

Small Company Administrative Rescue (SCARP)

Barry Lyons, Barry Lyons Solicitors



About SCARP

- Introduced in December 2021 by Minister of State at the Department of Enterprise and Employment Mr Robert Troy TD
- Was prepared and drafted by ISME arising from the foreseeable liabilities arising from business shutdowns caused by the COVID 19 epidemic
- Process when through the Company Law Review Group, of stakeholders such as academics, restructuring solicitors and accountants, Trades Unions representatives, departments of the State including Revenue, ODCE etc.
- Derivative of the examinership process, although disposing with many of the court applications that requires, thus dramatically reducing the costs
- “Debtor in possession” procedure, hands back control over rescue process to companies
- This is a very cursory overview, so take professional advice before taking any steps on foot of it!!



Features of SCARP



1. Am I a candidate for SCARP?

- a. Your trade needs to be carried out by a limited company
- b. Does your business have significant liabilities it is unlikely to be able to pay?
- c. Excluding those legacy liabilities, is it trading profitably on a monthly basis over (say) 5 months
- d. Are your revenue returns up to date?
 - i. If not, how much in arrears of filing your returns are you, and
 - ii. How much do you owe, and how long are the taxes in arrears
- e. Are you coming under pressure from creditors (including Revenue) to discharge balances outstanding by you? Juggling debt is very time consuming and disruptive to the recovery of a business.

Features of SCARP



2. What can SCARP do for you?

- a. If the company is subject to hostile actions from creditors, the process can be “upgraded” by a fast-track application to Court for Orders that might otherwise impact on the prospects for the survival of the company, such as;
 - i. Prohibiting court proceedings from taking place, and
 - ii. Prohibiting ejection from properties, and
 - iii. Prohibiting actions of enforcement or sequestration by creditors (e.g. retention of title creditors removing their goods from a property), and
 - iv. Terminating onerous agreements that would otherwise impact on the prospects for the survival of the Company

- b. The threat of a SCARP may bring hostile creditors back into line

3. What can SCARP NOT do for your company

- a. Impact on any existing arrangement with your landlord (save as regards historic rent liabilities and forfeiting onerous leases), and
- b. Impact on employee rights and entitlements, including historic WRC or Labour Court awards, and
- c. Cram down any Revenue liability if Revenue elect to “opt out” of any process. Revenue may elect to opt out where;
 - i. The company’s filing or payment history with Revenue is tainted, or
 - ii. Revenue believe the objective of participation in the process is solely with a view to avoiding tax liabilities

5. What are the features of a rescue plan?

- a. Winding up vs going concern valuation of any company is very unfavourable because fire sale (winding up) values of assets approximately 30% of going concern values
- b. No creditor can be “unfairly prejudiced” in a rescue plan. The test of unfair prejudice is whether they would fare better in a winding up
- c. Creditor dividends can be a combination of lump sum and deferred payments.
- d. For creditors a debt write down is somewhat mitigated by comprehending the loss as the actual cost of the goods sold, net of the VAT reclaim, overhead reallocation, profit foregone, etc.

Features of SCARP



6. What might the rescue plan look like?

XYX Limited			
Rescue Plan			
(Under Part 10A of the Companies Act, 2014 (as amended))			
Summary of Funding for Scheme if no challenge			€
Investment Funds			50,000.00
<u>Total anticipated funds available for scheme</u>			50,000.00
<u>Costs Under Scheme</u>	Net	VAT	Costs & Dividends
Process Advisor	15,000.00	3,450.00	18,450.00
VAT refund			3,450.00
<u>Balance after Costs</u>			35,000.00
	Creditor balance per Scheme	Dividend %	Total Dividends Payable
Super Preferential Creditor	316.00	100.00%	316.00
Preferential Creditors	60,929.34	20.00%	12,185.87
Employee creditor	51,551.31	100.00%	51,551.31
Unsecured Creditors	142,059.33	10.00%	14,205.93
Subrogated creditor	31,142.00	100.00%	31,142.00
Connected Creditors	55,000.00	0.00%	-
Total Dividends	340,997.98		109,401.11

Payable from investment	
Super preferential creditors	€316.00
Employee creditor (40%)	€20,620.56
Subrogated creditor	€0
Preferential creditors	€6,092.93
Unsecured creditors	€7,102.97
	€34,132.46

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To find out more contact

Barry Lyons
Barry Lyons Solicitor,
Crescent Hall,
Mount Street Crescent,
Dublin 2

blyons@lyonssolicitors.ie

01 539 0060

