Cyprus

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Section 1: CREDITORS' RIGHTS

1.1 When may a company seek relief from creditors? Must a company be insolvent?

The Cyprus Companies Law is based on the UK Companies Act 1948. It provides four main procedures for dealing with financially troubled companies. In increasing order of formality and finality they are:

- arrangements and reconstructions under sections 198 to 201;
- the appointment of a receiver;
- voluntary winding up, also known as voluntary liquidation; and
- winding up by the court, also known as compulsory liquidation.

Liquidations are mainly used as a means of bringing the existence of a company to an end, and so this article focuses on the procedure for arrangements and reconstructions under sections 198 to 201, which is the principal tool for restructuring and reorganising companies.

There are separate procedures for banks and insurance companies.

1.2 Does an "automatic stay" against creditor action arise upon filing of a bankruptcy case?

There is no automatic stay against creditor action on application to the court for an arrangement under sections 198 to 201.

The appointment of a receiver does not give any protection against recovery actions by creditors. However, if the appointment is under a crystallised floating charge, the creditor is unable to enforce any judgment it may obtain. Once a company is in liquidation, the creditors' ability to take effective recovery action is also severely constrained.

1.3 Who administers the estate following commencement of a voluntary bankruptcy case?

Unless the company concerned is in liquidation, the conduct of a proposed arrangement under sections 198 to 201, the control of the process and of the company's affairs generally, remains with the directors. If a resolution has been passed to liquidate the company and appoint a liquidator, the liquidator appointed by the members administers the estate and may propose an arrangement under sections 198 to 201. In a creditors' voluntary liquidation (that is, where the company is insolvent) the creditors may vote to appoint a different liquidator to replace or act jointly with the members' appointee.

Section 2: DEBTORS' RIGHTS

2.1 Does the Debtor have an exclusive right to propose a reorganisation plan?

No. Under section 198, 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 company or any creditor or member (or, in the case of a company being wound up, the liquidator) may apply to the court for an order to convene a meeting of the creditors or the members of the company in whichever way the court directs.

2.2 What are the voting requirements for approval of a plan?

Subject to the sanction of the court, any compromise or arrangement passed by a majority in number representing three-quarters in value of the creditors or members present and voting at the creditors' or members' meeting will be binding on all the creditors or members and also on the company. In the case of a company being wound up, it will also be binding on the liquidator and contributories of the company. In order to allow stakeholders to make an informed decision, the notices of the meetings sent to creditors and members must be accompanied by a statement explaining the effects of the proposals. This statement must identify any interests of the directors and the effect of the proposals on those interests.

2.3 May a plan be approved over the objection of a creditor or a class of creditors (i.e. does the concept of a "cram-down" exist)?

The majority voting procedure outlined above provides a cram-down mechanism allowing the reorganisation plan to be imposed by the court, regardless of the objection of some creditors or shareholders.

2.4 Is post-petition financing able to receive "super-priority" status?

Arrangements under sections 198 to 201 of the Companies Law may take any form that the stakeholders agree on, as long as the court does not consider the arrangement to be unreasonable. Therefore, it is possible to introduce new finance on the basis that its repayment will have priority, subject to proper registration of any charges.

2.5 Can the debtor sell all or a portion of its assets through a going concern reorganisation plan or otherwise?

As noted above, arrangements under sections 198 to 201 of the Companies Law may take any form that the stakeholders agree on, as long as the court does not consider the arrangement to be unreasonable. It is therefore possible for the arrangement to include disposals of assets.

2.6 What are the duties of directors of an insolvent company?

There are no special duties imposed on directors of an insolvent company over and above their usual fiduciary duties to act in the best interest of the company at all times.

If the company goes into receivership or liquidation, the directors are required to co-operate with the receiver or liquidator and provide information necessary for him or her to discharge his or her duties.

Section 3: CONTRACTS AND SUBORDINATION

3.1 How are executory contracts treated?

The terms of the contract will remain binding on the company unless a variation is agreed with the counter-party. In line with the general principle that arrangements under sections 198 to 201 of the Companies Law may take any form that the stakeholders agree on, and which the court does not consider unreasonable, the treatment of executory contracts is completely flexible.

3.2 Is contractual subordination enforceable?

Each company is treated as a separate entity, so any contractual structuring arrangement within a group will remain in place unless all parties involved agree to vary it.

Section 4: OTHER MATERIAL CONSIDERATIONS

4.1 What other major stakeholders (e.g. governmental or regulatory institutions) could have a material impact on the outcome of the reorganisation?

If any reorganisation involves significant redundancies, consultation with employee representatives and notification may be required. Other than this, unless the business is in a regulated sector such as banking or insurance, there are no other stakeholders that could have a material impact on the outcome.

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Kyriacou served as registrar of companies and official receiver, and registrar of patents, trade marks and copyright between 1989 and 2001, and oversaw the successful harmonisation of Cyprus company and IP law with the *acquis communautaire*. As official receiver, she conducted and supervised major liquidations, including investigation, identification, tracing and recovery of alienated assets.

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