

The Rise in Corporate Insolvencies—A Return to Normal or Something Deeper?

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Introduction

There has been an increase in the number of corporate insolvencies in Ireland with a related rise across all insolvency processes, namely liquidation and receivership. In the context of corporate rescue, recent insolvency data from 2024 shows that while the number accessing examinership has dropped when compared with previous years, there appears to be a steady rise in the number accessing the Small Company Administrative Rescue Process (SCARP) despite that number still remaining small. This analysis will attempt to contextualise the insolvency data for 2024 in light of the increase in corporate insolvencies that year. It will argue that the cessation of debt warehousing together with the reinstatement of the 13.5% rate of VAT for the hospitality sector contributed to insolvency activity levels in 2024. It will also argue that the well-publicised challenges faced by the hospitality and retail sectors brought about by such factors as high rents, increases to the minimum wage over consecutive budgets, and the introduction of statutory sick pay, amongst others, have created operational challenges for businesses in these sectors which may also have had a bearing on insolvency activity that year.

What follows in Section One is an initial presentation of the 2024 insolvency data across each of the four fiscal quarters broken down according to insolvency process. Section One will then offer an overview of each of the insolvency processes discussed in the data before analysing the data in detail in Section Two.

The analysis in Section Two will reveal increases across most of the insolvency processes with the largest increase being in the number of liquidations with 133 more liquidations recorded in 2024 than in 2023. Although the number of receiverships in 2024 was down slightly on 2023 figures, the trend is arguably upwards here too with 19 more receiverships reported in the first half of 2025 compared to 2024. As Section Two argues, this suggests that the forbearance shown by creditors in terms of enforcement in recent years on account of business disruption caused by the pandemic is dissipating.

Section Two will also show that while there have been slight decreases in the numbers accessing examinership and SCARP in 2024, the uptake is largely consistent with previous years. In the case of SCARP, the numbers accessing this process are quite respectable reaching 30+ in 2023 and 2024, which is positive considering that SCARP is still a relatively new insolvency process. The available insolvency data to date for 2025 points to an upwards trend

in the numbers accessing examinership and SCARP with four more examinerships in the first six months of this year compared to last and a doubling of the number accessing SCARP in the first half of 2025 compared to the same period in 2024.

Section Three will offer some explanation along the lines of that sketched out above for what may have driven the rise in corporate insolvencies in 2024. Among its conclusions will be that in spite of a somewhat positive outlook for 2025 as regards uptake of examinership and SCARP, the majority of companies are opting to liquidate rather than restructure. While several explanations may be given for this, not least a continued lack of awareness among businesses of SCARP, it may also point to a growing weakening in the Irish economy creating difficulties for companies in satisfying the “reasonable prospect of survival” test for examinership and SCARP having regard to how that test is assessed.

In light of the upward trend in corporate insolvencies revealed by the 2024 data and the half-year data for 2025, some recent reforms to insolvency law will be briefly discussed in Section Four. The effect of these reforms is to provide greater protection to employees in the course of liquidation by placing new obligations on directors in the context of a petition for compulsory liquidation and to facilitate the orderly and equitable liquidation of companies in group structures through a somewhat more “liberal”¹ contribution order remedy.

Section One

The table below contains corporate insolvency data for 2024 which was drawn from reports by PWC Ireland. It shows the total number of corporate insolvencies across each of the fiscal quarters in 2024 broken down according to insolvency process.

Period	Total Insolvencies	Insolvency Process
Q1 2024 (Jan–Mar)	223	5 SCARP 2 Examinership 27 Receivership 189 Liquidation
Q2 2024 (Apr–Jun)	188	9 SCARP 3 Examinership 21 Receivership 155 Liquidation
Q3 2024 (Jul–Sep)	232	11 SCARP 1 Examinership 30 Receivership 190 Liquidation
Q4 2024 (Oct–Dec)	193	8 SCARP 4 Examinership 21 Receivership 160 Liquidation

¹ Company Law Review Group, “Report of the Corporate Insolvency Committee on the Consequences of Certain Corporate Liquidation and Restructuring Practices including Splitting of Corporate Operations from Asset Holding Entities in Group Structures” (2021),

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Readers will be aware that liquidation involves the orderly winding up of the company and the collection, realisation and distribution of its assets in discharge of the company's liabilities. Receivership, by contrast, does not necessarily lead to the winding up of the company although it may do so if a liquidator is appointed after the receiver.² For this reason, Hutchinson describes receivership as “the prelude to a winding-up”.³ The function of a receiver is to take possession of secured assets on behalf of a creditor and to dispose of them in discharge of the debt owing to that creditor. Examinership and SCARP are quite different to the insolvency processes already discussed in that they are corporate rescue processes designed to facilitate the restructuring of failing companies so that they may survive as going concerns.

There are many reasons why a company might enter or be placed in any of these processes. In the case of liquidation, the company may be wound up because its purpose has been accomplished⁴ or because an irreparable breakdown of relations between company management has occurred due perhaps to oppressive conduct.⁵ There may also be public interest grounds justifying the company's dissolution.⁶ The companies represented in the insolvency data discussed here, however, entered liquidation by reason of insolvency which is the most common reason for liquidation.⁷ Therefore, one or more of the insolvency triggers set out in s.570 of the Companies Act 2014 (the 2014 Act) applied to these companies such as an inability to pay their debts as they fell due (commercial insolvency) or a deficit in the value of their assets compared to their liabilities (balance sheet insolvency).

As with liquidation, there are various reasons why a company may be placed in receivership and these will largely depend on the terms of the instrument under which the receiver is appointed or on the contents of the creditor's petition where the receiver is appointed by the court.⁸ With regard to the companies represented in the

data above, however, these are companies placed in receivership by reason of insolvency, a common ground for the appointment of receivers found in loan agreements like debentures. Alternatively, these companies may represent those who, in the opinion of the receiver at the time their appointment ended, are insolvent. This is a judgement that receivers are required to make upon the cessation of their appointment pursuant to s.430(4) of the 2014 Act.

The circumstances giving rise to examinership and SCARP are more clear-cut than liquidation and receivership, and there is little doubt therefore as to the position of the companies represented in the data prior to their entering these processes. This is because eligibility for examinership and SCARP is contingent on the companies being insolvent or approaching insolvency within the meaning of s.509(3) of the 2014 Act, which has been carried forward in respect of SCARP per s.558B(3). There is another important condition which is that companies have a “reasonable prospect of survival” which in the case of SCARP is defined in s.558C(4)(a)–(k) of the 2014 Act and in the case of examinership has been elucidated in such cases as *Re Vantive Holdings Ltd.*⁹ This indicates that all or part¹⁰ of the underlying business of the companies accessing examinership and SCARP in 2024 was sound and that in spite of solvency issues, the companies had a reasonable prospect of survival post-examinership and post-SCARP. It follows that in order to access examinership and SCARP, the companies behind the data may have been able to secure outside investment¹¹ or retain the support of their creditors¹² or convince the court or process adviser of their trading potential having regard to the wider economic situation,¹³ all of which goes some way towards satisfying the “reasonable prospect of survival” requirement.¹⁴

In the next Section, the insolvency data for 2024 will be discussed in some detail. It will show that the total number

p.21, <https://www.clrg.org/media/m5adea31/2021-12-22-clrg-report-on-insolvency-issues.pdf> [accessed 9 August 2023].

² There is no prohibition on a receivership and liquidation taking place simultaneously subject to any order the court may make under s.445 of the 2014 Act, including to terminate the receivership in favour of the liquidation or to limit the receiver's powers to specific assets. See, Irene Lynch Fannon and Gerard Nicholas Murphy, *Corporate Insolvency and Rescue*, 2nd edn (Haywards Heath: Bloomsbury Professional, 2012), paras 6.71–6.74.

³ Brian Hutchinson, *Keane on Company Law*, 6th edn (Dublin: Bloomsbury Professional, 2024), p.385.

⁴ Companies Act 2014 s.579. See further, Lynch Fannon and Murphy (fn.2), para.4.04.

⁵ Companies Act 2014 s.569(1)(e)–(f).

⁶ Companies Act 2014 s.569(1)(g).

⁷ Gráinne Callanan, *An Introduction to Irish Company Law*, 5th edn (Dublin: Clarus Press, 2021), p.427.

⁸ Usually, the court-appointed receiver will be appointed following a petition by the debenture holder who fears that their secured asset is in jeopardy and applies to the court for the appointment of a receiver even though, under the terms of the debenture itself, an event of default entitling the debenture holder to appoint a receiver has not happened.

⁹ [2010] 2 I.R. 108 (HC); [2010] 2 I.L.R.M. 156 (SC).

¹⁰ Companies Act 2014 ss.509(2) and 558C(2) regarding examinership and SCARP respectively.

¹¹ See, for example, *Re Butler's Engineering Ltd* (unreported, High Court, Keane J., 1 March 1996); see also, *Re McInerney Homes Ltd* [2010] IEHC 340; see further, *Re McInerney Homes Ltd* [2011] IESC 31.

¹² See, for example, *Re Vantive Holdings Ltd (No. 2)* [2010] 2 I.R. 118. See also, Lynch Fannon and Murphy (fn.2), para.12.34 where it is recommended that in order for creditor support to be persuasive evidence that a company has reasonable prospects of survival, creditors should express on affidavit that, in their opinion, the company has reasonable prospects of survival. This is following Denham J.'s warning in *Re Vantive Holdings Ltd (No. 2)* that creditor support will not in and of itself satisfy the “reasonable prospect of survival” test considering that creditors may have their own reasons besides rescuing the company for supporting the petition to appoint an examiner.

¹³ See, for example, *Re Vantive Holdings Ltd* [2010] 2 I.R. 108 (HC); [2010] 2 I.L.R.M. 156 (SC).

¹⁴ On proving reasonable prospects of survival, see generally, Lynch Fannon and Murphy (fn.2), paras 12.21–12.35 and paras 12.38–12.41.

of insolvencies has increased in 2024 compared to the three years prior, a trend that is continuing having regard to the available insolvency data for 2025. It will also show that there have been increases across all insolvency processes in 2024, most notably liquidations which saw an increase of 133 on 2023 figures. Section Two will also show that there has been a modest increase in the numbers accessing examinership and SCARP. Although this is positive, the numbers are low when compared with liquidations and receiverships. While the low uptake of corporate rescue processes may be explained by a lack of awareness on the part of businesses, particularly of SCARP, or, as one commentator suggested, a general “reticence”¹⁵ among Irish businesses with regard to corporate rescue, it might also point more worryingly to underlying problems in the economy such that examinership and SCARP were unsuitable options for the majority of companies.

Section Two

A note of caution should be offered at the outset in relation to the above data. First, the total number of insolvencies for 2024 should be 836 according to the data presented in the table above. However, PWC report a total for 2024 of 852¹⁶ and Deloitte report a total of 875.¹⁷ It might be assumed, therefore, that the above totals for each quarter are rounded or approximate totals. Second, these figures vary slightly depending on the source. For instance, while PWC report 223 insolvencies in Q1 2024,¹⁸ Deloitte report 214 for the same period.¹⁹ Likewise, in Q3 2024, PWC report that the total number for SCARP was 11,²⁰ whereas Deloitte report that there were 9.²¹

However, notwithstanding the foregoing, the above data is significant because when compared with previous years, it reveals a considerable increase in the number of corporate insolvencies in 2024. For instance, compared

to the 852 corporate insolvencies in 2024, there were 717 in 2023,²² 545 in 2022,²³ and 379 in 2021.²⁴ The trend is clearly upwards. There is a similar upwards trend in relation to the number of liquidations. Based on the data in the above table, there were 694 liquidations in 2024 compared to 561 in 2023,²⁵ 430 in 2022,²⁶ and 286 in 2021.²⁷ In relation to receiverships, there were 105 in 2023,²⁸ 83 in 2022,²⁹ and 81 in 2021.³⁰ Although there were six fewer receiverships in 2024 than in 2023,³¹ we might conclude that the trend is nevertheless upwards here too, which is also the view of Deloitte who predicted an increase across all insolvency processes in 2025,³² a prediction that has been borne out by the half-year insolvency data for 2025 showing that in the case of receivership, there were 19 more receiverships in the first half of 2025 (January to June) than in the same period in 2024.³³ This clearly indicates that the forbearance shown by creditors in recent years on account of the pandemic is dissipating.

There is also an upward trend, albeit a slow one, in corporate rescue processes with a slight increase in the number of companies resorting to these processes year on year. In relation to examinership, just 10 companies

²² Note that PWC offer two figures for the total number of insolvencies in 2023: one is 717 and the other is 734. The former appears to represent the total number of all insolvency processes in 2023. See, “PWC Restructuring Update—Q4 2023” (PWC Ireland, 8 January 2024), <https://www.pwc.ie/reports/restructuring-update-q4-2023.html> [accessed 25 February 2025]. Meanwhile, the latter figure of 734 is referred to in subsequent reports by PWC as representing the total number of corporate insolvencies in 2023. See, “PWC Restructuring Update – Q4 2024” (PWC Ireland, 6 January 2025), p.3, <https://www.pwc.ie/publications/2025/pwc-brs-q4-2025-report.pdf> [accessed 23 February 2025]. The difference between these figures is nominal and as such it is suggested that no inferences as to the reliability of PWC’s data should be drawn from this incongruity. It nevertheless further underscores the caution given in Section Two of this article in relation to the insolvency data.

²³ “PWC Restructuring Update—Q4 2023” (fn.22).

²⁴ “PWC Restructuring Update – Q4 2023: A look back at 2023 and what to expect in 2024” (PWC Ireland, 8 January 2024), p.12, <https://www.pwc.ie/publications/2024/brs-q3-2024-report.pdf> [accessed 25 February 2025].

²⁵ “PWC Restructuring Update – Q4 2023: A look back at 2023 and what to expect in 2024” (fn.24), p.12.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ PWC report 98 receiverships in 2024 and 105 receiverships in 2023. See, “PWC Restructuring Update – Q4 2024” (fn.16), p.3. See also, “PWC Restructuring Update – Q4 2023: A look back at 2023 and what to expect in 2024” (fn.24), p.3.

³² Deloitte predicted that insolvencies for 2025 would surpass 1,000. See, “Insolvency figures likely to surpass 1,000 in 2025” (fn.17).

³³ Deloitte report that in H1 2024 there were 52 receivers appointed over secured assets whereas there were 71 such appointments recorded in H1 2025. See, “2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise” (Deloitte Ireland, 2 July 2025), <https://www.deloitte.com/ie/en/about/press-room/insolvency-levels-2025-inlines-2024.html> [accessed 16 July 2025].

¹⁵ “Business News – Morning Ireland” (RTÉ Radio One, 16 July 2024), <https://www.rte.ie/radio/radio1/clips/22415734/> [accessed 16 July 2024].

¹⁶ “Restructuring Update Q4 2024” (PWC Ireland, 6 January 2025), <https://www.pwc.ie/reports/restructuring-update-q4-2024.html> [accessed 23 February 2025].

¹⁷ “Insolvency figures likely to surpass 1,000 in 2025” (Deloitte Ireland, 10 January 2025), <https://www.deloitte.com/ie/en/about/press-room/deloitte-forecasts-insolvency-figures-likely-to-rise.html> [accessed 23 February 2025].

¹⁸ “PWC Restructuring Update – Q1 2024” (PWC Ireland, 1 March 2024), <https://www.pwc.ie/reports/restructuring-update-q1-2024.html> [accessed 23 February 2025].

¹⁹ “Rates of corporate insolvencies reach levels not seen in six years” (Deloitte Ireland, 28 March 2024), https://www.deloitte.com/ie/en/about/press-room/corporate-insolvencies-q1-2024.html?icid=top_corporate-insolvencies-q1-2024 [accessed 23 February 2025].

²⁰ “Restructuring Update Q3 2024” (PWC Ireland, 7 October 2024), <https://www.pwc.ie/reports/restructuring-update-q3-2024.html> [accessed 23 February 2025].

²¹ “Deloitte increases insolvency forecast based on new figures published today” (Deloitte Ireland, 25 September 2024), https://www.deloitte.com/ie/en/about/press-room/corporate-insolvencies-q3-2024.html?icid=top_corporate-insolvencies-q3-2024 [accessed 23 February 2025].

entered the process in 2024.³⁴ While this is down on 2023 figures when 18 companies entered examinership,³⁵ it is on par with 2022 and 2021 when 10 and 12 examinerships were recorded in those years respectively.³⁶ In relation to SCARP, a respectable 33 companies entered the process in 2023 revealing an increase of 10 on 2022 figures which was the first full year of SCARP's existence having been introduced at the end of 2021.³⁷ In 2024, PWC and Deloitte report that 30 SCARPs³⁸ were initiated despite the table above indicating that the total is 33.

There are a few initial comments to make in relation to the foregoing before attempting to contextualise these figures in the next Section. First, although the number of corporate insolvencies has grown since 2021, it is important to note that the 2024 figure of 852 insolvencies represents a return to normal. This is because in 2021, 2022 and 2023, COVID-19-related business supports were still in place either fully or partially and while these supports were essential having regard to the significant business disruption caused by the pandemic, they gave companies that would otherwise have become insolvent a temporary lifeline. Seeing as the last of the pandemic-related supports—namely, the Revenue Commissioner's Debt Warehousing Scheme,³⁹ discussed further in the next Section—came to an end in 2024, it is perhaps unsurprising that we see corporate insolvencies that year mirroring pre-pandemic levels of 850 in 2019,⁴⁰ 767 in 2018,⁴¹ and 874 in 2017.⁴² So, rather than sounding alarm bells, we might instead view these figures as representing the norm after a number of years of artificially low insolvency figures owing to the pandemic.

The second observation is in relation to the number of SCARPs which, as stated, stood at 30 in 2024. Although the number of initiated SCARPs is low when we consider

the total number of insolvencies recorded in 2024 of 852, it is worth bearing in mind that SCARP is just three years old, having been established at the end of 2021. PWC suggest that one reason for the low uptake may be that companies were ineligible for SCARP because they did not have a "reasonable prospect of survival" and as a result liquidation became necessary.⁴³ If that is the case, then the low uptake may not be due to a lack of awareness of the process, as commentators suggest,⁴⁴ but rather that profitability issues precluded companies from accessing the process as they did not meet the eligibility criteria. Moreover, despite the low numbers accessing the process, of those who do, the success rate is high. In 2023, 78% of the 33 companies who accessed SCARP were successfully rescued saving approximately 211 jobs with similar results in 2022.⁴⁵ It is notable that there were generally low uptake figures for all rescue processes in 2022, 2023 and 2024 with, as outlined above, just 10, 18 and 10 examinerships reported in those years respectively. It follows that the problem may not lie with SCARP specifically but with corporate rescue in general which might make us wonder what kind of advice company directors are receiving from their advisors seeing as the majority of insolvent companies appear to opt for liquidation almost as a matter of course.

Section Three

Having outlined the insolvency data for 2024 and having compared and contrasted it with that in previous years, this Section will attempt to build on the preliminary conclusions drawn in the previous Section in relation to the data and offer further context surrounding the insolvency figures.

i. Cessation of debt warehousing

First, 2024 saw an end to the Revenue Commissioners' Debt Warehousing Scheme which was a COVID-19 measure in place since 2020. The aim of the Scheme was to allow businesses defer payment of eligible taxes until they were in a position financially to deal with the

³⁴ As recorded in the table in Section Two of this article, there were two examinerships in Q1 2024, three in Q2 2024, one in Q3 2024, and four in Q4 2024, bringing the total to 10. See, "PWC Restructuring Update – Q1 2024" (fn.18); see also, "PWC Restructuring Update – Q2 H1 2024" (PWC Ireland, 27 June 2024), <https://www.pwc.ie/reports/restructuring-update-q2-2024.html> [accessed 23 February 2025]; see further, "Restructuring Update Q3 2024" (fn.20); see also, "Restructuring Update Q4 2024" (fn.16).

³⁵ "PWC Restructuring Update – Q4 2023: A look back at 2023 and what to expect in 2024" (fn.24), p.12.

³⁶ Ibid.

³⁷ Ibid.

³⁸ For PWC's reporting of this figure, see "Restructuring Update Q4 2024" (fn.16). For Deloitte's account of the total number of SCARPs initiated in 2024, see "Insolvency figures likely to surpass 1,000 in 2025" (fn.17).

³⁹ For detail on the Revenue's Debt Warehousing Scheme, see <https://www.revenue.ie/en/starting-a-business/paying-your-tax/debt-warehousing/removal-from-warehouse.aspx> [accessed 23 February 2025].

⁴⁰ "PWC Restructuring Update – Q2 H1 2024" (fn.34).

⁴¹ "Significant decrease for Corporate Insolvencies in 2021" (Deloitte Ireland, 10 January 2022), <https://www.deloitte.com/ie/en/services/financial-advisory/research/significant-decrease-for-corporate-insolvencies-in-2021.html> [accessed 25 February 2025].

⁴² Ibid.

⁴³ Specifically, PWC say that the low uptake of SCARP in 2024 may be due to "fundamental profitability issues" experienced by the majority of insolvent companies. This, it is suggested, implies that the majority of companies had no "reasonable prospect of survival" such as to enable them to enter the examinership process. See, "PWC Restructuring Update – Q4 2024" (fn.22), pp.3, 7.

⁴⁴ See, for example, "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33) which notes that "[i]t is disappointing that awareness [of SCARP] remains low despite a success rate of over 70%"; see also, "Business News – Morning Ireland" (RTÉ Radio One, 16 July 2024), <https://www.rte.ie/radio/radio1/clips/22415734/> [accessed 16 July 2024] where the low uptake of SCARP at the end of Q2 2024 was put down to "reticence" on the part of small and micro companies in taking up SCARP and also a lack of awareness among companies of the process.

⁴⁵ "Highest Corporate Insolvency levels since 2018 recorded in 2023, with a 62% increase in both construction and hospitality sectors - Deloitte analysis" (Deloitte Ireland, 3 January 2024), <https://www.deloitte.com/ie/en/about/press-room/corporate-insolvencies-2023.html> [accessed 3 March 2025].

debt. This Scheme ended on 1 May 2024 and since then Revenue have sought repayment of companies' warehoused debt. Companies can repay on a phased basis or otherwise negotiate a repayment schedule with Revenue.⁴⁶ Those who do neither will be subject to normal collection and enforcement procedures as well as interest of 8–10%.⁴⁷ It is possible that the high level of liquidations in 2024 and so far in 2025 are on account of the debt warehousing facility coming to an end.⁴⁸ Similarly, PWC suggest that the low level of SCARPs and examinerships in 2024 might also be explained by the Debt Warehousing Scheme coming to an end.⁴⁹ It is possible that companies that might have entered SCARP or examinership but for the Scheme may now seek to do so considering that the temporary lifeline and skewed sense of solvency that the Scheme offered has ended. This is already proving to be the case with the number of SCARPs initiated in the first six months of 2025, double the number initiated during the same period in 2024.⁵⁰ Likewise, there has been an albeit modest increase in the number of examinerships commenced in the first half of 2025 compared with the same period in 2024. So far in 2025, 14 examinerships have been recorded, up from 11 at the same point in 2024.⁵¹ On this basis, it is possible that we may see an uptick in applications for corporate rescue in the latter months of 2025.

ii. Reinstatement of the higher rate of VAT for the hospitality sector

Second, 2024 was the first full year since the 13.5% VAT rate for the hospitality sector was reintroduced, which had temporarily been reduced to 9% on account of the disruption caused to this sector by the COVID-19 pandemic.⁵² Although this is only a suggested reason for the rise in insolvencies in 2024, it is supported by the figures. For instance, PWC report that 150 of the 852 insolvencies in 2024 were in the hospitality sector⁵³ which is significantly higher than 2023 when only 99 hospitality businesses went insolvent⁵⁴ with 61 and 31 going insolvent

in 2022 and 2021 respectively.⁵⁵ It should be noted in this context that it was from 2021⁵⁶ to 2023 that the lower rate of VAT applied to the hospitality sector which may account for the much lower insolvency activity in the sector during this period.

Unfortunately, the half-year insolvency data for 2025 shows insolvency levels across the hospitality sector similar to those in 2024. It is reported that 66 hospitality businesses entered some kind of insolvency process in the first six months of 2025⁵⁷ which, as noted previously, is almost equivalent to the total number of insolvencies in the hospitality sector recorded for the full 12 months of 2022.

Recognising the challenges faced by this sector, the Government has committed in its programme for government to keep VAT under review⁵⁸ with some speculating that this will involve a permanent return to the 9% rate of VAT for certain businesses in the hospitality sector.⁵⁹ Should this come to pass, insolvencies in the sector may subside but, in Deloitte's view, it will not be enough in and of itself to significantly reduce insolvency activity levels in the sector considering that there are issues beyond VAT contributing to the decline of hospitality and indeed other businesses.⁶⁰ Some of these other issues, such as high rents and difficulties in attracting and retaining staff, are discussed below in the context of the hospitality and retail sectors.

iii. Challenging economic environment

Third, in 2024, the majority of insolvencies were in the retail and hospitality sectors with 200 of the 852 insolvencies coming from retail⁶¹ and, as stated above, 150 of the total number coming from hospitality. The number of insolvencies in the retail and hospitality sectors were almost on par with each other across all of the

analysis" (fn.45). It should be noted that PWC reported a higher figure of 127 as the total number of insolvencies in the hospitality sector in 2023. See, "PWC Restructuring Update – Q4 2023: A look back at 2023 and what to expect in 2024" (fn.24), pp.3, 6.

⁵⁵ "Insolvency figures likely to surpass 1,000 in 2025" (fn.17).

⁵⁶ Strictly speaking, the 9% rate of VAT applied to the hospitality sector from 1 November 2020 with 2021 being the first full year of its application. It was meant to revert to 13.5% at the end of 2021 but was extended several times by government. See, "Minister Donohoe announces Tourism and Hospitality VAT Rate to move to 9% on Sunday" (Department of Finance, 30 October 2020), <https://www.gov.ie/ga/an-roinn-airgeadais/preaseisiuinti/minister-donohoe-announces-tourism-and-hospitality-vat-rate-to-move-to-9-on-sunday/> [accessed 3 March 2025].

⁵⁷ "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33).

⁵⁸ "Programme for Government 2025: Securing Ireland's Future" (2025), pp.14, 19, <https://www.fine Gael.ie/programme-for-government-2025/> [accessed 22 January 2025].

⁵⁹ Micheál Lehané, "New govt plans to cut VAT rate to 9% for parts of hospitality sector" (RTÉ, 15 January 2025), <https://www.rte.ie/news/ireland/2025/0114/1490869-vat-rate-programme-for-government/> [accessed 17 July 2025].

⁶⁰ "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33).

⁶¹ "Restructuring Update Q4 2024" (fn.16).

⁴⁶ "PWC Restructuring Update – Q2 H1 2024" (fn.34).

⁴⁷ Ibid.

⁴⁸ "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33), which notes that "Revenue was the petitioner for 27 out of 42 Court Liquidations (64%) in H1 2025 compared to 6 out of 19 (32%) cases in H1 2024. The rise in Court Liquidations can be attributed to companies being unable to meet phased payment agreements with Revenue as part of the Covid-19 debt warehousing programme."

⁴⁹ "PWC Restructuring Update – Q1 2024" (fn.18).

⁵⁰ "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33).

⁵¹ Ibid.

⁵² "VAT rate for the hospitality sector reverts to 13.5%" (KPMG, 31 August 2023), <https://kpmg.com/ie/en/home/insights/2023/08/vat-rate-hospitality-sector-tax.html> [accessed 3 March 2025].

⁵³ "PWC Restructuring Update—Q4 2023: A look back at 2023 and what to expect in 2024" (fn.24), pp.3, 9.

⁵⁴ "Highest Corporate Insolvency levels since 2018 recorded in 2023, with a 62% increase in both construction and hospitality sectors - Deloitte

fiscal quarters in 2024 except for Q3 when there was a marked increase in the number of retail insolvencies with approximately 76 recorded in retail⁶² compared to 31 in hospitality.⁶³ What does this indicate? It might explain why there were so many more liquidations in 2024 compared to other insolvency types like SCARP and examinership as outlined in the previous Section. Given the difficulties that exist for these and indeed all sectors, including high rents,⁶⁴ challenges in attracting and retaining staff,⁶⁵ increases to the minimum wage,⁶⁶ the aforementioned reinstatement of the 13.5% VAT rate, high cost of raw materials on account of inflation,⁶⁷ the relatively recent commencement of the statutory sick pay scheme,⁶⁸ and the new automatic pension enrolment scheme,⁶⁹ it may be the case that retail and hospitality businesses were advised that they would not meet the “reasonable prospect of survival” test in order to access SCARP and examinership and as such the only option available to them was liquidation.

The test for “reasonable prospect of survival” takes account, amongst other matters, of the prevailing economic conditions in which the company trades. In the case of SCARP, s.558C of the 2014 Act obliges the process adviser in assessing whether a reasonable prospect of survival exists to take account of, amongst other matters, “the nature of, and prospects for, the business of the eligible company”,⁷⁰ “the wider economic situation”,⁷¹ and “the circumstances of the market in which

the eligible company is operating, including the likely future prospects of the market”.⁷² The Government, in a guidance document on SCARP, said of these matters that they require the process adviser to consider “the economic environment the company trades in”.⁷³

In the case of examinership, the court will also take account of the economic environment in determining whether the company has a reasonable prospect of survival. Hence, in the case of *Re Vantive Holdings Ltd*,⁷⁴ the court refused to grant a petition to appoint an examiner to a property development company on the grounds that there was no reasonable prospect at that time that the company would survive considering the effect of the ongoing financial crisis on the construction sector. Specifically, the court did not accept the basis of the independent accountant’s conclusion that the company had a “reasonable prospect of survival”. This was because the independent accountant based his assessment in this regard on revenue generated through the development of existing sites and the sale of residential, commercial and retail units.⁷⁵ The independent accountant maintained that if these steps were taken, the company would generate net assets of just short of €300,000,000 which, together with other actions like rescheduled bank debt repayments and a moratorium on capital payments being accepted by the creditors, would give the company a reasonable prospect of survival.⁷⁶ Kelly J., however, refused to accept that the company had a reasonable prospect of survival on this basis citing the economic conditions at the time affecting the construction industry. He said:

“Given current market conditions and with little or no prospect for improvement in the future on the basis of all of the current economic indicators, this degree of optimism on the part of the independent accountant borders, if it does not actually trespass, upon the fanciful. What market is there likely to be over the next three years for the sale of sites even with planning permissions, and the sale of residential commercial and retail units? ... As is clear, I have the gravest reservations about the projections on which the independent accountant has relied in forming his opinion [about the company’s reasonable prospect of survival]. They appear to me to be lacking in reality given the extraordinary collapse that has occurred and the lack of any indication of the revival of fortunes in the property market.”⁷⁷

⁶² “PWC Restructuring Update – Q3 2024” (PWC Ireland, 7 October 2024), pp.3, 9, <https://www.pwc.ie/publications/2024/pwc-brs-q3-2024-report.pdf> [accessed 3 March 2025]. Deloitte report 74 insolvencies in retail in Q3 2024. See, “Deloitte increases insolvency forecast based on new figures published today” (fn.21).

⁶³ “Restructuring Update Q3 2024” (fn.20).

⁶⁴ “PWC Restructuring Update – Q4 2024” (fn.22), p.9.

⁶⁵ “2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise” (fn.33).

⁶⁶ The National Minimum Wage was increased to €13.50 from 1 January 2025 in line with the Government’s announcement in Budget 2025. This follows increases to the National Minimum Wage in four consecutive budgets (2020–2024). See, “Statement by Minister Chambers on Budget 2025” (Department of Finance, 1 October 2024), <https://www.gov.ie/en/department-of-finance/speeches/statement-by-minister-chambers-on-budget-2025/> [accessed 2 October 2024].

⁶⁷ See, for example, “Inflation hits building firms” (RTÉ Prime Time, 31 March 2022), <https://www.rte.ie/news/primetime/2022/0331/1289665-inflation-construction-crisis/> [accessed 10 August 2023].

⁶⁸ The right to paid sick leave for employees in Ireland commenced on 1 January 2023. See, “New entitlement to paid sick leave from the New Year” (Department of Enterprise, Tourism and Employment, 29 November 2022), <https://www.gov.ie/en/department-of-enterprise-tourism-and-employment/press-releases/new-entitlement-to-paid-sick-leave-from-the-new-year/> [accessed 3 January 2023].

⁶⁹ For details on the automatic pension enrolment scheme, see “New Workplace Pension Scheme for Ireland” (Department of Social Protection, 29 March 2022), <https://www.gov.ie/en/department-of-social-protection/press-releases/new-workplace-pension-scheme-for-ireland-minister-humphreys-announces-details-of-automatic-enrolment-retirement-savings-system/> [accessed 31 March 2022].

⁷⁰ Companies Act 2014 s.558C(4)(a).

⁷¹ Companies Act 2014 s.558C(4)(f).

⁷² Companies Act 2014 s.558C(4)(g).

⁷³ “The Small Company Administrative Rescue Process” (Department of Enterprise, Tourism and Employment, 11 June 2024), p.5, <https://assets.gov.ie/static/documents/small-company-administrative-rescue-process.pdf> [accessed 14 March 2025].

⁷⁴ [2010] 2 I.R. 108 (HC).

⁷⁵ Ibid at [28].

⁷⁶ Ibid at [26], [31].

⁷⁷ Ibid at [29], [33].

Indeed, this approach to assessing “reasonable prospects of survival” whereby economic/market conditions are taken into account was seemingly endorsed by the Supreme Court in its judgment in this case.⁷⁸ Murray C.J. quoted from Fennelly J.’s judgment in *Re Gallium Ltd*⁷⁹ in which the latter noted that the factors to which the court may have regard in determining a reasonable prospect of survival are non-exhaustive.⁸⁰ Murray C.J. therefore endorsed and added to Fennelly J.’s non-exhaustive list of factors, which included the interests of employees and creditors as a whole,⁸¹ by saying that “the general circumstances may of course be part of the factual matrix to which the court has regard when deciding whether there is a reasonable expectation of survival”⁸² (emphasis added). In light of Murray C.J.’s acceptance of the non-exhaustive nature of the assessment involved in determining reasonable prospects of survival⁸³ and considering his statement regarding the “general circumstances” of a case forming part of the court’s examination of reasonable prospects, it is possible that factors like economic/market conditions were within his contemplation and thus represents his acceptance of these factors as forming part of the court’s decision-making calculus in this regard. Murray C.J. gave a clearer endorsement, however, of economic/market conditions being relevant in this context later in his judgment where he criticised the lack of objective evidence or material offered by the independent accountant of any likely improvement in the property market at that time so as to support the independent accountant’s contention that the company had a reasonable prospect of survival. He said:

“[I]n order to persuade the court that the companies have a reasonable prospect of survival, it is perfectly obvious that some evidence of likely improvement in the property market is absolutely essential ... In their absence, it is not possible for the court to reach any conclusion on the question of ‘reasonable prospect of survival.’”⁸⁴

In light of the foregoing, the reason for the high number of businesses in the hospitality and retail sectors entering liquidation in 2024 rather than one of the corporate rescue processes may be due to a certain calculation on their part that in light of the well-publicised issues facing those industries, it would be difficult to prove to the satisfaction of the process adviser in the case of SCARP or to the satisfaction of the court in the case of examinership a

“reasonable prospect of survival” of their companies. As stated, this is because of the factors set out in s.558C(4) to which the process adviser “shall have regard”⁸⁵ in determining whether a company has a “reasonable prospect of survival” for the purposes of SCARP and also because of the approach taken by the courts to the “reasonable prospect of survival” assessment in examinership as evidenced by such cases as *Re Vantive Holdings Ltd*.

Section Four

Having regard to the rise in corporate insolvencies over the past year, a trend that looks set to continue into the second half of 2025 considering data for the first six months of the year showing increases across all insolvency processes, this Section will briefly set out some of the changes⁸⁶ to insolvency law brought about by the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (the 2024 Act). The changes outlined in this Section impose new obligations on company directors to ensure that employees and employee representatives are informed that a petition to wind up the company has been made. The Act also made changes affecting the liquidation of companies in group structures.

i. Directors’ obligation to notify all employees and employee representatives of a winding-up petition

The 2024 Act has amended s.571 of the 2014 Act by the insertion of a new subs.(1A). Section 571(1A) provides that where a petition to wind up the company is presented under s.571(1)(a), then directors must notify employees and employee representatives of the petition to wind up the company at the time the petition is presented or as soon as is reasonably practicable thereafter. Section 572 has also been amended by the 2024 Act by the insertion of a new subs.(2A) which provides that, in addition to the grounds in s.569(1), the court may have regard to whether the directors complied with s.571(1A) in deciding whether to grant the petition to wind up the company.

ii. Changes to the contribution order

Another change to insolvency law brought about by the 2024 Act is in relation to what is called the “contribution order” provided for in s.599 of the 2014 Act. This allows the court, on the application of a creditor, liquidator or contributory of a company being wound up, to order that a related company like a parent or subsidiary contributes to the debts of the company in liquidation. Prior to the changes brought about by the 2024 Act, there was really

⁷⁸ [2010] 2 I.L.R.M. 156 (SC).

⁷⁹ [2009] 2 I.L.R.M. 11.

⁸⁰ *Ibid* at 22.

⁸¹ *Ibid*.

⁸² [2010] 2 I.L.R.M. 156 (SC) at 172.

⁸³ Recognising the non-exhaustive nature of the “reasonable prospects of survival” assessment, Murray C.J. said (at 173): “It is not possible to envisage every circumstance which may bear on the exercise of the court’s discretion.”

⁸⁴ [2010] 2 I.L.R.M. 156 (SC) at 179–180.

⁸⁵ Companies Act 2014 s.558C(3).

⁸⁶ Note that there were other significant changes impacting insolvency law brought about by the 2024 Act, most notably to the law on reckless trading, which have been comprehensively analysed by Dr. Roz Breen elsewhere in this journal. See, Roz Breen, “Recent Legislative Changes to Reckless Trading” (2025) 32(4) *Commercial Law Practitioner* 47–51.

only one ground on which a contribution order could be granted and that was where the circumstances giving rise to the winding up of the company were attributable to the acts or omissions of the related company. Now, since the passage of the 2024 Act, that is just *one* factor provided for in s.599(4)(d) to which the court “shall have regard”⁸⁷ in deciding whether to make a contribution order. The *other* factors in the amended s.599(4) of the 2014 Act are “the extent to which the related company took part in the management of the company being wound up”,⁸⁸ “the conduct of the related company towards the creditors of the company being wound up”,⁸⁹ “the effect which such an order would be likely to have on the creditors of the related company”,⁹⁰ and, finally, “such other matters as the court considers appropriate”.⁹¹ The changes to the contribution order brought about by the 2024 Act have thus given effect to the recommendations of the Corporate Insolvency Committee of the Company Law Review Group in its 2021 report on the consequences of certain corporate liquidations and restructuring practices.⁹² The changes also bring Ireland’s contribution order remedy in line with New Zealand’s which served as an exemplar for the original contribution order in s.140 of the Companies Act 1990.⁹³

Conclusion

This analysis has considered the insolvency data for 2024 drawn from reports of PWC Ireland and Deloitte Ireland. It has compared and contrasted this data with previous years and also with the available data for 2025. It has shown that there has been an overall increase across all insolvency types in 2024 with most insolvencies resulting in liquidation, a trend that has continued in the first six months of 2025. Receiverships also increased in 2024 but not to the extent that might have been anticipated with creditors showing a degree of forbearance when it came to calling in their debt. This forbearance has begun to dissipate, however, according to the half-year insolvency data for 2025 with creditors, particularly non-bank lenders,⁹⁴ starting to return to normal practice in appointing receivers over secured assets. Corporate rescue processes were, by contrast, not as highly subscribed in 2024 with, as outlined above, 10 examinerships and 30 SCARPs recorded that year, a slight decrease on 2023

figures. As many commentators have argued, this may be due to a lack of awareness of SCARP and to a certain reticence among businesses regarding corporate rescue. However, as this analysis has suggested, the low uptake of SCARP and examinership may point to something deeper regarding the health of the Irish economy. It may indicate that the majority of insolvent companies in 2024 were ineligible for examinership or SCARP because they failed to satisfy the “reasonable prospects of survival” test. Having regard to at least one of the criterion used to assess this test discussed above in the context of *Re Vantive Holdings Ltd*, this would suggest that the underlying businesses of the insolvent companies could not survive within the prevailing economic environment. If this is correct, then this raises a significant red flag about the Irish economy that in its current state it cannot offer businesses a “reasonable prospect of survival”.

This analysis has also offered some context to these figures which may help us understand the significant increase in insolvencies in 2024 compared with preceding years. In the first instance, it pointed to the cessation of the Revenue Commissioners’ Debt Warehousing Scheme. On the date this Scheme formally ended, over 7,000 businesses with a combined warehoused debt of approximately €100 million had not repaid their debt or engaged with Revenue to agree a Phased Payment Arrangement.⁹⁵ These businesses, most of which would have been companies, were, as stated above, then subject to ordinary debt collection procedures with interest levied at between 8% and 10%. As a result, many of these businesses would likely have commenced winding-up procedures on account of insolvency, thus contributing to the insolvency data for 2024, or were compulsorily liquidated following a petition by the Revenue Commissioners. The fallout from the cessation of debt warehousing is still being felt in 2025 with Deloitte reporting that the majority of compulsory liquidations so far in 2025 were commenced by Revenue on account of unpaid warehoused debt.⁹⁶ The effect on the insolvency figures of the cessation of debt warehousing would therefore appear to be unequivocal.

The other factor identified in this analysis as having contributed to the insolvency data in 2024 was the reinstatement of the higher rate of VAT for the hospitality sector which took effect from the end of 2023. There were several other issues affecting the hospitality and retail sectors mentioned in this analysis such as higher rents, difficulties in attracting and retaining staff, increases to the minimum wage, and the establishment of a statutory sick pay scheme, amongst others, that could also account for the high levels of insolvency across these sectors in 2024. Of course there are global factors not discussed in this analysis that will likely impact insolvency activity

⁸⁷ Companies Act 2014 s.599(4).

⁸⁸ Companies Act 2014 s.599(4)(a).

⁸⁹ Companies Act 2014 s.599(4)(b).

⁹⁰ Companies Act 2014 s.599(4)(c).

⁹¹ Companies Act 2014 s.599(4)(e).

⁹² Company Law Review Group, “Report of the Corporate Insolvency Committee on the Consequences of Certain Corporate Liquidation and Restructuring Practices Including Splitting of Corporate Operations from Asset Holding Entities in Group Structures” (2021), pp.19–23, <https://www.clrg.org/media/m5adea31/2021-12-22-clrg-report-on-insolvency-issues.pdf> [accessed 9 August 2023].

⁹³ *Ibid*, p.20.

⁹⁴ “2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise” (fn.33).

⁹⁵ “PWC Restructuring Update – Q2 H1 2024” (fn.34).

⁹⁶ “2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise” (fn.33).

as we head into the latter half of 2025 and begin 2026. These global factors, which largely concern tariffs, may be examined as a cause of insolvency in Ireland in future analysis but to do so we will need to know more about the companies behind the insolvency data such as whether they are involved in transatlantic trade.⁹⁷ This is something that may be considered in future research but now is not the time to do so considering that the EU-US framework agreement imposing a baseline tariff of 15% on EU goods entering the US only took effect in August.⁹⁸ There is also still a lot of uncertainty regarding the scope of this agreement which makes it difficult to gauge its likely impact.⁹⁹

⁹⁷ Jude Sheerin, "EU and Mexico criticise Trump's proposed 30% tariff" (BBC, 12 July 2025), <https://www.bbc.co.uk/news/articles/cyvj13d9ylo> [accessed 23 July 2025].

⁹⁸ The European Commission confirmed that the 15% tariff rate on EU goods entering the US will commence on 8 August 2025. Other reporting gives 7 August 2025 as the date on which the EU-US framework agreement will commence. See, Thomas Moller-Nielsen, "EU to suspend US countermeasures despite lack of auto tariff relief" (Euractiv, 4 August 2025), <https://www.euractiv.com/section/economy-jobs/news/eu-to-suspend-us-countermeasures-despite-lack-of-auto-tariff-relief/#> [accessed 5 August 2025]; see further, Eoin Burke-Kennedy, "US tariffs will mean 70,000 fewer jobs created in Irish economy, Department of Finance warns", *The Irish Times* (1 August 2025), <https://www.irishtimes.com/business/economy/2025/08/01/us-tariffs-will-mean-70000-fewer-jobs-created-in-irish-economy-department-of-finance-warns/> [accessed 1 August 2025].

⁹⁹ There is uncertainty around whether pharmaceutical exports and semi-conductor exports are included in the 15% baseline levy or whether a special levy will apply to these sectors. There is further confusion over whether steel and aluminium, which is currently subject to a special tariff of 50%, will continue at that rate. US officials maintain that the 50% levy will continue to apply to EU steel and aluminium entering the US. Meanwhile, the European Commission say that a "quota system" will apply in respect of steel and aluminium exports such that certain EU steel and aluminium entering the US will be subject to a tariff lower than the current 50% rate. Separately, the European Commission also say that they agreed special tariff carve-outs for aircrafts, aircraft parts, and certain chemical exports whereas the US administration say that no such carve-outs were agreed. Adding to the uncertainty is that this is all subject to change as negotiations between the EU and US continue notwithstanding the framework agreement reached in July which the European Commission described as the "first step in a process that will be further expanded over time". See, "EU-US trade deal will help protect Irish jobs – Taoiseach" (RTÉ, 28 July 2025), <https://www.rte.ie/news/business/2025/0727/1525559-scotland-trump-talks/> [accessed 5 August 2025]; David Murphy, "Tariffs aren't good news but it could have been much worse" (RTÉ, 28 July 2025), <https://www.rte.ie/news/analysis-and-comment/2025/0728/1525620-tariffs-trade-analysis/> [accessed 5 August 2025]; Thomas Moller-Nielsen, "EU to suspend US countermeasures despite lack of auto tariff relief" (Euractiv, 4 August 2025), <https://www.euractiv.com/section/economy-jobs/news/eu-to-suspend-us-countermeasures-despite-lack-of-auto-tariff-relief/#> [accessed 5 August 2025]; Jonathan Josephs and Peter Hoskins, "US-EU tariff deal a big Trump win but not a total defeat for Brussels" (BBC, 28 July 2025), <https://www.bbc.com/news/articles/czxpdpv5x54ko> [accessed 5 August 2025]; European Commission, "EU-US trade deal explained" (29 July 2025), https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_1930 [accessed 5 August 2025].

Notwithstanding the warnings sounded in this analysis regarding the health of the Irish economy, it is noteworthy that insolvency activity levels, despite being high and significantly up on preceding years, were lower than expected in 2024 and predictions for 2025 are likewise proving to be somewhat inaccurate. For instance, PWC and Deloitte both predicted that insolvencies in 2024 would surpass 900.¹⁰⁰ While the predicted figure aligns closely with the recorded number of insolvencies in 2024, which was 852 according to PWC and 875 based on Deloitte's analysis, the total was nevertheless lower than forecast and in fact mirrored pre-pandemic levels when insolvency activity was in the region of 800 year-on-year.¹⁰¹ As regards predictions for 2025, it was forecast that there would be more than 1,000 insolvencies.¹⁰² However, half-year insolvency data for 2025 puts the number of insolvencies at 407, which is lower than the total for the same period in 2024, which was 412.¹⁰³

We might therefore conclude that although insolvency activity is up compared with preceding years, 2024 represents a return to normal after artificially low insolvency activity on account of the pandemic. Indeed, as PWC suggests, the better-than-expected outcomes in 2024 and in the first six months of 2025 speak to the "resilience of the Irish economy and of many Irish businesses",¹⁰⁴ a resilience that will be in high demand amidst ongoing international geopolitical uncertainties.

¹⁰⁰ "Deloitte increases insolvency forecast based on new figures published today" (fn.21). See also, "Restructuring Update Q4 2024" (fn.16).

¹⁰¹ See Section Two above.

¹⁰² "Insolvency figures likely to surpass 1,000 in 2025" (fn.17).

¹⁰³ "2025 insolvency levels in line with 2024 but formal restructuring and creditor led enforcement on the rise" (fn.33).

¹⁰⁴ "PWC Restructuring Update – Q4 2024" (fn.22), p.3.