Corporate Insolvency in Cyprus

PKE Consultants Limited **Publication Sheet – November #2 2019**

The Cypriot corporate insolvency framework has undergone an overhaul over the past years. The insolvency procedures summarised below are generally available to companies incorporated in Cyprus, except for certain regulated entities, such as credit institutions and insurance companies, to which specific insolvency frameworks apply.

Legislation applicable to insolvencies and reorganisations

Personal insolvency is governed by the Bankruptcy Law (Chapter 5) and the Bankruptcy Rules. In addition, the Insolvency of Individuals (Personal Repayment and Relief Plans) Law 65(I)/2015 provides for the handling of insolvent individuals.

The Companies Law (Chapter 113) governs corporate insolvency and reorganisation. In 2015, the Companies Law was amended to introduce the notion of examinership into Cyprus Law. As such, companies may be reorganised to meet their financial obligations. Furthermore, the Companies Law allows for corporate reorganisation, which under section 30 of the Income Tax Law 118(I) of 2002 includes the following: merger, division, partial division, transfer of assets, exchange of shares and transfer of registered office.

Certain provisions of the Bankruptcy Law regarding the rights of secured and unsecured creditors are also applicable to the winding up of insolvent companies.

Company arrangements and reconstructions

Arrangements and reconstructions are generally used to achieve a compromise or arrangement between a company and its creditors, or between a company and its members or any class of them. The term 'arrangement' refers to any reorganisation of the share capital of a company by the consolidation of different classes of shares, or by the division of shares into shares of different classes or a combination of both methods.

An approved compromise or arrangement is binding on all creditors or members and on the company. Where a company is being wound up, an approved compromise or arrangement will also be binding on the liquidator and contributories of the company.

For a compromise or arrangement to be binding it must be approved by a majority in value of the creditors or members present and voting at the meeting of creditors or members. The approval of the court is required both for the convening of meetings and for the terms of the proposals.

As there is no statutory protection from creditors during the reorganisation procedure it is important to keep creditors informed and cooperative. As to the length of the procedure, it is relatively quick, and in certain cases may be completed within a matter of weeks.

Involuntary Liquidations

Examinership

Examinership effectively places a company under the court's protection while a court-appointed insolvency practitioner assesses the company's affairs within a specified time frame and puts together a restructuring proposal for a compromise or scheme of arrangement (or both) with shareholders or creditors of the company (or both).
The examiner's powers, which include the power to put forward proposals to rescue the company and, in the meantime, to manage the company to facilitate the rescue of the company, are subject to the court's supervision.

Generally, while a company is placed under examinership, the disposal of the assets or business of the company is not permitted and the whole or part of the company's undertaking must remain with the company. An examiner shall, where so directed by the court, have the power to ascertain and agree on claims against the company. An examiner may apply to the court to determine any question arising in the course of their office.

During an examinership, the company is under the court's protection; no petition or resolution can be presented or passed for the company to be wound up, no legal action can be taken against the company to recover any debt or to repossess goods in the company's possession. No proceedings can be commenced against any guarantor of the company's debts and no receiver can be appointed during an examinership.

Once the court confirms the proposals of the examiner, they become binding on the company and its members and creditors.

Receivership

The main objective of appointing a receiver is to recover a secured creditor's debt. Typically, an instrument creating a charge affords a creditor with a right to appoint a receiver on default of a debtor's repayment obligations to realise the asset subject to the charge and discharge the debt out of the proceeds of the sale of this asset.

Creditors of a company can also apply to court seeking an order for a receiver to be appointed if their interests warrant protection by the appointment of a receiver. Where the charge is a floating charge over the assets of the undertaking the creditor can appoint a receiver and manager over the assets on which the floating charge crystallises at the time of default.

During the period in which a receiver is appointed, the directors' inherent powers of management over the charged assets cease and the receiver is vested with powers to manage the charged assets. Within seven days of the appointment of a receiver, the appointer must notify the Registrar of Companies.

If the appointment is under a floating charge covering substantially all the assets of the company, the receiver must notify the company of their appointment. The company must then provide to the receiver, within 14 days, a statement of affairs of the company including a register of all its assets and liabilities. Based on this information, the receiver will decide whether to dispose of assets individually or as a whole.

A receiver controls the assets over which they have been appointed, for the duration of their appointment. The extent of the receiver's powers and any relevant restrictions relating to their appointment are determined by the instrument under which they are appointed or in the court order pursuant to which they are appointed.

Winding-up by the court (compulsory liquidation)

Compulsory liquidation is a drastic sanction that may be taken by a creditor in certain circumstances. A company placed under compulsory liquidation immediately ceases to trade, its assets are realised and distributed, and its existence ultimately comes to an end.

A petition for the winding-up of a company can be presented by the company itself, any creditor (including a contingent or prospective creditor), a contributory or a member. The court may also order a winding-up on the petition of the official receiver against a company being wound up voluntarily where the court is satisfied that the voluntary winding-up cannot be continued, considering the interests of the creditors or shareholders.

On the making of a winding-up order, the company can no longer trade, except where it obtains the approval of the court (or the committee of creditors, if there is one). No judicial proceedings can be proceeded with, 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 property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding-up shall be void unless the court orders otherwise.

The liquidator has extensive powers to realise assets and determine claims, including the right to bring and defend actions on the company's behalf, to continue to trade for the beneficial realisation of assets, to borrow on the security of the company's assets and to do anything else it deems necessary for the purposes of the winding-up. Certain of these powers require the approval of the court (or the committee of creditors, if one has been appointed) and are subject to the control and supervision of the court. Any creditor or contributory can apply to the court in respect of the exercise of the liquidator's powers.

Voluntary Liquidations

Voluntary winding-up

A company's voluntary liquidation can be initiated either by members of a company or by creditors of a company. All activities of the company cease on the commencement of the voluntary winding-up, except where the continuance of its activities benefits the process of liquidation. The company maintains its legal personality throughout the voluntary winding-up period and ceases to exist upon completion of the liquidation process, which leads to the dissolution of the company.

Members' voluntary winding-up

A members' voluntary liquidation is the means of ending the existence of a solvent company that is no longer required and distributing its assets among the members. It is frequently undertaken as a housekeeping measure in the context of group reorganisations. The effect of liquidation is to vest the assets in the liquidator as trustee and the company can no longer trade except to the extent required to realise its assets.

The company's directors must make a statutory declaration of solvency, which must include a statement of the company's assets and liabilities and provide that, having enquired fully into the affairs of the company, the directors consider that the company can pay its debts in full within a maximum of 12 months. This declaration must be made within five weeks before the date of the proposed resolution to wind up and must be delivered to the Registrar of Companies before the date of the proposed resolution to wind up. Once the statutory declaration has been delivered to the Registrar of Companies, the liquidation is initiated by the passing of a resolution of members to wind up the company. The procedure applies to all Cyprus-registered companies with the exception of banks and insurance companies, which are subject to different procedures.

The ability of the company to pay debts in full within a year of liquidation is of pivotal importance. If the directors are unable to make a statutory declaration of solvency or if, having been appointed, the liquidator forms the opinion that the company will not be able to pay its debts, the liquidation must be undertaken as a creditors' voluntary liquidation. The statutory declaration must be made five weeks before the date of the proposed resolution to wind up and delivered to the Registrar of Companies before that date.

The liquidation is initiated by the passing of the members' resolution to wind up the company following the delivery of the statutory declaration to the Registrar of Companies. In specific, the shareholders' resolution to wind up the company must be made by either a special resolution, which requires a 75 per cent majority of votes cast at a general meeting, or, an ordinary resolution, requiring a simple majority of votes cast at a validly convened general meeting. The liquidator in a voluntary liquidation has the same powers as in a compulsory liquidation and can exercise these powers as necessary to achieve a beneficial winding-up.

Creditors in a members' voluntary liquidation must be paid in full within a year of commencement of the liquidation. Realisation and distribution of residual assets to members and formal conclusion of the winding-up may take longer. If the liquidation continues for more than one year, the liquidator must convene annual meetings of members and present accounts.

Creditors' voluntary winding-up

The purpose of a creditors' voluntary liquidation is to distribute the available assets of an insolvent company among the creditors and bring the company's existence to an end. As with compulsory liquidation, this may involve an investigation into the conduct of persons involved in the company to ascertain the reasons for its demise and their role in it. The first step in a creditors' voluntary liquidation is to convene separate meetings of members and creditors as described below.
Creditors' voluntary liquidations are often prolonged as the realisation of assets, agreement of claims and completion of investigations can take years. If the liquidation exceeds one year, separate annual meetings of members and creditors must be held within three months of each anniversary to consider the conduct of the liquidation, the liquidator's receipts and payments account.

Certain pre-insolvency transactions may be challenged and set aside in certain circumstances. These include:

- a charge that has not been properly registered is not perfected and is void against the liquidator and any creditor of the company;

- a transaction may be deemed to be a fraudulent preference against its creditors where the dominant intention of the transaction was to provide a preference to one creditor over another. This transaction must have occurred within six months prior to commencement of the winding-up and at a time when the company was insolvent; and

- a floating charge on the undertaking or assets of the company created within 12 months of the commencement of the winding-up shall generally be invalid, unless it is proved that the company, immediately after the creation of the charge, was solvent.

Disclaimer

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving appropriate professional advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication. PKE Consultants Limited is at your disposal to discuss with you all aspects with regards to the Corporate Insolvency in Cyprus and assist you in this respect. Please do not hesitate to contact us.

PKE Consultants Limited
10 Adamantiou Korai,
2321 Nicosia,
Cyprus

Phone
+357 22 102019

Fax
+357 22 102019

E-mail
info@pkeconsultants.com.cy

Find us at:
www.pkeconsultants.com.cy

About Our Organization

PKE Consultants Limited provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a connected network of key affiliates, PKE Consultants Limited brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges.

PKE Consultants Limited is a private company registered in Cyprus (Reg. No. HE376055).