

A directors guide to SCARP

Small Companies Administrative Rescue Process

Eligibility criteria

For a small company, the company generally needs to satisfy at least two of the following criteria:

Criterion	Threshold
Turnover	Not more than €15 million
Balance sheet total	Not more than €7.5 million
Average number of employees	Not more than 50

There are separate statutory criteria for micro companies.

Other eligibility requirements also apply. For example, the company must not already be in liquidation or subject to a winding-up order, and restrictions apply where the company has previously used SCARP or had an examiner or Process Advisor appointed.

Eligibility should therefore be assessed on the individual circumstances of the company rather than solely by reference to its size.

SCARP vs Examinership

SCARP and examinership are both corporate rescue mechanisms, but they are designed for different circumstances.

	SCARP	Examinership
Target	Small and micro companies	Broader range of companies
Objective	Rescue a viable business	Rescue a viable business
Process	More streamlined	Court-supervised
Court involvement	Generally limited, but may arise	Central to the process
Process Advisor / Examiner	Process Advisor	Examiner
Cost and complexity	Generally lower	Generally higher
Time pressure	Significant	Significant

The appropriate process depends on the company's size, financial position, creditor profile, funding requirements and prospects for survival.

SCARP is not automatically the right solution simply because a company qualifies.

The SCARP process in detail

1. Initial assessment

The first step is to understand the company's financial position and determine whether there is a realistic prospect of survival.

This involves reviewing matters such as:

- Current and projected cash flow
- Management accounts and financial information
- Assets and liabilities
- Creditor exposure
- Revenue and other tax liabilities
- Banking and security arrangements
- Employee costs
- Property and lease commitments
- The underlying profitability of the business
- Funding requirements
- The prospects for the business following restructuring

A SCARP should not be commenced simply because a company has debts. There must be a credible underlying business capable of survival.

2. Appointment of a Process Advisor

The directors appoint a suitably qualified insolvency practitioner to act as Process Advisor.

The Process Advisor independently considers the company's financial position and whether there is a reasonable prospect of survival.

The Process Advisor will also consider whether SCARP is an appropriate mechanism for achieving that survival.

3. Development of a Rescue Plan

Where SCARP is considered appropriate, the Process Advisor works with the company and its stakeholders to develop a Rescue Plan.

Depending on the circumstances, the plan may involve:

- Restructuring or compromising unsecured liabilities
- Repayment arrangements with creditors
- New investment or working capital
- Changes to the company's cost base
- Restructuring of operations
- Dealing with lease or other contractual obligations
- Contributions from shareholders or directors
- Other measures required to return the company to financial viability

The proposed outcome must provide creditors with an appropriate return and demonstrate that the company has a reasonable prospect of survival.

4. Appointment of a Process Advisor

Creditors are given information about the proposed Rescue Plan and have an opportunity to consider and vote on it.

The statutory approval requirements must be satisfied for the Rescue Plan to become binding.

Where objections arise, court involvement may be required.

5. Development of a Rescue Plan

Once approved and confirmed as required, the Rescue Plan becomes binding in accordance with the legislation.

The company can then continue trading while implementing the agreed restructuring.

Revenue debt

Revenue liabilities can be particularly important in a restructuring.

Revenue debt is treated as Excludable Debt for SCARP purposes. Revenue may therefore elect to opt out of the Rescue Plan in certain circumstances.

This makes early engagement and careful consideration of the company's tax position particularly important.

The Process Advisor must engage with Revenue as part of the SCARP process, and the company's tax compliance and ongoing ability to meet current tax obligations will be relevant to the restructuring.



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