



**An Roinn Fiontar,
Trádála agus Fostaíochta**
Department of Enterprise,
Trade and Employment

The Small Company Administrative Rescue Process

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Introduction

The Companies (Rescue Process for Small and Micro Companies) Act 2021 was commenced on 8th December 2021. It provides for a new dedicated rescue process for small and micro companies, namely the Small Company Administrative Rescue Process.

The Small Company Administrative Rescue Process is designed to address the specific needs of small and micro companies in financial difficulties. It allows viable companies experiencing temporary financial problems to restructure with the agreement of creditors. It has limited court involvement where creditors are engaged in the process and are positively disposed to a Rescue Plan. The process mirrors elements of examinership but in a simplified administrative content, thus reducing court involvement, making it potentially both quicker and cheaper.

This document provides an overview of the essential elements of the rescue process for companies, creditors, and employees.

Communication: the key a successful process

In order for the rescue process to be used successfully, communication is key. The process is designed to be quicker and cheaper than Ireland's existing restructuring framework by reducing court involvement. However, minimal court involvement can only happen where creditors are positively disposed to a Rescue Plan and there is constructive engagement between affected parties. This is why the process is designed to operate with complete transparency. Creditors and employees are afforded an opportunity to input to the Rescue Plan from an early stage and have access to all relevant material.

Where disputes arise, contentious issues may be referred to the courts for determination. However, it is in all parties' interests to make every effort to resolve matters outside court and to come to a mutually agreed position.

Company directors are encouraged to be upfront and honest with creditors and employees throughout the process. Remember, creditors and employees are more likely to support a Rescue Plan when they know all of the facts and feel included in the decision-making process.

Guidance for small and micro companies

The Small Company Administrative Rescue Process consists broadly of three stages: an assessment of eligibility; the appointment of a Process Adviser; the development and approval of a Rescue Plan.

A central feature of the process is that it is initiated by the company itself without the need to make an application to court. As a first step, the company directors must assess whether or not the company is eligible for the rescue process. The eligibility requirements are set out below.

Eligibility

To avail of the process, a company must meet the following criteria:

1. The company must be a small or micro company as defined by the Companies Act 2014.
A small or micro company is one which meets two of the following three conditions:
 - a. No more than 50 employees,
 - b. Turnover must not exceed €12 million, and
 - c. Balance sheet must not exceed €6 million.
2. The company is, or is likely to be, unable to pay its debts;
3. The company must not be in liquidation;
4. The company must not have appointed an examiner or Process Adviser in the previous 5 years;
5. If a receiver has been appointed to the company, the company is eligible only if that receiver has been appointed for a period of less than 3 working days.

Statement of Affairs

Once a company meets the eligibility criteria for the rescue process, the directors of the company must then prepare a *Statement of Affairs and a Statutory Declaration* in line with the requirements of [Section 558B](#) of the Companies Act.

The Statement of Affairs must provide the following details:

- a. particulars of the company's assets, debts and liabilities,
- b. the names and addresses of the company's creditors,
- c. particulars of each security given by the company, including the name of the secured creditor and the date on which it was given,
- d. such further or other information as may be prescribed.

This statement must be accompanied by a statutory declaration that the company has undertaken a full

enquiry into the affairs of the company and provided all relevant information. The statement and statutory declaration are then presented to a Process Adviser.

A copy of the prescribed form of the *Statement of Affairs* can be found on the [Department of Enterprise, Trade & Employment](#) website.

The Process Adviser

The Process Adviser is the insolvency practitioner appointed by the company to oversee and run the process. He or she is responsible for determining whether the company is capable of survival, notifying creditors and employees that the company is using the process, preparing a Rescue Plan, engaging with creditors, and holding creditors' meetings.

A Process Adviser must be appropriately qualified and is required to be qualified to act as a liquidator under [Section 633](#) of the Companies Act 2014.

Reasonable prospect of survival

The first task of the Process Adviser is to determine whether the company has a “reasonable prospect of survival”. This means he or she will look at the financial information available and assess whether the company will be in a position to trade if changes are implemented. The Process Adviser will use the information provided by the company in the Statement of Affairs to help them make this decision.

The Process Adviser must also take into consideration certain factors set out in [Section 558C](#) of the Companies Act. These factors include the economic environment the company trades in and the sector the company trades in.

When the Process Adviser has completed this assessment, he or she will call a meeting of the board of directors of the company to advise them of their determination and must also give a copy of the determination to them in writing.

Resolution to appoint a Process Adviser

If the Process Adviser has determined that the company has a reasonable prospect of survival the company directors may then pass a resolution to appoint the Process Adviser and formally commence the process.

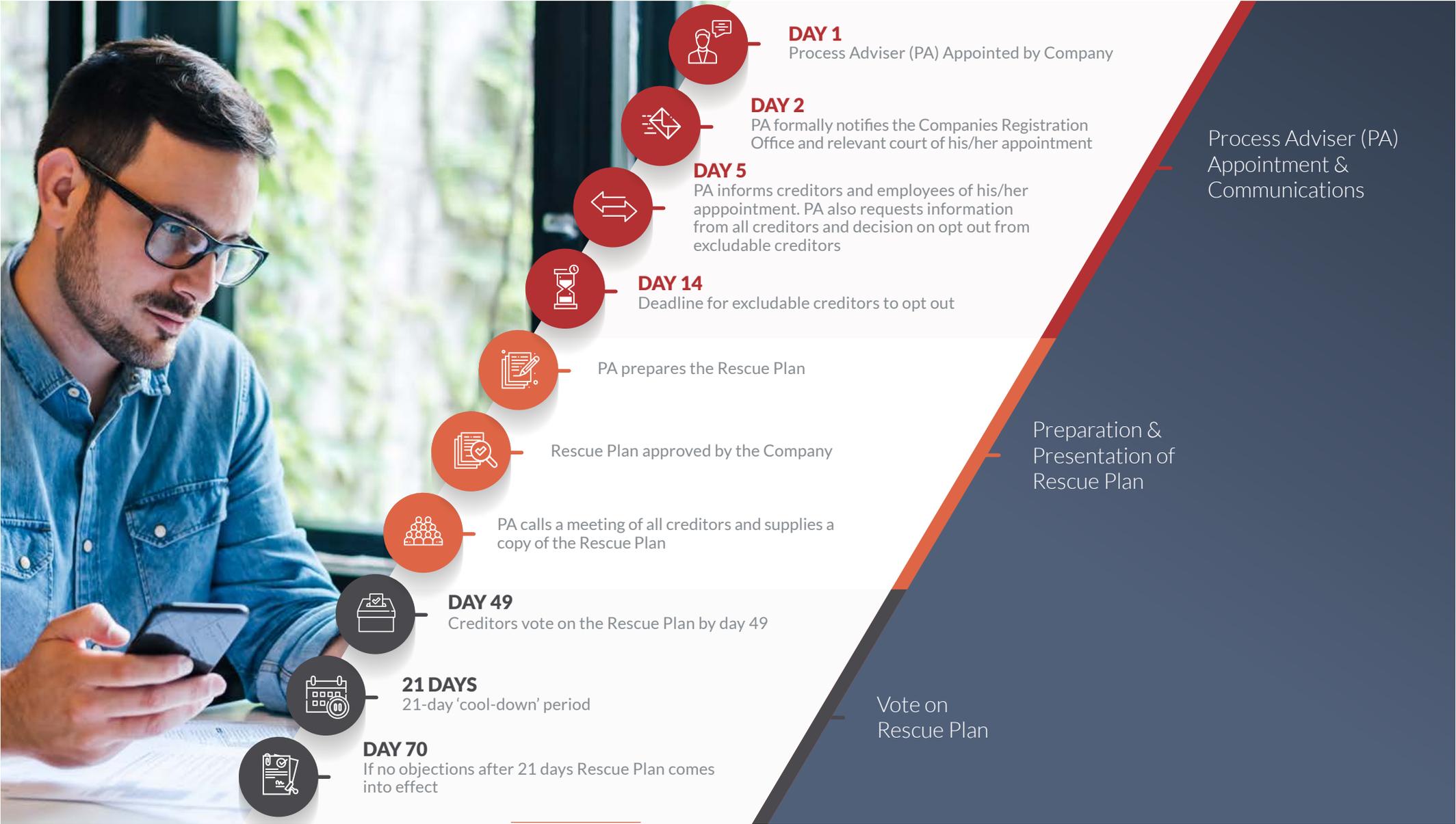
Rescue Process Steps – company perspective

With the approval and participation of creditors the rescue process is capable of conclusion within 70 days. However, this timeline may be extended where there is court involvement.

Following appointment, the Process Adviser will:

- Notify the company’s creditors and employees, the Registrar, the relevant court and the Revenue Commissioners of their appointment as Process Adviser.
- Write to all creditors seeking detailed information on outstanding debts.
- Contact all excludable creditors at the earliest opportunity seeking a decision on whether their debt can be included in the Rescue Plan or not. All excludable creditors are given a 14-day response deadline. (Excludable creditors are typically state creditors – e.g., the Revenue Commissioners)
- Prepare a detailed Rescue Plan within 49 days of appointment.
- Call a meeting of members and/or creditors to vote on the Rescue Plan.
- The plan is considered passed where 60 per cent in number representing a majority in value of the claims represented at that meeting have voted, either in person or by proxy, in favour of the Rescue Plan.
- Following the 21-day period, where no objections have been lodged, the Rescue Plan is considered binding.
- If the Rescue Plan is rejected or an objection is lodged within the 21-days following the approval of the Rescue Plan the matter may be referred to the courts.
- If the Rescue Plan is approved there is a further 21-day period in which objections may be lodged by creditors.

Small Company Administrative Rescue Process



Guidance for creditors

The Small Company Administrative Rescue Process aims to support the survival of viable small and micro companies to ensure a better outcome for creditors than the winding up of the company. Creditors rights are protected throughout the process.

Why have a new rescue process?

The existing examinership process, entirely overseen by the courts, is considered expensive and potentially out of reach for most small and micro companies. As a result, many of these companies have no real access to potential restructuring and rescue. The process is designed to provide these companies a chance to continue to trade thus avoiding viable companies being wound up and completely defaulting on monies owed to creditors.

How are my rights as a creditor protected under this process?

The rescue process aims to involve creditors from the beginning of the process to its conclusion. Your rights as a creditor from the appointment of a Process Adviser to the drafting and approval of a Rescue Plan are set out below.

Appointment of Process Adviser

The Process Adviser is obliged to engage with you as a creditor. Once appointed, the Process Adviser must write to you to inform you of his or her appointment. At this point, he or she will ask you to provide detailed information on your relationship and trading history with the company. You will be asked to confirm receipt of the notification from the Process Adviser within 7 days and to respond within 14 days. If you do not respond within this timeframe, you will be issued with a reminder. If you do not respond to the reminder notice, the Process Adviser will prepare a Rescue Plan on the basis of the information provided to him by the company in respect of your claim.

The Process Adviser will be guilty of an offence if he or she does not comply with the notice requirements in the Act. This acts as a safeguard for creditors.

Drafting of a Rescue Plan

As part of the notice provided by the Process Adviser to you on his or her appointment, you will be asked to provide information you consider relevant to the preparation of the Rescue Plan for the company. This means you have an opportunity from an early stage in the process to give input on the content of the Rescue Plan. The Process Adviser must take this information into consideration when drafting the Rescue Plan.

The Rescue Plan drafted by the Process Adviser must satisfy the 'best interest of creditors' test. This means the Rescue Plan must provide each creditor with a better outcome than a liquidation. In other words, the Rescue Plan must show that it is better for creditors if the company continues to trade. In addition to this, no creditor may be unfairly prejudiced by the plan.

Approval of a Rescue Plan

Creditors have a right to vote on the Rescue Plan and must be provided with detailed information on its content before this vote takes place.

The Process Adviser must prepare a Rescue Plan and call a meeting of creditors to vote on it by day 49 of his or her appointment. You will be given 7 days' notice of this meeting along with the following information:

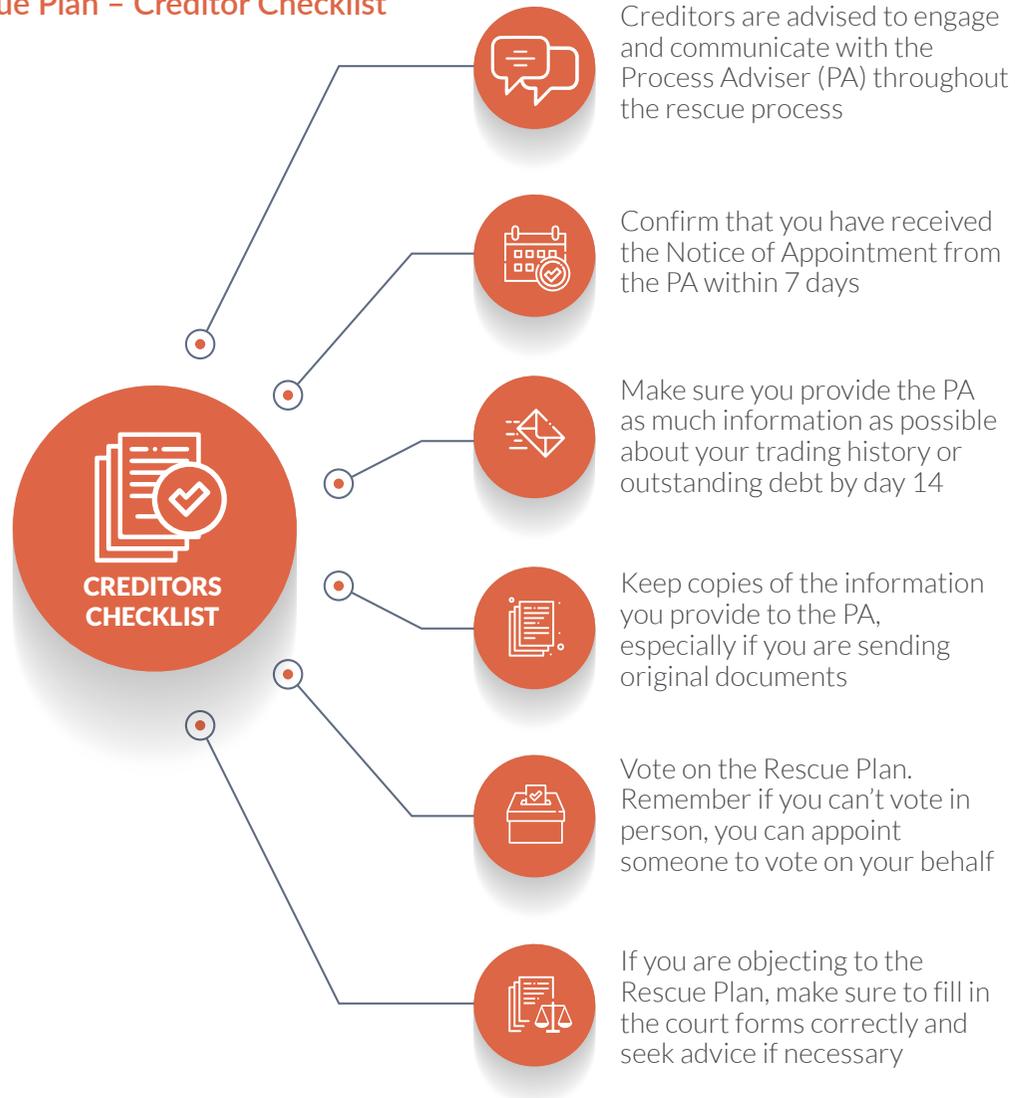
- a. Copy of the Rescue Plan,
- b. Statement of the assets and liabilities of the company,
- c. Description of the likely financial outcome of the winding up of the company,
- d. Statement by the Process Adviser which explains the effect of the Rescue Plan and why it is fair,
- e. Statement outlining the expenses of the Process Adviser.

A full list of information to be provided with the notice can be found at [Section 558U\(3\)](#) of the Companies Act 2014.

Creditors also have the right to object to a Rescue Plan. Once an objection is lodged, this triggers an automatic requirement for the objection and Rescue Plan to be considered by the relevant Court. If you are objecting to the Rescue Plan, you must select one of the grounds of objection provided for by the Act and notify the Process Adviser and court of your objection.

A full list of the grounds of objection can be found at [Section 558ZC\(3\)](#) of the Companies Act 2014.

Rescue Plan – Creditor Checklist





Offence provisions

The process provides for a range of offences where a company or a Process Adviser fails to comply with their respective obligations under the legislation. The offences range in seriousness from failure to file documents to acting as a Process Adviser without an appropriate qualification. Offences are categorised as 1 to 4, with Category 1 being the most serious.

Category 1 offences include offences such as false accounting and are the most serious. A person guilty of an offence under the Act that is stated to be a Category 1 offence shall be liable:

- a. on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- b. on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both.

Category 2 offences include offences such as the company failing to disclose information to the Process Adviser which has the effect of misleading him or her. It also includes the offence of acting as a Process Adviser without the appropriate qualification. A person guilty of an offence under the Act that is stated to be a Category 2 offence shall be liable:

- a. on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- b. on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

Category 3 offences include non-filing of documents and failure to send various notices throughout the rescue process. For example, if a Process Adviser failed to send a notice of his or her appointment to creditors, he or she would be guilty of an offence. A person guilty of an offence under the Act that is stated to be a Category 3 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

Category 4 offences include failure to make routine filings. Category 4 offences do not attract a term of imprisonment but may still result in fines of up to €5,000. A person guilty of an offence under the Act that is stated to be a Category 4 offence shall be liable, on summary conviction, to a class A fine.

What voting majority is required to pass the Rescue Plan?

The Rescue Plan is approved without the requirement for court approval provided that 60% in number representing the majority in value of claims of an impaired class of creditors vote in favour of the proposal and no creditor raises an objection to the plan within the 21-day cooling off period which follows the vote.

What does 'Cross-Class Cram Down' mean?

A "cross-class cram down" is the approval mechanism for the Rescue Plan. This means that where one class of impaired creditor votes in favour of the plan, this decision can then be imposed on all classes of creditors. However, creditors who do not vote in favour of the plan, may still make an objection.

What are excludable creditors?

Excludable creditors are state creditors such as the Revenue Commissioners and the Department of Social Protection. In examinership, all debts of the company may be compromised, and the court provides significant oversight in this regard. The court will ask Revenue to confirm the debts owed to it in advance of appointing an examiner, this will not happen in this process as the Process Adviser is appointed by the company directors. Therefore, the process could potentially be exploited by companies for the purpose of tax avoidance. Accordingly, certain state creditors are afforded the opportunity to opt out of the process on the basis of prescribed grounds, for example if the company has a poor history of tax compliance. This protects the process from potential abuse while providing sufficient flexibility for companies utilising the process for legitimate purposes.

Conduct of company directors

The small company rescue process provides that where it appears to the Process Adviser, at any point during the rescue process, that any past or present officer or member of the company has been guilty of an offence in relation to the company, the he or she is obliged to report the matter to the Director of Public Prosecutions and the Director of Corporate Enforcement. The Act also incorporates other safeguards against irresponsible and dishonest director behaviour, including various enforcement provisions in relation to failure to comply with filing, notice and information obligations.



Guidance for employees

The Small Company Administrative Rescue Process incorporates specific provisions for the protection of employees and their statutory entitlements and aims to maintain employment by enabling the survival of viable small companies.

How does the rescue process affect employees?

Employees are classed as creditors of the company and are therefore entitled to all of the same rights provided to other creditors. This means that employees will be notified of the appointment of the process adviser, have an opportunity to provide input to the Rescue Plan and also have an opportunity to vote on the Rescue Plan.

Statutory entitlements

The process does not interfere with the statutory entitlements of an employee. The employer must continue to comply with all employment rights legislation for the duration of the process and employee wages must continue to be paid.

Glossary and Resources

An explanation of key terms and their meaning in the context of the rescue process.

Examinership: Examinership is a process whereby the protection of the court is obtained to protect the company from creditors seeking to enforce a debt. This protection enables an examiner to prepare a Rescue Plan to assist the survival of a company. Part 11 of the Companies Act 2014 sets out the detailed provisions of the process.

Examiner: An examiner is a court appointed insolvency practitioner appointed by the court to oversee an examinership and prepare a Rescue Plan for a company.

Liquidation: Liquidation is the process by which the life of a company is brought to a legal end and its assets, such as stock and buildings, are sold and distributed to those owed monies from the company. There are different types of liquidation in Ireland, solvent and insolvent liquidations. Solvent liquidations happen where the members of the company decide to liquidate and have enough money to pay all of the company's debts. Any money left over after paying these debts is then divided amongst the members. An insolvent liquidation happens where a company can no longer afford to pay its debts and creditors may not receive all monies owed to them.

Liquidator: A liquidator is the insolvency practitioner appointed to oversee a liquidation. Qualification requirements for liquidators can be found in [Section 633](#) of the Companies Act 2014.

Receiver: A receiver is a person appointed by a secured lender over an asset to recover monies owed by a debtor. For example, if a bank loaned a restaurant money for machinery, the terms of the loan agreement may allow the bank to appoint a receiver over the machinery if the restaurant stops making payments. The receiver would then sell the machinery to recover the money owed to the bank.

Statement of Affairs: A Statement of Affairs is a detailed document which sets out the assets and liabilities of a company at a particular point in time.

Statutory declaration: A statutory declaration is a written statement of fact that a person signs and declares to be true. It is a legal document and it is an offence under the Statutory Declarations Act for a person to make a false declaration.

Pass a resolution: Passing a resolution is how decisions made by shareholders or creditors of a company are formalised. Once a resolution is passed in favour or

against a decision, this decision becomes legally binding. There are different majorities required for different resolutions. Some resolutions can be passed by a simple majority of those voting, these are referred to as "ordinary resolutions". Other resolutions require 75% of those voting to be in favour of the resolution before it is passed, these are referred to as "special resolutions". The small company rescue process requires a resolution in favour of a Rescue Plan to be approved by 60% of those voting.

Relevant court: The High Court and Circuit Court can both hear the rescue process cases. However, the Process Adviser chooses which Court is best suited to hearing the cases. The court chosen by the Process Adviser is referred to as the 'relevant court' in the Act.

Proxy: A proxy is a person appointed by a member or creditor of a company to vote on their behalf at meetings.

Impaired class: Creditors are separated into different groups for the purpose of voting on a rescue plan. These groups are referred to as classes. An impaired class is one whose legal or contractual rights are changed in any way by a rescue plan. The information provided by the Process Adviser in advance of vote on a rescue plan will explain the way in which these rights are changed.

Resources

Resources listed below are for guidance and background information.

Small Company Administrative Rescue Process resources & relevant links

- [Companies \(Rescue Process for Small and Micro Companies\) Act 2021](#)
(Note: the above Act inserts a new Part 10a into the Companies Act 2014. However, this part does not yet appear in the online version of the Companies Act 2014. Accordingly, all links provided to relevant sections describing the rescue process link directly to the above Act, pending the consolidation of the legislation.)
- [Companies Act 2014](#)
- [CRO Forms](#)
- [Office of the Director of Corporate Enforcement](#)
- [Section 633 Companies Act](#)
- [Company Law Review Group – Report advising on a legal structure for the rescue of small companies](#)
- [Small Company Administrative Rescue Process - Public Consultation Report](#)
- [Small Company Administrative Rescue Process – Regulatory Impact Assessment](#)

Ongoing review

The Department is committed to the periodical review of the rescue process and meaningful engagement with stakeholders. Feedback on the process and the information provided in this leaflet may be submitted for the attention of Tara Keane, Company Law Review Unit at companylawconsultation@enterprise.gov.ie.



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