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## Hughes Blake

A COMMERCIAL REPORT

# Rescuing businesses about to go under

With company failure rates again on the rise, demand is growing for corporate rescue expertise

**N**OW THAT the economy is officially in recession – according to the latest ESRI report – it should come as little surprise that the rate of corporate failure is on the increase.

A combination of the credit crunch, rising costs and falling consumer spending has put businesses under pressure – and driven many into insolvency.

"It takes six to 12 months for companies to start feeling the pinch of a downturn," says Neil Hughes, managing partner of accountancy practice and corporate rescue specialist, Hughes Blake. "If the current downturn started in the middle of 2007, then companies are really hurting now as a result of it."

This delay is because companies usually have reserves to trade on, but when a downturn is sustained, the reserves begin to run out and the company gets into trouble.

Hughes sees a number of sectors as particularly vulnerable. "If a company is involved in construction, the licensed trade or any area that's dependent on disposable income, then it is potentially in difficulty," he says.

"People become more cautious with their spending during a downturn. They will put food on the table and pay for necessities, but they will cut back on discretionary spending, on which a huge amount

of our economy depends."

According to Hughes, much of this fall in discretionary spending is not due to an actual fall in income or available money.

"There is a ripple effect across the whole economy from this fall in consumer spending, and it is down to confidence," he explains. "A lot of confidence has been lost because of stories which have talked down the economy. But we have to look at the psychology."

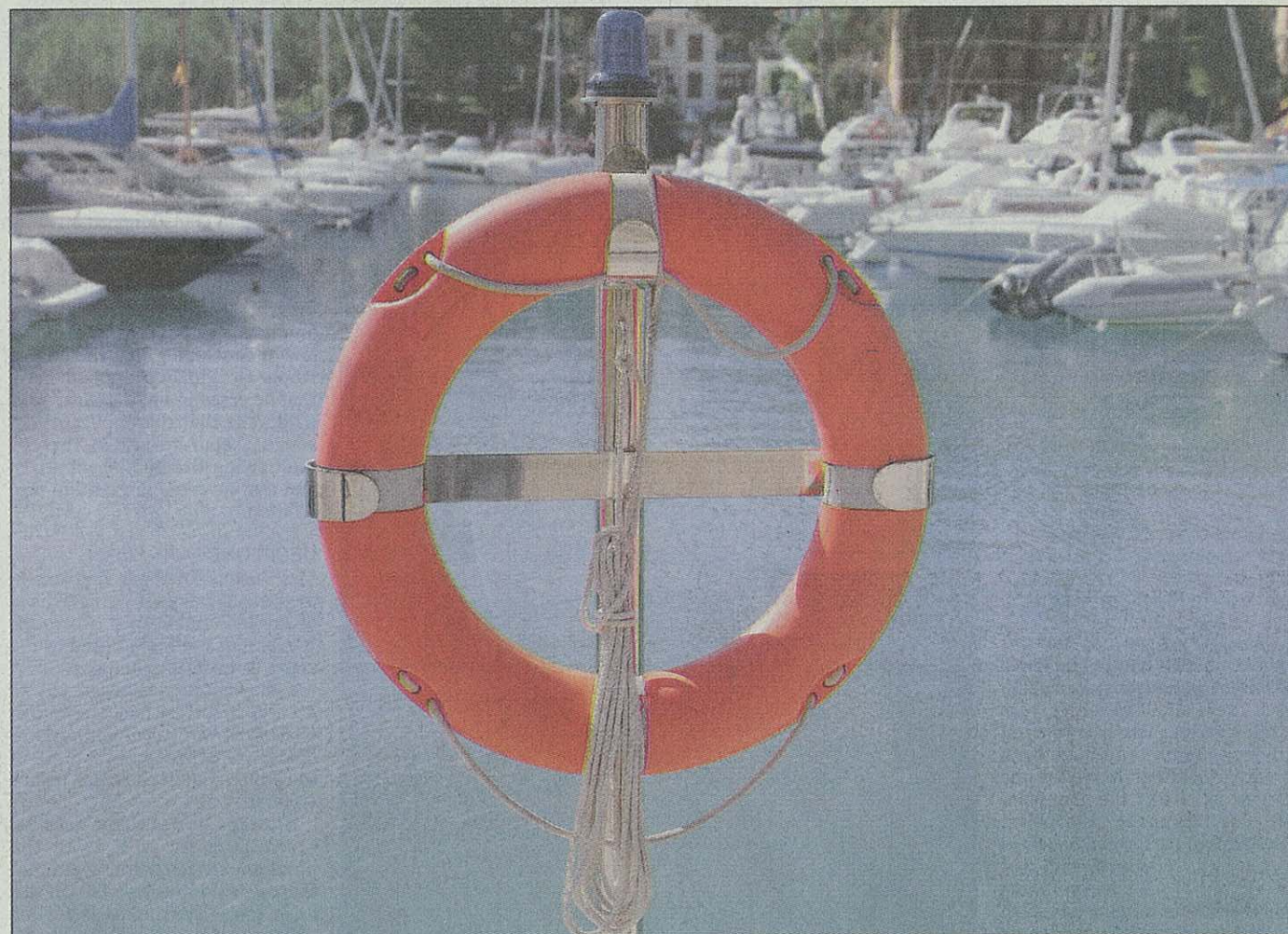
"Not so long ago, there was an announcement of 250 new high-tech jobs being created at SAP, Solaris and IBM, and it was only reported as the eighth story on the main evening news," Hughes says. "There was a time when that would have been the lead item. We seem to be overly interested in negative stories at the moment."

### Turning it around What to do if your business is in trouble

WHEN A company runs into difficulties, there are a number of turnaround options available. The first is to trade through the problems, but this is really only open to businesses that have seen problems in time, taken the right advice and the necessary remedial actions, which may have involved cost-cutting, selling parts of the business and so on. The second option is to approach

the creditors seeking their voluntary agreement to a scheme of arrangement for them to be paid less than they are owed. This would give the company the breathing space it needs to put things right for the future. But the difficulty is that many creditors may be sceptical of the company's ability to survive, long term, and may be unwilling to

participate in such an arrangement. The third option is examinership. This gives a company protection from its creditors for up to four months while a High Court-appointed examiner seeks to put in place a scheme of arrangement which will ensure the survival of the company into the future. This scheme of arrangement will



'Ireland is completely different from the US – they aren't afraid to tell people about their problems and seek help.' Photograph: iStockphoto

He also believes that some companies are actually victims of the boom. "You have to remember that we had 10 years of growth, averaging between 8 per cent and 9 per cent, up until 2005, and we've had 4 per cent to 5 per cent since then," he says.

"There are a lot of companies out there that are not used to dealing with tight conditions. They can't do it, because they've never had to before."

This is where the trouble can really start. "When people come

up against situations they haven't experienced before, they need to take advice," Hughes notes. "But there seems to be something in the Irish psyche that prevents us from sharing our problems. It is completely different in the US – they tell people about their problems. They aren't afraid to seek help."

Getting advice and working through the difficulties is the first step in the corporate rescue process. "We have seen a lot of companies doing this over the past 12 months – we've been helping

quite a number of them," says Hughes. "Stage two of the process is obtained. Such arrangements can fall apart if just a few creditors withdraw their agreement."

This occurs when the company has been unable to trade through its problems and the management approaches its creditors and negotiates a deal where they will take less than what they are owed in order to see the company survive and continue as a customer.

The drawback is that such a scheme can only be made binding

on all parties if the agreement of more than 75 per cent of creditors is obtained. Such arrangements can fall apart if just a few creditors withdraw their agreement.

This is where examinership comes in. Examinership was introduced in the 1990 Companies Act and is based loosely on similar legislation in the US known as Chapter 11. It gives a company protection from its creditors for a period of up to 100 days while a court-appointed examiner, usually an accountant, goes through the

affairs of the company and devises a scheme of arrangement to enable it to continue in business with the consent of its creditors. Once the 100-day period has expired, the examiner has a further 21 days to implement the scheme of arrangement.

"That's a total of four months," Hughes notes. "And if a company can't be saved in that time, then it probably wasn't a suitable case for examinership in the first place." He is quick to dispel any notion that this is an easy way out. "Examinership is a very exacting system, supervised by a High Court judge," he contends. "You need an independent accountant's report first, which shows that an examinership can succeed, that the company has a good prospect of survival."



Above, from left: Kieran McCarthy, Neil Hughes, Paddy Burns, Seán Burke and Kevin Hughes, partners at Hughes Blake

### Warning signs What to look for

MANY FACTORS can cause a business to fail, but the real warning sign that trouble is ahead is falling cash flows. "It's not a lack of profit that pulls a business down, it's a lack of cash," says Neil Hughes, managing partner of corporate rescue specialist, Hughes Blake. "A business might have profitable contracts, but if the cash isn't coming in, it won't be able to pay its bills."

But the question is how to monitor this so that you can take steps to prevent a problem escalating. "Businesses need early warning systems, and the best thing is to keep accurate monthly management accounts to tell you what money is coming in, where from, what's going out and what the trends are. "It was the Sage of Omaha, the great Warren Buffet, who said that you get a lot more clarity from the rearview mirror than you do looking through the windscreen. If you don't know where you've been, you have no chance of figuring out where you're going. Having good accounts means you can monitor your cash flows and see trouble coming."

"There is an attitude here of saying 'just wind the damn thing up'. This is often very much to the detriment of creditors, and if we were to use examinership more often we could save many thousands of jobs."

"We still have a long way to go to get the self-help culture going here," he says. "In 2004, about 22 per cent of US insolvencies went into Chapter 11 – in the same year in Ireland only about 2 per cent of them did."

For further information, tel: 01-669 9999 or see hughesblake.ie