

# The corporate liquidation procedures in Cyprus

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**THE NEED FOR A CLEAR FRAMEWORK IN RELATION TO THE REGULATION OF CORPORATE RECOVERY PROCEDURES HAS BECOME APPARENT**



As a consequence of the economic crisis, an increase has been noted in corporate liquidations and insolvency procedures and the need for a clear framework in relation to the regulation of corporate recovery procedures has become apparent. This article aims at providing a description of the main procedures for corporate liquidation in Cyprus, as regulated by the Companies Law, Cap. 113. It should be commented that, as insolvency law evolves, it has become obvious that the provisions under Cyprus law should be revisited to allow for the law to come in line with the emerging market conditions so that the procedures can be modernized and become more efficient.

In general, corporate liquidation is the procedure of collection and realization of a company's assets, for the settlement of its liabilities by way of distribution to the creditors, while any remaining excess is returned to its shareholders.

In accordance with the applicable provisions of the Law, a company's affairs may be wound up either by compulsory or voluntary liquidation.

## Compulsory liquidation

Compulsory liquidation is ordered by the court on the basis of a petition filed by the company itself, a creditor or a contributory. The court may issue an order for compulsory liquidation on a number of grounds including the company's inability to pay its debts, the company's failure to deliver its statutory reports or to hold its statutory meetings, the

company not commencing business within a year from its incorporation or suspending the same, a public company's reduction of shareholders below the minimum number prescribed by the law and of course, where the company resolves with a special resolution for the winding of its affairs by compulsory liquidation. Other grounds include requesting the court to exercise its discretionary powers, where just and equitable, or in cases of Societas Europaea, where the entity fails to provide for remedy in line with Article 64 of Council Regulation (EC) no. 2157/2001 of 8 October 2001.

The court order usually, further provides for the appointment of a Liquidator. The Liquidator undertakes to conduct the liquidation procedure on the basis of a Statement of Affairs that is prepared and submitted to him by the Company's directors. The Statement of Affairs describes the company's affairs, including details as to the company's assets and liabilities, creditors' details, securities and other information as this may be requested. The Liquidator undertakes to confirm and locate the company's assets, which shall in turn be materialized for the payment of the liquidation fees and expenses, preferential debts and secured and unsecured creditors, provided that their claims have been checked and admitted.

Court based compulsory liquidations are not as flexible as voluntary liquidations, because the law imposes greater control through, inter alia, the requirement for periodic filings. For example, the Liquidator is

requested to prepare statements of receipts and payments on a six-monthly basis, which contain information in relation to the accounts of the procedure and which must be submitted to the Registrar of Companies and Official Receiver, as the supervisory authority, in accordance with the provisions of the law.

## Voluntary liquidations

Voluntary liquidations can either be on the basis of a resolution of the members or in accordance with the creditors' decision. The difference between voluntary liquidation by members and voluntary liquidation by creditors is that in the former there is a requirement that the company is solvent, unlike the latter, which usually signifies that the company is unable to pay its debts by reason of insufficient assets. Depending on whether the procedure is initiated by members or creditors, the mechanics are different.

### *Voluntary liquidation by members:*

A voluntary liquidation by members is the procedure whereby a solvent company's shareholders decide that the company is to be liquidated. It is a prerequisite for this procedure that the directors of the Company make a statutory declaration of solvency, declaring that the company shall be able to pay its debts in full within 12 months from the commencement of the winding up procedure. The Declaration of Solvency is accompanied by a Statement of Assets and Liabilities up to the date of the declaration. In



addition, a general meeting of the company must be convened, in order for a special resolution to be passed by the company's members showing that the company is to be voluntarily wound up and a liquidator is to be appointed. Following his appointment, the Liquidator shall check and collect the company's assets, which will be realized in order to pay all creditors, any surplus to be returned to the shareholders. Once the Liquidator winds up the company's affairs, he will convene a final general meeting, during which he will submit to the company's members the final liquidation accounts and will give explanations in relation to the conduct of the Liquidation. The accounts must in turn be submitted to the Registrar of Companies and within three months from the filing of the returns the company will be deemed to be dissolved.

#### ***Voluntary liquidation by Creditors:***

A voluntary liquidation by creditors is instigated when the company, following the members' special resolution for winding up and nomination of Liquidator, causes in the same day the convocation of a creditors' meeting to which the resolution for voluntary winding up and the appointment of a liquidator is approved by the creditors. The creditors may also decide for the appointment of an inspection committee. Voluntary liquidation

by creditors applies when the company is insolvent.

Soon after the appointment of the Liquidator, the Company's directors are obliged to deliver to the Liquidator a Statement of Assets and Liabilities and, generally, information with respect to the company's affairs. As in all liquidation procedures, the Liquidator will undertake to confirm the information received, and locate and collect the assets, for the purpose of settlement, in part or in full, of all creditors, in accordance with the provisions of the law with regard to debt classification. In addition, and provided that the liquidation procedure is not completed within one year from its commencement, the Liquidator is obliged to convene annual general meetings of the company's members and creditors and lay before them his report for the conduct of the liquidation procedure and the liquidation accounts. Once the liquidation procedure is completed the Liquidator convenes final general meetings of the company and the creditors for the presentation of the final accounts. These will in turn be submitted to the Registrar of Companies and the company will be deemed to be dissolved within three months from the registration of the accounts.

A common issue with regard to all liquidation procedures is the priority with regard to the settlement of debts. It is noted that, in general, all liquidation fees

and expenses are payable out of the proceeds of the liquidation procedure before all other debts. Furthermore, preferential debts, which include all local taxes and levies as well as employees' salaries and compensations, are paid in advance to all other unsecured creditors, in accordance with the definitions provided in the law. Secured creditors are satisfied irrespective of the procedure for the payment of all other debts, from the proceeds of the sale of the asset to which the security is attached.

Overall, the provisions on liquidation procedures in Cyprus are clear and flexible, despite the absence of an independent regime of insolvency laws and regulations. Nevertheless, taking into consideration the complexities of such cases, especially in the current market conditions, the law is in need of change especially with regard to cross border insolvencies. In particular, it has become apparent that while the provisions of Regulation 1346/2009 of 29 May 2000 with regard to the regulation of insolvency proceedings within the EU apply in Cyprus, the law makes no provision with respect to international cross border insolvencies. It is noted that Cyprus has not adopted the UNCITRAL Model Law on Cross Border Insolvency Cooperation and all cases are dealt with depending on their facts.



## **THE LAW IS IN NEED OF CHANGE WITH REGARDS TO CROSS BORDER INSOLVENCIES**

