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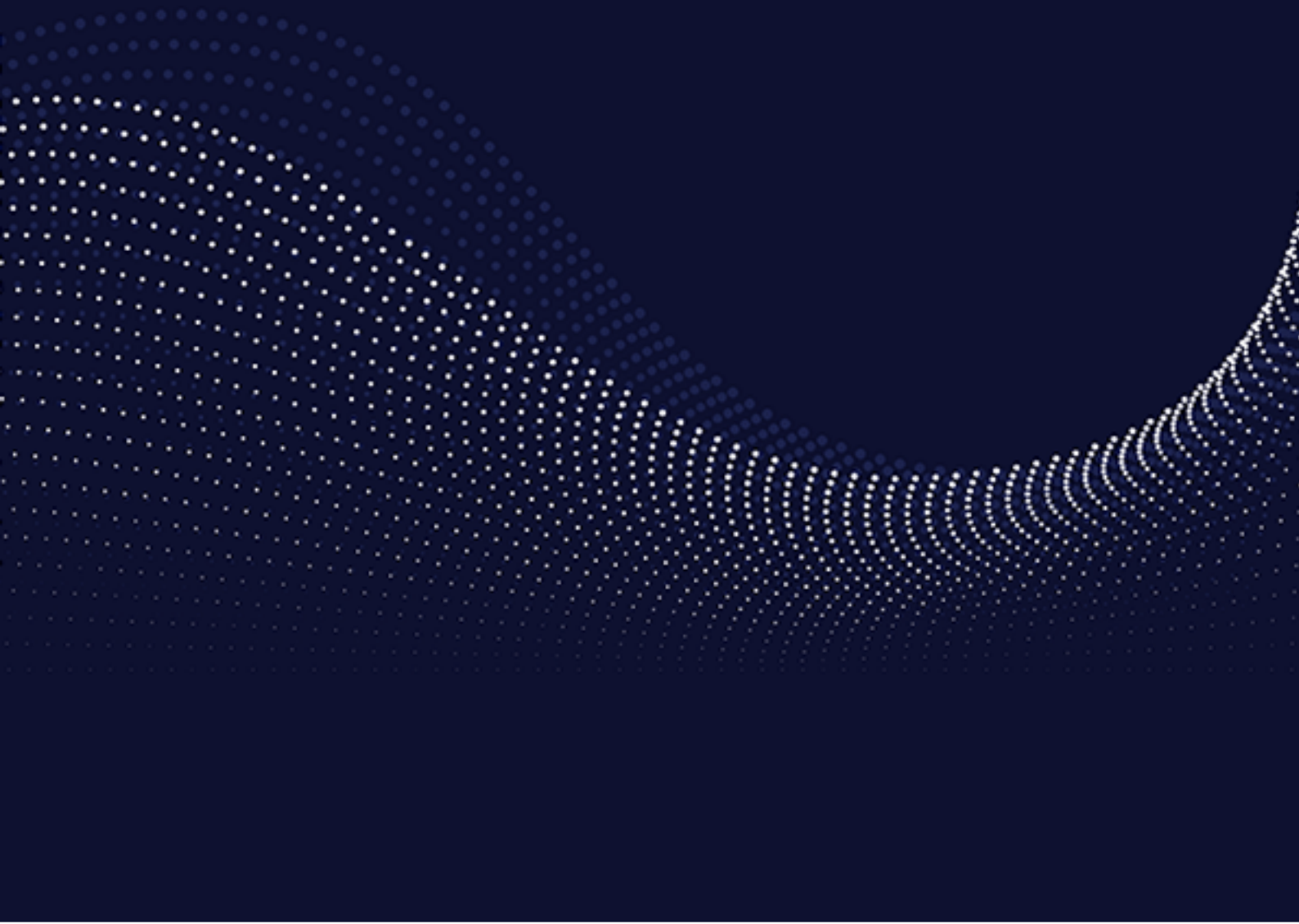
INSOLVENCY LITIGATION

Cyprus



Insolvency Litigation

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Cyprus

Patrikios Pavlou & Associates LLC

Katerina Philippidou kphilippidou@pavlaw.com
Ioannis Malachtos imalachtos@pavlaw.com

COMMENCING PROCEEDINGS

Litigation climate

How would you describe the general climate surrounding insolvency litigation in your jurisdiction? What are the most common sources of dispute? To what extent is litigation used as a pressure or delay tactic?

In accordance with the records kept by the Insolvency Service of Cyprus there was a decrease in the number of voluntary liquidation proceedings from 2,161 in 2021 to 1,772 in 2022. Within the same period, the number of involuntary liquidation proceedings decreased from 74 to 57. Moreover, a limited number of applications were filed seeking an examiner's appointment to look into a company's affairs.

As established by Cypriot case law a winding-up or bankruptcy petition can be filed on the basis of an undisputed debt. Insolvency proceedings cannot be used for the purpose of deciding a disputed debt and there is no mechanism available to put pressure on a debtor to pay sums that it disputes in good faith and on substantial grounds.

Cypriot case law provides that the term 'creditor' does not include 'a person whose debt is substantially disputed even if the company is in fact insolvent'. It is settled case law that in cases where there is a substantial ***bona fide*** dispute over the claim for payment, the winding-up petition cannot succeed because a winding-up petition is not the procedure offered for adjudication of a disputed debt.

So where there is a material dispute about a debt then the correct procedure would be to bring an action. In fact, if a creditor has reason to expect that the company will raise a plausible defence to its claim, its best course is to sue the company by action and to file a winding-up petition once it has obtained a court judgment against the claim. The debtor will then be estopped by the judgment from disputing the petitioner's claim on its merits.

Sources of law

What key sources of law form the basis of claims arising from insolvency? How does the insolvency regime interact with other laws?

The Bankruptcy Law, Chapter 5 (Chapter 5) relates to personal insolvency. In addition, the Law on the Insolvency of Natural Persons (Personal Repayment Plans) and the Debt Relief Order (DRO) L.65(I)/2015, as amended, provide additional provisions for the handling of insolvent individuals. The Companies Law, Chapter 113 (Chapter 113), as amended, governs corporate insolvencies and reorganisations.

Procedure

What procedural rules govern insolvency litigation in your jurisdiction? What common procedural hurdles arise in practice?

Insolvency proceedings are governed by the Procedural Rules for Companies 396/1944 as amended (the Companies Rules), the Procedural Rules for Companies Under Liquidation

1933-2013, the Bankruptcy Rules (368/1931), the Procedural Rules on the Insolvency of Natural Persons, the DRO of 2016 and the Civil Procedural Rules.

On 1 September 2023, the new Civil Procedure Rules came into force and apply to all cases filed after that date. However, the new Civil Procedure Rules do not explicitly provide what applies to the winding-up petitions and to what extent the new Civil Procedure Rules apply for winding-up petitions. Therefore, the issue of the type of claim to be used to commence a winding-up procedure and the procedure to be followed remains controversial. There are two different approaches as to that; one opinion that has been expressed is that the alternative procedure under Part 8 of the new Civil Procedure Rules applies and the claim form No. 7 should be used.

We tend to adopt the opposite view as the winding up proceedings appear to be a 'specified' type of proceedings, thus not falling under the proceedings regulated under Part 8. The wording and form of the claim form No. 7 provided by Part 8, appears to be suitable and to be employed whenever a claim is raised to be adjudicated by a claimant or applicant against a defendant or respondent, whereas in the winding up process, the object or purpose is quite different since such proceedings relate to the Company but, strictly speaking, are not addressed against a person.

Courts

Which courts hear insolvency claims? How experienced are they with insolvency litigation?

The district court where the company has its registered office (for at least six months before the filing of the petition) and where the individual has its residence is the applicable court to hear insolvency claims. When determining whether the procedure falls within the jurisdiction of a senior district judge or district court judge, the amount of the paid-up share capital of the company shall be taken into account.

Appeals may be submitted to the Supreme Court of Cyprus. Although there are no specific courts that hear winding-up and bankruptcy petitions, Cypriot judges are experienced with insolvency litigation.

Jurisdiction

Through what law do the relevant courts have jurisdiction to hear insolvency claims? Does jurisdiction differ for domestic and cross-border matters?

The district courts have jurisdiction to adjudicate insolvency proceedings, pursuant to the Companies Law, Chapter 113, the Bankruptcy Law, Chapter 5, the Courts Law, 14/1960, the common law as well as the relevant case law. Foreign creditors are entitled to bring a claim in the same way as domestic creditors.

Limitation periods

What limitation periods apply to bringing insolvency-related claims? Are there any notable exceptions?

The law that currently regulates limitation periods for promoting actionable rights in Cyprus is the Limitation of Actionable Rights Law 2012 (66(I)/2012). The general limitation period within which an action must be brought is 10 years.

In relation to civil offences, section 7 of the Limitation Law specifies that no claim in relation to a contract shall be brought after a period of six years from the date of completion of the claim.

Section 7(3) of the Limitation Law states that the limitation period does not commence before the date of service of the written demand from or on behalf of the lender, or where there are joint lenders, from one or on behalf of one of them, to the debtor for the repayment of the debt in the case of contracts derived from loan agreements that:

- do not provide for the repayment of debt on a specific or determinable date or until a specific or determinable date; and
- do not establish as a condition for repayment of the debt the provision of a prior notice to the debtor.

Provided that, in the cases referred to above, where in relation to the loan agreement, the borrower provides a mortgage or pledge as collateral to it, no claim in relation to a contract shall be brought after a period of 12 years from the date of completion of the claim.

According to section 3 of the Limitation Law, the limitation period shall be counted from 1 January 2016.

Interim remedies

What interim remedies are generally available and commonly deployed in insolvency proceedings? How are these used as part of claimants' overall litigation strategy?

If it is deemed necessary and appropriate, the claimant can file an application for the issue of interim orders, for example, a freezing order, to prevent a respondent from putting assets beyond the reach of creditors. Such an application can be promoted either by summons or, in exceptional or urgent circumstances, without notice to the other party.

If the applicant secures a freezing order, it may request the issuance of disclosure orders requesting the respondent to provide information on its assets to ensure that it complies with the freezing order. In addition to disclosure orders, the Cyprus courts can also issue orders for the appointment of a provisional liquidator to ensure the protection of the company's assets.

Evidence

What rules and procedures govern the collection and admissibility of evidence in insolvency litigation? To what extent is expert witness

testimony allowed? What common evidential issues should claimants be aware of?

The Evidence Law, Chapter 9 provides the relevant rules and procedures in relation to the collection and admissibility of evidence in all litigation procedures, including liquidation. Evidence can be given either orally or in writing. A winding-up petition is supported by an affidavit accompanied by relevant exhibits. The affidavit must be signed by the creditor and where the creditor is a company by the director or an employee of the company who has knowledge of the facts of the case. The affiant must swear and sign the affidavit before the registrar of the relevant district court. Expert witness testimony is also allowed in insolvency litigation.

Time frame

What is the typical time frame for insolvency claims?

Where the insolvency claim is based on the inability of the company to settle its debt, it is a prerequisite for the claimant to serve upon the debtor a written demand requesting the settlement of its debt within 21 days of the service. As soon as the 21 days from the service of the statutory demand lapses and provided that the amount due is still outstanding, the claimant may proceed with the filing of a petition.

The petition is fixed before the court approximately one month after the date it is filed. The petition will be served upon the company, the Registrar of Companies (ROC) and all the relevant authorities. If no one contests the proceedings on the date fixed for the first appearance of the petition before the court, the court shall set a new date on which the applicant will have to appear at the court and prove the content of the petition (approximately two months after). At the same time, directions are given by the court that a copy of the petition be published in the Official Gazette and usually in one or two newspapers with a daily circulation a few days prior to the date fixed for proof of the petition.

On the proof date, the court will proceed with issuing the winding-up order, provided that no one contested the petition and provided that the court is satisfied with issuing the order. A copy of the order should be delivered no later than three days from the date of its issuance (or as otherwise directed by the court) to the ROC, which shall register and publish the same on its official website.

The time frame for issuing the final judgment depends on whether the petition is contested and on the judge's workload. If the petition is not contested, the final judgment will be issued within three to six months; if the petition is contested, the final judgment is normally issued within two years.

Appeals

What are the requirements to appeal insolvency-related judgments? What is the typical time frame for appeals?

The time frame for filing an appeal against an insolvency-related judgment is six weeks from the issuance of the judgment. In general, an appeal can be supported by, among others, the following grounds of appeal:

- the court misinterpreted and misapplied the relevant provisions of the law and case law in reaching the judgment, or
- the relevant conditions of the law were not fulfilled, and, as such, it was not just and fair for the court to issue the judgment.

Costs and litigation funding

How are costs handled and how are claims funded? Can claimants obtain third-party funding to finance the prosecution of claims?

The costs of winding up, including disbursements and the fees of the liquidator and any other appointed persons in the process, will rank in priority over any other unsecured claims save for preferential debts, which are mandatorily preferred by law. Third-party funding is not prohibited by the law.

AVOIDANCE ACTIONS

Fraudulent transfers and undervalue transactions

What are the essential elements of avoidance actions seeking to claw back fraudulent conveyances and transfers? Can actions be brought for transfers without fraudulent intent based on undervalue of the transfer?

Under section 309 of the Companies Law, Chapter 113 (Chapter 113), if an individual commits one of the following offences, and at the time of the commission of the alleged offence was an officer of a company that is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding-up, he or she will be held guilty and will be liable on conviction to imprisonment not exceeding two years:

- by false pretences or by means of any other fraud, induced any person to give credit to the company;
- with intent to defraud creditors of the company, made or caused to be made any gift, transfer of or charge on, or caused or connived at the levying of any execution against, the property of the company; or
- with intent to defraud creditors of the company, concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company.

In addition, under the Fraudulent Transfers Avoidance Law, Chapter 62(Chapter 62), any judgment creditor may initiate proceedings against a debtor on the ground of an alleged fraudulent transfer.

According to section 3(1)of Chapter 62:

> every gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by any person with intent to hinder or delay

> his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors; and, notwithstanding any such gift, sale, pledge, mortgage or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage or other transfer or disposal.

Furthermore, under section 3(3)of Chapter 62:

> no sale, mortgage, transfer or assignment made in exchange for money or other property of equivalent value shall be voidable under the provisions of this Law, unless the purchaser, mortgagee, transferee, or assignee shall be shown to have accepted it with knowledge that such sale, mortgage, transfer, or assignment, was made by the vendor, mortgagor, transferor, or assignor with intent to delay or defraud his creditors.

The procedure that must be followed to set aside such a transaction is set out in section 4of Chapter 62. Where any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property is deemed to be fraudulent under the provisions of section 3**,** regardless ofwhether it is made before or after the commencement of an action or proceeding wherein the right to recover the debt has been established, it'may be set aside by an order of the court, to be obtained on the application of any judgment creditor made in such action or other proceeding, and to the court before which such action or other proceeding has been heard or is pending'.

Actions may be brought against a director for an undervalue transfer even where there is no fraudulent intent on the basis of negligence, depending on the circumstances within which such a transfer was effected and provided that the transfer deteriorated the financial position of the company.

Preference and improvement of position

What are the essential elements of avoidance actions seeking to claw back transactions and payments based on preference and improvement of position shortly before insolvency proceedings?

Under Chapter 113, the following transactions may be set aside when an insolvent party goes into liquidation:

- fraudulent preference;
- voidable floating charge;
- disclaimer of onerous contracts; and
- fraudulent transfer.

In each case, a liquidator may apply to the court to have the transaction set aside. If security was set aside under any of the above circumstances, the creditor must prove its debt in the course of the winding-up as an unsecured creditor.

Section 301 of Chapter 113 extends the fraudulent preference provisions of bankruptcy law to companies. Any transaction (including any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company) that the company enters into within six months before the commencement of its liquidation may be deemed a fraudulent preference against its creditors and be set aside.

For a transaction to be voided:

- the person preferred must be a creditor (including a contingent creditor) of the company when the transaction occurred;
- there must be a preference – where the company does something that has the effect of putting that person into a position, which in the event of the company going into insolvent liquidation, would put him or her in a better position than he or she would have been if that had not been done; and
- the company was influenced by a 'desire to prefer' – the burden of proof is on those who wish to establish fraudulent preference (in this case, the liquidator) to prove, on the balance of probabilities, that the dominant or real intention of the counterparty was to prefer the particular creditor.

Section 302 of Chapter 113creates an obligation for all and any creditors who benefited from a fraudulent preference to repay any benefit they obtained therefrom and the same are considered to be sureties of the company for an amount equal to the value of such benefit.

Liens and floating charges

What are the essential elements of actions for the avoidance of liens and floating charges on subsequently acquired property?

Pursuant to section 303 of Chapter 113, 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 subsequently to, the creation of and in consideration of the charge. This is unless it is proved that, immediately after the creation of the charge, the company was solvent. 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.

Process and resolution of avoidance actions

Through what process are avoidance actions litigated? What procedural issues often arise and how are avoidance actions usually resolved?

A liquidator may request the court to set aside transactions if they are found to relate to any of the following:

- fraudulent preference;

- voidable floating charge;
- disclaimer of onerous contracts; and
- fraudulent transfer.

Furthermore, the liquidator or any contributory or creditor may apply to the court to determine, among other things, any questions that arise in the winding up of a company. The court, if satisfied that the determination of the question will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make another order on the application as it thinks just.

CLAIMS AGAINST DIRECTORS, OFFICERS AND SHAREHOLDERS

Breach of fiduciary duty

What are the essential elements of a claim for breach of fiduciary duty against directors and officers in the context of corporate insolvency?

Directors will be held personally liable to the company for damages and injunctive relief may be issued against them if they breach the duty of acting in good faith and in the best interests of the company (fiduciary duty) and the duty of skill and care.

For example, directors may be found to be in breach of their fiduciary duties if they pay dividends in relation to a company with insufficient distributable reserves and may be held personally liable and be ordered to repay the amount representing the unlawfully paid dividends. Moreover, if a director has made a secret profit, they will be liable to pay that profit to the company.

Protection from liability

To what extent does the law in your jurisdiction protect directors and officers from liability for decisions made in connection with the restructuring or insolvency?

Directors are protected from liability for decisions made in connection with the restructuring or insolvency to the extent that such business decisions are taken after due consideration and without self-interest but for the benefit of the company as a whole. Where the company is insolvent or nearly so, the directors should not act in a manner that may be considered to be fraudulent trading or committing fraud with regard to the creditors; they owe the creditors a special duty to be careful not to put the company further into debt by questionable business decisions.

Converting credit to equity

Can credit extended by an insider or shareholder be recharacterised as equity? If so, what is the mechanism by which such an action is brought, and what elements are required to prevail?

Credit extended by a shareholder may be recharacterised as equity by way of the shareholder's capital contribution, provided that the contributing shareholder is willing and able to make a payment or contribution to the company that will not be refundable and that such an arrangement is in the best interests of both the contributing shareholder and the company.

Illegal dividends

Can dividends received by shareholders be prosecuted as illegal?

Dividends received by shareholders may be prosecuted as illegal if the company is insolvent or nearly so and such distribution caused the deterioration of the financial position of the company.

Where the company is under liquidation, shareholders may receive dividends or proceeds of liquidation only after all liquidation expenses, taxes and creditors' debts are fully settled.

Trading while insolvent

How is trading while insolvent treated in your jurisdiction? If actionable, what mechanisms apply and what are the elements of a successful claim?

If it appears that any assets of the company were unlawfully disposed of prior to the commencement of the company's liquidation or that the directors of an insolvent or near-insolvent company proceeded with any trading that caused the company's financial position to deteriorate further, the directors may be found liable.

Under the Companies Law, Chapter 113, directors might also be held liable if they proceeded with a fraudulent transfer within 12 months prior to the commencement of the liquidation of the company. However, this limitation period (for a claim based on tort) can be extended to up to six years prior to the commencement of the liquidation.

Any creditor, or the liquidator, may apply to the court requesting a director's personal contribution to the company's assets as compensation for the damage suffered by the creditors.

Equitable subordination

Is equitable subordination of shareholder claims allowed? If so, what requirements and mechanisms apply?

If a shareholder appears to have provided a loan to the company then they can also be considered a creditor of the company, and as such, they can also be included in the list or register of creditors, provided that they have proved their debt within the time frame required in accordance with the provisions of section 251(2)(a) of Chapter 113.

If the loan provided is a subordinated loan that is evidenced by supporting documentation, then it will be placed below the unsecured creditors in the ranking of distribution. If it is not a subordinated loan, it will rank pari passu with the unsecured creditors.

Other claims

Are any other claims commonly brought against shareholders, directors and officers in your jurisdiction? If so, what mechanisms are used to raise these claims and what elements are required to prevail?

Under section 313 of Chapter 113, if, in the course of a winding-up by a court or under the supervision of a court, it appears to the court that any past or present officer, or any member of the company, is guilty of any offence in relation to the company for which they are criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to report or refer the matter to the Attorney General. If the Attorney General considers that a prosecution is necessary, they will institute proceedings accordingly, and it will be the duty of the liquidator and every officer and agent of the company, past and present (other than the defendant in the proceedings), to give the Attorney General all the assistance it is reasonable to give in connection with the prosecution.

Risk mitigation

How can shareholders and sponsors mitigate the risk that claims against them will be successful, and minimise the accompanying financial burden?

The liability of the shareholder is limited to the issued share capital. The shareholders have no obligation to cover the liabilities of the company unless there is unpaid share capital.

CREDITOR ACTIONS AND STRATEGIC CONSIDERATIONS

Contesting restructuring plans

Can creditors bring actions contesting the restructuring plan? If so, what law governs such actions? What must the creditor show to succeed and what must the debtor show to successfully defend? How are these actions usually resolved?

Unsecured creditors may contest a restructuring proposal on the basis that such a proposal unfairly prejudiced their interests.

Where the court deems that a company is (or is likely to be) unable to pay its debts, no resolution for the winding up of the company has been passed and published in the Official Gazette of the Republic
and no order has been issued for the winding up of the company, the court may following a petition
appoint an examiner to the company for the purpose of examining the state of the company's affairs and performing such duties in relation to the company as may be imposed by or under the provisions of the law.

The examiner shall, as soon as practical after they are appointed, formulate proposals for a compromise or scheme of arrangements in relation to the company concerned. Upon

receipt of the report of the examiner, the court shall examine the same as soon as practically possible. A creditor whose interest or claim would be impaired by the proposals may object to their confirmation by the court on any of the following grounds:

- there was some material irregularity at or in relation to a meeting to which section 202KA (Cap 113) applies;
- the acceptance of the proposals by the meeting was obtained by improper means;
- the proposals were put forward for an improper purpose; or
- the proposals unfairly prejudice the interests of the objecting person.

Another popular method of restructuring the liabilities of distressed companies is a scheme of arrangement as provided for under section 198 of the Companies Law, Chapter 113 (Chapter 113). Under a scheme of arrangement, companies can promote an arrangement between their creditors and members (or any class of them) that, if agreed to by a majority in value in the case of creditors or a majority in number in the case of members, and subsequently sanctioned by the court, will bind all creditors and members whether they consented to the arrangement or not. A reorganisation plan is agreed upon based on the compromises made by both the company and its creditors, and it is subject to implementation.

Winding-up petitions

Do creditors apply for winding-up orders? If so, what law governs these actions? What must the creditor show to succeed and what must the debtor show to successfully defend? How are these actions usually resolved?

Any creditor may apply to the district court where the registered office of the debtor company is located and request its liquidation, and the court will grant such an order if, among other things, it is proved that the company is unable to pay its debts (section 211(e) of Chapter 113).

Specifically, under section 212 of Chapter 113, the company will be deemed to be unable to pay its debts if:

- the company fails to settle or secure a liquidated debt or obligation in excess of €5,000 within 21 days of receipt of a written demand from a creditor delivered to the registered address of the company requesting that the outstanding amount owed be settled;
- an order for execution or any other proceeding is issued by a court on any judgment, decree or order in favour of a creditor of the company and that order is returned either fully or partially without being satisfied;
- to the satisfaction of the court, it is proven that the company is unable to pay its debts at the time these fall due (at the time they are payable) and, in determining whether a company is unable to pay its debts as they fall due, the court shall take into account the contingent and prospective (future) liabilities of the company; or
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to the satisfaction of the court, it can be proven that the value of the assets of the company is less than the value of its liabilities, taking into account the contingent and prospective (future) liabilities of the company.

A creditor promoting a winding-up petition must prove that: its debt is partially or wholly unsecured; the company is unable to settle or secure the debt it owes; the company does not have a bona fide or a substantial dispute to the debt it owes; and that it is proper and just to wind up the company.

Stays of proceedings – scope and exceptions

Does the insolvency regime stay any creditor collection actions? If so, what are the parameters of such a stay? Are there any notable or commonly used exceptions?

During examinership, a moratorium is put in place preventing creditors from promoting any insolvency proceedings against the company. A receiver cannot be appointed and no attachment or execution may be put into force against the company's property. Additionally, during the moratorium, secured creditors are not allowed to proceed with the realisation of their security except with the consent of the examiner. In addition, no steps may be taken to repossess goods in the company's possession under any hire-purchase agreement.

Where a winding-up order is issued or a provisional liquidator is appointed, no action or proceeding shall be promoted against the company without prior leave of the court and upon such terms that the court may impose (section 220 of Chapter 113).

Following the filing of a petition and before the issuance of an order, 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 therein; and
- where any action or proceeding is pending against the company, apply to the court with jurisdiction to wind up the company to restrain further proceedings in the action or proceeding and the court to which an application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit (section 215, Chapter 113).

Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents (section 217, Chapter 113).

Stays of proceedings – strategy

How do creditors navigate stays in practice? How do stays generally affect their litigation strategy?

Where a winding-up order is issued, no action can be promoted against the company without the leave of the court (section 220 of Chapter 113). Therefore, a creditor whose action is pending or who is willing to file a new action on the basis of an unprovable debt can only do so following the relevant leave of the court. If the creditor's debt is provable, they should proceed with the submission of relevant proof of debt to the Registrar of Companies within the prescribed period of 35 days from the publication of the order.

Stays of proceedings – effect on emergence from insolvency

How do stays affect the debtor's emergence from insolvency?

Examinership is a rescue process providing for the financial reorganisation of a viable company with liquidity problems. Its aim is to keep the business alive and to give the company time to reorganise its financial affairs. With the submission of an application for the appointment of an examiner, the company is entered under court protection (moratorium) for a period of four months, which can be extended under certain circumstances. During this period, no proceedings can be promoted against the company without the permission of the court. Moreover, a receiver cannot be appointed and the company cannot be placed under liquidation.

Subordination and disallowance of creditor claims

Are the courts in your jurisdiction empowered to punish creditors' bad acts or inequitable conduct by pushing their claims down the priority waterfall? Can they void the claims altogether?

Under Chapter 113, the following transactions may be set aside when an insolvent party goes into liquidation:

- fraudulent preference;
- voidable floating charge;
- disclaimer of onerous contracts; and
- fraudulent transfer.

In each case, a liquidator may apply to the court to have the transaction set aside. If security was set aside under any of the above circumstances, the creditor must prove its debt in the course of the winding-up as an unsecured creditor.

Vote designation

Can creditors be disenfranchised based on bad-faith conduct?

There are no specific provisions under Cypriot law.

PRE-INSOLVENCY DEBTOR CLAIMS

Available claims

To what extent can claims existing before insolvency be pursued against shareholders and their affiliates and agents during an insolvency proceeding – including any contractual, tort and misfeasance claims and claims for the recovery of company property?

If, during liquidation, a person is proved to be involved in fraudulent trading under section 311 of the Companies Law, Chapter 113 (Chapter 113) or some other offence (such as misappropriation of assets under section 312 of the Law), such person may be found personally liable for the company's debts or ordered by the court to pay compensation.

Procedure and resolution

What procedural mechanisms and issues should be considered when bringing pre-existing claims? How are they usually resolved?

The liquidator will take all necessary steps to promote any pre-existing claims on behalf of the company.

Standing and assignment of claims

Who controls the pursuit of pre-insolvency debtor claims? Can creditors or other stakeholders pursue them derivatively if the debtor or trustee refuses to do so?

Undersection 234 of Chapter 113, if any person is aggrieved by an act or omission of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just. Such an application may be promoted by a creditor or other stakeholder if, for example,the liquidator refuses to promote pre-insolvency debtor claims.

Risk mitigation for creditors

How can creditors mitigate the risk that pre-insolvency debtor claims and remedies will be successful?

Where a pre-insolvency debtor claim is promoted against the creditors, defending such a claim is a method of mitigation.

If a pre-insolvency debtor claim is promoted against any third persons, other than creditors, such a successful claim will benefit unsecured creditors as the value of the estate of the company under liquidation will be increased and, therefore, there will be more assets for distribution.

Minimising costs for creditors

How can creditors reduce the costs of litigation associated with these claims? What procedures are commonly used?

Creditors can reach an out-of-court settlement, which will avoid the accumulation of litigation costs.

OTHER CLAIMS

Other claims against creditors

Are there any other major categories of claims that may be pursued against creditors during insolvency proceedings in your jurisdiction? If so, what are the essential elements of such claims?

No.

Other claims against debtors

Are there any other major categories of claims that may be pursued against debtors during insolvency proceedings in your jurisdiction? If so, what are the essential elements of such claims?

The liquidator will take all necessary steps to promote any claim (on behalf of the company) against its debtors. A possible claim can be promoted by the liquidator under section 246 of Chapter 113, requesting the court to order any contributory included in the list of contributories to pay to the company in liquidation, in the manner specified in the order, any money due from any contributory to the company.

CROSS-BORDER PROCEEDINGS

Parallel proceedings and international judgments

Are parallel proceedings and international judgments recognised in your jurisdiction? What are the requirements for recognition? Can recognition be challenged? On what grounds?

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the Recast Regulation) is applicable in Cyprus and, as such, where the foreign proceedings are capable of recognition under the Recast Regulation, they will be recognised in Cyprus. As of 1 February 2018, the archive of the Insolvency Service of Cyprus was able to interconnect with the European e-Justice Portal, facilitating cross-border insolvency proceedings.

Judicial cooperation

To what extent if any will there be judicial cooperation with other courts in relation to insolvency proceedings?

Cyprus has not entered into any cross-border insolvency protocols that enable the court to coordinate insolvency proceedings with other countries. Articles 41 to 43 of the Recast Regulation provide for cooperation between courts across EU member states. Cyprus is not a member of the UNCITRAL Model Law on Cross-Border Insolvency.

The Recast Regulation sets out comprehensive rules regarding the recognition of main insolvency proceedings within the European Union.

REMEDIES AND ENFORCEMENT

Remedies for debtors

What legal remedies are broadly available to successful debtor-claimants? Have the courts awarded any notable remedies recently?

A debtor may challenge a petition or an action filed against it on the basis that the debt is disputed. If successful, such a petition or action will be dismissed and the costs of the procedure will be awarded in favour of the debtor-claimant. A debtor may also file an application requesting the court to set aside a judgment that has been issued against it.

Remedies for creditors

What legal remedies are available to successful creditor-claimants? Have the courts awarded any notable remedies recently?

A creditor who has obtained a judgment against a company that is not under liquidation or examinership may proceed with the enforcement of the judgment in accordance with the tools provided by the relevant legislation, such as:

- writ of execution for the sale of movables;
- charges over immovable property;
- orders for the delivery or possession of goods and liquidation or bankruptcy proceedings;
- garnishee proceedings;
- writ of delivery of goods;
- possession of land; and
- writ of sequestration.

Court enforcement mechanisms

What tools are available to the court to enforce its rulings? Are there any jurisdictional limits to the court's enforcement powers?

If a debtor (upon whom an order was served) refuses to comply with the provisions of the order, the applicant may file an application for contempt of court.

SETTLEMENT AND MEDIATION

General court approach
Are the courts in your jurisdiction generally amenable to settlements?

Cypriot courts are always ready to accept an amicable settlement between the parties provided that the settlement was reached within the parameters of the relevant legislation.

Timing
When in the course of litigation are settlements most likely to be sought out?

An out-of-court settlement is most likely to be reached after the conclusion of the pleadings, followed by the mutual disclosure of documents or evidence between the parties and before the commencement of the hearing of the case.

Court review and approval
How do courts review settlements? What is the legal standard for entry into and approval of a settlement?

An out-of-court settlement is usually accepted by the court provided that it is reached within the parameters of the relevant legislation and the pleadings submitted by the parties.

Mediation clauses
Will courts enforce mandatory or voluntary mediation clauses in pre-existing contracts?

An insolvency process is itself a public process that affects the rights of third parties that have contractual relations with the company or the individual. Therefore, these rights cannot be enforced through an arbitration process that requires consent and is usually private. In addition, under the Companies Law, Chapter 113, the courts have jurisdiction over corporate and individual insolvencies, and only the courts may order liquidations. In the event of a shareholder dispute that leads to an application for liquidation before a court, it may be possible to resort to arbitration if all parties consent to it prior to the court ordering the liquidation of the company. In these cases, shareholders' disputes may be arbitrated. If this does not occur, a winding-up order will not be issued by the arbitration tribunal or body.

UPDATE AND TRENDS

Recent developments
What have been the most notable recent developments in insolvency litigation in your jurisdiction, including any key cases and legislative changes?

The most notable development regarding insolvency litigation was enacted with the amending Law 80 (I)/2023, which tends to remove powers and responsibilities that were exclusively related to the official receiver so that they are received/undertaken by the respective liquidator or temporary liquidator as another person (by the official receiver) appointed upon application to the court, while the official receiver for these acts will be informed by notifications of the liquidator or provisional liquidator appointed from time to time in connection with the winding-up proceedings pending in the court. By the amending law, in several sections of the Law (Chapter 113), the term 'official receiver' has been substituted with 'liquidator or provisional liquidator'.

Specifically:

- Regarding section 224 (Chapter 113), additions were made so that the content of the section regulates (generally) the preparation and submission of a statement of affairs of the company not only to the official receiver but also to the liquidator or temporary liquidator who is a person other than the official receiver.
- Regarding section 225 (Chapter 113), the corresponding additions were made so that the liquidation report submitted to the court is carried out and undertaken by the respective liquidator in the event that he is a person other than the official receiver.
- Regarding section 228 (Chapter 113), the amendment regulates the procedure for the appointment of an independent liquidator other than the official receiver in the court by application under the winding-up petition, which may be filed either at the outset or subsequently to the winding-up proceedings in question and that the Court for the appointment of such person may hear the positions and wishes of creditors, applicant, company and company contributions. However, the appointed liquidator, upon request under section 213(1) (Chapter 113), is not required to convene and preside over separate meetings of creditors and contributors for the purpose of electing a new liquidator unless the company has funds or funds are available to cover the relevant costs of convening meetings.