

CORPORATE RECOVERY & RESTRUCTURING

Uncertain times call for creativity

Companies need to be clever if they are going to ride out the recession, writes Dave Boland

The year ahead will be characterised by uncertainty for many companies. Forecasts will be cloudy at best, with many companies having no idea what the year ahead will look like – so planning for growth will generally not be high on the agenda.

"We are looking at restructuring for a new reality," said George Maloney, consulting partner at Baker Tilly Ryan Glennon, a firm of accountants and business advisors which is an independent member of Baker Tilly International, ranked the 8th largest network in the world. "Companies are operating in an environment where there will be very little visibility on turnover and trading upturn. This vacuum on visibility is not helped by the funding uncertainty that is there at the moment."

According to Maloney, companies are operating in circumstances where they can't be sure of the availability of funding – either pre-Nama or post-Nama.

"Companies are now thinking strategically from the point of view of preserving cash," he said. "So one of the most important things that they can do is to create a strategic cash fund, because when they can't be sure of their turnover or their cashflow, where else will they be able to get the cash to operate?"



George Maloney, consulting partner at Baker Tilly Ryan Glennon: 'Many business plans are actually restructuring plans'

MAURA HICKEY

To help companies to best prepare for the year ahead, Baker Tilly Ryan Glennon has developed the concept of what it calls a "crisis slope", and depending where companies are on the slope, this will determine their restructuring options.

"Many business plans are actually restructuring plans," Maloney said. "And a company's freedom to act is determined by the crisis slope."

There are, of course, a number of determinants which decide how a company approaches the current market. For example, if a company is on the green part of the slope, it could look towards strategic restructuring which could include risk reduction strategies, the decoupling of profitable from non-profitable trade, or the structured wind-down of onerous contracts.

But the reality for companies at the other end of the slope is that they are in deep trouble.

"These will require both financial and operational restructuring," said Maloney. "This will probably include financial restructuring, everything from debt moratoriums (both interest and capital) to moratoriums on lease repayments. Or companies may have to look at instruments such as profit participation where, if they can't pay, they have to look at the concept of the creditor becoming a stakeholder."

Other aspects that companies at the bottom of the slope have to contend with include the disposal of non-core assets and debt for equity conversion – but welcome as these may be, companies in trouble must realise that these actions have to be undertaken to create a strategic cash fund. It is all part

'We are seeing a number of emerging trends'

of an informal restructuring process that could make the difference between corporate survival and corporate failure – which comes with consequences for the company, the employees and the directors.

"We are seeing a number of emerging trends," said Maloney. "We are seeing large scale restructuring of personal finan-

ces. And we are seeing a greater number of examiner-led petitions, as well as a greater number of these being contested. Because of this, the Independent Accountant's Reports are increasingly being seen as a key document in court proceedings, and much more emphasis is being placed on the petition stage of examinations than before."

These companies hoping to use examinership as the main tool in their corporate recovery are having to give greater levels of attention to the advance pre-planning of the process. As witnessed by recent court decisions, greater emphasis is now being placed on trades within companies or groups of companies which form all or part of the undertaking.

Nevertheless, examinership will only be a consideration for those companies who have

found themselves close to the bottom of Baker Tilly Ryan Glennon's crisis slope. Other companies will be able to utilise different mechanisms to restructure and to ride out the current uncertainty.

"I'm a great believer in communication," said Maloney. "Communication with key stakeholders and suppliers is vital, and if you are dealing with a customer who can't pay, then do some research and find out to what extent you can be a stakeholder – essentially, you need to identify your stakeholder leverage. But there is no one solution to this problem. Advisors are continually seeking out more creative solutions to problems, and it is our experience that situations around corporate recovery tend to be complex. So any solutions need to be integrated in order to solve them."

The human side of cutting costs

By Dave Boland

The fight for survival can be seen as a game of numbers, where one equation equals success while the other equals failure. However, there's more to corporate restructuring than merely ensuring that the books are balanced.

Every business is made up of its constituent personnel, and any company considering cost reduction must also take account of its human stock before making what can be, in some cases, tough decisions.

It can be naive to believe that a restructuring programme can take place without the scale of the costs of any redundancies. Management and HR departments also needed to be involved in the scale of the costs of any redundancies. Management and HR departments also needed to be involved in the scale of the costs of any redundancies. Management and HR departments also needed to be involved in the scale of the costs of any redundancies.



Mary Connaughton, head of HR development at the Irish Business Employers Confederation (Ibec)

At its most basic level, there is a requirement for companies to handle redundancy processes in a legal manner. But there are also operational issues which need to be addressed, from the nature of the packages involved to the scale of the costs of any redundancies. Management and HR departments also needed to be involved in the scale of the costs of any redundancies. Management and HR departments also needed to be involved in the scale of the costs of any redundancies.

"We have supported a number of companies through these processes," said Connaughton. "We have helped them to make the right decisions."

The good news for the Irish workforce is that, while organisational restructuring has not come to an end, the requirements for drastic action regarding workforces seems at least to be slowing. A recent IEA survey showed that about 12 per cent of companies anticipated reducing their payroll costs this year, whether through wage cuts, shorter time, lay-offs or redundancies. But the Business Sentiment Survey also showed that fewer companies at the end of the year were looking to make reductions than there were at the start of the year.

"We like to engage with companies, and talk to them about the need to have an overall strategy on their benefits from any decisions made," said Connaughton.

A solicitor can also be a trusted business adviser

By Dave Boland

Putting the words 'corporate recovery' and 'solicitors' in the same sentence will generally conjure up images of examinership and, perhaps, court proceedings. But, as businesspeople will turn to their accountants and financial advisers when the numbers start to look precarious, they should also talk to their legal advisers to draw on solicitor's wealth of knowledge.

"Like any area of the law, if you find yourself with an issue regarding your business you should speak to a solicitor," said Shane Healy, partner in

Healy O'Connor Solicitors, which has offices in Cork and Dublin. "Many solicitors won't even charge you for their initial consultation and, if you are in trouble, they may be the ideal people to help you to head it off."

Of course, most businesspeople will talk to their accountants, but only engage with a solicitor when a drama has become a crisis. But this, said Healy, was a short-sighted approach which did not allow businesspeople to get the most out of their legal advisers.

"You would be amazed what your solicitor could do for you, especially when it comes to dealing with your creditors," he said. "For example, many people, if they receive a solicitor's letter, will react in the way that most people would. But if they present the letter to their solicitor, they will know exactly how to deal with it – it's not the end of the world."

There will, however, be certain times when the end has come for corporate entities and Healy O'Connor Solicitors has extensive experience in liquidations, dealing with creditors meetings and all the legalities around winding up an insolvent company. But Healy is keen to point out that there are many stages along the road from solvency to insolvency, and many solicitors have the specific training to allow them to advise companies on how to avoid an insolvent end.

"A proactive approach is crucial," he said. "People need to keep communicating and if there is to be a tough solution, then well and good. But solicitors can advise on a huge amount for their clients, even though many people may be nervous at first about approaching a solicitor for legal advice."

This is, in part, for fear of creating resentments among customers and clients, some of whom may feel affronted by the involvement of a legal practitioner in their affairs. But, said Healy, the process does not have to be adversarial. Quite the opposite, in fact, that through the intervention of a solicitor, solutions can be found that can be of mutual benefits to all parties.

"I don't like to use the word 'holistic', but the truth is that you can't look at a problem from just one perspective," said Healy. "Solicitors should be conversant in the problems facing companies operating in these difficult times, so they can act as business advisers, as well as legal advisers. But if you have to go down the legal route, by engaging with a solicitor early on you will have already started the process."



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Horwath Bastow Charleton Welcomes Finian Loftus To Its New National Insolvency Unit



Pictured (L-R) Finian Loftus with his new colleagues Brian McEnery & Aidan Murphy

Horwath Bastow Charleton has amalgamated its Dublin and Limerick insolvency departments and has secured the services of Finian Loftus as a dedicated Insolvency Consultant.

Finian joins Horwath Bastow Charleton directly from the Office of the Revenue Commissioners where he was Head of the Insolvency Section of the Office of the Collector General.

Finian will be working directly with Partners Brian McEnery and Aidan Murphy, and Director Eoin Ryan, in our new Dublin-based Insolvency Unit.

Finian will advise on Insolvency issues for private clients and financial institutions. He will also advise on voluntary liquidations (both creditors and members), Insolvency Investigations (into directors' actions, corporate affairs etc), court liquidations, receiverships, examinerships and Section 56 Reports.

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