

- [European Industrial Relations Dictionary](#)
- [EurWORK publications](#)
- [Working life country profiles](#)
- [Case studies](#)
 - [Attractive workplace for all](#)
 - [Ageing workforce](#)
 - [Workers with care responsibilities](#)
- [Database of wages, working time and collective disputes](#)
 - [Dispute resolution](#)
- [News](#)
- [Events](#)

The tripartite EU agency providing knowledge to assist in the development of better social, employment and work-related policies

You are here

- [Home](#)
- [Observatories](#)
- [EMCC](#)
- [ERM](#)
- [Restructuring in SMEs](#)
- [Jo'Burger, Ireland](#)

Jo'Burger, Ireland

- Type of restructuring:
(Avoiding) bankruptcy, Internal restructuring
- Employees before restructuring:
10-49
- Employees after restructuring:
50-249
- Nace/Sector:
Hotel / restaurants
- Country:
Ireland
- Date:
27/04/2012

Abstract

Irish firm Jo'Burger faced financial difficulties due to loans given to other companies of the same owners/managers that could not be repaid. The insolvent company went through examinership, a formal process to restructure the firm. In this process, the company found a new investor and reached an agreement with creditors to write off some of the debts. All existing jobs were retained and, about two to three years later, the company had opened additional branches resulting in considerable employment growth.

Organisational profile

The Macken family incorporated Jo'Burger Ltd as a private limited company in 2006 to set up and run the Jo'Burger restaurant in Rathmines, a suburb of Dublin. Husband and wife Kevin and Vonie Macken had previously and successfully operated a hotel in a small village near Dublin that they sold in 2000. While on a visit to London, Kevin and his son Joe became aware of the growing trend towards gourmet burger restaurants and decided to set one up in Dublin.

All three Mackens became directors of the company although only Kevin and Joe were actively involved in the running of the business. The company started trading in 2007 and proved to be immediately popular, with its innovative menu comprising of a range of South African-themed gourmet burgers, named after districts in Johannesburg. The restaurant won numerous awards including *The Dubliner* magazine People's Choice Restaurant of the Year 2008.

Jo'Burger, in addition to its reputation as a provider of good quality food at economical prices, also made effective use of social media (Facebook and Twitter) to promote its offerings.

In 2008, the Mackens set up another company, Blackrock JJB Ltd, to open and run a second Jo'Burger restaurant in Blackrock, another suburb

of Dublin. Blackrock JJB which had 20 employees was completely separate from Jo'Burger Ltd even though it had the same directors.

Prior to setting up Jo'Burger, the Mackens had in 2003 incorporated another company, Orange Square Ltd, which operated gourmet sandwiches take-away shops at two separate locations in Dublin city centre and which employed 10 people.

At the time of the restructuring, Jo'Burger Ltd was trading profitably and had 15 employees. The employees in Jo'Burger were mostly young, were both male and female and were not members of any trade union. Given the active involvement of Kevin and Joe Macken in the running of Jo'Burger and the fact that a number of them had other family relations (brothers, sisters) working in the restaurant, the employees had a real sense that this was a 'family' business.

As Jo'Burger was a new and small company it did not have any formal HR policies; nor did it have a works council.

Background to restructuring event

Jo'Burger Ltd got into financial trouble during the period 2008–2009 arising from loans worth €500,000 it had given to two other firms set up by the Mackens, Orange Square Ltd and Blackrock JJB Ltd.

The attempt to set up the second branch of Jo'Burger in Blackrock, under the Blackrock JJB banner, was not successful. The building that Blackrock JJB rented was too large to create the intimate atmosphere that made the Rathmines restaurant successful and, secondly, it was not in a good location to attract sufficient passing traffic.

Additionally, there were question marks over the long-term commercial viability of the two gourmet sandwich shops that Orange Square operated. The difficulties with Orange Square have been attributed to a combination of an invalid marketing strategy (a wrong product and target market), and planning issues, which had a negative impact on cash flow.

The cash requirements of both Blackrock JJB and Orange Square placed a heavy financial burden on the Mackens who were in danger of losing their life savings. Even though Jo'Burger in Rathmines was profitable, it was not earning enough to stem the losses arising from their other two companies. As Blackrock JJB and Orange Square were unable to repay the loans that Jo'Burger had made to them, Jo'Burger itself was having difficulties in paying its own creditors.

As the Mackens operated a lean and flat organisational structure – Kevin and Joe Macken were effectively the management team for all three companies – the difficulties in Blackrock JJB and Orange Square absorbed an enormous amount of their time.

Technically, the Mackens should have set up a holding company to link the three companies, Jo'Burger, Orange Square and Blackrock JJB, as a formal group. The provision of loans by Jo'Burger to the other two companies without a formal holding company structure being put in place meant that it unintentionally breached Section 31 of the Companies Act. (Section 31 of the Companies Act 1990 prohibits companies from entering into certain types of transactions, which would otherwise be lawful, for the benefit of a director or a party connected with a director. It seeks, among other things, to prevent a company giving a loan to another company that is owned or connected with a director of the company.)

An independent review of their businesses in 2009 indicated that there was little chance of recovering much of the money that Jo'Burger Ltd had lent to Blackrock JJB and Orange Square. It also showed that Jo'Burger owed approximately €250,000 in Value Added Tax, PAYE (income tax deduction) and PRSI (social insurance) to the Revenue Commissioners, the Irish tax authorities, and €100,000 to trade creditors.

Restructuring processes

Aware that the financial difficulties of Blackrock JJB and Orange Square were putting a huge pressure on their one profitable company in terms of paying its creditors, the Mackens sought to explore all the options available to them. They sought the advice of an accountant who had been recommended to them. Then, through a trade contact, Joe Macken became aware of a legal process, examinership, which potentially could be used to save Jo'Burger.

Examinership, which has parallels with Chapter 11 of the US Bankruptcy Code, is a formal corporate recovery process designed to save fundamentally good companies and the jobs they provide. Essentially, an insolvent company that goes into examinership is protected by the High Court for up to 100 days as it attempts to restructure its cost base, renegotiate or exit from onerous leases and put in place a scheme of arrangement with its creditors.

The examinership process is managed by an outside party known as the examiner, who is usually a practising accountant. Entering examinership is, for example, the only way in Irish law outside of receivership or liquidation that a company can, for example, hand back an onerous leasehold interest to a landlord. The appointment of an examiner is an option available to insolvent companies in Ireland since 1990.

The High Court has to be satisfied that in providing protection to a company it has a reasonable prospect of being successfully restructured. Another important aspect of the process is that the examiner will seek to attract new investment into the company. In September 2009, the directors of Jo'Burger Ltd petitioned the High Court for the appointment of an examiner to the company as a result of demands from the Revenue Commissioners and trade creditors for the money owed to them. Because it was unable to pay its debts, Jo'Burger was insolvent. Jo'Burger's creditors could seek to liquidate the company in order to recover the money owed to them, so the examinership process was an option available to

the directors to gain time to see if new investment could be obtained and/or a write-down of the company's debts could be agreed to save its survival.

In their application to enter the examinership process, the directors of Jo'Burger informed the High Court that the company would cease to trade in the absence of the protection of the court. The High Court was also told that Jo'Burger had an excess of liabilities over assets of €677,000 and it was estimated that if it was liquidated, there would be a total deficit of approximately €770,000 owed to creditors.

Jo'Burger's legal counsel told the High Court that an independent accountant's report commissioned by the company had indicated it had a reasonable prospect of survival if a scheme of arrangement – including additional investment and a write-down of its debts – could be put in place.

The judge agreed that Jo'Burger Ltd had a reasonable prospect of survival and had only got into difficulties arising from the loans it had provided to Blackrock JJB and Orange Square. He appointed Neil Hughes as examiner of Jo'Burger in order to determine its potential for survival.

The examinership gave Jo'Burger a 100-day breathing space that allowed Mr Hughes to explore all options for its future survival. He issued an information memorandum to attract new investors into the company so as to make it viable again. He also sought the agreement of creditors to write down some of the debt owned by Jo'Burger.

The Jo'Burger restaurant continued to trade in Rathmines during the examinership process. Kevin and Joe Macken provided information to their staff on examinership and told them that it was very likely that the restaurant would continue to trade following the examinership process because it was profitable and had a viable future. The Mackens told them that they should continue working normally but emphasised the need to maintain a high level of customer service in order to retain the restaurant's customer base.

The employees in Jo'Burger were aware of the difficulties that the Mackens were experiencing and knew that the expansion to Blackrock had not been successful. Other clues gleaned by staff were demands from suppliers to be paid in cash.

Although the decision to place Jo'Burger in examinership was covered in the national and social media and the restaurant had to close for one day (to facilitate a stock take so that a financial statement of affairs could be produced for the court), Jo'Burger continued to be as busy as ever. This to some extent meant that the employees in Jo'Burger were shielded from the activities associated with the examinership process. Given the family atmosphere and the close communications that existed in the restaurant, they had, however, concerns both for their own jobs and for the Mackens.

The examinership process allowed Mr Hughes to:

- secure new investment for Jo'Burger (he had decided to accept the offer from John Roberts, one of 10 potential investors that had expressed an interest in investing in the company);
- reach agreement with its creditors for a write-down of the debts that it owed them (the company's unsecured creditors agreed to a reduction of 90% of what had been due to them and the Revenue Commissioners agreed to an 80% write-down)

The new investor, Mr Roberts, agreed to put money into the company and to join the management team. He also became the majority shareholder in Jo'Burger Ltd.

The examiner presented these proposals for the survival of Jo'Burger – the new investment and the debt write-down – to the High Court in December 2009. The High Court approved these and Jo'Burger was able to emerge from the restructuring process with the jobs of all 15 employees intact.

Challenges and constraints of restructuring

The examinership process was an especially difficult and traumatic time for the Mackens (Joe Macken says it was like 'a death in the family'). While the Mackens were convinced that Jo'Burger as a restaurant would survive the restructuring process, there was no guarantee that they would have a future role in the business (a new investor could say, for example, that they did not want the Mackens to have any future involvement in Jo'Burger). They were worried that in addition to losing their livelihood they would also lose the significant amounts of their own money they had invested in Jo'Burger, Orange Square and Blackrock JJB.

On the first day of the examinership process, September 9th, 2009 ('9-9-9' as Joe Macken labels it), the Mackens in addition to informing their employees also had to personally visit all of their suppliers – some of whom were located outside Dublin – to explain the examinership decision, and to seek their continued support. The Mackens had to persuade their suppliers to continue supplying Jo'Burger even though they might be nervous doing so given that there was a lot of uncertainty about the company's long-term survival. Trade creditors would also have been worried that they might not get paid for the goods they had already supplied (as noted above, trade creditors agreed to a payment by Jo'Burger of 10 cents for every euro it owed them).

Later on in the examinership process, the Mackens had to respond to the many queries submitted about their business by the 10 or so interested parties who had submitted bids to invest in Jo'Burger in response to the information memorandum issued by the examiner. As the examinership process was managed by the examiner, Mr Hughes, the Mackens had no direct input into the evaluation of the bids received or into the negotiations with creditors.

Asked about the events leading up to the restructuring process, Joe Macken had this to say in an interview with *The Irish Times* in 2012:

'We got it wrong, and we went through examinership and there was a lot of pain involved for us and [for our] suppliers. My business partner, John Roberts, came on board and it gave us a new release and we kept most of our suppliers. The banks, who used to hate us, like us now. We spend all the money internally on our businesses. None of us have flash cars or houses. I go around on a bicycle — the rented ones.'

Restructuring advice and support Kevin and Joe Macken were acutely aware of the seriousness of their financial situation during the period 2008–2009. They knew that there was a danger that even though Jo'Burger was trading profitably it could be pulled down by the losses in their other companies, particularly Blackrock JJB.

The Mackens sought advice from the accountants who prepared the accounts for Jo'Burger but their regular advisor was not available. They were then given the name of another accountant who they understood had experience of helping companies that had gotten into financial difficulties.

The Mackens' experience with this accountant was not a happy one. The advice he gave them was not helpful (he recommended that they liquidate the company) and to compound matters he sought a large fee for his services.

Through his connections in the hospitality trade, Joe Macken became aware of the plight of the company running a well-known Dublin restaurant which was under the protection of the courts. His visit to the owners – who were ultimately unsuccessful in their examinership – gave Mr Macken the impetus to find out more about the examinership process.

He then made contact with Mr Hughes of the accountancy firm Hughes Blake, an acknowledged expert on examinership. He invited Mr Hughes to a meal in Jo'Burger and when he had reviewed the restaurant's situation, he told Mr Macken that examinership would be a good option for the company.

The new investor in Jo'Burger and its chief executive, John Roberts, said this about the examinership process:

'We are more than happy to be discussed as a case study to support the advantages of examinership. It is an enlightened piece of legislation, which few people understand.'

Outcomes of restructuring

Over the course of the 100-day protection process, Mr Roberts agreed to invest over €100,000 in the company. He became the majority shareholder in Jo'Burger and also agreed to provide loans to the company. Mr Roberts became a director of Jo'Burger and replaced Joe Macken as secretary of the company. He acts as the financial manager of the company.

After the scheme was approved by the High Court Jo'Burger Ltd began 2010 with all 15 jobs intact (there were no redundancies and no employee left the company) and all historic creditors fully discharged through the scheme of arrangement.

Both of the Mackens' other two companies, Orange Square and Blackrock JJB, which had not been part of the examinership process were liquidated with the loss of 30 jobs.

Jo'Burger Ltd continues to operate its gourmet burger restaurant in Rathmines and has since set up three new restaurants, Crackbird, Skinflint and Bear. Employment in the company has grown to 95 people and there are plans to increase this to 140. The employees in Jo'Burger have not only been able to retain their jobs but the growth of the company has allowed them to achieve supervisory/management positions (one interviewee joined Jo'Burger as a waitress and is now a supervisor in one of the company's new restaurants).

The employees believe the examinership process has benefited Jo'Burger by bringing in not only the additional financial investment but also the skills and experience of Mr Roberts. The employees see Mr Roberts's skill sets in management, marketing and finance as being a complement to Joe Macken's creative vision and energy. They feel that the business now operates on a more structured basis and are more confident about the future of Jo'Burger.

Commentary

Jo'Burger is a good example of a small company that was profitable and has been saved from liquidation and the loss of 15 employees because of losses sustained by other enterprises owned by the owners of the company. Jo'Burger was able to enter examinership, a court-supervised corporate recovery process, under which it received the protection of the courts for up to 100 days that gave it the breathing space to explore all opportunities for its survival.

The examinership process proved successful for Jo'Burger. Not only was it able to survive but it actually increased its employment from 15 employees in 2009 to 95 employees in 2012 (with an additional 45 jobs planned for the middle of 2012). Jo'Burger, in addition to its original

gourmet burger restaurant in Rathmines, now also runs three other restaurants in Dublin's city centre.

The new investor, John Roberts, inject capital and loans into Jo'Burger, he also brought a number of key skills to the company which complement Joe Macken's creative skills. John Roberts recognised that Jo'Burger had a good market offering which could be scaled, and this has led to the development of other restaurants based on the successful Jo'Burger template of offering innovative food at good value prices.

Jo'Burger's employees say that John Roberts has brought an element of structure and stability to the company. The financial input that John Roberts made in Jo'Burger was, however, the critical factor as a number of examinerships in relation to other companies had failed because they had not been able to secure additional investors.

Mr Roberts makes the point that external parties considering an investment in a small company to enable it to restructure may face additional risks compared with investing in a larger company. Smaller companies may lack detailed financial data to allow potential external investors to make an in-depth analysis of their commercial viability and the potential returns from investing in a small company may not be enough to justify the cost of undertaking a due diligence investigation.

Additionally, their management structures and processes may be weak. Mr Roberts also makes the observation that the dynamics of family-run SMEs present their own particular challenges to external investors. He recognised early on in the examinership process that the Mackens were the heart and soul of Jo'Burger and were vital to the business.

Mr Roberts says that ultimately it was because Jo'Burger had both a good product and had scalability potential that allowed it to successfully emerge from its restructuring. It was fortuitous that Joe Macken through his industry contacts was able to discover and learn more about examinership. At the time, examinership was a little known and even less understood legal process. The recession has raised the profile of examinership and the numbers of companies applying for the process have increased.

Mr Macken was equally fortuitous that he made contact with Mr Hughes, an expert on examinership, as his initial contact with a different professional adviser had led him to believe that examinership was not an option for Jo'Burger.

Author

Tom Martin, Tom Martin & Associates/TMA, Ireland.

Information sources

Interviews

John Roberts and Joe Macken, directors and shareholders in Jo'Burger Ltd

Simone Cullen, an employee of Jo'Burger Ltd

Company address

Jo'Burger Ltd

137 Rathmines road

Rathmines

Dublin 6

Secondary sources

'The Young Bloods: Joe Macken', *The Phoenix*, April 6, 2012.

'Muscling in on the meat game,' *Irish Times*, Saturday, February 4, 2012.

The Examinership website (www.examinership.ie) published by Hughes Blake, Chartered Accountants, promotes awareness of the court-supervised corporate recovery examinership process.

- [European Monitoring Centre on Change - EMCC](#)
 - [About EMCC](#)
 - [European Restructuring Monitor](#)
 - [About the European Restructuring Monitor](#)
 - [Restructuring events database](#)

- [Restructuring support instruments](#)
- [Restructuring related legislation](#)
- [Restructuring case studies](#)
- [ERM publications](#)
- [European Jobs Monitor](#)
- [Labour market research](#)
- [Case studies](#)
- [Future of Manufacturing in Europe \(FOME\)](#)
- [European Observatory on Quality of Life - EurLIFE](#)
- [European Observatory of Working Life - EurWORK](#)

Quick links

- [Legal information](#)
- [Data protection](#)
- [Environmental policy](#)
- [Cookies](#)
- [Subscriptions](#)
- [Multilingualism](#)
- [Templates for Eurofound reports](#)
- [Eurofound style guide](#)
- [Management Board extranet](#)
- [Map - how to get to Eurofound](#)
- [FAQ](#)
- [Sitemap](#)

Social media

- [Find us on Facebook](#)
- [Follow us on Twitter](#)
- [Follow us on LinkedIn](#)
- [Subscribe to our YouTube Channel](#)
- [Subscribe to our RSS feeds](#)

Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



[MEMBER OF THE NETWORK OF EU AGENCIES](#)



[EUROFOUND ACHIEVES EMAS REGISTRATION](#)



Eurofound is an agency of the European Union

- [Access to internal documents](#)
- [Financial information](#)
- [Archives](#)
- [Information centre](#)
- [RSS feeds](#)

[Top](#)