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190(I) of 2012  
203(I) of 2012  
6(I) of 2013  
90(I) of 2013  
74(I) of 2014  
75(I) of 2014  
18(I) of 2015

The House of Representatives votes as follows:

**1.** This Law shall be cited as the Companies (Amendment) (No. 2) Law of 2015 and shall be read along with the Companies Law, Cap 113 (hereinafter referred to as the ‘Principal Law’).

Amendment of  
section 2 of the  
principal law

**2.** Section 2 of the principal law is amended by inserting in section (1) in proper alphabetical order the following new terms and their definitions:

“independent expert” has the meaning given in subsection (3) of section 202B;

“guarantee” means an agreement of guarantee in the meaning given in Contract Law;

“guarantor” means any person who is liable under a guarantee in

relation to the debt of a company to which an examiner has been appointed;

“examiner” means the examiner appointed according to section 202A;

“interested party” in relation to the company referred to in subsection (1) of section 202A means:

- (a) a creditor of the company;
- (b) a member of the company;
- (c) a contributor;
- (d) a guarantor of any liabilities of the company;
- (e) any person whose property is subject to any mortgage or charge or security for any debt or liability of the company;

“Minister” means the Minister for Energy, Commerce, Industry and Tourism;

“debt to a credit and finance institution” means an amount constituting a debt based on an agreement initially entered into for the granting of any credit and finance facility by the credit and finance institution and includes contractual interest and overdue interest which cannot exceed the percentage of two per cent (2%) on the overdue instalments and not taking into consideration at the calculation of the said overdue interest, any instalments already paid by the debtor.

Amendment of the principal law by inserting new Part IVA

3. The principal law is amended by inserting, after section 202, the following new Part:

#### **PART IVA APPOINTMENT OF AN EXAMINER**

Power of court to appoint examiner.

202A.-(1) Subject to the provisions of subsection (2) where it appears to the Court that-

- (a) a company is, or is likely to be, unable to pay its debts, and
- (b) no resolution for the winding up of the company has been passed and published in the Gazette, and
- (c) no order has been made for the winding up of the company,

it may, on application by petition presented, 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 this Law.

(2) The court shall not make an order under this section unless it is satisfied that there is a reasonable prospect of the survival of the company, and the whole or any part of its undertaking as a going concern.

(3) For the purposes of this section, a company is unable to pay its debts if-

- (a) it is unable to pay its debts as they fall due,
- (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
- (c) the provisions of section 212 apply to the company.

(4) In deciding whether to make an order under this section the Court may also have regard to whether the company has sought from its creditors significant extensions of time for the payment of its debts, from which it could reasonably be inferred that the company was likely to be unable to pay its debts. The Court may also have regard to whether the company has used the process of restructuring laid down in the from time to time in force Directions on Arrears Management issued by the Central Bank of Cyprus by virtue of section 41 of the Business of Credit Institutions Law.

Official Gazette  
Part Three (I):  
9.9.2013  
14.2.2014

66(I) of 1997  
74(I) of 1999  
94(I) of 2000  
119(I) of 2003  
4(I) of 2004  
151(I) of 2004  
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35(I) of 2015

35(I) of 2002  
141(I) of 2003  
165(I) of 2003  
69(I) of 2004  
70(I) of 2004  
136(I) of 2004  
152(I) of 2004  
153(I) of 2004  
240(I) of 2004  
17(I) of 2005  
26(I) of 2008  
105(I) of 2009  
50(I) of 2011  
132(I) of 2013

(5) No examiner can be appointed in respect of any credit institutions to which the Business of Credit Institutions Law applies, nor to any insurance undertakings to which the Insurance Services and Other Related Issues Law applies.

Petition for protection  
of the Court.

202B-(1) A petition under section 2 may be presented by—

- (a) The company, or
  - (b) a creditor or contingent or prospective creditor, including an employee, of the company, or
  - (c) members of the company holding, at the date of the presentation of a petition under section 202A, not less than one-tenth of such of the paid-up capital of the company, as carries, at that date, the right of voting at general meetings of the company, or
  - (d) a guarantor of any liabilities of the company, or
  - (e) all of the above parties, together or separately.
- (2) A petition presented under section 202A shall—
- (a) nominate a person to be appointed as examiner, and
  - (b) be supported by such evidence showing that the petitioner has good reason for requiring the appointment of an examiner,
  - (c) where the petition is presented by the company, include a statement of the assets and liabilities of the company in so far as they are known to it, as they stand on a date not earlier than fourteen (14) days before the presentation of the petition, and
  - (d) include information on whether an application for the appointment of an examiner has been filed before and/or whether an examiner has already been appointed to the company.

(3) In addition to the matters specified in subsection (5), a petition presented under section 202A shall be accompanied by a report in relation to the company prepared by an independent expert who is either the auditor of the company or a person who is qualified to be appointed as an auditor of a company or as examiner of the company.

(4) The report of the independent expert shall comprise the following:

- (a) The names and addresses of the officers of the company,
- (b) the names of any other related bodies corporate of which the directors of the company are also directors,
- (c) a statement as to the affairs of the company, showing in so far as it is reasonably possible to do so, particulars of the company's assets and liabilities, including contingent and prospective liabilities, as at the latest practicable date, the names and addresses of its creditors, the securities held by them respectively and the dates when the securities were respectively given, as well as the names of its guarantors:

Provided that, for the purpose of this paragraph, "security" means any mortgage, charge, lien or other encumbrance,

- (d) his opinion as to whether any deficiency between the assets and liabilities of the company has been satisfactorily accounted for or, if not, whether there is evidence of a disappearance of property or properties or assets accumulating to substantial amounts or values which are not adequately accounted for,
- (e) his opinion as to whether the company, and the whole or any part of its undertaking, would have a reasonable prospect of survival as a going concern and a statement of the conditions which he considers essential to ensure such survival, whether as regards the internal management and controls procedures of the company or otherwise,
- (f) his opinion as to whether the formulation, acceptance and confirmation of proposals for a compromise or scheme of arrangement would offer a reasonable prospect of the survival of the company, and the whole or any part of its undertaking, as a going concern,

- (g) his opinion as to whether an attempt to continue the whole or any part of the undertaking would be likely to be more advantageous to the members as a whole and the creditors as a whole rather than a winding-up of the company,
- (h) recommendations as to the course he thinks should be taken in relation to the company including, if warranted, draft proposals for a compromise or scheme of arrangement,
- (i) his opinion as to whether the facts disclosed would warrant further inquiries with a view to proceedings under section 311,
- (j) details of the extent of the funding required to enable the company to continue trading during the period of protection and sources of that funding,
- (k) his recommendations as to which liabilities incurred before the presentation of the petition should be paid,
- (l) his opinion as to whether the work of the examiner would be assisted by a direction of the Court in relation to the role or membership of any creditor's committee referred to in section 202KB, and
- (m) such other matters as he thinks relevant.

(5) A petition presented under section 202A shall be accompanied—

(a) by a consent signed by the person nominated to be examiner, and

(b) if proposals for a compromise or scheme of arrangement in relation to the company's affairs have been prepared for submission to interested parties for their approval, by a copy of the proposals.

(6) The Court shall have discretion not to give a hearing to a petition under section 202A presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable.

(7) The Court shall not give a hearing to a petition under section

202A if a receiver stands appointed to the company the subject of the petition and such receiver has stood so appointed for a continuous period of at least thirty (30) days prior to the presentation of the petition:

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Provided that, in case a receiver stands appointed to the company the subject of the petition and such receiver was appointed within three months prior to the coming into force of the Companies Law (Amendment) (No. 2) of 2015, this subsection does not apply and section 202I applies.

(8) On hearing a petition under this section, the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order it thinks fit.

(9) Without prejudice to the generality of subsection (8), an interim order issued under the present subsection may restrict the exercise of any powers of the directors or of the company, taking into consideration the matters mentioned in subsection (2) of section 202IA.

(10) Without prejudice to subsections (8) or (9), on or after the presentation of a petition, the Court may, on application to it, appoint an examiner to the company on an interim basis.

(11) A petition under section 202A cannot be presented to the Court during a period of twelve (12) months beginning with the date of the termination of the appointment of the examiner under section 202KΘ, unless the Court is satisfied that new facts or circumstances justify such a petition.

Interim protection by the Court pending report.

202Γ.-(1) If a petition presented under section 202A satisfies the Court that —

- (a) that, by reason of circumstances outside the control of the petitioner, the report of the independent expert is not available in time to accompany the petition, and
- (b) that the petitioner could not reasonably have anticipated the circumstances referred to in paragraph (a),

the Court may make an order under this section placing the company concerned under the protection of the Court for such period as the Court thinks appropriate in order to allow for the submission of the independent expert's report:

Provided that, in case a receiver is appointed in relation to the whole or any part of the assets or business of the company at the time of submission of the application according to section 202A in

relation to the company, this in itself does not constitute, for the purposes of the present subsection, circumstances beyond the control of the applicant.

(2) The period provided in subsection (1) expires not later than the fifteenth day after the date of making of the order concerned or, if the fifteenth day after the issue of the said order or, in case that date would fall on a Saturday, Sunday or public holiday, the first day following that Saturday, Sunday or public holiday.

(3) In case the application is submitted by anyone of the persons mentioned in paragraphs (b) and (c) of subsection (1) of section 202B and an order is issued in relation to the said company, according to subsection (1), the directors of the company cooperate for the preparation of the report of the independent expert, in particular as regards the matters provided in paragraphs (a), (b) and (c) of subsection (4) of section 202B.

(4) In case the directors fail to comply with the provisions of subsection (3), the person who submitted the application or the independent expert may apply to the Court for the issue of an order requiring the directors to proceed with certain actions in compliance with subsection (3).

(5) In case the report of the independent expert is submitted to the Court after the expiration of the period of protection specified in the order issued according to subsection (1), the Court shall proceed with the examination of the application together with the report as if these were submitted according to the provisions of section 202A.

(6) Without prejudice to the possibility of submitting any other application, according to the provisions of section 202A, in case the report of the independent expert is not submitted to the Court before the expiration of the period of protection specified in the order issued according to the provisions of subsection (1), then, at the expiration of the said period, the company ceases to be under the protection of the Court.

(7) Any liabilities occurring against the company during the period of protection determined by the order issued by virtue of subsection (1) cannot constitute an object of a certificate according to the provisions of section 202IE.

202Δ. Notwithstanding the provisions of subsection (8) of section 202B, the Court shall not issue an order rejecting the application submitted according to section 202A or an order appointing an examiner to a company, without first giving the company or each creditor who has expressed to the Court his wish to be heard on the matter, the chance to be heard.

Right to be heard.

Availability of  
independent



expert's report.

202E.-(1) The independent expert shall supply a copy of the report prepared by him under subsection (3) of section 202B to the company concerned according to section 202A or any interested party on written application being made to him in that behalf.

(2) The Court may, on application to it, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.

Related companies

202ΣT.-(1) Subject to subsection (2), where the Court appoints an examiner to a company, it may, at the same or any time thereafter, make an order—

- (a) appointing the examiner to be examiner for the purposes of this Law to a related company, or
- (b) conferring on the examiner, in relation to such company, all or any of the powers or duties conferred on him in relation to the first-mentioned company.

(2) In deciding whether to make an order under subsection (1), the Court shall have regard to whether the making of the order would be likely to facilitate the survival of the company, or of the related company, or both, and the whole or any part of its or their undertaking, as a going concern and shall not, in any case, make such an order unless it is satisfied that there is a reasonable prospect of the survival of the related company, and the whole or any part of its undertaking, as a going concern.

(3) A related company to which an examiner is appointed shall be deemed to be under the protection of the Court for the period beginning on the date of the making of an order under this section and continuing for the period during which the company to which it is related is under such protection.

(4) Where an examiner stands appointed to two or more related companies, he shall have the same powers and duties in relation to each company, taken separately, unless the Court otherwise directs.

(5) For the purposes of this Law, a company is related to another company if—

- (a) that other company is its holding company or subsidiary; or
- (b) more than half in nominal value of its equity share capital as defined in subsection (5) of section 148 is held by the other company and companies related to that other company whether directly or indirectly, but other than in a fiduciary capacity; or

- (c) more than half in nominal value of the equity share capital as defined in subsection (5) of section 148 of each of them is held by members of the other whether directly or indirectly, but other than in a fiduciary capacity; or
- (d) that other company or a company or companies related to that other company or that other company together with a company or companies related to it are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company; or
- (e) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or
- (f) there is another company to which both companies are related;

and “related company” has a corresponding meaning.

(6) For the purposes of this section “company” includes any entity which is liable to be wound up under the provisions of the present Law.

Refusal of the Court to hear an application under certain circumstances

202Z. The Court may refuse to hear an application submitted according to section 202A or, depending on the circumstances, may refuse to continue hearing such application if it deems that during the preparation or submission of the application or during the preparation of the report of the independent expert, the applicant or independent expert-

- (a) has failed to reveal any information available to him which are essential for the exercise by the Court of its powers according to this Law, or
- (b) did not act in good faith.

Effect of petition to appoint examiner on creditors and others.

202H.-(1) Subject to section 202C during the period beginning with the date of the presentation of a petition under section 202A and, subject to subsections (3) and (4) of section 202I ending on the expiry of a period of four (4) months from that date or on the withdrawal or refusal of the petition, whichever first happens, the company shall be deemed to be under the protection of the Court.

(2) For so long as a company is under the protection of the Court under this Law, the following provisions shall have effect:

- (a) No proceedings for the winding-up of the company may be commenced or resolution for winding-up passed in relation to that company and any resolution so passed shall be of no

effect;

- (b) no receiver over any part of the property or undertaking of the company shall be appointed, or, if so appointed before the presentation of a petition under section 202A, shall, subject to the provisions of section 202I, such receiver be able continue to act as receiver;
- (c) 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;
- (d) where any claim against the company is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting 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 that security, except with the consent of the examiner,
- (e) 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;
- (f) where, under the provisions of any Law, 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, and
  - (ii) no proceedings of any sort may be commenced against such person in respect of the debts of the company,
  - (iii) where any claim against such person is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting 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 that security, except with the consent of the examiner.
- (g) no order for relief shall be made under section 202 against the company in respect of complaints as to the conduct of the affairs of the company or the exercise of the powers of the directors prior to the presentation of the petition,
- (h) any period of time during which a company is under the protection of the Court shall not be counted in determining

the prescription period according to the Law of Limitations,

- (i) in determining the period of six (6) months specified in section 301, any period of time during which the company is under the protection of the Court shall not be counted.

(3) Subject to subsection (2), no other proceedings in relation to the company may be commenced except by leave of the Court and subject to such terms as the Court may impose:

Provided that the Court may on the application of the examiner make such order as it thinks proper in relation to any existing proceedings, including an order to stay such proceedings.

(4) Complaints concerning the conduct of the affairs of the company while it is under the protection of the Court shall not constitute a basis for the making of an order for relief under section 202.

Restriction on payment of pre-petition debts.

202Θ.-(1) No payment may be made by a company, during the period it is under the protection of the Court, by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date of the presentation of the petition in relation to it unless —

- (a) the report of the independent expert contains a recommendation that the whole or, as the case may be, the part of that liability should be discharged or satisfied; or

- (b) the examiner authorises such payment.

(2) The Court may, on application being made to it in that behalf by the examiner or any interested party, authorise the discharge or satisfaction, in whole or in part, by the company concerned of a liability referred to in subsection (1) if it is satisfied that a failure to discharge or satisfy, in whole or in part, that liability would considerably reduce the prospects of the company or the whole or any part of its undertaking surviving as a going concern.

(3) Utility providers, including those providing electricity, telephone services, water, internet services, should be obliged to continue servicing the company provided they are being paid for any expenses created during the protection period:

Provided that, the expenses are considered, for the purposes of section 202AB as expenses which were duly incurred according to section 202IE.

Effect on receiver  
or provisional  
liquidator of order  
appointing  
examiner.

202I.-(1) Subject to the provisions of subsection (7) of section 202B, where, at the date of the presentation of a petition in relation to a company, a receiver stands appointed to the whole or any part of the property or undertaking of that company the Court may make such order as it thinks fit, including an order as to any or all of the following matters—

- (a) that the receiver shall cease to act as such from a date specified by the Court,
- (b) that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the Court,
- (c) directing the receiver to deliver all books, papers and other records, which relate to the property or undertaking of the company (or any part thereof) and are in his possession or control, to the examiner within a period to be specified by the Court,
- (d) directing the receiver to give the examiner full particulars of all his dealings with the property or undertaking of the company.

(2) Where, at the date of the presentation of a petition in relation to a company, a provisional liquidator stands appointed to that company, the Court may make such order as it thinks fit, including an order as to any or all of the following matters—

- (a) that the provisional liquidator be appointed as examiner of the company,
- (b) appointing some other person as examiner of the company,
- (c) that the provisional liquidator shall cease to act as such from the date specified by the Court,
- (d) directing the provisional liquidator to deliver all books, papers and other records, which relate to the property or undertaking of the company or any part of it and are in his possession or control, to the examiner within a period to be specified by the court,
- (e) directing the provisional liquidator to give the examiner full particulars of all his dealings with the property or undertaking of the company.

(3) The Court shall not make an order under paragraphs (a) or (b) of subsection (1) or paragraph (c) of subsection (2) unless the Court is satisfied that there is a reasonable prospect of the

survival of the company and the whole or any part of its undertaking, as a going concern.

(4) Where the Court makes an order under the provisions of subsection (1) or (2), it may include such conditions in the order and make such ancillary or other orders as it deems fit.

(5) Where a petition is presented under section 202A in respect of a company at a date subsequent to the presentation of a petition for the winding-up of that company, but before a provisional liquidator has been appointed or an order made for its winding-up, both petitions shall be heard together.

Disapplication of section 89 of the principal law to receivers in certain circumstances.

202IA.-(1) Without prejudice to the generality of subsection (1) of section 202I, the Court, on application being made in that behalf, may, in relation to a receiver who stands appointed to the whole or any part of the property or undertaking of a company, make an order providing that section 89 shall not apply in respect to payments made by the receiver out of assets coming into his hands as such receiver, if—

- (a) (i) an examiner has been appointed to the company, or
  - (ii) an examiner has not been appointed to the company but, in the opinion of the Court, such an appointment may yet be made, and
- (b) the making of the order would, in the opinion of the Court, be likely to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern.

(2) An order under subsection (1) shall not be made without each creditor of the company being afforded an opportunity to be heard:

Provided that, for the purposes of the present section, “creditor” means a creditor, any of the debts owed to whom by the company are debts which in the event of appointment of a receiver/manager or in a winding-up are, by virtue of the provisions of sections 89 and 300, respectively relating to preferential payments, required to be paid in priority to all other debts.

Powers of an examiner.

202IB.-(1) Any provision of the present Law or any other Law relating to the rights and powers of an auditor of a company and the supplying of information to and co-operation with such auditor shall, with the necessary modifications, apply to an examiner.

(2) Notwithstanding any provision of the present Law relating to notice of general meetings, an examiner shall have power to

convene, set the agenda for, and preside at meetings of the board of directors and general meetings of the company to which he is appointed and to propose motions or resolutions and to give reports to such meetings.

(3) An examiner shall be entitled to reasonable notice of, to attend and be heard at, all meetings of the board of directors of a company and all general meetings of the company to which he is appointed.

(4) For the purpose of subsection (3) “reasonable notice” shall be deemed to include a description of the business to be transacted at any such meeting.

(5)(a) The examiner shall have power to take steps in accordance with paragraph (b) of this subsection where he becomes aware of any actual or proposed act, omission, course of conduct, decision or contract, by or on behalf:

- (i) of the company to which he has been appointed,
- (ii) of its officers, employees, members or creditors, or
- (iii) of any other person,

in relation to the income, assets or liabilities of that company which, in his opinion, is or is likely to be to the detriment of that company, or any interested party.

(b)The examiner shall, subject to the rights of parties acquiring an interest in good faith and for value in such income, assets or liabilities, have full power to take whatever steps are necessary to halt, prevent or rectify the effects of such act, omission, course of conduct, decision or contract.

(6) Save as otherwise provided in section 202KA and without prejudice to subsection (7), nothing in this section shall enable an examiner to repudiate a contract that has been entered into by the company prior to the period during which the company is under the protection of the Court.

(7) Save as otherwise provided in the provisions of section 202KA a provision referred to in subsection (8) shall not be binding on the company at any time after the service of the notice under this subsection and before the expiration of the period during which the company concerned is under the protection of the Court, if the examiner is of the opinion that the provision, were it to be enforced, would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern and he serves a notice on the other party or parties to the agreement in which the provision is

contained informing him or them of that opinion.

(8) Any reference to the term “provision” in subsection (7) shall mean a provision of an agreement entered into by the company concerned and any other person or persons at any time, including a time that is prior to the period during which the company is under the protection of the Court, that provides that the company shall not, or shall not otherwise than in specified circumstances—

(a) borrow moneys or otherwise obtain credit from any person other than the said person or persons, or

(b) create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole or any part of the property or undertaking of the company.

(9) The examiner may apply to the Court to determine any question arising in the course of his office, or for the exercise in relation to the company of all or any of the powers which the Court may exercise according to the provisions of this Law, upon the application to it of any member, contributory, creditor or director of a company.

(10) The examiner shall, if so directed by the Court, have power to ascertain and agree claims against the company to which he has been appointed.

Production of documents and evidence.

2021F.-(1) It shall be the duty of all officers and agents of a company or a related company to which an examiner has been appointed to—

(a) produce to the examiner all books and documents of, or relating to, any such company which are in their custody or power;

(b) attend before the examiner when required by the examiner so to do; and

(c) otherwise give to the examiner all assistance in connection with the examiner’s functions which they are reasonably able to give.

(2) If the examiner considers that a person other than an officer or agent of any foregoing company, is or may be in possession of any information concerning the company’s affairs, the examiner may require that person to —

(a) produce to the examiner any books or documents in his custody or power relating to the company;



- (b) attend before the examiner; and
- (c) otherwise give to the examiner all assistance in connection with the examiner's functions which that person is reasonably able to give,

and it shall be the duty of that person to comply with the requirement.

(3) If the examiner has reasonable grounds for believing that a director, or past director, of any such company maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Republic or elsewhere, into or out of which there has been deposited or withdrawn—

- (a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement particulars of which have not been disclosed in the accounts of any company for any financial year as required by law; or
- (b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that director constituted misconduct whether fraudulent or not towards that company or its members;

the examiner may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account:

Provided that, for the purposes of this subsection "bank account" includes an account with any person with which deposits of money may have been exempt by virtue of subsection (3) of section 3 of the Credit Institutions Business Law, from the definition of "deposit".

(4) An examiner may examine, either orally or on the basis of a written questionnaire, the officers and agents of such company or other person as is mentioned in subsection (1) or (2) in relation to its affairs:

Provided that, the examiner may record in writing the answers of such person and require him to sign the document in which his answers have been recorded by the examiner.

(5) If any officer or agent of such company or other person—

- (a) refuses to produce to the examiner any book or document which it is his duty under this section to produce, or

(b) refuses to attend before the examiner when requested to do so, or

(c) refuses to answer any question which is put to him by the examiner with respect to the affairs of the company,

the examiner may certify the refusal under his hand to the Court, and the Court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the said officer, agent or other person or any statement which may be offered in defence, make any order or direction it thinks fit:

Provided that for the purposes of this subsection, the expression “agent” in relation to a company shall have the same meaning as in section 313.

(6) Without prejudice to the generality of subsection (5), the Court may, after a hearing under the said subsection (5), give directions—

(a) to the person concerned to attend or re-attend before the examiner or produce particular books or documents or answer particular questions put to him by the examiner, or

(b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the examiner.

Further powers of Court.

2021A.-(1) Where it appears to the Court, on the application of the examiner, that, having regard to the matters referred to in subsection (2), it is just and equitable to do so, it may make an order that all or any of the functions or powers which are vested in or exercisable by the directors whether by virtue of the memorandum or articles of association of the company or by law or otherwise shall be performable or exercisable only by the examiner.

(2) The matters to which the Court is to have regard for the purpose of subsection (1) are—

(a) that the affairs of the company are being conducted, or are likely to be conducted, in a manner which is calculated or likely to prejudice the interests of the company or of its employees or of its creditors as a whole, or

(b) that it is expedient, for the purpose of preserving the assets of the company or of safeguarding the interests of the company or of its employees or of its creditors as a whole, that the carrying on of the business of the company by, or the exercise of the powers of, its directors or management should be curtailed or regulated in any particular respect, or

(c) that the company, or its directors, have resolved that such an

order should be sought, or

(d) any other matter in relation to the company the Court thinks relevant.

(3) Where the Court makes an order under subsection (1), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it sees fit.

(4) Without prejudice to the generality of subsections (1) and (3), an order under this section may provide that the examiner shall have all or any of the powers that he would have if he were a liquidator appointed by the court in respect of the Company.

Incurring of certain liabilities by examiner.

202IE.-(1) Where an order is made under this Law for the winding-up of the company or a receiver is appointed, any liabilities incurred by the company during the protection period which are referred to in subsection (2) shall be treated as expenses properly incurred, for the purpose of section 202LB, by the examiner.

(2) The liabilities referred to in subsection (1) are those certified by the examiner at the time they are incurred, to have been incurred in circumstances where, in the opinion of the examiner, the survival of the company as a going concern during the protection period would otherwise be seriously prejudiced.

(3) In this section, “protection period” means the period, beginning with the appointment of an examiner, during which the company is under the protection of the Court.

Power to deal with charged property.

202IET.-(1) Where, on an application by the examiner, the Court is satisfied that the disposal with or without other assets of any property of the company which is subject to a security which, as created, was a floating charge or the exercise by the examiner of his powers in relation to such property would be likely to facilitate the survival of the whole or any part of the company as a going concern, the Court may by order authorise the examiner to dispose of the property, or exercise his powers in relation to it, as the case may be, as if it were not subject to the security.

(2) Where, on an application by the examiner, the court is satisfied that the disposal with or without other assets of—

(a) any property of the company subject to a security other than a security to which subsection (1) applies, or

(b) any goods in the possession of the company under a hire-purchase agreement,

would be likely to facilitate the survival of the whole or any part of the company as a going concern, the Court may by order authorise the examiner to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Where property is disposed of under subsection (1), the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(4) It shall be a condition of an order under subsection (2) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(5) Where a condition imposed in pursuance of subsection (4) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of subsection (4) applies, the sums mentioned in that paragraph to be applied towards the sums secured by those securities in the order of their priorities.

(6) A copy of an order under subsection (1) or (2) in relation to a security shall, within seven (7) days after the making of the order, be delivered by the examiner to the registrar of companies.

(7) If the examiner without reasonable excuse fails to comply with the provisions of subsection (6), he is guilty of an offence and in case of conviction shall be liable to a fine not exceeding five thousand euro (€5,000).

(8) References in this section to a “hire-purchase agreement” include a conditional sale agreement, a retention of title agreement and an agreement for the bailment of goods which is capable of subsisting for more than three (3) months.

202IZ.-(1) Where a petition has been presented according to section 202A, notice of the petition shall, within three (3) days after the date of its presentation, be delivered by the petitioner to the registrar and any other interested party.

(2) An examiner shall, within twenty-one (21) days after the date of the examiner's appointment, cause to be published in the Gazette a notice of his appointment and the date of that appointment.

(3) Within three (3) days from his appointment, the examiner delivers to the registrar of companies and the Department of Lands and Surveys a copy of the order of his appointment. The registrar of companies keeps a public record published in the official website of the Department of Registrar of Companies and Official Receiver in which the companies for which petitions have been filed for the appointment of an examiner or/and for which an examiner has been appointed are listed.

(4) Where a company is, by virtue of section 202H under the protection of the Court, every invoice, order for goods or business letter issued by or on behalf of the company, being a document on or in which the name of the company appears, shall, immediately after the mention of that name, include the words "**under EXAMINATION** according to the provisions of the Companies Law".

(5) The website of a company that is under the protection of the Court, and any electronic mail sent to a third party by, or on behalf of, such a company, shall immediately after the mention of that name, include the words "**under EXAMINATION** according to the provisions of the Companies Law" and such a statement shall be in a prominent and easily accessible place of the website.

(6) In subsection (5) the reference to "third party" means a person other than —

(a) an officer or employee of the company concerned; or

(b) a holding company or subsidiary of the company or an officer or employee of that holding company or subsidiary.

(7) A person who fails to comply with the provisions of subsection (1), (2), (3) or (4) shall be guilty of an offence and on conviction he shall be liable to a fine not exceeding five thousand euro (€5,000).

(8) If default is made in complying with the requirement under subsection (5) concerning the company's website, the company concerned and any officer of it who is in default shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five thousand euro (€5,000).

(9) If the company or any person acting on its behalf, fails in

complying with the requirement under subsection (5) concerning electronic mail, then —

(a) in every case, the company and any officer of it who is in default; and

(b) where the default is made by a person acting on the company's behalf, that person,

shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five thousand euro (€5,000).

General provisions  
in relation to  
examiners

202IH.-(1) The Court may remove the examiner on reasonable grounds.

(2) In case an examiner resigns or if for any reason a vacancy occurs in the office of examiner, the Court may by order fill the vacancy.

(3) An application for an order under subsection (2) may be made by—

(a) any committee of creditors established under section 202KB or

(b) the company, or

(c) any interested party.

(4) The examiner is described as “the examiner” of the particular company in respect of which he is appointed and not by his personal name.

(5) The acts of an examiner shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(6) An examiner shall be personally liable on any contract entered into by him in the performance of his functions whether such contract is entered into by him in the name of the company or in his own name as examiner or otherwise unless the contract provides that he is not to be personally liable on such contract, and he shall be entitled in respect of that liability to indemnity out of the assets:

Provided that nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(7) A company to which an examiner has been appointed or an interested party may apply to the Court for the determination of any question arising out of the performance or otherwise by the examiner of his functions.

Examiner's Report

202IΘ.-(1) The examiner shall—

(a) as soon as practicable after he is appointed, formulate proposals for a compromise or scheme of arrangement in relation to the company concerned,

(b) without prejudice to any other provision of this Law, carry out such other duties as the Court may direct him to carry out.

(2) Notwithstanding any provision of the present Law relating to notice of general meetings, but subject to notice of not less than three (3) days in any case, the examiner shall convene and preside at such meetings of members and creditors as he thinks proper, for the purpose of section 202KΔ and shall report on those proposals to the Court, within sixty (60) days of his appointment or such longer period as the Court may allow.

(3) Where, on the application of the examiner, the Court is satisfied that the examiner would be unable to report to the Court within the period of four (4) months referred to in subsection (1) of section 202H but that he would be able to make a report if that period were extended, the Court may by order extend that period by not more than sixty (60) days to enable him to do so.

(4) Where the examiner has submitted a report under this section to the court and, but for this subsection, the period mentioned in subsection (1) of section 202H and any extended period allowed under subsection (3) would expire, the Court may, of its own motion or on the application of the examiner, extend the period concerned by such period as the Court considers necessary to enable it to take a decision under section 202KE.

(5) The examiner shall supply a copy of his report under this section—

(a) to the company concerned on the same day as he causes the report to be delivered to the office of the court, and

(b) to any interested party on written application being made to him in that behalf.

(6) The Court may, on application to it, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.

(7) If the examiner is not able to enter into an agreement with the interested parties and any other persons concerned in the matter or formulate proposals for a compromise or scheme of arrangement in relation to the company concerned, he may apply to the court for the grant of directions in the matter and the Court may, on such application, give such directions or make such order as it deems fit, including, if it considers it just and equitable to do so, an order for the winding-up of the company.

Contents of the  
examiner's report

202K. An examiner's report under section 202I $\Theta$  shall include—

- (a) the proposals placed before the required meetings,
- (b) any modification of those proposals adopted at any of those meetings,
- (c) the outcome of each of the required meetings,
- (d) the recommendation of the committee of creditors, if any,
- (e) a statement of the assets and liabilities including contingent and prospective liabilities of the company as at the date of his report,
- (f) a list of the creditors of the company, the amount owing to each such creditor, the nature and value of any security held by any such creditor, and the priority status of any such creditor under section 300 of the or any other provision of the law,
- (g) a list of the officers of the company,
- (h) his recommendations,
- (i) evidence of publications actually made in accordance with the provisions of section 202 $\Lambda$  $\Gamma$ ,
- (j) evidence of notifications made to the registrar,
- (k) such other matters as the examiner deems appropriate or the court directs.

Repudiation of  
certain contracts.

202KA.-(1) Where proposals for a compromise or scheme of arrangement are to be formulated in relation to a company, the company may, following the approval of the Court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the company and the other contracting party.

(2) Any person who suffers loss or damage as a result of such



repudiation shall stand as an unsecured creditor for the amount of such loss or damage.

(3) In order to facilitate the formulation, consideration or confirmation of a compromise or scheme of arrangement, the Court may hold a hearing and make an order determining the amount of any such loss or damage and the amount so determined shall be due by the company to the creditor as a judgment debt.

(4) Where the examiner is not a party to an application to the Court for the purposes of subsection (1), the company shall serve notice of such application on the examiner and the examiner may appear and be heard on the hearing of any such application.

(5) Where the Court approves the affirmation or repudiation of a contract under this section, it may in giving such approval make such orders simultaneously as it thinks fit for the purposes of giving full effect to its approval including orders as to notice to, or declaring the rights of, any party affected by such affirmation or repudiation.

Appointment of  
creditors'  
committee.

202KB.-(1) An examiner may, and, the Court shall, on an application to it, direct the examiner to, appoint a committee of creditors to assist him in the performance of his functions.

(2) Save as otherwise directed by the Court, a committee appointed under subsection (1) shall consist of not more than five (5) members and shall include the holders of the three (3) largest unsecured claims who are willing to serve or their duly appointed representatives.

(3) The examiner shall provide the committee with a copy of any proposals for a compromise or scheme of arrangement and the committee may express an opinion on the proposals on its own behalf or on behalf of the creditors or classes of creditors represented thereon.

(4) As soon as practicable after the appointment of a committee under subsection (1) the examiner shall meet with the committee to transact such business as may be necessary.

Proposals for  
compromise or  
scheme of  
arrangement.

202KF.-(1) Proposals for a compromise or scheme of arrangement shall—

(a) specify each class of members and creditors of the company,

(b) specify any class of members and creditors whose interests or claims will not be impaired by the proposals,

- (c) specify any class of members and creditors whose interests or claims will be impaired by the proposals,
- (d) provide equal treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to less favourable treatment,
- (e) provide for the implementation of the proposals,
- (f) if the examiner considers it necessary or desirable to do so to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern, specify whatever changes should be made in relation to the management or direction of the company,
- (g) if the examiner considers it necessary or desirable to do so to specify whatever changes should be made in the memorandum and articles of the company either in relation to the management or direction of the company, or otherwise,
- (h) if the examiner considers appropriate, he may include a controlled full or partial turning in to cash of assets of the company, free of liens and other encumbrances attaching to the proceeds or otherwise, as the Court may direct, the restructuring of long term debts of the company, conversion of short term debt to long term debt or equity, means of managing open contracts, means of resolving disputes, and such other matter.
- (i) Insofar as it is practicable provided the primary objective ensuring the survival of the company as a going concern is not undermined provide for appropriate alternatives to the company disposing an interest in or ceasing to use as a main premise the business premises, in order to protect the business premises of the company, taking into account the costs likely to be incurred by the company by continuing to use the business premises, the company's statement of affairs and the ability of any interested party to contribute to the costs:

Provided that for the purposes of this subsection, "business premises" mean the premises used by the company as the principal place of accommodation and conduct of their business ventures, which are necessary for the continued operation of the business.

(2) A statement of the assets and liabilities, including contingent and prospective liabilities of the company as at the date of the proposals shall be attached to each copy of the

proposals to be submitted to meetings of members and creditors under section 202K.

(3) There shall also be attached to each such copy of the proposals a description of the estimated financial outcome in case of a proposed winding-up of the company for each class of members and creditors.

(4) The Court may direct that the proposals include whatever other provisions it deems fit.

(5) For the purposes of this section and sections 202KE and 202KΣΤ, a creditor's claim against a company is impaired if he receives less in payment of his claim than the full amount due in respect of the claim at the date of presentation of the petition for the appointment of the examiner.

(6) For the purposes of this section and sections 202KE and 202KΣΤ, the interest of a member of a company in a company is impaired if—

(a) the nominal value of his shareholding in the company is reduced,

(b) where he is entitled to a fixed dividend in respect of his shareholding in the company, the amount of that dividend is reduced,

(c) he is deprived of all or any part of the rights accruing to him by virtue of his shareholding in the company,

(d) his percentage interest in the total issued share capital of the company is reduced, or

(e) he is deprived of his shareholding in the company.

Consideration by members and creditors of proposals.

202KΔ.-(1) This section applies to a meeting of members or creditors or any class of members or creditors summoned to consider proposals for a compromise or scheme of arrangement; save where expressly provided otherwise in this section, this section shall not authorise, at such a meeting, anything to be done in relation to such proposals by any member or creditor.

(2) At a meeting to which this section applies, a modification of the proposals may be put to the meeting but may only be accepted with the consent of the examiner.

(3) Proposals shall be deemed to have been accepted by a meeting of creditors or of a class of creditors when a majority in value of creditors or class of creditors represented at that meeting have voted, either in person or by proxy, in favour of the resolution for

the proposals.

(4) Nothing in subsection (3) shall, in the case of a creditor who abstains from voting, or otherwise fails to cast a vote, in respect of the proposals, be construed as permitting such an abstention or failure to be regarded as a casting by that person of a vote against the proposals.

(5) (a) Where a governmental authority is a creditor of the company, such authority shall be entitled to accept proposals under this section notwithstanding—

(i) that any claim of such authority as a creditor would be impaired under the proposals, or

(ii) any other enactment.

(b) In this subsection, “governmental authority” means the Republic, the Government or the Tax Commissioner, or any municipal or local authority in the Republic.

(6) Section 138 shall apply to any resolution to which subsection (4) relates which is passed at any adjourned meeting.

(7) Subsections (2) to (5) of section 199 shall, with the necessary modifications, apply to meetings held under this section.

(8) With every notice summoning a meeting to which this section applies which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or scheme of arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise and the effect thereon of the compromise or arrangement, insofar as it is different from the effect on the like interest of other persons.

Confirmation of proposals.

93(I) of 1996  
69(I) of 1999  
95(I) of 2007  
136(I) of 2014

160(I) of 1999  
141(I) of 2014  
66(I) of 2015

202KE.-(1) Upon receipt of the report of the examiner according to the provisions of section 202IΘ by the Court, this is examined the soonest practicable, taking into consideration the provisions of the Unfair Terms in Consumer Contracts Law and the Freedom of Interest Rate and Relative Matters Law.

(2) The following persons may appear and be heard at a hearing under subsection (1)—

- (a) the company,
- (b) the examiner,
- (c) any creditor or member whose claim or interest is impaired if the proposals were implemented,
- (d) any interested party.

(3) Subject to the provisions of the present section and section 202KΣΤ, the Court may, as it thinks proper, confirm, or confirm subject to modifications, or refuse to confirm the proposals as provided in subsection (1):

Provided that the Court in deciding whether to confirm, confirm subject to modifications or refuse the proposals may take in to consideration whether the proposals are just and equitable, would lead to the continuation of the operations of the company, would save employment positions bearing always in mind that the company's creditors should not find themselves in a more disadvantageous position as compared to the position in which they would have been had the company gone into winding-up.

(4) The Court shall not confirm any proposals unless—

(a) at least one class of creditors whose interests or claims would be impaired by implementation of the proposals has accepted the proposals; and

(b) the Court is satisfied that—

(i) 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 implementation; and

(ii) the proposals are not unfairly prejudicial to the interests of any interested party,

and in any case shall not confirm any proposals if the sole or primary purpose of them is the avoidance of payment of tax due.

(5) Without prejudice to the provisions of subsection (4), the Court shall not confirm any proposals in respect of a company to which an examiner has been appointed under section 202ΣΤ if the proposals would have the effect of impairing the interests of the creditors of the company in such a manner as to favour the interests of the creditors or members of any company to which it is related, being a company to which that examiner has been appointed examiner under section 202A or, as the case may be,

section 202ΣΤ.

(6) Where the Court confirms proposals (with or without modification), the proposals shall be binding on all the members or class or classes of members, as the case may be, affected by the proposal and also on the company.

(7) Where the Court confirms proposals, with or without modification, the proposals shall, notwithstanding the provisions of any other Law, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the proposals in respect of any claim or claims against the company and any person other than the company who, under the provisions of any Law, is liable for all or any part of the debts of the company.

(8) Any alterations in, additions to or deletions from the memorandum and articles of the company which are specified in the proposals shall, after confirmation of the proposals by the Court and notwithstanding any other provisions of the present Law, take effect from a date fixed by the Court.

(9) Where the Court confirms proposals under this section it may make such orders for the implementation of its decision as it deems fit.

(10) A compromise or scheme of arrangement, proposals for which have been confirmed under this section shall come into effect from a date fixed by the Court, which date shall be not later than thirty (30) days from the date of their confirmation.

(11) On the confirmation of proposals a copy of any order made by the Court under this section shall be delivered by the examiner, or by such person as the Court may direct, to the registrar of companies for registration.

(12) Where-

(a) The Court refuses to confirm proposals under this section, or

(b) the report of an examiner under section 202IΘ concludes that, following the required meetings of creditors of a company under this Law, it has not been possible to reach agreement on a compromise or scheme of arrangement,

the Court may, if it considers it just and equitable to do so, make an order for the winding up of the company, or any other order as it deems fit.

(13) Notwithstanding the provisions of subsection (4), or any other provision of this Law, nothing in this Law shall prevent the examiner from including in a report under section 202IΘ

proposals which will not involve the impairment of the interests of members or creditors of the company, nor the Court from confirming any such proposals.

Objection to confirmation by court of proposals

202ΚΣΤ.-(1) At a hearing under section 202ΚΕ a member or creditor whose interest or claim would be impaired by the proposals may object in particular to their confirmation by the Court on any of the following grounds—

- (a) that there was some material irregularity at or in relation to a meeting to which section 202ΚΔ applies,
- (b) that acceptance of the proposals by the meeting was obtained by improper means,
- (c) that the proposals were put forward for an improper purpose,
- (d) that the proposals unfairly prejudice the interests of the objector.

(2) Any person who voted to accept the proposals may object to their confirmation by the Court only on the grounds—

- (a) that such acceptance was obtained by improper means, or
- (b) that after voting to accept the proposals he became aware that the proposals were put forward for an improper purpose.

(3) Where the Court upholds an objection under this section, the Court may make such order as it deems fit, including an order that the decision of any meeting be set aside and an order that any meeting be reconvened.

Provisions in relation to guarantees and evaluation of the property subject to security.

Cap. 149.  
22(I) of 1995  
99(I) of 2013  
197(I) of 2003  
8(I) of 2004  
7(I) of 2006  
58(I) of 2015

202ΚΖ.-(1) Subject to the provisions of paragraph (f) of subsection (2) of section 202Η and notwithstanding the provisions of the Contracts Law and the Protection of Certain Categories of Guarantors Law, in relation to the liability of any guarantor, the following provisions apply:

(2) In case the guarantor is-

- (a) a company or other legal entity,
- (b) a natural person who, at the time of entering into the agreement for guarantee had or undertook liability for an amount exceeding five hundred thousand euro (€500.000),

the provisions of subsections (3) and (4) of the present section apply.

(3) (a) Notwithstanding the provisions of subsection (6) of section 202KE, subject to the provisions of paragraph (b) and except where the contrary is provided in an agreement between the guarantor and the person in against whom the guarantor is liable in relation to the debt (herein after referred to in this subsection as “the creditor”), this liability is not affected by the fact that the debt is subject to a compromise or scheme of arrangement which has been enforced according to subsection (9) of section 202KE.

(b) In case the guarantor is a company to which an examiner has been appointed, the provisions of the present subsection shall not apply.

(c) In case the creditor proposes to take judicial or legal or other measures against the guarantor in relation to the guarantee, then-

(i) the creditor-

(I) if, before the day on which such general meeting shall take place, a notice of fourteen (14) days for a general meeting has been given according to section 202KΔ for the examination of the proposals, or

(II) if a notice less than fourteen (14) days for such general meeting, not later than forty eight (48) hours after the creditor shall receive the notice for such general meeting,

serves a notice to the guarantor which includes a written offer by the creditor for the transfer of any rights, as determined in section 202KΔ, to the extent that they are connected to the debt, to vote in relation to the proposals for compromise or scheme of arrangement in relation to the company,

(ii) if the said offer is accepted by the guarantor and if the guarantor presents to the examiner, during the relevant general meeting, a copy of the offer and informs the examiner that he has accepted it, then the examiner is authorised to exercise the said rights of the creditor without the need for any assignment or the execution of any other document,

(iii) if the creditor fails to make the offer according to sub paragraph (ii), then, subject to the provisions of sub paragraph (iv) the creditor may not take judicial or legal



or other measures against the guarantor in relation to the guarantee,

- (iv) sub paragraph (iii) does not apply if a compromise or scheme of arrangement in relation to the company does not take effect according to subsection (9) of section 202KE and the creditor has been granted leave by the Court to take judicial or legal or other measures against the guarantor in relation to the guarantee:

Provided that neither the said transfer nor any vote cast by the guarantor in relation to the said transfer shall affect the right of the creditor to object to the proposals according to section 202KΣT.

- (4) (a) The present subsection takes effect in case the guarantor proceeds with a payment towards the creditor in relation to the liability, after the expiration of the period of protection.

(b) In case the present subsection comes into effect, any amount, if payment has not been made according to the provisions of paragraph (a), which would have been payable to the creditor in relation to the debt, according to a compromise or scheme of arrangement put into effect according to subsection (9) of section 202KE in relation to the company, becomes and is payable to the guarantor under the same terms and conditions as provided by the compromise or scheme of arrangement provided that it would be payable to the creditor.

- (5) In cases the guarantor is a natural person other than that provided in paragraph (b) of subsection (2) of the present section, the provisions of subsections (6) to (22) of the present section apply.

(6) (a) For the purposes of the present section “declaration of guarantors” means a declaration by the creditor which includes the names of all the guarantors that are liable in relation to the debt of the company and the extent of the liability arising according to the guarantee agreement, at the date of the declaration of guarantors.

(b) In case of a secured creditor, the declaration of guarantors includes additionally all information regarding-

- (i) the evaluation of the market value of the property subject to the security determined according to the procedure of subsection (23) of the present section:

Provided that, in case the property is subject to more than one securities, the value of the property subject to security for the purposes of the declaration of guarantors of each

9 of 1965  
51 of 1970  
81 of 1970  
3 of 1978  
6 of 1981  
181(I) of 2002  
59(I) of 2006  
122(I) of 2007  
52(I) of 2008  
26(I) of 2010  
120(I) of 2011  
142(I) of 2014  
197(I) of 2014  
4(I) of 2015  
27(I) of 2015  
32(I) of 2015  
42(I) of 2015  
46(I) of 2015

secured creditor shall be the value which the said secured creditor expects to receive from the disposal of the said property, taking also into consideration the priority of the rights of the other secured creditors for whom the said property is subject to security, as determined by the provisions of the Transfer and Mortgage Law.

(ii) The amount of the due debt of the company to the particular secured creditor on the date of the declaration of guarantors (in the present section referred to as “the due debt”).

(7) (a) A creditor submits the declaration of guarantors by double registered letter or serves it upon the examiner within thirty five (35) days from the date of publication of the appointment of the examiner in the Gazette. Following a duly justified application by the creditor, the time period of thirty five (35) days may be extended by the examiner who, if necessary, submits an application according to the provisions of section 202IΘ of the present Law for extension of the period of protection.

(b) The creditor is obliged to submit or serve the declaration of guarantors within the time period determined and in case the creditor does not submit or serve the declaration of guarantors within the period set, he shall not be entitled to take judicial, legal or other measures against the guarantor in relation to the guarantee.

(c) The examiner examines the declaration of guarantors immediately and the latest within five (5) days accepts or rejects in writing the declaration of guarantors. If he rejects the declaration of guarantors, he shall mention in writing the reasons for the rejection.

(d) The creditor notifies the guarantors in relation to the declaration of guarantors and the acceptance or rejection by the examiner by virtue of paragraph (c) of the present subsection:

Provided that the above notification does not constitute a notification for payments to be made by the guarantor and does

not affect the right of any creditor, guarantor or the company to appear and be heard in Court according to section 202KE.

(8) In case the value of the property subject to security according to the declaration of guarantors is equal or exceeds the value of the debt due, the secured creditor may not take judicial, legal or other measures against the guarantor in relation to the guarantee when the compromise or scheme of arrangement comes into effect according to subsection (10) of section 202KE.

(9) In case the value of the property subject to security according to the declaration of guarantors is lower than the value of the debt due of the company at the date of the declaration of guarantors, the secured creditor cannot take judicial, legal or other measures against the guarantor in relation to the guarantee for an amount higher than the amount of the difference between the value of the property subject to the security and the amount of the debt due, as these are included in the declaration of guarantors.

(10) (a) In case the provisions of subsection (9) apply, the amount of the difference between the value of the property subject to the security and the amount of the debt due, is classified as an unsecured debt for the purposes of a compromise or scheme of arrangement and the respective creditor shall receive possible payments as an unsecured creditor *pari passu* with other unsecured creditors.

(b) Notwithstanding the provisions of paragraph (a) of the present subsection, in case the property of the company subject to security is disposed of and the net amount of the disposal is greater than the amount of the evaluation of the property subject to security, then the secured creditor is entitled to take judicial or legal or other measures against the guarantor only for the amount of the difference between the net amount of the disposal and the due debt:

Provided that, the amount of the difference between the net amount of the disposal and the due debt is classified as an unsecured debt for the purposes of a compromise or scheme of arrangement and the respective creditor shall receive possible payments as an unsecured creditor *pari passu* with other unsecured creditors:

Provided further that, in case the guarantor has made any payments on the amount of the difference between the market value of the said property and the due debt before the disposal of the said property and the net amount that finally resulted from such a disposal is higher than the market value of the property, then the secured creditor is obliged to return to the guarantor any amount he paid exceeding the difference between the amount

that finally resulted from the net amount of the disposal of the property and the due debt.

(11) Possible apportionment of liabilities by the creditor between the guarantors whose names appear on the declaration of guarantors is done by applying the principle of equal treatment, the principle of transparency and according to the principles of equity.

(12) (a) The guarantors may pay amounts on a monthly basis in relation to their liability arising from the guarantee, and no guarantor shall pay an amount exceeding the amount remaining after the deduction from their monthly income of the total of-

65(I) of 2015

(i) reasonable living expenses according to the Insolvency of Natural Persons (Personal Repayment Schemes and Debt Relief Order) Law of 2015, and

(ii) the total of the monthly instalments the same guarantor is obliged to pay in relation to his own liabilities when the compromise or scheme of arrangement comes into effect:

62(I) of 2015

Provided that sub paragraph (ii) applies only to guarantees which existed before the date of entry into force of the Companies (Amendment) (No.2) Law of 2015.

(b) In cases where guarantors pay amounts on a monthly basis in relation to their liability arising from the respective guarantee, the total duration of the monthly instalments shall be the same as that determined at the initial agreement between the company and the creditor, unless the interested parties agree differently and the interest rate shall not be higher than that provided in the said initial agreement.

62(I) of 2015

(13) The provisions of subsection (12) apply only for a period of three (3) years from the date of entry into force of the Companies (Amendment) (No.2) Law of 2015 and apply only in relation to a compromise or scheme of arrangement set up for the purpose of restructuring the debts for which guarantee agreement were entered into before the date of entry into force of the Companies (Amendment) (No.2) Law of 2015:

62(I) of 2015

Provided that, the provisions of the present subsection continue to be in effect for the whole duration of the monthly instalments the payment of which commenced within three (3) years from the date of entry into force of the Companies (Amending) (No.2) Law of 2015 notwithstanding whether the total duration of the monthly instalments exceeds the relevant period of three (3) years.

(14) The total of any lump sum payments and the net present

value of a series of payments made by the guarantor as well as possible payments made by the company for unsecured debts within the framework of a compromise or scheme of arrangement cannot exceed the amount of:

- (a) The difference between the value of the property subject to security and the amount of the secured debt, in case the amount of the value of the property subject to security is lower than the amount of the due debt, in case of a secured creditor, or
- (b) the total debt in the declaration of guarantors, in case of an unsecured creditor:

Provided that, in case of payment by the guarantor of a lump sum, any payments made by the company to the creditor under the compromise or scheme of arrangement are taken into consideration.

(15) Notwithstanding the provisions of any other Law, no court action relating to a guarantee in relation to a debt is filed by a creditor against a guarantor after a period of two (2) years from the day the compromise or scheme of arrangement comes into effect.

(16) In case any guarantor has paid, to a creditor, the full amount deriving as a result of applying subsection (9) of the present section, by virtue of the present section, such guarantor, upon making such payment is classified as an unsecured creditor for an amount equal to the amount of the said payment and has all the rights of an unsecured creditor against the company and his claims have the same priority as those of the other unsecured creditors.

(17) Notwithstanding the provisions of any other Law, no court action by a guarantor against the company or any other co-guarantor in relation to a debt may be filed after the period of three (3) years from the date of payment by the guarantor to the creditor in relation to a debt of the company.

(18) Every guarantor included in a declaration of guarantors shall be kept informed by the examiner in relation to the ability of the company to pay its debts.

(19) In case the company fails to proceed with payments according to the compromise or scheme of arrangement, a creditor cannot take judicial or legal or other measures against the guarantor in relation to the guarantee, to the extent where the said debt constitutes a secured debt, according to the provisions of the present section.

(20) In case the company fails to proceed with payments

according to the compromise or scheme of arrangement, the guarantor is liable for the amount of the difference between the value of the property subject to security and the amount of the debt due, in case of a secured creditor and if the amount of the value of the property subject to security is less than the amount of the debt due, or the total debt in the declaration of guarantors, in case of an unsecured creditor, not including any amounts settled by the company or the guarantor.

(21) If a compromise or scheme of arrangement has not come into effect by virtue of the provisions of section 202KE, then the provisions of the present section cease to be in force.

(22) Each guarantor is summoned to be present at any meetings of the creditors by virtue of the provisions of the present Law, in the same manner that the creditors are summoned, and is called upon to submit observations on the proposals for a compromise or scheme of arrangement formulated by the examiner.

(23) (a) A secured creditor, within ten (10) days from the date of publication of the appointment of the examiner in the Gazette, submits to the examiner, the company and, where applicable, to a guarantor, a preliminary evaluation of the market value of the property subject to security.

(b) The latest within ten (10) days from the day of submission of the preliminary evaluation by the creditor, according to the provisions of paragraph (a), the examiner, the company and, where applicable, the guarantor, either:

(i) agree between them and the creditor as regards the market value of the property in which case the said evaluation is binding on all of them, or

(ii) they appoint an independent evaluator, or

(iii) apply to the Insolvency Service for the appointment of an independent evaluator.

(c) An independent evaluator appointed either by virtue of sub paragraph (ii) or by virtue of subparagraph (iii) of paragraph (b) of the present subsection, the latest within ten (10) days from his appointment, determines the market value of the property subject to security and the evaluation made by the said evaluator is binding on the company, the examiner, the secured creditor and, where applicable, the guarantor.

(d) The costs for the evaluation made by virtue of paragraph (c) are paid proportionally by the secured creditor, the examiner on behalf of the company and, where applicable, the guarantor:

Provided that, in case the examiner on behalf of the company or, where applicable, the guarantor, accept the preliminary evaluation of the market value of the property subject to security submitted by virtue of paragraph (a) of the present subsection by the secured creditor, he is exempted from the obligation to pay the costs for the evaluations.

Provided further that, the costs paid by the examiner by virtue of the present subsection, are considered expenses according to section 202AB of the present Law.

(24) For the purposes of the present section:

“market value” means the amount expected to be received if the property were to be disposed in the free market by a seller acting willingly to a buyer acting willingly.

“evaluator” means a licenced evaluator who is registered in the Register of Members of the Scientific Technical Chamber of Cyprus by virtue of the Scientific Technical Chamber of Cyprus Law.

224 of 1990  
106(I) of 1992  
15(I) of 1993  
53(I) of 1993  
44(I) of 1996  
34(I) of 1997  
15(I) of 2002  
24(I) of 2002  
221(I) of 2002  
19(I) of 2003  
151(I) of 2003  
105(I) of 2006  
61(I) of 2009  
101(I) of 2012  
167(I) of 2013  
100(I) of 201  
38(I) of 2015

“Insolvency Service” means the Insolvency Service as determined according to the provisions of the Insolvency Practitioners Law of 2015

64(I) of 2015

(25) Notwithstanding the provisions of the present section, a creditor cannot take judicial or legal or other measures against a guarantor in case the following conditions are collectively satisfied:

- (a) The guarantor is a natural person.
- (b) The balance between the assets and liabilities of the personal and professional property of the said guarantor, exempting his main residence, according to his capital statement pursuant to the Assessment and Collection of Taxes Law, does not exceed seven hundred and fifty thousand euro (€750.000), and

4 of 1978  
23 of 1978  
41 of 1978  
164 of 1987  
159 of 1988  
196 of 1989  
10 of 1991  
57 of 1991  
86(I) of 1994  
104(I) of 1995  
80(I) of 1999  
153(I) of 1999  
122(I) of 2002  
146(I) of 2004  
214(I) of 2004  
106(I) of 2005  
135(I) of 2005  
72(I) of 2008  
46(I) of 2009  
136(I) of 2010  
163(I) of 2012  
197(I) of 2012  
198(I) of 2012  
91(I) of 2013  
78(I) of 2014  
79(I) of 2014

(c) The said guarantor:

(i) at the time of entering into the guarantee agreement had or assumed responsibility according to the terms of the guarantee agreement for an amount of debt or liability of the company which is covered by a compromise or scheme of arrangement that has come into effect, not exceeding two hundred and fifty thousand euro (€250.000) and for which the business premises of the company are subject to a security, or

(ii) at the of entering into force of the present Law, has a liability according to the terms of the guarantee agreement for the balance of a debt or liability of the company, covered by a compromise or scheme of arrangement that has come into effect, not exceeding two hundred and fifty thousand euro (€250.000) and for which the business premises of the company are subject to a security:

Provided that, the provisions of the present subsection apply only for debts or liabilities of the company which, until the date of entry into force of the Companies (Amendment) (No. 2) Law of 2015, constituted loans which were considered as a non performing grant by virtue of the from time to time applicable Directive on the Definition of Non-Performing and Restructured Facilities issued by the Central Bank of Cyprus by virtue of section 41 of the Business of Credit Institutions Law and does not apply for debts or liabilities of the company for which guarantee agreements were entered into after the entry into force of the Companies (Amendment) (No. 2) Law of 2015.

62(I) of 2015

62(I) of 2015

202KH.-(1) Subject to the provisions of the Rent Control Law, proposals for a compromise or a scheme of arrangement, including any amendment of same by the Court according to the provisions



of section 202KE, cannot contain any provision providing one or all of the following:

Provisions in  
respect of leases

23(I) of 1983  
51(I) of 1983  
39(I) of 1984  
79(I) of 1986  
94(I) of 1986  
135(I) of 1988  
51(I) of 1989  
138(I) of 1991  
67(I) of 1992  
100(I) of 1992  
21(I) of 1993  
102(I) of 1995  
70(I) of 1999  
109(I) of 1999  
119(I) of 1999  
16(I) of 2001  
20(I) of 2001  
150(I) of 2002  
171(I) of 2003  
99(I) of 2006  
128(I) of 2007  
173(I) of 2013

(a) reduction in the amount of any rent or other periodical payment reserved under a lease of land that falls to be paid after the compromise or scheme of arrangement would take effect under subsection (9) of section 202KE or the complete extinguishment of the right of the lessor to any such payments

(b) in case of failure that relates to-

(i) to pay an amount of rent or make any periodical payment reserved under a lease of land, or

(ii) an obligation to any other agreement or an obligation arising from such lease, which must be paid or with which there must be compliance, after the date provided in paragraph (a),

a claim, according to which the lessee shall not exercise or shall exercise only under certain circumstances any right arising on the basis of the lease or any other arrangement in order to –

(I) repossess the respective land,

(II) cancel the lease or enter the land in another way,

(III) repossess the amount of such rent or other payment or claim damages or other remedy in relation to the failure to comply with such agreement or liability.

(2) Subject to the provisions of subsection (3), proposals for compromise or scheme of arrangement in relation to a company satisfy the condition set in subparagraph (ii) of paragraph (b) of subsection (4) of section 202KE, if the proposals include a provision related to a lease or any lease agreement in relation to property other than land and according to the opinion of the Court-

(a) the value of the said property is substantial, and

(b) the said provision has a similar result with a provision mentioned in paragraph (a) or (b) of subsection (1).

(3) Subsection (1) or (2) shall not apply if the lessor or owner of the property concerned has consented in writing to the inclusion of the provision referred to in subsection (1) or (2) in the proposals for the compromise or scheme of arrangement.

(4) In deciding, for the purposes of subsection (2), whether the value of the property concerned is substantial the matters to which the Court shall have regard, inter alia, to the length of the unexpired term of the lease or hiring agreement concerned.

202KΘ.-(1) Subject to section 202H, the protection deemed to be granted to a company under the said section 202H shall cease—

(a) on the coming into effect of a compromise or scheme of arrangement under this Law, or

(b) on such earlier date as the Court may direct.

(2) Where a company ceases to be under the protection of the Court, the appointment of the examiner shall terminate on the date of such cessation.

Cessation of protection of company and termination of appointment of examiner.

202Λ.-(1) The company or any interested party may, within one hundred and eighty (180) days after the confirmation of the proposals by the Court, apply to the Court for revocation of that confirmation on the grounds that it was procured by fraud and the Court, if satisfied that such was the case, may revoke that confirmation on such terms and conditions, particularly with regard to the protection of the rights of parties acquiring interests or property in good faith and for value in reliance on that confirmation, as it deems fit.

Revocation of confirmation

(2) As soon as practicable after the revocation under this section of such a confirmation, a copy of the order made by the Court shall be delivered to the registrar of companies by such person as the Court may direct.

202ΛA. A person shall not be qualified to be appointed or act as an examiner of a company if he would not be qualified to act as an advisor according to the provisions of the Insolvency Practitioners Law of 2015.

Qualification of examiners.

202ΛB.-(1) The court may from time to time make such orders as it thinks proper for payment of the costs of, and reasonable expenses properly incurred by, an examiner.

(2) Unless the Court otherwise orders, the costs and expenses of an examiner shall be paid out of the revenue of the business of the company to which he has been appointed, or the proceeds of realisation of the assets, including investments:

Costs and remuneration of examiners.

Provided that, the examiner shall be under an obligation to file in Court interim accounts as to his costs every two (2) months after his appointment.

(3) The costs and expenses of an examiner which have been sanctioned or reduced by order of the Court, other than the expenses referred to in subsection (4), shall be paid in full and shall be paid before any other claim, secured or unsecured, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.

(4) Liabilities incurred by the company to which an examiner has been appointed that, by virtue of subsection (1) of section 202IE, are treated as expenses properly incurred by the examiner shall be paid in full and shall be paid before any other claim, including a claim secured by a floating charge, but after any claim secured by a mortgage, charge, lien or other encumbrance of a fixed nature or a pledge, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.

(5) Any references to a “claim” in subsections (3) and (4) shall be deemed to include references to any payment in a winding-up of the company in respect of the costs, charges and expenses of that winding-up, including the remuneration of any liquidator.

(6) The duties of an examiner may be performed by him with the assistance of persons appointed or employed by him for that purpose provided that an examiner shall, insofar as is reasonably possible, make use of the services of the staff and facilities of the company to which he has been appointed to assist him in the performance of his duties.

(7) In considering any matter relating to the costs and expenses of an examiner the court shall have particular regard to subsection (6).

(8) The remuneration of an examiner is determined in accordance with the provisions of the Insolvency Practitioners Regulations of 2015.

202ΛΓ.-(1) An examiner or, where appropriate, such other person as the court may direct, shall, within fourteen (14) days after the delivery to the registrar of companies of every order made under section 202KE or 202Λ, cause to be published in the official Gazette notice of such delivery.

(2) Where a person fails to comply with this section, that person, and where that person is a company, the company and every officer of the company who is in default, shall be guilty of an

offence and on conviction shall be liable to a fine not exceeding five hundred euro (€500) and to an additional fine not exceeding fifty euro (€50) for every day the default continues.

Hearing of proceedings

202ΛΔ. The whole or part of any procedure provided in the present Law may take place by public hearing unless the Court considers that there are particular circumstances that may have an adverse effect to the interests of justice, taking into consideration the interests of the particular company or its creditors as a whole.

No lien over company's books, records

202ΛΕ. Where the Court has appointed an examiner, no person shall be entitled as against the examiner to withhold possession of any deed, instrument, or other document belonging to the company, or the books of account, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the company, or to claim any lien thereon provided that—

- (a) where a charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the examiner by the person shall be without prejudice to the person's rights under the charge or pledge, other than any right to possession of the document,
- (b) where by virtue of this section an examiner has possession of any document or papers of a receiver or that a receiver is entitled to examine, the examiner shall, unless the Court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.

Civil liability of persons concerned for fraudulent trading of company.

202ΛΣΤ.-(1) If in the course of proceedings under this Law it appears that any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other person or for any fraudulent purpose, the Court, on the application of the examiner, or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that such person shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the Court may direct.

(2) On the hearing of an application under this section, the applicant may himself give evidence or call witnesses.

(3) Where it appears to the Court that any person in respect of whom a declaration has been sought under subsection (1) has acted honestly and responsibly in relation to the conduct of the affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the Court may, having regard to all the circumstances of the case, relieve him either wholly or in part, from personal liability on such terms as it

may think fit.

(4) Where the Court makes any such declaration, it may—

- (a) give such further directions as it thinks proper for the purpose of giving effect to the declaration and in particular make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further orders as may be necessary for the purpose of enforcing any charge imposed under this subsection,
- (b) provide that sums recovered under this section shall be paid to such person or classes of persons, for such purposes, in such amounts or proportions at such time or times and in such respective priorities among themselves as such declaration may specify.

(5) This section shall have effect notwithstanding that—

- (a) the person in respect of whom the declaration has been sought under subsection (1) may be criminally liable in respect of the matters on the ground of which such declaration is to be made; or
- (b) any matter or matters on the ground of which the declaration under subsection (1) is to be made have occurred outside the Republic.

(6) Subsection (1) (a) shall not apply during a period when the company is under the protection of the Court.

(7) For the purposes of this section—

“assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

“company” includes any body which may be wound up under the present Law.

202AZ.-(1) If any person is knowingly a party to the carrying on

Criminal liability of persons concerned for fraudulent trading of company

of the business of the company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, that person shall be guilty of an offence and in case of conviction shall be liable to a custodial sentence not exceeding three (3) years or a fine not exceeding two thousand five hundred and sixty two euro (€2,562), or both.

202AH.-(1) Where on the application of an examiner of a company, it can be shown to the satisfaction of the Court that—

Power of court to order the return of assets which have been improperly transferred.

(a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect, and

(b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members,

the Court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the examiner on such terms or conditions as the Court sees fit.

(2) Subsection (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which provisions of subsection (1) of section 301 applies.

(3) In deciding whether it is just and equitable to make an order under this section, the Court shall have regard to the rights of persons who have bona fide and for value consideration acquired an interest in the property the subject of the application.

(4) For as long as the company is under the protection of the Court under the provisions of this Law the six months period mentioned in section 301 shall stop suspend and any unexpired period thereof shall start running again from the date on which the company concerned shall cease to be under the protection of the Court.