

Small Companies Administrative Rescue Process - practical guidance for company directors

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland, The Association of Chartered Certified Accountants, The Institute of Certified Public Accountants and Chartered Institute of Management Accountants.

Key definitions:

The following key definitions will act as a reference throughout the questions and answers below:

- **SCARP Act** – The SCARP Act commenced on 9 December 2021 via the Companies (Rescue Process for Small and Micro Companies) Act, 2021.
- **SCARP** – A dedicated rescue process for small and micro companies known as Small Companies Administrative Rescue Process or SCARP.
- **Process Advisor** – The company should engage a Process Advisor to determine whether an eligible company has a reasonable prospect of survival. A Process Advisor should have the same qualifications for appointment as a Liquidator as set out in Companies Act 2014, section 633.

Is a SCARP a solution for my business?

A SCARP may be a solution for your business if:

- It is a micro or small company which is unable or likely to be unable to pay its debts.
- It may be viable if a way of managing that debt could be found.
- Not having used the process in previous 5 years.
- No Examiner has been appointed in the past 5 years.
- Not be in liquidation nor has an order been made for the winding up of the company.
- The directors, with the assistance of an Insolvency Practitioner, can show that the company has a reasonable prospect of being financially viable in the future and that creditors would be better off financially under a SCARP than in a liquidation.

What are the key benefits of SCARP?

The key benefits of a SCARP are:

- An Insolvency Practitioner will give the business owners an opinion based on their knowledge and experience as to whether they company has a reasonable prospect of survival. This brings clarity to a directors' decision making, and peace of mind at a time when they could be in danger of trading recklessly.
- The process will let the company pay its debts over time and write off a percentage of its total debts to creditors, improving cash flow in the short term.
- It could enable a company to deal with State creditors including the Revenue Commissioners.
- Court involvement is not a prerequisite, meaning that a business which previously may not be able to afford or be eligible for the examinership process may have an alternative to liquidation.

What are the advantages of a SCARP?

The advantages for the eligible company include:

- The directors retain control of the company and it can continue trading.
- It can write down and / or write off debt whilst having its remaining secured debt restructured enabling the company to continue with a solid financial foundation.
- Lower costs than alternative insolvency rescue procedures like examinership.
- It may be possible to repudiate onerous contracts, including leases.
- It is a better alternative to liquidation if the rescue plan is approved.

The advantages for creditors include:

- Positive informed engagement with the debtor through the Process Advisor.
- Solution to the historical debt.
- Better return on debts owed when compared to the potential return through a liquidation.
- Transparency on the costs of the process.

What are the disadvantages of a SCARP?

The disadvantages of a SCARP include:

- If unsuccessful, liquidation will follow.
- Creditor reaction results in application to court for approval - costs increase and uncertainty results on outcome and timing.
- Impact on company's business – potential loss of customers, negative impact on credit rating.
- Company must have “prominent” notice on website that is it in a SCARP.
- May not be suitable for a company with a complex creditor debt profile.
- May be challenging to include State debt.

How does an eligible company commence the SCARP process?

To enter the process, the company will engage an independent Insolvency Practitioner to act as a Process Advisor as set out in Companies Act 2014 section 633. This individual needs to be independent of the company and cannot be the company's existing auditor as set out in Companies Act 2014 section 635.

Having engaged a Process Advisor, the directors of the company will, having made full enquiry into the affairs of the company, prepare a Statement of Affairs in a prescribed form. The Statement of Affairs will detail the company's financial position.

The Process Advisor will then consider the statement of affairs and make enquiries into the company's affairs so that they can formulate an opinion as to whether the preparation, approval and taking effect of a rescue plan would offer the company a reasonable prospect of survival.

The Process Advisor issues a report on whether the company in their opinion has a reasonable prospect of survival and whether a SCARP should be undertaken.

What happens if a Process Advisor says a SCARP should be undertaken?

To formally commence the SCARP, the directors of the company will call a board meeting within 7 days of receiving the Process Advisor's report at which they will pass a resolution to commence the process.

Creditors are then informed of the process and are sent the Statement of Affairs and the Process Advisor's Report. Creditors will also receive a Proof of Debt form which needs to be returned to the Process Advisor within 14 days.

During this period, creditors are afforded an opportunity to provide input to the Process Advisor and to disclose any facts they consider material to the process.

The Process Advisor having reviewed the company's financial circumstances and consulted with stakeholders including directors, creditors and shareholders, will prepare a rescue plan.

In terms of this plan, which is in simple terms, an agreement between a company and its creditors to settle company debts. There are:

- No prescribed components or exclusions.
- No creditor may be unfairly prejudiced.
- Critically the plan must satisfy 'best interest of creditors' test (i.e., provide each creditor with a better outcome than a liquidation).

In terms of the approach the Process Advisor's rescue plan can take, there are no express limitations. In this regard, debts can be written down and different classes of creditors receive different treatment. For example, whilst in examinership, creditors are normally settled with a "lump sum", a company could pay creditors over a period in a SCARP, of say, three years.

Having formulated a rescue plan, the Process Advisor summons meetings of members and each class of creditor within 42 days of their appointment. Facilitating a timely process, notices may be sent by email.

Creditors are invited to vote (having been provided with 7 days' notice) on the plan by day 49.

For the Rescue Plan to be approved by creditors there must be a 60% majority in number and a simple majority of value in respect of at least one class of creditors.

Such approval of one class of creditor voting in favour of the rescue plan will result in it being binding on all creditors.

If there is no objection to the plan and it is approved by creditors there is no requirement to obtain Court approval and the plan becomes binding 7 days after statutory notices are filed unless objected to within 21 days.

How long will the process last?

The duration of the process itself will take up to 70 days. Once the company, having received the Process Advisors Report, passes the resolution to commence the process, the creditors must vote on the rescue plan by day 49. The creditors have up to 21 days to object to the rescue plan proposed.

The duration of a SCARP rescue plan will depend on what is being proposed by the Process Advisor, agreed pursuant to the process, and the company's specific circumstances.

Is there a need to go to Court?

One of the key advantages of a SCARP over an examinership is that there is no requirement for Court involvement. This is one of the key reasons why it is a more cost-effective process than examinership.

However, a Court application may be required in certain circumstances such as:

- Determine questions posed by the Process Advisor, creditors, ODCE etc.
- Stand down a Receiver or provisional Liquidator.
- Deal with repudiation of onerous contracts including leases.
- Hear objections made by creditors/members to the rescue plan.

The Process Advisor must make an application to Court for protection from any specific creditor (unlike examinership – there is not an automatic protection from creditor action).

What happens if a SCARP fails?

If at least one class of creditor does not approve the SCARP and the vote does not pass, the Process Advisor must report to the Board why it was not successful and their recommendations as to the next steps which may include continuing to trade, examinership, liquidation etc.

How can I prepare for a SCARP?

If you think your business may be suitable in exploring a SCARP, you should not delay as companies that act early have more options to turnaround or restructure a business.

In this regard, you should:

- Prepare up to date management accounts;
- Submit up to date tax returns;
- Prepare an up to date Statement of Affairs for your company including a list of all creditors of the company; and
- Meet with an experienced Insolvency Practitioner.

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