PROFESSIONAL SERVICES

A CHANGE FOR THE BETTER?

CYPRUS'S NEW INSOLVENCY LAWS

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In April 2015, the House of Representatives approved a new package of insolvency laws, aimed at streamlining and modernising the existing system and promoting a rescue culture. Reform of the insolvency framework forms part of the adjustment programme agreed at the time of the 2013 banking crisis and is essential for the resolution of non-performing debt, which is currently estimated to amount to €27.6 billion, almost 50% of gross loans in the banking sector.

After gaining independence in 1960, Cyprus enjoyed 50 years of uninterrupted prosperity. Insolvencies were few and far between and there was no reason to modernise the mechanisms set out in the Bankruptcy Law and the Companies Law, which were a legacy of British colonial rule and closely resembled the corresponding UK legislation of the mid-20th century. The new package includes amendments to both laws, together with new laws introducing new voluntary arrangement provisions for individuals and licensing and regulation of insolvency practitioners. The most noteworthy changes are as follows:

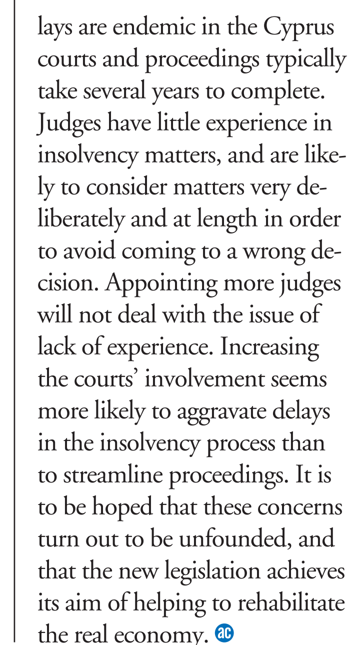
COMPANIES

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

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

In addition, the following changes regarding liquidation have been made:

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



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INDIVIDUALS

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

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

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

A CHANGE FOR THE BETTER?

The changes are undoubtedly bold but they have been criticised as a charter for abuse, given the absence of an established, experienced insolvency profession and all the regulatory and other infrastructure that develops with it. The requirement for a simple majority in value for a "cram-down" of liabilities introduces substantial scope for abuse. There is no detailed guidance on implementation of the new provisions in the form of regulations or statements of required practice, and the only safeguard appears to be the requirement for the court to approve any arrangement before it becomes binding.

The increased involvement of the courts, not only in the review of corporate voluntary arrangements, but in all the other matters outlined above, is likely to be a particular pressure point and area of vulnerability. Delays are endemic in the Cyprus courts and proceedings typically take several years to complete. Judges have little experience in insolvency matters, and are likely to consider matters very deliberately and at length in order to avoid coming to a wrong decision. Appointing more judges will not deal with the issue of lack of experience. Increasing the courts' involvement seems more likely to aggravate delays in the insolvency process than to streamline proceedings. It is to be hoped that these concerns turn out to be unfounded, and that the new legislation achieves its aim of helping to rehabilitate the real economy.

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