



Insolvency, Restructuring and Funding Advisory

Wednesday 14 July 2021

11am-12pm

Zoom webinar



Agenda

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Business Insolvency & Restructuring (Aengus Burns, Partner, Advisory)

- Company led Examinership, Schemes of Arrangement and Liquidation
- SCARP – Small Company Administrative Rescue Process
- Creditor led Liquidation and Receivership
- Personal Insolvency Solutions

2

Funding Advisory (David Farrell, Director, Corporate Finance)

- Market landscape
- Challenges
- Fundraising, business plans and financial models



Business Insolvency and Restructuring

Aengus Burns

Partner - Restructuring

Grant Thornton



Grant Thornton at a glance



The Restructuring Toolbox

- Company led Liquidation, Examinership and Schemes of Arrangement
- Creditor led Liquidation and Receivership
- Personal Insolvency Solutions
- Small Company Administrative Rescue Process (SCARP)



Negotiating an Informal Settlement

Formal Insolvency a last resort



Multiple Creditors harder to all agree



Outcome on Insolvency a base position



Put new investment in now or after settlement?



Future Viability



Corporate Wind Ups

Insolvent Liquidations

Creditors' Voluntary Liquidation ("CVL")

- ✓ Company is insolvent and unable to pay its debts as they fall due
- ✓ No Court involvement in appointing liquidator
- ✓ Directors call a creditors' meeting to appoint a liquidator
- ✓ Shareholders pass an ordinary resolution to wind-up the company

Advantages

- Company directors have control over who they choose to be Liquidator subject to ratification by creditors
- Liquidator deals with all the Company creditors
- Employee entitlements are paid by the state
- Avoids Reckless Trading / start again?

Disadvantages

- Report to the ODCE is required on the conduct of the directors
- If the directors are found to have not acted "honestly and responsibly" – face restriction or disqualification
- Unsecured creditors receive less than they are owed
- Reputational

Corporate Wind Ups

Insolvent Liquidations

High Court Liquidation

- ✓ Occurs when a petitioner makes an application to the High Court to place an insolvent company into liquidation.
- ✓ Usually a creditor petition but can be a member/shareholder or “friendly creditor” of the company.
- ✓ Avoids CVL notice period or convening of creditors’ meeting.
- ✓ Once the Court Liquidation commences it is completed in the same manner as a CVL.
- ✓ Minimum qualifying indebtedness required to serve a written demand on a company for payment is €50,000 (was €10,000 pre Covid).

Advantages

- Petitioner nominates the Liquidator
- 10 day notice to creditors is not required
- Shareholder majority not required
- No TUPE
- Similar pros and cons to CVL

Provisional Liquidation

- In between appointment of Provisional Liquidator and the hearing date to appoint Official Liquidator
- May be possible for Provisional Liquidator to sell business as a going concern
- Purchasers lined up?

Priority of Creditor Claims

Insolvency Waterfall

Statement of Affairs (“SOA”)

- SOA prepared by directors in advance of both the members’ and creditors’ meetings
- SOA details the company’s assets and liabilities on a going concern basis and a winding up basis
- An insolvency waterfall SOA format is used to reflect priority of creditor claims
- The SOA must be accompanied with a list of the company’s creditors
- Examinership SOA part of the Independent Expert Report
- Court Liquidation Format

Priority of Claims in a Liquidation

- Secured creditor
 - (security subject to a fixed charge:- i.e. property)
- Costs arising in the winding up.
- Super-preferential creditor
 - (total of all employee’s share of PRSI deducted and not paid for all periods prior to liquidation)
- Preferential creditors
 - (e.g. specific Revenue liabilities, employee entitlements and commercial rates)
- Secured creditors
 - (security subject to a floating charge:- e.g. WIP, stock, etc.)
- Unsecured creditors

Liquidation Statement of Affairs

INSERT COMPANY NAME HERE

DIRECTORS' ESTIMATED STATEMENT OF AFFAIRS

AS AT XX XXXX 2018

	GOING CONCERN I	WIND UP BASIS I
ASSETS		
Land and Buildings		
Furniture, Fittings and Equipment		
Cash at Bank		
Stock		
Debtors		
	<u>0</u>	<u>0</u>
Estimated Value of Super-Preferential Creditors (Appendix 1)		<u>0</u>
Surplus as regards Super Preferential Creditors		0
Estimated Value of Preferential Creditors (Appendix 2)		<u>0</u>
Deficiency as regards Preferential Creditors		0
Secured Creditors - Floating Charge		0
Deficiency as regards Secured Creditors		<u>0</u>
Estimated Value of Unsecured Creditors (Appendix 3)		<u>0</u>
Deficiency as regards Unsecured Creditors		<u>0</u>
Signed: _____		
Director		

NOTES TO THE STATEMENT OF AFFAIRS

- The total value of assets available for the claims of the creditors does not take into account the cost, charges and expenses of the Liquidation, which are payable out of the Company in priority to all other claims.
- The estimated realizable values of the assets are based on the opinion of the Directors of the Company.
- The claims of all creditors are admissible to proof against the company in the winding up.

I

APPENDIX 1
LIST OF SUPER PREFERENTIAL CREDITORS

0

APPENDIX 2
LIST OF PREFERENTIAL CREDITORS

0

APPENDIX 3
LIST OF UNSECURED CREDITORS

0

Creditor angles in Insolvency

Skipping the Queue

Retention of Title (“ROT”)

- Terms of trade / supply agreements
- Prevent the loss of ownership by a supplier until goods are paid for in full
- Consider ROT when valuing stock for the purposes of the SOA

Set Off

- Creditor / Debtor contra
- Banks “setting off” accounts

Liens, judgement mortgages, seizures

- Carriers liens
- Judgement mortgage on property
- Sheriff execution against goods

Certification / Warranty

- Required where onward supply of goods and services
- May impact on ability to get paid

Personal Guarantees (“PG”)

- In some cases, company directors may provide a PG to one or more classes of creditor
 - (e.g. to a new supplier to facilitate supply of essential goods or to a bank for property loan or an overdraft facility)
- The protection of limited liability does not extend to company directors where PG’s have been provided
- Creditors may:
 - Secure a judgment on foot of the terms of the personal guarantee; and then
 - Enforce that judgment against the assets of the guarantor
- Impact on own **personal solvency**

Corporate Rescue

Section 508 CA 2014 - Examinership

Purpose

- ✓ To facilitate the survival of the whole or part of business/company, by dealing with historical liabilities through a scheme of arrangement and the future profitability of the business/company by:-
 - ✓ injection of adequate working capital
 - ✓ removal / renegotiation of onerous contracts such as leases, changes by agreement to work practices
 - ✓ a scheme of arrangement with creditors
- ✓ It is not the sale of assets for the highest price, as in a liquidation or a receivership

Reasons why

- Legacy issues
- Onerous contracts
- Broken Balance Sheet
- Landlord leases
- Protect Business and Employment

Key characteristics for success

- Strong underlying business
 - “Reasonable prospect of survival”
- Ability to attract sufficient investment
- Positive Independent Expert Report
- Positive Cashflows

Corporate Rescue

Examinership (cont'd)

Overview

- ✓ Independent Expert's Report – Viability and Appropriateness
- ✓ Examiner: non-executive, supervisory role, focused on restructuring
- ✓ Court Protection and Key assets maintained e.g. Goodwill, Staff, Contracts
- ✓ Directors continue to manage the business during Examinership
- ✓ 150 day timeframe (100 days pre Covid)
- ✓ Formulates scheme in conjunction with investor, but must ensure creditors obtain at least what they would receive in a winding-up

Disadvantages

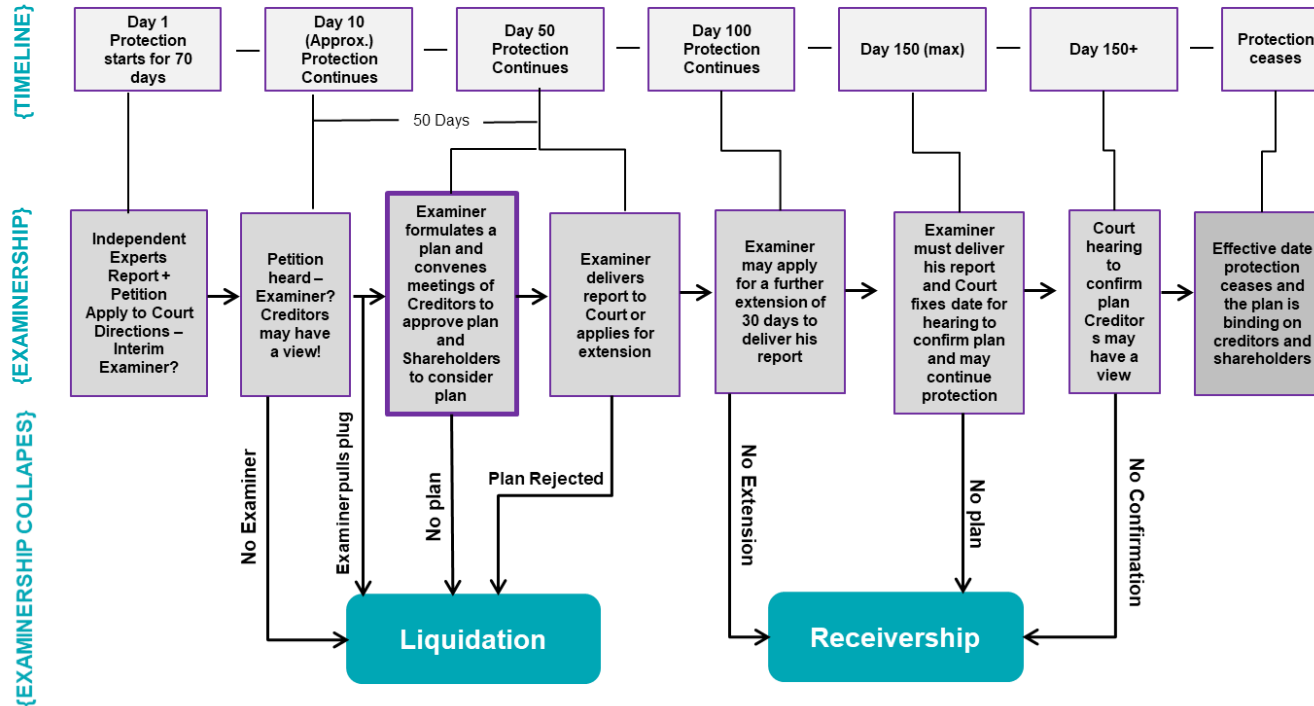
- Costly
- Court scrutiny and reporting
- Requirement for Investment
- High Qualification Requirements
- Requirement for IER opinion

Examinership Lite

- ✓ Circuit Court
- ✓ Employees < 50
- ✓ Turnover < €8.8m
- ✓ Balance Sheet < €4.4m
- ✓ Lower Costs

Corporate Restructuring Processes

Examinership Timeline



Failed Examinership

Order of Priorities

- Fees costs and expenses of examiner
- Receiver's fees costs and expenses
- Fixed charge holder
- Section 529 (certified expenses)
- Costs charges and expenses of the liquidation
- Section 16(2) Social Welfare Act 1993 (super preferential)
- Preferential creditors
- Floating charge
- Unsecured creditors
- Subordinated creditors



Corporate Restructuring

Part 9 CA 2014 Schemes of Arrangement

Overview

- ✓ Insolvent company reaches a formal binding agreement with its creditors
- ✓ A scheme of arrangement is typically instigated by the company directors
- ✓ Where informal creditor write off not possible
- ✓ Company directors must be fully honest and transparent about the company's affairs
- ✓ The company can continue trading during and after
- ✓ Court Application for a moratorium preventing creditors from taking action
- ✓ 75% of the creditors need to agree to make the scheme binding

Advantages

- The business need not be viable
- Court protection available, looser deadlines
- Binding on creditors
- Costs less, no advertising
- Management retain control
- Can renegotiate Personal Guarantees

Disadvantages

- Threshold for creditor support is high
- 75% voting for in every class vs 51% one class
- Does not impact Secured Creditors or Leasing
- Cannot repudiate landlord leases

Receivership

Part 8 CA 2014 Receivership and by Contract

Overview

- ✓ Different to insolvent winding ups
 - ✓ Creditor led repossession (i.e. lender / secured charge holder)
- ✓ Borrower default
- ✓ Receivership is used where there is a threat to the lender's security:
 - ✓ Debenture / loan is in arrears
 - ✓ Interest is in arrears
 - ✓ Liquidation / threat of liquidation
 - ✓ Part of a restructuring process
- ✓ Typically the relationship between the lender and borrower has broken down
- ✓ Lender will appoint a receiver to attempt to recover the outstanding loan

Type of Receiverships

Corporate

- Fixed and floating
- Fixed charge only
- Floating charge only

Personal

- Fixed charge only

Role of a Receiver

- Take possession of charged assets
- May if required continue to operate a company's business in order to maximise value of assets
- Make arrangements to sell and realise assets
- Duty to obtain best price (not highest)
- Take proceedings if necessary to secure, take possession of and realise assets

Personal Insolvency

Options available

Debt Relief Notice

- ✓ Arrangement for people who have unsecured debt (not a mortgage)
- ✓ Examples include credit cards, personal loans (e.g. a car), social welfare debt and trade creditors
- ✓ Debt must be under €35,000
- ✓ Freedom from your creditors after 3 years
- ✓ Debt is legally written off and your credit rating starts being repaired

Debt Settlement Arrangement (“DSA”)

- ✓ Arrangement for people who have unsecured debt (not a mortgage)
- ✓ A PIP acts independently to negotiate the best deal
- ✓ The term is usually 5 years but this can be less
- ✓ Stops all legal proceedings
- ✓ Puts a plan in place for unmanageable debt
- ✓ Debt is written off legally so no surprises when arrangements finish



Personal Insolvency

Options available (cont'd)

Personal Insolvency Arrangement

- ✓ Secured (i.e. Mortgage) and unsecured debts
- ✓ The term is usually 6 years but it can be less
- ✓ Long term solution for the family home and stops any repossession hearings
- ✓ Unsecured debt written off and negative equity written off the family home
- ✓ May be possible to appeal the creditors' decision if they fail to agree
- ✓ Legal Aid available
- ✓ Return to personal solvency

Bankruptcy

- ✓ Once all other options have been explored, bankruptcy may be looked at
- ✓ This may be suitable if debt is over €20,000 and not seeking to retain any assets
- ✓ Term is 1-3 years depending on the individual arrangement
- ✓ Helps people move on with their lives if creditors will not work with them
- ✓ Family home can be at risk
- ✓ Trustee in Bankruptcy / Official Assignee

SCARP

Scheme for Small & Micro Business Administrative Rescue Process

Press release

<https://www.gov.ie/en/press-release/cb315-minister-troy-publishes-general-scheme-for-small-and-micro-business-administrative-rescue-process/>

Published on 11 May 2021

- **addresses the need for a simplified restructuring process for viable small companies that is timely and cost effective**
- **mirrors key elements of existing examinership framework in an administrative context**
- **process commenced without the need for Court approval**
- **Bill also gives permanent statutory footing for virtual AGMs**

The main provisions of the Bill can be broadly summarised as follows:

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

SCARP Rescue Process

Steps

- ✓ Statement of Affairs (SOA) prepared by Company directors
- ✓ Process Advisor provides reports on survival prospects
- ✓ Directors' resolution appointing Process Advisor and ceasing payments to creditors
- ✓ Process Advisor consults with creditors and prepares a Rescue Plan
- ✓ Meeting of Members and Creditors by Day 42 and Voting– up to Day 49
- ✓ 60% in number and 50% in value of one class of creditors needed
- ✓ If creditor objection (unfairly prejudiced) within 21 days then apply to Court for confirmation

Eligibility

- Annual turnover up to €12m
- Balance Sheet total up to €6m
- Up to 50 employees
- Insolvent or likely to become insolvent
- Reasonable Prospect of Survival

Features

- Less costly than Examinership
- Court involvement not required
- Can repudiate landlord leases
- Apply to Court for stay on creditor action
- “Best interests of creditor” test

SCARP v Examinership

Comparison

- Small companies only, Director resolution and no Court petition to commence
- State creditors “Excludable” – potential opt out
- No automatic stay on creditor proceedings
- 49 days vs 150 days
- 60% in number and majority in value vs 50% in number and value
- Greater control of business by directors – less risk of being sold to 3rd party
- No Court approval required where no creditor objection

Repudiation of Landlord Leases

- Court application where no consent
- Meaningful engagement a prerequisite
- Calculation of claim
- Threat of repudiation encourages deals
- Guarantor must be provided creditor’s vote

Revenue Commissioners

- Excludable Debt included unless:
 - History of non-compliance
 - Ongoing Tax audit or intervention
 - Taxes are under appeal
- Deemed consent after 14 days notice

Funding Advisory

David Farrell

Director
Corporate Finance



Agenda

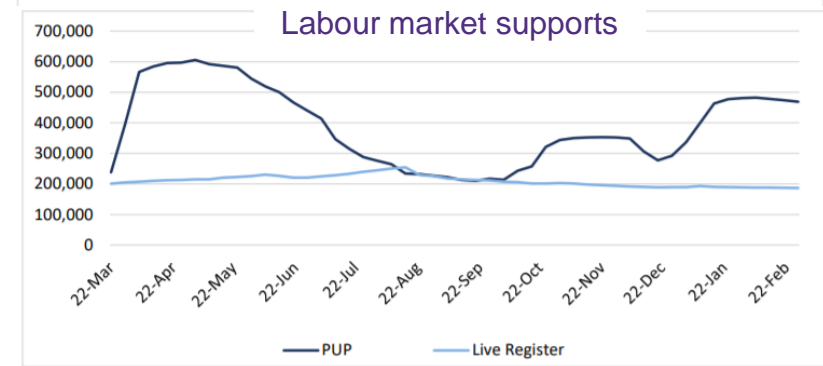
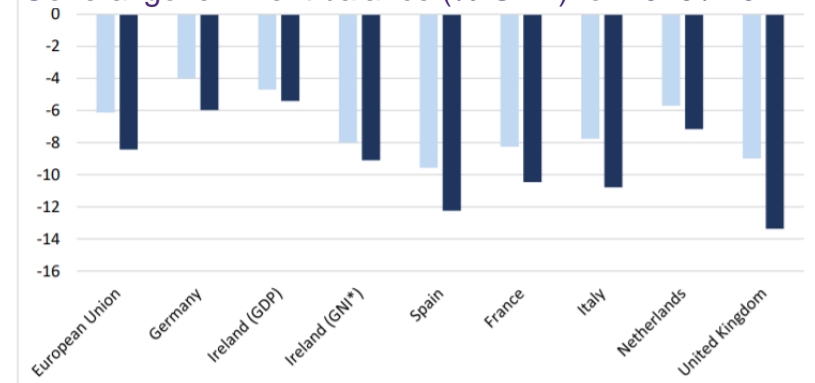
- 1 Economic challenges
- 2 The shape of the recovery
- 3 Growth funding market
- 4 Current trends
- 5 Challenges
- 6 Thinking outside the box
- 7 Useful initiatives
- 8 Creating certainty in uncertain times

Economic context and challenges

Forecasted KPIs	EU		Ireland		UK	
	2020	2021	2020	2021	2020	2021
Real GDP %	(6.3)%	3.7%	3.0%	3.4%	(10.3)%	3.3%
Unemployment % (% of total labour)	7.7%	8.6%	5.3%	8.9%	5.0%	7.3%
Public debt (% of GDP)	93.9%	94.6%	63.1%	66%	104.4	111.0%
Bond yields (10 year)			(0.22)%			0.36%

Sources: 1. European Commission's Autumn Winter 2021 forecast (Feb-2021). 2. Trading Economics

General government balance (% GDP) for 2020 / 2021F



Source: Central Statistics Office.



Brexit



COVID-19



Investor sentiment and stock market performance



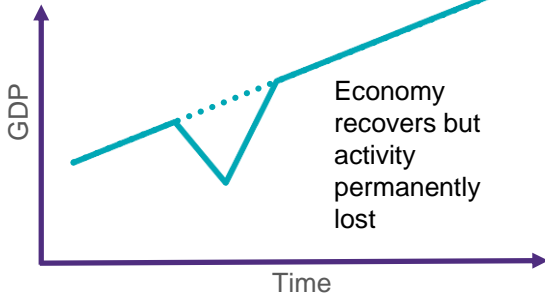
Government support and spending / stimuli



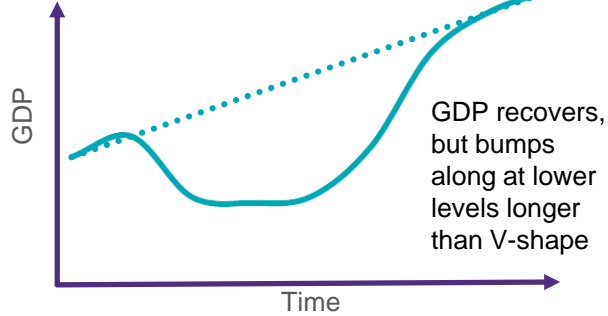
International trade and tax policies

The shape of recovery is uncertain

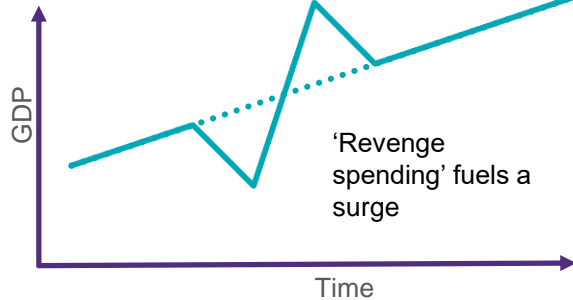
V-shaped recovery



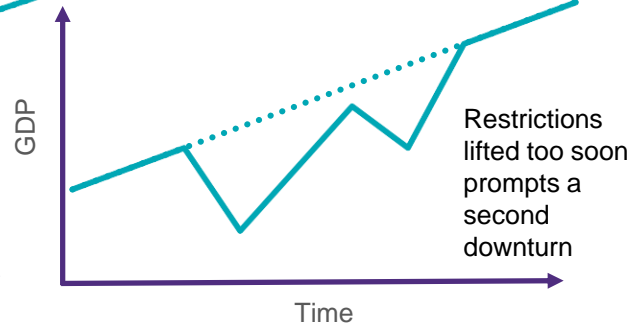
U-shaped recovery



Z-shaped recovery



W-shaped recovery



Challenges facing businesses



Finance and liquidity



Consumer spending and business performance will take time to return to pre-crisis levels



Supply chain and operations



New regulations and guidelines
































































Managing workforce



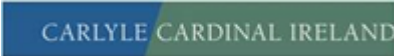







Strategy and brand – Online

Sample of Growth Funding Marketplace

Traditional	Non-traditional	Private equity	Alternative funders
       	            	            	                          

Selection of Recent Private Equity Deals

Equity funder	Deals...Entry/Exit	Date	Deal Value		
	<ul style="list-style-type: none"> • IdentiGEN (exit) • Kyte Powertech (CG Power) (entry) • Irish HomeCare (entry) • DMS Governance Limited (entry) • RelateCare (entry) • Eastland Engineering Supply Co Ltd (entry) 	<ul style="list-style-type: none"> • 2020 • 2020 • 2020 • 2019 • 2019 • 2019 	<ul style="list-style-type: none"> • N/A • N/A • N/A • N/A • €12m • €6.5m 		
		<ul style="list-style-type: none"> • Mowlam Healthcare (entry) 	<ul style="list-style-type: none"> • 2020 	<ul style="list-style-type: none"> • €50m 	
		<ul style="list-style-type: none"> • AA Ireland (exit) • Abtran Unlimited Company (exit) • Payzone (exit) • The City Bin Co Ltd (entry) • Sports Surgery Clinic (entry) 	<ul style="list-style-type: none"> • 2020 • 2019 • 2019 • 2019 • 2019 	<ul style="list-style-type: none"> • €240m • N/A • €100m • N/A • N/A 	
			<ul style="list-style-type: none"> • Maximum Media Network (entry) • Lovin Media (entry) 	<ul style="list-style-type: none"> • 2020 • 2020 	<ul style="list-style-type: none"> • N/A • N/A
			<ul style="list-style-type: none"> • CRS (entry) 	<ul style="list-style-type: none"> • 2020 	<ul style="list-style-type: none"> • N/A
			<ul style="list-style-type: none"> • Edgescan (entry) • Croom Precision Medical (entry) • Brindley Healthcare Limited (exit) 	<ul style="list-style-type: none"> • 2020 • 2020 • 2020 	<ul style="list-style-type: none"> • €10.5m • N/A • N/A
	<ul style="list-style-type: none"> • Lonely Planet (entry) 	<ul style="list-style-type: none"> • 2020 	<ul style="list-style-type: none"> • N/A 		
	<ul style="list-style-type: none"> • Westerwood Global Limited (entry) 	<ul style="list-style-type: none"> • 2019 	<ul style="list-style-type: none"> • N/A 		

Current trends



Sectors struggling for funding

- Examples include; **Leisure, Retail & Hospitality**
- Nuances within sectors; within tourism there would be distinct differences between the likes of outdoor adventure tourism and 5 star destination hotels



Funding parameters

- Interest rates – Varying
- Debt / EBITDA 
- Debt Service Cover 



Covid uncertainty

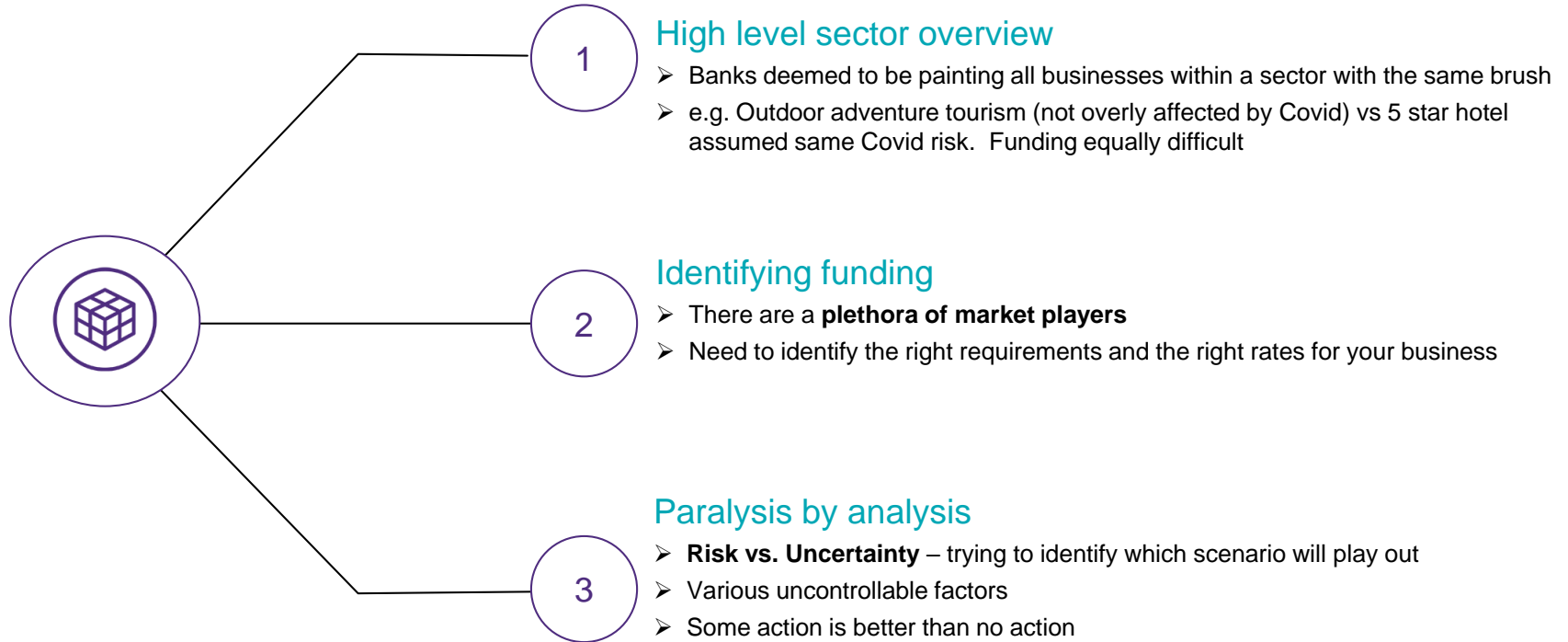
- **Direct vs indirect impacts**
 - Hospitality vs Suppliers to Hospitality
- Timeline for return to **normality**?
- Difficulty determining **funding requirements** in light of the above



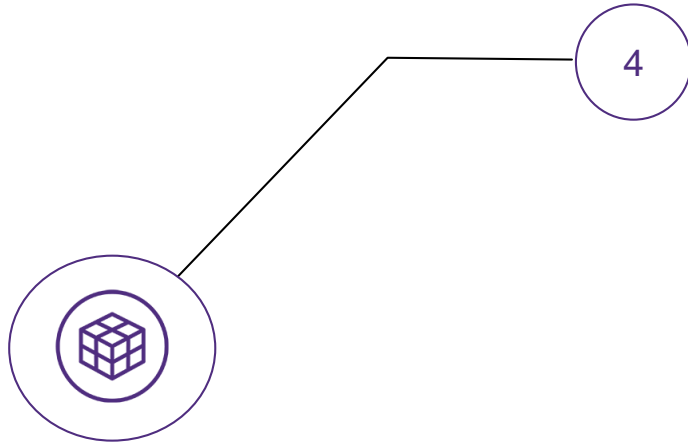
Moratoriums

- **Approved by ECB**
- In December 2020, the European Banking Authority introduced a new end date of 31 March 2021
 - Cap of 9 months for individual payment breaks
- Questions
 - Are timelines long enough?
 - Impact on non-performing loans?
 - Further requirements for restructuring?

Challenges



Challenges (continued)



Asset light SMEs looking for funding

➤ Non Traditional

- Pricing?
- Appetite / lending multiple
- Who is the right fit? Entry/Exit considerations

➤ Traditional/Pillar banks

- Credit guarantee scheme requirements
- What security is needed?
- Low multiple / risk appetite
- Repayment profile

➤ Private Equity

- Is the client big enough?
- Is it the right time to dilute?
- **Do shareholders want to dilute?**
- Is there an exit strategy in place?

Thinking outside the box

- Businesses and Advisors tend to default to traditional term debt funding
- This doesn't always fit the capital needs
- Thinking outside the box can really help
- You should ask yourself a number of questions to determine the appropriate source of funding



Are there any fixed assets to be financed?



Can book debts release cash?



Are there non-core assets from which to release equity?



Are alternative financing structures available to the specific sector

Useful initiatives



- **Business Financial Planning Grant**
 - Provides strategic intervention for companies to work with 3rd party consultants to prepare detailed financial and business plans
- **Sustaining Enterprise Fund**
 - Small Enterprise - €25k-€50k short term working capital injection
 - Other – up to €800k medium term financial support
- **Lean Business Continuity Voucher**
 - Access up to €2.5k in training or advisory services support
- **Online Retail Scheme**
 - Aids Irish-owned retailers enhance their digital capability
- **Brexit – Ready for Customs grant**
 - Up to €9k for each new employee engaged in customs work



- **Covid-19 Loan Scheme**
 - Aids in funding working capital requirements or to fund innovation & adaptation of the business
- **Future Growth Loan Scheme**
 - Long-term, lower-cost loan scheme for SMEs
- **Brexit Loan Scheme**
 - Aids in funding working capital requirements or to fund innovation & adaptation of the business
- **Leasing & Hire Purchase**
 - Flexible funding schemes for assets
- **Invoice Financing**
 - Working capital facility that provides flexible finance
- **Covid-19 Credit Guarantee Scheme**
 - Assists businesses impacted by Covid-19 access credit



Intertrade Ireland provide support, both financial and other, to businesses looking for expertise in specialist areas

- **Acumen** - Sales and marketing programme
 - Provides funding of up to €18,750 to help source expertise to target cross-border markets effectively
- **Innovation boost**
 - Financial support up to €47,400 for 12 months innovation projects and €67,900 for 18 month projects
- **Elevate**
 - Provides up to €6,000 consultancy expertise for micro businesses to help create a cross-border sales development plan

Creating certainty in uncertain times

Business plans & financial models are more important than ever



Use a **Bottom up** approach in financial model



Run **various scenarios** to understand the range of potential funding requirements & outcomes



Assume the reader of the application / financial model **knows nothing** about your business



Build the future projections on a number of key assumptions, **not on past performance**



Use **high level forecasts** with + / - %



Assume the reader is **financially literate** and is an expert in your business area



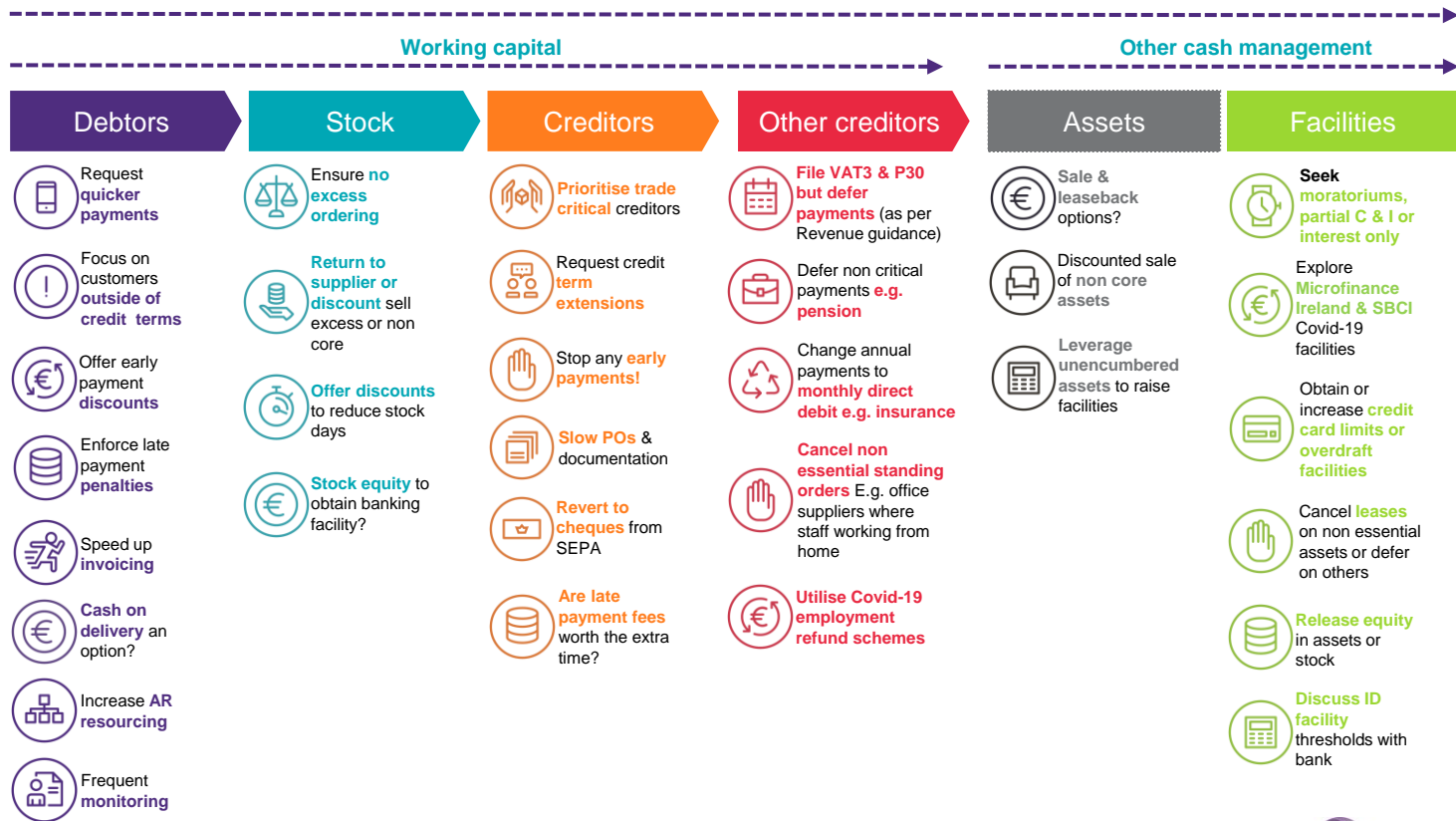
Just show the numbers **without a story** behind them



Assume the future will **replicate the past** performance of the business

Considerations for working capital & cash management

Regular Communication with key stakeholders + Monitor, project and stress test cash flows



Concluding thoughts



Significant uncertainties remain for Irish corporates – Brexit and COVID-19 most pressing.



Fiscal deficit is unsustainable (2020f: €21bn) and profile of recovery is uncertain.



Impacted businesses need to plan for the reboot / higher activity levels and assess required capital.



Be prepared – business plan, financial model, engage early



Private Debt & Equity can assist with unlocking value opportunities for ambitious corporates.



Stronger propositions have a number of funding options/structures/offtakes and appropriate market positioning is critical advice for clients e.g. avoiding the 'slow no' & setting unrealistic expectations



Questions

Notice

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