

# Business Reorganisation Assessment

📍 Cyprus



**European Bank**  
for Reconstruction and Development



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# General Information

## Macro Data

0.886	3%	US\$ 29,550	€ Euro – EUR	12.5%	0.5%	7.5%
Population (million) <sup>1</sup>	GDP growth rate <sup>1</sup>	GDP per capita <sup>1</sup>	Currency	Corporate tax rate <sup>2</sup>	Inflation rate <sup>1</sup>	Unemployment rate <sup>1</sup>

## Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings of legal entities in Cyprus is the **Companies Law, Chapter 113** (the Insolvency Law) as amended, which regulates: schemes of arrangement; examinership; and three different types of company liquidation proceedings: voluntary winding up, compulsory winding up, and winding up under the supervision of the court. Insolvency of natural persons (including entrepreneurs) is regulated by the **Bankruptcy Law, Chapter 5**.

Relevant secondary legislation includes the **Law for Insolvency Practitioners 64/2015** and the **Insolvency Practitioners Regulations 151/2015**.

**Directive (EU) 2019/1023** (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt has not yet been transposed. Cyprus was granted an extension for transposition of the Restructuring Directive and has until July 2022 to reflect the provisions of the Directive in its insolvency legislation.

## Insolvency Data

The **Insolvency Service**, which is under the **Ministry of Energy, Commerce and Industry of Cyprus**, is the authority responsible for issuing monthly and annual reports containing insolvency data. As per the published **monthly reports**, the available insolvency data for the last four years is as follows:

Year	Compulsory winding up orders <sup>3</sup>	Voluntary winding up proceedings <sup>4</sup>
2018	97	2,378
2019	67	2,097
2020	77	2,235
2021	35	1,091

The reports published by the Insolvency Department do not contain any data regarding the two reorganisation procedures available: schemes of arrangement and examinerships. Examinership is reportedly not used in practice. The appointment of examiners in insolvency cases is required to be published in the Official Gazette.



<sup>1</sup> IMF – Source as of June 2021: [www.imf.org/en/Countries/CYP](http://www.imf.org/en/Countries/CYP)

<sup>2</sup> PWC – Source as of July 2021: [www.taxsummaries.pwc.com/cyprus/corporate/taxes-on-corporate-income](http://www.taxsummaries.pwc.com/cyprus/corporate/taxes-on-corporate-income)

<sup>3</sup> Data is only for compulsory winding up orders following a winding up petition. Winding up under supervision of the court, where an interested party asks the court for a voluntary winding up to be supervised by the court, is rarely used and is not included in this table.

<sup>4</sup> Voluntary liquidations can be initiated by a shareholder resolution or by creditors' decision. Voluntary liquidation by members requires the company to be solvent but voluntary liquidation by creditors is usually initiated when the company is unable to pay its debts. These statistics cover both types of voluntary winding up.





## Company Information

The Cypriot company law framework is governed mainly by the **Companies Law, Chapter 113** as amended, which includes provisions relating to the incorporation of a company, financing instruments, securities, management and governance of the company, and insolvency procedures. The Companies Law covers the following legal forms of entities: private limited liability companies with shares; limited liability companies with guarantee without share capital; limited liability companies with guarantee and share capital; and variable capital investment companies.

The Companies Section, and more precisely the **Department of Registrar of Companies and Official Receiver** is the portal in which all information about legal entities is collected. The Department of Registrar of Companies and Official Receiver is in charge of maintaining a database with all incorporation and other corporate documents. The website is searchable free of charge. It is possible to consult **here** the status of a company and whether it is in winding up proceedings by searching against the registration number or the trading name of the company.

## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency and restructuring proceedings are overseen by regional courts (located in Nicosia, Famagusta, Limassol, Larnaca, Paphos and Kyrenia, with the latter currently operating in Nicosia). Jurisdiction of the court in relation to legal entities is determined by the location of the registered office of the company.

The **Insolvency Service**, which is under the umbrella of the **Ministry of Energy, Commerce and Industry** of Cyprus, is the portal for insolvency practitioners and for any relevant information that concerns a company under insolvency or restructuring. The Insolvency Service was established on 1 January 2020, and until then the duties and responsibilities of insolvency practitioners were under the Department of Registrar of Companies and Official Receiver. The Insolvency Service is part of the **European e-Justice Portal** as established by **Regulation (EU) 2015/848** on insolvency proceedings, which aims to connect the insolvency registers of all European Union member states.

The **Law for Insolvency Practitioners 64 (I)/2015** provides for the training and licensing of insolvency practitioners and the establishment of competent authorities for the regulation and supervision of the profession. The Insolvency Service, the Pancyprian Bar Association and the Association of Certified Public Accountants of Cyprus have been designated as competent authorities by a Ministerial Decree regarding the licensing of insolvency practitioners. The **Insolvency Practitioners Regulations** were also issued in 2015 by the Minister of Energy, Trade, Industry and Tourism, with the approval of the Council of Ministers, to support implementation of the Insolvency Practitioners Law.

The Insolvency Service maintains the register of insolvency practitioners which is publicly available **here**.

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## Part B

# Business Reorganisation

### Are there any incentives for extrajudicial voluntary agreement? If so please describe.

There are no specific incentives for concluding an extrajudicial voluntary agreement. However, the scheme of arrangement, requires minimum court intervention, no supervision from an insolvency practitioner, and allows the debtor to reach an agreement with its creditors. The court only intervenes by approving the agreement of the debtor and creditors.

### What is the nature and purpose of the reorganisation procedure?

There are two types of procedures which may support the reorganisation of a corporate debtor: schemes of arrangement (συμβιβασμός ή διακανονισμός) and examinership (διορισμός εξεταστή). **Click here** for a high-level overview of both procedures.

#### **Scheme of arrangement procedure**

The scheme of arrangement aims to achieve a compromise or arrangement between a company and its creditors or a class thereof, or a company and its members or a class thereof (Article 198 (2)). The scheme of arrangement is not an insolvency procedure. However, the scheme can be used to achieve a financial restructuring of a debtor by compromising the liabilities owed by a company to its creditors. The contractual agreement deriving from a scheme of arrangement may include various forms of restructuring including a rescheduling of debt and/or debt write offs.

#### **Examinership procedure**

The purpose of an examinership procedure is to facilitate the survival of the company or the related company or both, and all or any part of its business, as a going concern. The court is in charge of verifying if the procedure is likely to achieve this goal. Subject to expected satisfaction of this goal, the company can request the commencement of examinership proceedings (Article 202 B1).

### Who can commence the process and what entry conditions apply?

#### **Scheme of arrangement procedure**

The company or any creditor or member of the company, or, in the case of a company under liquidation, the liquidator, may apply to the court, in order for the court to order the summoning of a meeting of creditors or a class of creditors, or of members of the company or a class of members, in such manner as the court may direct (Article 198 (1)). In practice, it is often the company that makes the proposal.

The procedure is not linked to the financial situation of the company, so there is no entry requirement regarding the solvency or insolvency of the applicant.

#### **Examinership procedure**

An application may be filed before the court for it to appoint an examiner (Article 202B (1)). The application may be filed by: the debtor; a creditor, or a contingent or prospective creditor; employees of the company; members of the company holding, at the time of making an application, not less than one-tenth of the paid-up capital of the company which, at that time, are entitled to vote at general meetings of the company; a guarantor of any liabilities of the company; or a combination of these parties. The application must be accompanied by an independent expert's report confirming, among other matters, whether the company has a viable future (Article 202B (3) and (4)).

The court, following the submitted application, should consider whether: the company is or is likely to be unable to pay its debts; no resolution has been passed and published in the Official Gazette in respect of the winding up of the company; no order has been made for the winding up of the company; and there is a reasonable prospect of the survival of the company and the

whole or any part of the company as a going concern. If this is the case, the court may appoint an examiner to the company for the purpose of examining the state of the affairs of the company. The court will issue a decree to commence the examinership procedure only if it is satisfied that there is a reasonable prospect of survival of the company and all or any part of it as a going concern (Article 202A (1) and (2)).

A company is unable to pay its debts if: it is unable to pay its debts when they become due; or the value of its assets is less than its liabilities, taking into account contingent and future liabilities; or if the provisions of Article 212, regarding satisfaction of enforcement proceedings, apply (Article 202A (3)).



References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**



## Is there any court involvement?

### **Scheme of arrangement procedure**

Yes, the court oversees the application and the summoning of a creditors' meeting (Article 198 (1)).

The court is also responsible for approving the proposed agreement as voted by the involved parties (Article 198 (2)).

### **Examinership procedure**

Yes, an application should be submitted to the court and following examination of the application the court may decide to appoint an examiner (Articles 202A and 202B).

During the period commencing from the date of filing of the application until the expiration of a period of four months, which may be extended for a further two months, or until the withdrawal or rejection of the application, whichever occurs first, the company is deemed to be under the protection of the court (Articles 202IØ (3) and 202IØ (4)).

The court, after hearing the debtor, the examiner, any creditor or member of the company and any other interested party that wants to be heard, and after taking into consideration the report of the examiner, will confirm, confirm with variations, or refuse to confirm the proposals as presented by the examiner (Article 202KE (3)).



## Are there any hybrid procedures?

No. However, the scheme of arrangement procedure, which is not an insolvency procedure, may be considered hybrid in nature since the debtor and its creditors should reach an agreement which can be voted on formally by each applicable class (group) of creditors and confirmed with minimal court intervention.

## Does the debtor remain in possession of the company and continue carrying its business operations while conducting the reorganisation?

### **Scheme of arrangement procedure**

Yes. As this is not an insolvency procedure, the debtor remains in possession and no insolvency practitioner is involved in the procedure.

### **Examinership procedure**

Yes, the debtor remains in possession. However, the court by an interim order and following a request by the examiner, can restrict the exercise of powers of the directors of the company and transfer all the powers to the examiner. The court should examine whether: the company's business is or may be conducted in a manner that is estimated to or is likely to adversely affect the interests of the company, its employees and its creditors; it is appropriate to restrict or regulate the powers exercised by directors or the management for the purpose of maintaining the assets of the company or to protect the interests of the company or its employees or creditors as a whole; and if the company has decided to give the powers to the examiner (Articles 202B (9) and 202IΔ (2)).

## Is there a need to appoint an insolvency practitioner?

### **Scheme of arrangement procedure**

No, as this is not an insolvency procedure. The process of reaching an agreement between the debtor and the creditors and applying to the court in order to summon a creditors' meeting is conducted by the involved parties, meaning the debtor, the creditors and, where applicable, the members of the company.

However, where a scheme of arrangement is proposed while the company has already been placed in winding up, a liquidator is already appointed by the court and has the right to apply before the court in order to summon a creditors' meeting (Article 198 (1) and (2)).

### **Examinership procedure**

Yes, the procedure is based on the appointment of an examiner, who is a qualified insolvency practitioner. The court, following the submitted application should consider if: the company is or is likely to be unable to pay its debts; no resolution has been passed and published in the Official Gazette in respect of the winding up of the company; no order has been made for the winding up of the company; and there is a reasonable prospect of the survival of the company and the whole or any part of that company as a going concern. If this is the case, the court may appoint an examiner to the company for the purpose of examining the state of the affairs of the company (Article 202A (1) and (2)).

The examiner has the power to take action if any acts or omissions by related parties have taken place or may take place in relation to the financial interests of the company which, in the opinion of the examiner, are or are likely to be to the detriment of the company or any interested party. The examiner also has the power to take any action necessary to stop, prevent or remedy the effects of such acts or omissions, subject to the rights of parties that have acquired an interest in the company's income, assets or liabilities (Article 202IB (5)).

## Is there any applicable stay or moratorium?

### **Scheme of arrangement procedure**

No. There is no provision in the law which offers a stay or a moratorium in connection with the procedure.

### **Examinership procedure**

Yes, the company shall be deemed to be under the protection of the court during the period commencing from the date of filing of the application until an expiration of a period of four months, which may be extended for further two months, or until the withdrawal or



rejection of the application, whichever occurs first (Articles 202I(3) and 202I(4)).

For as long as a company is under the protection of the court: no winding up proceedings of any kind may be commenced against the company, no resolution for winding up may be passed in relation to the company, and any resolution passed will be of no effect; no attachment in the hands of any third party, attachment, garnishment or execution may take place 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 mortgage, charge, lien or other charge or pledge on or affecting all or any part of the property, effects or income of the company, no action may be taken to realise all or any part of such security except with the consent of the examiner; no measures may be taken to repossess goods in the company's possession under any hire purchase agreement, except with the consent of the examiner; and no other proceedings against the company may be commenced except by leave of the court and subject to such terms as the court may impose (Article 202H (2)).

No payment may be made by a company during the period in which it is under the protection of the court for the satisfaction or repayment of all or part of a liability incurred against the company prior to the filing date of the application in relation to it, unless: the independent expert's report contains a recommendation that all or, where appropriate, part of that obligation be repaid or satisfied; or the examiner authorises such payment (Article 202(1)).

### Is there any protection for essential contracts and to prevent termination of contracts by third parties?

#### **Scheme of arrangement procedure**

No. In practice, the approval of a scheme of arrangement is often a ground for termination of contracts.

#### **Examinership procedure**

Yes, to a certain extent, although the legislation contains no express restrictions on termination of contracts by third parties. No action may be taken against a company that is under the protection of the court i.e., during the moratorium period, unless the court orders otherwise. This has the practical effect of taking away the automatic right to terminate a contract due to a debtor's entry into the examinership procedure. Third-party termination clauses may be inapplicable in relation to the provision of such essential contracts as utilities (electricity, water and telecommunication services (including internet)) provided that the relevant providers are paid for their services (Article 202(3)).

### Is new financing protected by law?

#### **Scheme of arrangement procedure**

No. There is no relevant provision in the law since, technically, this is not an insolvency procedure but rather a restructuring mechanism that can be used for solvent, as well as insolvent, companies.

#### **Examinership procedure**

Yes. Liabilities, incurred as necessary by the examiner to facilitate the company's survival as a going concern, will be treated as expenses if a subsequent scheme of arrangement is sanctioned or a liquidation order is made. The examinership law provides that such financing will get priority over any other claim but not before secured creditors' claims (Articles 202E and 202AB).

### Does the law recognise separate classes of creditors for voting purposes?

#### **Scheme of arrangement procedure**

Yes, under a scheme of arrangement, creditors vote in groups or classes (Article 198). It is at the applicant's discretion to form classes as appropriate. No specific classes are prescribed by the Insolvency Law. However, courts in Cyprus and applicants follow the English common law and have a duty to take into account when formulating classes whether there is sufficient commonality of interest among members of a class and the ability of such members to consult with one another to approve a scheme of arrangement.

#### **Examinership procedure**

Yes. Under an examinership procedure, creditors are divided into separate groups or classes for voting on a proposal. The proposal submitted by the examiner should: specify each class of members and creditors of the company; designate any class of members and creditors whose interests or claims are not prejudiced by the proposals; and designate any classes of members and creditors whose interests or claims are affected by the proposals (Article 202K(1)).

However, as with schemes of arrangement, the legislation does not prescribe any specific classes for the purposes of voting and it is at the examiner's discretion to form such classes as the examiner deems appropriate.



## What are the majorities required to approve a reorganisation plan?

### Scheme of arrangement procedure

In order for the scheme to be eligible for approval by the court, a majority in value of the creditors, the class of creditors, the members or the class of members, must be present and vote in favour either in person or by proxy at the meeting (Article 198 (2)). All classes need to approve the plan and there is no cross-class cram down, i.e. the agreement cannot be in any circumstances imposed on non-consenting classes of creditors.

### Examinership procedure

With regard to creditors, proposals by an examiner are deemed to be accepted if a majority in value of creditors present or represented at the meeting vote, either in person or by proxy, in favour of the proposals (Article 202KΔ (3)). Variations to proposals may be submitted but such variations may only be accepted with the approval of the examiner (Article 202KΔ (2)).

If a creditor abstains from voting or otherwise fails to vote on the proposals, Article 202KΔ (4) cannot be construed as allowing such abstention or omission to be regarded as a vote of that creditor against the proposals.

## Who does the reorganisation plan bind?

### Scheme of arrangement procedure

If a majority in value of the creditors or the class of creditors, present and voting either in person or by proxy at the meeting, agree to any arrangement, the arrangement shall, if sanctioned by the court, be binding on all the parties, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company (Article 198 (2)). The scheme of arrangement needs the approval of all classes.



### Examinership procedure

Where the court confirms the examiner's proposals, with or without variations, these are binding on all creditors (including all class or classes of creditors affected by the proposal) in respect of any claim or claims against the company and also on any person other than the company which is liable for all or any part of the debts of the company (Article 202KE (7)), e.g. guarantors. The proposals are also binding on all members, or class or classes of members, affected by the proposal, and on the company (Article 202KE (6)).

## What is the timeframe for the reorganisation procedure and any moratorium?

### Scheme of arrangement procedure

The scheme of arrangement aims to be a flexible and efficient procedure, which may be completed within a short period of time. The legislation does not prescribe any deadline or timeframe for the procedure.

### Examinership procedure

The company is placed under the protection of the court for a period of four months from the date of the application. This period may be extended for an additional period of sixty days, if the court is satisfied that such an extension is necessary for the examiner to file the report (Articles 202IΘ (3) and 202IΘ (4)). Such report will append, among other matters, any proposal by the examinership, in the form presented during the creditors' meeting (Article 202K (α)).

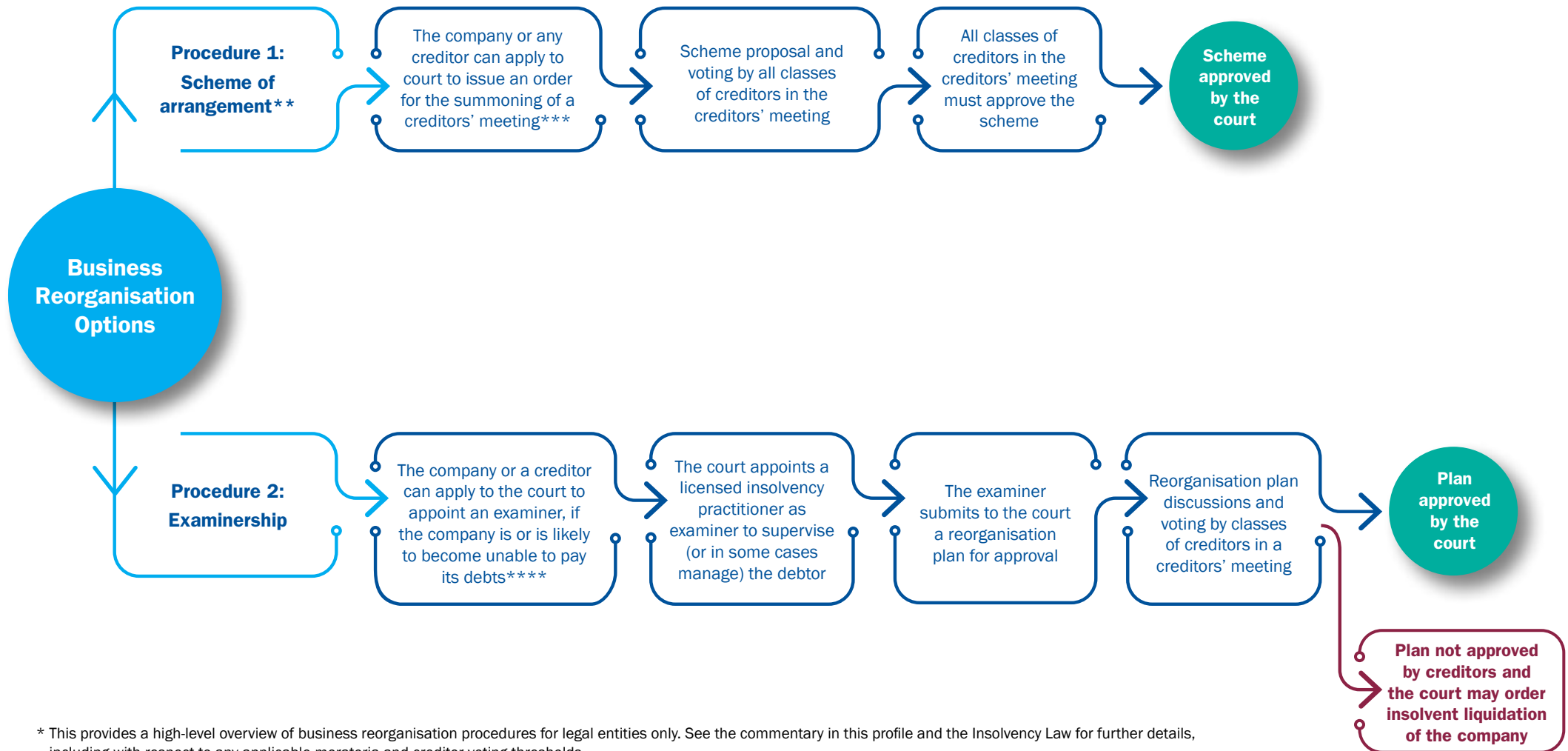
## Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, Cyprus has not adopted the UNCITRAL Model Law. However, as a member of the European Union, Cyprus is subject to **Regulation (EU) 2015/848** on insolvency proceedings which governs the coordination of insolvency proceedings within the EU.

### Special features/observations:

- The Cypriot insolvency law framework is highly influenced by the English legal system and its scheme of arrangement is based on the English scheme of arrangement procedure contained in the United Kingdom Companies Act 2006.
- In May 2015, the Cypriot government completed a major overhaul of the country's corporate and personal insolvency law framework and regulation of insolvency practitioners as part of a memorandum of understanding entered into by Cyprus with the International Monetary Fund, the European Commission and the European Central Bank. The amendments included the introduction of the examinership procedure with Law No. N62/2015 as an amendment to the Insolvency Law., derived from the Republic of Ireland Companies Act 1990. Examinership has not been widely used.
- In June 2018, the Government of Cyprus approved an **Action Plan** to improve the efficiency of the operations of the Insolvency Service, developed with assistance from the EBRD's Legal Transition Team. The Action Plan has led to the establishment of a new Insolvency Service under the Ministry of Energy, Commerce and Industry, which began operations in January 2020.

# Overview of Cypriot Business Reorganisation Procedures\*



\* This provides a high-level overview of business reorganisation procedures for legal entities only. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratoria and creditor voting thresholds.

\*\*Schemes of arrangement are a corporate restructuring tool and are not linked to the financial position of the company.

\*\*\* Also available for any member of the company, or, in the case of a company under liquidation, the liquidator. A meeting of members or any class of members of the company may be summoned, as well as a creditors' meeting.

\*\*\*\* Other permitted applicants include: a contingent or prospective creditor; employees of the company; members of the company holding, at the time of making an application, not less than one-tenth of the paid-up capital of the company which, at that time, are entitled to vote at general meetings of the company; and a guarantor of any liabilities of the company.



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