

Insolvency and enforcement framework upgrades in Cyprus

The Restructuring and Debt Advisory team of KPMG in Cyprus outlines recent changes to the international business hub status



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Cyprus has a small, open, and service oriented economy. Its strategic location positions it as a business gateway and financial hub between three continents. The country has achieved impressive rankings in various key ‘Doing Business’ areas, highlighting its commitment to facilitating international business activity.

Indicatively, it has achieved significant rankings as per the report “Doing Business 2020” issued by the World Bank, which ranked 190 world economies. Cyprus ranked 54th in the ease of doing business index, demonstrating a favourable environment for business operations.

The Cyprus Corporate Insolvency Framework: Modernised, fully-regulated and robust

As a thriving international business and financial hub, it is of paramount importance to have an efficient playbook for the resolution of commercial disputes as well as effective asset recovery tools. As per the latest Doing Business report, Cyprus ranked 31st globally in resolving commercial disputes and insolvency.

The legal framework for insolvency and corporate matters in Cyprus is governed by the Companies Law (Cap 113) and is supplemented by the Companies (Winding-up) Rules 1933–2013 and the Civil Procedure Rules. The provisions apply to all companies registered in the

Republic of Cyprus, albeit special rules apply to banking institutions under the Business of Credit Institutions Law (66(I)/1997, as amended) and to insurance companies under the Law on Insurance and Reinsurance Business and Related Issues (38(I)2016, as amended).

The main corporate insolvency procedures in Cyprus are:

- i. Examinership;
- ii. Receivership; and
- iii. Winding-up/Liquidation.

Examinership

This is a debt restructuring and corporate rescue procedure, which aims to pre-emptively assist viable businesses in surviving. An Examiner is appointed where:

- i. the company is or will probably be unable to pay off its debts;
- ii. there is no resolution or order for the company’s winding-up; and
- iii. there is a reasonable survival prospect for the company as an active economic unit, either wholly or partially.

The application for appointment of an Examiner can be made by the company, any creditor, shareholders holding 10% of its capital or by any guarantor of the company’s obligations. The application is accompanied by a report concerning the affairs and financial standing of the company prepared by an independent expert. Once the application is filed, the court grants a four-month moratorium, which may be extended up to a maximum 12 months.

If satisfied, the court will appoint a licensed insolvency

practitioner as Examiner, who will then prepare a restructuring plan to be presented to court. The court may ratify, amend or reject the plan at its discretion. When the proposed restructuring plan takes effect, the company ceases to be under the court’s protection and the appointment of the Examiner is terminated.

Receivership

The main purpose/objective of receivership is for a licensed Insolvency Practitioner to be appointed as Receiver (or Receiver and Manager) (“Receiver/Manager”) with view to taking over the operations of the business, assessing its viability and satisfying its debt and other obligations. The Receiver/Manager is appointed to continue the business, if possible, with the aim of ultimately returning it to the shareholders as a viable economic unit, once the relevant obligations have been settled or otherwise rescheduled.

A Receiver/Manager can be appointed in two ways: (i) through a court decision; or (ii) by a secured creditor who holds a relevant charge over the company’s assets (either a floating charge over the company’s entire undertaking and assets, in which case a Receiver and Manager is appointed, or a fixed charge on specific assets, in which case a Receiver is appointed).

In receivership, the directors’ powers to manage are curtailed and transferred to the Receiver/Manager. The extent of these powers is defined either by the court order or in the document that permits the



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secured creditor to appoint. The expected timeframe for a receivership varies in relation, inter alia, to the activities and complexities of the company, the nature of its assets and any legal challenges during the appointment.

Winding Up/Liquidation

This is the process of terminating a company's activities, paying off its debts from any available assets, and winding up the company in an orderly manner. There are two forms of liquidation in Cyprus: compulsory and voluntary.

Compulsory liquidation is generally for insolvent companies and occurs after a petition is filed in court by the company, a creditor, a contributory, an Examiner, an insolvency practitioner from another member state (including a temporary insolvency practitioner appointed by a court under Article 38 of the European Insolvency Regulation (recast)). On the other hand, voluntary liquidation is initiated by the company's members or creditors. A Creditors' Voluntary Liquidation is used to distribute the available assets of an insolvent company among the creditors, whilst a Members' Voluntary Liquidation is a method of dissolving a solvent company that is no longer needed and distributing its assets among its members.

According to the Companies Law (Cap 113), a compulsory liquidation must be completed within a period of eighteen (18) months from commencement. If this is not possible, an extension application must be submitted by the liquidator to court. The expected timeframe for a voluntary liquidation differs from case to case.

Streamlining insolvency and enforcement procedures through judicial system digitalisation

Over the past few years, Cyprus has made substantial efforts to

modernise and strengthen its insolvency framework through various reforms to align with the Directive 2019/1023 on preventive restructuring and insolvency. An important milestone in these reforms is the digitalisation of the judicial system through the introduction of the e-justice and i-justice systems.

The e-justice system is currently in development that will lay the foundations for the modernisation and digitalisation of the judicial system, which involves the implementation of digitalisation in all major aspects of court administration and procedural hearings.

The system is intended to provide for electronic lodgement of documents and lawsuits, for information to be filed in a central register accessible by stakeholders and, overall, to improve efficiency in relation to the collation and presentation of pleadings. The system is expected to be fully implemented in 2023, albeit an interim solution, called i-justice, has been recently introduced.

Alignment of enforcement and asset recovery procedures with international best practice

There are several instances of international companies having to initiate legal proceedings in Cyprus for the recovery of assets held via Cyprus-registered entities.

Cypriot Courts will assist in the enforcement of a foreign judgment by ratification of the judgment, if certain conditions are met. Upon recognition and registration within the Cypriot jurisdiction, the foreign judgment can have the same legal impact as a domestic judgment and can support the execution of actions or a winding up/liquidation or bankruptcy petition against a judgment debtor in Cyprus.

Enforcing EU court judgments

In insolvency proceedings, the European Insolvency Regulation (recast) will apply by determining rules on which court has

jurisdiction to open an insolvency case, the applicable national law and recognition of the court's decision when a company, a trader or an individual becomes insolvent.

Enforcing non-EU court judgments

For the recognition and enforcement of non-EU Court judgments, there are several bilateral treaties between Cyprus and other countries that define the ways foreign judgments can be ratified in by the Cypriot courts. These include the HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

Once a foreign court judgment is ratified by the local judicial system, then all locally available enforcement actions may be utilised to recover the asset in question.

Unlocking Investment Value

Cyprus is making significant strides in enhancing and upgrading its insolvency, enforcement and asset recovery framework in a conscious move to support and reinforce its international business and financial hub status, by providing a comprehensive, practical toolkit to international companies which safeguards and maximises the recoverability of their international investments. ■



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