GETTING THE DEAL THROUGH

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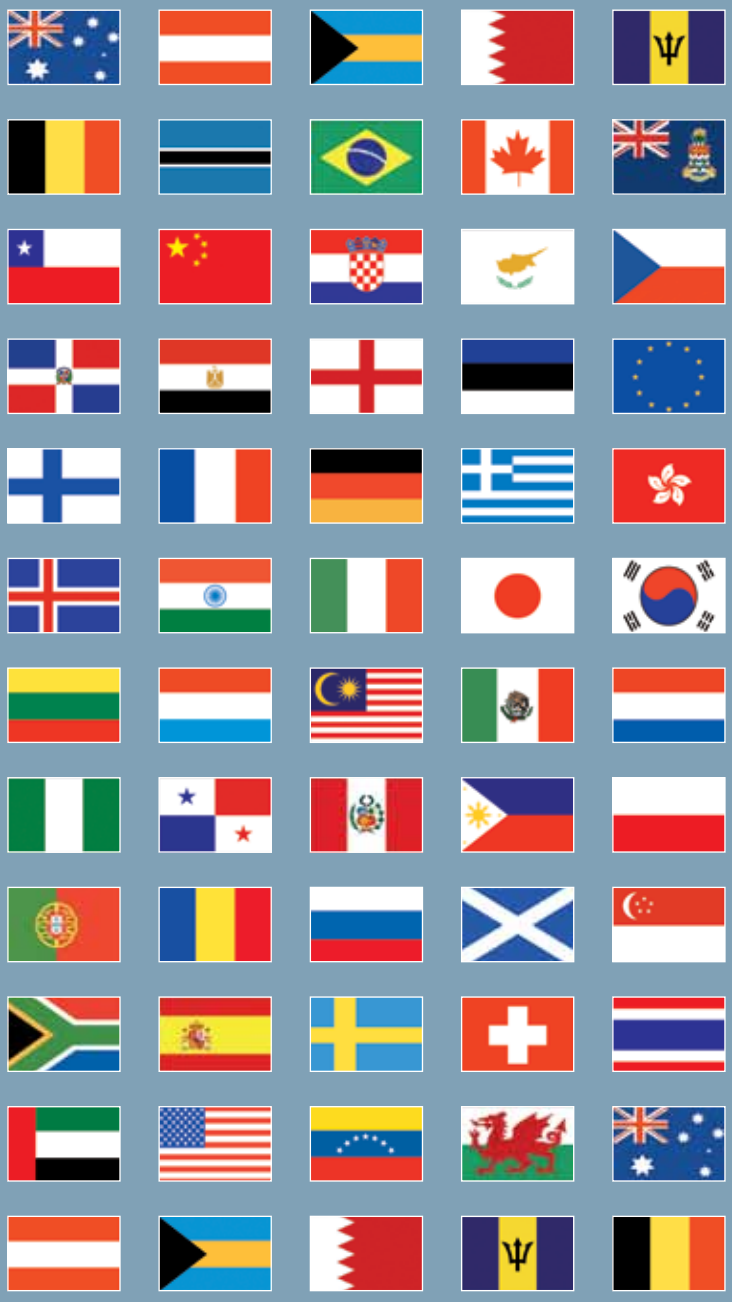

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Cyprus

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1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

Personal bankruptcy is governed by the Bankruptcy Law, Cap 5, and the Bankruptcy Rules, Cap 6. Corporate insolvencies and reorganisations are governed by the Companies Law, Cap 113. Section 203 of the Companies Law provides two methods of winding up, namely:

- compulsory winding-up by the court; and
- voluntary winding-up, which may be either a members' winding-up or a creditors' winding-up.

Sections 198 to 201 of the Companies Law set out procedures for compromises with members and creditors, either within or outside insolvency, and for mergers and divisions of public companies.

2 Excluded entities

What entities are excluded from general bankruptcy proceedings and what legislation applies to them?

There are no excluded entities either in bankruptcy or in insolvency. The definition of a debtor given in section 3(2) of the Bankruptcy Law, Cap 5, gives jurisdiction to the courts to adjudicate bankrupt Cypriots and foreigners residing in Cyprus. Bankruptcy proceedings can only commence if the debtor has committed one of the acts set out in section 3(1) of the Bankruptcy Law, Cap 5.

A company may be wound up following a court order in the following circumstances:

- the company has by special resolution resolved that it is to be wound up by the court;
- default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
- the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- the number of members is reduced, in the case of a private company, to below two, or in the case of any other company, to below seven (subject to Law 2(I) of 2000 which provides that a company can be formed with only one shareholder);
- the company is unable to pay its debts;
- the court is of the opinion that it is just and equitable that the company should be wound up; or
- the company is a Societas Europaea (SE) that no longer complies with article 7 of Council Regulation (EC) 2157/2001, which requires the registered office and head office of an SE to be in the same member state.

Special arrangements apply to insolvent banks and insurance companies.

3 Secured lending and credit (immoveables)

What principal types of security are taken on immoveable (real) property?

The type of security most commonly granted over immoveable property is the legal mortgage. A mortgage does not constitute an estate in land but only a contractual right for the benefit of the mortgagee and a charge on the immoveable property. Mortgages or other charges over immoveable property must be registered with the Department of Lands and Surveys and, if given by a company, with the Registrar of Companies.

4 Secured lending and credit (moveables)

What principal types of security are taken on moveable (personal) property?

The security devices for moveables are the lien, the pledge and the floating charge.

A lien may be legal under common law or equitable. A common law lien is the right to retain possession of certain property belonging to another person until complete payment of a debt. This type of lien merely provides a possession right to the holder of the property until payment, not a right to sell or otherwise deal with the property and it is extinguished if the creditor gives possession to the debtor or any agent of the debtor.

An equitable lien does not require continued possession of the property and is superficially similar to a mortgage, the difference being that a mortgage is a right founded on contract, whereas an equitable lien arises from general principles of equity, which do not permit a person who has acquired property under a contract to keep it without payment.

A pledge is the bailment of moveables (typically goods or shares) as security for payment of a debt or performance of a promise, usually in the context of a loan of money in return for the delivery of possession to the lender. The lender has the power to sell but the general ownership of the goods remains with the borrower. The pledge must be in writing, made in the presence of two competent independent witnesses and signed by the pawnor.

A floating charge is a security interest over the assets of a company, which 'floats' until an event of default is triggered or until the company goes into insolvent liquidation, at which time the floating charge crystallises and attaches to all of the assets of the company. It gives the secured creditor two important remedies in the event of default. First, the creditor may crystallise the charge and then realise any assets subject to the charge as if it was a fixed charge. Alternatively, if the floating charge substantially encompasses all of the assets and undertaking of the company, the creditor may appoint a receiver to take control of the business, with a view to discharging the debt out of income or selling off the entire business as a going concern.

Mortgages over Cyprus ships must be supported by a deed of covenants entered into by the parties and must be registered with the Registrar of Cyprus ships or at a Cyprus consulate overseas.

Any charge, pledge or marine mortgage given by a company must be registered with the Registrar of Companies.

Sums due to a person, such as a legacy under a will, money to be received from the sale of property, an interest in trust funds and similar choses in action, may be assigned to a lender as security for an advance.

Other arrangements such as hire purchase and leasing are also common.

Retention of title or 'Romalpa' (after the English case of *Aluminium Industrie Vaassen BV v Romalpa Aluminium Limited*) clauses are frequently encountered, providing that the title to the goods remains vested in the seller until certain obligations (usually payment of the purchase price) are fulfilled by the buyer. In the event of the purchaser's insolvency the buyer may be able to recover possession of goods that have not been paid for. In Cyprus law, English law precedents after 1960 are highly persuasive and although retention of title clauses have not been tested in the Cyprus courts, it is likely that the courts would follow the English precedents, of which there are many.

5 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

A creditor may bring an action for recovery of the debt in the district court where the debtor lives or has his principal place of business. Such actions can be protracted if the debtor files a defence. If the debtor owns certain assets and there is a risk that the debtor will dispose of them, the creditor can obtain an injunction to freeze them.

If the creditor has obtained a judgment against the debtor he can enforce it in various ways, namely by a writ of moveables, garnishee proceedings, registration of a charging order over the immoveable property of the judgment debtor or over his chattels (eg, shares), a writ of delivery of the goods ordered to be delivered to the judgment creditor, a writ of possession of the land ordered to be delivered to the judgment creditor, a writ of sequestration and bankruptcy proceedings against the judgment debtor.

Pre-judgment attachments are not available, and no special procedures apply to foreign creditors.

Generally as a last resort, the creditor may present a petition for bankruptcy or winding-up.

6 Courts

What courts are involved in the bankruptcy process? Are there restrictions on the matters that the courts may deal with?

Bankruptcy proceedings are dealt with by the district court of the district in which the debtor's home or place of business is located. A petition to wind up a company must be presented to the district court in whose area the company's registered office is situated. The procedure commences with the filing of the bankruptcy petition or petition for winding-up in the appropriate court.

7 Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation and what are the effects?

A corporate debtor may enter into members' or creditors' voluntary liquidation. The directors decide that the company has no future and agree that it would be best to terminate its existence. Voluntary liquidations start with a resolution of the company. If the articles of association of the company provide for a fixed period for the duration of the company or specify that a certain event should occur for the winding-up, only an ordinary resolution in a general meeting is needed. Otherwise, a special or an extraordinary resolution is necessary, resolving that the company should be voluntarily wound up.

A voluntary winding-up is deemed to begin on the passing of the resolution. After the commencement of the winding-up, the company may not carry on any business except that required for its winding-up. Any transfer of shares, unless done with the approval of the liquidator, is void as it is an alteration in the status of the members.

In order to enter into a members' voluntary winding-up the company must be able to pay all its debts, with interest, within a year and a majority of the directors are required to swear a statutory declaration to that effect prior to the passing of the resolution to wind up and deliver it to the Registrar of Companies. The liquidator is appointed by the members and, unless the company subsequently proves to be insolvent (in which case the liquidation is converted to a creditors' voluntary winding-up), the creditors have no say in his or her appointment.

If the company is insolvent, the members' appointment of a liquidator is considered by a meeting of creditors held on the same or the following day. The creditors may accept the liquidator appointed by the members or appoint someone else, either to act in place of the liquidator appointed by the members or to act jointly with him or her.

8 Involuntary liquidations

What are the requirements for creditors placing a debtor in involuntary liquidation and what are the effects?

A petition for the winding-up of a company may be presented by any creditor, including a contingent or prospective creditor. On hearing the petition, the court may dismiss it, adjourn it, or make any order that it deems fit. If a winding-up order is made, the liquidation will be deemed to have commenced at the time of presentation of the petition, unless a resolution has been previously passed for a voluntary winding-up, in which case liquidation will be deemed to have begun with the passing of the resolution. Any disposition of the company's property that takes place after the commencement of winding-up and any transfer of shares or alteration in the status of the members of the company after the commencement of winding-up will be void unless the court otherwise orders.

9 Voluntary reorganisations

What are the requirements for a debtor commencing a financial reorganisation and what are the effects?

Reorganisations may be formal or informal. Most reorganisations are informal, so there is no set procedure to be followed. Even in formal reorganisations the company will usually have agreed the arrangement in principle with its creditors before entering into the formal process.

Under section 198 of the Companies Law, Cap 113, where a compromise or arrangement is proposed between a company and its creditors or between the company and its members or any class of them, the court may, on application by the company or any creditor or member or, in the case of a company being wound up, by the liquidator, order a meeting of the creditors or of the members of the company to be summoned in such a way as the court directs. At this meeting, any compromise or arrangement passed by a majority in number representing three-quarters in value of the creditors or members present and voting will be binding on all the creditors or members and also on the company. In the case of a company being wound up, the compromise will also be binding on the liquidator and contributories of the company.

To have binding force such an order must be delivered to the Registrar of Companies for registration and a copy of every order must be annexed to every copy of the memorandum of the company issued after the order has been made. If no memorandum exists, then a copy of every order must be attached to every copy of the instrument comprising or defining the constitution of the company.

10 Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

Although section 198 of the Companies Law allows for the possibility of a creditor initiating a reorganisation, reorganisations initiated by creditors are not typical. The procedure to be followed is as described in question 9.

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result?

Any director of a company making a declaration of solvency for the purposes of a members' voluntary liquidation without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the specified period will be liable to up to two years' imprisonment or a fine of up to €2,560. If the liquidator, once appointed, forms the opinion that the company will not be able to meet its obligations and pay all its debts within the specified period, he or she must call a meeting of creditors and supply them with full information regarding the company's financial position and affairs. From the date of that meeting, the winding-up is converted from a members' voluntary winding-up to a creditors' voluntary winding-up.

Personal liability may only be imposed on directors in the event of fraudulent trading, namely carrying on business with intent to defraud creditors. Because of the high standard of proof required, successful claims for fraudulent trading are extremely rare.

Cyprus law does not contain any wrongful trading provisions requiring directors to commence insolvency proceedings as soon as they know or ought to know that their company will be unable to pay its debts.

12 Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Any business carried on by a company during a reorganisation occurs outside any formal insolvency and the law offers no automatic protection in these circumstances. Any arrangements would be the subject of specific agreement between the company and the creditor or supplier in question.

13 Rejection and disclaimer of contracts in reorganisations

Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

Section 200 of the Companies Law gives the court comprehensive powers to make any appropriate order to facilitate a reconstruction, including the power to make provision for any persons dissenting from the arrangement. In practice, the preferred option would be to terminate the onerous contract by negotiation but if no agreement could be reached the company could apply to the court for an order setting out the terms for cessation. Industry-specific restrictions may exist in certain regulated industries such as banking, insurance, transport and media.

14 Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Under section 200 of the Companies Law the assets may be transferred on such terms as the court determines, including the release of charges on assets (section 200(2)). This gives great flexibility. Some potential or contingent liabilities will nevertheless pass with the assets, for example under the Transfer of Undertakings Law) in connection with the sale of the business and under environmental, tax or other public laws in the case of specific assets. Industry-specific restrictions may exist in certain regulated industries such as banking, insurance, transport and media.

15 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

In reorganisations there is no automatic stay of proceedings.

In compulsory liquidations, under section 215 of the Companies Law, Cap 113, at any time after the presentation of a winding-up petition and before a winding-up order has been issued, the company or any creditor or contributory may, where any action or proceeding against the company is pending in any district court or the Supreme Court, apply to the court in which the action or proceeding is pending for a stay of proceedings. Where any other action or proceeding is pending against the company, the company or any creditor or contributory may apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding. The court in which such an action is brought may restrain the proceedings accordingly on any terms it thinks fit. Once a winding-up order has been made, any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up (which dates back to the presentation of the winding-up petition) is void (Companies Law, section 217) and no action or proceeding may be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose (Companies Law, section 220).

In voluntary liquidations creditors, even if they have obtained judgment, cannot enforce it against the company (Companies Law, sections 305 and 306).

16 Arbitration processes in bankruptcy

How frequently is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? Will the court allow arbitration proceedings to continue after an insolvency case is opened?

Arbitration procedures are rarely, if indeed ever, encountered in insolvency proceedings. According to section 5(1) of the Arbitration Law, Cap 4: 'Where it is provided by a term in a contract to which a bankrupt is a party that any dispute arising out of this contract or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it relates to any such dispute.' Section 5(2) provides that if the trustee in bankruptcy does not adopt the contract, the trustee or any other party to the agreement may apply to the court for an order directing that the matter in question be referred to arbitration in accordance with the agreement. There are no decided

cases in which the court has allowed arbitration proceedings to continue after the commencement of insolvency proceedings.

As far as the limitations on the availability of arbitration procedures in insolvency cases are concerned, section 24 of the Arbitration Law provides for the limitation of time for commencing arbitration proceedings. Specifically, section 24(1) provides that the laws on limitation of actions shall apply to arbitrations as they apply to proceedings in the court. Section 24(7) provides that the laws on limitation of actions include any law or public instrument limiting the time within which any particular proceeding may be commenced.

17 Set-off and netting

To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Set-off is generally available to creditors, subject to the following restrictions.

Under section 204(g) of the Companies Law, a sum due to any member of a company in his or her capacity as a member by way of dividends, profits or otherwise is not deemed to be a debt of the company, but it may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Under section 246 of the Companies Law the court may, at any time after making a winding-up order, make an order against any contributory for the time being on the list of contributories to pay any money due from him to the company. In making such an order the court may make, to any director or manager whose liability is unlimited, an allowance by way of set-off of any money due to him from the company on any independent dealing or contract with the company, but not any money due to him or her as a member of the company in respect of any dividend or profit.

18 Intellectual property assets in insolvencies

May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

There is no provision in the Bankruptcy Law, Cap 5, or the Intellectual Property Rights Law of 1976, as amended, that enables the licensor or the owner of the IP to terminate the debtor's right to use it when an insolvency case is opened. Also, no provision is made in any law as to the right of an insolvency administrator to continue to use IP rights which are granted under an agreement with the debtor or in regard to the insolvency representative's right to terminate a debtor's agreement with an IP licensor to continue to use the IP for the benefit of the estate. Cyprus law is silent on the particular issues and the general approach taken is that the terms incorporated in the agreement entered into by the parties apply. The general principles of contract law apply and IP rights may be sold or transferred like other assets of the estate.

19 Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Under section 117 of the Bankruptcy Law, a bankrupt individual may not obtain any loan or credit of more than €17 without disclosing that he is an undischarged bankrupt. Such debts rank after all others and have no priority over the existing debts on the day of the receiving order.

An insolvent company may not enter into any further transactions after a winding-up order unless it exits from liquidation (for example, by successfully completing an arrangement with its creditors). However, the liquidator may raise money of the security of the assets of the company (Companies Law, section 233).

As noted earlier, the Cyprus reorganisation procedure is extremely flexible and further credit can be taken on whatever terms can be agreed.

20 Successful reorganisations

What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

Notices of meetings to consider proposed arrangements under section 198 of the Companies Law must be accompanied by a statement explaining the effect of the compromise or arrangement, and in particular stating any material interests of the directors of the company – whether as directors, members or creditors of the company or otherwise – and the effect on these of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

Section 201C of the Companies Law sets out the details to be provided in the case of a reorganisation of a public company under section 201A. In general, full financial information must be provided on the proposed reorganisation, accompanied by reports from the company's advisers and an independent expert.

As noted in question 13, the court has wide powers to make any order facilitating the reconstruction, including the power to create releases in favour of third parties.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

Section 200 of the Companies Law provides a mechanism for expedited or prepackaged reconstructions.

22 Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What if the debtor fails to perform a plan?

If a proposed arrangement does not secure the requisite majorities, creditors are not bound and any creditor may petition for the winding up of the company. Creditors may also petition for winding-up in the event that the debtor fails to carry out its obligations under the arrangement.

23 Bankruptcy processes

During a bankruptcy case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

Individual insolvency

In an individual bankruptcy, a general meeting of the debtor's creditors will be convened within 14 days of the receiving order being made. The purpose of the meeting is to allow the creditors to consider any proposal for a composition or scheme of arrangement that the debtor may make or to resolve to make the debtor bankrupt.

If the debtor proposes an arrangement with his or her creditors, a written proposal must be submitted to the official receiver, setting out the terms of the proposed arrangement, together with details of any proposed guarantors or any security offered.

On receipt of the proposal, the official receiver circulates it to creditors, together with his or her comments on the proposal and notice of the meeting to consider the proposal. The debtor must be

present at this meeting and must provide all the requested information essential for the purposes of convening the meeting (Bankruptcy Law, section 23).

If the debtor's proposal is approved by a majority in number representing 75 per cent in value of the creditors who have proved their debts, it is deemed to have been accepted by the creditors and, subject to the court's approval, is binding on all creditors. The public examination is designed to elicit information on the debtor's assets and liabilities, and the events leading up to bankruptcy. The debtor is examined under oath and the court, the official receiver and the creditors may question the debtor. The examination is concluded when the court is satisfied that the debtor has made full disclosure of his or her assets and of the circumstances of his or her bankruptcy.

If no arrangement is proposed by the debtor, or if the requisite majorities are not achieved, the court will adjudge the debtor bankrupt and his or her property will become available for distribution among the creditors (Bankruptcy Law, section 19). At the meeting, the creditors may appoint an appropriate person (who may or may not be a creditor) to act as trustee in bankruptcy. The creditors may also elect a committee of inspection of between three and five persons to assist and supervise the trustee in bankruptcy. Generally, creditors' rights are assigned to the trustee in bankruptcy and they may not take separate actions.

Corporate insolvency

Notices of the first meeting of creditors should be posted to the creditors not less than seven days before the date of the meeting and the meeting must be advertised once in the Official Gazette and once in two daily newspapers circulating in the district where the registered office of the company or its principal place of business is situated. As described in question 7, the meeting may accept or change the liquidator appointed by the members. The creditors may also establish a committee of inspection.

24 Creditor representation

What committees can be formed and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

In a bankruptcy or a liquidation a committee of inspection may be formed. The principal function of a committee of inspection is to act as a representative of the creditors (or, more rarely, the members) and give the trustee in bankruptcy or liquidator a means of consulting them. In addition, the committee generally fixes the trustee's or liquidator's remuneration.

The trustee in bankruptcy or the liquidator in a winding-up by the court requires the approval of the committee of inspection to exercise certain of his or her powers, including:

- bringing or defending any action or other legal proceeding in the name and on behalf of the debtor or company;
- carrying on the business of the debtor or company;
- appointing an advocate;
- paying any classes of creditors in full;
- making any compromise or arrangement with creditors or persons claiming to be creditors; and
- compromising calls and liabilities to calls.

If there is no committee, the trustee or liquidator must obtain the sanction of the court. In a voluntary liquidation, the approval of the committee is required only for the last three of these powers.

The court has the power to decide on the composition of the committee in case of disagreement, and may make any order it considers appropriate regarding how it is to function.

25 Insolvency of corporate groups

In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

There is no provision in Cyprus law that provides for the combination of proceedings by the parent company and its subsidiaries for administrative purposes, nor for the aggregation of assets and liabilities. Each company is a separate legal entity and is subject to separate procedures.

26 Modifying creditors' rights

May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

There are a number of provisions in the Companies Law that may invalidate a charge granted by a company and remove the creditor's secured status. These are explained in question 33.

27 Enforcement of estate's rights

If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

Cyprus courts do not permit contingent fee arrangements and we are not aware of any cases in the past in which the remedies of an insolvent estate have been assigned to one or more creditors, though there would be no prohibition on this. Although we have not yet seen this in practice, it would always be open to creditors to provide the liquidator or trustee with a fighting fund to pursue a claim.

28 Claims and appeals

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

Proofs of debt must be delivered to the official receiver, the trustee in bankruptcy of an individual or the liquidator of a company. The proof of debt should be verified by affidavit and accompanied by a detailed statement of account and vouchers to substantiate the debt. All creditors' proofs are open to inspection by any creditor who has submitted a proof. Secured creditors are obliged to realise, value or surrender their security. The trustee or liquidator has the right to redeem the security at the creditor's valuation or he may apply to the court for an order for realisation of the property comprised in the security.

On receiving a proof, the trustee or liquidator must admit it or reject it, whether wholly or partially, or require further supporting evidence. He or she must notify the creditor in writing of his or her decision and of the grounds for any rejection of the proof. A creditor who is dissatisfied with the trustee's or liquidator's decision may apply to the court for a determination.

When paying interim dividends, the trustee or liquidator must reserve funds to allow for likely debts that have not yet been proved and must notify all creditors, whether they have proved their debt or not, of his or her intention to pay a dividend.

Before paying a final dividend, the trustee or liquidator must notify all creditors of his or her intention and give them a final time limit (determined on a case-by-case basis by the court) to submit and prove their claim.

There are no provisions dealing with the purchase, sale or transfer of claims.

29 Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

The order for distribution of the assets in a winding-up is as follows:

- the costs of the winding-up;
- preferential debts;
- any amount secured by a floating charge;
- the unsecured ordinary creditors; and
- any deferred debts, such as sums due to members in respect of dividends declared but not paid.

Claims of each succeeding class rank equally among themselves and abate in equal proportions if the assets are insufficient to meet them.

Preferential claims comprise:

- all government and local taxes and duties due at the date of liquidation, having become due and payable within 12 months before that date and, in the case of assessed taxes, not exceeding in the whole one year's assessment; and
- all sums due to employees including wages, accrued holiday pay, deductions from wages and compensation for injury.

In bankruptcy, up to four months' rent is also preferential.

30 Employment-related liabilities in restructurings

What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Contracts, including contracts of employment, are terminated by winding-up. Employees will have claims according to their contracts and statute law, including claims for pay in lieu of notice and redundancy. Some elements are preferential (see question 29). Certain employee claims are safeguarded in reorganisations or business transfers (see question 31).

31 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

Liabilities of an individual debtor that survive and must be paid irrespective of the bankruptcy are any fines payable for a criminal offence and the alimony payable to an ex-spouse and children in a divorce.

In company arrangements, under section 200(1) of the Companies Law the court has a wide discretion to direct that where an application is made under section 198 for the sanctioning of a compromise or arrangement involving the transfer of the whole or any part of the undertaking or the property of any company concerned in the scheme to another company, the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- transfer to the transferee company of the whole or any part of the undertaking, and of the property or liabilities of any transferor company;
- continuation by or against the transferee company of any legal proceedings pending by or against any transferor company; and
- dissolution, without winding up, of any transferor company.

According to section 200(4) of the Companies Law, the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

Section 6 of the Law on the Safeguarding and Protection of Employees Rights in the Event of the Transfer of Undertakings, Businesses or Parts Thereof, of 2000 (the Transfer of Undertakings Law) provides that liabilities as regards employees remain with the insolvent transferor in the event of bankruptcy, liquidation or similar proceedings and are not transferred to a purchaser of the business or assets. Furthermore, any reorganisation must respect the rights of the employees of all the companies that participate in the reorganisation in accordance with the Transfer of Undertakings Law (section 201H of the Companies Law).

32 Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

Distributions to the creditors should be made as soon as there are adequate funds in hand. The procedures are described in question 28.

33 Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

There are various provisions in the Companies Law, Cap 113, which may invalidate a charge granted by a company or any other disposition it has made or any debt which it has incurred. These are as follows:

- a charge that has not been properly registered is void against the liquidator and any creditor of the company (Companies Law, section 90(1)); and
- any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding-up is considered to be a fraudulent preference against its creditors and invalid under section 301 of the Companies Law.

On the question of fraudulent preference, the court looks at the dominant or real intention and not at the result. The onus is on those who claim to avoid the transaction to establish what the debtor really intended and that the real intention was to prefer. The onus is only discharged when the court, after reviewing all the circumstances, is satisfied that the dominant intention to prefer was present.

A floating charge on the undertaking or property of the company created within 12 months of the commencement of winding-up is valid only to the extent of any cash paid to the company at the time of or subsequent to the creation of and in consideration of the charge, unless it is proved that immediately after the creation of the charge the company was solvent (Companies Law, section 303). The onus of proving the company's solvency is on the holder of the floating charge. Solvency requires not only an excess of assets over liabilities, but also the ability to pay debts as they become due.

34 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

See question 33. Voidable transactions can be attacked by any creditor or by the liquidator or trustee, but only in winding-up proceedings.

In personal bankruptcy the Bankruptcy Law and the Fraudulent Transfers Avoidance Law, Cap 62, contain provisions for the avoidance of certain settlements in which the suspect period may up to 10 years depending on whether at the time of the transaction the debtor was able to pay his debts.

35 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Cyprus law does not contain any wrongful trading provisions requiring directors to commence insolvency proceedings as soon as they knew or ought to have known that the company would be unable to pay its debts. The principal way in which directors and officers may be made liable for the company's debts is under a claim for fraudulent trading as set out in section 311 of the Companies Law. Because of the high standard of proof required, successful claims for fraudulent trading are extremely rare.

36 Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

As described in question 5, Cyprus law provides many of the 'self-help' remedies to creditors available under English law, including liens and seizure of assets to secure judgment debts. A creditor secured by a charge may appoint a receiver (or a receiver and manager if the charge is a floating charge) to take possession of the assets subject to the charge and realise them for the benefit of the appointor.

37 Corporate procedures

Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

A company may be struck off the Register under section 327 of the Companies Law. If it is dormant with no assets and liabilities, no formal liquidation procedure need be followed. The company may be restored to the register on application by an interested party for up to 20 years from the date of dissolution.

38 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

In a compulsory winding-up, once the liquidator has distributed the funds in his hands and summoned a final meeting of the company's creditors, he or she may vacate office and obtain his or her release. Under section 260 of the Companies Law the company is dissolved from the date of the issue of the court order for its dissolution. The liquidator is required to forward a copy of the order to the Registrar of Companies within 14 days of its being made. On receipt of the notice, the Registrar records the dissolution of the company in his or her books.

In a voluntary winding-up, the liquidator will call final meetings of the company's creditors for approval of his or her accounts. Within a week the liquidator will file his or her accounts and a return of the meetings with the Registrar of Companies. The company is deemed to be dissolved three months after the registration of the return.

After either type of liquidation, the court can restore the company to the register within two years if, for example, further assets are discovered which should be distributed to creditors.

39 International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

Foreign insolvency proceedings are recognised by Cyprus courts when those proceedings are taken in accordance with the law of the country of the company and there is no domestic law which prevents recognition. The appointment of a foreign liquidator will also be recognised and there is no need for the liquidator to apply for formal recognition. If there are simultaneous proceedings in Cyprus and abroad, the Cyprus courts will consider the local proceedings as subsidiary to the foreign proceedings. Foreign creditors can prove their claim in a liquidation in Cyprus under the normal procedure. In the event of concurrent liquidation of the same company in the foreign jurisdiction, a creditor who proved his claim in Cyprus will only receive a share in any distribution after any amount received in the foreign proceedings has been taken into account.

Generally, Cyprus courts will recognise judgments and orders made by courts in other jurisdictions where the Cyprus court considers that such judgments or orders have been properly made under the foreign law and that the foreign courts had the necessary jurisdiction. Cyprus is a contracting state to the European Convention on the Recognition of Certain Aspects of Bankruptcy (Law 36 (III) of 1993). Contracting states to the convention are the members of the Council of Europe and, until now, no rules have been passed to govern its procedural enforcement.

40 Cross-border cooperation

Does your country's system allow cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings?

In principle, the court system allows cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings. However, there

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have been no practical cases to test the efficacy of the procedures in practice.

41 Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

No. Unlike most Commonwealth countries, Cyprus is not a party to the mutual assistance arrangements set out in section 426(4) and (5) of the UK Insolvency Act 1986.

Update and trends

Cyprus has enjoyed 50 years of prosperity since independence and little attention has been given to insolvency legislation, which is unchanged from the time of independence and mirrors British insolvency law of the mid-20th century. Over the past two or three years, as the effects of the global financial crisis have been felt in Cyprus and the number of insolvencies has risen, questions have begun to be asked about the adequacy of the insolvency legislation, and whether new laws are required to foster a rescue culture. However, insolvency law reform does not appear to be a priority issue.

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