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The International Comparative Legal Guide to:

Lending & Secured Finance 2014

2nd Edition

A practical cross-border insight into lending and secured finance

Published by Global Legal Group, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
April 2014

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ISBN 978-1-908070-95-1

ISSN 2050-9847

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in Cyprus?

The domestic lending market in Cyprus (lending to locally-owned business and resident individuals by local banks) is modest, reflecting the small size of the Cyprus economy, and is dwarfed by cross-border lending to Cyprus legal entities holding overseas assets.

Domestic lending volumes have been significantly affected by the Eurogroup's March 2013 "bail-in" of deposits at Cyprus banks. The use of depositor funds to bail out problematic banks inevitably hurt depositor confidence, and local banks have not been in a position to extend new lending. The result has been a 5% reduction in outstanding loans to local non-financial corporations during 2013, following flat loan volumes in 2012.

The current context of highly-leveraged local corporates operating in a weak economy presents a significant need for loan restructuring and refinancing, which local banks may not currently be able to accommodate. This provides an opportunity for international funds or lenders to become involved, given their greater financial flexibility.

Financing of Cyprus legal entities that hold overseas assets has been less affected by domestic developments. Such companies typically receive funding from foreign banks and apply this to their operations in foreign markets. Accordingly developments in this area of lending reflect the industry and financial trends of other major economies.

1.2 What are some significant lending transactions that have taken place in Cyprus in recent years?

In the past decade or so the main focus of domestic lending has been to companies that are active in the area of real estate development, particularly those catering to foreign buyers. However, few major domestic projects have been financed since the 2008 financial crisis.

By contrast, the financing of Cyprus companies holding overseas assets has been much more robust. For example, SUEK plc, which owns major coal production facilities in Russia, has secured US\$1.5 billion in pre-export finance from a consortium of international banks in 2014.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

In principle under Cyprus law a company can provide guarantees for the borrowings of members of its group, provided that it demonstrates a direct or indirect benefit accruing to the company from granting the guarantee.

In the case of a parent granting security in respect of its subsidiary, the benefit to the grantor is usually apparent; however, this may not be the case with a subsidiary granting security for the benefit of its parent or a fellow subsidiary. Corporate benefit can be difficult to prove if the potential liability exceeds or accounts for most of the asset value of the company granting security.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

The directors must be in a position to discharge their fiduciary duties to the company, namely to act in the company's interest – the company must obtain a commercial benefit from entering into the guarantee in order for the directors to be in a position to discharge their duties. Guarantees are contracts and must, therefore, conform to the basic requirements of a contract: offer; acceptance; intention to create legal relations; and consideration. Guarantees are often executed as deeds to overcome any argument as to whether good consideration has been given.

2.3 Is lack of corporate power an issue?

In principle a Cyprus company is bound by its memorandum of association ("memorandum"), in relation to its scope of permitted operations and activities and by its articles of association ("articles") regarding internal management. Any act that is beyond the company's powers as set out in its memorandum is *ultra vires* under common law and *void ab initio*. For this reason, it is customary for the objects clause of companies' memorandums to be drafted extremely broadly so as to permit the widest possible range of activities. Moreover, even when it is not explicitly stated in the memorandum, relevant case law suggests that the memorandum should be construed and interpreted in the widest possible manner.

and be considered to permit any activity unless it is expressly prohibited. Furthermore, section 33A of the Companies Law, Cap 113 (“Companies Law”) provides *inter alia*, that a company will be bound *vis-à-vis* third parties by acts or transactions of its officers, even if they do not fall within the objects of the company provided that the third party acted in ‘good faith’, unless the performance exceeds the powers prescribed by law or which the law permits to be prescribed to the officers. The burden of proof is on the company to prove not only that the acts or transactions do not fall within the objects of the company and, further, that the third party did not act in ‘good faith’. The test of ‘good faith’ is a subjective test and a person will be presumed to act in good faith unless the contrary is proven. Mere publication of the memorandum and articles will not constitute sufficient evidence of knowledge on the part of the third party.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

Other than the possibility that the guarantee will be considered as being stampable in accordance with the Stamp Duty Law (Law 19 of 1963) (which is considered below in question 3.9) there are no governmental consents, filings or registration requirements to be obtained or made in connection with the issue of a guarantee.

The articles of a company will determine the corporate authorities required for it to enter into transactions and contracts, including guarantees. It is a well-established principle in Cyprus that third parties contracting with a company and dealing in ‘good faith’ may assume that acts within the company’s constitution and powers have been properly and duly performed and as such are not bound to inquire whether acts of internal management have been regular. See also question 2.3 above regarding section 33 A of the Companies Law.

Shareholder approval may be required if there is a potential financial assistance issue (see section 4 below) and shareholders’ approval is often obtained for added comfort.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

Even though Cyprus law does not prohibit companies entering into an unlimited guarantee for all amounts owed by the debtor, such a guarantee could well raise issues regarding the directors’ compliance with their duties. It is therefore advisable to link any guarantee to a specific agreement and to ensure that it does not put the company’s solvency into question.

The guarantor’s obligation is contingent on the borrower’s primary obligation and will therefore never be greater than the borrower’s obligation under the primary agreement. If, for example, the guarantee is granted in a different currency from the primary obligation it must be ensured that the amount guaranteed will not exceed the amount stated in the agreement which is guaranteed, by reason of currency fluctuations.

Regard should also be had to the provisions of sections 301 and 303 of the Companies Law, which are described in question 8.2 below.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

Please see question 3.9 below regarding stamp duty in relation to enforcement. There are no exchange control issues which could be an obstacle to the enforcement of a guarantee.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Any type of asset that is an effective store of value, such as real estate, intellectual property, plant and machinery, rights under agreements and financial instruments are available to secure lending obligations.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Whereas it is possible to give asset security by means of a general security agreement covering several classes of assets, it is important in order to ensure effectiveness and enforceability that the relevant statutory provisions governing the creation and perfection of security over specified assets have been complied with.

For practical reasons, and to avoid the complexity implied in the preceding paragraph, it is standard practice that security over Cyprus real estate and shares in privately-owned Cyprus companies is created by separate agreements (please see questions 3.3 and 3.6 below).

Other assets, such as plant and machinery, receivables, bank accounts, inventory and the like can be collectively secured via a fixed and floating charge debenture, which, according to the nature of each asset, creates a fixed or a floating charge over it. A fixed and floating charge debenture may also incorporate the assignment of rights under contracts.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Collateral security over real property can be typically created by mortgaging the property in favour of the creditor. The Immovable Property (Transfer & Mortgage) Law (Law 9 of 1965) requires a Deed of Mortgage in the prescribed form to be signed by the mortgagor, being the registered owner of the mortgaged property, and filed with the District Lands Office in the district in which the immovable property is situated. Once the mortgage has been filed with the District Lands Office no transfer or other disposal of the property can be registered, except with the consent of the mortgagee.

A charge over plant, machinery and equipment would typically be created as a fixed charge under a fixed and floating charge debenture.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Security over receivables is typically created within the context of a fixed and floating charge debenture or a separate security document.

It is at the discretion of the parties whether the security over the receivables will take the form of a fixed charge, an assignment or a floating charge, depending on the commercial arrangement on the control of the receivables during the life of the security. A fixed charge or an assignment by way of security will involve the control

of specified receivables by the chargee, which will involve, *inter alia*, the serving of notice on the debtor. A floating charge will typically cover a pool of receivables and leave the chargor free to manage the receivables in the ordinary course of business.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

It is possible to create security over a Cyprus bank account within the context of a fixed and floating charge debenture or a separate agreement.

Whether the charge constitutes a fixed charge or a floating charge depends on the extent to which the bank account is under the control of the chargor or the chargee. A fixed charge will require effective control of the inflows and outflows of the account by the chargee and this implies that the relevant terms relating to the management of the charged account require the consent of the bank.

Depending on its terms, a charge over the bank account may also constitute a financial collateral arrangement under the Financial Collateral Arrangements Law (Law 43(I) of 2004).

3.6 Can collateral security be taken over shares in companies incorporated in Cyprus? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

The giving of security over shares in a Cyprus company generally takes the form of a pledge of share certificates and charge of shares, and is regulated by the Companies Law, the Contract Law, Cap 149 (“Contract Law”) and principles of equity.

The common form of such security involves the pledging and physical delivery of the share certificates to the pledgee together with creation of an equitable charge over the shares of the company, under which the pledgor remains the legal owner of the shares and (typically) retains the benefits deriving from the shares pending an enforcement event. The security instrument includes a mechanism for an event of default to trigger the out-of-court transfer of control over the shares to the pledgee.

The Contract Law sets out the requirements for the creation of a valid and perfected pledge over the share certificates of a company (it must be in writing, signed at the end by the pledgor and witnessed by two competent witnesses, who must also sign. In addition, for a pledge over shares in a Cyprus company to be valid and enforceable, the pledgee must give notice of the pledge to the company, the company must make a memorandum of pledge in its register of shareholders against the shares concerned, and it must provide the pledgee with a certificate of the memorandum of pledge). The Companies Law prescribes the procedure for transfer of legal ownership of the shares in the company. It therefore follows that while the security could in principle be governed by New York or English law, it must also comply with mandatory provisions of Cyprus law.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Security over inventory usually takes the form of a fixed and floating charge debenture. Because of the need for a business to acquire and dispose of inventory in the ordinary course of business (making it impractical and undesirable for the chargor to control), inventory is typically covered by a floating charge.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Unless the granting of security as primary or third party security provider is expressly prohibited under a company’s memorandum and articles, then the company can grant a security interest subject to compliance with the law regarding directors’ duties, corporate benefit and fraudulent preference (see questions 2.5 and 8.2) and unlawful financial assistance (see question 4.1).

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Section 90 of the Companies Law provides that any charge (as well as every amendment, assignment or other change to it created by a Cyprus company must be filed with the registrar of companies together with the duly stamped instrument, if any, by which it is created or evidenced, within 21 days after the date of its creation, failing which it will be void against the liquidator and any creditor of the company. A further 21 days is allowed for filing charges created overseas. There is an exemption for pledges of shares and agreements for the provision of financial collateral within the meaning of the Financial Collateral Arrangements Law (Law 43(I) of 2004) that has not yet been judicially tested.

The following additional registration requirements apply in relation to charges over specific classes of assets:

- Real Estate: A legal mortgage must be registered with the Land Registry Department under the Immovable Property (Transfer & Mortgage) Law (Law 9 of 1965). A registration fee of one thousandth of the amount secured is payable.
- Vessels or any share in a vessel: A mortgage must be registered with the Department of Merchant Shipping, under the Merchant Shipping (Registration, Sales and Mortgages) Law (Law 45 of 1963). The fee for registration will depend on the gross tonnage of the vessel.

Payment of Stamp Duty:

The Stamp Duty Law (Law 19 of 1963) as amended (“the Stamp Duty Law”) provides, *inter alia*, that the documents specified in the Stamp Duty Law are chargeable with duty if they relate to any asset located in Cyprus or to matters or things to be done or performed in Cyprus irrespective of the place where the document is created. Non-payment of stamp duty does not invalidate the document or the transaction contemplated by it, but the document may not be adduced as evidence before a Cyprus court without payment of stamp duty and any applicable penalty for late payment.

The rates of stamp duty are as follows:

- For transactions with a consideration up to €5,000 no stamp duty is payable.
- For transactions with a consideration in excess of €5,000 but not exceeding €170,000, stamp duty of €1.50 for every €1,000 or part thereof is payable.
- For transactions with a consideration in excess of €170,000 stamp duty of €2.00 for every €1,000 or part thereof is payable.
- The maximum stamp duty payable on a contract is capped at €20,000.
- Where no amount of consideration is specified in the contract the stamp duty is €34.
- For a transaction which is evidenced by several documents

stamp duty is payable on the main contract and ancillary documents are charged at a flat rate of €2.

Stamp duty must be paid within 30 days from the date of execution of the relevant documents or, if they are executed abroad, within 30 days after they are received in Cyprus.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The registration fee for filing a charge with the Registrar of Companies under section 90 of the Companies Law is €680. The Registrar of Companies will typically issue a certificate of registration of the charge within one to four weeks of filing.

The fee for registering a mortgage with the Department of Merchant Shipping under the Merchant Shipping (Registration, Sales and Mortgages) Law is €0.034172 per gross tonne for the first 10,000 tonnes and half that rate above 10,000 tonnes. The registration of the charge can be finalised within five days.

The fee for registering a mortgage with the Land Registry Department under the Immovable Property (Transfer & Mortgage) Law is one thousandth of the amount secured. The registration of the charge can be finalised on the same day.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

Unless the company operates in a regulated industry, such as financial services, or has a special status, such as semi-government bodies, there are no restrictions to the granting of security.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

So long as the terms under which the facility is being provided do not conflict with mandatory provisions of Cyprus law, there are no concerns relating to the granting of security.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

There are specific statutory requirements in relation to the creation of a valid pledge over shares in a Cyprus company. These are described in question 3.6 above.

The board resolution approving entry by the company into a security document that is a deed should expressly authorise the execution of such document as a deed. Any Cyprus law power of attorney authorising a person to execute the document as a deed should also be executed as a deed.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

(a) Shares of the company

Section 53(1) of the Companies Law prohibits a company from

providing direct or indirect financial assistance for the acquisition or subscription of shares in itself or its holding company subject to certain limited exceptions. Section 53 prohibits any financial assistance which may lead to the purchase of such shares unless otherwise permitted by section 53(1), notably if the lending of money is part of the ordinary business of the company. Contravention of this provision renders the company and every officer in default liable to a fine. There may, in addition, be proceedings on behalf of the company against the directors for breach of trust or, when the company is wound up, for misfeasance.

However, section 53(3) relaxes this prohibition by the introduction of a “whitewash” mechanism. A private company may now provide direct or indirect financial assistance for the acquisition of its own shares or shares of its holding company as long as it is not a subsidiary of a public company registered in Cyprus, and the arrangement is approved by a resolution passed at a general meeting at which the holders of 90 per cent of all the issued shares of the company vote in favour.

Public companies continue to be prohibited from providing financial assistance for the acquisition of their own shares. However, a public company may redeem or otherwise purchase its own shares out of realised and undistributable profits, subject to strict adherence to sections 57A–F of the Companies Law.

(b) Shares of any company which directly or indirectly owns shares in the company

As (a) above.

(c) Shares in a sister subsidiary

No prohibition unless the transaction results in indirect acquisition of the company’s shares, in which case (a) above applies.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will Cyprus recognise the role of an agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Cyprus law recognises the role of a security agent or trustee who will hold the underlying security on trust for the benefit of all or some of the lenders in a syndicated loan, as well as for those lenders who may from time to time join the syndicate by way of a loan transfer. The rights and obligations of the security agent or trustee will normally be specified in the related loan agreement, and each security agreement will clarify which provisions of the loan agreement are equally applicable. Finally, it is common practice that the relevant security agreement will be filed with the Registrar of Companies as creating a charge over the assets of the borrower company in favour only of the security agent or trustee.

5.2 If an agent or trustee is not recognised in Cyprus, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

This is not applicable – see question 5.1.

5.3 Assume a loan is made to a company organised under the laws of Cyprus and guaranteed by a guarantor organised under the laws of Cyprus. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

Under Cyprus law there are no special requirements to make the loan and guarantee enforceable by Lender B, provided that the transfer, assignment or novation requirements of the relevant Cyprus law facility agreement are clear as to their purpose and have been complied with.

6 Withholding, Stamp and other Taxes; Notarial and other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

a) No withholding tax of any kind is due on interest payments to non-Cyprus tax residents. Interest paid to tax residents of Cyprus is subject to Special Contribution for Defence, which is deductible at source (“SDC tax”).

Interest closely connected to the ordinary carrying on of a business (after deduction of the costs of earning the interest) of a Cyprus tax resident is subject to income tax in the hands of the recipient. Interest not closely connected with the ordinary carrying on of a business is subject to SDC tax on the gross amount.

b) There is no requirement to withhold tax from the proceeds of enforcement of any guarantee or security.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Foreign lenders are not subject to any withholding tax in Cyprus in relation to interest payments from resident companies and there are no specific anti avoidance rules governing the issue of companies which are highly leveraged.

6.3 Will any income of a foreign lender become taxable in Cyprus solely because of a loan to or guarantee and/or grant of security from a company in Cyprus?

Provided that the income derived by the foreign lender is not attributed to a Cyprus permanent establishment then there will be no liability to Cyprus tax in relation to income arising from a loan to or guarantee or grant of security by a Cyprus company.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

There are no other significant costs apart from those described.

6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

Cyprus does not have thin capitalisation rules or any other specific anti-avoidance rules in relation to non-resident lenders.

However, a matter that must be taken into consideration in related party transactions (both for domestic and international transactions) is the need to comply with the arm’s length principle. Section 33 of the Income Tax Law contains a general anti-avoidance clause permitting the tax authorities to disregard any transaction, through which the object of the tax of any person is reduced, which is deemed to be artificial or fictitious. While there is no jurisprudence or published policy regarding the application of this section, it is possible to obtain advance clearance on proposed transactions.

7 Judicial Enforcement

7.1 Will the courts in Cyprus recognise a governing law in a contract that is the law of another jurisdiction (a “foreign governing law”)? Will courts in Cyprus enforce a contract that has a foreign governing law?

The Cyprus courts will determine the governing law of a contract in accordance with the Rome I Regulation (Reg. (EC) No 593/2008), which respects the autonomy of the parties to choose the governing law of their contracts. It will be recognised and given effect to in any action brought before a court of competent jurisdiction in Cyprus subject to such governing law being pleaded and proved, except for such provisions of foreign law which the court considers procedural in nature, which are revenue or penal laws, or which are inconsistent with Cyprus public policy. Although this term has not been legislatively defined, it has been interpreted by courts as the totality of values, perceptions and ideas on which the ethical, financial and political order regulating Cypriot society is based from time to time.

7.2 Will the courts in Cyprus recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?

Recognition and enforcement of judgments given by English courts:

The courts in Cyprus will recognise and enforce judgments issued by English courts in accordance with the Brussels I Regulation (Reg. (EC) No 44/2001). Under the Regulation, there are no particular procedural requirements for the recognition of a foreign judgment, which may under no circumstances be reviewed as to its substance. A Cyprus court may refuse to recognise a judgment issued in another member state only in the circumstances specified in Article 34 of the Regulation.

As soon as the judgment is recognised, the competent Cyprus court will order its enforcement and the judgment will be executed as if it had been issued by a Cyprus court.

Recognition and enforcement of judgments given by New York courts:

There is no bilateral treaty between Cyprus and the United States of America concerning the enforcement of court judgments, and therefore any New York judgment will be enforced by Cyprus

courts pursuant to the common law. Cyprus courts generally assist the enforcement of a foreign judgment if:

- the judgment is issued by a jurisdictionally competent court in accordance with Cyprus rules on conflict-of-laws;
- the judgment is made on merit and not according to procedure;
- the judgment is not obtained by fraud;
- the proceedings leading to the judgment's issuance do not contravene the laws of natural justice; and
- enforcement of the judgment is not contrary to Cyprus public policy.

Finally, when a claim is brought on the judgment, the Cyprus court will not re-examine the merits.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in Cyprus, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in Cyprus against the assets of the company?

The amount of time of any court proceeding will depend on a variety of factors, including any interlocutory applications submitted by any of the parties, defences raised, complexity of the proceedings and postponement of hearings. It will usually take a couple of years to obtain a judgment and enforce it against the assets of the company.

The amount of time necessary for the enforcement of a foreign judgment in a Cyprus court is also dependent on a variety of factors; it would generally be prudent to allow at least six months.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or (b) regulatory consents?

There is no explicit requirement for a public auction. Some requirements may apply in respect to the consent of certain types of borrowers (for example, if an entity is regulated by the Central Bank of Cyprus ("CBC") there is a requirement to obtain consent from the CBC prior to the appointment of receivers).

In general, whereas receivers will prioritise the satisfaction of secured claims, they owe a general duty to apply reasonable care to obtain a fair price when realising assets. Liquidators owe a duty to all creditors of the borrower.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in Cyprus or (b) foreclosure on collateral security?

Assuming Cyprus courts have jurisdiction over the matter, foreign lenders can file a suit against a company in Cyprus and foreclose on collateral security.

7.6 Do the bankruptcy, reorganisation or similar laws in Cyprus provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Liquidation proceedings provide for a moratorium on creditor

claims but not on the claims of holders of fixed charge security. Schemes of Arrangement may bind secured creditors but are relatively uncommon and are subject to the courts' approval and to the agreement of a 75% majority in number and in value of each class of creditors. The effect of Schemes of Arrangement on secured creditors has not been judicially tested in Cyprus.

7.7 Will the courts in Cyprus recognise and enforce an arbitral award given against the company without re-examination of the merits?

As a contracting state to the 10 June 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention"), Cyprus is bound, in principle, to enforce awards made in foreign states which are parties to the Convention.

Article V of the Convention provides that a contracting state to the Convention may refuse to recognise and enforce an arbitral award at the request of the party against whom such award is invoked, only if such party furnishes to the competent authority where the recognition and enforcement is sought, all the requested proof, as defined under the Convention.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

The main provisions relating to corporate insolvency in Cyprus are contained in the Companies Law. The lender's ability to enforce its rights as a secured party over the collateral security depends on the type of the security which has been provided (e.g. fixed or floating charge).

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

In addition to the registration requirements under section 90 of the Companies Law, section 301 provides that 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. 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.

Section 303 of the Companies Law provides that 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. Solvency requires not only an excess of assets over liabilities, but also the ability to pay debts as they become due. The onus of proving the company's solvency is on the holder of the floating charge.

It should be noted that the date of commencement of winding up may be considerably earlier than the date of liquidation: for

example, section 218 of the Companies Law provides that the winding up of a company by the court commences at the time of the presentation of the petition for the winding up or the date of an earlier resolution to wind up the company voluntarily.

In a winding up there are a number of categories of claim that rank ahead of debts secured by a floating charge, namely the costs of the winding-up and preferential claims, which 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 one whole year's assessment; and
- all sums due to employees including wages, accrued holiday pay, deductions from wages and compensation for injury.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

There are no excluded entities either in personal or corporate insolvency. Special arrangements apply to insolvent banks and credit institutions (the Resolution of Credit and Other Institutions Law of 2013 as amended) and insurance companies (the Insurance Services and other Related Issues Laws of 2002-2011).

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

A creditor secured by a charge may appoint a receiver to take possession of the assets subject to the charge and realise them for the benefit of the appointor. If the charge is a floating charge over the whole or substantially the whole of the property of the company and the charge document provides for it, the charge holder may appoint a receiver and manager, with extensive powers to manage the company and dispose of the assets as a going concern.

In addition, creditors may use the self-help remedies available under common law such as liens.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of Cyprus?

In general a party's submission to a foreign jurisdiction is accepted as legally binding and enforceable under the laws of Cyprus.

There does not exist a single unified system in Cyprus for the enforcement of foreign judgments. Depending on its origin, a foreign judgment may be recognised and enforced in Cyprus under Council Regulation (EC) No. 44/2001, under bilateral and international treaties or under common law. Generally, for a foreign judgment to be recognised in Cyprus it:

- must have been issued by a court that has jurisdiction according to the conflict of laws rules applied in Cyprus;
- must not be contrary to public policy;
- must have been made on merit and not according to procedure;

- must not have been obtained by fraud; and
- must have been the outcome of proceedings that were conducted in accordance with natural justice.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of Cyprus?

The basic rule at common law, also applicable in Cyprus, is that whereas a foreign sovereign is immune from the jurisdiction of the Cyprus court, such court would take jurisdiction if the foreign sovereign submitted to it.

10 Other Matters

10.1 Are there any eligibility requirements in Cyprus for lenders to a company, e.g. that the lender must be a bank, or for the agent or security agent? Do lenders to a company in Cyprus need to be licensed or authorised in Cyprus or in their jurisdiction of incorporation?

There are no requirements of this type.

10.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in Cyprus?

Law 72(I) of 2011 established a maximum rate of interest, the "reference rate" that can be charged on loans and made it a criminal offence to charge interest above that rate. The interest rate ceiling (currently 12.51 per cent per annum) is calculated by the Central Bank of Cyprus using a formula based on half the average bank lending rate of the previous year plus a margin of between 5 and 10 percentage points, which varies according to various risk factors.

The restrictions on interest rates do not apply to credit institutions or to:

- loans where the lender and the borrower are legal persons which are deemed to be connected persons for the purposes of article 33 of the Income Tax Law;
- loans to legal persons where the capital out of which the loan is provided derives directly or indirectly from sources outside Cyprus provided that the amount of the loan exceeds €1,000,000 and the minimum drawdown amount is €500,000; or
- loans to legal persons which are disbursed overseas provided that the amount of the loan exceeds €1,000,000 and the minimum drawdown amount is €500,000.

Acknowledgment

The authors would like to acknowledge the assistance of their colleagues Lisa Garner and Demetris Roti in the preparation of this chapter. Lisa and Demetris are associates with Andreas Neocleous & Co LLC. Lisa specialises in corporate and commercial law and banking and finance law and Demetris specialises in corporate and commercial law, liquidation and insolvency.



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