AMERICAN BANKRUPTCY INSTITUTE

GLOBAL TURNAROUND

13th International Insolvency & Restructuring Symposium

DUBLIN - open for business

WELCOME TO THE AMERICAN BANKRUPTCY INSTITUTE'S (ABI) 13TH INTERNATIONAL INSOLVENCY & RESTRUCTURING SYMPOSIUM IN DUBLIN, IRELAND! GLOBAL TURNAROUND IS PROUD, ONCE AGAIN, TO BE THE MEDIA SPONSOR FOR THE CONFERENCE

Sir Ivan Rogers

This year's keynote address is being given by Sir Ivan Rogers, who was the UK's Representative to the European Union (EU) in Brussels until January this year.

Sir Ivan resigned from his position following the Brexit Referendum, in order to allow for a smooth handover to his successor who would conduct the UK's negotiations for exiting the EU.

His inside knowledge gained from working in the EU, coupled with his work in the British Treasury and the London financial markets, will enable him to give conference delegates a compelling view of how the land lies.

Sir Ivan's career in the British civil service previously included work for politicians such as Kenneth Clarke and Sir Leon Brittan. In 2003 he was appointed Principal Private Secretary to then Prime Minister Tony Blair.

Sir Ivan said: "I am really looking forward to attending the conference in Dublin. I have been looking at the position of the restructuring and insolvency industry in the context of the many permutations of 'Brexit', and I will be very interested to exchange views with the experienced professionals I expect to meet."

Ian Williams

Ian Williams, a director in RSM Restructuring Advisory LLP in London, is once again the conference chairman. He said:

"This is my 13th year of chairing this conference and it's our second time in Dublin. I'm excited that we're offering something a bit different this year, with the extended two-day format involving other organisations.

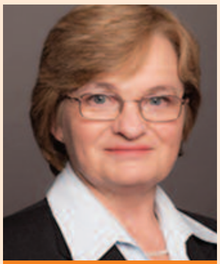
"We also have the usual selection of excellent speakers and sponsors. I'm delighted to have secured Sir Ivan Rogers whose insights on the EU and 'Brexit' should prove most interesting to our audience."

"Dublin is a fascinating location for this year's conference. Ireland is just emerging from the effects of the global financial crisis and the subsequent real estate crash and banking meltdown. Now it faces the challenges and opportunities presented by Brexit.

"In the following pages we present the views of some of the leading figures in the Irish restructuring and insolvency market."

John Willcock, Editor, Global Turnaround

Jane Marshall passes on the baton at McCann FitzGerald



Jane Marshall
McCann FitzGerald

After 40 years at McCann FitzGerald, Jane Marshall is handing over the insolvency and restructuring practice as she prepares to retire. In fact she already passed the leadership of the practice to partner Michael Murphy two years ago, staying on as a consultant.

The other leading member of the team is Lisa Smyth, who recently won an important mandate from NAMA. Smyth heads a team advising NAMA on a Dublin-based enquiry into 'Project Eagle', the sale of NAMA's portfolio of loans in Northern Ireland, which was criticised in reports from the Comptroller and Auditor General and the Public Accounts Committee.

The practice that Marshall is preparing to leave is heavily involved in advising funds and corporates on restructuring portfolios of bank loans to businesses, working through the fallout from the banking and real estate crisis that hit Ireland in 2007-8, and the subsequent restructurings emanating from NAMA and the banks. Other mandates include large-scale financial restructurings.

After the trauma of the financial crisis years, there is a real feeling of recovery in Ireland these days, she said: "It's very upbeat."

During her time Marshall has scored a number of firsts; in March she was elected a fellow of the American College of Bankruptcy, the first Irish person to win this accolade. And in 2000 she was elected as the first Irish president of INSOL Europe reflecting the high profile nature of the cases she has worked on.

Marshall advised the Examiner of Ireland's biggest ever restructuring, the Eircom Group in 2012. She also advised the Administrators of Quinn Insurance Limited.

Looking at the cross-border restructuring market, Marshall sees challenges and opportunities flowing from the vote to leave the EU by Ireland's biggest trade partner.

> If the UK ceases to be a party to the Brussels Convention, said Marshall, this will make recognition of English law Schemes of Arrangement in the EU more problematical.

Likewise UK Administration may lose automatic recognition in the EU under the Insolvency Regulation Recast.

Meanwhile the Irish Scheme offers a genuine alternative. "We need to tell our foreign colleagues and clients about that," said Marshall.

All in all, there should be good opportunities for Dublin to win cross-border work, Marshall concludes.

Declan McDonald hails growth of loan servicing platforms

Declan McDonald
Pricewaterhouse-Coopers

Ireland is still working through the backlog of non performing loans coming out of the country's 'bad bank', NAMA, as well as the likes of AIB and other mainstream banks, according to Pricewaterhouse-Coopers' (PwC) business recovery services leader, Declan McDonald.

This has attracted funds interested in buying these loans and working them out, says McDonald, such as Goldman Sachs, Apollo, Cerberus and Carval.

Fundamental to the success of working out these distressed loans is the availability of suitable servicing platforms and Dublin has seen a number of these businesses created and expanding in recent years.

McDonald points to the Australian financial services group Pepper as an example of a successful servicing platform operating in the Irish market.

Pepper was among an initial wave of overseas buyers of Irish assets during the height of the crisis five years ago, buying GE Capital's 600 million euro of subprime mortgages at 40 cent on the euro in a deal backed by Goldman Sachs.

Pepper than entered the business of managing and servicing loans of overseas banks who have been extracting themselves from the Irish market following the crash, as well as overseas buyers of loan portfolios in recent years.

This shows how the servicing platform sector in Ireland is maturing, said McDonald.

He has seen a lot of changes during his 20 years' experience as an insolvency practitioner. He first worked with Michael McAteer at Foster McAteer before that firm merged with Grant Thornton in 2008, and then he moved to PwC a year later. Now he thinks that Dublin is well placed to win international restructuring work, with its depth of experience, favourable legislation and its efficient court system.

Competition for cross-border work is hotting up, he noted, from centres as diverse as the Cayman Islands, Singapore, the Netherlands and Spain.

"Its time to market Dublin a little bit more widely," he concluded.

Tony O'Grady welcomes growth of fund activity in Ireland

Tony O'Grady
Matheson

Tony O'Grady, a partner in the corporate restructuring and insolvency department at Matheson, welcomes the influx of private equity and hedge funds to Ireland that followed the global financial crisis in 2007.

These funds have made a big impact on the huge effort needed to clear up Ireland's sour property and construction loans.

While this process is winding down from the peaks of activity seen a few years ago, said O'Grady, there is still much work to do. The supply of new money from the funds will be a big help. Also, the tools at the disposal of restructuring professionals should prove attractive, he said, especially the 'Irish version of Chapter 11', Examinership.

O'Grady is an Examinership veteran; he has advised on high profile cases including Agcert, Fate Park, Golden Discs, Linen Supply of Ireland, Blackshore Group, Aer Arann, McInerney Homes and Eircom.

And once the UK leaves the EU, it will almost certainly also leave the coverage of the European Insolvency Regulation. This means that it will no longer be possible to 'anchor' EU-wide administrations in the UK in the same way, with the automatic recognition that the Regulation previously provided.

> "So if you want to avail of the European Regulation for a cross-border restructuring, Dublin is a good option," said O'Grady.

He acknowledges that there are some drawbacks to Examinership. The time limit of 100 days may be considered too short. On the other hand this does place a crude cap on the ultimate expense of the restructuring. Examinerships tend to prove too expensive for smaller companies.

But for all that, O'Grady is optimistic that Dublin will continue to attract its fair share of cross-border cases. In the past he has advised on KPNQwest, Exodus Communications, Flightlease and Sea Containers.

He also advised on the Eurofood case, the Irish subsidiary of the Parmalat Group, in relation to the first reference to the European Court of Justice (ECJ) for an interpretation of the European Insolvency Regulation.

> "On all these cross-border cases, partnership is the name of the game," O'Grady concluded.

Barry Cahir sees a big future for Ireland's Scheme

Barry Cahir
Beauchamps

Barry Cahir is head of Beauchamps' restructuring and insolvency practice, based in Dublin, having joined from William Fry last year.

Beauchamps is particularly strong in acting for purchasers of distressed loans and related sales of distressed assets. And it is Ireland's Scheme of Arrangement that Cahir believes holds potential for the Dublin market post-Brexit.

Cahir said: "England's dominance as a leading venue for global restructuring has been enhanced by its creative use of the statutory Scheme of Arrangement.

"Ireland has almost identical provisions with two alternative Schemes, one Companies Act Scheme and the alternative Examinership Scheme," said the Dublin-based lawyer.

"This is important in the context of Brexit, after which Ireland will be the only English speaking, common law jurisdiction in the EU, thus making it easier to export its Schemes."

The Scheme is not new to Ireland, having been on the statute books since at least 1963, added Cahir, but it has been used more for corporate reorganisations, mergers and de-mergers than for insolvent restructurings. He said:

"However, it could readily be used for insolvent restructurings, including by non-Irish companies which could demonstrate 'a sufficient connection' with Ireland. "A sufficient connection in this regard could be choice of law for debt documents," said Cahir. He also pointed out that a Scheme had been used to effect Ireland's biggest-ever debt/equity swap, the 1.4 billion euro restructuring of Eircom in 2012.

"Eircom's Scheme was confirmed by the court within 54 days of the filing," said Cahir. He concluded:

"Ireland also benefits from an independent judiciary with dedicated commercial judges and a specific commercial court framework which deals speedily with large cases. This puts Ireland in a viable position to become more centrally involved with established trends in the global restructuring market."

Ken Fennell sees uncertainty ahead

Ken Fennell
Deloitte

According to Ken Fennell, who has 25 years' restructuring experience and now leads Deloitte's restructuring practice in Ireland, the UK Brexit vote continues to defy any attempts to forecast how it will play out, and has led to a considerable amount of uncertainty.

The decline in the value of Sterling has impacted Irish exporters and has also led to a decline in the number of UK visitors to Ireland, says Fennell.

Some hard-pressed Irish retailers are also seeing potential customers cross the border to Northern Ireland to take advantage of the currency depreciation in the shops there. There is also the risk of a 'hard border' returning with Northern Ireland, which in turn could hit trade.

This has prompted some UK companies to consider relocating to Ireland to guarantee staying in the EU's single market, said Fennell; at the same time some Irish companies are pondering a move the other way, to mitigate the currency risk.

One boost Ireland has enjoyed this year is a significant increase in American tourists, prompted by the strong US dollar and the perception of Ireland as a 'safe haven' from terrorist attack compared to other parts of Europe.

A worry, however, are the various US proposals to cut corporation tax , thus hitting Ireland's current attractiveness as a target for inward investment.

Fennell joined Deloitte in 2014 following the merger of the restructuring boutique he co-founded, Kavanagh Fennell. He is now seeing a very strange dynamic emerging in the Dublin residential market that has gone from oversupply to undersupply in short order. There may be plenty of talk about bankers and lawyers relocating from London post –Brexit, but does Dublin have sufficient housing stock available?

"It's a confused picture, with lots of uncertainty in it," Fennell concluded.

Michael Quinn says Irish restructuring tools are 'very fit for purpose'

Michael Quinn
William Fry

Michael Quinn, head of William Fry's insolvency and corporate recovery department, is confident that the Dublin market is well equipped to compete in the cross-border restructuring market.

"We think Examinership is very fit for purpose," said Quinn, a former President of INSOL Europe.

Closer to the US Chapter 11 than the UK Administration, Quinn praised the Irish process's automatic stay, which he said has proved particularly useful.

Also, the Irish Scheme of Arrangement is almost identical to its UK counterpart, said Quinn, and it was only a matter of time before it began to be used more often for cross-border cases. "A precedent is needed," said Quinn.

One big international case that used an English Administration to anchor an EU-wide Administration was Nortel Networks. Quinn advised the Administrators of Nortel Networks (Ireland) Limited, the Irish arm of the Canada-based global group, which had big operations in Ireland.

He also advised the share receiver of Quinn Group, Waterford Wedgwood Group in its restructuring process, and the receivers appointed by NAMA, Ireland's 'bad bank', to companies in the Treasury Holdings Group.

> Looking ahead, Quinn reckons Dublin is well placed to attract more funds and insurance companies in the post-Brexit environment.

"The players would be familiar with our regulatory rules," Quinn noted.

As for the local insolvency market, corporates continue to benefit from low interest rates, he said. Fundamentally, however, Brexit is not good news for Irish corporates. "It raises lots of big issues for agribusiness, which exports to the UK, for instance."

Kieran Wallace still has work to do at IBRC

Kieran Wallace
KPMG

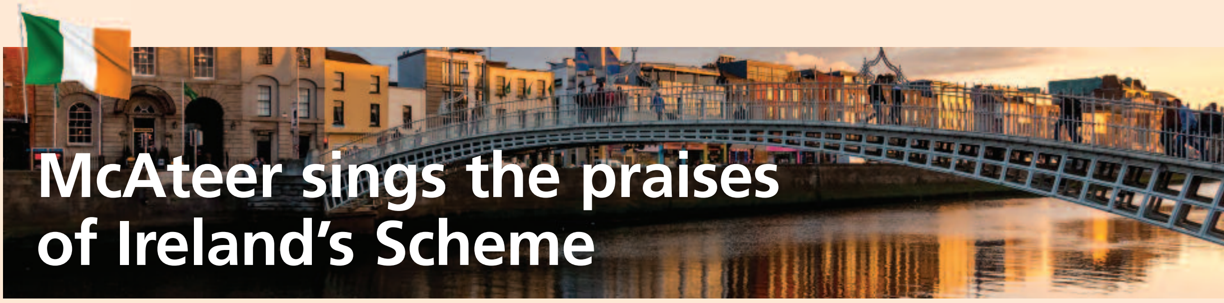
In February 2013 Kieran Wallace, KPMG's head of restructuring in Ireland, and his colleague Eamonn Richardson, were appointed joint liquidators to one of the biggest cases in Irish history: that of IBRC, the former Anglo Irish Bank.

During the boom Anglo indulged in a disproportionate amount of lending for one institution set against the size of the Irish economy. The lending was also overwhelmingly to a small group of property developers.

After the bubble burst, Anglo announced a loss for the 15 months to December 2009 of 12.7 billion euro, the biggest corporate loss in Ireland's history. Since then the Irish Government has pumped in over 30 billion euro in new capital commitments.

Anglo Irish had a loan book totalling just over 100 billion euro in 2008, just after the financial crisis broke. What was left represented a game-changing opportunity for distressed investors in Ireland.

NAMA now faces its own wind down, but the long tail of work from IBRC continues.



McAteer sings the praises of Ireland's Scheme

Michael McAteer
Grant Thornton

American bankruptcy lawyers should feel at home in Dublin when it comes to bankruptcy processes; Ireland's Examinership is based on the US Chapter 11, with some key differences, and cases tend to be debtor-led.

This could be significant in the post-Brexit era, as US-based funds look for alternatives to London to base their loan-to-own and other distressed investing strategies in Europe.

Companies exit Examinership by formulating a Scheme of Arrangement, similar to its UK model, but again different in key respects. One is the lower voting threshold to get Irish Schemes through compared to their English counterparts.

For instance, where the English Scheme requires a majority by number and 75 per cent by value, the Irish equivalent requires a minimum of one class and a simple majority by value in that class.

Michael McAteer, a senior insolvency partner at Grant Thornton and head of Ireland's largest insolvency practice with over 140 staff in Dublin, has just completed a Scheme for an Irish oil exploration company, Petroceltic, which restructured its balance sheet and delivered it to new owners.

McAteer is a big fan of the Irish Scheme. However, he says:

"I just don't understand why it hasn't been used more."

First, a brief warning to our American readers: 'Scheme' in the US traditionally relates to a criminal conspiracy. Confusingly, on this side of the pond, a Scheme of Arrangement has existed under UK company law for over 100 years, as a very flexible mechanism for both solvent and insolvent corporate reorganisations.

Ireland has its own Scheme, but with some important differences. And with Brexit, the differences could become more noticeable. Some lawyers in Dublin are pushing Irish Schemes as a viable tool for international distressed investors.

McAteer was appointed Examiner of Petroceltic in March. He also acted as Examiner to by far Ireland's biggest such case, the national telecom group Eircom in 2012, as well as Aer Arran, a regional airline, two years earlier.

Petroceltic's restructuring has just closed, and illustrates how a distressed corporate can be successfully restructured via Examinership.

So what happened at Petroceltic?

Petroceltic is an oil exploration company listed in Dublin and London with over 9,000 shareholders. It has assets in Algeria, Tunisia, Bulgaria and Italy. Its Ain Tsila oil field project in Algeria, is considered 'the jewel in the crown'.

A Swiss/Cayman hedge fund called Worldview, run by a Bulgarian and former Goldman Sachs banker, Angelo Moskov, first approached Petroceltic with takeover proposals in 2014.

Petroceltic's board rebuffed the approaches, but then the oil price collapsed, changing the landscape. Worldview bought nearly three quarters of Petroceltic's senior debt totalling US$233 million at a deep discount, and also accumulated 29 per cent of the equity. Meanwhile the company failed to get away a 100 million euro share placing, and the share price fell.

The company was forced to seek repeated waivers from its lenders after posting a UK£23 million loss in its half-year results in July 2016 and putting itself up for sale in December.

Petroceltic shares were worth more than 220p in late 2014 as oil prices began to slide. By May 2015 they had almost halved, before falling to 7p as the company suspended trading on 7 March this year.

The company was clearly insolvent, its banks had withdrawn support, and McAteer was appointed Examiner in March following a petition by Worldview as a shareholder. He used a Scheme for a debt/equity swap; the Scheme allowed the company to cram down liabilities, remove guarantees, cram down various 'poison pill' contracts as well as cramming down the bank debt to market levels of 50 per cent. Worldview injected around 100 million euro in new equity and 7.8 million euro in cash.

McAteer sees the Irish Scheme, and Examinership, as complimentary to rather than threatening or replacing English Schemes, as a tool for restructurings.

Much depends on how 'hard' the terms of Brexit are. Political uncertainties need to be sorted out before the legal landscape will become clear. One key question is whether UK Schemes will still be recognised by courts throughout the EU, for instance.

As for the Irish insolvency market, McAteer sees a continuing evolution since the global financial crisis of 2017/8; "First we had the property developers, then the suppliers to the construction industry. Between 2011 to 2015 we saw a lot of retail, which continues. Now we are seeing a lot of buy-to-let owners in difficulties. It's a developing landscape," says the insolvency veteran.

How would Nortel have been treated post-Brexit?

Luke Charleton
EY

As EY's head of restructuring in Ireland, Luke Charleton's team has played a part in both the restructuring of Petroceltic (see above), where his firm represented the banks, and the bankruptcy of Nortel, the global telecoms provider based in Canada, where EY are Administrators of the European operations.

As such, Charleton has strong views about the challenges and opportunities created by the UK's Brexit vote.

In particular, the European side of the global Nortel group was able to anchor a London-based, Europe-wide administration covering 18 jurisdictions, because the UK falls under the EU's European Insolvency Regulation. Apart from France, the filing in London avoided altogether the need for separate, possibly antagonistic filings in different countries. The UK-based process was recognised automatically in all EU states.

It is precisely this kind of neat arrangement that is threatened by Brexit. Charleton acknowledges that we are very far from a final Brexit 'deal', and therefore how UK law would be viewed in EU states. Nevertheless, the worry is there:

"We don't know whether we would be able to provide the same solution," said Charleton. "It all depends on the final deal."

Nortel was an excellent illustration of the myriad complications that can spring up when a truly global group files for insolvency. Stakeholders in Europe, the US and Canada all found themselves competing for a share of the US$7 billion of realisations held in a 'lockbox'; Following eight years of negotiations, mediation and court hearings, only this year are distributions being made. Dublin-based restructuring partner David Hughes led EY's Irish team in this mammoth saga.

Meanwhile, EY were also involved advising the banks to Petroceltic in its restructuring. This featured two secured lenders owed 202 million euro, NBSA Ltd, which is linked to NedBank, and Standard Chartered. Others included HSBC and the International Finance Corporation (IFC).

This was a highly unusual case, said Charleton, in that it featured a non-consensual takeover of a company using Examinership.

Separately, Don Featherstone, a London-based EY partner, advised the Petroceltic board on its transition from old ownership to new.

Looking ahead, Charleton said of the Irish economy:

"The public sector debt is north of 200 billion euro, which is quite frightening. On the other hand, corporates are in very strong health. "

"The banks have been through a very tough time since the global financial crisis. While there are still non-performing loans to clean up, the banks are lending again. There is still work to do on distressed SMEs (small- and medium-sized enterprises) and individuals facing bankruptcy."

As for international restructuring work, Charleton reckons Dublin is an attractive base: "We are an English-speaking, Common Law jurisdiction within the EU; problems we have with infrastructure are fixable. And despite the weather, it's a nice place to live."