



# Webinar: The Rescue of Small Companies

Restaurants Association of Ireland

12 March 2021

Private and Confidential



DUFF & PHELPS

A **KROLL** BUSINESS

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# About Duff & Phelps, A Kroll Business

# ABOUT DUFF & PHELPS, A KROLL BUSINESS

For **nearly 100 years**, Duff & Phelps has helped clients make confident decisions in the areas of valuation, real estate, taxation and transfer pricing, disputes, M&A advisory and other corporate transactions.

Kroll is the world's premier provider of services and digital products related to **governance, risk and transparency**. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance.

The firm's nearly **5,000 professionals** are located in **30 countries and territories** around the world.

**~5,000**  
**TOTAL PROFESSIONALS**  
**GLOBALLY**

**13,400**  
CLIENTS INCLUDING  
NEARLY  
**48%** OF THE  
**S&P 500**

THE  
AMERICAS  
**2,700+**  
PROFESSIONALS

EUROPE AND  
MIDDLE EAST  
**1,250+**  
PROFESSIONALS

ASIA  
PACIFIC  
**950+**  
PROFESSIONALS

# ENHANCING VALUE ACROSS A RANGE OF EXPERTISE

## Our service areas



### VALUATION ADVISORY

Valuation and consulting for financial reporting, tax, investment and risk management purposes

- Valuation Services
- Alternative Asset Advisory
- Real Estate Advisory
- Tax Services
- Transfer Pricing
- Fixed Asset Management and Insurance Solutions



### CORPORATE FINANCE

Objective guidance to management teams and stakeholders throughout restructuring, financing and M&A transactions, including independent fairness and solvency opinions

- M&A Advisory
- Fairness and Solvency Opinions
- Transaction Advisory Services
- ESOP and ERISA Advisory
- Private Equity - Financial Sponsors Group
- Distressed M&A and Special Situations
- Private Capital Markets and Debt Advisory



### GOVERNANCE, RISK, INVESTIGATIONS AND DISPUTES

Risk management and mitigation, disputes and other advisory services

- Business Intelligence and Investigations
- Compliance and Regulatory Consulting
- Compliance Risk and Diligence
- Cyber Risk
- Disputes Consulting
- Global Restructuring Advisory
- Legal Management Consulting
- Security Risk Management



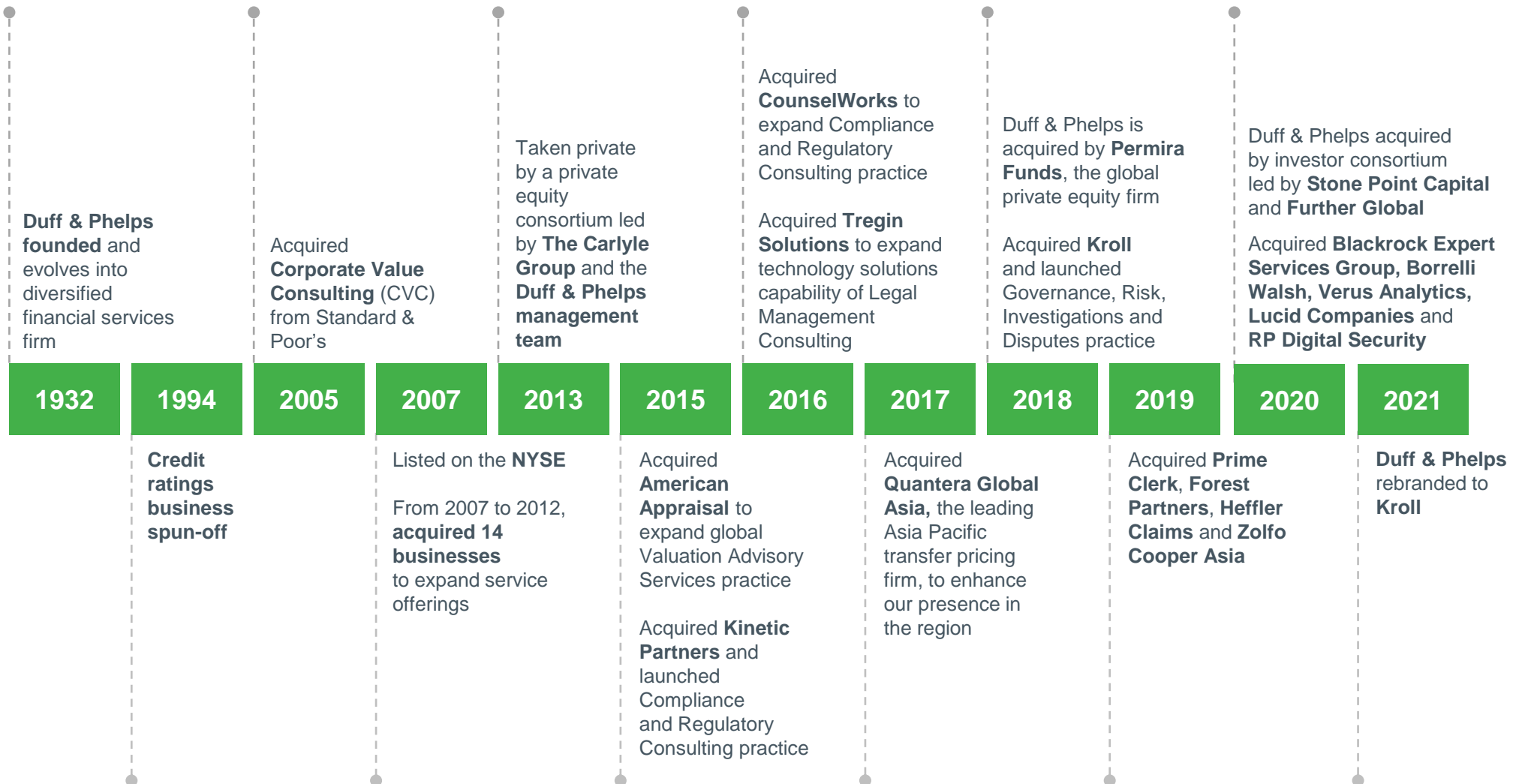
### BUSINESS SERVICES

Complex legal and business solutions through our proprietary technology and team of experts

- Prime Clerk Restructuring
- Kroll Corporate Actions
- Lucid Issuer Services
- Lucid Agency and Trustee Services
- Kroll Class Action Administration
- Kroll Mass Tort Administration
- Kroll Notice Media Solutions
- Kroll Business Technology
- Kroll Agency Cloud

# OUR EVOLUTION

In operation for nearly 100 years



# OUR LOCATIONS

Across 30 countries and territories worldwide



## THE AMERICAS

Addison	Houston	San Francisco
Atlanta	Los Angeles	São Paulo
Austin	Mexico City	Seattle
Bogota	Miami	Secaucus
Boston	Minneapolis	Silicon Valley
Buenos Aires	Morristown	St. Louis
Chicago	Nashville	Toronto
Dallas	New York	Washington, D.C.
Denver	Philadelphia	Waterbury
Ellensburg	Reston	Westchester

## EUROPE AND MIDDLE EAST

Abu Dhabi	Dublin	Moscow
Agrate Brianza	Frankfurt	Munich
Amsterdam	Gibraltar	Padua
Barcelona	Lisbon	Paris
Bari	London	Pesaro
Berlin	Longford	Riyadh
Bilbao	Luxembourg	Rome
Birmingham	Madrid	Turin
Channel Islands	Manchester	Zurich
Dubai	Milan	

## ASIA PACIFIC

Bangalore	New Delhi
Beijing	Shanghai
Guangzhou	Shenzhen
Hanoi	Singapore
Hong Kong	Sydney
Hyderabad	Taipei
Jakarta	Tokyo
Kuala Lumpur	
Mumbai	

## CARIBBEAN

British Virgin Islands  
Cayman Islands

## STRATEGIC PARTNERS

Almaty  
Athens  
Limassol  
Moscow

# OUR CREDENTIALS

## WE SERVE

61% of Fortune 100 companies

85% of Am Law 100 law firms

72% of the 25 largest Euro STOXX® companies

76% of the 25 largest private equity firms in the PEI 300

52% of the 25 largest hedge funds in the Alpha Hedge Fund 100

## WE RANK

One of America's Best Management Consulting Firms 2020<sup>9</sup>

#1 Total Number of U.S. and Global Fairness Opinions Over the Past 10 Years<sup>1</sup>

#5 U.S. Middle-Market Transactions Over The Past 10 Years<sup>2</sup>

Leading patent consulting firm<sup>11</sup>

## WE WON

**Best Cyber Security Services Provider**<sup>4</sup>

**Best Compliance Consultancy Firm**<sup>5</sup>

**Thought Leader** in Digital Forensics, Arbitration and Investigations<sup>3</sup>

International Mid-Market M&A Advisory Firm of the Year in Canada – 2020<sup>6</sup>

**Thought Leader** in Corporate Tax and Digital Forensics<sup>7</sup>

**Best Valuations Firm** for Hard-to-Value Assets<sup>8</sup>

**Kroll recognized** as Pacesetter in the ALM Intelligence: Cybersecurity Services 2020

Duff & Phelps and Kroll named **Best Compliance Consultant/Advisor**<sup>10</sup>

Recommended Vendor for Security Incident Response in Gartner® Invest Analyst Insight: SRM 2020 and 2019

1. Source: Thomson Reuters' cumulative data 2011-2020

2. Source: Thomson Financial Securities Data (U.S. deals \$10M < \$150M, including deals without a disclosed value). Full years 2011 through 2020

3. Who's Who Legal 2018-2020: Forensic and Litigation Consulting.

4. HedgeWeek 2018

5. HFM European Quant Awards 2019

6. 2020 Corporate INTL Global Awards

7. Who's Who Legal 2019

8. 11th Annual HFM European Hedge Fund Services Awards in 2019

9. America's Best Management Consulting Firms – Forbes

10. Compliance Week's 2020 Excellence in Compliance Awards

11. IAM Patent 1000 2020

# AGENDA

## Speakers:

- Declan Taite, Managing Director, Restructuring Advisory, Duff & Phelps – A Kroll Business
- Adrian Cummins, Chief Executive Officer, Restaurants Association of Ireland

## Topics:

- Eligibility criteria for companies to avail of proposed “summary rescue process”
- Overview of proposed structure of “summary rescue process”
- Comparisons and differences with existing examinership process
- Likely issues as part of public consultation process
- Q&A



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# **“Summary Rescue Process”**

Overview and Background

# “SUMMARY RESCUE PROCESS”

## Overview and Background

- CLRG Sub Committee Chaired by Professor Irene Lynch Fannon from UCC
- Representatives from government departments, ODCE, ISME, ICTU, ISIP, Revenue Commissioners, insolvency practitioners and legal advisors
- Remit was drafted as part of the government’s medium-term stabilisation response to the economic challenges of the pandemic
- Looking to establish a stand-alone process outside existing frameworks for the rescue of small companies
- Tánaiste wrote to the CLRG requesting it to examine the issue of rescue for small companies and make recommendations as to how such a process might be designed
- The CLRG submitted its report in October 2020 and has recommended a “Summary Rescue Process” which should be a stand-alone process separate from the examinership process, but which would mirror key elements of the examinership legislation
- Minister for Trade Promotion, Digital and Company Regulation, Robert Troy TD launched a public consultation on 8 February 2021 seeking views on the proposed “summary rescue process”
- Public Consultation ended on 5 March 2021

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# Eligibility Criteria for Companies to Avail of Proposed “Summary Rescue Process”

# ELIGIBILITY CRITERIA FOR COMPANIES TO AVAIL OF PROPOSED “SUMMARY RESCUE PROCESS”

The “Summary Rescue Process” would:

- Be designed for “small” and “micro” companies (as defined by the Companies Act 2014) which represent 98% of companies in Ireland
- Small company is defined if it fulfils 2 or more of the following requirements:
  - Turnover doesn’t exceed €12m per annum
  - Balance sheet doesn’t exceed €6m
  - Average number of employees doesn’t exceed 50
- Micro company is defined if it fulfils two or more of the following requirements:
  - Turnover doesn’t exceed €700k per annum
  - Balance sheet doesn’t exceed €350k
  - Average number of employees doesn’t exceed 10

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# Overview of Proposed Structure of “Summary of Rescue Process”

# OVERVIEW OF PROPOSED STRUCTURE OF “SUMMARY RESCUE PROCESS”

The “Summary Rescue Process” would:

- Be commenced by resolution of directors rather than by application to court
- Be concluded within a shorter period than examinership
- Be overseen and assisted by insolvency practitioners
- Provide that the rescue plan be passed by a simple majority in value of creditors
- Provide for format of cross class cram down of debts designed to reduce costs
- Not require application to court for approval of rescue plan (provided no creditor objections)
- Have safeguards against irresponsible and dishonest director behaviour
- It is envisaged that this process will reduce the associated costs and regulatory burden for ease of access for small companies while also maintaining appropriate safeguards for creditors

# OVERVIEW OF PROPOSED STRUCTURE OF “SUMMARY RESCUE PROCESS”

- Rescue of company v undertaking
- Limitation on use of process
- Who can act – qualified insolvency practitioner – “process adviser”
- Resolution of directors rather than application to Court
- Sworn statement of affairs
- Process adviser – advice in writing if company appears to have reasonable prospect of survival
- Directors pass resolution to appoint process adviser, to publicly issue notice of suspension of pre-process debts, potential for convening creditor meetings and potential investors – formal notices to be issued by company to CRO, revenue, employees and creditors
- Iris Oifigiuil and company website
- No automatic stay on proceedings – ability to apply to court

# OVERVIEW OF PROPOSED STRUCTURE OF “SUMMARY RESCUE PROCESS”

- 70 day suggested time period
- Initial meeting of creditors
- Pre notification to Court
- Directors’ duty to creditors
- Classes of Creditors
- Onerous contracts
- Cross class cram down – Court approval required
- Revenue Commissioners – “Warehoused Debt” and “Excludable Class”
- Guarantors



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# **Comparisons and Differences with Existing Examinership Process**

# COMPARISONS AND DIFFERENCES WITH EXAMINERSHIP PROCESS

- Commencement of Process
- Costs
- No automatic Stay on Proceedings
- Time limitations
- Repudiation of Onerous Contracts
- Court Approval of a Rescue Plan

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# Likely Issues as Part of Public Consultation Process

# LIKELY ISSUES AS PART OF A PUBLIC CONSULTATION PROCESS

- No automatic stay on proceedings – ability to apply to court
- Onerous contracts
- Cross class cram down – court approval required
- Revenue – warehousing debt and “excludable class”
- Guarantors

A full copy of the terms of the Government’s term of reference and CLRG’s report can be accessed at the link below:

[www.clr.org/clrg/publications/the-company-law-review-group-s-special-report-on-the-rescue-of-small-business.pdf](http://www.clr.org/clrg/publications/the-company-law-review-group-s-special-report-on-the-rescue-of-small-business.pdf)

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# Q&A



For more information, please contact:



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## About Duff & Phelps, A Kroll Business

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## About Kroll

Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance. Our firm has nearly 5,000 professionals in 30 countries and territories around the world. For more information, visit [www.kroll.com](http://www.kroll.com).

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