



Examinership

A restructuring tool for shipping companies in Cyprus

Contents:

- 1) Shipping Industry Challenges
- 2) Options
- 3) What is Examinership?
- 4) Success stories
- 5) The Fundamentals
- 6) Process
- 7) Examinership v Chapter 11
- 8) Q & A



Key Financial Challenges

- Market declining
- Decreasing revenue
- Inability to service debt (with risk of increasing interest rates)
- Significant rise in debt maturing in next 5 years
- Basel III, IFRS 9, asset quality reviews
- ECB pressure on banks to strengthen balance sheets
- Hedge funds slow to invest as they are waiting for market to bottom out

Options

a) Moratorium / Amend and extend

b) Chapter 11 (USA)

c) Examinership (Cyprus & Ireland)

d) Administration (UK)

e) Receivership

f) Liquidation

What is **Examinership**?

Examinership is a process whereby the protection of the Court is obtained to enable a Company reach a binding settlement of its debts with its creditors

An Examinership affords a 120 - 180 day protection period to a Company to restructure its debts by putting a scheme of arrangement in place with its creditors which is ultimately subject to Court approval

A successful conclusion of the process results in creditor debts being reduced, while the assets are protected and investment is obtained

Examinership is the Irish equivalent to the UK Administration process and the US Chapter 11 protection which has been adopted by Cyprus.

Examinership – Success Stories (Ireland)

Ladbrokes



CITYJET 

- Reasonable prospect of survival subject to meeting certain criteria which can be achieved in Examinership
- Liquidation v Examinership
- Divest non core assets (optional)
- Debt write off
- Surrender onerous leases
- Fresh investment
- Court approved
- Short timeframe

Pre-Petition Planning & Entry to Examination Process

Suitability

- Reasonable Prospect of Survival (whole or part of company)
- Insolvent (or likely to be insolvent in the near future)
- Positive cash flow for period of Examinership
- Investor
- Key stakeholders support

Independent Experts Report

- Prepare Liquidation Outcome (Base Case) V Examinership outcome
- Prepare Cash flow for 120 – 180 days
- Identify conditions essential for survival, funding requirement & business plan

Appointment of Examiner

- Ex parte application made by the Company
- Company need to demonstrate urgency
- Day 1 – clock starts ticking (Pre-petition planning critical to ensure all parties are aware of their role from day 1)
- Seek investment
- Petition Hearing – right to attend

During Examination Process

Company & Directors

- Maintain day to day responsibility
- No change in powers
- Management customers / PR issues
- Management of critical issues with guidance from Examiner – employees, suppliers, customers, cash collection

Examiner Role

- Seek Investment
- Draft Proposals for a Scheme of Arrangement
- No automatic executive powers but option to apply to Court to obtain executive power
- No prospect of survival? Duty of Examiner as an Officer of the Court to advise Court of same as soon as he becomes aware of same.

Exit of the Examination Process

Creditors Meetings

- Creditor Classes categorisation
- Voting
- One class of impaired creditors...AND
- Scheme isn't "unfairly prejudicial" any other class
- Examinership outcome better than liquidation outcome for creditors

Application for approval of scheme

- Copy of proposals presented to creditors, one class of creditor prejudiced by petition must approve and the scheme must be fair and equitable to all other classes (ie. better than what the creditors would expect to achieve in a liquidation scenario)
- Result of creditor meetings
- Final report by the Examiner

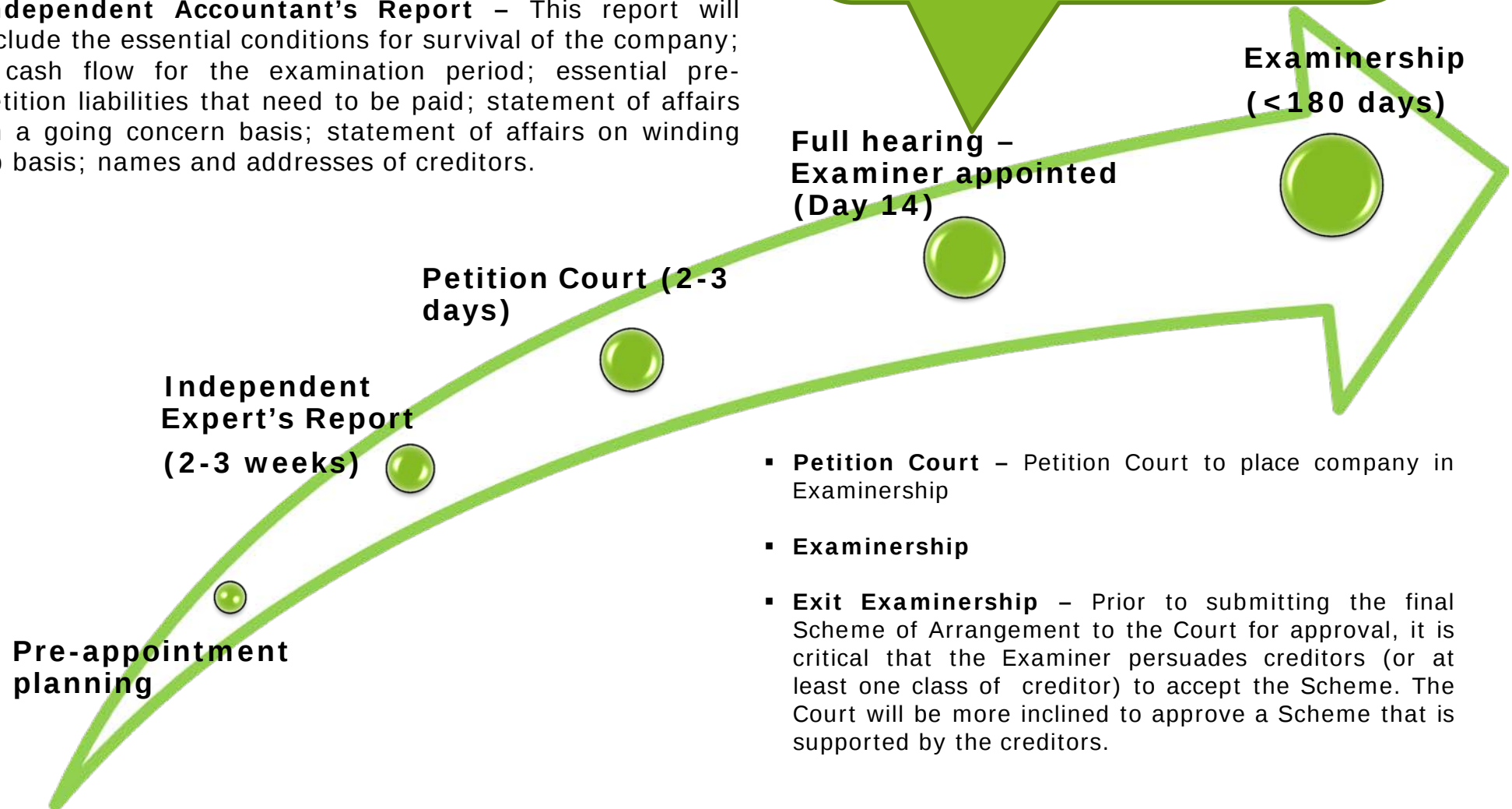
Exit

- Success – pay dividends / protection lifted
- Fail – liquidation / receivership

Examinership – Timeline

- **Pre-appointment planning** – it is critical that the objectives and strategy to achieve same are agreed in advance of implementing the strategy.
- **Independent Accountant's Report** – This report will include the essential conditions for survival of the company; a cash flow for the examination period; essential pre-petition liabilities that need to be paid; statement of affairs on a going concern basis; statement of affairs on winding up basis; names and addresses of creditors.

***Note** - whilst the maximum timeline for examinership is 180 days, the process can be completed <180 days with sufficient planning and co-operation from borrower and investor.*



- **Petition Court** – Petition Court to place company in Examinership
- **Examinership**
- **Exit Examinership** – Prior to submitting the final Scheme of Arrangement to the Court for approval, it is critical that the Examiner persuades creditors (or at least one class of creditor) to accept the Scheme. The Court will be more inclined to approve a Scheme that is supported by the creditors.

	Examinership	Chapter 11
Jurisdictions	Cyprus and Ireland	USA
Court approved	Yes	Yes
Timeframe	Up to 180 days (100 days in Ireland)	Up to 300
Fresh investment	Yes	Optional
Voting requirements	Approved by one class of creditor and not unfairly prejudicial to any class	Judge can approve once not unfairly prejudicial to any class of creditor
Creditor approval threshold	Better than liquidation outcome	Better than liquidation outcome
Secured creditor	Written down to value of asset	Write down to value of asset
Onerous leases	Option to disclaim	Option to disclaim
Divest non-core assets	Optional	Optional

European Insolvency Regulation



A Cypriot company is capable of availing of Irish insolvency laws provided it shifts the majority of its administrative functions (aka Centre of Main Interest (COMI)) to Ireland.



Case Study 1 - Eircom

- Telecommunications co
- €4bn debt (€1.4bn written off)
- Bondholders €350m
- Banking syndicate of > 200 institutions (including five Wall st banks)
- 40% reduction in debt
- 3rd largest restructuring globally in 2012
- Pre-appointment negotiation key to success (2 years of planning)
- Executed in 54 days!!!
- Low creditor approval threshold critical as it allows senior lenders who have an debt with company to retain an element of control in voting, once no other class of creditor is prejudiced

Case Study 2 – Shipping Co Example



- Turnover €18m, no significant increase anticipated
- 8 vessels
- Vessel value €60m / Land & Buildings €4m (market values / all assets mortgaged)
- 4 banks (3 supportive)
- €70m bank debt
- Preferential creditors €1.5m
- €6m unsecured creditors
- One large creditor has issued legal proceedings to recover balance due, matter gives rise to threat of insolvency (ie. Liquidation)

Case Study 2 – Shipping Co Example



- *Step 1* – Planning
- *Step 2* – Petition to put company into Examinership / immediate protection from creditor litigation
- *Step 3* – Form Scheme of Arrangement:
 - Secured creditors – write down to asset value of €64m (€6m write off)
 - Preferential creditors – Write down to €150k (€1.35m write off)
 - Unsecured creditors – write down to €300k (€5.7m write off)
 - Total write off €13.05m = Company is now viable
- *Step 4* – Creditors approve (alternative is liquidation where all creditors receive significantly less)
- *Step 5* – Court approves

Restructuring – Key Message

The earlier you engage professional restructuring advice, the more options you will have to restructure and save your business.





Deloitte.