

RESTRUCTURING & INSOLVENCY  
AND CORPORATE

## Examinership of Mallinckrodt plc – *The key points*

On 27 April 2022, the Irish High Court approved the Examiner's scheme of arrangement in the Examinership of Mallinckrodt plc.

The Examiner's scheme gives effect to a wider restructuring by way of a US Chapter 11 Plan of Mallinckrodt plc and its subsidiaries.

6 MIN READ

On 27 April 2022, the Irish High Court approved the Examiner's scheme of arrangement in the Examinership of Mallinckrodt plc. The Examiner's scheme gives effect to a wider restructuring by way of a US Chapter 11 Plan of Mallinckrodt plc and its subsidiaries.

**The restructuring included:**

- an overall reduction of group debt by USD\$1.32bn
- the establishment of a number of opioid trusts to be funded by USD\$1.725bn in cash and additional non-cash consideration to address all opioid related litigation and claims against the group
- a settlement of all state and federal Acthar Gel-related litigation
- the establishment of a general unsecured claims trust to address certain other unsecured creditor claims
- in respect of the guaranteed unsecured notes claims, a debt-for-equity swap with 100% of the ordinary shares in Mallinckrodt plc being allotted to those claimants.

ALG's Restructuring & Insolvency Group and the Corporate Department advised the Examiner (Michael McAteer of Grant Thornton) in this complex and material US-Irish cross-border restructuring. These are the key points arising from the Examinership:

**1. Chapter 11 and Examinership working in tandem**

As part of the US Plan, it was proposed that the existing shares in Mallinckrodt plc would be cancelled with a reissuance of new ordinary shares in favour of the group's guaranteed unsecured noteholders. A new constitution of Mallinckrodt plc was needed to give effect to this. To ensure that these steps were given effect under Irish law, a local process was required in respect of Mallinckrodt plc.

As also demonstrated in the Examinership of Weatherford International plc in early 2020, where the Irish rescue process was required to give effect to a US Plan, stakeholders can take comfort from the fact that Examinership is increasingly considered a process which delivers a predictable and swift outcome; it will not cut across what has been agreed as part of a US Plan; and, in the context of the process being a key limb of a long-running international restructuring, it is reasonable from a costs perspective.

**2. Speed of process**

If a parallel Examinership process is required as part of cross-border restructuring, there

can be confidence that the process can be completed quickly. In the Mallinckrodt Examinership, the period between appointment of the Examiner and the Confirmation Hearing was just 71 days.

The Court was fully cognisant of the need for a prompt process and the fact that any delay in the confirmation of the Examiner's scheme would delay the consummation of the US Plan, thereby postponing the delivery of financial assistance to the various trusts established as part of the US Plan. The Court's approach follows the pragmatic approach taken in other recent cross-border restructurings where the Court was urged to facilitate accelerated timelines.<sup>1</sup>

**Mallinckrodt Examinership timeline:**

- **14 February 2022:** Petition presented and interim appointment of Examiner
- **28 February 2022:** Petition Hearing
- **4 April 2022:** Meetings of creditors and members
- **26 April 2022:** Confirmation Hearing
- **16 June 2022:** Simultaneous effective date of Examinership and Chapter 11

<sup>1</sup> In three recent schemes of arrangement under Part 9 of the Irish Companies Act 2014 (*Re Ballantyne Re plc* ([2019] IEHC 407), *Nordic Aviation Capital DAC* ([2020] IEHC 445) and *Re Celtic Roads (Waterford) DAC* (unreported)), the period between the initial Convening Hearing and ultimate Sanction Hearing was just 37 days, 42 days and 23 days, respectively.

### 3. Flexible effective date

The US Plan had a number of conditions precedent to its effective date, one of which being the confirmation of the Examiner's scheme before the Irish High Court. It was also a condition that the Examiner's scheme would become effective concurrently with the US Plan.

The implementation of the US Plan was multi-faceted. Appreciating the challenges associated with anticipating a specific date on which the completion of all conditions precedent could be synchronised, the Irish High Court was flexible in allowing an effective date for the Examiner's scheme that tracks the effective date of the US Plan.

### 4. Examinership not a rubber-stamp

One of the key tests applied by the court in assessing whether to confirm an examiner's scheme is whether the scheme is unfairly prejudicial to the interests of any interested party. While there was no formal objection to the Examiner's scheme in the Mallinckrodt Examinership, two creditors made joint submissions challenging the fairness of the Examiner's scheme at the Confirmation Hearing.

Those submissions noted that the Examiner's scheme was silent as to the treatment of creditors except by reference to creditors' treatment in the US Plan. It was argued that the Irish High Court should satisfy itself that the US Plan itself is not unfairly prejudicial to any interested party as a matter of Irish law, and that the Irish High Court should not simply rubber stamp the decision of the US Bankruptcy Court to confirm the US Plan.

In his judgment, Justice Quinn agreed with the general principle that, in examinerships like this, it is not appropriate for the Court to simply apply a rubber stamp approach. He also accepted that the Examiner's scheme was unusual in circumstances where all of the provisions for the treatment of creditors are contained in the Examiner's scheme only by reference to the US Plan.

However, in deciding that the Examiner's scheme was not unfairly prejudicial, the Irish High Court noted that, in the 16-day hearing before the Delaware Bankruptcy Court, extensive evidence was examined by the US Court as to the fairness of the US Plan. Justice Quinn was satisfied that he could take into account the rigorous analysis of the evidence presented by Mallinckrodt in the US, and the application by the US Court of a fairness test that had many similarities to the corresponding test under Irish law.

For further information in relation to this topic please contact [David Baxter](#), [Stephen Ahern](#), [Alan Casey](#), [Edel Daly](#) or any member of ALG's [Restructuring and Insolvency](#) or [Corporate](#) teams.

## Key contacts



**David Baxter**  
*Partner and Head of  
Restructuring and Insolvency*  
+353 1 649 2514  
dbaxter@algoodbody.com



**Stephen Ahern**  
*Senior Associate,  
Restructuring & Insolvency*  
+353 1 649 2310  
sahern@algoodbody.com



**Alan Casey**  
*Partner and Head of  
Corporate and M&A*  
+353 1 649 4495  
acasey@algoodbody.com



**Edel Daly**  
*Solicitor, Corporate  
and M&A*  
+353 1 649 2882  
edaly@algoodbody.com