

## Examinership Update: Ireland transposes EU directive on restructuring into law

Insights - 03/08/2022

The Minister for Enterprise, Trade and Employment signed into law the *European Union (Preventive Restructuring) Regulations 2022* (the “**Regulations**”) on 29 July 2022.

The Regulations provide for the transposition of the mandatory articles of EU Directive 2019/1023 on preventive restructuring frameworks, insolvency and discharge of debt (the “**Directive**”). The Directive’s overarching aim is to harmonise insolvency and restructuring procedures across Member States and to reduce the length and cost of solvency and restructuring proceedings across Europe.

The Regulations amend Parts 5, 10 and 11 of the Companies Act 2014 and insert a new Part 5A to transpose the requirements of the Directive not already provided for in Irish examinership law.

Listed below are the key changes to the law of examinership in Ireland that were introduced by the Regulations:

- Introduction of an early warning system to allow companies to respond quickly to a situation so as to avoid insolvencies
- Workers are now prohibited from seeking to enforce any claim against the company during the period of the stay
- The ‘twilight zone’ (duty of a director to creditors in the period before insolvency) has been codified
- 12-month cap on the maximum stay on proceedings
- Creditors are prevented from withholding performance or ending executory contracts to the detriment of the company
- Cross-class cram-down has been amended to ensure full alignment with the Directive. This procedure allows the Court to confirm a Scheme of Arrangement even in cases where there

has been one or more classes of dissenting creditors or other affected parties

Ogier Leman has extensive experience in this area and regularly advises appointed Examiners, directors of companies applying for examinership, creditors of companies in examinership and third party funders of companies in examinership.

*If you would like more information on how these new Regulations may impact you or your company, please contact Ronan McGoldrick, Stephen O'Connor or Dee Murphy.*

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