Insolvency law reform in Cyprus – the first steps

Kyriacos Kourtellos and Demetris Roti look at the first steps toward reform in Cyprus aiming to modernise and streamline the procedure for the compulsory liquidation of companies

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The Companies Law of Cyprus CAP113 ("Companies Law") is based on the UK Companies Act of 1948 with the necessary amendments to incorporate the relevant EU Directives.

The sections referring to restructuring and corporate insolvency, winding up voluntarily or compulsorily, registration and enforcement of charges and appointment of liquidators or receivers and managers remain basically unchanged, with the exception of the incorporation of the Third Council Directive on mergers and divisions of public companies. The insolvency regime under the Companies Law generally favours creditors and clearly defines the collection, liquidation and distribution of proceeds to the creditors, and the remainder, if any, to the members.

Under the Companies Law as it currently stands there are two regimes for the winding up of a company: compulsory and voluntary. A compulsory winding up (also known as winding up by the court) is triggered by a winding up order from the court, concerning a petition filed by one of a range of stakeholders (a creditor, a contributory or the company itself). A voluntary winding up is initiated by the company itself after passing an appropriate resolution. The substantial criteria which will determine the most appropriate procedure in any case are whether a company has had any activities, has any assets or liabilities to third parties and whether it is solvent or not. A solvent company can be voluntarily dissolved via the members' voluntary liquidation procedure or, if it has no significant assets, by being struck off the Register.

The Council of Ministers at its meeting held on 23 December 2014 approved a draft bill entitled *"The Companies Law (Amendment) (No. 4) Law of 2014"* (the "Bill") amending the provisions of the Companies Law relating to compulsory liquidation, and authorised it to be submitted to the House of Representatives for enactment into law. The amendments are required under the April 2013 Memorandum of Understanding between Cyprus and the European Commission, on behalf of the European Stability Mechanism and the Memorandum of Economic and Financial Policies between Cyprus and the International Monetary Fund. The Bill has been reviewed by the Attorney General of Cyprus, who signed the relevant Explanatory Memorandum.

The main objective of the Bill is to modernise and streamline the procedure for the compulsory liquidation of companies, with the aim of minimising the time taken to complete the process, thus facilitating and expediting the return of productive assets on the market, as set out in the Insolvency Framework which was adopted by the Council of Ministers on 30 July 2014 and endorsed by the House of Representatives in a Resolution dated 6 September 2014.

The Companies Law provides that one of the grounds for a company to be wound up by the court is its inability to pay its debts. The Bill amends the criteria for assessing the inability to pay debts, and adds a criterion showing that, to the satisfaction of the court, the value of the company's assets is lower than the sum of its liabilities, taking into account its current and future obligations. The Bill also provides that once a winding up order is made, the Official Receiver, who is a government official and an officer of the court, becomes the liquidator and not a provisional liquidator, as is the case at present.

Other significant amendments introduced by the Bill are as follows.

a. any liquidator other than the official receiver must be an independent licensed professional (registered lawyers and accountants will be considered to meet this requirement);
b. the liquidator may be appointed not only by the court but also by the meetings of the creditors and contributories;
c. to address the delays and bottlenecks created by the existing decision-making process in creditors' meetings, the Bill amends the decision-making process in such assemblies and replaces the requirement for a majority by number and value with a majority by value alone;
d. under certain circumstances the liquidator may be given power by the court to manage assets subject to charges in favour of third parties if the court is satisfied that the disposal of any secured property of the company in this way may result in a more beneficial realisation of the company's assets than by alternative means. The liquidator may distribute any surplus, after repaying the secured creditors, to unsecured creditors. However, the rights

of the secured creditors to repayment of the amount secured by the charge are not diminished;

e. the liquidator's powers to obtain information from officers and managers of the company are enhanced, and a liquidator may apply to the court for public examination of any contributory, or any previous liquidator or insolvency office-holder of the company;

f. under an expedited process aimed at avoiding delays and reducing costs, the Official Receiver may apply to the court for early dissolution of the company if he is satisfied that the assets of the company are insufficient to cover the costs of liquidation and that the company's affairs do not require further investigation; and

g. the period in which a compulsory liquidation must be completed is limited to 18 months, with any extension of the period in a particular case requiring the approval of the court.

The Bill, together with the Explanatory Memorandum signed by the Attorney General, and the completed Impact Analysis Questionnaire, have been submitted to the House of Representatives in order to enact the Bill into law.

While enactment of the Bill will mark a long-awaited first step in the modernisation of the insolvency regime in Cyprus, the changes it introduces are limited in scope, and many practitioners were hoping for a far more comprehensive reform. For example, the Bill does not deal with issues that have recently been addressed in the United Kingdom, such as the registration of a pledge of shares or the abolition of the requirement for a memorandum of association of a company. Nevertheless the Bill is a move in the right direction as it should simplify compulsory liquidation procedures and save time and costs.

Once the Bill becomes law, the manner in which it is implemented, and particularly the approach adopted by the courts, will be critical factors in determining the degree of success it will achieve. As the courts themselves are currently a major bottleneck, reducing the time taken to complete liquidations will require a much more expeditious approach on their part. ■

> **THE MAIN OBJECTIVE OF THE BILL IS TO MODERNISE AND STREAMLINE THE PROCEDURE FOR THE COMPULSORY LIQUIDATION OF COMPANIES**