues in advance of a decision being made.	- Policy issue
	- Should include guidance on where a business stands if there are international trade creditors.	- Technical issue – for further consideration with Advisory/Parliamentary Counsel
Co- operation works	- Examinership process should look into all beneficial outcomes for all stakeholders and stakeholders should have access to professionals to assist them in preparing buyout proposals to operate the business as a cooperative.	- Noted to inform future policy development in the area
Deloitte	- Initial report of the process advisor should mirror independent experts report in examinership.	- Policy issue
	- Notice of the appointment of a Process Advisor along with a copy of the Process Advisors Initial report should be furnished to the ODCE at the commencement of the process.	- Policy issue
	- A copy of the finalised proposals (if agreed) should also be furnished to the ODCE.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
	- During the course of the proposed Summary Rescue Process, if the Process Advisor becomes aware of any fraudulent or criminal activity, they would be obliged to report same, similar to the obligation placed on Examiners (S511(i) CA2014) & Receivers (S447 CA 2014).	- Policy issue
	- Repudiation should be available in respect of onerous commercial contracts which cannot be mutually renegotiated by the parties.	- Policy issue
Eugene F Collins	- Repudiation should be available.	- Policy issue
ICTU	- Process should be PRD compliant.	- Policy issue
	- Workers claims should not be compromised.	- Policy issue
	- Repudiation, if provided should not include workers.	- Policy issue
	- Not in favour of cross class cram down.	- Policy issue
	- Should cross class cram down be provided this must be approved by the courts.	- Policy issue
ISIP	- Repudiation important to deal with landlords/leases.	- Policy issue
ISME	- As per Barry Lyon's submission.	- As per response to Barry Lyon's submission
	- Rescue plan should be drafted earlier and presented to creditors asap.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
Kirby Healy Chartered Accountants	- Automatic stay for 28 days while creditors consider proposals similar to UK CVA.	- Noted to inform future policy development in the area
	- Opportunity to codify classes of creditors so as to avoid the creation of artificial classes (suggests that this is a trend in examinership).	- Noted to inform future policy development in the area
	- Should deal with the issue of connected creditors along the lines of UK.	- Noted to inform future policy development in the area
	- Standard proposal template.	- Policy issue
	- Process advisor's fees should have priority in a liquidation.	- Policy issue
Rory Ardagh	- Important to ensure that this process can be linked with a PIA, or multiple PIA if there are multiple entrepreneurs, to ensure a holistic approach to both entrepreneur and enterprise, and to ensure that these cross linkages can be addressed/severed inside a single process.	- Noted to inform future policy development in the area
	- The long-term survival of the business depends on the long-term survival, and mental health, of the entrepreneur.	
SFA	- Codification of classes of creditors should be considered.	- Noted to inform future policy development in the area
	- Liquidators reporting regime seems onerous in this context.	- Policy issue

Question 6 – Any further comments

Respondent	Response	Categorisation
	<ul style="list-style-type: none"> - Consideration should be given to the procedure by which a liquidator adjudicates on the claims of creditors of a company being wound-up being applicable to the Summary Rescue Process. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
SME Equity	<ul style="list-style-type: none"> - Availability of investment capital will be central to the success of the process. - EIIS (Employment Investment Incentive Scheme) Scheme should be reviewed to allow investment and rescue of companies availing of summary rescue process. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area
Vintners Federation Ireland	<ul style="list-style-type: none"> - Did not respond to this question. 	<ul style="list-style-type: none"> - N/A
Whitney Moore LLP	<ul style="list-style-type: none"> - If compositions are to have good chance of success to enable a company to be rescued, it is very important that the composition be binding abroad on foreign creditors. 	<ul style="list-style-type: none"> - Noted to inform future policy development in the area