

INSOL Europe/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States

Cyprus

09/05/2022

Restructuring & Insolvency analysis: This article looks at how Austria has implemented Directive (EU) 2019/1023 as part of the Joint Project between INSOL Europe and LexisPSL to track implementation.

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INSOL Europe/LexisNexis research on implementation of the EU Directive

LexisPSL are working with INSOL Europe on a joint project to obtain articles from the INSOL Europe membership and Country Coordinators showing how EU Member States have implemented [Directive \(EU\) 2019/1023](#) of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending [Directive \(EU\) 2017/1132](#) (the EU Directive).

A consolidated table appears at Practice Note: [INSOL Europe/LexisPSL Joint Project on EU Harmonisation Directive 2019/1023: consolidated table](#).

As always, you should contact local lawyers in the relevant jurisdiction to check the current measures in force and the impact of any particular circumstances or nuances of your case.

Question 1: When did/will the new restructuring law come into force? What is/are the name of the new proceedings which comply with the EU Directive?

The national insolvency regime is already in line with many provisions of the EU Directive. The harmonization of national insolvency law relates primarily to the EU Directive's mandatory provisions and the reforms will result in amendments to both the Bankruptcy Law Cap 5 and Cap 113 Companies Law of Cyprus.

The restructuring tool which forms part of the Insolvency Framework is Examinership, introduced in Cyprus in May 2015 and the provisions relating to this form part of Cap 113, in particular Part IVA. There will not be a new restructuring law per se coming into force based on the current suggested amendments which were submitted to the Law Office of the Republic of Cyprus in November 2021, and which are still subject to review. Thus, the proposed amendments reflected below are subject to confirmation by the House of Parliament.

Once the Law Office has approved the draft transposition, legislation will be submitted to the Council of Ministers and Parliament for approval.

Question 2: Is court approval automatically required? Is court involvement possible during the course of the proceedings? (for eg to rule on short notice on conflicts regarding classes of creditors with voting rights, etc...)

A court order is required in order for an Examiner to be appointed. During the course of the Examinership there are several stages in which the court will or may be involved, including, but not limited to the following:

- approval of proposals

- giving directions in relation to the proposals
- the court may decide to order the powers/duties of directors to be undertaken by the Examiner
- the Court may order certain pre examinership debts to be settled
- the court may order the extension of the moratorium period/an earlier termination of the moratorium period

Question 3: What are the entry criteria (ie must insolvency be proved)? Could you please define the entry criteria under your national legislation?

The criteria are that the debtor is unable to pay its debts or it must be likely that the debtor will be unable to pay its debts. The debtor must not have passed a resolution for its winding up and no order for liquidation has been made against it.

Question 4: Can foreign companies use the process?

A registered branch of a foreign company may also apply for Examinership.

Question 5: Does the debtor (ie company's management) remain in possession or is an insolvency practitioner (or any other professional, in that case could you please specify) automatically appointed?

The debtor/company's management remain in possession under the supervision of the Examiner (the appointed insolvency practitioner), although the court can order that some or all of the powers of directors are vested in the Examiner and/or may order that the Examiner has the same powers as a liquidator.

Question 6: Is there any moratorium on claims to protect the debtor during the process? What is the minimum and maximum length of the stay?

The initial stay is limited to four months and the maximum length of stay in total, based on the proposed amendments, is limited to twelve months. Certain criteria are set for the stay to be lifted during this period.

Question 7: Are creditors placed into classes for voting purposes? How are 'affected creditors' defined under your legislation?

Creditors are placed into classes for voting purposes. The definition for 'Affected creditors' is in line with Article 2.1.2 of the EU Directive. 'Affected parties' means creditors, including, where applicable under national law, workers, or classes of creditors and, where applicable, under national law, equity holders, whose claims or interests, respectively, are directly affected by the restructuring plan.

Question 8: What is the voting threshold to approve the restructuring?

The proposals put forward must be approved by a majority of creditors, in terms of value of claims, in each class.

Question 9: Can shareholders be bound?

Shareholders can be bound, although, provided their interest in the debtor company is impaired as a result of the proposed restructuring they can choose to oppose the same.

Question 10: How are secured creditors treated?

Secured creditors are treated as a separate class.

Question 11: How are employees treated?

Employees may be treated as a separate class. Employees' rights, in accordance with union and national labour laws, are not affected by the plan.

Question 12: Can certain (holdout) creditors be crammed down? Is the absolute priority rule applied?

With regard to the cross-class cram-down, the provisions of Article 11.1 of the EU Directive will be applied, which states that 'the majority of the voting classes of affected parties, provided that at least one of those classes is a secured creditors class or is senior to the ordinary unsecured creditors class; or, failing that at least one of the voting classes of affected parties...'.

The absolute priority rule will apply.

Question 13: Can onerous contracts be disclaimed? Are there any restrictions on ipso facto clauses?

Provision is made to prevent creditors from withholding performance or terminating, accelerating or, in any other way, modifying contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely due to the company/debtor entering Examinership.

Question 14: Will the new procedure be listed in Annex A of the EU Recast Regulation on Insolvency 2015/848? If not, how will it be recognised in other countries?

The Examinership procedure will be listed in Annex A of the EU Recast Regulation on Insolvency.

Question 15: Are new money or other arrangements granted any protection/priority (eg DIP finance)?

A provision has been added for the protection of new or interim financing.

Question 16: How long should the process take (roughly)?

This is difficult to estimate as, to date, there have not been any successful Examinerships in Cyprus despite that they were introduced in 2015. One of the key factors contributing to the many failed Examinership attempts was that the procedures were bogged down due to the high number of creditors seeking to appear in the proceedings and/or oppose the court applications for Examinership and the slow pace at which the court dealt with this influx. On this basis it's likely that the process will take the maximum period a stay can be in place for—ie 12 months (despite the complexity of the case) assuming that any procedures are to be implemented.

Question 17: How much is the process likely to cost (roughly)?

This depends on the complexity of the case and the extent to which creditors/other stakeholders decide to oppose the petition. For a less complex Examinership, which faces some opposition at court, an estimate may be €60,000 to €70,000.