

## **Examinership: A shield for businesses to cope with Covid-19**

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### **Introduction**

A relatively less-known procedure, the examinership framework, may hold the key to the survival of corporations faced with the financial consequences of the Covid-19 outbreak.

### **What is examinership?**

Examinership is a Court restructuring procedure suitable for companies which are facing immediate financial distress but have reasonable prospects of survival. The procedure affords the distressed company a short-term moratorium on claims by creditors, so that during the period of examinership no claims by creditors can be advanced against the company. In parallel, a restructuring plan is prepared for the company and submitted to creditors and the Court for approval.

### **Background**

Examinership was introduced in Cyprus in 2015, two years after the 2013 banking crisis which significantly affected a wide range of businesses in Cyprus. By the time the examinership procedure became available, few businesses saw value in committing to the procedure whereas many were deemed not to meet the test of having reasonable prospects of survival. As a result, there was limited take-up of the examinership procedure at the time.

### **Why it is relevant during and post Covid-19 outbreak?**

In the unprecedented challenges presented to businesses in light of the Covid-19 outbreak, examinership has now become relevant as a mechanism for safeguarding a business survival. Businesses today are facing short-term liquidity problems as a result of the direct or indirect suspension of their operations, caused by the lockdown. Thereafter, the business will need to deal with declining revenues that are expected to result from the global financial slowdown caused by the outbreak.

### **A shield to businesses**

Examinership offers a shield to businesses from any claims advanced against it in the short-term, while the business is assisted by the examiner to devise a restructuring plan aiming at its long-term survival.

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In outline:

- Following the commencement of the examinership procedure, the distressed company enjoys a temporary 4-month moratorium against claims from creditors, which may be extended.
- The Court will exercise the power to commence the examinership procedure where (i) the company is, or is likely to be, unable to pay its debts and (b) the company is not in liquidation.
- At the commencement of the examinership procedure an insolvency practitioner is appointed as the examiner of the company. The examiner's role is to propose a restructuring plan which needs to be approved by the majority of the creditors and sanctioned by the Court, in order to become binding.
- Examinership commences upon the filing of a Court application by either the company, a creditor of the company, a guarantor of the company's obligations or any member(s) of the company holding not less than 10% of the paid-up voting share capital of the company at the time.
- An application for examinership must be filed promptly when the financial distress arises and not when the need for a moratorium becomes apparent.

## Conclusion

The examinership procedure, appears to offer the much-needed protection businesses will need in the short-term for surviving the Covid-19 disruptions; while it also allows for the implementation of a long-term restructuring plan, that will safeguard the company's long-term survival.

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