The Insolvency Review

Seventh Edition

Editor
Donald S Bernstein

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SEVENTH EDITION

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PREFACE

This seventh edition of *The Insolvency Review* once again offers an in-depth review of market conditions and insolvency case developments in key countries. A debt of gratitude is owed to the outstanding professionals around the world who have dedicated their time and talents to this book. As always, their contributions reflect diverse viewpoints and approaches, which in turn reflect the diversity of their respective national commercial cultures and laws.

In a prior edition of this book, we examined the challenges faced by multinational enterprise groups attempting to restructure under diverse and potentially conflicting insolvency regimes. At that time, the European Parliament and Counsel had recently published the Recast Insolvency Regulation,[1] which included provisions relating to cooperation and communication across group restructuring proceedings in multiple jurisdictions, and UNCITRAL's Working Group V was in the process of developing its Enterprise Group Insolvency: Draft Model Law (the EGI Model Law).[2] This year's edition provides an occasion to revisit this topic in light of the Working Group's EGI Model Law and the EGI Model Law's Guide to Enactment (the Guide to Enactment).

The EGI Model Law is designed to provide states with a legislative framework to address the cross-border insolvency of enterprise groups, complementing the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide, part three).[3] What distinguishes the EGI Model Law from the Model Law, which concerns itself with multiple proceedings of a single debtor, is the focus on multiple insolvency proceedings relating to multiple related debtors.[4]

The EGI Model Law defines 'enterprise group' as two or more entities, regardless of legal form, that are engaged in economic activities and may be governed by insolvency law, that are interconnected by control or significant ownership.[5] When members of an enterprise group are located in different jurisdictions, the EGI Model Law is intended to support cross-border cooperation and coordination with respect to their insolvency proceedings and establish new mechanisms that can be used to develop and implement a solution for the group (a

1 Regulation (EU) No. 2015/848 of 20 May 2015 on insolvency proceedings (recast), 2015 O.J. (L 141) <https://eur-lex.europa.edu/eli/reg/2015/848/oj>.
2 See UNCITRAL, Report of Working Group V (Insolvency Law) on the Work of its Forty-Fifth Session (New York, 21 to 25 April 2014), U.N. Doc. A/CN.9/803 (6 May 2014) <https://undocs.org/en/A/CN.9/803>.
3 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.
4 ibid., at I.A.3.
5 EGI Model Law, at Article 2.

group insolvency solution) through one (or potentially more) insolvency proceedings (each a planning proceeding) taking place in a state where a group member has its centre of main interests (COMI).[6] A planning proceeding is a main proceeding commenced in respect of an enterprise group member provided (1) one or more other enterprise group members are participating in that main proceeding for the purpose of developing and implementing a group insolvency solution, (2) the enterprise group member subject to the main proceeding is likely to be a necessary and integral participant in that group insolvency solution, and (3) a group representative has been appointed. The group representative will be able to seek a wide range of relief in any group member's insolvency proceeding. Ultimately, a group insolvency solution can be a reorganisation, sale or liquidation of some or all of the assets and operations of one or more enterprise group members, with the goal of protecting, preserving, realising or enhancing the overall combined value of those enterprise group members.[7] The EGI Model Law does not address the procedure for seeking approval of the group insolvency solution, leaving that to the law of the approving jurisdiction.[8]

The court overseeing the planning proceeding may grant certain types of relief if necessary to preserve the possibility of developing or implementing a group insolvency solution.[9] These forms of relief include, among other things, staying execution against the assets of an enterprise group member, suspending the right to transfer, encumber, or otherwise dispose of any assets of an enterprise group member, staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations or liabilities of an enterprise group member, and approving arrangements concerning the funding of an enterprise group member and authorising the provision of finance under those funding arrangements.[10] With respect to approval of post-filing funding arrangements, the Guide to Enactment notes that the court might take into consideration various criteria, including whether the funding arrangement is necessary for the continued operation or survival of the business of that enterprise group member or for the preservation or enhancement of the value of its estate, whether any harm to creditors of that enterprise group member will be offset by the benefit to be derived from continuing that funding arrangement, whether the funding arrangement safeguards the development of a group insolvency solution, and whether the interests of local creditors are protected.[11]

Moreover, the EGI Model Law also seeks to minimise the need for commencement of non-main proceedings in a second state in which an enterprise group member has an establishment and facilitates the centralised treatment of claims in an enterprise group insolvency by including a mechanism under which such claims can be addressed.[12]

It remains to be seen how swiftly and extensively the EGI Model Law will be incorporated into national laws. There is reason to believe, however, that some of the 45 jurisdictions

6 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.

7 ibid., at Article 2(f).

8 ibid., at Article 26.

9 ibid., at Article 19.

10 ibid., at Article 20.

11 UNCITRAL, Enterprise Group Insolvency: Guide to Enactment, Working Group V (28 to 31 May 2019) <https://undocs.org/en/A/CN.9/WG.V/WP.165>.

12 ibid.

that have adopted the existing Model Law may act relatively quickly, given the need for an enterprise group solution and the public nature of Working Group V's work.

Recent experiences in high-profile enterprise group restructurings further underscore the benefits promised by this new regime. The United States Bankruptcy Court for the Southern District of New York quoted from a working draft of the EGI Model Law in its opinion denying recognition of the Dutch insolvency proceeding of Oi Brasil Holdings Coöperatief UA (Coop).[13] There, the Dutch trustee of Coop sought such recognition notwithstanding that:

a the Oi Group was a Brazilian enterprise that maintained nearly all its operations, management, principal executive offices, customers, assets and employees in Brazil;
b many of the Oi debtors, including Coop, were already subject to restructuring proceedings in Brazil (*recuperação judicial* (RJ));
c an RJ had previously been recognised by the US Bankruptcy Court as foreign main proceedings;
d Coop was merely a special purpose vehicle (SPV) used to finance the Oi Group as a whole; and
e Brazil was the preferred venue of the Oi Group.

The Coop dispute was highly contentious and costly, but had the EGI Model Law existed, the effects of the dispute might have been mitigated. The group representative of a hypothetical Brazilian planning proceeding for the Oi Group could have, among other things, petitioned the Dutch court for (1) recognition of the planning proceeding and (2) relief to support the development and implementation of an insolvency solution for the Oi Group as a whole. The existence and recognition of a planning proceeding might have reduced the likelihood of the contested recognition hearing in the United States. The same may be true for the case of OAS SA and its debtor affiliates, which also involved a COMI determination regarding a European SPV that served as a financing vehicle for a Brazilian enterprise.[14]

As I do each year, I want to thank each of the contributors to this book for their efforts to make *The Insolvency Review* a valuable resource. As each of our authors knows, this book is a significant undertaking because of the current coverage of developments we seek to provide. As in previous years, my hope is that this year's volume will help all of us, authors and readers alike, to reflect on the larger picture, keeping our eye on likely, as well as necessary, developments, on both the near and distant horizons.

Donald S Bernstein
Davis Polk & Wardwell LLP
New York
September 2019

13 *In re Oi Brasil Holdings Coöperatief U.A.*, 578 B.R. 169, 243 (Bankr. S.D.N.Y. 2017) (noting that 'the promotion of cooperation between courts and other competent authorities among States involved in cases of cross-border insolvency affecting members of an enterprise group' is a key objective of both the Enterprise Group Insolvency Model Law and reflects current trends in international insolvency law).

14 *In re OAS S.A.*, 533 B.R. 83 (Bankr. S.D.N.Y. 2015).

Chapter 7

CYPRUS

Charis Christodoulou[1]

I INSOLVENCY LAW, POLICY AND PROCEDURE

i Statutory framework and substantive law

The Cypriot Companies Law (Cap 113) is the primary legislation that governs corporate insolvency matters in Cyprus and is supplemented by the Companies (Winding-up) Rules and the Civil Procedure Rules. Certain provisions of the Bankruptcy Law (Cap 5) and the Bankruptcy Rules, which apply to individuals, are also applicable to companies in insolvency. The provisions of the Companies Law govern every company that is registered in the Republic of Cyprus, notwithstanding that there are special insolvency rules for sector-specific instances, such as banking institutions and insurance companies.

The Companies Law was amended in 2015, with the aim of modernising the legal framework and simplifying the procedure for compulsory winding up, and for the purpose of introducing an examinership scheme as a creditor-friendly alternative option to the winding up of a company.

With the latest amendments, the procedure for compulsory winding up has been expedited significantly with the implementation of various provisions to this effect, such as faster appointment of a liquidator of a company, even in circumstances where there are different classes of creditors, and the power of the court to order the premature liquidation of a company if its assets are insufficient to cover the liquidation expenses and its affairs do not require further investigation. Another significant amendment, which was introduced to facilitate the liquidation procedure, is the enhancement of the liquidator's overall powers, including the management of assets that have been subject to a charge in favour of a secured creditor. Still, the granting of this power is subject to the court's discretion, upon its satisfaction that such a disposal could lead to a more beneficial liquidation of the assets of the company.

The examiner scheme allows the creditors of a company to reach a formal settlement that will enable the company, which would have otherwise been wound up, to continue its operations for the purpose of repaying all its creditors. Aside from examinership and compulsory winding up, the insolvency of legal entities can also be dealt with through voluntary or court-supervised winding up, reorganisation and receivership.

ii Policy

The prevailing practice for companies in financial distress was to liquidate, owing to the absence of any material corporate rescue mechanisms. The provisions on examinership signify a shift in policy, made in an effort to avoid liquidation in circumstances where there are

1 Charis Christodoulou is a senior associate at Dr K Chrysostomides & Co LLC.

prospects that a company can become viable, provided that the creditors of the company can reach a compromise. In line with this policy, the requirements for the approval of a compromise or arrangement between a company's creditors or its members, have also been simplified by lowering the relevant threshold.

At the same time, the necessity for reform of the company insolvency provisions was mandated by the need to resolve a great number of non-performing loans by companies, which had accumulated during the financial crisis in 2013 in Cyprus. The aim of this legislative reform was to render the liquidation procedure more efficient and cost-effective, as well as to ensure that, following the liquidation of a company, assets would be released and subsequently bolster the economy.[2]

iii Insolvency procedures

Liquidation

In general, the purpose of winding-up proceedings under Cypriot law is to enable a liquidator to collect and realise a company's assets for the settlement of its liabilities by way of distribution of the assets to the creditors. Under Cypriot law, a company may be wound up following a compulsory winding up, a voluntary winding up or through a court-supervised winding up.

Voluntary winding up

Voluntary winding up does not require any court involvement and it may be commenced either by the members of the company or its creditors, depending on whether the company is solvent or not, respectively.

The key aspect of a voluntary winding up by members is that the company must be in a position to be able to pay its debts within 12 months of commencement of the liquidation procedure, during which time its assets shall be distributed among its members. To this effect, a statutory declaration must be made by the directors of the company, stating the ability of the company to pay its debts within the above-mentioned time frame. In the event that the members' liquidation procedure as a whole is not concluded within 12 months, the liquidation must then continue as a creditors' voluntary liquidation.

Once the affairs of the company are completely wound up, certain procedural steps must be taken by the liquidator so that the company is deemed dissolved. These include the preparation of a report indicating how the winding up was conducted and the way the company assets were distributed, the presentation of said report to a general meeting of the company, and the filing of the same with the registrar of companies.

As to a creditors' voluntary winding up, the procedure comprises members' meetings and creditors' meetings. The aim of the former is to adopt a resolution for the winding up of the company and for the appointment of a liquidator. At the creditors' meeting, a statement of the company's financial position must be presented, with a list of the creditors' claims, and a liquidator must be nominated to act in the place of the liquidator chosen by the members of the company. Should the two nominees differ, the creditors' choice shall prevail, and if there is a dispute, the matter may be resolved by the court. Finally, a committee of inspections must be appointed by the creditors, which may consist of up to five persons who will provide supervision and assistance to the liquidator, as well as fixing his or her remuneration.

2 Preamble of Amending Law No. 63(I)/2015, titled The Companies (Amending) (No. 3) Law of 2015.

In both types of voluntary liquidation, the liquidator is granted extensive powers to complete the process of winding up. In certain instances, the approval of the inspection committee or the court shall be required, for example if the liquidator decides to settle any claim or proceed with a compromise.

Compulsory winding up

A compulsory winding up may be commenced, *inter alia*, if:

- *a* a company has resolved, by special resolution, to be wound up by the court;
- *b* a company fails to deliver the statutory report to the registrar of companies or to hold the statutory meeting;
- *c* a company does not commence its business within a year of its incorporation, or it suspends its business for a whole year;
- *d* the number of members is reduced to below one in the case of a private company, or below seven in the case of any other company;
- *e* a company is unable to pay its debts; or,
- *f* the court is of the opinion that it is just and equitable that a company should be wound up.

Pursuant to the Companies Law, a company is considered unable to pay its debts if:

- *a* it is indebted with a total sum exceeding €5,000, the concerned creditor has served the company with a written notice demanding payment of the incurred debt due, and the company has failed to pay the sum owed within three weeks of the date on which the written notice was served;
- *b* following a judgment issued against a company's property, the execution thereof fails to settle the debt;
- *c* the court is satisfied that the company is unable to pay its debts when due, having taken into consideration, for the purpose of reaching this decision, the prospective and future liabilities of the company; or
- *d* the court is satisfied that the value of the assets of a company is less than its liabilities, taking into account its prospective and future liabilities.

There is no additional test to be applied by the court to establish whether a company is insolvent. Thus, for instance, in case (a) above, the mere fact that the company failed to pay the amount of €5,000 will suffice for the issuance of a winding-up order of the company by the court. However, winding up is a discretionary remedy and the court, in exercising that discretion, may take into account various factors, such as the possibility that the company may secure funding or the fact that the winding-up petition is not supported by the majority of the creditors.

If a winding-up order is issued, the company can no longer trade, except with the approval of the court (or the committee of creditors, if there is one), for the realisation of the available assets. No pending action can be continued, or commenced against, the company except by leave of the court and subject to such terms as the court may impose. Any disposition of the company's property that takes place after the commencement of winding up (i.e., after the filing of the winding-up petition), and any transfer of shares or alteration in the status of the members of the company after the commencement of winding up, shall be void unless the court orders otherwise.

Compulsory liquidation is the most formal insolvency process and the relevant proceedings generally require more than two years to complete, depending on a number of factors, such as the available assets of the company and the number of creditors. Once all the affairs of the company have been completely wound up, the court, following an application by the liquidator, shall order the dissolution of the company.

Court-supervised winding up

Court-supervised winding up constitutes a combination of the voluntary and compulsory winding up processes. Specifically, following the approval of a resolution for a voluntary winding up, the court may issue an order for the continuation of this procedure under its supervision. The time frame for the conclusion of these proceedings shall vary from case to case.

Examinership

Examinership is a debt restructuring and corporate rescue procedure for insolvent companies, or companies that are likely to be insolvent, the purpose of which is to give a company facing insolvency a period of protection from its creditors, to facilitate its survival as a going concern and to save viable businesses and jobs.

For an examinership order to be granted, the court must be convinced that the company has a 'reasonable prospect of survival'. Whether such a prospect exists is determined by the court on the basis of a petition that is filed before it, accompanied by a report by an independent expert. Courts and insolvency practitioners are granted a margin of appreciation in determining whether a company has reasonable prospects of survival. The policy in instances of examinership is that creditors should not be put in a worse position than they would be in the event of liquidation.

Examinership orders are issued if the following requirements are collectively met:

a the company in question must be unable to pay its debts or is likely to be unable to pay its debts;
b no liquidation order has been issued by a court, nor has a voluntary liquidation resolution been adopted;
c the company has reasonable prospects of survival of its business as a going concern either in whole or part; and
d no receiver has been in office for more than 30 days.

Once an application for the appointment of an examiner is filed, the company is placed under the protection of the court for four months (which may be extended under specific circumstances for another two months by the examiner, if appointed). Within this period, no winding-up orders can be issued against the company, a receiver cannot be appointed, no execution measures can be taken against the company, and no action can be taken to materialise a mortgage of a company under examinership without the consent of the examiner, if an examiner has been appointed.

Once appointed, the examiner is vested with the rights and powers of an auditor, thus enabling the examiner to formulate proposals for saving the company. The court may also grant the examiner additional powers, including any or all of the directors' powers (management and borrowing) or the liquidator's powers, or both.

The examiner formulates proposals and presents them to the creditors and shareholders. He or she is primarily responsible for the formulation of an arrangement scheme that will allow the company to continue its operation as a going concern after the protection period has expired. Having formulated his or her proposals, the examiner must convene and preside over such meetings of the members and creditors of the company as he or she thinks proper, and report back to the court on those proposals within 60 days of being appointed.

The examinership procedure is still rather new and, so far, it has not been successful, because the law enables the respondent company to easily employ delaying tactics or simply to oppose the application for the appointment. Thus, in most cases, it will not be possible to have a hearing on the application for the appointment of an examiner and to obtain a court order for the appointment of one within the four months during which the company is under the protection of the court.

Reorganisation

The Companies Law allows for company restructurings to materialise in the form of compromises or arrangements, either between the company and its creditors or any class of them, or between the company and its members. This mechanism may be used for the financial restructuring of a company that is viable but subject to short-term liquidity problems, or to effect a wide range of mergers and reorganisations of companies. It may also be employed in the context of winding up.

Under this scheme, compromises between the majority of a company's creditors can be made, which may then be imposed on all its creditors and enable class rights of company members to be varied. Such a scheme cannot be sanctioned by the court if it is *ultra vires* to the company's memorandum and articles of association, or if it is contrary to the law.

To be precise, a company, creditor, member, or, in the case of a company being wound up, the liquidator, may apply to the court for an order for a meeting of the creditors or members of the company to be convened, in whatever way the court directs, to consider the proposal. If the majority, in value, of the creditors or members present and voting, either in person or by proxy, agree to the compromise or arrangement, an application is then made to the court for sanctioning. Once the court has sanctioned the compromise or arrangement, this becomes binding on all the creditors or members, as the case may be.

During the procedure for the reorganisation or compromise, the company has no protection from the creditors of the company. However, the procedure is flexible and fast. Therefore, with proper planning, reorganisations can be completed fairly quickly, especially if the majority of the creditors consent to such a restructuring.

Receivership

The appointment of a receiver may be available if a charge has been provided to a creditor. The receiver is responsible for realising the assets subject to the charge and for discharging the debt from the proceeds. The general practice in Cyprus is that a receiver is appointed on the basis of a floating charge covering all the assets of the company, up to the amount of the secured debt. The standard provisions of the debenture would enable the creditor, without having to obtain a court order to that effect, to appoint a receiver with extensive powers to manage the company.

The precise powers and capacity of the receiver will be determined by the provisions of the authorising instrument, pursuant to which the receiver was appointed. Not only does the receiver enjoy the express powers conferred by the authorising instrument, but he or she also has implied powers to take the necessary steps to liquidate the charged assets.

An appointed receiver acts as a fiduciary of the secured lender by which he or she was appointed, and is liable towards him or her, including civil liability as a result of a duty of care, or a contractual liability on the basis of the contract between the receiver and the secured lender. In addition, the receiver has a duty of care towards third persons, whose assets the receiver happens to hold under his or her capacity. Further, the receiver is under a duty to act diligently towards the rest of the creditors of the company. In view of the importance of the role, the receiver must exercise his or her duties with accuracy, honesty and diligence. Once a receiver has been appointed on the basis of the terms of the debenture, most of the directors' powers are suspended and the directors are left only with limited residual powers.

The appointment of a receiver on the basis of a charge is preferred by creditors because it is more efficient and less time-consuming. In practice, the receiver will aim to liquidate the company's charged assets, to recover and pay the debt to the secured creditors as effectively and quickly as the receiver's rights and duties allow. A receiver may also be appointed as an interim measure in the context of ongoing legal proceedings, provided that the conditions of the law are met, pending the adjudication of such proceedings.

Ancillary insolvency proceedings

In instances where Regulation (EU) 2015/848 on insolvency proceedings (the Insolvency Regulation) is applicable, insolvency proceedings initiated in another EU Member State are instantly recognised in Cyprus. Secondary proceedings may be initiated in support of main proceedings in another Member State only when the company has an establishment in Cyprus. The Regulation applies only to companies whose core main interests are within the European Union.

In instances where the Insolvency Regulation is not applicable, and in the absence of any bilateral treaty stating otherwise, Cypriot courts will apply the general principles established under English common law in relation to insolvency. These principles dictate that the effect of a winding up or a dissolution of a foreign company will be recognised under the law of the state of the company's incorporation. Additionally, Cypriot courts will recognise the status of a foreign liquidator and his or her right to be in control of company assets. This recognition stems from the principle of universalism, which is a long-established feature of common law.

iv Starting proceedings

Voluntary winding up

A members' voluntary winding up can be effected on the basis of a special resolution by the members of a company, or with an ordinary resolution if the articles of association of a company envisage a fixed period for the company's lifetime or indicate that the company may be wound up if a certain event should occur. The voluntary winding up of a company is deemed to be effective as of the date of the adoption of the resolution. Similarly, a creditors' voluntary winding up is initiated with the adoption of the relevant resolution and the convening of the relevant meetings, as explained in Section I.iii.

Compulsory winding up

Compulsory winding up commences with the filing of a winding-up petition. This may be filed by, among others, the company, its creditors, its contributories, an examiner, or an insolvency practitioner of a different EU Member State in accordance with the provisions of the Insolvency Regulation.

Examinership

A petition for the appointment of an examiner may be filed by the company itself, its creditors, shareholders holding more than 10 per cent of the issued share capital of the company, or by any guarantor of the company's obligations.

Reorganisation

An application to convene a meeting for the purpose of reaching a compromise or arrangement may be filed by the company itself, a creditor, a member or, in the case of a company being wound up, the liquidator.

Receivership

A receiver may be appointed once the conditions set out in the relevant underlying instrument are fulfilled, provided he or she also submits to the registrar of companies the relevant forms and documents required in relation to his or her appointment.

v Control of insolvency proceedings

The court and the official receiver act as supervising authorities of the winding-up procedure, and of the liquidators in a compulsory winding up. As regards voluntary winding up, the liquidator, any contributory or a creditor may apply to the court to determine any question arising in the course of the winding up of a company, or to exercise all or any of the powers that the court could exercise if the company were to be wound up by the court.

In the context of receivership, the receiver may, if deemed necessary, apply to the court for directions in relation to any particular matter arising in connection with the performance of his or her functions. The court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court deems just.

vi Special regimes

The Business of Credit Institutions Law[3] and the Resolution of Credit Institutions and Investment Companies Law[4] have been enacted for the purpose of regulating the operations and compliance issues of banking institutions. The Insurance and Reinsurance Services and Other Related Business Law[5] governs the same in relation to insurance companies. The provisions of these laws are supplementary to the insolvency provisions provided in the Companies Law.

3 Law No. 66(I)/1997.
4 Law No. 22(I)/2016.
5 Law No. 38(I)/2016.

vii Cross-border issues

The jurisdiction of the Cypriot courts in cross-border insolvency cases derives primarily from the Insolvency Regulation and the principles developed under English common law. In general, Cypriot courts are willing to assist with and facilitate corporate insolvency proceedings or judgments with cross-border characteristics, provided that the proceedings or judgments are not against public policy in Cyprus, that they were taken in accordance with the law of the country of incorporation of the company, and that there is no domestic law that prevents the recognition or enforcement thereof.

II INSOLVENCY METRICS

The growth rate of the Cypriot economy in the first quarter of 2019 was positive, and was estimated at 3.2 per cent compared to the first quarter of 2018. This can be explained by the growth in construction, information and communication, professional, scientific and technical, administrative and support, and arts and entertainment sectors. The financial and insurance sector recorded a negative growth rate. In the same period, there has been a steady decline in unemployment (roughly 34 per cent). The growth forecast for 2020 is currently 2.6 per cent.[6]

According to the available data, the number of winding-up orders issued in the context of compulsory winding up has decreased significantly compared to previous years, whereas there has been a steady increase in voluntary winding-up proceedings.[7]

III PLENARY INSOLVENCY PROCEEDINGS

One of the most significant insolvency proceedings in Cyprus is the liquidation proceedings of FBME Bank Ltd (the Bank). The Central Bank of Cyprus (CBC), having revoked the Bank's licence to operate a branch in Cyprus on the basis of the Resolution of Banking and other Institutions Law,[8] filed a petition with the court pursuant to the provisions of the Business of Credit Institutions Law, seeking the special liquidation of the Bank, the headquarters of which are located in Tanzania. Both the CBC's application and the respective appeal were dismissed.

In the meantime, the Bank's licence to operate as a banking institution in Tanzania was revoked by the Bank of Tanzania, which subsequently appointed a liquidator. The Tanzanian liquidator filed an application in Cyprus seeking formal recognition of its authority to act as the liquidator of the Bank in Cyprus as well. Pending the determination of this application, the CBC filed another application seeking the liquidation of the Bank's branch in Cyprus. The second application was filed on the basis of the newly amended provisions of the Business of Credit Institutions Law, with which the definition of a licensed banking institution was amended to include a Cyprus branch of a foreign bank. Both applications are currently pending.

6 According to data published by the Statistical Service, available (in Greek) at https://www.mof.gov.cy/mof/cystat/statistics.nsf/economy_finance_11main_gr/economy_finance_11main_gr?OpenForm&sub=1&sel=2.

7 According to data published by the Cyprus Insolvency Service, available at www.mcit.gov.cy/mcit/insolvency.nsf/All/587242BC71DB8AE6C2257FEA0025A358?OpenDocument.

8 Law No. 17(I)/2013.

The cases involve complex and unprecedented legal and procedural issues, as follows:

a the relevant legal provisions for the special liquidation of banking institutions were only implemented in Cyprus in 2013. They are now being tested before the court and are subject to legislative review;

b this is the first case concerning the special liquidation of a bank in Cyprus;

c it is the first time that Cypriot courts had to decide whether they had jurisdiction to put a foreign banking institution under special liquidation, based on the fact that the institution's licence to operate a branch in Cyprus had been revoked; and

d it is the first time Cypriot courts are having to adjudicate whether the CBC or a foreign regulator (non-EU) has the authority to liquidate the Cyprus branch of a foreign banking institution.

IV ANCILLARY INSOLVENCY PROCEEDINGS

There is no public information or publicly available cases regarding ancillary insolvency proceedings pending before Cypriot courts.

V TRENDS

Following the financial crisis in 2013, Cyprus' economy has shown remarkable resilience and, following various reforms to correct fundamental weaknesses in its financial system, the economy has, for the most part, recovered and been stabilised. Proactive measures combined with insolvency legislation have led to the reduction of non-performing loans. In addition, the regulation and supervision of banking institutions has become stricter, which has also affected lending.[9] These factors have resulted in a significant decline in the number of insolvent companies, and the general anticipation is that insolvency activity will generally decrease in the coming years.

Cyprus' economy has also experienced, and is continuing to undergo, a period of consolidation, which has mostly affected the banking and insurance sectors. In total, four banking institutions have ceased operations, two of which were considered to be among the largest domestic banks. Consolidation in the insurance industry is also anticipated in the near future. These mergers and acquisitions are perceived to be necessary and positive as these sectors have long been understood to be non-viable.

9 According to statistical data, available through the Statistical Service of the Republic, loans have steadily decreased since 2016 by a significant degree – available at https://www.mof.gov.cy/mof/cystat/statistics.nsf/economy_finance_13main_gr/economy_finance_13main_gr?OpenForm&sub=3&sel=4.

Appendix 1

ABOUT THE AUTHORS

CHARIS CHRISTODOULOU

Dr K Chrysostomides & Co LLC

Charis Christodoulou is a senior associate in the firm's dispute resolution department. He represents and advises clients in all matters relating to corporate and commercial litigation, and has considerable experience in corporate insolvency and restructuring, banking litigation and real estate litigation. He regularly advises clients in relation to the appointment and duties of receivers and managers on the basis of fixed charges and extrajudicial enforcement of securities such as pledges and mortgages. Recently, he advised a privately owned hedge fund on the legislation on foreclosure, the procedure for the resolution of non-performing loans and the liquidation of assets by receivers appointed on the basis of a charge and liquidators in the context of winding up.

DR K CHRYSOSTOMIDES & CO LLC

1 Lampousas Street
1095 Nicosia
Cyprus
Tel: +357 22 777 000
Fax: +357 22 779 939
ch.chistodoulou@chrysostomides.com.cy
www.chrysostomides.com

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