

A second chance for consumers in Cyprus: Reorganisations go virtual

In the last few decades the promotion of a corporate rescue culture has been a key objective for many EU jurisdictions, but particularly since the 2008 financial crisis, corporate rescue has been at the top of the agenda.

Although the significance of corporate rescue is not to be underestimated, it can be argued that consumer bankruptcy carries no less significance. The adverse impact of consumer bankruptcy has been intensely experienced at very large scales in countries like Greece and Cyprus. However, as opposed to the sporadic attempts that were made in the shadow of the financial crisis in Greece, Cyprus appears to have approached both corporate and consumer reorganisation in a more methodical manner and has noticeably placed greater emphasis on laying the foundations of a strong second-chance culture.

This article describes the steps taken in Cyprus to improve the position of consumer debtors and offers a brief overview of the recently introduced legislative framework, which is now entering into use following the introduction of an Interactive Reorganisation Tool and an accompanying 'Guide' in January 2018.

The new interactive reorganisation tool and guide

As stated above, the most recent addition to the second chance toolkit is an Interactive Reorganisation Tool (IRT), whose introduction was announced in January 2018.¹ It is designed to work together with a

Reorganisation Guide (the Guide) relating to the facilitation of debt settlement arrangements with creditors, which has been recently launched by the Cypriot Insolvency Service.² The aim of both the IRT and the Guide is to inform debtors, who might in the future struggle with the repayment of their bank loans and other debts, of the various procedures available, as well as their rights and obligations. In addition, a key objective of the IRT and the Guide is to inform debtors of the advantages of early intervention.

The IRT is accessible both to debtors and to insolvency practitioners via the Insolvency Service's website³ and aims to assist them in predicting the total value of the debt and to facilitate the repayment debts, by taking into account the debtor's monthly income and expenses, as well as any property that could possibly be used to discharge the debt. The IRT offers a range of personalised reorganisation scenarios available to the debtor and also provides a calculation of the time the debtor will need so as to repay their debt. Crucially, the IRT, by taking into account the particular circumstances of a debtor, also predicts whether the debtor might become unable to pay the debt, either in full or in part. It is argued that the IRT will prove to be particularly useful to insolvency practitioners, as by using it, they will be able to draft the most appropriate and viable reorganisation plans, hence maximising the possibility of creditor approval.

The Guide provides consumer debtors with

information about the various options that banks may encourage them to adopt as part of settling their debts in accordance with the Directive of the Central Bank of Cyprus in relation to Arrears Management.⁴ The Directive has been adopted by the Association of Cyprus Banks, which must also adhere to the Code of Conduct Regarding the Handling of Borrowers in Financial Difficulties, designed to support consumer efforts to achieve a fair, viable, consensual and voluntary restructuring where possible. In addition, the Guide offers summary descriptions of the various reorganisation and debt-settlement procedures that are available to consumers, such as the reorganisation plans.

The legislative framework

The rules that apply to indebted consumers are part of a recently updated Insolvency Framework, which provides for special procedures regarding the settlement and discharge from debt: the 2015 Law on Insolvency of Natural Persons (for the Development and Implementation of Personal Repayment and Discharge Plans), and the 2015 Bankruptcy Law (supplemented by the Insolvency Regulations, Ch.6).

The Law on the Development and Implementation of Personal Repayment and Discharge Plans provides for two key instruments: a) the Personal Repayment Plans (PRP) by means of which an individual may restructure his debts and repay his creditors; and



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CONSUMERS ARE ENCOURAGED TO TAKE STEPS TO AVOID BANKRUPTCY AND ARE OFFERED A SECOND CHANCE WITH NEITHER STIGMA, NOR A PUNISHMENT



b) the Debt Discharge Mechanism, by means of which debtors with insufficient income and personal property may be discharged from debts not exceeding €25.000.

The 2015 Law on Insolvency of Natural Persons places much emphasis on the personal repayment plans, and arguably this provides for a shift in the socio-legal culture in Cyprus, as indebted consumers are encouraged to stake steps to avoid bankruptcy and are offered a second chance with neither stigma, nor a punishment element being attached to the available reorganisation procedures.

The personal repayment plan (PRP)

It is possible for consumers, provided that certain conditions are satisfied, to restructure their debts by means of a repayment plan. The repayment plan can either be consensual, or compulsory. A debtor who wishes to reach a compromise with his creditors through a Consensual PRP, prior to submitting a repayment plan for creditor approval, must appoint an insolvency practitioner who acts as Insolvency Advisor. The Insolvency Advisor examines the debtor’s financial circumstances,

advises the debtor as to the most appropriate course of action and drafts a plan.

Consensual PRP

When the debtor opts for a Consensual PRP,⁵ the Insolvency Advisor drafts an appropriate plan and submits it to the Insolvency Service, which, in turn, must examine whether the conditions outlined in the Law have been complied with⁶. If the Insolvency Service approves the plan, it makes an application to the court for a Protection Order (moratorium),⁷ which effectively protects the debtor against any action⁸ from his creditors for a period of 95 days.⁹ When the court issues a Protection Order, this order decides which debts are subject to it, and mentions the name of each creditor to whom the debts are due.

The Insolvency Advisor, within 10 days from the date the Protection Order has been issued, must provide all affected creditors with a written notice of his appointment and also submit a statement detailing the state of the debtor’s financial situation.¹⁰ In addition, he invites the creditors to confirm that their claim has been correctly listed by the Protection Order (i.e. prove their debt),¹¹ and to submit comments on the proposed plan and the

manner in which the debtor’s debt could be restructured.¹²

The creditors must, within 35 days from the date they receive the written notice, confirm in writing whether their claims have been correctly listed in the Order. The Insolvency Advisor subsequently examines the creditors’ confirmation statements and within 5 days, from the moment he received these confirmations, he/she either accepts or rejects the creditors’ submissions. In the event of a disagreement between the Insolvency Advisor and any creditor in relation with the confirmation of their claim, the court, upon an application by the Advisor or the relevant creditor, shall decide whether or not to uphold the Insolvency Advisor’s decision.¹³ The court’s judgment is final and binding.¹⁴

Once the process of confirming the creditors’ claims has been concluded, the Insolvency Advisor invites creditors to submit further comments on the proposed repayment plan. He/she then submits his proposal(s) concerning the PRP to the creditors and calls a creditors’ meeting in order for the proposals to be approved.¹⁵

The proposed PRP must contain a series of compulsory terms. For instance, the plan must



clearly include:

- a) the secured and unsecured claims;
- b) the circumstances for an extension of the maximum duration (60 months) of the PRP to another maximum 12 months, if necessary;
- c) the condition, at the creditors' demand, that once the PRP ceases to have effect, (i.e. lapse of time) the debtor shall not be discharged from secured debts covered by the Plan and must continue making payments in accordance with the terms and conditions of the original loan-agreement, unless otherwise agreed and stated in the PRP; and
- d) another condition: the terms of the PRP must place the creditors in a more favourable position than the one they would be if the debtor's property was liquidated, unless the creditors' consented to a different outcome.

In addition, the plan must not demand:

- a) the sale of any tools/equipment, necessary for the debtor to continue his profession/trade, unless the debtor consents to such a sale;
- b) any payments, which would preclude the debtor from having a sufficient income so as to meet his and his family's reasonable living costs, unless otherwise agreed by the debtor.

Finally, the plan must include a provision about the remuneration of the Insolvency Advisor and mention any costs that may be incurred, as well as the manner in which they will be paid.¹⁶ Once the repayment plan has been approved by the creditors at a creditors' meeting, it is also sanctioned by the court.¹⁷

Non consensual/imposed PRP

In the event that the proposed PRP fails to receive the necessary creditor support, provided that certain criteria are satisfied,¹⁸ the Insolvency Advisor may request

the court to issue an Order, imposing the plan to the dissenting creditors.¹⁹ The Insolvency Advisor may at the same time apply to the court for an extension of the Protection Order, in order to prevent the enforcement of any claims during the period of time during which the court considers the application for the imposition of the non-consensual repayment plan.²⁰

The court may only impose the repayment plan on the creditors, only if it is satisfied that a more favourable (or the same) outcome will be achieved for creditors through the Plan rather than through bankruptcy proceedings.²¹ The moment the court imposes the proposed repayment Plan, it becomes binding on all creditors. Concerning the debtor, if he successfully fulfils the terms of the Plan he is relieved from any remaining unsecured debts, but he must continue making payments to the secured creditors, as stated in the original loan agreement (unless otherwise agreed).

Summary

To sum up, the IRT is 'consumer-friendly', as it is very easy to use. Provided that consumers resort to it at an early stage, the IRT offers a clear and structured approach that the consumers should take towards reorganising some of their key debts, such as credit card debt or overdraft indebtedness. The combination of the IRT and the comprehensive Guide encourages consumers to take early action, as clear and precise instructions are provided in relation to the steps to take in order to avoid a cessation of payments at a later date. They are also instructed how to reorganise their debts, so as to ensure that they are in a position to repay them.

Finally, it can be argued that the recently introduced IRT and Guide are complementary to an already sophisticated legislative framework, which effectively promotes a second-chance culture in the consumer indebtedness sphere. This is an issue which has

come to preoccupy the European Commission, which is at present exploring ways of stimulating and improving Member State action in this area.

In this context, Cyprus is certainly a model worth considering, particularly for Member States without a strong history of legislative action in this field. ■

Footnotes

- 1 Available at: <<http://www.mcit.gov.cy/mcit/insolvencyensf/All/3C7D63F988E612C7C2258219002E26ED?OpenDocument>>
- 2 The IRT and the Guide were prepared by the Insolvency Service with the support and advice of the Central Bank of Cyprus.
- 3 Available at: <http://www.mcit.gov.cy/mcit/insolvencyensf/page04_gr/page04_gr?OpenDocument>
- 4 Directive on Arrears Management, 2015, Central Bank of Cyprus.
- 5 Article 33, Law on Insolvency of Natural Persons 2015.
- 6 Pursuant to Article 36, the Insolvency Adviser may include secured creditors claims into the plan, provided that he obtains their consent.
- 7 Articles 37-39.
- 8 Article 40.
- 9 For instance, Article 35 provides that in order for a debtor to use a PRP the following conditions must be satisfied: 1) the debtor is: a) a resident of the Republic; and b) unable to pay his debts as they fall due; 2) no other application for a protection Order is pending; 3) there is a reasonable prospect that the prospective PRP will facilitate the 'recovery' of the debtor within a period of no more than 5 years; 4) 25% of the debts have not been incurred within six months from the date the application for a Protection Order was made.
- 10 Article 42(1)(a).
- 11 Article 43(1).
- 12 Article 42(1)(b).
- 13 Such an application must be made no later than 15 days starting with the date the Insolvency Adviser notified the creditors of his decision to reject their confirmation statement (See Article 43(9)).
- 14 Article 43(10).
- 15 Article 51(1). In addition, Article 51(2)(a) states that the Insolvency Advisor must give written notice of the creditors' meeting at least 14 days before it is to be convened. It is necessary that the creditors' meeting is convened during the period that the Protection Order has effect, otherwise the PRP procedure is deemed to be terminated (Article 51(3)).
- 16 Article 46.
- 17 Article 55(1).
- 18 The main criteria are: a) the total value of secured and unsecured creditors' claims does not exceed €350.000; b) at least one of the secured creditors has security over the debtor's main household, the market value of which does not exceed €300.000; c) the total value of the debtor's personal property (excluding his main household) does not exceed €250.000; d) the debtor has become unable to pay his debts due to circumstances beyond his control and as a result he suffered a reduction of his income by at least 25%.
- 19 Article 72, Ch. III of the Law on the Development and Implementation of Personal Repayment & Discharge Plans, 2015.
- 20 Article 75.
- 21 Article 73.



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