

Revenue Guidelines for Process Advisors (PA) for proposed rescue plans under the Companies (Rescue Process for Small and Micro Companies) Act 2021

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Introduction

The Companies (Rescue Process for Small and Micro Companies) Act 2021 introduces a new ‘Small Companies Administrative Rescue Process (SCARP) to assist viable, yet insolvent small and micro companies restructure their debts which otherwise face liquidation. The directors must show that creditors are better off financially under the scheme than in a liquidation.

This new process, while based on the Examinership model, is designed to make rescue and restructuring more accessible and affordable to fundamentally viable companies experiencing temporary difficulties. The fundamental of establishing that the company has a reasonable prospect of survival remains.

This guidance note has been prepared to ensure a streamlined and efficient process between Revenue and Process Advisors operating in this environment.

Background

Revenue already has well-developed procedures to deal with companies who do not or cannot meet their tax obligations. These procedures include assigning designated Caseworkers to individual cases with tax debts and applying escalatory interventions where necessary to ensure compliance, including Phased Payment Arrangements, the charging of interest and, where necessary, debt recovery through enforcement. The application of the various strategies is deployed depending on the level of engagement encountered and the level of tax debt at risk.

Please follow the links for further guidance on **Debt Management** and **Enforcement**.

Procedures

To ensure clear and streamlined engagement between Revenue and key stakeholders operating in the SCARP environment, the Insolvency Unit in the Collector-General’s Division will act as the first point of contact for all queries. The Unit can be contacted through MyEnquiries, insolvency@revenue.ie. Where a Process Advisor (PA) contacts the Insolvency Unit in regard to a specific company, the Caseworker will require an authority to act to enable a discussion on the relevant issues with the advisor. Decisions regarding whether to opt-out of any proposed arrangement will be made by the Insolvency Unit in conjunction with their management stream where necessary.

Revenue debt is classed as “Excludable Debt” under s558L(4) of the Act. Revenue may opt-out of an arrangement on the following grounds:

- (a) the eligible company has failed at any time to comply with a requirement relating to tax imposed
- (b) there is an open Revenue audit or intervention into the eligible company,
- (c) the eligible company is party to an appeal in relation to a requirement relating to tax.

Examples of scenarios under (a) include outstanding returns or a poor tax compliance history.

Revenue would welcome and encourage PAs to engage as early as possible during the preparatory stage. Such communication will assist in clarifying the requirement and help increase the possibility of Revenue consenting to the inclusion of its debt. Attached in the Appendices is an outline of the information that the Revenue Caseworker will require. The form should be completed and submitted to assist the decision-making process. It is important to note that in circumstances where there is failure by the PA to provide the required level of information, the Caseworker will have no option but to opt-out of the arrangement.

The PA must consider all tax implications when entering SCARP. These include:

- Revenue debt within SCARP will automatically be removed from the Debt Warehouse
- Following the commencement of this process, the company must file and pay their future taxes as they fall due (known as current taxes). Failure to file and pay their taxes is a clear indication that the company does not have a reasonable prospect of survival
- Section 62A VATA 2010
- Section 997A implications on the Company Directors.

If the company fails to file returns and make the necessary payments in respect of current taxes, the Insolvency caseworker will notify the PA. If the non-compliance is not addressed, Revenue may apply to the Court to challenge the continuation of the process or to place the company into liquidation/receivership.

Revenue will comply with its obligations to the Office of the Director of Corporate Enforcement and report any offences under the Act.

Payments

When a rescue plan has been agreed, details on making payments to Revenue are available [here](#)

Information required by Revenue for a Small Company Administrative Rescue Process Scheme

PART 1 – Company Details

Company Name	
Registered Address	
Corporation Tax Number	
CRO Number	
Are all tax returns up to date	Yes <input type="checkbox"/> No <input type="checkbox"/> <i>*if no, please include details of outstanding returns and any additional liabilities</i>
Is the PA aware of any ongoing Revenue Compliance Interventions	Yes <input type="checkbox"/> No <input type="checkbox"/>
Details of Revenue Compliance interventions	

PART 2 – Process Advisor

Name			
Address			
Contact Details	Phone		Email
Authority to Act on behalf of company *attach copy	Yes <input type="checkbox"/> No <input type="checkbox"/>		

PART 3 – Rescue Plan

Does the company meet the requirements under the Act

- that the company is small or micro
- that the company is, or is likely to be, unable to pay its debts
- that the company is viable and has a reasonable prospect of survival
- that no resolution subsists for the winding up of the company
- that no order has been made for the winding up of the company
- that the company has not availed of the small company administrative rescue process in the preceding 5 calendar years.

The company meets two of the following criteria

- the amount of turnover of the company does not exceed €12 million
- the balance sheet total of the company does not exceed €6 million
- the average number of employees does not exceed 50

The directors of a company shall make a full inquiry into the affairs of the company and that it is true and fair

Yes No

Statement of Affairs attached

Yes No

Confirmation that Company will file and pay current taxes that fall due during the process

Yes No