Investors, start-ups slate share option scheme

BY LEANNA BYRNE

Conall Laverty, founder and chief executive of Wia Technologies. Right: Alan Hickey, founder of WeBringg
Barry Cronin

Fast-growing start-ups, venture capitalists and angel investors have blasted the government's new employee share options scheme as unworkable and restrictive.

The Key Employee Engagement Programme, or 'Keep' for short, was introduced three weeks ago for next year's budget to allow SMEs to give employees share options that would not be subject to tax until after the employee disposed of the shares.

But following the publication of the Finance Bill, which outlined the details of the Keep scheme, investors and start-up founders say its restrictions have made it impractical.

Conall Laverty, founder and chief executive of Wia, a Dublin-based digital start-up, said a rule specifying that the company must remain small, to fit the European Union's definition of an SME, during the period an option is held, is a disincentive to start-ups thinking big.

"The government aren't making start-ups their priority because they really don't understand what start-ups are, and there isn't a set structure like there is whenever it comes to corporations," said Laverty.

"For start-ups to grow they need tools like a strong share option scheme, but [the government doesn't] understand it. So now, if your start-up does well, you're penalised."

Alan Hickey, co-founder of the delivery service for retailers WeBringg, said the scheme's cap on the total value of all outstanding options at €3 million could prevent the company from granting share options while it was expanding.

"The scheme feels like something that was thrown in two weeks before the budget to grab a nice headline, but there was no real intellectual capital behind the ins and outs of it," said Hickey.

WeBringg, which has expanded to Britain and Australia, was hoping to attract top talent using the Keep scheme, but Hickey said he would now wait for changes to be made to the scheme before putting it to use.

"We would love to be a first mover on most things that we see as being a positive avenue for business to travel down.

"With this, there's too much uncertainty around it and even as a disrupter arena we wouldn't plan on being a disrupter with Keep," he said.

Generally, share options are popular with start-ups battling with multinationals to attract new talent.

Keep was flagged by Donohoe's predecessor Michael Noonan in his budget speech last year.

The new share-based remuneration incentive will be introduced on January 1 next year.

Laverty, who employs six staff on his cloud-based platform for internet of things (IoT) companies, said Wia had already diluted its shares to allocate to its employees as an incentive.

But the scheme only grants options that are less than 50 per cent of salary value; Laverty said this diminished the incentive.

Regina Breheny, director general of the Irish Venture Capital Association (IVCA), which represents 20 venture capital firms, said the scheme's overall message to start-ups and SMEs was to "stay small".

"I think they just took the scheme from the UK and copied it. In essence, that's what they did," said Breheny.

She said restrictions on some types of companies, such as fintech, pharma and service companies, "must be a mistake" and that the IVCA would lobby for a change to these limits.

Lone Star ruling hailed as 'game-changer' for debtors

BY FRANCESCA COMYN

A High Court ruling which prevented US private equity giant Lone Star repossessing a Co Waterford couple's home has been welcomed as a game-changer and a "ray of hope" for debtors.

Ms Justice Marie Baker last week approved a Personal Insolvency Arrangement (PIA) for the couple, despite objections from the vulture fund offshoot Shoreline Residential.

The arrangement involves a writedown of the mortgage debt to Shoreline from €323,626 to €190,000, and an extension of the term of the loan from 21 years to 27 years. It also sees the interest rate for the entire outstanding term of the mortgage fixed at 3.65 per cent.

The decision recognises a distinction between a vulture fund and a bank when assessing the interest rate proposed in a PIA. Judge Baker found that, unlike a bank, there was no suggestion Shoreline would have to return to the market to meet its capital needs.

Debtor advocate David Hall said the ruling was a "nightmare" for the business model of vulture funds, who now face being bound to a long-term mortgage with the debtors.

"Any restructure, especially an imposed restructure, is absolutely catastrophic for vultures because they don't do restructuring. Their sole model is to shed the asset," Hall said.

Fianna Fáil's justice spokesman, Jim O'Callaghan, said the decision is an important recognition that the purpose of the personal insolvency legislation is to allow debtors to restructure their loans on a sustainable level, while allowing them stay in their homes.

"In order for PIAs to become more frequent and effective, it will be necessary for creditors to understand and accept that such arrangements can take place against the objection of creditors. This judgment will assist creditors in coming to such an understanding," he said.

There are approximately 450 appeal cases in the system where creditors have vetoed insolvency proposals.

Personal insolvency practitioner Mitchell O'Brien said that objections raised in the vast majority of the 30 or so cases he is handling would be sunk on the back of Judge Baker's judgment, though other issues of contention would still arise.

He said he hoped the decision would help to rein in delays in the system.

"This case took 490 days, from the protective certificate being issued to the High Court approval on November 1, which is too long. The period envisaged by the legislation was 70 days," O'Brien said.

Goldman Sachs claims Irish firm tried to defraud it

● 'Highly unorthodox development' scuppered examinership plan

BY FRANCESCA COMYN
LEGAL AFFAIRS CORRESPONDENT

A small Irish packaging firm allegedly tried to defraud Goldman Sachs by secretly diverting the business and assets to a sister company, leaving a €400,000 hole in the accounts, the High Court has heard.

Last April, Com-Plas Packaging managed to resist the efforts of the Goldman Sachs vehicle Ennis Property Finance to take control of the business by ousting a receiver appointed by the vulture fund and persuading the High Court that the company could be saved in examinership.

The 30-year-old company, based in Naas, Co Kildare, employs 11 people and supplies packaging materials to 250 clients across Ireland and Britain, including Glanbia, Avondale and the Happy Pear. Com-Plas owes Ennis €1.1 million.

However, days after a rescue deal for the company was approved in September, the examinership proposal collapsed following what the court heard was "an unexpected and highly unorthodox development".

Com-Plas director Patrick Gregory and his partner Leslie Hogg allegedly scuppered the survival plan by withdrawing from a commitment to invest €100,000 in the company.

Ennis moved in, the protection of the court was lifted and receiver Shane McCarthy of KPMG was appointed on October 13, 2017.

According to claims made by McCarthy, the business and assets of the failed company were diverted in "clandestine" fashion during the final days of the examinership process to a sister firm, Com-Plas International, which lists Hogg and Gregory as director and company secretary respectively.

When KPMG accountants visited the firm's premises at Naas Industrial Estate last month they found many of the offices were bare.

The court heard they were told that employees had been sent on holidays and production at the packaging wing of the business had ceased activity in August.

After further investigation, company staff were found operating out of a separate premises nearby in Newbridge. Invoices bore the name of Com-Plas International, a related firm.

The allegedly "clandestine" transfer of the business has been described by McCarthy as a "manifestly unlawful" abuse of the examinership process and a "clear fraud" on the firm's creditors.

However this is denied by the directors who maintain that Complas International had been used to source supplies because of the uncertain financial position of the company under examinership.

Last Wednesday, Tom Murray of Friel Stafford was appointed liquidator following a creditors' meeting, attended by Revenue.