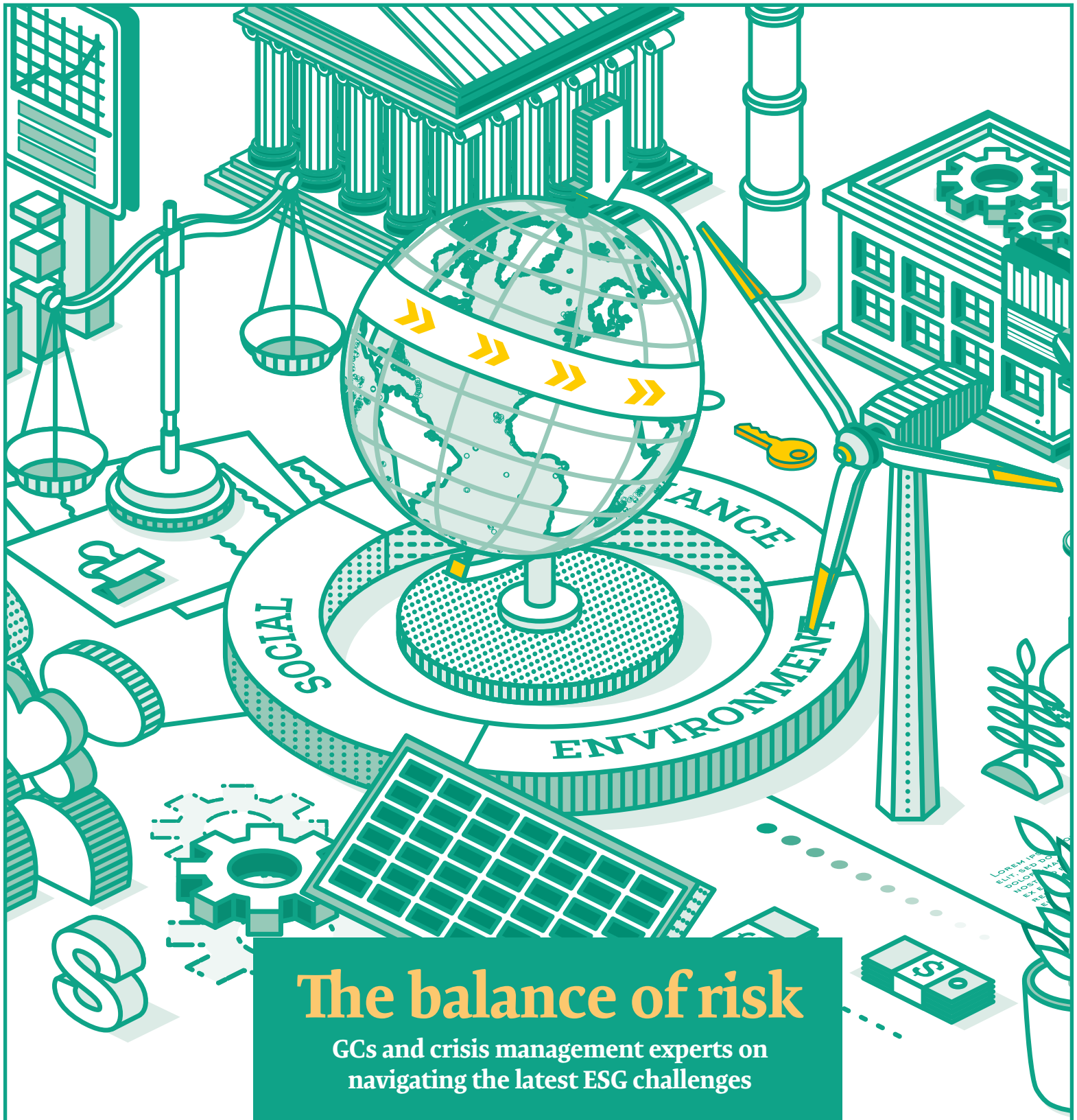


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The balance of risk

GCs and crisis management experts on navigating the latest ESG challenges

Irish insolvency procedures and international restructurings



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Introduction

The Irish restructuring and insolvency regime is well-established and internationally recognised. The underlying principles have been heavily shaped and influenced historically by the common law system and in recent years have been integrated in the EU framework under the Recast Insolvency Regulation, augmented by the provisions of the Rome Regulation and Recast Brussels Regulation. Ireland is generally regarded as having a creditor friendly and flexible restructuring and insolvency framework providing the required degree of certainty for both creditors and debtors.

Irish insolvency procedures

There are a variety of insolvency and restructuring solutions available, the main ones of which are:

- **Liquidation** – an insolvent company can be wound up by the High Court (compulsory liquidation) or by way of a shareholders' resolution followed by a creditors' meeting (creditors' voluntary liquidation).
- **Examinership** – similar in many respects to the Chapter 11 procedure in the United States and, to a lesser extent, administration in the United Kingdom. The procedure's main attraction is that a simple majority of only one impaired class of creditor must vote in favour of the scheme in order for it to be approved by the court.
- **Statutory schemes of arrangement** – although the statutory scheme of arrangement (similar in all material ways to the English scheme of arrangement) is not necessarily an insolvency process, it can be used to facilitate a broad range of possible restructurings and

arrangements between a company and its members or creditors.

- **Receivership** – whilst this is the usual method for enforcing security, restructurings are regularly implemented using a pre-pack receivership process.

International restructurings in Ireland

As one of the most open economies in the world for trade and finance, Ireland has proved in recent years to be a jurisdiction of choice for a number of significant and complex cross-border restructurings, aided by a combination of Brexit and the Covid-19 pandemic.

In *re Ballantyne Re plc* an Irish scheme of arrangement was used to effect the restructuring of the company's reinsurance obligations and US\$1.65bn of senior New York law governed debt. In sanctioning the scheme, the High Court demonstrated a clear willingness to take into account established case law from a number of jurisdictions, including the UK. Following the sanction hearing in Ireland, an application was successfully made to have the Irish scheme recognised under Chapter 15 of the US Bankruptcy Code. The entire process was concluded in a matter of weeks, which is testament to the efficiency of the Irish commercial court process.

The 2019 restructuring of Weatherford International plc, one of the largest oil-field service companies in the world, was the first occasion on which the Irish examinership process was used in parallel with the US Chapter 11 process. Weatherford was an Irish parent company of the US-based Weatherford group with 24,500 employees worldwide and \$8.35bn in debt to be restructured. The examinership dove-tailed with a Chapter 11 bankruptcy in

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the US Bankruptcy Court for the Southern District of Texas and a provisional liquidation in Bermuda. This was one of the most significant global corporate restructuring transactions of 2019 and the largest corporate restructuring to date in Ireland.

Ireland is the global leader in the aviation sector and has played a central role in a number of recent restructurings in this sector. Nordic Aviation Group, one of the world's largest regional aircraft lessors and the world's fifth largest aircraft lessor, used an Irish scheme of arrangement to effect a 12-month standstill and deferral of over US\$5bn of secured and unsecured debt from the group to its creditors. The scheme was implemented using the scheme company as a common guarantor and single point of entry across the complex financings of the group. The Irish scheme was the first part of Nordic Aviation Group's international restructuring, with a US Chapter 11 plan utilised in 2022 to eliminate nearly \$4.1bn of debt, while significantly enhancing the group's liquidity.

In 2020, examinership was used to facilitate the survival of CityJet. The Irish examinership process was also utilised by Norwegian Air to effect one of the most innovative and complex restructurings in Europe. The Irish examinership was the lead process along with a parallel Norwegian reconstruction used to restructure English and US law debt, repudiate English law contracts, reduce the group's fleet and discontinue its long haul operations, and restructure the group's balance sheet by compromising debt of approximately €5bn and raising new capital through share and debt offerings. Orders were sought and obtained recognising an Irish examinership

for the first time under Chapter 15 of the US Bankruptcy Code.

Most recently, the Irish High Court approved a scheme of arrangement in the examinership of Mallinckrodt plc (a pharmaceutical company run in the US with its holding structure based in Dublin, with \$5.3bn in long-term debt arising from lawsuits relating to its marketing of opioids). This scheme gave effect to a wider global restructuring of the group by way of a US Chapter 11 plan, demonstrating the willingness of the Irish courts to recognise US Chapter 11 orders when necessary. This was the second largest examinership in Ireland to date.

Outlook

The general consensus among insolvency practitioners is that Ireland will see an increase in insolvency activity and the uptake of restructuring solutions as we move into the second half of 2022 and into 2023. With government support after the pandemic being phased out and creditor forbearance depleting, the effect of government support being withdrawn cannot be understated¹. The war in Ukraine has resulted in higher energy costs and price inflation combined with continued supply chain issues, as well as upward pressure on interest rates, further contributing to the increased level of uncertainty and pressures for business owners.

Ireland is now the largest remaining English-speaking, common law EU member state and its restructuring and insolvency processes and court structure will be familiar to those accustomed to doing business in the UK. In addition, Ireland

is the only EU country that can avail of section 426 of the UK Insolvency Act 1986, permitting the recognition of Irish insolvency proceedings in the UK through the provision of judicial assistance. As a member of the EU, Ireland can benefit from the fact that it has a similar insolvency and restructuring regime to the UK that is automatically recognised and enforced across the EU.

Examinership is increasingly used as the tool of choice in international restructurings. Ireland presents significant jurisdictional advantages and gaining an understanding of that dynamic at an early stage will reap rewards down the line. ■

Julie Murphy-O'Connor and Kevin Gahan are partners in Matheson LLP. Matheson LLP has played a leading role in all of the international restructurings mentioned in this article.

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Notes

- 1) **PwC restructuring update – Q1 2022 – reporting that liquidations in the United Kingdom are currently running at three times the number of liquidations in Ireland per 10,000 companies since government pandemic support was tapered in Autumn 2021.**