A REVIEW OF THE DEPARTMENT OF THE REGISTRAR OF COMPANIES AND OFFICIAL RECEIVER, GOVERNMENT OF THE REPUBLIC OF CYPRUS

Presented by:

- **The National School of Government International, Defence Academy, Ministry of Defence, UK;**
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December 2013

BACKGROUND

The Government of Cyprus (GoC) is implementing a set of fiscal consolidation reforms aimed to overcome short and medium-term financial, fiscal and structural challenges. For this purpose the GoC has agreed with EC/ECB/IMF a Memo of Understanding on Specific Economic Policy Conditionality (MoU). Both parties agreed in Section 3.11 of the MoU to launch an independent external review of the whole public administration including ministries, agencies and local government.

The external review will be coordinated by the Commissioner for Public Service Reform of the GoC who reports directly to the President of the Republic. The Commissioner contacted the British High Commission (BHC) in Nicosia to enquire whether HMG assistance could be provided to conduct the external review. The BHC, through the Foreign and Commonwealth Office (FCO), has asked the National School of Government International (NSGI)[1] to provide the necessary assistance in collaboration with the World Bank.

There is strong HMG backing for positive engagement of this kind with the GoC demonstrated by the "Memorandum of Understanding between the Republic of Cyprus and the United Kingdom" signed on 5th June 2008 by the Prime Minister of United Kingdom and the President of the Republic of Cyprus. This Memorandum committed both parties to establishment of a programme of bilateral cooperation on a range of priority issues. The cooperation is to be developed through the exchange of best practice between the public administrations of UK and GoC. Accordingly, funding for NSGI's work will be provided jointly by FCO and GoC.

There is strong preference on the part of the GoC for assistance from the UK civil/public service to deliver the review. There is a shared administrative tradition and commonality in legislative frameworks which makes HMG expertise and advice attractive. The GoC Registrar of Companies has asked specifically for help from Companies House and the Insolvency service in providing advisory services to fulfil its commitments as part of the external review (see Annex 1 for full background and Terms of Reference).

This report is split into two parts:

Part 1: Review of the Registrar of Companies & Trademarks Sections; and
Part 2: Review of the Bankruptcies and Liquidation Section.

[1] The National School of Government International (NSGI) is a cross-cutting civil service unit based in the Defence Academy (MOD). NSGI is supported and governed by the Department for International Development (DFID), Foreign and Commonwealth Office (FCO), Ministry of Defence (MOD) and Cabinet Office.

PART 1
Review of the Registrar of Companies & Trademarks Sections

This part of the review was undertaken by:

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INTRODUCTION

The team from Companies House (CH) UK has completed 3 missions to Cyprus meeting with DRCOR staff, stakeholders and representatives from other Government offices all of whom provided a huge amount of information and support. There has been a great willingness to participate in these discussions from all parties for which we are most grateful.

We know, from a meeting with the Permanent Secretary of MECIT in September 2013, that the strategic goal for the Ministry and DRCOR is to become a paperless environment with simplified procedures that deliver a fast, high quality service to customers and to become a "showcase registry" facilitating and attracting investment. We also understand from the Commissioner for Civil Service Reform that the GoC will institute legislative change to facilitate reform where this is required.

In September 2013, we analysed the backlog of documents within the companies section with a view to providing an immediate solution. We also analysed the end-to-end processes within the companies section and the systems support that was available.

On our second mission in November we analysed, in greater detail, specific areas of policy, legislation, staffing structure, systems – both input and output, internal and external.

During our third mission in December we discussed the draft report. Whilst we have made many recommendations in this document, the Department will have to take ownership of managing and delivering the change.

Change should be an ongoing process and consideration and implementation of any of the recommended changes in this report should only be the start. The legislation currently in place - although sections have been added and sections repealed over the years – is over 60 years old. It is legislation from a time when transacting electronically was not even a concept and there is now a need to modernise both the legislation and process.

Implementation of the programme of work recommended in both parts of this report will require exceptional transformational leadership skills. Implementation should be led by a committed individual who has a clear understanding of management of a project, excellent change management skills and who is empowered to implement the necessary changes to processes in line with the agreed policy.

We further recommend that an independent change team be set up to oversee the project and to provide support to and monitoring of the Department as it goes through this change.

To facilitate the work of the change team we have included action plans for both the Companies Section and the Bankruptcies & Liquidations Section. The action plans are at Companies Section Annex 10 and Bankruptcies and Liquidations Annex 1 in the Appendix to this report.

We have drafted our report in the knowledge that there are currently some restraints - the existing legislation, schemes of service for employment, external legislation such as the Advocates' Law[2] and "custom and practice". We are also well aware that changing the culture both within an organisation and with stakeholders will bring its own unique challenges.

Throughout this report, where we refer to "the Registrar", this means anyone who is acting "on behalf of the Registrar". We also note that in some cases, specifically names, the Registrar is acting "on behalf of the Council of Ministers".

THE ISSUES REVIEWED

1. The Building
2. Roles and Responsibilities
3. The Backlog
4. Scanning/Public Search/ Records Management
5. Legal Issues and Legislation
   - Fees
   - The Company Law
6. Policy and Process
7. Systems

[2] Introduced in 1960

8. Communication

9. Defining the Customer and Customer Service Levels

10. Compliance and Enforcement

11. Trademarks and Intellectual Property

12. Change Management

FINDINGS AND RECOMMENDATIONS

1. The Building

It is clear from our observations that the location and facilities of DRCOR are not suited to the efficient operation of a large scale document management system. If the goal of the Ministry is to have a first class register that underpins the Cypriot economy, the location and premises need to be suitable to house this. The ideal site would be large enough to hold all processes of the Department under one roof with teams located together and enough storage space to effectively house both staff and files/paper batches adequately.

The offices are clearly branded as being the home of the Companies Section but there is no clear identification that this is also the home of Trademarks and Intellectual Property and this should be addressed.

The Official Receiver function is housed in a separate building.

Health and safety is an issue with uncontained wiring across floors and volumes of paper and files stacked on floors and in corridors[3] which are restricting ease of emergency exit from the building as well as causing a substantial fire risk.

Furthermore the file repositories are not suitable to house documents of national historic importance and the conditions in which the paper files are being stored is inappropriate. It was noted that each of the units/rooms used for the storage of company files had a keypad door entry system. However, on several occasions we observed that these were not only unlocked but the doors left open.

To visitors, the external image of the office is poor with the public service areas being external to the rest of the operation and having insufficient space to house all incoming mail in one place. The security of public facing areas especially for cashiers is a particular concern, with members of the public having free access to areas where large volumes of documents and cash are being handled.

If DRCOR is to lead in the establishment of Cyprus as a place companies want to register and do business the public image and the building housing DRCOR needs to be upgraded.

Recommendations

- At the very least, public access areas need to be upgraded;
- Improve branding to clearly identify the home of Trademarks and Intellectual Property;

[3] The backlog and paper is being dealt with via the scanning project

- Improve security – both for staff and documents. Ensure public facing areas are secure and restrict avoidable access to DRCOR staff;
- Scanning will reduce the need for large scale paper storage, however appropriate storage should be available for documents;
- Re-locate to a suitable facility large enough to house a modern document processing facility.

Benefits

- Modern building fit for purpose;
- Public face of DRCOR more professional.
- Safer for staff
- Reduction in avoidable customer contact improves productivity
- Better records management facilities
- Potential cost saving – we understand the current rental to be c.700,000 Euros per annum

Risks

- May be longer term option to locate and fit out new building;
- May not be central in Nicosia (more difficult for customers/staff to get to although this can also be a benefit in terms of reduced avoidable contact)

2. Roles and Responsibilities

We are aware that the schemes of service for staff are the subject of legislation and that within these there are specific qualification requirements and role specifications. We are also aware that there is another report being compiled on Cross-Cutting Public Service Human Resource Management Reform and as such our recommendations tie in with this report.

In the course of the end-to-end process analysis, we identified areas of unnecessary work that is taking place. Some of this is where extra-statutory functions are being undertaken. There is double handling and also a lack of a clear process flow and examination policy.

We will recommend that all processes are reviewed with a view to extra-statutory processes being stopped and we propose the addition of new roles and functions within the companies section that will add value to the register, not to mention offering significant development opportunities to staff.

For these reasons, whilst aware of the schemes of service, we cannot be constrained by them in our report.

There is a much wider range of grades within the Companies Section than in Companies House UK. Companies Annex 1 has sample job specifications which

reflect the type of skills and knowledge required for each role. In the UK civil service promotion is based solely on merit and ability to evidence skills rather than qualifications. Some exceptions to this where specific qualifications are required are IT, Legal and Finance. However, in nearly all other areas, skills can be learned and developed in post.

To provide some comparisons:

- Band A is a scanning, postal, messenger services role.
- Band B is the examination, cashier, compliance, clerical type role.
- Band C is the first line manager and caseworker role and typically a Band C would manage 7-10 Band A/Bs. (A change administrator is a Band C role)
- Band Ds are middle managers and would manage a functional area, with a few Band Cs, reporting to them. They would deal with escalated casework and staffing and management issues, as well as participate in project and change work that affects their staff and team. (A change manager is a Band D role whose responsibilities would involve, management of a change team of Bs and Cs, and the management of implementing change including planning and delivery).

An example organisational structure for the Companies Section is shown as Companies Annex 2. This shows jobs and grades, numbers would need to be calculated after workload analysis has been done.

The information provided shows there is a combination of permanent, casual and hourly paid staff. None of these posts are considered to be temporary. The figures below represent operational staff and do not include IT staff, porters and cleaners. There are also support “registry” (infrastructure staff) and “cashier” (general finance) staff on the organisational chart supplied but they are not included in the figures below.

Numbers:

- The Registrar (A15-16)
- Senior Officer (A13)
- Chief Examiner (A11)
- Officer A (A11)
- 7 x Officer (A8. A10, A11)
- 2 x Senior Examiner (A10)
- 4x Examiner (A8, A9)
- 21 x Assistant Examiner (A4, A7)
- 9 x Clerical Officer (?)
- 19 x Assistant Clerical Officer (A2, A5, A7)

At the time of the chart provided to us there were an additional 9 New Scientists working in the scanning area. We will not comment on salary or pay scales although it is noted that pay can be more reliant on length of service than role – a new

Examiner could for instance earn significantly less than an Assistant Examiner with long service, or even an Assistant Clerical Officer at the top of their scale.

When the Companies Law came into operation in 1951, the roles and responsibilities were all based on paper based filings and manual systems. That would be a very fair reason to demand a level of qualification for the considerative role of the examiner.

However, technology has advanced and internal systems now dictate the level of information that is checked – many of the fields are there to be populated, and with electronic filing data entry is actually completed by the presenter (not the clerical assistant). When clerical staff input data, the system actually shows any matches e.g. with other appointments or any missing fields such as ID information.

From our observations clerical staff are able to determine if there is missing information, yet they cannot accept or reject a filing. This part of the process must be performed by an Examiner. The Section is missing an opportunity to tap in to a significant portion of its resource and skills.

There are of course more considerative areas that require a greater level of training and this could be reflected by the grades within these teams (in the UK all examiners are the same grade) – specifically on incorporations and charges.

There is a considerable amount of double handling of documents within the Companies Section and the overarching policy should be for one person to own an examination process end-to-end (i.e. examine the document, key the data, reject/accept the document and deal with basic customer enquiries).

More considerative casework, or complex policy and legal issues could be escalated and dealt with by more senior grades as required.

It was difficult to determine the volumes of work that each member of the team was expected to deliver. Some initial analysis suggests that current paper volumes received per day are approximately 50 names applications, 50 incorporations, 35 charges and 650 other documents. Over the last three months there have also been between 30 and 50 searches each day. Some detailed performance and throughput evaluation ("Benchmarking") is required to set targets at appropriate levels. This will enable managers to effectively monitor and evaluate staff based on output and quality.

If our recommendations on roles and responsibilities, exam policy and removal of extra statutory work are put in place, we would envisage that, once new processes were fully bedded in, the volume of paper examination could be carried out by 8 examiners for general documents, 2 for incorporations and change of name and 2 for charges. There will be another calculation for the resource requirement to deal with electronic filing as this increases but that resource will always be significantly less than for paper transactions, as the customer enters their own data.

These suggested staffing numbers are based on about 60% of the volume an examiner in the UK registries would process but consideration has been given to the huge amount of change that examiners would have to deal with.

Of course there are also logistical considerations regarding cover for sick absence or leave and therefore there will be an optimum number that may be slightly higher than the actual requirement might appear.

The workload of the team currently covering the cashiers' role and the issuing of receipts is unlikely to reduce until the volume of electronic filing increases significantly. This process currently works very well as it links the document to the company throughout the system.

The workload for messenger duties will reduce as processed documents are filed by date and not by company, as well as with a gradual reduction in paper as electronic volumes grow.

Obviously more detailed work would be needed on the time to complete various processes and review the targets, but this quick estimation should show how sufficient staff could be released to work on policy, guidance, compliance, casework and customer service as mentioned elsewhere in this report.

We see the role of the Examiner as being one requiring knowledge and experience, but not something restricted to graduates. Opening this up to staff showing potential at other grades creates excellent development opportunities and would also release resource from some areas to help alleviate backlogs in others.

Until all filing is completed electronically, there will continue to be a need for messengers, scanning staff and data input staff, but this volume of work will gradually decrease, leaving these staff, under the current rules, without work. Therefore, having a more flexible HR policy which allows the department to train and develop staff in more challenging and interesting roles is essential.

If the system is as intuitive as it appears to be, and recommendations in the process and policy sections of this report are enabled, DRCOR should see significant efficiency improvements meaning it will require less staff to complete the same tasks as at present.

We believe that in the short term, the numbers are sufficient to enable a percentage of the resource to be freed up to deal with the backlog, which must be a priority. By ceasing the double handling of documents and removing non-statutory checks currently being undertaken, staff can be redeployed into new teams and processes as proposed later in this report.

If there is any requirement for temporary additional resource this will come when a decision is taken on the scanning project for older documents. In the meantime we see no argument for numbers to be increased.

Recommendations

- Evaluate the capabilities and future potential of all staff without regard to current grade or employment status – there are extremely competent, casual staff in DRCOR.
- Deal with any performance issues and look to capitalise on development potential.
- Create a skills matrix to determine areas of competence and highlight gaps in knowledge and skills – sample attached as Companies Annex 3
- The Companies Section must analyse current volumes of work and the time required to carry out each task. This will require detailed analysis of each process - the time taken to process an individual document, and detailed analysis of volumes received and processed. This will allow measurable targets to be set, evaluation of staff and their skills levels and facilitate better management of resource and prediction of trends.
- Using the above analysis, establish stretching targets for staff to enable performance to be measured – this should be under constant review in line with volumes and electronic filing growth.
- Create new roles/teams for the following areas which have been expanded on elsewhere in the report - examination policy, business change, compliance, casework and customer services.

Benefits

- Opportunities for the right staff to be in the right jobs and be developed to full potential;
- Improved staff engagement for those who have previously not had opportunities to progress despite ability;
- Reduction in double handing of work;
- Opportunities to introduce new roles and work streams;
- Increased flexibility within the teams;
- Wider spread of knowledge and experience;
- Opportunities for staff to be involved in change and show skills perhaps currently unidentified.

Risks

- Schemes of service need to be reviewed and will involve legislative change;
- Staff no longer automatically considered for promotion;
- Expected resistance to change in processes and culture.

3. The Backlog

Before the register of companies can move forward into a digital future, there is a significant volume of paper documents that have been received but not examined, by the Registrar. There are in excess of 390,000 documents "pended", dating back to 2005, and the IT team and Companies Section staff were able to provide us with the volume and type of documents not processed.

This means the register is not up to date and the statutory duty of the Registrar has not been fulfilled, both in terms of processing the statutory information and making it (easily) available for inspection. Fees have been accepted but nothing has been done with the information.

The backlog also has a huge impact on searchers trying to determine the stability of a company when considering investment opportunities.

There is a commitment from the Ministry to provide temporary employment for a number of people to help with Companies Section work. The proposal is to utilise this resource to prepare and scan the documents at a "scanning factory". Whilst this produces an image of the document, it will not update the register and there is uncertainty over the quality of the documents because they have been poorly stored.

After our first mission, when we discussed the backlog with many of the groups that this concerned, we submitted a discussion paper and it was extremely gratifying to note on our second visit that work has started to clear this, taking on board the majority of our recommended option 4 (Companies Annex 4).

Benefits

- The Registrar will fulfil his statutory duty in terms of entry into the register (see also note re Gazette);
- Data relating to appointments, registered office, shareholding etc would be correct (as notified by customers), reducing the risk of fraud;
- The Registrar could use his powers under s327 to dissolve companies no longer required, reducing the size of the register to a more manageable level;
- Compliance rates would be measurable. The figures in Companies Annex 4 suggest that there are approximately 1.5 pended documents per company on the register. This means that a huge proportion of the registered companies are not up to date with their statutory filings and as such could reasonably be considered as no longer in operation;
- It is difficult to determine how many companies have paid the levy. If this is a high number, then the number of companies in default for statutory filings must be extremely high;

- The filing history for searchers would be as submitted by customers; see issues in section 4.2 re data protection re output products
- Images for everything received after February 2012 would be available to search; see issues in section 4.2 re data protection re output products
- Part of the additional resource would be available to strip and scan the relevant documents;
- Part of the additional resource would be available to "examine" documents pre Feb 2012 non HE32 (11,428) and post Feb 2012 all pended documents (117,502) Total (128,930);
- Part of the additional resource would be available to file the documents batched by date;
- The additional resource would be spread throughout the workspace and not all working in one area which should be more manageable;
- Would recommend that pre February 2012 this is a data entry exercise and not an examination one, so basically, the work that a clerical assistant currently does.

Risks

- Images of documents pre 2012 would not be available to searchers and might need to be manually found at a later date;
- There may be errors in the information of filings pre Feb 2012 not examined – but it would be inappropriate to ask a customer to correct such historic information;
- There may be complaints about this but these can be dealt with on a case by case basis. As long as information from February 2012 is up to date, the number of complaints should be minimal.

Progress

A decision was taken by the Ministry to do the following[4]:

- The HE 32s pending from 2005 will not be scanned, nor examined. They will be accepted on the system as received with a technical switch;
- All other pending docs from 2005 will be examined and filed in the physical file of the company;
- All docs being received at the Department will be scanned and examined regardless of the date of the company's incorporation; see issues in section 4.2 re data protection re output products
- With regards to the HE32s, only the last 2 calendar years will be scanned and examined (2011, 2012). If the Department receives any HE32s that refer to years prior to 2011, these will not be scanned, nor examined. They will be accepted in the system as received and will be filed according to the date of receipt in the Department;

[4] Information taken from e-mail from MECIT dated 22 October 2013.

- The physical file of all companies will be scanned. (*This is something the Department insisted upon in order to have a complete company electronic file online*). See issues in section 4.2 re data protection on output products.

Further recommendations

- During our second mission we became aware that there were differing approaches to what was being scanned. We recommend that a process flow is drawn up to ensure that everyone carries out the same process in the same way and that this project is overseen by someone with change delivery experience and skills (our understanding is that training is being delivered in change management in the course of the next few weeks);
- If there is an issue with the quality of scanned images or speed of delivery to the Examiners, this should be resolved by an urgent IT fix rather than changing the process. If the process is changed to suit the system, the companies register will end up with system workarounds which are inefficient and extremely counterproductive.
- Whilst there is a strong desire to scan all paper files, there must be acceptance that it is likely that some paper will not be in an acceptable condition to scan and scanners may not have the required specification to deal with older paper sizes; see issues in section 4.2 re data protection on output products
- Re-consider scanning back to a certain time to be determined by the department and scan other documents only when requested – "Scan Upon Demand".
- There may be some specific circumstances where the department will retrieve the "delivered" but not examined HE32s to minimise any risk – examples may be in applications for redomiciliation or cross-border mergers where volumes are low. The unexamined documents are historic and the risks are minimal if the latest 2 years are examined and up to date. (The Examiner will know the receipt numbers and dates of receipt so the documents should be relatively easy to call back from storage.) In these cases there are many other criteria to be fulfilled by the applicant companies and they are likely to have adequately researched the requirements.

4. Scanning/Public Search/Records Management

The primary function of the Registrar is to accept statutory information under the Companies Law and to make this information available to the public. The Registrar is also obliged under the amended 1st Directive to make documents available (to the public) electronically.

Recommendations

4.1 Make Images Available Electronically

It is of primary importance for the Companies Section to develop systems to make accepted document images available for public inspection. There is already a database of images for companies incorporated after 1 February 2012, which is available to view by internal staff. The Registrar could make these images available externally as soon as the functionality is developed. IT staff have determined that this is a quick fix to achieve. Therefore, system development work should start now to be ready when the backlog work is completed. See issues in section 4.2 re data protection on output products.

DRCOR will need to determine when there are sufficient images available to make this a beneficial electronic search service for customers.

This will provide the business and legal community access to images for the first time and may significantly reduce the need for certified copies of documents. We understand that in some cases, asking for a certificate is a means of ensuring that a document is processed.

4.2 Data Security

We have previously commented on the physical security of documents in the storage area but we also have some concern over personal information which is contained within documents. Information delivered to the Registrar must be made available to search but we understand that on the HE3, HE4, HE12, HE57, and HE32 prospective officers of the company are asked for a personal ID number or passport number.

For ease and transparency of doing business, searches of the register are to be encouraged and should be facilitated. However, personal details such as this becoming more easily available (statistics suggest that search volumes are currently very low) are likely to result in complaints that the Registrar is facilitating identity theft.

Protection of this information will require legislative change because the law currently states that copies of documents must be made available. We know forms are created by legislation but they are in Greek and we do not have exact details of the content. However we assume that the provision of an ID number of some type is a legislative requirement because the forms require it and these are set in statute.

There are means of capturing information but “hiding” it, so the requirement for the Registrar to capture the information can be maintained without it being made freely available. One option is a redaction of information made available to the public – in the UK we have a specific barcode on a page of officer forms that allows

the Registrar access to a residential address, but does not present this personal information to the public.

Therefore legislative change will be twofold because forms will require amending and the Registrar will need specific powers to prevent him from out putting the personal information.

Whilst annexing certain information via a redaction barcode within an image system will resolve the issue going forward, consideration needs to be given to the existing information contained in documents already held by the Registrar.

The Registrar may need to consider giving himself additional statutory powers to redact personal information from forms that he has already scanned or holds in hard copy form. Legal consideration regarding the use of the Registrar's ability to make this type of legislation combined with what is permissible in terms of Data Protection will need to be undertaken.

A representative of the Office of the Commissioner for Personal Data Protection attended the December meeting and considered the implications of the current process. Whilst the Registrar can collect the information as in statute, the spirit of Data Protection legislation is that personal ID/Passport numbers and date of birth should be protected from the public domain.

The Department will need to decide whether or not, in future, the information will not be collected, or find a way to redact the information from the image. The information is statutory by it being required on statutory forms, therefore if DRCOR decided:

- not to require this information; or
- to require it, but not disclose it to the public.

changes to the statutory forms will be required.

For historic filings there are programmes available to redact information from electronically filed data but a solution for the paper forms needs to be developed.

A clear way forward on this must be decided as a matter of urgency as existing and future scanned images must be considered.

There are four areas to be considered:

4.2.1 Paper documents where the image is not available electronically

Here the solution is relatively simple. With immediate effect, the information is "redacted" (covered in a way that stops the searcher accessing the information)

4.2.2 Existing scanned images available internally but not available to the public.

A means of protecting the personal information must be decided. This could be to print, redact and rescan a version that would be made available to the searcher. This would be time consuming and generate a lot of paper but reduce the risk of the Registrar being accused of facilitating identity theft. Once rescanned, the redacted copies would need to be securely destroyed.

4.2.3 Future scanned images – not yet processed or made available.

There may be a decision to remove the requirement for this information altogether. If the decision is that it is required, is it required on the full range of documents or would the appointment of an officer be considered sufficient as future filings relating to that director would tie them to a specific company number. There may be an option of putting the personal information on one page of the form with a barcode that prevents the image being made public.

This will require legislative and system change. It will also require forms producers to be notified of forms changes and given time to change their templates. CH UK has developed forms in such a way that the personal information is suppressed following a "special" barcode on the form (see AP01 – appointment of director).

4.2.4 Images developed from e-filed data.

There is software available that would allow this information not to be publicly shown.

Data Protection of a citizen's personal information is a serious issue. Decisions need to be taken on how to handle this as a matter of extreme urgency. The Department needs to consult with IT providers to determine a full range of options.

4.3 Scan All Documents

Scanning should not be restricted to documents received for those companies incorporated after 1st February 2012 but should be for all companies. This will significantly increase the number of available images to the business community.

It is our understanding that this has now started and that all documents received are being scanned regardless of date of incorporation.

4.4 Scan Upon Demand (SCUD)

Whilst we understand the Ministry's desire regarding the scanning of all documents we recommend that images are captured from a specific date and that a SCUD service is developed. Customers order images of documents through an ordering system – preferably electronic - and the Companies Section staff scan the image of the document and make this available to the customer and future searchers electronically.

This is cheaper and more targeted than a large scale back-capture exercise where the majority of old documents scanned may never be accessed, or be too fragile to scan in bulk.

To manage demand a SCUD system should not be in place until the historic HE32s have been switched from pended to "delivered" or "filed" and electronic images of scanned documents made available to the public. It is at this stage that a SCUD pilot should be implemented. This will also need to take into account any decisions made on Data Protection.

4.5 Records Management

The Registrar is now scanning documents before registration. There are three main issues to consider, in terms of effective records management IT and/or legislative development.

4.6 Rejected Scanned Documents

The Registrar does not need to keep images of rejected documents indefinitely. In the UK, under the terms of the Data Protection Act 1998, we have been legally advised that the Registrar has no jurisdiction to retain images of documents that he has rejected. Whatever Data Protection legislation exists for Cyprus should be considered when coming to a conclusion on this.

A policy should be agreed and the system developed to enable the removal of images of rejected documents after an agreed time. This means that the database will not being clogged up with images of incorrect documents which do not form part of the statutory register. The Registrar only needs to keep and manage images of documents that he accepts.

A solution to this should be considered but is not the highest priority.

4.7 Managing accepted document records

In the case of accepted documents the legislation is silent on what happens to historic paper – presumably because when the legislation was written there was no electronic alternative. This should be updated to give the Registrar powers to

destroy, after a set period of time, paper documents where he holds the information in another form (i.e. electronic image).

s1084 (1) of the UK Companies Act 2006 states:

"The originals of documents delivered to the Registrar in hard copy form must be kept for three years after they are received by the Registrar, after which they may be destroyed provided the information contained in them has been recorded."

What this means for the Registrar is that for any accepted document for an electronic image has been captured the Registrar can destroy the original hard copy after three years.

Before deciding on the length of time for any retention the Department needs to fully embed scanning and increase the take up levels of electronic filing. Analysis should also be carried out on how far back paper can actually be scanned to produce a quality image, and how often there is a requirement to rescan corrupted images.

Implementing a retention policy will have a huge impact, over time, on the amount of storage required by the Registrar.

Paper copies, where it is the only copy, will need to be kept for the life of the company plus a period (to be determined) after dissolution. We would recommend a period of 20 years as this is the time period within the legislation during which a company can apply for restoration. However, there are specific cases where this period is currently being extended for very valid reasons.

4.8 Destruction of Dissolved Company Records

We understand that under the State Archives Law specific records must be permanently kept and held for official use. This means that they may have an interest in retaining historic records for dissolved companies.

An example of what this could potentially mean is that for any company dissolved more than 20 years the records office may decide to select for preservation dissolved records for:

- All PLCs
- A selection of Limited companies (based on size of company/share capital, national interest)

All those dissolved company records that are not selected for national preservation could then be destroyed. This includes all hard copy information and any electronic data and images held by the Registrar[5].

[5] s1084 of Companies Act 2006 deals with this issue for the UK Registrar.

The result is that the Registrar is not responsible for storing and managing dissolved records indefinitely, with all the associated storage and handling costs.

Whilst this is unlikely to be a priority at this time, the Registrar should work with the Public Record Office to determine the necessary requirements.

5. Legal Issues and Legislation

We must clarify at the outset none of the team from CH are legally qualified and we do not propose to offer any drafting suggestions.

However, we all have a clear understanding that anything Companies House UK considers doing or changing must be thoroughly considered within our current legislative framework. We cannot work outside of this framework, neither can we decide to impose new requirements that are not covered by legislation.

The Registrar is regularly asked by customers to make a change to information held or remove something from the register, but there must be consistency of approach and therefore, the Registrar will not act outside of the law.

During our first mission we were able to acquire a translation of the legislation and we acknowledge that this is a translation of the Greek text (which is the authentic version as published in the Gazette).

We understand that neither DRCOR nor MECIT have their own internal legal advisors, with the Advocate General being the provider of legal advice. It was also clear in some instances that the Bar Association of Cyprus was prepared to help – but this seems to depend on the specific circumstances.

Recommendation

We cannot recommend strongly enough that the Ministry should have its own legal advisor, not only to ensure that any proposed legislative change meet requirements but to ensure that any new European directives that affect DRCOR are firstly known about, and then harmonised and implemented on time.

It has been clearly stated that there is a willingness to review and change legislation wherever necessary. We therefore make some recommendations for sections that could be reviewed.

5.1 Fees and Expense of Registration

What was immediately apparent to us was that it is expensive to incorporate a company and keep it on the register. There are two elements to this:

- The fees charged by solicitors
- The fees approved in The Companies (Fees and Charges) Rules 2013.

It has been explained to us that whilst not specified in the Companies Law, it states in the Advocates' Law that only a practicing solicitor can incorporate a company. Internet research shows the fees for this to be in the region of 1,000 Euros which must be a barrier to many companies being incorporated. More companies, no matter whether small or large, will contribute to the economy and generate employment in the private sector. We are not questioning fees charged by solicitors. However this process gives no real alternative to the Cypriot business community to be able to incorporate a company directly with the Registrar.

Recommendation

Whilst this may be a contentious recommendation, serious consideration should be given to making it less expensive to transact with Government. The register of companies should be there to support all business in Cyprus, not only one professional sector.

We do not suggest that the lawyers are not providing a good service and many companies would undoubtedly continue to use them, particularly where directors are not Republic of Cyprus nationals or residents. However, customers should have the choice to be able to simply incorporate a company directly with the Registrar.

5.2 Fees, EU Directives and Cost Recovery Principles

We have been informed that on accession to the EU there were dispensations given relating to EU directives on fees. However, we have not received further clarification on this point we therefore set out our analysis on the full effect of EU legislation and its application on the Companies Section of DRCOR.

The Department expects to generate revenue of c. 100m Euros this year, with an estimated cost base of 10m Euros to manage and maintain the register with the existing infrastructure and staff.

Whilst it is recognised that the 350 Euro levy is not a fee to be used in recovery calculations, there still remains an exceptional return on employed capital especially when considering the relatively small size of the companies register. We have seen no evidence of statutory fees being based on cost recovery principles which is at odds with the various EU legislation affecting EU company registries such as the EU 1st Directive (as amended), Capital Taxes Directive and the Italian Tax Cases.

Furthermore we feel that the fee associated with the pre-vetting of company names seems to be set without a statutory requirement for this process within the Company Law (see paragraph 6.2).

The underlying principles of the EU legislation are set out below:

5.2.1 Capital Taxes Directive

The Capital Taxes Directive allows company registration costs to be met from fees, but prohibits charges that are effectively taxes. This means that prices cannot lawfully be set above the costs of the relevant service. Case law provides further clarification as to which costs can and cannot be taken into account for fee-setting.

The case law referred to above are known collectively as the Italian Tax cases - Ponente Carni in 1993 and the Fantask case in 1997.

The Fantask case provides detailed guidance on the costs that may (and may not) be properly taken into account. The judgment states:

"a Member State is entitled to take account of all the costs related to the effecting of registration, including the proportion of the overheads which may be attributed thereto."

E.g. "lighting, heating, staff management costs, computer operation and development costs, office rents or depreciation and other fixed assets….."

A major affect of these cases is that registries cannot cross-subsidise between services. However, there is allowed the concept of charging for premium and standard services provided that the overall income from both parts when aggregated does not exceed the cost of the service.

5.2.2 1st Directive

The 1st Directive requires copies of company records to be made available to the public at the administrative cost of producing them.

The amended 1st directive which took effect from 1st January 2007 means that company registries have a duty to ensure that they are able to register and disseminate certain information electronically.

All documents required to be delivered by electronic means should be deliverable by electronic means by 1 January 2007.

From January 2007 searchers have the right to choose between paper copies or electronic copies of any document delivered on or after 31 December 1996.

There are also requirements to provide electronic certification of documents.

Compliance with EU directives is a matter for the Registrar and the Ministry to consider and implement.

Recommendation

The Companies Section should review and attain compliance (if required) with EU legislation as soon as reasonably practicable.

5.2.3 Policy change following Italian Tax Cases

CH needed to change its fee setting policy following the judgement in the Italian Tax cases. Having looked at the income levels and the structure of Incorporation, Charge and Share Capital fees, the Companies Section might need to do something similar.

5.2.3.1 Differing levels of fee for same service (Italian Tax Cases)

The principle is that it does not cost the Registrar any more to incorporate a company with no share capital than a company with share capital. The staff, systems and processes are identical yet the Registrar charges differing levels of fees based solely on the level of capital. This is setting a fee based on assumption of an ability to pay rather than the cost of the process.

Mortgage charges have the same the process, systems, staff levels etc. whether you are registering a small charge over rents or a multi-million pound mortgage over property. Yet the fees are set on assumption that someone taking out a larger charge is able to pay more and therefore is charged more, which goes against the Italian Tax Cases judgments.

Recommendation

As set out above legal and finance experts need to review the Companies Section fees against EU legislation.

5.3 Same Day/Expedited Fees

Expedited fees seem to be the norm for most processes within the Companies Section. It is important that expedited fees are used to manage a process and do not replace the standard process. Expedited fees should only be introduced alongside standard fees so that when the income from both is aggregated it recovers the total cost of the relevant process. This only works well for high volume products.

Evidence suggests that where there is an option for an expedited fee, standard fee paid documents are not generally processed unless there is a requirement for the completion of a subsequent transaction e.g. cross-border merger, certificate of good standing etc. However this is now being remedied.

In terms of cost recovery principles when an accelerated fee represents the higher proportion of the fees charged, the cost is being significantly over recovered. If this knowingly continues it could represent unlawful charging under EU legislation, unless the fees are re-aligned to costs. This makes an annual review of fees against cost essential.

Combining a review of costs with a well-developed management reporting system will also benefit the Registrar in setting fees because they can be developed to take account of predicted trends in volumes.

Recommendations

- A fees review is required to ascertain which transactions might benefit from an accelerated process. This should exclude low volume documents.
- An alternative would be to charge for mainstream documents i.e. all high volume or "specialist" documents such as incorporation, change of name, mortgage and HE32. The Registrar should then calculate the costs of all other documents e.g. HE2, HE4, general documents etc. and wrap these up in a single annual fee attached to the HE32. When the income from this annual fee is aggregated it should recover the cost of the rest of the registration services.

Benefit

- When income from search, incorporation, change of name, mortgage and HE32 is aggregated this should recover the total cost of the company registration functions within the Companies Section which would be in line with EU Legislation.

5.4 Over Recovery

The Companies Section seems to be significantly over recovering its costs. In terms of running a business for profit this would be great news. However, in terms of running a companies register subject to EU directives and legislation this may be unlawful.

Coupled with this the Companies Section is taking significant sums of money out of the Cyprus economy (80m-90m Euros per annum.). If the Registrar aligned fees to costs, this money would be ploughed back into businesses which in turn would help with the re-generation of the wider economy.

The register is there primarily to underpin and facilitate business at cost.

Recommendation

An immediate review of fees is required to ascertain the risk involved in the current fee structure, to stimulate investment in business and create employment.

5.5 Search Costs

In line with EU Directives search costs should be recovered through fees set within the search products themselves.

The Registrar is committed to providing basic search free of charge but must ensure "cost neutrality[6]". What this effectively means is that any income the Registrar loses by making basic data available free of charge must be made up elsewhere.

In terms of cost recovery principles (taking the over recovery aside) this is a sound principle. If the Registrar loses income by provision of free data he will need to ensure the costs are recovered overall for the service.

The costs of provision of search will need to be calculated to determine how much income will need to be generated to recover the cost. However if the Registrar made images available to the public electronically he could charge a nominal fee (e.g. 1 Euro) per image or for a specific sub-set of images (e.g. charges, Incorporation and HE32) which, when the income is aggregated would recover the costs of the provision of electronic search.

Recommendation

The cost for paper search should be calculated separately and different fees set which should indicate the assisted service element of managing, locating, copying and handling paper documents.

When all search income is aggregated it should meet the costs of total search provision.

5.6 Cost Recovery Principles

We fully understand the sensitivities around fees and charges and ultimately it is up to the Registrar and the Ministry to determine whether there is any change required to the current costing structure. However, we believe that there is a sizeable risk associated with not doing this, as setting up a business within Cyprus is less economically attractive than elsewhere within the EU.

Recommendations

- The Registrar needs to calculate the associated costs for each individual service. This requires a sophisticated cost analysis model.

[6] Cost Neutrality issue taken from Paragraph 12 of MEFP (IMF document).

- As highlighted in sub section 5.1 to 5.6 above, the Registrar needs to complete a review of the EU directives, which only apply to company registries.

Benefits

- Fees aligned to costs make it cheaper for customers;
- Where efficiencies are made reduced costs can be passed on to customers in terms of lower fees;
- Lower fees encourage business start-ups which will benefit the wider economy;
- Free basic search will provide better information more readily accessible for business;
- Electronic transactions are generally cheaper to register than paper and, as such, fees should be set to reflect this. Lower electronic fees will help drive up electronic registration which is a stated aim of the Ministry.
- Compliance with EU Legislation.

Risks

- Lower fees will ultimately reduce over recovery and this money will no longer flow into Government;
- Implementing a more sophisticated costing model than currently exists will take time and add some extra cost.

5.7 The Companies Law

As part of our analysis we developed a spreadsheet identifying the delivery requirements to the Registrar and also identified other content issues.

We have attached this at Companies Annex 5 purely as an indicator of how this task might be carried out. It is a working document and should not be seen as a definitive analysis of the legislation. We would however recommend that the Registrar and the Advocate General review the legislation to ensure consistency of terminology and statutory requirements.

As part of our analysis we arrived at some key conclusions for consideration:

Recommendations

5.7.1 Legal Support - Ensure appropriate, unbiased legal support is available to the team who are reviewing the requirements for change – this may be a short to medium-term resource issue as many other Departments are looking at legislative reform.

5.7.2 Align Legislative References - For all deliverables ensure that the terminology is consistent – in some cases, documents are "forwarded to", and others are "delivered to" or "notified to".

There also needs to be certainty about what the Registrar must do with information upon receipt of it. In other words the "Registrar shall register it". This is missing in many sections.

Ensure there is a clear legislative definition of when a document is delivered to the Registrar – is it when, an acceptable document is issued a receipt or is it when an acceptable document is registered? - this becomes important for collection of fees and for future consideration for any kind of compliance or penalty system.

There are references to fees required to be paid in various parts of the legislation whilst there is also a catch-all requirement in section 387(d). This needs to be tidied up.

The internal system shows the date of receipt as well as the date of processing so this is an excellent way of determining the date of receipt even if processing is delayed.

5.7.3 Signatures - Allow for the Registrar to delegate the signatures of documents e.g. in some sections, the Registrar certifies "under his own hand";

5.7.4 Registrar's Seal - Implement s363(3) – the Council of Ministers can direct an authentication seal for the Registrar. This will reduce a significant requirement for signatures on certificates of incorporation, changes of officers, registered offices etc. There is still a requirement to sign documents that are "certified" especially for bespoke processes like the Apostile, but the seal will cover a majority of the certificates issued and, when combined with delegated powers as set out above, will save the Registrar many days per year signing certificates.

5.7.5 Define Dates for Delivery - Review the requirements for delivery of the HE32 – currently this is completed "within forty-two days after the annual general meeting" and "forwarded to the Registrar forthwith". However, we can find no definitive date for the annual general meeting and "forward forthwith" does not define any form of delivery to the Registrar. Under s120 there are specific criminal and administrative sanctions for companies failing to comply with this timescale and there is a specific default fine for the "company and every officer" failing to meet the timescale. However, because the delivery is so ambiguous the Registrar will have no idea when to start a strike-off process unless he does so upon complaint or a prolonged period after the HE32 can reasonably be delivered. This is also discussed in the section on Compliance with specific reference to the introduction of a late filing penalty regime.

5.7.6 Voluntary Dissolution – The Registrar should consider introducing statutory voluntary dissolution – there is passing mention within s327(3) that a company could write to the Registrar to the effect that the company is no longer in business. Any new process should contain specific conditions under which this can be applied e.g. not traded for a specific period, no creditors/creditors notified etc. There is a provision for voluntary winding up but this is a different option. The UK introduced this process in 1995[7].

Further consideration should be given to introducing a legislative requirement that allows creditors to object to the dissolution of a company between the 1st and 2nd Gazette notices as set out in s327. This will have the benefit of saving the company the added expense of restoration costs.

This would help greatly in ensuring that the register can be cleansed of companies that are no longer required.

5.7.7 Registered Office[8] - The status of the registered office address should be reviewed. Section 102 only states that there will be a registered office, it does not state that this is a legal address for the service of documents – and yet there is a penalty for non-notification of the address. Statutory letters in the event of the application of s327 have no specified address to go to – just that the Registrar "will send to the company by post or registered letter". This is also discussed in the section on Compliance.

5.7.8 Auditing Financial Reports – Review the requirements surrounding the financial report that must accompany the HE32. The legislation shows that small companies are not required to have their accounts audited and yet are having to do so because the revenue requirements for filing insist on audited accounts. Internet research has shown figures of approximately 300 Euros for the auditing of a set of dormant accounts – a significant cost to a business that is not trading. This may need to be looked at in conjunction with the Inland Revenue and Customs and Excise.

5.7.9 Review s391 - We strongly recommend that s391 is examined before any action is taken to remove a company from the register.

The dates that the levy is due to paid are clear as is the maximum due from a group of companies and the additional charges for late payment are understood.

Our concerns are over removal of companies from the register.

Firstly, the section says that if the fee is not paid, the Registrar shall proceed with the removal of the company from the register using his powers under s 327. There is an explicit action for the Registrar but it is not being carried out at present.

[7] see s1003-1011 of the Companies Act 2006
[8] see s86-87 of the Companies Act 2006

We understand "mutatis mutandis" to mean that necessary changes can be made to the fit this new process. Section 327 is about strike-off and dissolution of a company. The problem is that it is not apparent what modifications, if any, are necessary, especially given a new concept of removal for non-payment of an annual fee. For example, what is the registrar to do if he writes to a company that has not paid, asking if it is carrying on business, to receive an answer that it is? Is there a legal presumption being made that the company cannot be carrying on business if it has not paid the levy? And what if the company responds that it has no assets or the assets are overseas - these companies are exempt? How does the registrar know which companies are exempt?

Then there is the issue of what "removal" means. Removal may mean strike-off and dissolution or it may mean something different such as deregistration e.g. the company might continue in business as an unregistered company.

Section 391 goes on to say that on payment of a further fee of 500 E, the company can be "ipso jure reinstated" to the register within 2 years of its removal and it can be "ipso jure" reinstated at any time after that for a payment of 750 E. So if the company pays the appropriate sum, it is deemed by operation of law to be reinstated to the register. What s391 does not do is impose a time limit for reinstatement, nor does it specify what the legal effect of reinstatement is. If the company was dissolved, is it now deemed to have never been dissolved, or if it was rendered unregistered, is it now deemed never to have been unregistered?

If the company is dissolved, the assets pass to the Republic. We have concerns about any legislative provision that uses strike-off and dissolution as a sanction because it does not sit well with Human Rights legislation, particularly the right not to be deprived of one's property. However, it would not be for us to advise on the compatibility of this section with the European Convention of Human Rights.

5.8 The Gazette

The Official Gazette of the Republic appears to be similar to the UK equivalents although it also includes any public sector vacancies and tenders.

There appears to be at least one issue each week and an electronic version is available.

Information on filings can be published weekly. The internal system already generates lists of notices for the Gazette. Section 365A states what information the Registrar will have published in the Official Gazette of the Republic. Lists are then requested by the different areas within the Companies Section when they are ready for publication.

In some areas notices are published weekly, in others there is a monthly submission.

We understand that there is a limit to the number of entries that will be published in any issue of the Gazette. This can be a problem where there is volume to be published e.g. once the backlog of older HE32s is updated and when the register can be cleansed of companies no longer required under s327, there will be a huge number of notices for publication.

If there is any delay in publishing details of companies that have been wound up or struck off the register (at which point the company ceases to exist in law), dissolution is delayed. The publication of the Gazette notice is the point of dissolution as clarified in s327 (5). To use an analogy, a company that is struck off is dead, when dissolved, it is buried.

If there are problems increasing the capacity of the Gazette, cleansing of the register should be phased in manageable numbers to ensure there is no delay between strike-off and dissolution.

We are unsure of the calculation of date when a company is considered to have been struck off in Cyprus. However, property of the dissolved company is only deemed bona vacantia on dissolution and is vested to the Republic at that time. In the UK the company is struck off when the Gazette notice is “requested”, this is the date at which the file is produced.

Section 327 (7) allows for the restoration by court order of a company that has been struck off within a specified timescale from the publication (dissolution) in the Gazette. Therefore if there is a delay in publication in the Gazette, there must surely be a delay in the option of restoration.

Whilst the Patents (see section 11) work in terms of applications is up to date, approvals have only been published to 2008 because of file size restrictions. The problems have been identified and good progress is being made in this area.

DRCOR does not pay for the publication of Gazette notices.

Recommendations

- Automate and collate the production of a weekly Gazette notice (this may not be possible for Patents);
- Negotiate the amount of information that can be published in each issue of the Gazette to ensure that there is no backlog either for general notices or for dissolution notices – as this is a Government publication it should presumably be in a position to publish everything required by Cyprus legislation;
- Negotiate if additional space can be procured in Gazette publications to enable the Patents backlog to be gradually brought up to date;

- There is no cost to DRCOR for Gazette publication but there would still be an efficiency cost saving if there was a fully electronic version where the file is generated from the DRCOR systems and transmitted to the Gazette in a format that can be published.

5.9 Insolvency Information Delivered to the Registrar of Companies

The Registrar of Companies should process all information that is required to be delivered to him under the Companies Law and make this information available to the public in the same way as for all other information delivered to him under the Companies Law.

However, the companies registry does not process all insolvency information required to be delivered to the Registrar. Instead the Office of the Official Receiver staff currently receive and process a proportion of insolvency information which is not part of the Official Receiver's remit.

Recommendation

- The Registrar should take back the responsibility for processing notices of Voluntary Liquidation (as he currently does for receiverships).

Benefits

- This will free up Official Receiver staff to process corporate and personal insolvency cases in line with their statutory remit;
- This will ensure all Company Law filings are managed by the appropriate statutory body;
- All Company Law filings are held at the Registrar of Companies instead of two separate sites as at present;
- Provides opportunity to develop more wide ranging skills for existing companies register staff.

6. Policy and Process

There is a difference between Legislation and Policy. Effectively policy is "the what" i.e. a need or issue identified which will require some thought and analysis to come up with a practical solution. Once the policy has been determined the legislation will be drafted to give a legislative framework in order to implement the policy.

The physical process should always be determined by the policy and legislative framework and not the other way round.

DRCOR needs to decide a policy on what type of company register they wish to be to fulfil the strategic goal set down by the Ministry.

The Companies Section's aim should be to become an efficient, cheap, mainly electronic register passing on efficiency saving to its customers in the form of lower fees set to costs.

This is the high level vision and goal. However, at an operational level there is a way to go before this can be achieved.

For example, within Companies Section there are many similar processes e.g. examination, keying data, rejection etc. Whilst the content of the information may vary, the underlying principles should not differ for core tasks. There appear to be different approaches to examination at this time with some areas rejecting documents by post, others asking customers to come in, some examiners asking to see proof of ID number and others accepting this number as presented on forms.

Recommendation

We recommend an end-to-end review of each process be undertaken with a view to achieving the following policy objectives:

- Align core tasks;
- Analyse the statutory remit;
- Remove extra statutory tasks/checks;
- Reduce avoidable customer contact;
- Remove unnecessary double handling.

For every document type delivered to the Registrar the existing process should be mapped, end-to-end (Companies Annex 6). Once this has been completed a review of the process needs to be undertaken to remove any non-statutory, non-value added or double handling processes (Companies Annex 7). Once the new streamlined process has been mapped the examination policies should be drafted to reflect the new process (Companies Annex 8 - this annex shows the exam policy for the name, first officers and registered office. There was another policy for memorandum and articles.) The examination policy should cover every mandatory field or requirement for delivery to the Registrar.

Mapping processes and developing examination policies should be started immediately, especially as the majority of this work will not require systems changes or legislative change.

This review should be carried out and managed by someone who has a clear understanding of the legislation and is empowered to implement the necessary changes to processes in line with the agreed policy within a change management process. In order to facilitate the changes necessary to move the Companies Section forward this needs to be completed dispassionately and objectively.

Recommendation

We recommend that an independent change team be set up to oversee and manage the changes necessary within DRCOR. This team should have autonomy to review and change process where necessary as well as implement the necessary statutory and IT changes required.

Many current operational practices appear to have remained unchanged over the years despite rapid changes in technology and the constantly changing economic environment. Now is the time to step back and review the underlying policy requirements with a view to streamlining and modernising the statutory requirements.

Due to the frequency of amendments the legislation is disjointed and in need of homogenisation.

We set out below some of the issues we observed during our analysis of the Companies Section processes:

6.1. Incorporation and Document Examination

Current Process:

- The Registrar creates and uses hard copy company files throughout the process which slows down the processing of information;
- There are many examples of double handling of documents e.g. assistants key information, examiners check documents, assistant contact customers and deal with rejects face-to-face, assistant creates hard copy company file;
- Staff do not reject incorrect incorporation and name applications by returning them. Instead they phone the presenter to discuss or invite to the building to amend. This is avoidable contact;
- The Registrar has to physically sign every incorporation, charge and specific other certificates which is extremely labour intensive;
- The Registrar pre-vets company names and holds accepted names for the presenter to allow the solicitor to make the relevant incorporation application. There does not appear to be any legislative requirement to pre-vet and accept name applications. This could form part of the check upon incorporation removing an onerous, extra-statutory and time consuming part of the process.

Recommendations

Use the overarching policy objectives as a base line to analyse the end-to-end process weeding out non-value added tasks:

- Create document batches to save staff creating hard copy files;
- Register documents in batches and store in date order;
- One person examines, keys and accepts/rejects the documents;
- All sections reject documents by post;

- Improve guidance on the website for customers (see section 8);
- Introduce a seal instead of a requirement to sign certificates;
- Remove pre-vetting of company names and introduce a names check as part of incorporation; or
- Completely overhaul statute across the board and remove statutory requirements for court to sanction incorporation and make it easier for customers to incorporate directly with the Registrar.

Benefits

- Creating batches saves cost, time and resource;
- One person owning the examination process end-to-end frees up 50% of resource for other tasks and improves productivity, reduces backlogs and processing times;
- Rejecting all documents by post will improve productivity as staff will not be taken off task to manage customers;
- Improving guidance will help reduce the number of documents being rejected;
- Introducing statutory provisions e.g. the Registrar's seal, will reduce the process burden;
- Removal of extra-statutory pre-vetting of names and including this in the incorporation process will save resource, time and cost;
- Making it quick, cheap and easy to incorporate a company directly with the Registrar will stimulate growth and business within the economy.

Risks

- Public/senior stakeholders may be resistant to some changes
- HR (cross-cutting) issues in aligning examiner and assistant roles into one process.
- Legislation takes time to implement so signage and seals etc won't change in immediate/short term.
- Sensitivity surrounding proposed changes to the Advocates' Law

Further Recommendations

- All other filing types will benefit from a similar review of the end-to-end process. For example removing the need for multiple registries will free up working space.
- Removing extra-statutory checks etc will further streamline the process creating efficiencies. Examples include: checking back to the Memorandum and Articles when directors/members information is filed.

6.2 Names Approval

The Registrar has a pre-incorporation names process which carries a statutory fee. This pre-approval also applies to change of name applications. We can find no statutory authority that gives the Registrar power to demand that a company choose its name before it applies for incorporation, let alone charge a fee.

This process significantly slows down incorporation - in extreme cases for up to four weeks.

Recommendations

- We recommend that the names application forms part of incorporation or change of name and ceases to be a separate process. This will streamline the names processes, reduce the time taken to incorporate or change name and reduce costs (see Companies Annex 7).

  The Registrar also rejects a high number of name applications, although this is falling. This could be due to a lack of understanding from customers as to how the names process works or due to the lack of clarity on names rules and the paucity of information available to customers.

  For example, making customers ask permission from large companies e.g. Benetton, if they wanted to use Benetton in their own company name, which is a surname and could justifiably be used in a company name.

- The Registrar needs to review names policy and improve guidance around names on the Companies Section website. Improving customer guidance and simplifying names policy will significantly reduce rejected applications and avoidable customer contact (see paragraph 8).

6.3 Introduce Voluntary Dissolution

As previously mentioned in paragraph 5.7.6 the Registrar could decide as a policy to introduce the concept of voluntary dissolution. This is where the officers of a company decide that they no longer require it, cease trading for a designated statutory period, ensure their creditors are paid in full and make an application to the Registrar to administratively remove their company.

This is very different to the power in s327(3) of the Company Law where the Registrar can initiate strike-off if he believes or is told that the company is no longer in operation.

With voluntary dissolution there is no need for the Registrar to consider whether he believes the company is required. The company will need to fulfil statutory obligations to use this route to dissolution and there should be a criminal sanction for not doing so.

This will allow companies an option to be struck off and dissolved cheaply and relatively quickly without the need for an expensive insolvency procedure, whilst at the same time protecting creditors by making the company ensure it has cleared it trade debts before applying for dissolution. Consideration should also be given to introducing a statutory process to allow creditors to object to the dissolution of the company.

This will ensure the register is self-cleansed by those companies no longer required.

6.4 Creation of Examination Policies

Each document examination process needs to follow an agreed policy. To work effectively this needs to be documented in detail outlining the decision points that an Examiner could be faced with. The documented process should be made available to staff as a reference material. An example of UK examination policy is set out in Companies Annex 8

However, before exam policy can be drafted each transaction needs to be fully mapped to enable non-value added processes to be removed.

The examination policy needs to be continuously reviewed each time there is a change in process or legislation. This will ensure internal compliance with agreed process and policy.

This way policy and legislation will be effectively documented to provide not only better instruction for staff but also historic information about the rationale behind why changes were made.

Recommendation

The Registrar should set up a team which has responsibility for analysing, assessing documenting and implementing policy for each process in line with statute**.**

It is important to note that the Registrar only needs to consider documents within his remit as set out in the legislation; he is a Registrar not an arbiter of fact.

7. Systems

7.1 Internal systems

The examination system in the companies section appears to be good and performs well. There is data validation to prevent obvious keying errors and the system is indexed so that data already held e.g. officer names, address, and ID numbers, can be readily located and reused on new filings to prevent duplication. The electronic filing already implemented is received in data format and skips the

data entry process to go straight to examination. As the percentage take-up of this service increases, this will free up clerical staff for redeployment to other areas e.g. the suggested new teams for compliance, policy, customer services.

In addition, many of the simple electronic documents could be automatically accepted without any "human" intervention. System rules and the form types suitable for the streamlined process would need to be identified following a policy review. Initial suggestions would be terminations, change of officer details and HE32s where the details being submitted match those already held on the company record. Again, this would free up an additional number of examination staff.

7.2 External Systems

The search facilities currently available enable customers to see the filing history of a company but not the actual details of individual documents. Images of documents need to be available for the transactions shown on the company history. How far back these are captured is discussed earlier in this paper.

Before this is done a solution must be identified to protect individual officer personal data.

Tracking the progress of electronic filing submissions is possible online through "My Workspace" using the receipt of payment docket. This process works well and should be used as a selling point when encouraging customers to switch from paper to electronic filing.

A reduction in fees for electronically filed documents would also be an incentive to encourage a transition to the new methods of filing.

All electronic filing customers have to use a code to file so this is itself a deterrent to fraudulent filing, providing the methods of allocating and delivering this code are adequate from a security point of view.

When an electronically filed document is rejected, the reason(s) are generated by the system and are made available to the presenter through "My Workspace". This makes it very important that customers track their filings to ascertain acceptance or rejection.

The customer-facing website should contain much more information about filing obligations, examination procedures and frequently asked questions (FAQ) to enable customers to get their submissions correct with the minimum number of rejections.

7.3 PROOF

This is an option every company has in the UK where it can restrict certain filings it submits to the Registrar to be electronically filed only. This is achieved by holding a 'flag' on the company database record. Any paper document received at CH for that company will be rejected to the company registered office and only individuals who are in possession of an electronic code can file against the company. In the UK there is only one authentication code which is allocated and sent to the company's registered office. The company then gives this code to anyone it wishes to file documents for the company.

If the system for allocating codes for electronic filing is considered robust against fraud then introducing a similar system to the UK would be an effective method of mitigating fraudulent filing.

This could be implemented on the internal system without involving third party suppliers.

Terms and conditions will be required to allow customers to sign up to the service. The Registrar must state the parameters under which the service operates.

Companies should be allowed to file paper documents of PROOF filings in exceptional circumstances but only with the agreement of the Registrar. Therefore a process will need to be developed to facilitate the paper delivery of forms under the PROOF scheme. CH UK has developed a covering form (PR03) that accompanies the statutory deliverable so that the examiners know that the form has been agreed to be filed on paper by someone in the Registry. The covering form is only made available upon application to the Registrar.

The link below provides the UK terms and conditions as an example of what DRCOR would need to consider when setting up a service.

http://www.companieshouse.gov.uk/about/pdf/statutory_proof_terms_and_conditions.pdf

The following link contains an overview of the PROOF service along with Youtube videos of CH services.

http://www.companieshouse.gov.uk/webfiling/demoVideos

7.4 Monitor

This is a service in the UK which enables a member of the public to register an interest in a particular company and receive notification via e-mail (could use text messaging) whenever the company filing history changes with the addition of an accepted document.
The link below has an overview of the Monitor service:

http://www.companieshouse.gov.uk/webfiling/demoVideos

This service does not prevent filing but serves to notify interested parties when a document has been accepted. Early notification can limit the extent of intended fraud if the officers of a company monitor their own company's filings.

Recommendation

We recommend that the backlog of filing is cleared before any version of this service is implemented, since notifications of very old filings would be sent to customers and would not enhance the reputation of the companies section.

7.5 Government Gateway.

We understand that Cyprus intends to join the Government Gateway in the near future. Working within this framework requires an extra layer of authentication prior to filing documents which will be advantageous if fraud is a particular problem. The company is in control of access to file documents and manages this through a delegated authority mechanism on the Gateway.

Recommendations

- Develop the customer-facing system to show images against a company history
- Make document images available as soon as the Registrar considers that a significant amount of the backlog has been scanned. Making images available prior to this point would result in more queries for missing images.
- Look at ways to increase the number of documents filed electronically for example:
    - Reduce electronic fees;
    - Promotion of service on website and via external advertising;
    - Introduce the HE32 pre-population service which will be much easier for customers to complete and should reduce reject rates – options to do this are already being considered;
    - Introduce pre-population on other forms e.g. change of director details, termination of director, update of capital details.

- Publicise/advertise the advantages of the electronic filing service, for example:
    - Ability to track filing progress on-line;
    - Less chance of rejection (data validation on customer input);
    - Faster acceptance/rejection of documents hence company record more up to date.

- Introduce automatic acceptance/rejection of a subset of electronically filed documents;

- Introduce a sign-up process so that companies can elect to file electronically;
- Introduce a process where customers can be notified that a document has been accepted for any company they may wish to 'follow' or monitor.

Benefits

- Customers have a clear and accurate view of the latest position of a company;
- E filing is a more efficient way of collecting data;
- Reducing the need for staff to key data;
- Lower reject rates with pre-populated electronic filing;
- Faster turn around time for customers;
- Better value for customers;
- Helps mitigate fraudulent filing.

Risks

- Poor paper quality (old documents) will mean poor quality images;
- Cultural resistance to electronic processes due to need for signatures etc;

Introducing and up-scaling the electronic registration will significantly reduce the occurrence of fraudulent filings. However, whilst the risk can be effectively managed it will never be fully removed.

We understand that internal disputes are considered to be fraud however the Registrar is not an arbiter of fact and should not be getting involved in disagreements between directors of companies.

8. Communications

Currently, the majority of interaction and communication with customers is face-to-face. Most documents are delivered by hand, the main areas of the building can be visited by customers during specified hours of the day. Messengers collect correspondence, certificates and rejected documents. In the case of incorporations, if there is further information or correction required, the presenter is asked to come into the office. We understand that there are over 1,000 telephone calls coming into the Companies Section every week.

Communication is of course vital, but it does need to be managed otherwise it will dominate the working day and be a distraction from the statutory work of the Companies Section, which is the acceptance and processing of documents.

Every effort should be made to reduce the levels of "avoidable" contact referred to earlier in the document. Not only will this free up time for the staff to carry out their

duties with minimal interruption, also reducing the risk of errors, but it will increase customer satisfaction levels.

If DRCOR can make strides in making information easily available to customers, this will reduce the volume of visits and phone calls to the office. Increasing the levels of electronic filing will also reduce the requirement for visits to the office.

Written or electronic communications to customers as perhaps a reminder of a statutory filing being due or to notify a default are opportunities for including other information e.g. a reminder letter about the filing of the HE32 could include details of the top 10 reasons that these forms are rejected. In the section on compliance and enforcement (see section 10) we have been more specific on some of the letters that might be considered.

Change managers need to look at refining process flows and developing examination policies, the next step being to produce guidance information for customers. This needs to be looked at as a whole and not as three separate exercises as the process has to capture all the required information. Legislation has to deliver the policy requirements and the process has to deliver the legislative aim. Therefore any guidance produced has to be consistent with the examination policy.

We appreciate that the current website is used to put out notices to customers. Those we have seen are about changes and the annual levy. This can be expanded on significantly.

By giving the customer the information they need, and access to frequently asked questions, this reduces the level of personal enquiries.

Developing these forms of communication will take time, and it will take customers time to adapt to different methods, but for the majority that must surely be easier than taking the time to come to the office, or cheaper than sending a messenger. In the longer term, it will give customers greater understanding of, and access to, the information provided.

The following link shows examples of the CH guidance notes. In the past these were produced on paper as well as being available electronically but this is now restricted to an electronic format as this allows quicker updates and version control.

http://www.companieshouse.gov.uk/about/guidance.shtml

Of course, the website can also be used for other messaging, such as, promotion of electronic filing, information on director's responsibilities, news announcements, security issues etc.

http://www.companieshouse.gov.uk/index.shtml

Once basic information is made freely available, consideration can be given to using the newer platforms e.g. SMS, YouTube, Twitter, Facebook

http://www.youtube.com/TheCompaniesHouse

We understand that the companies section have offered training seminars for the professions in the past, however, these should be made available for all stakeholders.

Whilst it is acknowledged that currently, most transactions are carried out by accountants and practicing solicitors, we are unaware of anything to prevent officers of companies or their agents filing directly (with the exception of the HE1).

Once the chosen methods of communication are in place, there must be ongoing analysis of contact from customers. If the same questions keep being asked, the guidance is probably unclear and needs to be reviewed. Having guidance available in electronic format means it can be updated quickly.

Recommendations

- Set up a small team (not additional staff but from streamlining processing areas) to look at letters, guidance and web communications (training for updating website is essential);
- Get "the business" to comment on these before publication to ensure that the information is correct and workable;
- Guidance should be made available on the website and should be version controlled;
- Devise a list of the most frequently asked questions (FAQs) and make these available, with answers, on the website;
- Introduce a process to enable website changes, be able to react to any important announcements, electronic systems problems etc. (In the UK we currently have notices about phishing emails);
- Develop the website into a "must go to" resource for customers;
- From the exam policy, create "scripts" for general telephone queries to ensure consistency of response;
- Analyse the questions that will still be asked to establish where information may not be clear and review guidance and FAQs on an ongoing basis;
- Look at options for face-to-face training events and seminars.

Benefits

- Reject rates for documents will reduce as customers have a better understanding of requirements;
- The number of phone calls and visitors into the offices will reduce;
- Examiners will have fewer interruptions and be able to increase volumes of work;

- Transacting with the Companies Section becomes easier and cheaper for company officers, allowing them to invest more in their businesses, benefiting the wider economy.

9. Defining the Customer and Customer Service Levels

In order to offer the services that customers want, and to improve the role of the register within the business community, it is imperative that there is a clear understanding of who the customer is – both internal and external.

Once that is clarified, it will become obvious how best to engage with different groups.

It appears that currently the professions, accountancy and legal, are considered to be the main external customers of DRCOR, the conduit between the two often being messengers employed by the professionals to deliver and collect from the offices. Whilst this seems to work within the current scope, this must be a time consuming and expensive method of contact, which will inevitably be passed on to the companies themselves.

Whilst it is of course imperative to listen to these bodies and to provide them with the required services, this must be equitable with the service offered to others, within reason, consistent and within the confines of policy and legislation. The Registrar should not be told “what to do” by customers. For example, there is a suggestion that much of the signing of certificates is because overseas directors want signatures but this is not a requirement within the law.

Officers of the companies are all customers, as are those seeking to search the register. Meeting their needs can be achieved through the targeting of communications as detailed elsewhere in the report.

If the Department is to become paper free, and to facilitate doing business with Government, the perception of the customer base must change and processes and policies introduced to give all customers the tools to be able to transact with the Registrar, on an equitable basis. There should be no “mystery” surrounding filing documents andinformation should be made available to all who wish access to it.
This will reduce costs for all and leave more money to be invested in the businesses and therefore the wider economy.

Once there is an understanding of who the customers are, there needs to be a team responsible for providing support via telephone, e-mail and letter. The Registrar may decide to have a specific liaison for the bigger companies or groups, for example a relationship manager.

Services can be targeted once the customer base is identified. Different groups with different levels of knowledge can be targeted in the most appropriate way when it

comes to promoting services. For large presenters, ease and speed of filing electronically, savings in messenger costs and time, dedicated contact details; for directors and officers, reduced costs, speed of filing, ease of doing business; for searchers, more information readily available.

Customer satisfaction surveys are an excellent way of gaining feedback and tracking improvement in perceived levels of service. This will also allow for the establishment of targets to drive service levels and improvements. Everyone performs better where there is a measurable expectation and target to meet.

It should also be remembered that there are internal customers. Any changes to systems or process need to be appropriately consulted on and impact assessed internally. This is covered under Change Management.

Recommendations

- Create a Customer Care role. This would provide relationship management between the companies section and its major customers. The organisations to which the specific customer care service is provided come from all the main sectors that have dealings with the Registrar. These include: - accountants, solicitors, banks, group companies, other government departments, professional bodies/associations and all end-users of DRCOR services.
- Customer Care should represent the needs and expectations of the customers and stakeholders, both internally and externally. The portfolio of customers built up through this process should regularly be used for the purposes of important consultation and updates to services.
- Events should be used to raise awareness of existing products and services, advise customers of forthcoming enhancements and changes and encourage adoption and usage. Feedback from these events is used to determine the success of the events and influence future product enhancements.

Benefits

- More engaged staff and customers;
- Will reduce avoidable contact;
- Will improve two-way communication on service level expectation and change;
- Demonstrates willingness to work together to showcase the benefit of doing business in Cyprus.

10. Compliance and Enforcement

To facilitate the provision of timely and trusted corporate information to the public and business community, the Registrar needs to develop an appropriate process to

encourage companies to comply with their regulatory requirements, and to deal with non-compliance in a proportionate manner.

To achieve this, there should be a variety of ways to help companies comply with regulatory requirements. This should include sending automated reminder letters and e-mails to companies via electronic and paper channels before a filing deadline; holding information seminars, free website guidance; utilising contacts in professional bodies, and offering support and advice to customers through a Customer Care programme. Much of this we have covered in sections on communications and customer service levels.

However, where help and advice does not secure compliance with regulatory requirements, the Registrar should use fair and proportionate enforcement with the ultimate sanction being prosecution of criminal activity. Alternatively the Registrar can determine under s327 that the company is no longer in business and not required and therefore can take the necessary steps to remove the name from the register and dissolve the unwanted company and publish in the Gazette.

Enforcement of regulations and prosecution of criminal activity will maintain confidence in the corporate register, reduce fraud and provide stability for business and enterprise. However, in the majority of cases, the driver should be to improve compliance and educate directors rather than enforce punitive measures.

As there is currently no significant compliance action taking place, this is a very basic suggestion for a move into this area.

Our research suggests that there are some 139 offences within the Companies Law Companies Annex 9 attached (this list has been compiled from a cursory reading of the legislation for the purposes of this paper and should be reviewed, with the same expert criteria as Companies Annex 5 on legislation)

The Registrar should consider introducing a range of activities designed to ensure that companies do not default, and as compliance improves, should continuously look for ways to help companies avoid getting into default.

There are different types of offences:

- Defaults for documents filed outside of the period laid down in legislation, where the penalty can potentially increase on a daily basis. In the UK, with the exception of the Annual Accounts where we levy a late filing penalty, we do not pursue these as:
- We generally are unaware that the breach has taken place until we receive the document;
- Once we have received it, the breach has been rectified;
- Criminal offences where misinformation has wilfully and knowingly been submitted to the Registrar or members of the company. These cases require to be prosecuted through the courts and a decision needs to be taken on

which of these are the priorities to pursue. We would suggest determining whether or not a prosecution is in the public interest.

The Registrar is not a regulator or an arbiter of fact, neither "does he know what he doesn't know", in other words he is unaware of an un-notified change.

DRCOR and the Ministry would need to discuss:

- which breaches are considered the most serious;
- who will be responsible for the investigation and prosecution of each breach – DRCOR or the Ministry or the Courts;
- whether some breaches better pursued under different legislation e.g. fraud.

Cost and resource will dictate some of this discussion.

The Registrar in the UK would be unlikely to spend money pursuing a criminal breach where there is a civil remedy or where there is obviously an internal dispute between members or officers of the company.

Recommendations

10.1 Bring register up to date

In order to instigate any type of compliance and enforcement process, the register first needs to be brought up to date. This work cannot be started until the backlog work is completed.

10.2 Cleanse the register of companies no longer required

Once the Registrar has a clear picture of the number of compliant companies, he can determine the criteria for strike-off under s327 "where the Registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation"

We would suggest that one of the offences that might lead to this conclusion is the failure to file the HE32 and financial statements (s120 (3)). The HE32 carries a potentially large penalty on prosecution for failure to deliver, and a default penalty for late delivery. The maximum level of the penalty for failure to deliver would suggest this is seen within the legislation as being the most important filing. If an automatic late filing penalty was to be introduced, legislation would need to be implemented to allow this.

The ultimate sanction for failure to file the HE32 is prosecution with a substantial fine on conviction, or a default penalty for late filing. Whilst not a statutory requirement, it aids compliance levels to issue reminder letters before the due filing date. From discussions with the third party IT provider and the Department of

Information Technology, this would be relatively easy to achieve. In that way, the Registrar could clearly lay out the penalties for non-compliance.

There should be at least one standard default letter re non filing before consideration is given to either prosecution or strike-off.

If the alternative to prosecution is to strike the company off the register, the processing system needs to be enabled to produce lists of companies in default and generate standard letters. In the case of the HE32 offence above, there are two statutory letters that must go to the company before the company can be struck off the register and dissolved.

As mentioned earlier in this report, there is no formal method for a company to be voluntarily dissolved under the current legislation. They can appoint a liquidator to voluntarily wind the company up, but a company that is fully compliant with their filing requirements has no cost-effective way of being removed from the register. To achieve strike-off through non-compliance, the officers run the risk of prosecution.

10.3 Set up a team to deal with statutory compliance issues

A specialist compliance team will be able to ensure that compliance letters are issued once defaults become clear and to deal with enquiries from customers as to requirements.

If late filing penalties are to be introduced, as we have covered earlier, there would be a requirement to define a specific deadline for delivery of an HE32 and also the conditions under which a penalty is incurred

The Companies Act 2006 states:

“Where the requirements of section 441 are not complied with in relation to a company’s accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty” which is automatically imposed.

If a penalty regime was to be introduced, and there seems to be an appetite for this from the stakeholders, consideration should be given to exceptional grounds for appeal where a decision not to collect a penalty might be made.

There would also be a requirement for a team to deal with casework, generally acting on complaint to try and obtain compliance e.g. complaint that annual general meeting has not been held, registered office is not effective, disclosure requirements have not been met.

In dealing with breaches, the Registrar should not be an arbiter of fact and can only ask the company to respond to the complaint, either with an explanation or

confirmation that the breach has been rectified. If the complaint is between officers of a company, this is an internal dispute and the parties should be advised to seek their own legal advice as the Registrar cannot be involved in internal company matters.

10.4 Establish which body is responsible for which type of action and clarify the penalties for non-compliance

There needs to be clarity over who has responsibility for what actions.

For some of the offences, such HE32 offences and non-payment of the levy, the Registrar might have the full enforcement role i.e. including reporting for the prosecutors if it is agreed that this is the most important filing.

For other offences, the Registrar might carry out the initial compliance function, sifting cases for Republic prosecutors to consider criminal proceedings. Or these may be investigated by an investigator appointed under s158 by the Council of Ministers. We understand that these investigations are carried out within DRCOR although there are very few of them. This might be in conflict with the role of the Registrar as a Registrar unless he is acting under different powers as an investigator.

In other cases, these would be civil claims that are brought about by officers or members of the company, shareholders etc.

Some offences may only be followed up on complaint, particularly in areas where an offence has been committed but as no information has been sent to the Registrar, he could not possibly be aware of the offence.

Many of the breaches listed would be better used to develop some examination policy, detailing the information that is required and therefore the appropriate reasons to reject a form.

Benefits

- The benefits to the business community of being able to show creditworthiness and legal compliance are vital in times of economic hardship;
- Increased rates of compliance and transparency can only lead to a significant decrease in fraud, which we are led to believe is a huge issue;
- Initially, compliance rates are likely to be low and the volume of work arising significant, particularly if financial penalties are introduced. The process will be resource intensive, but once company officers become familiar with the focus on compliance, the number of offences will reduce.

10.5 Compliance and Late Filing Penalties (LFP)

The system should monitor when the HE32 becomes due. When the due date has passed the system will automatically initiate enforcement or strike-off procedures by sending the automated standard compliance letters. If no response to these letters is received the Registrar can simply strike the company from the record as per s327 of the company law.

If as a result of the compliance letters the company provides the HE32, the Registrar accepts the document and levies a fine for the late filing.

This method of chasing compliance has proved extremely effective in the UK with very high compliance rates of over 98% for the equivalent information.

If the Registrar wanted to implement this as a policy and implement the required statute there are potentially a few statutory hurdles to overcome.

10.5.1 The due date of the HE32

The Registrar will need to define in law exactly when the annual return is due to be delivered. Currently the legislative requirements are inextricably linked to the annual general meeting of the company with the annual return needing to be "completed within forty-two days after the annual general meeting" and the company must "forthwith forward to the Registrar…..a copy….".

Therefore if the policy is to develop an automated compliance and late filing penalty (LFP) regime the fact that the Registrar does not know definitively when a company has held its AGM means that he cannot implement the policy unless he changes the statutory mechanics of this process.

10.5.2 The Registered Office (RO)

A further policy decision before considering an LFP regime is to ensure the Registrar has somewhere in law that can be relied upon, in court, to deliver statutory notices.

In the UK the RO as registered with the Registrar is the statutory address of the company (even if the RO is not up to date). Therefore if the Registrar needs to issue a LFP to a company he can ensure it is delivered to the statutory registered office and this serves as compliance with the statutory requirements for service.

If following the issuance of the LFP, or following dissolution, the company claims that they did not receive the statutory warnings because the registered office was out of date this is not considered as cause to waive the penalty, or restore the company as it is the company's responsibility to ensure their records are up to date.

Introducing a compliance and enforcement policy will require considerative thinking about how this process flows throughout the Company Law as well as a team to manage and deal with compliance issues.

11. Trademarks and Intellectual Property

On our first visit in September 2013, we had presentations from the teams involved in Intellectual and Industrial Property.

These are not areas that CH has operational expertise in, however, from a process point of view, the principles are the same. Certificates are signed by the Registrar himself.

Trademarks and Intellectual Property is one of the three operational areas within DRCOR. DRCOR is the Department of the Registrar of Companies and Official Receiver. There is a lack of branding, both within the Department name and the physical building that needs to be resolved.

Not only does the patents and trademarks area require increased visibility within the Department, great benefits would be derived from representation on the wider stage, both nationally and internationally.

Development of a team to represent the section at external meetings and conferences, both within Cyprus and further afield, would reap huge benefits in terms of raising the profile of Cyprus, extending networking opportunities and enabling access to potential funding initiatives.

The team would also be able to present awareness seminars to assist entrepreneurs in terms of safeguarding and patenting their intellectual property, therefore enabling innovation and business growth for Cyprus.

Trademarks

Whilst details of registrations are entered into an internal computerised system, the actual process of examination, authorisation and rejection is partly manual. An electronic filing system is planned for 2015. This is in the context of the co-operation agreement between DRCOR and OHIM. The electronic filing system will be available only for the application for registration, renewal, opposition and cancellation procedures.

The only backlog that exists is work concerning computerisation of approx 75,000 trademarks. This involves the keying of data from paper files to e-files and the Vienna coding. This requires to be done to enable the offering of a full search facility based on relative grounds for renewal.

Some Gazette data is automatically generated and the rest manually. Historically there were issues regarding the volume of information that could be accepted by the Gazette each month, but these issues have since been resolved.

International trademarks are in a good position without backlogs. However, for international trademarks there is not yet any computerised system.

Patents

It is interesting to note that national patents applications are not required to be made through a practicing solicitor. The majority of the work volume concerns European Patents which require a lawyer to handle and file.

The register of patents is also up to date although there are backlogs in the Gazette publication. This is not an issue with the intellectual property section; rather it is due to restrictions on the Gazette size that we have described elsewhere in this report. Each month only about 250 new patents can be published (the limitation is due to the inclusion of drawings), 50 renewals and 50 removals. This was due to some issues with the Ptolemy system. The issues have been resolved and more European patent applications will be published from now on.

The publication of national patents is up to date.

Patents have been published up to 2008. Additional resource would not help bring this up to date unless an agreement regarding volume can be reached with the Gazette.

However, there is a backlog of 6,000 patents for which the data from paper files needs to be keyed into the system and the images of the patents scanned.

The majority of the legislation is based on wider EU legislation and therefore unlikely to require revision.

Recommendations

- It is imperative that this section of the Department has its own identity (Name, website etc);
- Additional resource would help the back capture exercise of approximately 75,000 trademarks (already granted). This work is estimated to take 75,000 man hours, or 54 full-time equivalents for a year (30 hours working over a 46 week year);
- Additional resource would help the back-capture exercise of approximately 6,000 patents. This work is estimated to take 7,500 man hours, or 5.5 full-time equivalents for a year based on the above calculation;
- A full review of human resource within the section should be carried out with a view to enabling a small team of representatives who can develop external contacts, and raise the profile of Cyprus throughout Europe and the World;

- There should be delegated authority for the signature of certificates or the introduction of a statutory seal;
- Introduction of a change management structure, analysis of process flows, production of examination policies and guidance notes would benefit all areas within DRCOR, increasing efficiency;
- More staff flexibility in terms of roles and responsibilities would assist workflow and increase efficiency;
- Work should progress on the development of the electronic Trade Marks system which should also be a search system (the back-capture exercise is imperative to make this search system integral to the operation);
- As previously mentioned a review of the Gazette would benefit all areas within DRCOR, particularly the Patents section.

For clarification, there are no data protection issues with personal data in this operational area.

12. Change Management

Changes to processes or systems must to be properly evaluated and controlled.

Large scale change will be required if the recommendations in this report are agreed. Therefore it is imperative that an effective change management process is put in place to enable DRCOR to achieve the enhanced processes and systems it needs, with minimum disruption to its core functions.

A change management team should consist of:

- A change manager who should chair any meetings;
- Change administration staff;
- Internal DRCOR examination and customer care representatives – both internal and external needs should be considered;
- Development/IT;
- Business/system analysts.

Change Management responsibilities

Change management should operate throughout the lifecycle of a change from the initial ideas right through to implementation. It should involve:

- Processing requests for change (RFC);
- Prioritising/authorising/declining an RFC when all impact assessments have been collected and analysed;
- Scheduling an RFC – where possible have a schedule of planned release dates and allocate changes to a release so that each release so that each release is manageable and support staff are not overwhelmed by the scale of changes;

- A documented back-out plan should be prepared before any change is implemented;
- All changes must have a full audit trail and decision log.

Benefits

- A well defined process will lead to better quality service for customers with less disruption, fewer quality problems and code back-outs;
- DRCOR will have the ability to work with higher levels of change if everyone understands the process and works within it.

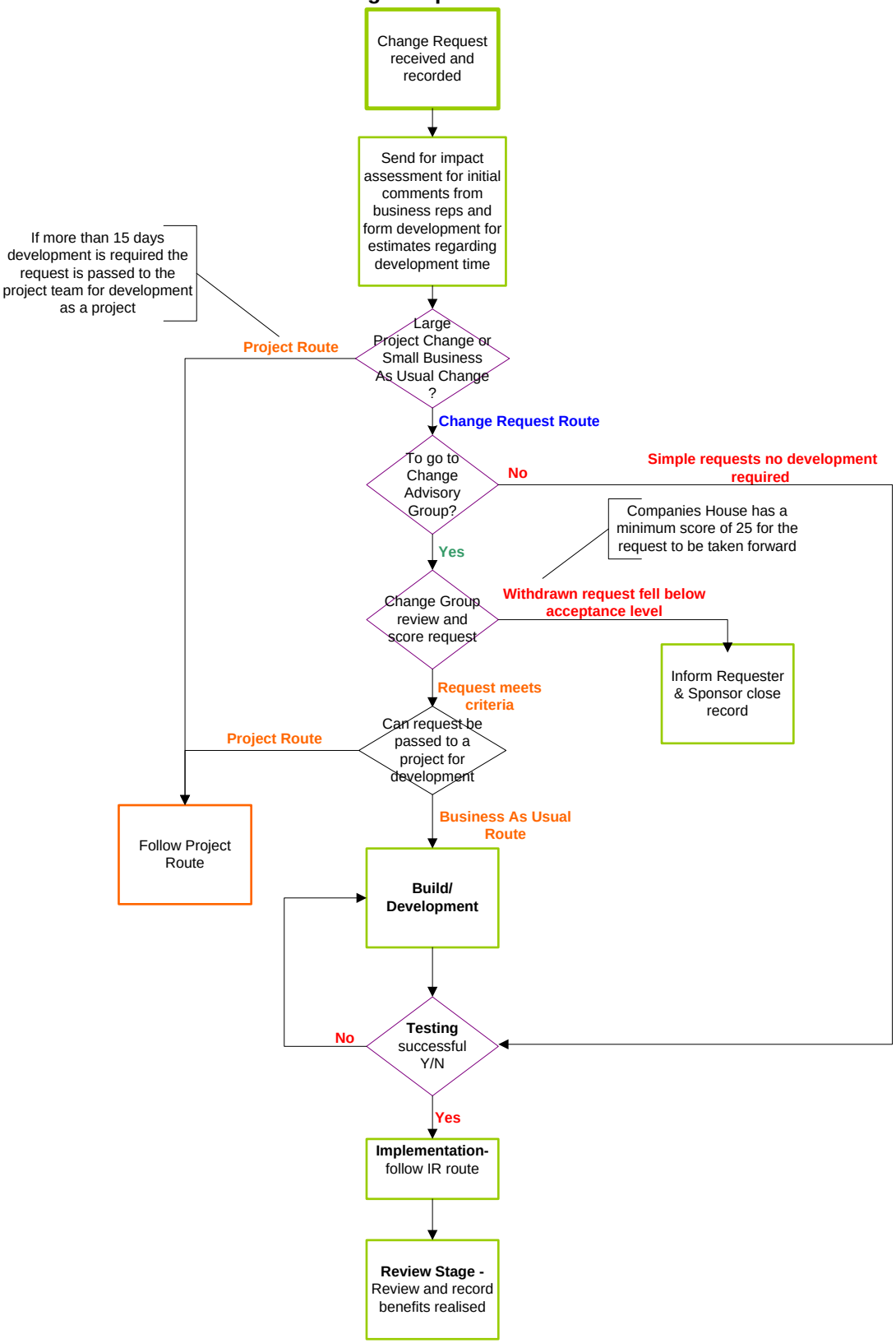
Risks

- There will be attempts to put through changes which by-pass the change management process – this will ultimately jeopardise the controlled changes which are already in the process.
- Each stage of the process should be followed for each RFC – problems will occur if attempts are made to skip stages – important impacts could be missed.
- RFC's should be declined if there is no obvious benefit to customers of DRCOR.

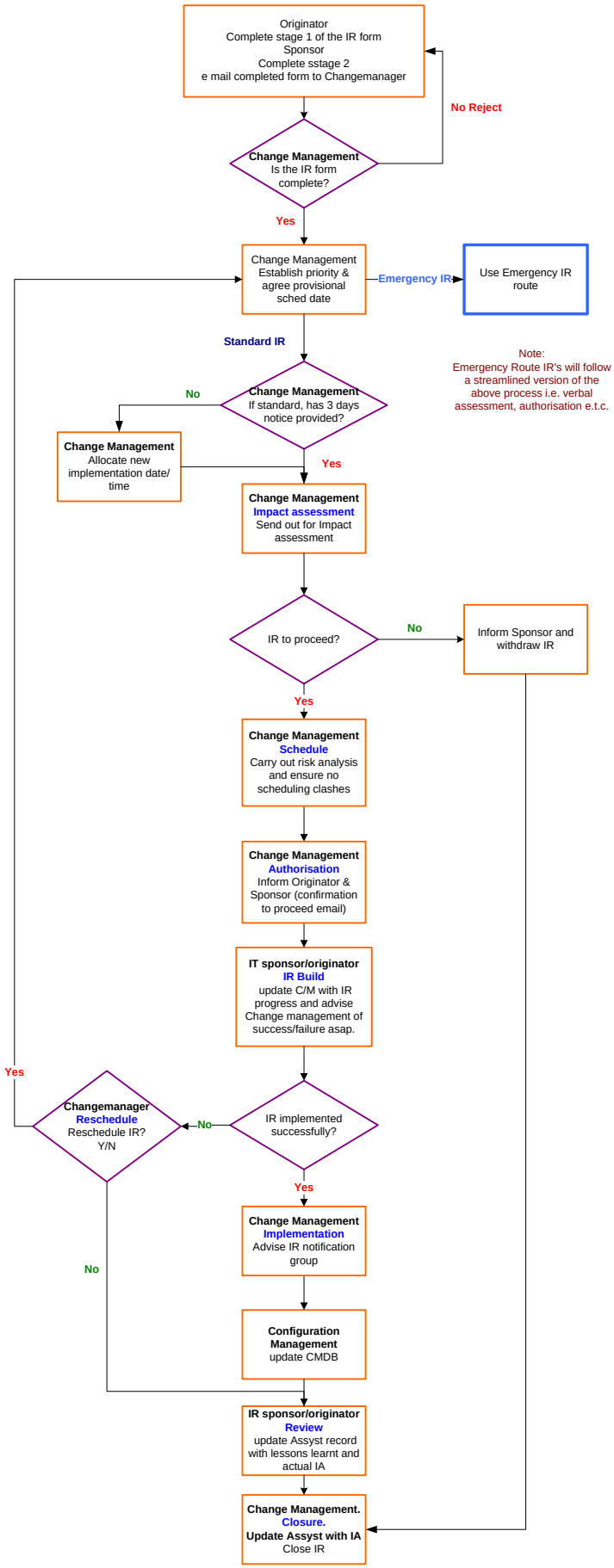
Examples of change request process flow

We set out below two examples reflecting how process and implementation flows for an IT change in CH have evolved over many years. The same principles would apply to changing a major non-technical change programme.

Change Request Process



Implementation Request Proposal



The implementation process is used where the RFC has progressed through change development and is now waiting for implementation. There are clear decision points of whether to go ahead with the implementation and the process ensures that all customers, both internal and external, are given adequate notice of a change.

If a change is large enough to be considered a project (greater than 15 days work) then the same constraints are placed on the delivery in terms of the implementation process. The change manager is required to liaise with the project manager and project team to deliver the functionality.

The most important aspects of any change process are:

- The assessment of the impact of the change – this opportunity to input opinions must extend to all areas of DRCOR and to staff at all levels. This will encourage staff engagement and leads to many excellent suggestions for further improvements. To support this method of working there must be accessible information on the progress of all changes available to all staff. Justification for the progress of a particular change in preference to another must be clear and understandable.

- Continual confirmation throughout development that the proposed solution meets the customer requirements. This should be achieved by regular demonstrations of change progress with customers given the chance to correct any misunderstandings before the change is finally completed.

Recommendations

- Introduce a change management team;
- Introduce effective change controls;
- Define the processes;
- Ensure staff are trained in this technical area.

SUMMARY

There are obviously many areas where we would recommend significant change within the Companies Section of DRCOR.

We do appreciate that taking on these changes will involve a significant amount of work and cultural change both for staff and customers. However, we are clear that these changes would bring internal efficiencies, savings for customers, an up-to-date and searchable register and would put money back into the economy.

Many of the changes would require legislative change and that will take time. A thorough review of the legislation needs to be done to ensure that all requirements are captured and thoroughly evaluated. There will also be some sensitive decisions

to be taken in this area such as the staffing schemes of service and the Advocates' Law although we appreciate that these are not actually within the remit of DRCOR.

However, there are also many changes that could start to be effected immediately and at little or no cost. We have summarised the changes recommended below but in each case full reference should be made to the relevant section of the report, particularly in terms of longer term recommendations.

1. The Building

- Decorate customer facing areas on the ground floor and make them more inviting;
- Improve identity for Trademarks and Intellectual Property
- Improve Health and Safety considerations;
- Tighten data security surrounding the hard copy files.

2. Roles & Responsibilities

- Within current grade structures determine who could take on some of the new roles described in the report;
- Evaluate numbers needed for each role;
- DRCOR and/or MECIT need their own Legal Advisor(s);
- Determine a potential new grade structure.

3. The Backlog

- Work is already underway on this;
- Once completed, determine which companies that may no longer be required and start the strike-off process.

4. Scanning, Public Search, Records Management

- Resolve the data security issue on personal information (ID and Passport numbers) on output services;
- For older paper that cannot easily be scanned at speed, develop a SCUD system;
- Continue development to make images available electronically – without ID numbers on external search;
- Redaction of sensitive information must be considered – this would be legislative in terms of changes to forms if required;
- Develop system to delete images of rejected scanned documents;
- Initiate discussion on document retention with the Public Record Office.

5. Legal Issues and Legislation

- Initiate full analysis of existing content of the Companies Law to clarify exactly what change is necessary or desirable (see individual areas for consideration in section 5);
- Before any steps are taken to remove companies failing to pay the levy, s391 must be clarified in terms of process of removal and reinstatement;
- Determine the terms of the agreement at the time of Cyprus joining the EU re fees structure and cost recovery;
- Establish registration and search fees on the basis of the costs of provision of the service;
- Negotiate increased Gazette space.

6. Policy and Process

- Appoint an experienced team member to take responsibility for this area;
- Remove extra statutory checks, processes and tasks;
- Remove elements of double handling;
- Analyse the statutory remit;
- Map all existing transaction processes;
- Develop examination policy for each transaction type;
- Ensure all examiners follow the same policy for consistency.

7. Systems

- Develop customer facing systems to show electronic images;
- Promote e filing through lower fees and speed of submission;
- Introduce validation and pre-population of data;
- Introduce PROOF and Monitor type systems as fraud reduction measures;
- Pursue Government Gateway route to services.

8. Communications

- Develop standard letters as reminders for statutory filings;
- Develop version controlled guidance for customers ensuring consistency with exam policy;
- Develop DRCOR website adding FAQs, Guidance, “breaking news”;
- Develop scripts for customer facing staff to ensure consistency on the most frequent queries – continue developing as new questions arise;
- Ongoing review of guidance and scripts for clarity and ease of understanding.

9. Defining the Customer

- Within existing structure, develop Customer Care role;
- Build portfolio of key customers across all company types and sizes;
- Face-to-face events and seminars.

10. Compliance and Enforcement

- On completion of the backlog exercise, determine companies to be struck off;
- Appoint an experienced team member to take responsibility for developing this area;
- Further analysis of breaches within the legislation;
- Determine due date of HE32;
- Determine which breaches to pursue;
- Determine which body has responsibility for investigating which breach;
- Clarify penalties;
- Develop standard and statutory default letters.

11. Trade Marks and Intellectual Property

- Physically re-brand the working environment;
- Develop stand-alone website;
- Assistance to back-capture of Trade Marks;
- Consider how to increase profile at both national and international level;
- Delegated authority for signatures;
- Analysis of process flows;
- Development of exam policy and guidance;
- Develop electronic search system;
- Negotiate Gazette publication space.

12. Change Management

- Introduce a change management team;
- Introduce effective change controls;
- Define the processes;
- Ensure staff are trained in this technical area.

This report sets out our recommendations and we hope that this will enable DRCOR and the Ministry to work towards its stated strategic objectives.

Many of the proposed changes will have little impact if they are undertaken in isolation or not properly sequenced. For example, removing non-value examination processes will not improve the quality of the register if examination policy is not consistently applied and the introduction of PROOF and Monitor type systems cannot be completed before the register is up to date.

It is therefore imperative that the recommendations are well communicated, staff are engaged throughout the process, the change is driven strategically within specific timescales and results and benefits are measured at regular intervals.

Delivering an up to date and searchable register, as required by statute, will deliver benefits both for local businesses and will facilitate inward investment.

We would like to thank everyone who provided information and assisted us in the compilation of this report particularly; DRCOR staff, PAPD, MECIT, the Ministry of Finance, the Commissioner's Office and external stakeholders, without whom this report would not have been possible.

PART 2 – Review of Processes of the Bankruptcies and Liquidations Section

INTRODUCTION

This review of the processes followed by the Bankruptcies and Liquidations Section has been carried out in the course of October and November 2013 by David Chapman, Senior Official Receiver of the Insolvency Service, an agency of the Department of Business Innovation and Skills in the UK. This report is comprised of four sections:-

1. Work carried out
2. Summary of recommendations
3. Detailed recommendations
4. Conclusion

1. Work Carried Out

The review has taken into account the report prepared for this review by the Head of the Bankruptcies and Liquidations of Companies Section (B&L) in September 2013.

The review considered the deficiencies and strategic plan prepared by the Head of B&L Section in September 2013. This refers to substantial backlogs of work and the desire for improved information technology, improvements in processes and additional resourcing.

The reviewer has also been provided with manuals setting out the work carried out by the different parts of the Section and has met with staff to review and discuss the processes.

The reviewer met with staff covering the following areas of work in the Section:-

- Dividends
- Execution of Orders
- Meetings of Creditors
- Lawyers
- Head of Section

- Voluntary Liquidations
- Auditing
- Archives and certificates
- Accounts

Meetings were held with stakeholders of the Official Receiver as part of the review and these included insolvency practitioners, accountants, representatives of the Bar Association, Cypriot banks and the Cyprus Investment Agency.

2. Summary of Main Recommendations

It is clear that the legislation is very outdated, in particular there is inadequate provision for the rescue of companies and individuals to save themselves from the finality of liquidation and bankruptcy. There needs to be a modernising of all the insolvency legislation but there is an urgent need to introduce change in specific areas. This will necessitate the prioritising of changes. Alternatively the insolvency provisions in the UK could be adopted, as these have in many parts built on and developed from the insolvency legislative regime that is in place in Cyprus (the most significant change coming into force on the introduction of the Insolvency Act 1986).

External stakeholders were clearly in favour of the need for a rescue culture in insolvency legislation and point to an expectation of a rapid and substantial increase in insolvency cases.

This review recognises steps that have already been taken to modernise the insolvency regime.

There needs to be greater access to insolvency and the opportunity for the bankrupt to be discharged from their debts.

There are extremely high backlogs of work that have to be dealt with. The extent of these backlogs is so large as to risk undermining the entire insolvency regime in Cyprus.

There is a need to lessen the involvement of the court from the level required under the current insolvency procedures.

This report deals with the recommendations under the following sections:-

3.1 - Update legislation to facilitate rescue of companies and individual arrangements with creditors.
3.2 - Provide a mechanism for dealing with lower level of individual debt
3.3 - Effective Enforcement Regime
3.4 - Regulated IP Profession

3. Detailed Recommendations

3.1 Update legislation to facilitate rescue of companies and voluntary arrangements with creditors.

- Mechanism for the rescue of companies – Administration; Company Voluntary Arrangements;
- Mechanism for individual debtors to come to agreement with their creditors - Bankruptcy Individual Voluntary Arrangements; and
- Discharge from debts in bankruptcy

The current legislation does not support the rescue through insolvency proceedings of companies that are in financial difficulties. External stakeholders have indicated their support of a change to the insolvency regime to support the rescue of companies and the change would provide the opportunity for some of the companies that currently go into liquidation to avoid this (with consequent reduction of the workload of the Official Receiver).

In the UK, the administration procedure was introduced by the Insolvency Act 1986, as amended by the Enterprise Act 2002, to provide companies with a mechanism to allow a rescue package or more advantageous realisation of assets to be put in place. The Enterprise Act 2002 provided a legislative framework for administration making it quicker, cheaper and less bureaucratic than the previous legislation. One of the principal changes is that a company can enter administration without first obtaining a court order. An outline of the administration procedure is set out later in this section. The process allows for appointment of an administrator by a charge-holder, the company or its directors. A system enabling out of court appointments has to be considered in terms of the requirement of having a properly regulated insolvency practitioner regime being in place. More details of the administration procedure are set out below.

Company Voluntary Arrangements were also introduced under the Insolvency Act 1986 as a simpler alternative to the Companies Act 1985 scheme of arrangement provisions. These involve a legally binding agreement in satisfaction of a company's debts or a scheme of arrangement of its affairs. This may involve

restructuring, delayed or reduced payment of debts, or an orderly disposal of assets. The proposal is put to creditors at meeting(s) and, if approved, its implementation is supervised by a qualified insolvency practitioner or other authorised person.

A mechanism needs to introduced to aid the rescue of companies in financial difficulties and the review recommends that provision is made to do so as a priority, either by introducing similar legislation to that in the UK in respect to administration and Company Voluntary Arrangements or by introducing similar provisions that provide for the benefits of these processes to companies in Cyprus.

The current insolvency legislation does not offer an adequate route for individual debtors to reach agreement with their creditors with respect to their debts. There should be a procedure that encourages debtors to reach agreement with their creditors. The Insolvency Act 1986 introduced individual voluntary arrangements ("IVA") to the UK and these are now the largest used insolvency procedure dealing with personal debt in the UK. An IVA offers flexibility to the debtor in that it may take any form including third party funds, funds from continued trading, income from the debtor's business or employment and/or an orderly disposition of some or all of his/her assets. A mechanism needs to introduced to help debtors reach agreement with their creditors and to avoid going into bankruptcy. This review recommends that provision is made to do so as a priority, either by introducing similar legislation to that in the UK in respect to Individual Voluntary Arrangements or by introducing similar provisions that provide for the benefits of these processes to debtors in Cyprus.

There should be consideration of discharge from debts when the bankrupt is discharged. In UK legislation the bankrupt is discharged from his debts, subject to limited exceptions such as fines imposed for an offence. If the bankrupt has not co-operated in the proceedings then his discharge will have been suspended and there will not be a discharge from the debts until suspension is lifted.

The main provisions of the administration, IVA and Debt Relief Order procedures are summarised in the outline description set out below. This summary does not seek to cover the detailed provisions underlying these insolvency processes.

3.1.1 Administration

The administration procedure provides a company, limited liability partnership or partnership with a breathing space to allow a rescue package or more advantageous realisation of assets to be put in place.

The aim of administration proceedings is to rescue and rehabilitate insolvent but potentially viable companies. The objective of the administrator is, where appropriate, to restore profitability by reorganising the company's business in whole or in part. This may involve making proposals to realise the

company's assets to obtain a better result for creditors than could be obtained on immediate winding up.

An administrator is appointed under the Insolvency Act 1986 to manage the company's affairs, business and property. On appointment an administrator becomes an officer of the court. A person must be qualified to act as an insolvency practitioner and may be appointed:

- by the court
- by the holder of a qualifying floating charge, or
- by the company or its directors

The administrator must generally perform his/her functions in the interests of the creditors as a whole.

The functions of the administrator are:

- to rescue the company as a going concern, or
- to achieve a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration, or
- realising the company's property in order to make a distribution to one or more secured or preferential creditor.

The administrator should aim to rescue the company as a going concern unless it is not reasonably practicable to do so, or a better result could be obtained for creditors by not doing so.

Generally an application for an administration order is likely to be made by the company, the directors of the company, creditor(s) of the company or the supervisor of a voluntary arrangement.

The court may make the administration order, dismiss the application, make an interim order or treat the application as a winding-up petition.

The company or the directors of a company may also appoint an administrator by resolution of the members or formal or informal decision of the directors. Where the directors formally agree to appoint an administrator the decision can be by majority vote. Where the decision is taken informally it must be unanimous

An application to court for an administration order or filing of a notice of intention to appoint an administrator triggers an interim moratorium unless an administrative receiver has been appointed. Once a company enters administration a permanent moratorium applies.

The administrator acts as the company's agent and has a general power to do anything necessary or expedient for the management of the company's

affairs, business and property. An administrator has the same general powers as the company and/or its directors. This general power extends to the disposal of assets.

The administrator has a duty to make proposals to meet the purpose of the administration. The statement of proposals must include the circumstances leading up to the administration, summary statement of affairs, details of how the administrator's remuneration will be fixed and the objectives of the administration.

The creditors at the initial meeting may approve the statement of proposals without modification, or with modification if agreed by the administrator. The creditors can accept or reject the statement of proposals by a majority, in value, of those voting in person or by proxy. However, any resolution is invalid if those voting against it total more than half in value of the company's creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company.

The appointment of an administrator automatically ends after one year from the date it takes effect but may be extended.

3.1.2 Individual Voluntary Arrangements ('IVA')

The debtor should prepare a proposal for an IVA on which the nominee is able to make his/her report to the court (in practice most proposals are professionally prepared).

The proposal, which is the key document in an IVA, should explain why the debtor considers that the IVA is desirable and give reasons why creditors may be expected to agree with the IVA. It should also give details of the debtor's assets and liabilities in addition to other prescribed matters. In order to make it likely that the creditors will accept the proposal, it should be credible, an acceptable alternative to bankruptcy and should take account of creditors' legitimate interests.

The debtor must give the intended nominee written notice of his/her proposal and the notice, accompanied by a copy of the proposal must be delivered to the nominee, or the person authorised to take delivery of the documents on his/her behalf.

The proposal must provide for some person (i.e. the nominee) who must be qualified to act as an insolvency practitioner in relation to the debtor and is willing to act, to act in relation to the IVA either as trustee or otherwise for the purpose of supervising its implementation. The proposal should also deal with other matters that may become an issue e.g. whether the debtor continues to trade on his/her own account.

The debtor must, at the same time as the proposal is delivered to the nominee, deliver to the nominee a statement of his/her affairs, which must detail his/her assets (secured and unsecured) preferential and unsecured creditors and details of their names and addresses,

The debtor may also apply for an interim order. This is a court order that creates an initial moratorium on proceedings against the debtor who intends to apply for an IVA. The aim of the interim order is to enable a viable IVA to be put to creditors as a whole without being spoilt by the action of one or more individual creditors and provides a breathing space to allow a viable proposal to be formulated and agreed by creditors.

A secured creditor is not restrained from enforcing his/her rights where this does not involve judicial process.

If the creditors decline to approve the debtor's proposal, with or without modifications, the court, on receipt of the report of the meeting, may discharge any interim order which is in force.

After receiving the nominee's report, if the court is satisfied that a meeting should be summoned, the court can extend the interim order for a further period so that the proposal can be considered by the creditors.

Where the nominee has reported to the debtors creditors that in his/her opinion a creditors' meeting should be summoned to consider the debtor's proposal and no interim order is in force, the meeting should be held not more than 28 days from the date the nominee received the document and statement from the debtor.

The creditors' meeting is summoned to decide whether to approve the proposed IVA, with or without modifications. The creditors may agree to accept or reject the proposal made by the debtor or approve the proposal with modifications but in the latter case, only if the debtor consents to the modifications.

The chairman of the meeting should be the nominee or a qualified insolvency practitioner or an employee of the nominee who is experienced in insolvency matters.

The approval or modification of a proposal at a creditors' meeting requires a majority of three-quarters or more (in value) of the creditors present in person or by proxy and voting on the resolution. In respect of any other resolution proposed at the meeting, e.g. the supervisor's remuneration, a majority (in value) of those present and voting in person or by proxy is required.

Where a creditors' meeting approves the proposal, this has the effect of binding every person who in accordance with the rules was entitled to vote

at the meeting (whether or not he/she was present or represented at it) or would have been so entitled if he/she had received notice of it, as if he/she were a party to the IVA. The approved IVA is deemed to be in force and effective from the date of the creditors' meeting; no further orders of the court are necessary.

Once the scheme has taken effect, the nominee becomes the supervisor of the scheme.

Within 28 days of the completion of an IVA, the supervisor must give notice of the completion and submit a final report to all creditors bound by the IVA and to the debtor.

3.2 Provide a mechanism for dealing with lower level of individual debt

3.2.1 Access to insolvency – entry level to bankruptcy is currently 15,000 euros

The current entry level for bankruptcy is debts of 15,000 euros and there needs to be an insolvency procedure that to enables lower levels of debt to be dealt with – there is no effective insolvency procedure in place at the moment to deal with debt below this level. By comparison the UK bankruptcy level for creditors is £750.

Following public consultation in the UK examining the accessibility of debt relief, it was established that there is a significant proportion of debtors who are unable to access debt relief though existing forms of formal debt relief (such as bankruptcy or individual voluntary arrangements) due to the costs involved. To meet this need, Debt Relief Orders ("DRO") were introduced by the Tribunals, Courts and Enforcement Act 2007 and came into force on 6 April 2009. They are designed to provide a more accessible form of debt relief for debtors who have relatively low level of debt, minimal assets and insufficient disposable income to access alternative debt solutions. For example, a debtor's bankruptcy petition costs £525 for the petition and £175 for the court fee, whereas the application fee for a Debt Relief Order is £90. A summary of the main provisions of The Debt Relief Order procedure is set out in more detail below.

The review recommends that consideration is given in time to the introduction of a system that deals with low level debt outside of bankruptcy. The review recommends that steps are taken in the short term to address the fact that there is no insolvency mechanism in place in respect of debts up to 15,000 euros. This could be done either by way of reducing the current entry level to bankruptcy or by introducing an alternate mechanism for dealing with such cases.

3.2.2 Debt relief orders (DRO)

A DRO, once granted, provides the debtor with relief from action by creditors (up to a maximum level of £15,000)for, usually, one year (the moratorium period), after which the debts are discharged. The procedure is aimed at debtors who have, in effect, no realisable assets (debtors with material levels of assets will not be eligible) and, therefore, there is no vesting of the estate in a trustee as with bankruptcy.

The legislation requires that an application for a DRO is assessed by an official receiver.

DROs are aimed at debtors who are unable to access debt relief through existing debt solutions such as bankruptcy, debt management plans or administration orders.

The basic criteria that a debtor has to satisfy if he/she is to be successful in an application for a DRO are as follows:

- The debtor is unable to pay their debts.
- The debtor's total liabilities do not exceed £15,000.
- The debtor's total gross property level does not exceed £300.
- The debtor's disposable income, following deduction of normal household expenses, does not exceed £50 per month.
- The debtor lives in England and Wales, or in the last three years has been resident or carrying on business in England and Wales.
- The debtor has not been subject to a DRO within the previous six years, nor subject to any other current formal insolvency procedure (including a bankruptcy petition that has not been dismissed – unless the person who presented the petition agrees to the debtor entering the DRO), or is currently subject to a BRO/BRU or a DRRO/DRRU.

To be eligible for a DRO, the total amount of the debtor's liabilities, other than un-liquidated debts and excluded debts must not exceed £15,000. Debts that are liquidated and not excluded are known as qualifying debts. Un-liquidated debts and excluded debts are not included in the calculation of total indebtedness but, equally, those debts will not be subject to the moratorium period or discharged.

A debt is not a qualifying debt to the extent that it is secured.

The legislation provides that certain debts are automatically excluded from a DRO. These include a fine imposed for an offence; any obligation arising under an order made in family proceedings or any obligation arising under a maintenance assessment; any debt or liability in respect of any sum paid or

payable to the debtor as a student by way of a loan and which he/she receives before or after a debt relief order is made in respect of him/her.

The debtor must have a gross property level of less than £300 to be eligible for a DRO. As the property level is gross (rather than net) it is highly unlikely, if not impossible, that a homeowner would meet this condition.

A single domestic motor vehicle which is worth less than £1,000 will be disregarded when determining the debtor's total gross property. The maximum value for the vehicle is £1,000, and cannot be combined with the £300 – which is ring-fenced for other property.

In addition to motor vehicles, certain other items are disregarded when calculating the debtor's property value. They include:

- Tools of the trade.
- Items satisfying the basic domestic needs of the debtor and/or his family.
- Property held on trust for another.
- Certain tenancies.

In the calculation to establish the debtor's property level, the value of a pension must be taken into account.

A debtor's disposable income, following deduction of normal household expenses must not exceed £50 per month for him/her to be eligible for a DRO.

The official receiver is not involved in the process of gathering the information for the DRO application or completion of the application form. The official receiver's role begins once the application has been submitted and, at this point, he/she is required to review the application and, if appropriate, grant the DRO.

The role of the approved intermediary is to guide the debtor through the DRO application process and assist him/her in completing the application.

As part of this process, the intermediary is required to ensure that the debtor meets the eligibility for a DRO.

The application process is, largely, an electronic process, with the application being completed electronically, on-line, and sent to the official receiver electronically.

The official receiver has a duty to consider and determine the debtor's application for a DRO. On determining the application, the official receiver may decline the application if the eligibility criteria are not met, or approve the DRO.

The DRO process does not involve an interview with the debtor and, generally speaking, the official receiver is entitled to presume that the facts stated in the debtor's application are true. The legislation provides for verification checks to be carried out. In the main, these are checks on the IIR (to check insolvency history) credit reference agency (to confirm ID, domicile, debt levels, property levels).

If the official receiver determines that the debtor's application should result in the approval of a DRO application, then he/she must make the order.

The official receiver must also notify each creditor to whom a qualifying debt is specified of the making, date and reference number of the order and its effect, along with the matters to which a creditor may object to a DRO and the contact details of the official receiver.

If the official receiver has received an objection from a creditor, he/she may open an investigation which may add to the DRO being revoked.

The main effect of a DRO will be to place a moratorium period on the debts listed in the DRO. This means that creditors cannot take any action to recover or enforce. The moratorium normally lasts 12 months – after which the debts will be discharged.

During the moratorium period, a creditor to whom a specified qualifying debt is owed has no remedy in respect of the debt and may not commence a bankruptcy petition in respect of the debt, or otherwise commence any action or other legal proceedings against the debtor for the debt, except with the permission of the court and on such terms as the court may impose.

If the creditor has any action pending in respect of the debt, the court may stay the proceedings or allow them to continue on such terms as the court thinks fit.

The restriction on action to recover or enforce a DRO debt has no effect on the right of a secured creditor to enforce their security.

At the end of the moratorium period the debtor is discharged from all the qualifying debts specified in the order.

It is possible for a debtor with a DRO to be subject to a Debt Relief Restrictions Order where there has been some level of irresponsible behaviour or culpability by the debtor in the incurring of the debts. The effect of this is to extend the DRO restrictions for the period of the DRRO or DRRU.

Restrictions applicable in the restriction orders include not obtaining credit over the prescribed amount (£500), not engaging in business under a different name, acting the promotion, formation and management of a

company, not acting as an Insolvency Practitioner, not acting as a receiver and manager of company property on behalf of a debenture holder, not being on a liquidation or creditors committee

3.3 Effective Enforcement Regimes

- Recoveries of assets and other and civil recoveries e.g. wrongful trading
- Modernised criminal offences
- Disqualification and bankruptcy restrictions – ability to increase period of discharge when behaviour justifies this

There needs to an improved regime to assist with recoveries of the transfer of assets before the insolvency order – something that external stakeholders have endorsed.

There would involve improved mechanisms for recovering antecedent recoveries, to effect an orderly and equitable realisation of assets for the general benefit of creditors and contributories. If some act occurs in the run-up to the insolvency which leads to one creditor being treated more favourably than another, the transaction should give rise to recovery rights by an administrator, liquidator or trustee. Similarly, if a person other than a creditor has benefited from the company or bankrupt to the detriment of creditors generally, the legislation should provide a remedy. There should be legislation in place to enable recoveries to be made when directors knew or ought to have concluded that there was no reasonable prospect that the company would avoid insolvent liquidation, and took the decision to carry on trading.

The Insolvency Act 1986 sets out the following civil recoveries:-

Company - Insolvency Act 1986	Bankruptcy - Insolvency Act 1986
S 212 – Misfeasance, breach of fiduciary duty	S339 – Transactions at an undervalue
S 213 Fraudulent trading	S 340 Preferences
S 214 Wrongful trading	S 342 – Recovery of excessive pension contributions
S 217 – personal liability regarding restriction on re-use of company names	S 343 – Extortionate credit transactions
S 238 Transactions at an undervalue	S 344 – Avoidance of general assignment of book debts
S 239 Preferences	
S 244 Extortionate credit transactions	
S 245 Avoidance of certain floating charges	

These are new procedures brought into force by the Insolvency Act 1986 or procedures that build on or amend procedures already in force under prior Companies Act legislation.

3.3.1 Company Antecedent Recoveries

Section 212 provides a remedy against directors and others who have misapplied or retained or become accountable for any money or property of the company or is guilty of any misfeasance or breach of fiduciary duty.

Section 213 provides a method of recovery if it appears that any business of the company has been carried on with intent to defraud creditors of the company or of any other person, or for any fraudulent purpose, the court may, on the application of the liquidator, declare that any persons (not just company officers) who were knowingly parties to the carrying on of the business in the manner mentioned above are liable to make such contributions to the company's assets as the court thinks fit.

Wrongful trading is a civil remedy available to liquidators, defined in section 214, by which the court may require a contribution to a company's assets from directors who have allowed a company to trade without reasonable prospect of avoiding insolvent liquidation. In OR cases, where the OR is liquidator, consideration should be given to the recovery implications of directors' misconduct in this area as well as to reporting it to the Secretary of State (Minister) for disqualification purposes. The court will not make an order requiring a director to make a contribution to the assets of the company in connection with wrongful trading if it is satisfied that the director, knowing that there was no prospect of avoiding insolvent liquidation, took every step with a view to minimising the potential loss to the company's creditors as he/she ought to have taken. In reaching this conclusion, the court will take into account the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as that director and the actual knowledge, skill and experience of the director.

In addition, the court must be satisfied that the company's position was worse as at the date of liquidation than it was when there was knowledge of insolvency to make an order for contribution. It is possible that not all directors could be found liable as each individual's role and knowledge will be separately assessed by the court.

Where a director takes the decision to continue trading, the court may grant relief (allow a lesser amount of contribution to be paid) if he/she were acting on professional advice.

Section 217 provides that where a company uses a prohibited name, a person will be personally responsible for any debts incurred when he/she was

involved in the management of the 'new' business and/or incurred at a time when he/she was acting or willing to act on the instructions of the person restricted from using the name. A company name becomes a prohibited name if:

- it is a name by which the company in liquidation was known at any time in the in the period of 12 months prior to the making of the winding up order (note that it does not just apply to the registered name), or
- it is a name which is so similar to a name used by the company as to suggest an association with that company.

There are some exceptions to the restriction, covering circumstances when the business has been sold by an IP or when the new business has been established for some time.

Where a person is in contravention of a disqualification order, or whilst an un-discharged bankrupt, without leave of court is involved in the management of a company, involved in the management of the company, and he/she acts or is willing to act on instructions given without leave of the court by a person whom he/she knows at that time to be the subject of a disqualification order or to be an un-discharged bankrupt, That person will be liable for any debts incurred when he/she was involved in the management of the company and/or incurred at a time when he/she was acting or willing to act on the instructions of the disqualified person.

Section 238 provides a remedy where the company has entered into a transaction with a person at an undervalue where the company makes a gift to a person or otherwise enters a transaction for no consideration or enters into a transaction for a consideration significantly less than the value of the consideration provided by the company.

Section 239 deals with preferences where the company does anything or allows anything to be done that has the effect of putting that person into a position which, in the event of the company going into insolvency liquidation, will be better than the position he would have been in if that thing had not been done.

Section 244 provides for the court to address extortionate transactions entered into by the company in the three year period before a company went into liquidation (or administration).

Section 245 provides for the setting aside of floating charges that have been created within prescribed time limits.

3.3.2 Bankruptcy Antecedent Recoveries

The following provisions relate to recovery provisions in bankruptcy cases.

Section 339 provides for recoveries when a bankrupt has entered into a transaction with any person at an under value.

Section 340 provides for the court making an order restoring the position to what it would have been if the bankrupt has given a preference to any person.

Section 342 provides for the recovery of excess pension contributions.

Section 343 provides for the court to address extortionate transactions that the bankrupt has been party to.

Section 344 provides for avoidance of general assignment of book debts which were not paid before the presentation of the bankruptcy petition.

In addition to the above, there are powers to compel the co-operation of bankrupts and directors with the Official Receiver and in practice the Official Receiver will apply to the court for the public examination of directors and bankrupts who have not co-operated. Non-attendance at court can lead to the issuing of an arrest warrant. The public examination is called on the request of the Official Receiver and is only requested if there is a specific need to do so. Public examinations are covered under section 236 and 290 of the Insolvency Act 1986. This review recommends that similar provisions are brought into force in Cyprus to aid the enforcement of co-operation from directors and bankrupts when this is not provided voluntarily.

Section 279 of the Insolvency Act 1986 provides for the suspension of the discharge of a bankrupt if he has not co-operated in the bankruptcy.

3.3.3 Offences

The Insolvency Act 1986 sets out the following offences affecting officers of companies, which could be adopted to strengthen the current insolvency regime in Cyprus. This is a wide ranging regime, picking up and building on offences under previous legislation as well as introducing new provisions. The offences are set out below:-

Company Offence - Insolvency Act 1986	**Bankruptcy Offence - Insolvency Act 1986**
S 206 – Fraud in anticipation of winding up	S353 – non disclosure of property
S 207 Transactions in fraud of creditors	S 354 Concealment of property
S 208 Misconduct in course of winding up	S 355 – Concealment and falsification of books and papers
S 209 Falsification of company's books	S 356 – False statements

S 210 Material omissions from statement relating to company's affairs	S 357 – Fraudulent disposal of property
S 211 False representations to creditors	S 358 – Absconding
S 216 Restriction on re-use of company names	S 359 Fraudulent dealing with property obtained on credit
	S 360 – Obtaining credit and engaging in business under another name

3.3.3.1 Company offences

Under Section 206 it is an offence within 12 months preceding the winding-up to conceal any part of the company's property or conceal any debt, fraudulently remove any part of the company's property, conceal , destroy, mutilate or falsify company books and papers, make a false entry in company books and papers, part with, alter or make any omission in a document relating to the company's affairs , pawn, pledge or dispose of company property obtained on credit and which has not been paid for.

It is an offence under Section 207 if an officer has made or caused to be made any gift or transfer of, charge on, or has caused or connived at the levying of any execution against, the company's property, has concealed or removed any part of the company's property since or within 2 months the date of any unsatisfied judgment or order for payment of money.

Under Section 208 it is an offence if officer does not disclose property and how it has been disposed of, does not deliver up the company's property, does not deliver up the books and papers, does not inform the liquidator of any false debt, prevents the production of any book or paper affecting or relating to the company's property or affairs or attempts to account for property by fictitious losses or expenses

Under Section 209, it is an offence if an officer destroys, mutilates, alters or falsifies books, papers, securities or is privy to the making of any false or fraudulent entry in books or documents belonging to the company.

Under Section 210 an officer commits an offence if he makes any material omission in any statement relating to the company's affairs.

It is an offence under section 211 if an officer makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up.

Section 216 places restrictions on the re-use of company names and breach of the section is a criminal offence. The restriction is placed on the person and so it is only the directors or shadow directors of the liquidated

company who are banned from trading with the prohibited name. A prohibited name is any name by which the liquidated company was known at any time in the 12 months prior to the liquidation, or any name so similar as to suggest an association with that company.

3.3.3.2 Bankruptcy Offences

A bankrupt has a duty to disclose to the OR and/or trustee all property comprised in the bankruptcy estate, and subject to a saving for legitimate business or domestic matters, to disclose full details of any past disposal of property that would otherwise have been included in the estate. Failure to do so, may make a bankrupt liable to criminal penalties under section 353 of the Insolvency Act 1986

Under section 354, the bankrupt is guilty of an offence if he does not deliver up possession the property comprised in his estate as is in his possession or under his control or he conceals any debt due to or from him or conceals any property with a value of over £500 and which he is required to deliver up to the official receiver or trustee, or

Under section 355 the bankrupt is guilty of an offence if he does not deliver up possession of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

Under Section 356 a bankrupt is guilty of an offence if he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy

Under section 357 the bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

Under section 358 the bankrupt is guilty of an offence if he leaves, or attempts or makes preparations to leave England and Wales with any property over £1,000 which he is required to deliver up.

Under section 359 a bankrupt, he commits an offence if in the prescribed period, he has disposed of property obtained on credit and not paid for at the time of the disposal.

Under section 360 the bankrupt is guilty of an offence if he obtains credit over £500 without giving the person from whom he obtains it the relevant information about his status or he engages (whether directly or indirectly) in any business under a name other than that in which he was

adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

The UK legislation also provides for a disqualification regime that was modernised under the Director Disqualification Act 1986. This provides for disqualification orders to be made against those whose conduct makes them unfit to hold the position. Disqualification orders can be made for a period between 2 and 15 years.

The Enterprise Act 2002 also provided for the introduction of the bankruptcy restriction regime in 2004 that provides for a bankrupt to remain under the restrictions of bankruptcy for a period of between two and fifteen years. The restriction regime provides a balance against a reduced period of discharge for bankrupts where their behaviour has not raised concern.

Recommendation

It is recommended that consideration is given to adopting a revised enforcement regime on the model of the Insolvency Act 1986.

3.4 Regulated IP Profession

There is no regime for authorising insolvency practitioners in Cyprus. It is recommended that a system is introduced for the authorising of insolvency practitioners as soon as possible and that this be done at the outset under the control of the Department of the Registrar of Companies and Official Receiver.

In the UK apart from the official receiver, only a person who is both authorised to act as an insolvency practitioner and has the necessary security can be appointed as a liquidator or trustee.

An insolvency practitioner will not be qualified to act in respect of an insolvent unless, there is in force, security for the proper performance of his/her functions and that security complies with the security requirements of the Insolvency Practitioners Regulations. In relation to his/her appointments as liquidator or trustee the insolvency practitioner must hold

- an initial enabling bond which will be lodged with his/her authorising body and,
- specific penalty cover, based upon the amount of assets estimated by the insolvency practitioner, in respect of each appointment.

The enabling bond must be in a form approved by the Secretary of State and provide general insurance cover up to an amount of £250,000, against any losses caused by the fraud or dishonesty of the Insolvency Practitioner. The enabling bond is lodged with the insolvency practitioner's authorising body and

can be called upon if the insolvency practitioner fails to obtain a specific penalty or the specific penalty obtained is insufficient.

The insolvency practitioner must obtain a specific penalty in respect of each and every appointment taken. The specific penalty sum will be based upon the amount of assets estimated by the insolvency practitioner.

3.5 Legislative Changes Post Order

- OR to be appointed liquidator and trustee on making of winding-up and bankruptcy orders;
- Provide power for the OR to apply for the appointment of trustee/liquidator through a non-court based process;
- Rota of IPs – to be used to appoint from this if creditors do not nominate;
- Meetings of creditors not held if a formality;
- Appointments effective on filing of documents at court;
- Strengthen legislation to bring about stay of legal proceedings post order.

There is no benefit in having a two stage system for liquidations and bankruptcy in Cyprus. Accordingly the appointment of the Official Receiver as provisional liquidator on the making of the winding-up order should cease and the Official Receiver should be appointed as liquidator instead. This would mirror the position under the Insolvency Act 1986. There is no apparent advantage in retaining the system of having a receiving order made on the bankruptcy petition and then a bankruptcy order usually being made at a later stage. Time would be saved for both the Official Receiver and the courts if a bankruptcy order was made on the hearing of the petition and the Official Receiver appointed as trustee, rather than as receiver and manager.

Bearing in mind the resourcing problems that the Department faces, it is recommended that the Official Receiver should be able to appoint an insolvency practitioner as liquidator or trustee in any case where there are sufficient assets of an appropriate nature to justify such an appointment. It is also recommended that the Official Receiver should create a rota of insolvency practitioners from which he could appoint trustees and liquidators where an appointment following meetings of creditors does not provide the most effective route. When passing out cases to insolvency practitioners, the Official Receiver has to have in mind the qualifications and experience of the person taking the appointment.

The legislation should be amended to provide for the appointment of a trustee or liquidator other than the Official Receiver on the application of the Official Receiver to a non-judicial authority.

The Insolvency Act 1986 provides for the Official Receiver at any time when he is liquidator of a company to apply to the Secretary of State under section 137 for the appointment of an insolvency practitioner as liquidator. Section 296 provides for the Official Receiver at any time when he is trustee to apply to the Secretary of State for the appointment of a trustee in his place. If the application is successful then a certificate of appointment is prepared that sets out the date that the appointment is effective from. The Secretary of State's function is carried out by Insolvency Practitioner Unit of the Insolvency Service, which operates independently of the Official Receiver. It is recommended that there is an independent party making the appointments so that it can be seen that there is external agreement that appointments meet the set criteria for appointments. This helps provide a measure of confidence and deal with any misconceptions about the proper application of the process. Within the UK Insolvency Service this function is carried out by an officer from the Business Service Delivery Directorate of the Insolvency Service, which operates separately from the official receivers.

In the UK the Secretary of State may appoint an insolvency practitioner as liquidator or trustee as an alternative to holding a meeting of creditors. If there is a possibility of contention, dispute or conflict, then there is a strong presumption that a meeting of creditors should be held.

The circumstances in which the Official Receiver can apply to the Secretary of State are as follows:-

- If a meeting of creditors has been held and no resolution passed, then the official receiver remains liquidator or becomes trustee and may make an application to the Secretary of State for the appointment of an insolvency practitioner;
- If a meeting would be an unnecessary formality and cost to the estate because a majority of known creditors by value, with undisputed claims, who would be entitled to vote at a meeting (or one creditor, if it has a clear undisputed majority in value) have indicated that they would appoint a particular insolvency practitioner or have otherwise agreed to the appointment of the next insolvency practitioner on the official receiver's rota;
- An application would also be made in cases where there is no known creditor or public interest, a notice of no meeting has already been issued and sent to creditors and a creditor has then requested the appointment of a particular insolvency practitioner, who has agreed to take the case;
- The Official Receiver would also apply to the Secretary of State there is a charge, no surplus is expected for unsecured creditors, and the charge holder is unwilling to appoint a receiver or take action itself;
- An application would also be made when the available assets of whatever description are, in the opinion of the official receiver, unlikely to attract a nomination at a meeting;

- The Official Receiver can also apply for an appointment when assets are in jeopardy and will be better protected if an early appointment is made or the insolvent is trading at the date of the order and significant value in the estate will be lost if trading ceases.

If a comparable system could be introduced in Cyprus, this would enable cases to be transferred to insolvency practitioners much more easily, reducing work on the part of the Official Receiver and reducing backlogs. The criteria used in the UK, are not exhaustive and further criteria could be added if this were necessary. The criteria are published externally and directors, bankrupts, creditors and insolvency practitioners are able to access it.

3.5.1 Meetings

It is recommended that changes be made to the legislation covering meetings of creditors and contributories to ease delays that are occurring in the appointment of insolvency practitioners in place of the Official Receiver. The need for holding meetings as a default position in the UK is currently being reviewed and has gone out for public consultation.

Under the Insolvency Act, the creditors and contributories at their respective meetings may nominate different insolvency practitioners to be liquidator. The creditors' nominee takes precedence over any nomination made at the contributories meeting. If the creditors do not pass a resolution for an appointment but the contributories do, the appointment made at the contributories' meeting will take effect. It is recommended that legislation be changed to adopt this provision.

The Insolvency Act also provides that where an insolvency practitioner has been appointed liquidator or trustee as a result of a meeting, the effective date of his/her appointment will be when the chairman certifies the appointment, following receipt of a written statement to the effect that the person nominated is an insolvency practitioner, is duly qualified and consents to act. The date of appointment is endorsed on the certificate of appointment when authenticated by the chairman.

In a winding up the creditors' nominee is appointed, but a different practitioner was nominated by the contributories, either a creditor or a contributory may, within 7 days of the nomination, apply to the court for the appointment of the contributories' nominee to be liquidator instead of, or jointly with, the creditors' nominee, or for another practitioner to be appointed in place of the creditors' nominee. The chairman of the meetings should certify the appointment of the creditors' nominee in such cases, notwithstanding that an application may be made to the court. .If this provision were adopted it would assist with the delay in appointing insolvency practitioners.

At a meeting of creditors or contributories, for each resolution put to the meeting each creditor, or valid proxy-holder, entitled to vote can chose to abstain, vote for, or vote against any resolution put to the meeting. A resolution is normally passed when a majority (in value) of those present and voting, in person or by proxy, vote in favour of the resolution, regardless of the extent of the majority. The value of contributories is determined by reference to the number of votes conferred on each contributory by the company's articles. It is recommended that this method of deciding resolutions at meetings of creditors and contributories is adopted.

The Legislative Reform (Insolvency)(Miscellaneous Provisions) Order 2010 (LRO) introduced provisions from 6 April 2010 which permit the official receiver and other office-holders to convene meetings on a remote basis. Where considered appropriate, the convener can arrange for a meeting to be held in such a way that persons who are not present together at the same place may all attend without the need for travel or other inconvenience. In practice a remote meeting may, where the technology is available, be held via a telephone conferencing system or by accessing a web-based forum page, although the Rules do not limit the convener by specifying the methods to be used for conducting the meeting.

3.5.2 Stays of Proceedings

There is an automatic stay on legal proceedings following the making of the winding-up order and bankruptcy order, subject to the consent of the court being obtained. If the view is that the provisions do not provide sufficient relief then there should be discussions with the courts about strengthening of this area.

3.5.3 Non-payment of Deposits

Consideration must also be given to the position with cases that are not being actioned post order because the deposit has not been paid. This leaves an unsatisfactory situation where orders are not followed through, which could be seen to be damaging to the integrity of the insolvency regime. An approach could be made to the courts to ask that they seek confirmation ahead of an order being made that the deposit has been paid and failing that, that orders should not be drawn up if confirmation has not been provided the deposit has been paid.

3.5.4 Early dissolution

Section 202 of the Insolvency Act provides for the early dissolution of companies when the Official Receiver is of the view that the assets of the company are insufficient to cover the expenses of the winding-up and that the affairs of the company do not require any further investigation. The Official Receiver has to give at least 28 days notice to creditors and

contributories. On giving notice the Official Receiver ceases to be required to perform any duties imposed on him by the Act, other than registering his application for early dissolution with the Registrar of Companies. He will register this after the notice period has expired, provided there has been no objection raised in this period. The Registrar of Companies will then dissolve the company within a three month period.

In practice the section is little used within the UK but it could be of use when dealing with the backlog of company work in Cyprus and consideration should be given to adopting a similar provision.

3.6 Obtaining Information from Insolvents

- Cease obtaining statement of affairs in all cases;
- Require information to be provided by the insolvent at the outset of the case – don't wait for an interview.

The requirement to obtain a sworn statement of affairs in every case needs to be reconsidered. The Insolvency Act 1986 provides for the submission of a statement of affairs in a liquidation or bankruptcy but section 288 of the Insolvency Act 1986 allows the official receiver to release the bankrupt from his duty to submit or the decision. Section 131 of the Act provides that the official receiver may require the submission of a statement of affairs. In effect this means that the official receiver will only obtain a statement of affairs in it will assist him in his administration and investigation of the insolvent estate. This will save resource in Cyprus where the Official Receiver is obliged to pursue the submission of the statement of affairs regardless as to the benefit to him in doing so. (It is the intention in the UK to remove the need to formally dispense with the statement of affairs and allow the Official Receiver to obtain a statement of affairs only when it would assist).

It remains critical that a full list of assets and liabilities is provided by the bankrupt or directors but this does not have to be in a sworn affidavit. Directors and bankrupts are currently required to provide this information to the Official Receiver in Cyprus and to provide information in interviews with one of the Official Receiver's examiners. There is a set list of questions that are put to bankrupts and directors.

There are now very substantial delays in obtaining information from bankrupts, going back some years as well as a developing problem with obtaining information from directors. This means that in many cases there is no information on which the Official Receiver can take the case forward. It is recommended that bankrupts and directors are required to provide in writing at the outset of the case details of their assets and liabilities and provide answers to a version of the set questions that are currently put to them in interview. These should be sent to them and a response required within a few weeks. This would mean that the Official Receiver would have information at a

much earlier stage (depending on the co-operation of the bankrupt/director). It would also have the advantage that the examiner's time at interview could be focussed on the critical areas of the case, as they would be able to review the information provided ahead of the interview and only revisit this if the information was deficient or identified an area of concern.

Consideration should also be given to interviewing by telephone if the circumstances of the case are straightforward. The Official Receiver in the UK currently interviews the large part of debtor petition bankruptcies by telephone. Such interviews, for example, include many cases where income payment agreements are reached with creditors, a significant category of asset in UK bankruptcies.

Consideration should also be given to allowing discretion within internal procedures to dispense with interviewing the bankrupt at all if the Official Receiver is satisfied on the basis of information provided by the bankrupt that an interview would be unlikely to serve any useful purpose. The Official Receiver in the UK applies this discretion to interview if the case is very straightforward. Searches with credit reference agencies can provide some assurance regarding information provided.

3.7 Backlog of Work

- Appointment of IPs – batched cases
- Increase resource with temporary staff

There are very substantial backlogs of work covering the interviewing of directors and bankrupts, holding meetings of creditors and paying dividends. The backlog of work is so substantial as to carry the risk of undermining the entire insolvency regime in Cyprus.

There were 2,200 cases pending the completion of the statement of affairs and preliminary statement at 31 December 2012. It is not possible to say what assets exist in these cases. There were 3,600 cases awaiting the first meeting of creditors/contributories or for the appointment of the trustee at this stage under the new simplified proceedings. There were more than 7,500,000 euros held in respect of some 260 of these cases that had not been distributed.

It is critical that there is a reduction in the number of cases under the control of the Official Receiver.

If legislative changes are brought in to enable the appointment of insolvency practitioners as trustee or liquidator, it is recommended that the Official Receiver seeks the appointment of Insolvency Practitioners administratively. A rota could be used for appointments and case offered in batches, including ones where a dividend is to be paid if these cannot be dealt with in a timely way. The Official Receiver should ask insolvency practitioners to take a share of

cases where interviews have not yet been carried out. This would involve the insolvency practitioner taking a mixed batch of cases. The Official Receiver would need to bear in mind any possible liability in respect to neglect in dealing with a case that had led to a loss to creditors.

The Official Receiver should also increase the use of agents where this would facilitate the realisation of assets more effectively and where the costs of these would be paid from the assets in cases. Enquiries should be carried out to see whether it would be possible under government financial rules to employ agency staff or self-employed staff to carry out realisation work paid from assets held in a specific case.

If insolvency practitioners will not take on the administration of the backlog of cases then additional resource would have to be provided to deal with the backlog of work or alternatively a decision made to leave historic work un-processed. This would be a very unsatisfactory conclusion in respect to the integrity of the insolvency regime.

3.8 Information Technology

The Liquidation and Bankruptcy Team have access to e-mail and it is important to build on this.

It is imperative that benefits from better information technology are utilised and as a basic step the introduction of electronic files which could be accessed across the team would be a significant advantage.

The team would benefit from the introduction of a case-based IT system that would improve management information and the easy access of the team to essential information, as well as facilitating benefits such as the production of letters and forms from the system, saving significant staff time. The costs of introducing a system are likely to be high set against the comparatively small size of the team but investigation of comparative systems in different jurisdictions should be pursued.

The accounts system is restricted by the inability to upgrade the specification of the Pastel accounts system and additionally the lack of connection between the Pastel system and the Fimas system. Additionally the cashiering system in the section is not linked to the Pastel system. It would be an advantage to the efficiency of the team if the Pastel system could be upgraded and could connect to the Fimas system. Further investigation should be made into the benefits arising from this but this needs to be balanced against the likely costs associated with the changes required.

3.9 Streamlining of Internal Systems

There is a saving to be made in staff time regarding the authorising of documents and decisions. There should be an effort to ensure that all decisions are made at the lowest appropriate level.

The current system depends on documents being signed off by the Official Receiver that causes additional work and unnecessarily takes the time of the Official Receiver.

This problem could be addressed by making the Head of Bankruptcies and Liquidations Section the Official Receiver.

The system operating within the UK Insolvency Service has a number of official receivers working to a Director of Official Receivers, who has overall responsibility for the work of the official receivers. The Director is not appointed as an official receiver. An alternative to this system would be to make the Head of Bankruptcies and Liquidations Section a Deputy Official Receiver with the powers of the Official Receiver.

Generally there is much involvement of the court in the insolvency process where there is no measurable benefit and any further changes that could reduce this should be explored.

3.10 Resource

There are on-going efforts to benchmark costs and there has been a loss of experienced staff in the section.

It is not possible to make a clear recommendation on resources going forward, separately from the backlog of work. It is imperative that backlog is reduced and utilising insolvency practitioners in dealing with the administration of cases or through proving additional resource needs to be explored as a priority. The increased use of agents could also assist with workloads.

If changes are made to the legislation bringing in alternative insolvency processes then the Official Receiver's work would also be reduced, for example the time spent around meetings of creditors. Similarly streamlining the information gathering process, should free examiner time.

The suggested changes would take some time to bring into action and the Section needs any assistance by diversion of resource to assist with its work now.

It is not possible to make a direct comparison between staffing levels in the Official Receiver's offices in the UK and the Official Receiver in Cyprus as there are differences in the way the work is carried out. The benchmarks in place for resourcing used by the Insolvency Services expects an examiner to deal with around 100 new companies in a year or alternatively around 140 creditor

petition bankruptcies (these benchmarks do not take into account detailed investigation work).

There urgently needs to be additional examiner resource in place to deal with the input of new cases and for dealing with the very large backlog of work that has built up. There needs to be a substantial increase in the resource dealing with the execution of orders, partly to deal with new cases and partly in respect of the backlog of work in this area.

There will shortly be only two examiners dealing with this work and there should be an increase of resource to have at least twelve examiners dealing with this work in the short term. Existing resource needs to be maintained to deal with receipts and payments, voluntary liquidations and dividends. Further support is required in all these areas and there should be an increase in administrative resource available to deal with this – at least four further staff are required.

The reduction of the backlog and introduction of new processes will ease the requirement for examiner resource when these have come into effect. The resource should be reviewed on at least a quarterly basis against backlogs of work and in time the effect of introduction of new processes.

A specialist insolvency lawyer would also be required to assist the changes to legislation and processes set out in this review.

In summary a substantial increase in staffing in the short term is needed to deal with backlogs of work and in order to deal effectively with new cases. There is a need for at least 15 additional staff but resource should be reviewed on at least a quarterly basis against progress on dealing with backlogs and improvements deriving from new processes. It seems unlikely that there would be any reduction in this requirement for additional staff before the end of 2014.

3.11 Other Issues

Stakeholders are very clear on their desire to see updated insolvency legislation – it is increasingly difficult working under legislation that was brought in many years ago and in a different time. For example authorities on cases are very much out of our time.

There is a clear desire that there should be a specialised insolvency or at least a specialised commercial court. It is suggested that this idea is raised and pursued with representatives of the judiciary.

This review has not touched on the position of the government as a preferential creditor but it should be noted that this is an issue that has been raised by stakeholders. In the UK the crown is no longer a preferential creditor for PAYE, National Insurance Contributions and Value Added Tax. In corporate

cases where there is a floating charge, the monies that would have been paid to the preferential creditors are not made available to the floating charge holder but are held for the unsecured creditors (this is described as the "prescribed part ").

The filing of documents with the Registrar of Companies relating to the voluntary liquidations is currently carried out by the Bankruptcies and Liquidations Section. The work does not have any direct link to the work of the Section and the review recommends that this work is moved away from the section and to the Registrar of Companies section. There needs to be a move away from doing work for insolvency practitioners, such as arranging publication of documents on their behalf.

The review recognises that there has to be confidence that insolvency practitioners are carrying out their duties properly and the current checking of receipts and payments accounts plays a part in this. In the longer term, a self-regulated insolvency profession would mean that double checking of the details of the receipts and payments would not be necessary.

The review also notes that the family home is not included as an asset in the bankruptcy estate. Under UK insolvency law, this is a major asset in bankruptcy cases and generally the bankrupt's interest in the property needs to be dealt with in a three year period following the bankruptcy order (either by sale, the creation of a charging order or revesting in the bankrupt). If the property is not dealt with within the three year period then it will revest automatically in the bankrupt.

If the family home is to remain outside the bankruptcy estate in Cyprus then there needs to be provision made to ensure that secured liabilities relating to the property are not discharged in the bankruptcy, at least to the extent that they are covered by the value of the property. There needs to be an amendment to current legislation to ensure that the secured creditor is not disadvantaged by the discharge of debts and the secured element of the debt remains protected.

4. Conclusion

The review acknowledges the steps that have already been taken by the Official Receiver to update insolvency legislation in Cyprus. It also acknowledges the assistance that has been provided to the reviewer by staff in the Bankruptcy and Liquidation Section and their professionalism and commitment to making effective changes.

There needs to be significant changes made to update legislation and make adequate provision for the rescue of companies and provide alternative insolvency proceedings for individuals.

There needs to be a modernising of all the insolvency legislation but the introduction of new legislation will be subject to the need to introduce urgent change in specific areas. This may necessitate the prioritising of changes or it may be possible to adopt insolvency provisions in the UK, which have in many parts built on and developed from the insolvency legislative regime that is in place in Cyprus.

There needs to be greater access to insolvency and the opportunity for the bankrupt to be discharged from their debts.

Generally there is a need to lessen the involvement of the court from the level required under the current insolvency procedures

There are extremely high backlogs of work that have to be dealt with. This can be reduced by introduction of procedures that enable the appointment of insolvency practitioners to be effected much more easily and this is a priority area in respect of the changes required.

The backlog of work could also be eased by the streamlining of processes in the Bankruptcy and Liquidation Section. These should result in easing workloads in the Section in the longer term. That said there are substantial backlogs of work and consideration needs to be given to diverting resource to the section to deal with the current workload.

Appendix

- Annex 1 – Terms of Reference

- Companies Annex 1 - Job Specifications
- Companies Annex 2 - Organisational Structure
- Companies Annex 3 - Skills Audit
- Companies Annex 4 - Backlog Discussion Document
- Companies Annex 5 - Legislation Working Document
- Companies Annex 6 - Current Incorporation Process Map
- Companies Annex 7 - Suggested Incorporation Process Map
- Companies Annex 8 - Companies House UK Exam Policy
- Companies Annex 9 - Breaches Working Paper
- Companies Annex 10 – Action Plan
- Bankruptcies and Liquidations Annex 1 – Action Plan