



Bank Resolution Regime – from theory to practice

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The financial crisis in Cyprus resulted among others in the introduction of the Insolvency Framework, comprising of a package of six bills of legislation that came into force on the 07/05/2015. The new practices emerging from the financial realities are focused on corporate and banking insolvency in a more complicated level involving high net wealth credit, banking and financial institutions. Amongst other legal issues raised is the implementation of the Bank Recovery and Resolution Directive (Directive 2014/59/EU) (“**BRRD**”) to the domestic law, depositors’ rights and cross-border insolvency recognition questions.

Our law firm (such appointment having been approved by the Central Bank of Cyprus) is currently acting as the special legal counsels (both litigation and consultancy) to the appointed Special Administrator of FBME Bank Ltd (Cyprus Branch). A variety of litigation issues emanating from the principles behind the resolution legislations



and the powers and role of a Special Administrator in general have led to the identification of various legal issues and the formulation of the relevant legal principles. A sample of such litigation cases is provided herein below:

The shareholders of FBME had filed an *ex parte* application requesting a freezing injunction for the amount deposited to the Central Bank of Cyprus. An injunction was not granted on the *ex parte* basis and application was rejected following full hearing. The Court in its reasoning has explained that the application will be rejected initially due to the failure of the plaintiffs to proceed with full and frank disclosure of all essential facts as they owed to. The Court went a step further stating that nor the relevant prerequisites provided by law in order for an interim order to be issued were met holding as follows:

“The issuance of the requested orders (as interim remedies) would be equivalent to a breach of the relevant laws and regulations and by virtue of that cannot be issued within the framework of an interim procedure where the facts are considered only prima facie (as indications of rights) and where an analyses (or findings) is not allowed (for obvious reasons) in a way that could possibly influences the substance of the case during hearing. The Court cannot obstruct (in the form of an interim procedure) with the force and scope of Regulatory Acts and the Law of the Legislative and Executive Powers, considered as necessary measures so as to avert (of what is hereby examined) threats and situations, according to the Decree regarding Sales of the Operations of thre Branch of FBME Bank Ltd in Cyprus)”

In another instance depositors of FBME have filed an action with regards to the amount maintained unto their name with FBME, having also filed an application for summary judgment based on breach of contract. The application for summary judgment has failed based on the oppositions of the counterparties. The District Court of Nicosia ruled the following by its judgemnt:



“The present dispute has been transformed from an apparently simple contractual dispute of private law to a wider public dispute with substantial administrative procedural law elements and private law, due to the circumstances which arose after the conclusion of the agreements at issue because of the aforesaid consolidation process”.

We note that the aforesaid abstract fully reflects and encompasses the arguments put forward from our law firm while representing the SA.

Depositors of FBME have filed an action with regards to the amount maintained unto their name with FBME, having also filed an application for interim injunctions which were granted on an *ex parte* basis. The interim application was rejected and the interim orders have been dismissed following full hearing of the application. The Judge ruled that the relevant requirements surrounding issuance of interim orders were not satisfied and more precisely that there was no obvious possibility of success of the action nor was it considered that it will be difficult for the Plaintiffs to be compensated at a later stage.

Within the context of separate proceedings the plaintiff asking inter alia damages against the defendants based on arguments of fraud and/or deceit and/or misrepresentation. The Special Administrator of FBME had filed an application requesting to be joined as Defendant to the action which application succeeded despite the oppositions of the counterparties. In its judgment the President Judge, highlighting the role of the SA considered him as “a *necessary defendant*” and “an affected party”. The following was held:

*“In accordance to the Resolution of Credit and other Institutions Law 17(I)/13, the special administrator has a legal duty to take every reasonable step, with aim to promote the objectives of the resolution and the more efficient performance of the measures resulting thereof, until the completion of the process of implementation (of the measures) upon the institution under resolution and/or the observance of its liquidation in accordance with the insolvency proceedings. **The addition of the applicant as defendant is rendered as necessary even further since the claim at issue concerns assets which are (or were) under the control of the applicant in such a way that the application influences directly both the legal rights and financial interests of the Branch. The applicant is a person whose powers and exercise of duties as special administrator will be directly influenced by the issuance of a judicial judgement in the present action and (unless the resolution order at issue is annulled by Court or revoked by the Central Bank of Cyprus), this will continue to bring about the legal consequences emanating from the Resolution of Credit and other Institutions Law 17(I)/13.**”¹*

On another occasion the Court also accepted the *locus standi* and the right of the SA to intervene proceedings as an affected/proper party describing him as “*necessary defendant*” whose exercise of

¹ The 2013 Law has been replaced by The Resolution of Credit Institutions and Investment Firms Law of 2016 for the purposes of transposing the EU directive titled "Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012."



duties would be directly influenced by a possible judgement in favour of the Plaintiffs since their claim concerns assets being under the control of the SA, pursuant to the Resolution Order, hence the respective application was allowed.

The District Court of Nicosia has recognised in another instance the crucial and overriding role of the Special Administrator. In this case a Judgment has been issued against the Defendants 1 and the plaintiffs have initiated garnishee proceedings against the Defendant 2 in order to enforce the judgement. The Special Administrator has only recently become aware of the proceedings and immediately proceeded with an application requesting leave of the court to oppose the garnishee proceedings and another application requesting stay of execution of the judgment until adjudication of the by summons application. The Court having considered that the Administrator needs to be heard by virtue of his office, granted, at the first appearance, leave to the Administrator to step in and file his opposition dismissing any arguments to the contrary.

It can be safely concluded that the Cyprus Courts have treated positively so far motions initiated on behalf of the Special Administrator to join or intervene proceedings affecting directly or indirectly his office and/or assets under his control. The Resolution law and regulations are more to be tested. Following the revocation of the banking license activities of FBME Bank Ltd by the Central Bank of Cyprus an application for the special liquidation and the appointment of a Special Liquidator of the Tanzanian bank has been filed and judgment has been reserved by the Court.

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