



Submission to Department of Enterprise, Trade and Employment on the Proposed “Summary Rescue Process”

March 2021

Chambers Ireland is the state’s largest business representative network. We are an all-island organisation with a unique geographical reach; our members are the chambers of commerce in the cities and towns throughout the country – active in every constituency. Given the importance of local economies to our members, and member businesses, Chambers Ireland’s perspective is unique within the Irish business community – we seek to support thriving local economies and recognise the diversity of business environments that exist across the cities and regions of the country.

Chambers Ireland is also an advocate of the Sustainable Development Goals and uses the Goals as a framework for formulating and advocating policies that support sustainable local economies. At the heart of local economies throughout the country are indigenous businesses and SMEs.

Drafted in correspondence with our Chamber Network and associated policy fora, Chambers Ireland is pleased to have the opportunity to make this submission to the Department of Enterprise on the proposed “Summary Rescue Process”.

Context

The timing of this consultation is significant. The Irish economy has suffered a devastating twin shock from the impact of the COVID-19 pandemic, and the ongoing fall-out of the UK’s departure from the European Union.

In 2020, Chambers Ireland published a series of surveys illustrating, in real-time, the impact of COVID-19 on the business community.

The most recent set of results, published in September 2020, noted that the debt burden for SMEs is growing with Sole Traders believing that they will only be able to service 48% of their debt that falls due over the following 12 months. Liquidity was also noted to be a problem for many businesses as considerable outstanding invoices are beginning steadily build up. Again, the burden was being felt hardest by smaller

businesses with as many as 50% of Microenterprises say that they are having difficulty receiving payments for outstanding invoices.¹

Since the publication of that data, Ireland has experienced both its second and third wave of COVID-19 and associated “lock-downs”, which continued to have a devastating impact on the domestic economy.

The concern now relates to the consequences for the SME cohort of the economy- particularly SMEs in vulnerable sectors- once the economy re-opens. Since the start of 2021, Chambers Ireland has warned that existing COVID-19 supports do not go far enough – too many businesses are left out. For many that are eligible, the existing rates of support is too limited, particularly given the scale of economic shock facing the most vulnerable sectors and the length of time they have been impacted.

Debts for many businesses are mounting, and the supports available are rarely enough to offset them. When a reopening finally occurs, many businesses will see their lockdown debts threaten their long-term viability. It is our views that wage supports, commercial rates waivers and debt warehousing will be needed for most of 2021, and that this certainty should be given to vulnerable sectors as soon as possible.²

Beyond the need for financial supports, it is critical that the appropriate structures are in place as the economy exits restrictions and enters the recovery phase. Unless suitable structures, such as the proposed Summary Rescue Process are operational, there is a risk that vulnerable but viable SMEs will become insolvent, resulting in permanent job losses and devastation for local economies.

All supports for vulnerable SMEs, both financial and structural, is to be welcomed by the business community.

Priorities

First and foremost, it is important to note that Chambers and our members welcome the proposals and the initiative to introduce a restructuring framework suitable for the rescue of small and micro companies. We also welcome the opportunity to engage with the Department ahead of the General Scheme for the legislation being drafted.

Affordable

Any initiative that can make the examinership process cheaper for small companies is a positive. At present, it often may be less expensive to just liquidate a company and start a new one. Further, the current solution of reverting to the High Court can be prohibitively expensive for many smaller firms, resulting in businesses avoiding “examinership” processes, sometimes resulting in default and subsequent insolvency.

Accessible

It is critical that should an “SME” Rescue process be introduced under legislation, that the operation and application of such a process is SME-friendly. Its should not require assistance from third-parties advisory

¹ <https://www.chambers.ie/wp-content/uploads/2020/09/Chambers-Ireland-Q3-2020-Business-Community-Survey.pdf>

² <https://www.chambers.ie/news/chambers-ireland-calls-for-an-end-to-incremental-half-measures-and-fresh-start-in-approach-to-tackling-covid-19/>

services in order to avail of the mechanism. Many of the SMEs likely to be in this situation may not have the capital on hand to procure advisory or support services. A user-friendly approach must be at the heart of the Process.

Communications and Awareness

The introduction of the new process should be accompanied by a strong communications and education piece across the SME community. Feedback from our membership indicates that there is a low level of understanding of “examinership” among most small companies already.

Proposals:

- Should a proceeding have to go to Court, it is important that the Summary Rescue Process be dealt with by the lower courts if possible.
- Should cases go to court, decisions must be binding.
- The independence of insolvency practitioners must be guaranteed.
- Introduce a simplified means of registering objections and any potential issues in advance of the decision being made - suggest a standard form for creditors to sign outlining what they are owed and what they are seeking.
- A new Rescue Process should include guidance on where a business stands if there are international trade creditors, i.e. are they included/excluded.