MARIA KYRIACOU
Head of Andreas Neocleous & CO LLCo, Nicosia (Cyprus) office, and former Registrar of Companies and Official Receiver

THE CHANGES ARE UNDOUBTEDLY BOLD BUT THEY HAVE BEEN CRITICISED AS A CHARTER FOR UNSCRUPULOUS DIRECTORS

Cyprus: New insolvency laws

In April the Cyprus Parliament approved a new package of insolvency laws, aimed at streamlining and modernising the existing system and promoting a rescue culture.

Reform of the insolvency framework forms part of the adjustment programme agreed between the Cyprus government and international lenders at the time of the 2013 banking crisis, and is essential for the resolution of non-performing debt, which is currently estimated to account for almost 50% of gross loans in the banking sector.

The new insolvency laws, which were extensively amended by the Parliament in the course of its debate, have not been promulgated and there is uncertainty concerning the detail, but the following summary highlights the most noteworthy changes.

Companies

The majority required for a proposed voluntary arrangement to be binding on all creditors has been lowered from a majority in number representing three quarters in value to a simple majority in value of those voting. The majority required for votes of members to be binding on all members has also been reduced to a simple majority. The sanction of the court is required for the proposal to become effective.

The Companies Law has been amended to introduce a process called "examinership", which is akin to the United Kingdom administration process. This provides for the appointment of an insolvency practitioner as "examiner", whose role is to develop restructuring proposals and propose them for agreement to the stakeholders during a four-month moratorium in which the company is protected from creditor action.

The Companies Law has also been amended to make the following changes regarding liquidation:

- the minimum debt required for a creditor to petition for winding up on the basis of a statutory demand has been increased from €854 to €5,000;
- compulsory liquidations must be completed within eighteen months from commencement unless the court grants an extension;
- a liquidator can be appointed by the court as well as by existing means, and the Official Receiver can be appointed as the permanent liquidator in a compulsory liquidation;
- a liquidator must be a licensed and regulated professional insolvency practitioner;
- the liquidator can apply to the court for an order bringing the liquidation to an end and dissolving the company if the assets are insufficient to cover the cost of liquidation; and
- a court can make an order authorising the liquidator to dispose of the assets subject to a charge if it is satisfied that this would be advantageous.

Individuals

The court has the power to order a 95-day moratorium on enforcement action by creditors for the debtor to agree to an arrangement (known as a personal repayment plan) with them. If approved by the necessary majority of creditors and the court, the arrangement will be binding on the debtor and all creditors, subject to dissenting creditors' right to be heard before the court. No proceedings can be commenced to enforce a guarantee within two years after the date of implementation of a personal repayment plan by the primary debtor.

The court can impose a rescheduling in small cases where aggregate liabilities are no more than €350,000 and individuals with minimal assets and income may apply to the court via the government insolvency service for an "order for debt relief" of up to €25,000.

Discharge from bankruptcy is automatic after 3 years on the condition that all the debtor's assets are sold and the proceeds are distributed to the creditors. There are new criminal sanctions against fraudulent alienation of assets prior to bankruptcy and non-disclosure of assets.

A change for the better?

The changes are undoubtedly bold but they have been criticised as a charter for unscrupulous directors, given the lack of an established insolvency profession and all the regulatory infrastructure that goes with it. Furthermore, proceedings in the Cyprus courts are beset with delays, usually taking years to complete, and judges have little experience in insolvency matters. Increasing the courts' involvement in the insolvency process therefore seems more likely to aggravate delays than to streamline proceedings.

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