

SEMINAR ON NEW CYPRIOT INSOLVENCY FRAMEWORK

ADDRESS BY THE PRESIDENT OF THE SUPREME COURT MYRON M. NICOLATOS.

Distinguished Guests,

Ladies and Gentlemen,

I am delighted to be here, addressing this interesting seminar on the new Cypriot insolvency framework.

Insolvency is not usually viewed as a positive state of affairs, as it is associated with business failure. Business failures, though, are a commercial reality. Initially sound and commercially viable businesses, may sometimes encounter financial difficulties that may lead to business failure. The question is not how to eliminate bankruptcies, completely, but how to set up a framework enabling business people to have a second chance and a fresh start towards reintegration in the economy. A good insolvency regime facilitates an orderly and fair distribution of assets of the bankrupt business to its stakeholders. It provides incentives for repayment of debts, thus contributing to a decrease of non-performing loans. It provides full and rapid relief to debtors with no income and no assets, with very low overall debt, and protects, where feasible, the primary residence of the debtor, from seizure, under certain conditions.

Furthermore, it provides incentives for the rescue and rehabilitation of companies, affording them the opportunity to reduce indebtedness and preserve jobs. Stakeholders ultimately get a better return, and the economy, as a whole, is benefited.

Insolvency reform, including personal and corporate, was a fundamental part of the Government's strategy to return our country to stability and economic growth. The enactment of the New Insolvency Framework comprising a package of six legislative texts (five laws and a set of regulations) fulfills this key commitment which was also required by the terms of the Memorandum by EU-IMF-ECB, for the Financial Support to Cyprus.

The New Insolvency Framework was adopted by the House of Representatives in May, 2015 and all the legislative provisions are in full force, since early August. It is an extensive and complex piece of legislation, introducing new concepts to Cypriot law, especially with regard to personal Insolvency arrangements and debt relief orders for natural persons.

Cyprus stands to benefit from the adoption of this New Legal Framework. A well-established framework will lead to increased certainty and efficiency in dealing with insolvencies. In turn, this will lead to more consistent processes and more predictable results which may help reduce the cost in insolvency administration and, in the long run, attract more foreign investment in Cyprus.

The Courts' role in the application of these new insolvency laws is, undoubtedly, of vital importance. The provisions of the new insolvency laws will engage the Courts in a significant number of new tasks, not previously required by them. New and amended "Rules of Court" are necessary in order to facilitate the effective application of the new legal framework for insolvency.

The provisions of the new personal insolvency law will, most likely, engage the Courts in a significant increase in cases, particularly with regard to the Personal Repayment Plan (PRP), which allows an insolvent debtor, with the mandatory help of an insolvency practitioner, to develop a voluntary plan aimed at restructuring the debts, secured and unsecured. The Plan should, where possible, avoid the sale of the debtor's primary residence. A compulsory Personal Repayment Plan allows the debtor to apply to the court for the imposition of a restructuring plan on the creditors, subject to certain criteria.

Insolvency law will be effective only if the judiciary has sufficient capacity and capability to implement it. To ensure that an insolvency law is applied with predictability, the law, to the extent that it is permissible, should provide adequate guidelines on how the courts should exercise their discretion, particularly when the court's decision involves an assessment of economic and commercial issues, in addition to legal issues.

Since insolvency proceedings give rise to a dynamic process, it is important that court hearings are held promptly and that judgments, at first and second instance, are given soon thereafter. Delay in the court's adjudication can have an adverse effect on the value of the assets, or the viability of the enterprise.

Today and tomorrow, we will have the opportunity to hear about some significant aspects of the new insolvency law and the key challenges in its implementation, by prominent speakers. Panels such as these are very valuable indeed, enhancing the ability to deal with the complexity of insolvency cases and to manage, with greater skill and confidence, restructuring proceedings.

I wish you all, fruitful and enjoyable deliberations and every success to the seminar.

Thank you.

SUPREME COURT OF CYPRUS

6 November, 2015.

Insolvency Framework

- The Insolvency Individuals (Personal Plans Repayment and Debt Waiver Order) Law, 2015
- The Bankruptcy (Amendment) Law of 2015
- The Companies (Amendment) (No. 3) Act of 2015, regarding the liquidation
- The Companies (Amendment) (No. 2) Law of 2015, concerning the mechanism for corporate debt restructuring (Examinership)
- The Council on Insolvency Law of 2015
- The Council on Insolvency Regulations 2015