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Companies Bill 2012 – Insolvency

Publication of the Companies Bill 2012 (the “Bill”) by the Minister for Jobs, Enterprise and Innovation on 21 December 2012 proposes a significant reform of Ireland’s company law regime. As of the date of this article, it is expected that it will take another 6 to 8 weeks before the Bill is enacted, assuming no further amendments are introduced. Notwithstanding the date of enactment of the Bill, the commencement date of the Act is expected to be 1 June 2015. Among many other aspects, the Bill proposes a welcome consolidation and modernisation of the law relating to liquidations, receiverships and examinerships.

The Bill seeks to reduce the Court’s supervisory role in court liquidations such that it is more closely aligned to creditors’ voluntary liquidations and introduces greater consistency between the three types of liquidations being; members’ voluntary, creditors’ voluntary and court liquidations. The provisions relating to examinership reflect those introduced by the Companies (Miscellaneous Provisions) Act 2013. The Bill also reforms and consolidates the law relating to corporate receivers and prescribes minimum qualifications for liquidators as well as codifying liquidators’ powers and duties.

Liquidations

Court Ordered Liquidations

One of the most significant amendments to this area is the move

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away from the supervisory role of the Court and the Court Examiner in court liquidations with great emphasis on creditor participation. In particular, the Bill permits greater creditor participation through a committee of inspection. A committee of inspection may now be established in a court liquidation without court sanction at the instigation of the liquidator or a minimum proportion in value of the creditors. It is currently uncommon to see a committee of inspection in a court liquidation because the interests of the creditors are generally seen as protected by the Court. This change is indicative of the move away from judicial oversight in liquidations generally, which is a common theme in the Bill.

The Bill increases the minimum indebtedness required before making a 21 day statutory demand. Where a statutory demand is not met then there is a presumption that the debtor company is insolvent. Currently such a statutory demand need only be for an amount exceeding €1,200. A statutory demand will only be permitted to be served by a creditor where there is a minimum indebtedness of €10,000 (or €20,000 where two or more creditors in aggregate make the demand).

Members' Voluntary Liquidations

The Bill re-enacts a considerable portion of the existing provisions in relation to members' voluntary liquidations. It does additionally provide for a members' voluntary liquidation to be initiated by way of the Summary Approval Procedure ("SAP"). The SAP is a new procedure under the Bill providing a streamlined means to authorise certain "restricted activities" under differing provisions of company law.

Creditors' Voluntary Liquidations

As with members' voluntary liquidations, the Bill substantially re-enacts the existing provisions for creditors' voluntary liquidation with the exception of new provisions for the content of notices for creditors' meetings. Notices must specify the date, time and location of the meeting, the name and address of the proposed liquidator and either attach a list of the creditors of the company (without values) or notify the recipients on how the list may be inspected.

Liquidators

The Bill provides that liquidators must now meet certain minimum qualifications before they can take an appointment. Qualification under the Bill means being a member of a prescribed accountancy body or qualified in another EU Member State or authorised by the Irish Auditing and Accounting Supervisory Authority. The Bill also makes detailed provisions for liquidators' remuneration and sets out in a schedule to the Bill the powers and duties of liquidators in all

types of liquidations which have been compiled from the current legislative regime and also the applicable rules of court.

Examinership

The introduction of the “Examinership Lite” procedure is the most significant change to the area of examinerships. “Examinership Lite” will allow a “small company” to apply directly to the Circuit Court for examinership. The Bill mirrors the provisions of the Companies (Miscellaneous Provisions) Act 2013 which introduced the concept and which came into effect on 14 July 2014. It is intended that that these changes will reduce the costs of examinership for small companies and make the process more cost effective and accordingly more accessible. A small company must satisfy at least two criteria as follows: (i) having turnover of less than €8.8 million, (ii) having a balance sheet total not exceeding €4.4 million and/or (iii) having an average number of employees not exceeding 50.

The Bill also reverses an earlier High Court decision insofar as the Court may now authorise a reduction of capital in a scheme of arrangement or compromise as long as it doesn’t result in the share capital being rendered “manifestly inadequate”. Reference to the report of the “Independent Accountant” which accompanies examinership applications is now to be a report of the “Independent Expert”.

Receiverships

The most significant change in relation to receiverships is that specific powers and duties of corporate receivers are set out in the Bill and will operate in addition to those conferred on them by court order or the security instrument under which they were appointed.

Transitional Measures

Examinerships and liquidations which are commenced but not completed before the Bill comes into force may be continued and completed under the corresponding provision of the Bill subject to the Court’s jurisdiction to make any order it thinks fit to ensure the smooth transition to the new regime introduced by the Bill once enacted.

For further information on any of the issues discussed, please contact Jamie Ensor or your usual contact in Dillon Eustace.

Dillon Eustace's cross firm multi-disciplinary team includes the following members who will be responsible for co-ordinating client communications on the impact of the Bill in the following practice areas over the course of 2014:-

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