

## Company Law

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### 1. What legislation is applicable to bankruptcies and reorganisations?

Personal bankruptcy is governed by the Bankruptcy Law, Cap 5, and the Bankruptcy Rules, Cap 6. Corporate insolvencies and reorganisations are governed by the Companies Law, Cap 113. Section 203 of the Companies Law provides two methods of winding up, namely:

- compulsory winding-up by the court; and
- voluntary winding-up, which may be either a members' winding up or a creditors' winding up.

Sections 198 to 201 of the Companies Law set out procedures for compromises with members and creditors, either within or outside insolvency, and for mergers and divisions of public companies.

### Excluded Entities

### 2. What entities are excluded from bankruptcy proceedings and what legislation applies to them?

There are no excluded entities either in bankruptcy or in insolvency. The definition of a debtor given in section 3(2) of the Bankruptcy Law, Cap 5, gives jurisdiction to the courts to adjudicate bankrupt Cypriots and foreigners residing in Cyprus. Bankruptcy proceedings can only commence if the debtor has committed one of the acts set out in section 3(1) of the Bankruptcy Law, Cap 5.

A company may be wound up following a court order in the following circumstances:

- the company has by special resolution resolved that it is to be wound up by the court;
- default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
- the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- the number of members is reduced, in the case of a private company, to below two, or in the case of any other company, to below seven (subject

to Law 2(I) of 2000 which provides that a company can be formed with only one shareholder);

- the company is unable to pay its debts; or
- the court is of the opinion that it is just and equitable that the company should be wound up.

Special arrangements apply to insolvent banks and insurance companies.

## Secured Lending And Credit (Immoveables)

3. What are the principal types of security devices that are taken on immoveable (real) property?

The primary type of security granted over immoveable property is the legal mortgage. A mortgage does not constitute an 'estate in land' but only a contractual right for the benefit of the mortgagee and a charge on the immoveable property. Mortgages or other charges over immoveable property must be registered with the Department of Lands and Surveys and, if given by a company, with the registrar of companies.

## Secured Lending And Credit (Moveables)

4. What are the principal types of security devices that are taken on moveable (personal) property?

The security devices for moveables are the lien, the pledge and the floating charge.

A lien may be legal under common law or equitable. A common law lien is the right to retain possession of certain property belonging to another person until complete payment of a debt. This type of lien merely provides a possession right to the holder of the property until payment, not a right to sell or otherwise deal with the property and it is extinguished if the creditor gives possession to the debtor or any agent of his or hers.

An equitable lien does not require continued possession of the property and it may appear similar to a mortgage, the difference being that a mortgage is a right founded on contract, whereas an equitable lien arises from general principles of equity, which do not permit a person who has acquired property under a contract to keep it without payment.

A pledge is the loan of money in return for the delivery of possession to the lender. The lender has the power to sell but the general ownership of the goods remains with the borrower. The pledge must be in writing, made in the

presence of two competent independent witnesses and signed by the pawnor.

A floating charge is a security interest over the assets of a company, which 'floats' until an event of default is triggered or until the company goes into insolvent liquidation, at which time the floating charge crystallises and attaches to all of the assets of the company. It gives the secured creditor two key remedies in the event of default. First, the creditor may crystallise the charge and then realise any assets subject to the charge as if it was a fixed charge. Alternatively, if the floating charge substantially encompasses all of the assets and undertaking of the company, the creditor may appoint a receiver to take control of the business, with a view to discharging the debt out of income or selling off the entire business as a going concern.

Mortgages over Cyprus ships must be supported by a deed of covenants entered into by the parties and must be registered with the registrar of Cyprus ships or at a Cyprus consulate overseas. Any charge, pledge or marine mortgage given by a company must be registered with the registrar of companies.

## Unsecured Credit

5. What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

In the case of an unsecured creditor, an action for recovery of the debt may be brought in the district court of the debtor's residence. Such actions can take time if the debtor files a defence. If the debtor owns certain assets and there is a risk that the debtor will dispose of them, the creditor can obtain an injunction to freeze them.

Provided that the creditor has obtained a judgment against the debtor he can enforce it in various ways, namely by a writ of moveables, garnishee proceedings, registration of a charging order over the immoveable property of the judgment debtor or over his chattels (eg, shares), a writ of delivery of the goods ordered to be delivered to the judgment creditor, a writ of possession of the land ordered to be delivered to the judgment creditor, a writ of sequestration and bankruptcy proceedings against the judgment debtor.

Pre-judgment attachments are not available, and no special procedures apply to foreign creditors.

Generally as a last resort, the creditor may present a petition for bankruptcy or winding-up.

## Courts

6. What courts are involved in the bankruptcy process? Are there restrictions on the matters that the courts may deal with?

Bankruptcy proceedings are dealt with by the district court of the district in which the debtor's home or place of business is located. A petition to wind up a company must be presented to the district court in whose area the company's registered office is situated. The procedure commences with the filing of the bankruptcy petition in the appropriate court.

## Voluntary Liquidations

7. What are the requirements for a debtor to commence a voluntary liquidation of its business? What are the effects of the commencement of the liquidation?

The directors decide that the company has no future and agree that it would be best to terminate its existence. Voluntary liquidations start with a resolution of the company. If the articles of association of the company provide for a fixed period for the duration of the company or specify that a certain event should occur for the winding-up, only an ordinary resolution in a general meeting is needed. Otherwise, a special or an extraordinary resolution is necessary, resolving that the company should be voluntarily wound up.

A voluntary winding-up is deemed to begin on the passing of the resolution. After the commencement of the winding-up, the company may not carry on any business except that required for its winding-up. Any transfer of shares, unless done with the approval of the liquidator, is void as it is an alteration in the status of the members.

There are two categories of voluntary winding-up, namely members' voluntary winding-up and creditors' voluntary winding-up:

- In order to enter into a members' voluntary winding-up the company must be able to pay all its debts, with interest, within a year and a majority of the directors are required to swear a statutory declaration to that effect prior to the passing of the resolution to wind up. The liquidator is appointed by the members and, unless the company subsequently proves to be insolvent (in which case the liquidation is converted to a creditors' voluntary winding up), the creditors have no say in his appointment.
- If the company is insolvent, the members' appointment of a liquidator is considered by a meeting of creditors held on the same or the following

day. The creditors may accept the liquidator appointed by the members or appoint someone else, either to act in his place or to act jointly with him.

## Involuntary Liquidations

8. What are the requirements for creditors to successfully place a debtor in involuntary liquidation? What are the effects of the commencement of the liquidation?

A petition for the winding-up of a company may be presented by any creditor, including a contingent or prospective creditor. On hearing the petition, the court may dismiss it, adjourn it, or make any order that it deems fit. If a winding-up order is made, the liquidation will be deemed to have commenced at the time of presentation of the petition, unless a resolution has been previously passed for a voluntary winding-up, in which case liquidation will be deemed to have begun with the passing of the resolution. Any disposition of the company's property that takes place after the commencement of winding-up and any transfer of shares or alteration in the status of the members of the company after the commencement of winding-up will be void unless the court otherwise orders.

## Voluntary Reorganisations

9. What are the requirements for a debtor to commence a financial reorganisation? What are the effects of the commencement of the reorganisation?

Reorganisations may be formal or informal. Most reorganisations are informal, so there is no set procedure to be followed. The company will usually agree either to an informal arrangement with its creditors before any reorganisation occurs or to follow the formal procedures.

Pursuant to section 198 of the Companies Law, Cap 113, 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 court may, on application by the company or any creditor or member or, in the case of a company being wound up, by the liquidator, order a meeting of the creditors or of the members of the company to be summoned in such a way as the court directs. At this meeting, any compromise or arrangement passed by a majority in number representing three quarters in value of the creditors or members present and voting will be binding on all the creditors or members and also on the company. In the case of a company being wound up, this will also be binding on

the liquidator and contributories of the company.

To have binding force such an order must be delivered to the registrar of companies for registration and a copy of every order must be annexed to every copy of the memorandum of the company issued after the order has been made. If no memorandum exists, then a copy of every order must be attached to every copy of the instrument comprising or defining the constitution of the company.

### Involuntary Reorganisations

10. What are the requirements for creditors to commence an involuntary reorganisation? What are the effects of the commencement of the reorganisation?

Reorganisations initiated by creditors are not typical. The procedure to be followed is as described in question 9.

### Mandatory Commencement Of Insolvency Proceedings

11. Are companies required to commence insolvency proceedings in particular circumstances (to avoid personal liability to directors and officers or otherwise)? In what circumstances must companies do so? If proceedings are not commenced, what liabilities can result?

Any director of a company making a declaration of solvency for the purposes of a members' voluntary liquidation without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the specified period will be liable to up to two years' imprisonment or a fine of up to CY1,500 (2,565). If the professional liquidator is of the opinion that the company will not be able to meet its obligations and pay all its debts within the specified period, he or she must call a creditors' meeting and supply them with full information. From the date of that meeting, the winding up is converted from a members' voluntary winding up to a creditors' voluntary winding up.

Personal liability may only be imposed on directors in the event of fraudulent trading, namely carrying on business with intent to defraud creditors. Because of the high standard of proof required, successful claims for fraudulent trading are extremely rare.

Cyprus law does not contain any wrongful trading provisions requiring directors to commence insolvency proceedings as soon as they know or ought to know that the company will be unable to pay its debts.

### Doing Business In Reorganisations

12. Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Any business carried on by a company during a reorganisation occurs outside any formal insolvency and proceedings would be halted pursuant to an agreement between the company and its creditors. The purpose of the agreement is to prevent creditors proceeding with enforcement proceedings against the company.

#### Sale Of Assets

13. In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor?

See questions 12 and 18.

#### Stays Of Proceedings And Moratoria

14. What prohibitions against the continuation of legal proceedings or the enforcement of claims by secured and unsecured creditors are imposed by legislation or court order in liquidations and reorganisations? In what circumstances may secured or unsecured creditors obtain relief from such prohibitions?

According to section 215 of the Companies Law, Cap 113, at any time after the presentation of a winding-up petition and before a winding-up order has been issued, the company or any creditor or contributory may, where any action or proceeding against the company is pending in any district court or the Supreme Court, apply to the court in which the action or proceeding is pending for a stay of proceedings. Where any other action or proceeding is pending against the company, the company or any creditor or contributory may apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding. The court in which such an action is brought may restrain the proceedings accordingly on any terms it thinks fit.

#### Arbitration Processes In Bankruptcy

15. How frequently are arbitration procedures used in insolvency proceedings? What limitations are there on the availability of arbitration procedures in insolvency cases? In insolvency proceedings, will the court allow

arbitration proceedings to continue after an insolvency case is opened?

Arbitration procedures are not widely used in insolvency proceedings. According to section 5(1) of the Arbitration Law, Cap 4: "Where it is provided by a term in a contract to which a bankrupt is a party that any dispute arising out of this contract or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it relates to any such dispute. "

Section 5(2) of the above-mentioned law provides that if the trustee in bankruptcy does not adopt the contract, the trustee or any other party to the agreement may apply to the court for an order directing that the matter in question be referred to arbitration in accordance with the agreement.

As far as the limitations on the availability of arbitration procedures in insolvency cases are concerned, section 24 of the Arbitration Law provides for the limitation of time for commencing arbitration proceedings. Specifically, section 24(1) provides that the laws on limitation of actions shall apply to arbitrations as they apply to proceedings in the court. Section 24(7) provides that the laws on limitation of actions include any law or public instrument limiting the time within which any particular proceeding may be commenced.

## Set-Off And Netting

16. To what extent are creditors able to exercise rights of set off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set off either temporarily or permanently?

Set-off is generally available to creditors, subject to the following restrictions.

Under section 204(g) of the Companies Law, a sum due to any member of a company in his capacity as a member by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

According to section 246 of the Companies Law, Cap 113, the court may, at any time after making a winding-up order, make an order against any contributory for the time being on the list of contributories to pay any money due from him to the company. In making such an order the court may make, to any director or manager whose liability is unlimited, an allowance by way of set-off of any money due to him from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in



respect of any dividend or profit.

## Intellectual Property Assets In Insolvencies

17. May the licensor or owner of the IP terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with an IP licensor or owner to continue to use the IP for the benefit of the estate?

There is no provision in the Bankruptcy Law, Cap 5, or the Intellectual Property Rights Law of 1976 that enables the licensor or the owner of the IP to terminate the debtor's right to use it when an insolvency case is opened. Also, no provision is made in any law as to the right of an insolvency administrator to continue to use IP rights which are granted under an agreement with the debtor or in regard to the insolvency representative's right to terminate a debtor's agreement with an IP licensor to continue to use the IP for the benefit of the estate. Cyprus law is silent on the particular issues and the general approach taken is that the terms incorporated in the agreement entered into by the parties apply.

## Post-Filing Credit

18. Does your country's insolvency system allow a debtor in liquidations or reorganisations to obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Under Cyprus law, an insolvent company may not enter into any further transactions after a winding-up order, nor may a bankrupt individual obtain any loan or enter into any transactions unless the company exits from liquidation (for example, by successfully completing an arrangement with its creditors) or the bankrupt individual settles all his or her debts and pays the prescribed fee to the relevant authority and is removed from the register of bankrupts.

## Successful Reorganisations

19. What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved?

Notices of meetings to consider proposed arrangements under section 198 of the Companies Law must be accompanied by a statement explaining the effect of the compromise or arrangement, and in particular stating any material interests of

the directors of the company ? whether as directors, members or creditors of the company or otherwise ? and the effect on these of the compromise or arrangement, insofar as it is different from the effect on the like interests of other persons.

Section 201C of the Companies Law sets out the details to be provided in the case of a reorganisation of a public company under section 201A. In general, full financial information must be provided on the proposed reorganisation, accompanied by reports from the company' s advisers and an independent expert.

### Expedited Reorganisations

20. Do procedures exist for expedited reorganisations?

Section 200 of the Companies Law, Cap 113, described under question 28 below, provides a mechanism for expedited or prepackaged reconstructions.

### Unsuccessful Reorganisations

21. How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What happens if there is default by the debtor in performing an approved plan?

If a proposed arrangement does not secure the requisite majorities, creditors are not bound and any creditor may petition for the winding up of the company. Creditors may also petition for winding up in the event that the debtor fails to carry out its obligations under the arrangement.

### Bankruptcy Processes

22. During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees are or can be formed? What powers or responsibilities do these committees have? May creditors initiate proceedings to pursue remedies against third parties?

### Individual insolvency

In an individual bankruptcy, a general meeting of the debtor' s creditors will be convened within 14 days of the receiving order being made. The purpose of the meeting is to allow the creditors to consider any proposal for a composition or scheme of arrangement that the debtor may make or to resolve to make the debtor bankrupt.

If the debtor proposes an arrangement with his creditors, a written proposal must be submitted to the official receiver, setting out the terms of the

proposed arrangement, together with details of any proposed guarantors or any security offered. On receipt of the proposal, the official receiver circulates it to creditors, together with his comments on the proposal and notice of the meeting to consider the proposal. The debtor must be present at this meeting and must provide all the requested information essential for the purposes of convening the meeting (Cap 5, section 23).

If the debtor's proposal is approved by a majority in number representing 75 per cent in value of the creditors who have proved their debts, it is deemed to have been accepted by the creditors and, subject to the court's approval, is binding on all creditors. However, before the court will make an order approving the arrangement, the debtor's public examination must have been concluded. The public examination is designed to elicit information on the debtor's assets and liabilities, and the events leading up to bankruptcy. The debtor is examined under oath and the court, the official receiver and the creditors may question the debtor. The examination is concluded when the court is satisfied that the debtor has made full disclosure of his assets and of the circumstances of his bankruptcy.

If no arrangement is proposed by the debtor, or if the requisite majorities are not achieved, the court will adjudge the debtor bankrupt and his property will become available for distribution among the creditors (Cap 5, section 19). At the meeting, the creditors may appoint an appropriate person (who may or may not be a creditor) to act as trustee in bankruptcy. The creditors may also elect a committee of inspection of between three and five persons to assist and supervise the trustee in bankruptcy. Generally, creditors' rights are assigned to the trustee in bankruptcy and they may not take separate actions.

## Corporate insolvency

Notices of the first meeting of creditors should be posted to the creditors not less than seven days before the date of the meeting and the meeting must be advertised once in the *Official Gazette* and once in two daily newspapers circulating in the district where the registered office of the company or its principal place of business is situated. As described in question 8, the meeting may accept or change the liquidator appointed by the members. The creditors may also establish a committee of inspection.

## Role of the committee

The principal function of a committee of inspection is to act as a representative of the creditors (or, more rarely, the members) and give the trustee in bankruptcy or liquidator a means of consulting them. In addition,

the committee generally fixes the trustee' s or liquidator' s remuneration.

The trustee in bankruptcy or the liquidator in a winding-up by the court requires the approval of the committee of inspection to exercise certain of his powers, including:

- bringing or defending any action or other legal proceeding in the name and on behalf of the debtor or company;
- carrying on the business of the debtor or company;
- appointing an advocate;
- paying any classes of creditors in full;
- making any compromise or arrangement with creditors or persons claiming to be creditors; and
- compromising calls and liabilities to calls.

If there is no committee, the trustee or liquidator must obtain the sanction of the court. In a voluntary liquidation, the approval of the committee is required only for the last three of these powers.

### Insolvency Of Corporate Groups

23. In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be combined into one pool for distribution purposes?

There is no provision in Cyprus law which provides for the combination of proceedings by the parent company and its subsidiaries for administrative purposes, nor for the aggregation of assets and liabilities. Each company is a separate legal entity and is subject to separate procedures.

### Modifying Creditors' Rights

24. May the court change the rank (priority) of a creditor' s claim? If so, what are the grounds for doing so and how frequently does this occur?

There are a number of provisions in the Companies Law that may invalidate a charge granted by a company and remove the creditor' s secured status. These are explained in the answer to question 30.

### Enforcement Of Estates' Rights

25. If the insolvency administrator is without assets to pursue a claim that is available to the estate, are there procedures by which the creditors can pursue the estate' s remedies? If so, to whom do the fruits of the

remedies belong?

Cyprus courts do not permit contingent fee arrangements and we are not aware of any cases in the past in which the remedies of an insolvent estate have been assigned to one or more creditors. Although we have not yet seen this in practice, it would always be open to creditors to provide the liquidator or trustee with a 'fighting fund' to pursue a claim.

## Claims And Appeals

26. How is a creditor's claim submitted and what are the applicable time limits? How are claims disallowed and how does a creditor appeal a disallowance? Are there any provisions that deal with the purchase, sale or transfer of claims against the debtor?

Proofs of debt must be delivered to the official receiver, the trustee in the case of bankruptcy or the liquidator of a company. The proof of debt should be verified by affidavit and accompanied by a detailed statement of account and vouchers to substantiate the debt. All creditors' proofs are open to inspection by any creditor who has submitted a proof. Secured creditors are obliged to realise, value or surrender their security. The trustee or liquidator has the right to redeem the security at the creditor's valuation or he may apply to the court for an order for realisation of the property comprised in the security.

On receiving a proof, the trustee or liquidator must admit it or reject it, whether wholly or partially, or require further supporting evidence. He or she must notify the creditor in writing of his or her decision and of the grounds for any rejection of the proof. A creditor who is dissatisfied with the trustee's or liquidator's decision may apply to the court for a determination.

When paying interim dividends, the trustee or liquidator must reserve funds to allow for likely debts that have not yet been proved and must notify all creditors, whether they have proved their debt or not, of his or her intention to pay a dividend.

Before paying a final dividend, the trustee or liquidator must notify all creditors of his or her intention and give them a final time limit (determined on a case-by-case basis by the court) to submit and prove their claim.

There are no provisions dealing with the purchase, sale or transfer of claims.

## Priority Claims

27. What are the major governmental and non-governmental privileged and priority claims in liquidations and reorganisations? Which priority and privileged claims have priority over secured creditors?

The order for distribution of the assets in a winding up is as follows:

- the costs of the winding up;
- preferential debts;
- any amount secured by a floating charge;
- the unsecured ordinary creditors; and
- any deferred debts, such as sums due to members in respect of dividends declared but not paid.
- Preferential claims 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 in the whole one year's assessment;
  - all sums due to employees including wages, accrued holiday pay, deductions from wages and compensation for injury.

In bankruptcy, up to four months' rent is also preferential.

#### Liabilities That Survive Insolvency

28. Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised or against a purchaser of the debtor's assets in an insolvency?

Under section 200(1) of the Companies Law, Cap 113, the court has a wide discretion to direct that where an application is made under section 198 for the sanctioning of a compromise or arrangement involving the transfer of the whole or any part of the undertaking or the property of any company concerned in the scheme to another company, the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- transfer to the transferee company of the whole or any part of the undertaking, and of the property or liabilities of any transferor company;
- continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- dissolution, without winding up, of any transferor company.

According to section 200(4) of the Companies Law, the expression 'property'

includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

Section 6 of the Law on the Safeguarding and Protection of Employees Rights in the Event of the Transfer of Undertakings, Businesses or Parts Thereof, of 2000 (the Transfer of Undertakings Law) provides that liabilities as regards employees remain with the insolvent transferor in the event of bankruptcy, liquidation or similar proceedings and are not transferred to a purchaser of the business or assets. However, any solvent reorganisation must respect the rights of the employees of all the companies that participate in the reorganisation in accordance with the Transfer of Undertakings Law (section 201H of the Companies Law).

## Distributions

29. How and when are distributions made to creditors in liquidations and reorganisations?

Distributions to the creditors should be made as soon as there are adequate funds in hand. The procedures are described in question 26.

## Transactions That May Be Annulled

30. What types of transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

There are various provisions in the Companies Law, Cap 113, which may invalidate a charge granted by a company or any other disposition it has made or any debt which it has incurred. These are as follows:

- A charge that has not been properly registered is void against the liquidator and any creditor of the company (Companies Law, section 90(1)).
- According to section 301, 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 shall, in the event of the company being wound up, be deemed a fraudulent preference against its creditors and be invalid accordingly.
- 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.

- 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 (Companies Law, section 303). The onus of proving the company's solvency is on the holder of the floating charge. Solvency requires not only an excess of assets over liabilities, but also the ability to pay debts as they become due.
- In the case of personal bankruptcy, certain antecedent transactions may be set aside at the trustee's instance if they are to the detriment of the general body of creditors. A transfer of property from an insolvent debtor to a creditor, with a view to giving that creditor preferential treatment, made within three months prior to presentation of a bankruptcy petition against the debtor, is deemed fraudulent and void as against the trustee, who may recover the property for the benefit of creditors. The rights of a bona fide person who acquires title for value from the bankrupt or from a creditor of the bankrupt are not affected.
- Any voluntary settlements and transfers of property by the debtor in the two years leading up to bankruptcy may also be set aside at the instance of the trustee in bankruptcy. Voluntary settlements made by the bankrupt up to 10 years prior to bankruptcy may also be voidable unless the beneficiaries can show the bankrupt was able to pay his debts at the time settlement was made, without the aid of the property transferred.

### Proceedings To Annul Transactions

31. Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? May voidable transactions be attacked by secured creditors or by unsecured creditors, or only by a liquidator or trustee? May they be attacked in a reorganisation or suspension of payments or only in a liquidation?

See question 30. Voidable transactions can be attacked by any creditor or by the liquidator or trustee, but only in winding-up proceedings.

### Directors And Officers

32. Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations?

Cyprus law does not contain any wrongful trading provisions requiring directors to commence insolvency proceedings as soon as they knew or ought to



have known that the company would be unable to pay its debts. The principal way in which directors and officers may be made liable for the company's debts is under a claim for fraudulent trading as set out in section 311 of the Companies Law. Because of the high standard of proof required, successful claims for fraudulent trading are extremely rare.

## Duties Of Directors To Creditors Prior To Bankruptcy

33. Do corporate directors and officers have any liability for pre-bankruptcy actions by their companies? Can they be made subject to sanctions or penalties for other reasons?

Sections 307 to 310 inclusive of the Companies Law set out a range of bankruptcy offences, including failure to cooperate with the liquidator, concealment of the company's assets and falsification of accounts, that result in criminal liability punishable by imprisonment for up to two years.

Furthermore, if in the course of winding up a company it appears that any person that has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, the liquidator, or any creditor or contributory, compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation.

## Creditors' Enforcement

34. Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

As described in question 5, Cyprus law provides many of the 'self-help' remedies to creditors available under English law, including liens and seizure of assets to secure judgment debts. A secured creditor may also appoint a receiver and manager to take possession of the assets subject to the charge and realise them for the benefit of the appointor.

## Corporate Procedures

35. Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

A company may be dissolved under section 327 of the Companies Law, Cap 113. If it is dormant with no assets and liabilities, no formal liquidation procedure need be followed. The company may be restored to the register on application by an interested party for up to 20 years from the date of dissolution.

## Conclusion Of Cases

36. How are liquidation and reorganisation cases formally concluded?

In a compulsory winding-up, once the liquidator has paid off the creditors, distributed the surplus (if any) and summoned a final meeting of the company's creditors, he or she may vacate office and obtain his or her release. Under section 260 of the Companies Law, Cap 113, the company is dissolved from the date of the issue of the court order for its dissolution. The liquidator is required to forward a copy of the order to the registrar of companies within 14 days of it being made. On receipt of the notice, the registrar records the dissolution of the company in his or her books.

In a voluntary winding-up, the liquidator will call final meetings of the company's creditors for approval of his accounts. Within a week he will file his accounts and a return of the meetings with the registrar. The company is deemed to be dissolved three months after the registration of the return.

After either type of liquidation, the court can restore the company to the register within two years if, for example, further assets are discovered which should be distributed to creditors.

## UNCITRAL Model Law

37. Is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency under consideration in your country? If so, what is the present status of this consideration?

No.

## International Cases

38. What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

Foreign insolvency proceedings are recognised by Cyprus courts when those proceedings are taken in accordance with the law of the country of the company and there is no domestic law which prevents recognition. The appointment of a foreign liquidator will also be recognised and there is no need for the liquidator to apply for formal recognition. If there are simultaneous proceedings in Cyprus and abroad, the Cyprus courts will consider the local proceedings as subsidiary to the foreign proceedings.

Foreign creditors can prove their claim in a liquidation in Cyprus under the normal procedure. In the event of concurrent liquidation of the same company in the foreign jurisdiction, a creditor who proved his claim in Cyprus will only receive a share in any distribution after any amount received in the foreign proceedings has been taken into account.

Generally, Cyprus courts will recognise judgments and orders made by courts in other jurisdictions where the Cyprus court considers that such judgments or orders have been properly made under the foreign law and that the foreign courts had the necessary jurisdiction. Cyprus is a contracting state to the European Convention on the Recognition of Certain Aspects of Bankruptcy (Law 36 (III) of 1993). Contracting states to the Convention are the members of the Council of Europe and, until now, no rules have been passed to govern its procedural enforcement.

#### Cross-Border Insolvency Protocols And Joint Court Hearings

39. In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in crossborder cases? If so, with which other countries?

No.

#### Pending Legislation

40. Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

A bill was passed in 2005 that accelerated the procedure for sales of mortgaged properties, which were previously very lengthy. If the mortgagor delays payment by one month, the mortgagee is able to give notice to the mortgagor, requiring payment within 30 days. If the mortgagor fails to pay, the mortgagee is entitled to initiate the procedure for the sale of the property, which could be completed within 12 months. If the property is the

home of the mortgagor, the time for payment is extended from 30 days to four months.

## Developments Under The EU Regulation On Insolvency Proceedings

41. Please comment, if applicable, on any significant developments or recent decisions in your country involving the EU Regulation on Insolvency Proceedings.

Regulation 1346/2000 has had direct effect in Cyprus since the island's accession to the EU on 1 May 2004. There have not yet been any significant developments or decisions involving it.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*