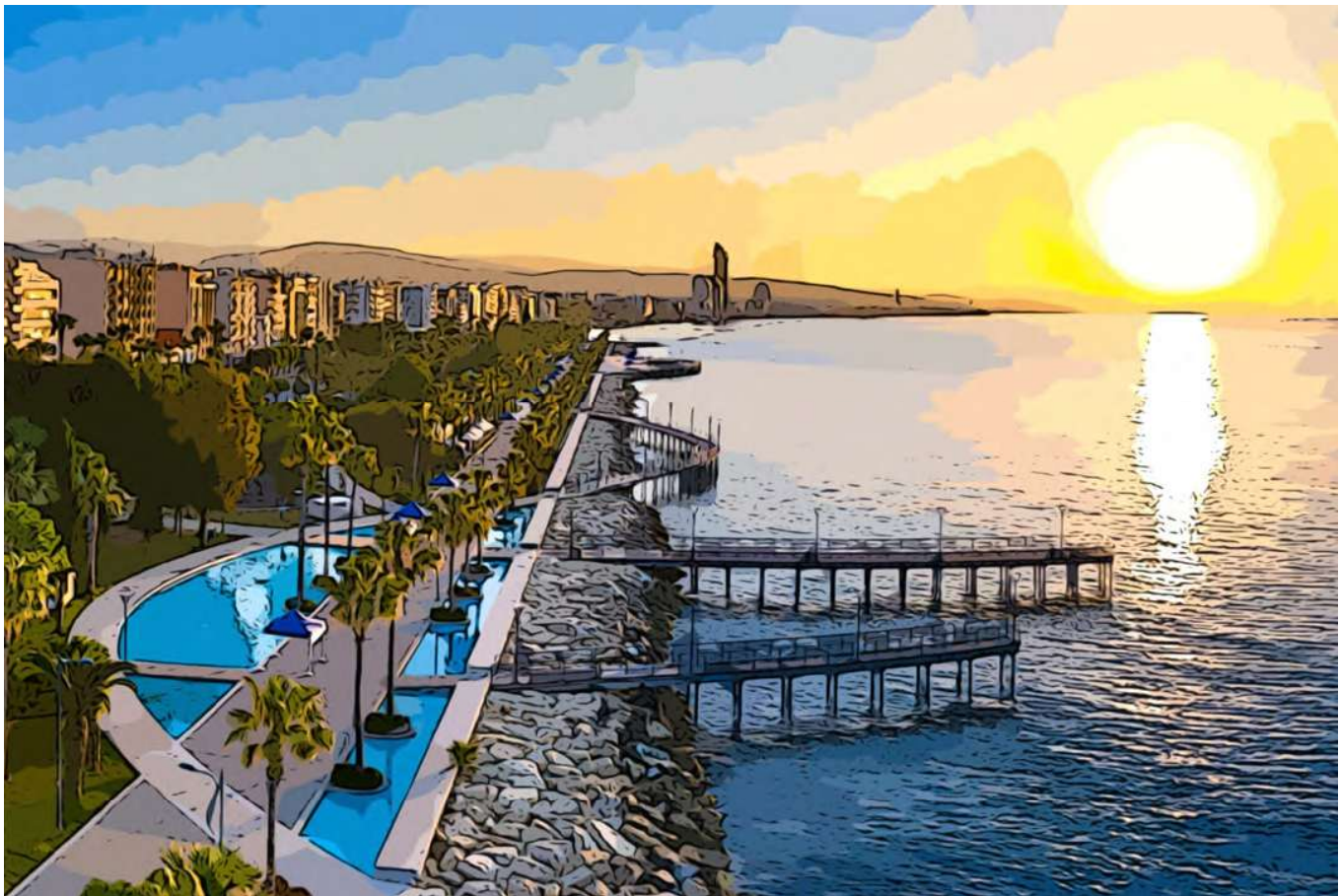


A GUIDE TO CYPRUS EXAMINERSHIP REGIME



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Introduction

Since 2013, new mechanisms for the protection of businesses facing financial difficulties by the appointment of an examiner have been introduced in Cyprus by the amendment of the Cyprus Company Law, Cap.113.

Who can apply for the appointment of an examiner?

A petition for the appointment of an examiner under Cyprus Company Law, Cap.113, may be filed by the company in question, a creditor of the company, member(s) of the company holding more than 10% of the share capital of the company, or a guarantor of the company.

Under which circumstances will the Court decide for the appointment of an examiner?

The Court may proceed to the appointment of an examiner for the purpose of examining the state of the company's affairs and performing such functions in relation to the company as may be conferred by Cyprus Company Law, only if satisfied that there is a reasonable prospect of survival of both the company and the whole or any part of the company's undertaking as going concern and such appointment may be extended to any related (subsidiary or holding) company of the company in question.

Period of Protection

Upon the appointment of an examiner by the Court, the company is under protection from its creditors for a period of 4 months from the date of filing of the petition requesting the appointment of an examiner.

During the aforesaid period of protection:

- No winding-up proceedings may be commenced against the company, nor any resolution for the winding-up of the company may be passed.
- No receiver may be appointed over any part of the property or undertaking of the company.
- No attachment, sequestration, distress or execution shall be put into force against the property or effects of the company, except with the consent of the examiner.

- Where any claim against the company is secured by a charge on the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of such security, except with the consent of the examiner.
- No steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the examiner.
- Where, under the provisions of any legislation, regulation or otherwise, any person other than the company is liable to pay all or any part of the debts of the company, (i) no attachment, sequestration, distress or execution shall be put into force against the property or effects of such person in respect of the debts of the company, (ii) no proceedings of any sort may be commenced against such person in respect of the debts of the company, and (iii) where any claim against any such person is secured by mortgage, encumbrance or otherwise, which affects all or part of the property of the company, no action may be taken for the realisation of the whole or any part of such security, except with the consent of the examiner.

Proposals for a Compromise or Scheme of Arrangement

One of the main functions of an examiner is to formulate proposals for a compromise or scheme of arrangement regarding the restructuring of the debt obligations of the company in question, as soon as practicable after he or she is appointed; such proposals or scheme are presented to the members and creditors of the company in question in a series of meetings.

Proposals shall be deemed to have been accepted by a meeting of creditors or of a class of creditors when a majority in number representing a majority in value of the claims represented at that meeting have voted, either in person or by proxy, in favour of the resolution for the proposals.

Upon the acceptance of such proposals or scheme, the examiner files a report with the Court, including the aforesaid proposals or scheme, in order for the Court to confirm the latter.



Confirmation of the Proposals or Scheme

The Court shall not confirm any proposals unless at least one class of creditors whose interests or claims would be impaired by the implementation of the proposals has accepted the proposals, and the court is satisfied that the proposals are fair and equitable in relation to any class of members or creditors that has not accepted the proposals and whose interests or claims would be impaired by the implementation, and the proposals are not unfairly prejudicial to the interests of any interested party.

During the Court hearing in relation to the confirmation, or not, of the proposals, a member or creditor whose interest or claim would be impaired by the proposals may object to their confirmation on any of the following grounds:

- that there was some material irregularity at or in relation to a meeting that was called for the examination of the proposals for compromise or scheme of arrangement;
- that acceptance of the proposals by the meeting was obtained by improper means;
- that the proposals were put forward for an improper purpose;
- that the proposals unfairly prejudice the interests of the one who objects.

If the Court refuses to confirm the proposals, or there has not been possible to reach any agreement on a compromise or scheme of arrangement, following the aforesaid meetings of creditors, the Court may, if it considers it just and equitable to do so, to issue an order for the winding up of the company.

Conclusion

In light of the extraordinary pressure that has been put on many previously healthy companies due to the pandemic, the process of examinership may be proved to be a saviour for such companies, able to provide breathing space for the company to operate without pressure from its creditors whereas the control of the business will be retained by its management.

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