

The Court battle between Louis Hotels Public Company Ltd and the Attorney General, in relation to the winding up of Helios, will continue to be rehearsed in the Cypriot Courts for some time, whereas the company's claim against Boeing, is currently being prosecuted before the Greek Courts.

By Chris Iacovides

On the 9th of April 2009, Louis Hotels Public Company Ltd, a creditor of Helios, filed an application to the court, inter alia seeking its winding up, on the basis that the company is insolvent and unable to meet its liabilities, as and when these fall due for payment.

The application came before the District Court of Limassol on the 23rd June and 8th July 2009 but it was adjourned to 10th September 2009, following opposition filed by the Attorney General's Office seeking extended time in order to enable him to file the grounds for his opposition. No doubt the delay in relation to the liquidation of the company and the serious criminal charges currently being defended by the chairman and some other members of the board, will have a negative impact in relation to the interest of the company and its creditors.

Chris Iacovides, who is a director and a Licensed Insolvency Practitioner in the specialist Corporate Recovery and Insolvency firm, CRI Group, considers that the most appropriate solution, in the circumstances, for the petitioner the company and its creditors is, for the petitioner, to apply to the court for the appointment of a provisional liquidator, in order to ensure that the company's claim against Boeing, the manufacturer of the lost 737-300 aircraft, is not prejudiced in any way as a result of either, the delay in the court making the winding up order and the appointment of a liquidator or the directors focusing all their attention and resources, in defending the very serious criminal charges brought against them by the state.

Following the tragic loss of its plane in Greece, in August 2005, Helios filed a law suit running into several millions against Boeing.

Given that the directors have other priorities and possible conflicts, the appointment of a provisional liquidator is the best remedy for creditors, pending the outcome of the winding up petition.

How does a Provisional Liquidator get appointed?

A provisional liquidator can be appointed by the court at any time, after a petition to 'wind-up' a company has been presented. This may be because there is concern that assets are at risk or because it is not in the 'public interest' for the company to continue trading. The assets and potential creditors are therefore protected until the court hears the winding-up petition.

How is the application made?

An application for the appointment of a provisional liquidator may be made 'with notice' or 'without notice' to the company. When appointed, the provisional liquidator will carry out duties set out by statute although these can be further extended by the order appointing him. It is not unusual for the order to contain terms, as to how the provisional liquidator should deal with the company's assets and affairs.

The appointment is a caretaker role as the provisional liquidator is generally required to maintain the status quo.

On what grounds will the court appoint a provisional Liquidation?

The Court will appoint a provisional liquidator when it is persuaded that the assets of the company are in danger of being dissipated or otherwise lost before the winding up application is heard.

In effect, the appointment is made to protect the company's assets or business.

Who can apply?

In general terms those that can apply for the appointment of a provisional liquidator are:

- Creditors making a winding up application, if they believe that the assets of the company are at risk of being lost or made otherwise unavailable during the period before the winding up application is heard.
- Members (shareholders) of a company where they believe that the directors of the company are acting improperly, recklessly or in their own interests. These applications do not need to show that the company is insolvent, only that it is just and equitable that the company be wound up and that an independent person should take immediate control of the company. These applications are usually made by minority shareholders who do not have the voting powers to remove and appoint directors.

- The company (through its directors) may apply. This may arise due to a dispute between directors and other officers, or because the company is insolvent and the directors do not want to risk insolvent trading claims in the period before a liquidator is appointed.

Who can be appointed?

It is possible for the Official Receiver to be appointed provisional liquidator, but appointment is also open to any other fit and proper person.

Although in Cyprus there is no specific legislation requiring practitioners of insolvency to be licensed, when acting as liquidators or Trustees, one would expect the court to entertain nominations of only competent professionals with proven experience and skill.

What are the provisional liquidator's powers and duties?

While the provisional liquidator's powers may be extensive and absolute, he or she should generally try to utilize them in such a way so that they have as little impact on the company as possible. These powers are generally defined by law but may be limited and restricted by the Order under which one is appointed.

The duties of the provisional liquidator are similarly set out in the court order and they may vary depending on the company concerned but, they usually involve:

- Protecting assets;
- Safeguarding the company's records;
- Investigating the company's affairs only in so far as it is necessary to discover, protect and recover assets.

Provisional liquidators have the power to operate the business of the company or close it down and sell off the assets. They have the power to call for proofs of debt, determine the priority of creditors and conduct investigations but, **they do not have the power to recover void transaction or pay dividends.**

What is the effect on the company and creditors?

The company structure itself survives the provisional appointment albeit, control of all assets including its business and affairs are transferred to the provisional liquidator and the directors cease to have any authority. At the end of the provisional liquidation, control of the company will either pass back to the directors or to the Official Receiver - depending on the outcome of the winding up application. In most cases, the provisional liquidator will be appointed liquidator after the company is wound up.

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The effect on creditors is identical to that of any other liquidation, except they cannot receive a dividend during the provisional liquidation.

When does the appointment end?

In so far as the appointment coming to an end, this will be at the hearing of the application to wind up the company when the application will either be:

- (a) Dismissed - ending the appointment, the company will be returned to the control of the Director(s). All property and records previously removed will be returned to the trading premises and any assets that were being held will be released back to the company.
- (b) Granted – resulting in the appointment of the Official Receiver or provisional liquidator as Liquidator of the company.

The Court may also order that the appointment ends, either on an appeal to the original appointment, or where the Court is convinced that it is proper to end the appointment.