

CHAPTER 2 Appointment of examiner

Power of court to appoint examiner

509. (1) Subject to subsection (2), where it appears to the court that—

- (a) a company is, or is likely to be, unable to pay its debts,
- (b) no resolution subsists for the winding up of the company, and
- (c) no order has been made for the winding up of the company,

the court may, on application by petition presented, appoint an examiner to the company for the purpose of examining the state of the company's affairs and performing such functions in relation to the company as may be conferred by or under this Part.

(2) The court shall not make an order under this section unless it is satisfied that there is a reasonable prospect of the survival of the company and the whole or any part of its undertaking as a going concern.

(3) For the purposes of this section, a company is unable to pay its debts if—

- (a) it is unable to pay its debts as they fall due,
- (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
- (c) the circumstances set out in section 570 (a), (b) or (c) are applicable to the company.

(4) In deciding whether to make an order under this section, the court may also have regard to whether the company has sought from its creditors significant extensions of time for the payment of its debts, from which it could reasonably be inferred that the company was likely to be unable to pay its debts.

(5) The court shall not make an order under this section unless—

- (a) the court is satisfied that the company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency or a NAMA group entity, or
- (b) if the company has any such obligation—
 - (i) a copy of the petition has been served on that Agency, and
 - (ii) the court has heard that Agency in relation to the making of the order.

(6) In subsection (5) “bank asset” and “NAMA group entity” have the same respective meanings as in the National Asset Management Agency Act 2009 .

(7) In this section “court” means—

(a) in the case of any company (including one referred to in paragraph (b)), the High Court; or

(b) in the case of a company that, in respect of the latest financial year of the company that has ended prior to the date of the presentation of the petition, fell to be treated as a small company by virtue of section 350, the Circuit Court,

and—

(i) subject to subsection (9), all subsequent references to the court in this Part shall, as respects the powers and jurisdiction of the court with respect to an examinership on foot of an appointment made under this section by the Circuit Court, be read accordingly; and

(ii) the jurisdiction under section 512 (7) to appoint an examiner on an interim basis, and the jurisdiction to do the things referred to in section 513, are likewise available to the Circuit Court in the case of a company specified in paragraph (b).

(8) For the purpose of paragraph (b) of subsection (7), if the latest financial year of the company concerned ended within 3 months prior to the date of the presentation of the petition, the reference in that paragraph to the latest financial year of the company shall be read as a reference to the financial year of the company that preceded its latest financial year (but that reference shall only be so read if that preceding financial year ended no more than 15 months prior to the date of the presentation of the petition).

(9) Subsection (7) does not confer on the Circuit Court any jurisdiction that is provided under this Part to hear a petition for the winding up of, or to wind up, a company.

(10) The jurisdiction of the Circuit Court under this Part in relation to a company shall be exercisable by the judge of the Circuit Court—

(a) for the circuit in which the registered office of the company is situated at the time of the presentation of the petition or in which it has, at that time, its principal place of business, or

(b) if, at that time, there is no registered office of the company and its principal place of business is outside the State, for the Dublin Circuit.

(11) On the making of an order appointing an examiner to a company, the proper officer of the Central Office of the High Court or, as the case may be, the county registrar shall, on request and payment of the prescribed fee and subject to any conditions that may be specified in rules of court, give to the examiner concerned—

(a) a copy of the order, certified by the officer to be a true copy, and

(b) any other prescribed particulars.