ID-DRITT

Edition XXXIV

2024

Published by Għaqda Studenti tal-Liġi

Insolvency Reform: How Malta implemented the transposition of Directive (EU) 2019/1023 of 20 June 2019

Charlene Mifsud and Martina Cassar

Dr Charlene Mifsud B.A., LL.D. is a partner at Chetcuti Cauchi Advocates. Charlene heads the corporate and commercial legal team within the firm. She has been actively involved for the past ten years in Corporate Law, Property Conveyancing, Employment Relations, and General Commercial law.

Martina Cassar is a trainee associate at Chetcuti Cauchi Advocates. Martina supports the corporate and commercial law unit and assists clients with various legal issues relating to the legal responsibilities of their Maltese companies. Additionally, she assists the team's research and development endeavours in areas including company organisation, EU regulations, compliance obligations, and other emerging areas of corporate law.

Abstract

This article shall discuss the Maltese legislative insolvency reform and the European Parliament Directive (EU) 2019/1023 on preventive restructuring frameworks, on the discharge of debt and disqualifications. This directive sparked a debate on how Malta's legal framework can be revised to assist businesses afflicted by financial hardship and everchanging economic demand. The three newly enacted Acts which will substantially impact the current Maltese legislation regulating processes of restructuring and insolvency shall also be discussed. Additionally, the article shall delve into the main objectives behind the legislative reform to provide early-warning mechanisms and tools which businesses may resort to, diminishing the stigma associated with resorting to such legal mechanisms and the newly introduced changes in terminology to strengthen the existing legal framework on bankruptcy and discharge of debt. The article shall also give a general overview of the Insolvency Practitioners Act and how it aims to strengthen the efficiency and effectiveness of the existing legislative framework relating to insolvency through the regulation of activities of insolvency practitioners. This article reflects the legal position as at 1st of January 2024.

1. Introduction

On the 20th of June 2019, the European Parliament introduced Directive (EU) 2019/1023 on preventive restructuring frameworks, on the discharge of debt and disqualifications (hereafter the 'EU Directive' or 'Directive').[1] The Directive also introduced measures to increase the efficiency of

[1] Council Directive (EU) 2019/1023 of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) [2019] OJ L 172/18.

procedures concerning restructuring, insolvency, and discharge of debt, amending Directive (EU) 2017/1132. This Directive sparked a debate on the current insolvency laws and how Malta's legal framework can be revised to assist businesses afflicted by dire financial hardship and ever-changing economic demand. Despite the Directive's coming into force in 2019, the local transposition of the Directive was successfully completed in December of 2022. Consequently, the Maltese Parliament promulgated two new Acts and carried out amendments to the Commercial Code, all of which will substantially revolutionise the legal approach regulating processes of restructuring and insolvency.

The aforementioned Acts enacted by the Maltese Parliament are Chapter 631, the 'Pre-Insolvency Act' and Chapter 632, the 'Insolvency Practitioners Act'.[2] The main objective behind the introduction of these Acts is to provide early-warning mechanisms and tools that businesses may resort to should they find themselves in hot water. Simultaneously, the introduction of these procedures may potentially diminish the stigma associated with resorting to such legal mechanisms available to businesses in similar situations. The easily accessible restructuring procedure together with the efficient discharge of debt framework are key mechanisms introduced by these Acts. The objective of such mechanisms is to strike a balance between the rights of debtors and those of creditors. Most noticeably, the amendments to the Commercial Code introduced changes in terminology.[3] It was tabled to update certain provisions of the Commercial Code by substituting the nomenclature of 'curator' with that of 'bankruptcy trustee'. In addition to this change, the bill intends to extend the competence of the Civil Court (Commercial Section) within the insolvency legislation and to strengthen

---

[2] Pre-Insolvency Act, Chapter 631 of the Laws of Malta; Insolvency Practitioners Act, Chapter 632 of the Laws of Malta.

[3] Act XXIII of 2022, Commercial Code (Amendment) Act.

the existing legal framework on bankruptcy and discharge of debt.[4] This being said, there was a lacuna within Maltese law providing for insolvency regulations as well as pre-restructuring and restructuring procedures. This lacuna together with the aforementioned EU Directive paved the way for the insolvency reform which introduced a newly proposed Act, the 'Pre-Insolvency Act', to strengthen the legislative framework relating to such procedures.[5] Lastly, the 'Insolvency Practitioners Act' is another newly proposed Act to provide for a modern framework striving to strengthen the efficiency and effectiveness of the existent legislative framework relating to insolvency through the regulation of activities of insolvency practitioners.[6]

2. Early-Warning Mechanisms

The current legislative framework provides very limited scope and opportunity for insolvency to be detected at inception. This is primarily due to the fact that it is dependent upon the director of the company's detection. Upon detecting a potential situation of insolvency, a director needs to undertake relevant measures such as seeking a compromise or any arrangements between the company and its creditors, engaging in an out-of-court voluntary mediation or lodging an application to the courts to initiate a company recovery procedure.[7] It was evident that Malta's legal framework lacked sufficient early-warning procedures and thus, the newly proposed 'Pre-Insolvency Act' aims to provide for such tools, particularly crisis prevention mechanisms.[8] The mechanisms to be introduced could be

---

[4] ibid.

[5] Pre-Insolvency Act, Chapter 631 of the Laws of Malta.

[6] Insolvency Practitioners Act, Chapter 632 of the Laws of Malta.

[7] 'The Likeliness of Insolvency and Applicable Procedures' (Malta Business Registry) <https://mbr.mt/the-likeliness-of-insolvency-and-applicable-procedures/> accessed 23 January 2023.

[8] Pre-Insolvency Act (n 5).

categorised into three categories: those coming into force with immediate effect, short-term mechanisms, and those which are aimed to be medium to long-term mechanisms. The new legislation on 'Early-Warning Tools and Crisis Prevention', Part II of the Pre-Insolvency Act, may potentially revolutionise the way insolvency is detected at such an early stage that might render the company to be salvaged rather than having it abandoned to rot in financial ruin.[9] In a recent training seminar delivered by Dr Ingrid Hamilton, from the Malta Business Registry (MBR), Official Receiver Unit, explained how the Directive imposes the obligation on the competent authority to develop a platform where the debtor company can assess the viability of continuing operating.[10] The tool would be used by the company to assess itself, aimed to assist and detect early on that the company is likely to face financial distress.

In a recent lecture on Aspects of Maltese Company Law, Dr Kevan Azzopardi, from the Official Receiver Unit of the MBR, discussed some of these mechanisms, such as the introduction of a self-help portal, an online register of insolvency practitioners, and dedicated advisory services for debtors.[11] Moreover, Dr Azzopardi revealed the shortly introduced decentralised automatic alerts system whereby third parties such as the Central Bank, other commercial banks, tax authorities, essential services providers, and the MBR, would notify debtors via electronic mail alerts with standardized links to the self-help portal.[12] The automated IT-based system would trigger an alert when certain payments are not made on time. For instance, when payments (such as payments of tax statements, loans,

[9] ibid Article 1(2).

[10] 'The Insolvency Framework, Preventive Restructuring and Money Laundering' (Training Seminar) Society Education, 27 February 2024.

[11] Kevan Azzopardi, 'Aspects of Maltese Company Law' (Lecture) Society Education, 2 December 2022.

[12] ibid.

and utility bills) are delayed, the debtors will receive an alert to act without delay and respond promptly. The competent authority would then provide guidance on the steps that could be undertaken with the aim of preventing insolvency and preserving business viability. Dr Azzopardi expressed how the regulator is ambitious to convert the automatic alert system into a centralised one, whereupon specific trigger events a communication would be issued to the debtor outlining all identified alerts.[13] Furthermore, it was explained how this centralised register could further strengthen provisions combatting wrongful trading. Thus, we can deduce that this new legal framework will bestow upon the officials of a company (such as company directors and/or any other persons carrying out substantially the same functions as company directors) a greater duty to monitor any such alerts made. Consequently, these alerts may appeal to the debtor to consider its financial situation more thoroughly. Ultimately, the Official Receiver Unit at the MBR, the competent authority overseeing the implementation of early-warning mechanisms, will be responsible to develop and maintain up-to-date information about the availability of early-warning mechanisms. Further information and details on early-warning mechanisms that shall come into force in Malta should be made publicly available in due course.[14]

3. Preventive Restructuring Procedures

Prior to the insolvency reform, the only remedy for companies facing financial distress was the Company Recovery Procedure as regulated by Article 329B of the Companies Act.[15] By time, this procedure proved to be very costly and time-consuming due to the court's active involvement

[13] ibid.

[14] ibid.

[15] Chapter 386 of the Laws of Malta.

and ultimately ineffective for its purposes.[16] The reform of the Insolvency Framework through the Pre-Insolvency Act is establishing preventive restructuring procedures.[17] The key objective to be achieved through the implementation of such procedures is to maximise the value for the stakeholders involved compared to that available under insolvency. Such procedures strive to provide temporary protection to the debtor until a concrete restructuring plan is envisaged. A restructuring plan is initiated upon submission of an application for a preventive restructuring procedure to the relevant court. It would follow that an insolvency practitioner is appointed to guide the debtor and oversee the entirety of the procedure while providing any necessary assistance to the business.[18] It should be noted that prior to the introduction of the EU Directive, preventive restructuring plans and their contents were hardly regulated. Thus, this legislative reform shall address this lacuna. The EU Directive under Article 8 provides comprehensive guidance on the contents of a 'Preventive Restructuring Application' and how EU Member States should implement regulations for such applications.[19] Malta, by way of Article 10 of the Pre-Insolvency Act, transposed the essence of Article 8 of the EU Directive into an even more detailed provision on the contents of a preventive restructuring procedure application.[20] More specifically, the Second Schedule to the Act lists the necessary information that should be included in the restructuring plan as well as a list of the required documentation that should be attached to the restructuring plan.[21] Nonetheless, prior to applying for a restructuring procedure, the company must assess its situation and identify one of the

[16] 'The Insolvency Framework, Preventive Restructuring and Money Laundering' (n 10).

[17] Pre-Insolvency Act (n 5) Article 8.

[18] ibid 43(4).

[19] ibid 8.

[20] ibid 10; Council Directive (EU) 2019/1023 (n 1).

[21] Pre-Insolvency Act (n 5).

three most suitable procedures. The Pre-Insolvency Act names three distinctive types of preventive restructuring procedures, particularly the Standard Procedure, the Pre-Formulated Procedure, and the Pre-Approved Procedure.[22]

The Standard Procedure is resorted to when a detailed restructuring plan is unavailable following a major event that the company would not have been in a position to foresee. Thus, the company would be in a situation where it was previously unaware of such distress. This filing procedure may be triggered through the debtor or alerted by the creditor or employees' representative of the company and filed accordingly without a pre-determined plan of action. The procedure would provide for a four-month timeframe which may be potentially extended to a maximum of 12 months that start running upon filing of the application.[23] Consequently, the procedure would automatically stay any claims of creditors upon the approval of the filing of the preventive restructuring procedure.[24] It further entails a process of creditors' ranking followed by an evaluation of the businesses' assets which would support the preparation of the restructuring plan accordingly. The restructuring plan is delivered to the creditors for voting and if accepted by creditors, the court would then need to give its approval for the cram-down dissenting creditors.[25]

The Pre-Formulated Plan Procedure is the recovery plan adopted when the business in question already has a recovery plan drafted.[26] The recovery plan may have already been discussed with some creditors and potentially gained informal approvals. This procedure has some similarities to the previously

[22] ibid Article 9(3).

[23] ibid 25.

[24] ibid.

[25] ibid.

[26] Azzopardi (n 11).

mentioned Standard Procedure, such as the effect of the automatic stay of creditor claims, the appointment of the insolvency practitioner, and the required court approval. However, this procedure provides for a shorter preventive restructuring procedure period since the business plan would already have been developed. Thus, the business would only have to go through the process to confirm its creditors. The Act stipulates that the duration for such procedure would '*automatically terminate upon the lapse of four months from the date of application*'.[27]

Lastly, the procedure for the filing of the Pre-Approved Plan caters for those businesses that would have a recovery plan already in place which would have gained the creditors' approval, thereby satisfying the minimum quota of creditors' votes. Similar to the plans previously mentioned, this plan would allow for the automatic stay of creditors' claims, an insolvency practitioner would be appointed, and the court would need to issue its approval to cram down dissenting creditors. A distinctive feature of this restructuring procedure is that the Act requires the plan to be presented for implementation at a meeting between the affected parties, called upon by the insolvency practitioner.[28]

It should be noted that prior to the introduction of the EU Directive, the Maltese legislative framework on remedies pertaining to insolvency provided for two mechanisms: 'The Company Recovery Procedure' (CRP) and 'The Compromise and Arrangement Procedure' (CAP).[29] Nonetheless, an analysis carried out to assess the efficiency and effectiveness of these mechanisms revealed that certain issues were left unaddressed. Noteworthy shortcomings would include the lack of provisions catering for the Best-

[27] Pre-Insolvency Act (n 5) Article 33.

[28] ibid 39.

[29] 'The Likeliness of Insolvency and Applicable Procedures' (n 7).

Interest-Of-Creditors (BOIC) test, at the detriment of the creditors.[30] It is understood that no dissenting creditors should be worse off under a restricting plan than if a traditional ranking in liquidation procedures were to take place. This test was only applied upon appeal of a decision taken concerning a CRP recovery plan.[31] Presently, the Act requires that the BOIC test is applied prior to obtaining the creditors' approval of the restructuring plan.[32] Furthermore, another shortcoming was detected regarding essential executory contracts.[33] Such contracts would include those contracts which are necessary for the continuation of the day-to-day operations of the business. Suspending these contracts would render the business inoperable and ultimately lead to the debtor's activities coming to a standstill. Prior to the insolvency reform, there was no protection afforded to such contracts, with the exception regarding lease and hire-purchase agreements. Alternatively, the insolvency reform vows to grant the necessary protection to such essential executory contracts against their termination and nullity of the contrary.[34]

Moreover, it also resulted that the previously established mechanisms failed to provide adequate protection for dissenting creditors.[35] For a restructuring plan to be confirmed, it is required that the minimum protections for dissenting creditors voting against a restructuring plan are satisfied. According to the old framework, such protection was only afforded during CRP appeal proceedings initiated by those dissenting creditors whose rights have been impinged. The updated insolvency framework aims to provide extensive safeguards for dissenting creditors from the very start

[30] Azzopardi (n 11).

[31] ibid.

[32] Pre-Insolvency Act (n 5) Article 43 (4)(a).

[33] Azzopardi (n 11).

[34] Pre-Insolvency Act (n 5) Article 25 (1)(b).

[35] Azzopardi (n 11).

of the procedure, at first and second instance. It should be noted that any protection concerning interim financing provided to struggling businesses was also neglected as per the old regulations.[36] Thus, the legislative reform seeks to establish that where any interim financing is acquired, during a preventive restructuring procedure, it shall not be declared voidable or unenforceable.[37] Moreover, the grantors of such financing shall not bear any civil, administrative, or criminal liability founded on the basis that such financing is detrimental to the general body of creditors in any subsequent insolvency proceedings, such as those leading to the dissolution of the company.[38]

The Pre-Insolvency Act sets forth the principle that all creditors shall be deemed to be affected parties to a preventive restructuring plan. Nonetheless, there are two exceptions to this rule in that the debtor has the option to exclude claims of a creditor from the restructuring plan.[39] These exclusions include any claims where it is reasonably expected that such claim is to be settled in full or where the exclusion of such claim is reasonable in consideration of the economic realities of the debtor, for instance where the debt is secured against an asset belonging to the debtor.[40] The legislative framework shall confirm that the way forward adopted for creditors shall be determined by the class of the claim, dependent on its economic interest. Claims shall be organised into five classes as follows: secured claims; unsecured claims; claims for the payment of wages (which are not privileged claims over the debtor's assets); subordinate claims (such as claims which would remain unpaid until the primary debts have been

[36] ibid.

[37] Pre-Insolvency Act (n 5) Article 20.

[38] ibid.

[39] ibid 17.

[40] ibid.

dealt with); and claims related to shares, equity or ownership rights.[41] It should be noted that the above-mentioned Act acknowledges that specific classes may be further sub-categorised into different classes, in order to distinguish between claims of different legal priority within the same group. In the absence of such a sub-division, all claims within the same class are to be considered in the same manner.

The insolvency reform by means of the Pre-Insolvency Act shall provide for cross-class cram-down.[42] This procedure entails judicial approval and imposition of a restructuring plan over one or several dissenting creditors. It is triggered when a business has multiple creditors that need to be separated into various classes, for instance, secured or unsecured creditors, supplier creditors, and employees.[43] A majority of two-thirds of the affected parties in each class must approve the restructuring plan.[44] Then, it would follow that a restructuring plan which is not adopted by every voting class can be crammed down if it embraces the required protections. Should the court be satisfied that the minimum requirements at law are in place, it would then proceed to give its approval of the restructuring plan. Nonetheless, the plan must be satisfactory of the foregoing conditions:[45]

- The plan is sufficiently in the best interest of the creditors;
- The plan ensures that no class of creditors shall receive an economic value exceeding the full amount of the claims; and
- The restructuring plan ensures that, if the standard ranking of liquidation priority were to be implemented, any dissenting class of affected parties' claims would be handled at least as favourably as those of the majority.

[41] ibid 18.

[42] ibid 42.

[43] Azzopardi (n 11).

[44] Pre-Insolvency Act (n 5) Article 41.

[45] ibid 42.

As per the Pre-Insolvency Act, once the debtor is put under a standard preventive restructuring procedure by the court, the enforcement of any financial claims made against the debtor shall be suspended for a period of four months running from the date of the application.[46] However, it should be noted that the Act provides for an exception to this rule of suspension - where any claims of debt are brought forward by employees, such claims shall not be suspended.[47]

4. Protection of Interim Financing

The Pre-Insolvency Act stipulates that in the event of any subsequent insolvency proceedings concerning the debtor, any temporary financing obtained by the debtor, forming part of a restructuring plan or otherwise, shall be given the protection to be considered as an enforceable claim rather than be declared as void, voidable or unenforceable.[48] The financial assistance provided by grantors of such interim financing is protected from any legal disputes alleging that such aid is detrimental to the debtor's creditors. Furthermore, any interim financing shall not serve as a basis for any claim or allegation of wrongful trading or fraudulent preference, in terms of the Companies Act, that may be brought against the debtor during potential bankruptcy or insolvency proceedings.[49]

5. Discharge of Debts

There are essentially three modes to terminate and exit a preventive restructuring procedure which would be: a dissolution and winding up;

[46] ibid 25.

[47] ibid 42.

[48] ibid 20.

[49] Azzopardi (n 11).

should the restructuring actions be unsuccessful, have the company declare restored viability following a rewarding restructuring plan; or otherwise, discharge of debt.[50] At present, Maltese legislation and, even more specifically, the Commercial Code, provides that the insolvent debtor is only discharged of its debts upon the court's ruling declaring one as bankrupt.[51] Moreover, in the case when the ranking of creditors is established and the court has undergone examination of the case, the court would consider the facts gathered to determine whether there is sufficient proof of deceit or fraud on the part of the bankrupt. This would determine whether the court should allow the bankrupt to be granted a possibility of rehabilitation and a chance to trade again. If it is satisfied that the bankruptcy was a result of genuine causes, the court would concede to the company's rehabilitation and consequently, discharge the bankrupt from all debts, including current and future possessions that could be claimed against the bankrupt at any time previous to the declaration of bankruptcy. Undoubtedly, this would not apply to those insolvent debtors and bankrupts who have been declared fraudulent bankrupts.

The tabled bill proposing the amendment of the Commercial Code shall introduce a new test to assist in procedures declaring bankruptcy, referenced as the 'Cash Flow Test'.[52] This test is identical to the 'Cash Flow Test' as understood under English law.[53] Following the initiation of bankruptcy procedures, either by the entrepreneur on the brink of bankruptcy or by a creditor demanding that the debtor be declared bankrupt, the court may declare bankruptcy if it is satisfied that an executive title has remained

[50] ibid.

[51] Civil Code, Chapter 16 of the Laws of Malta, Article 214(1)(a).

[52] Azzopardi (n 11).

[53] ibid; Simon Pullicino, 'The inability to pay debts test before the Maltese Courts' (Mamo TCV, 7 April 2022) <https://www.mamotcv.com/insights/the-inability-to-pay-debts-test-before-the-maltese-courts/> accessed 23 January 2023.

unsettled after a period of 24 weeks.[54] Prior to the proposed bill, such test was not incorporated into Maltese law, but the named equivalent test is the 'balance-sheet test'.[55]

Upon the delivery of the judgment pronouncing the entrepreneur as bankrupt, the court shall issue a suspension of any payment of debt and then proceed to appoint a 'bankruptcy trustee'.[56] Should a creditor feel that there might be a conflict of interest, the bill provides that a creditor may protest the appointment of such trustee within 30 days of the court's pronunciation of bankruptcy.[57] The bill shall establish substantial provisions describing the rights and obligations of a bankruptcy trustee, particularly those related to their appointment, authorisation, removal, and any property that might be put in their control.[58] For instance, the new law stipulates that the trustee may allow a bankrupt trader to receive minimum wage, retain the use and possession of one's residential home, and also allow the use of certain property.[59] Another obligation imposed upon such trustee would be to draw up an inventory of the bankruptcy estate, make a list of the bankrupt's creditors, and conclude a debt register.[60] Finally, one is obliged to file such information with the MBR within 30 days.[61] This documentation shall be forwarded before the court for its examination to confirm its contents.

Following the confirmation and publication of the debt register of a bankrupt, the MBR shall proceed to call a meeting where the bankrupt's

---

[54] Act XXIII of 2022 (n 3) Section 5 amending, Title I Clause 477(2).

[55] Simon Pullicino (n 53).

[56] Act XXIII of 2022 (n 3) Section 5 amending, Title VI Clause 485.

[57] ibid.

[58] ibid Section 6 amending, Title II Clause 488.

[59] ibid Section 5 amending, Title I Clause 592.

[60] ibid 502.

[61] ibid.

attendance is mandatory.[62] The bankruptcy trustee would lead this meeting and amongst a variety of information that the trustee is obliged to share, the trustee would open a discussion on the terms of a debt agreement and an income payment agreement.[63] It is important to be aware that the provisions for such agreements must obtain the court's approval and consequently, the bankrupt trader (classified as a natural person) would become *ipso jure* rehabilitated to trade on certain conditions as stipulated in great detail under the amended Commercial Code.[64] If the bankrupt is a legal entity, all its debts will be automatically discharged and the bankrupt will be removed from any relevant register.[65] Whatever debts that stay unpaid after the debt agreement's terms are conducted will become the personal liabilities of the persons identified within the legal entity's governing documents. Nonetheless, the bill establishes a list of debts that are not dischargeable, such as fines due by the debtor in terms of any provisions of the Laws of Malta; civil debts due by the debtor by way of damages; wages due by the debtor and constituting a privileged claim over the assets of the debtor in terms of employment law in Malta; debts due by the debtor by way of fraudulent or wrongful trading in terms of the relevant provisions of the Companies Act of Malta;[66] and debts due by the debtor in relation to maintenance obligations in terms of the relevant provisions of the Civil Code.[67] Therefore, we may presume that other types of debts which are not mentioned shall be considered by the court to be discharged partially or in full, depending on the circumstances of the case.

---

[62] ibid Section 9 introducing Title V Clause 517 (2).

[63] ibid 519.

[64] ibid 524 (b).

[65] ibid 534 (a).

[66] Companies Act, Chapter 386 of the Laws of Malta.

[67] Act XXIII of 2022 (n 3) Section 11 amending Title VII Clause 538 (2)(b).

6. The Insolvency Practitioners Act

The Insolvency Practitioners Act introduces a new role in insolvency proceedings.[68] The role of the insolvency practitioner is a crucial one in the context of both a preventive restructuring procedure and in the context of bankruptcy proceedings. In the latter case, the insolvency practitioner would be assuming the role of a bankruptcy trustee. The recently enacted Act establishes clear requirements for eligibility for both natural persons as well as registered firms to act as insolvency practitioners.[69] The Act stipulates that eligible insolvency practitioners could be legal professionals, accountants, or auditors who are deemed to be fit and proper by the relevant authority. Regardless of having satisfied these requirements, the Act stipulates that professionals in the industry must seek authorisation from the relevant authority.[70] Such authorisation, as prescribed by the Act, must be obtained not solely with respect to the execution of the role of the insolvency practitioner but also to fulfil the functions of a bankruptcy trustee. The performance of the obligations of both roles is subject to substantive regulatory oversight and supervision.[71] In addition, this Act sets out rigorous sanctions to ensure compliance with the guidelines set in place and to uphold the necessary standard of diligence and responsibility that comes with the role of insolvency practitioners.[72] The sanctions may vary from a range of fines and extend to imprisonment and are imposed for offences such as false assumption of the title of an insolvency practitioner, executing duties of an insolvency practitioner without the required authorisation, failure to disclose information, or providing false information to the relevant authority. Accompanying such sanctions, Part

---

[68] Insolvency Practitioners Act (n 6).

[69] ibid Articles 3 and 6.

[70] ibid 3 and 4.

[71] Azzopardi (n 11).

[72] Insolvency Practitioners Act (n 6) Article 16.

IV of the Act puts forward a code of conduct for insolvency practitioners and incorporates rules on conflict of interest and transparency.[73] One may notice that the Act not only stipulates penalties and sanctions associated with administrative obligations but also imposes them on breaches of the code of conduct. In any such case, it shall be lawful that an insolvency practitioner who breaches one's professional duties shall be subject to cancellation or revocation of the authorisation granted by the competent authority.[74]

7. Conclusion

Maltese legislation is currently focused on liquidation rather than on early restructuring and other pre-insolvency solutions. Therefore, the proposed transposition of the Directive could potentially grant a second chance for struggling entrepreneurs. Currently, in restructuring proceedings, companies and entrepreneurs are prevented from controlling their own assets and the day-to-day operation of their businesses. Thus, the proposed legal amendments will provide entrepreneurs with control of their businesses which will avoid unnecessary costs and better ensure the continuation of the business. Moreover, businesses in financial difficulties will have access to restructuring tools at an early stage where their chances of survival are higher. The breathing space afforded to the debtor upon enforcement of an insolvency remedy would be lengthy enough for the entrepreneur to recover. Typically, this would be a 12-month period with a potential extension of two months.

Viable companies will have access to a time-limited *breathing space* from enforcement actions of no more than four months, renewable until a maximum duration of 12 months. This will not only facilitate negotiations

[73] ibid Part IV.

[74] ibid Article 19.

and reduce the length of procedures but also provide further predictability and legal certainty for creditors. One criticism of this insolvency reform that these authors note relates to the measures introduced relating to new financing. It is noted that interim financing granted to companies in the process of early restructuring procedures is not sufficiently encouraged or protected. Nonetheless, the authors firmly believe that the prospects of the insolvency reform are very positive in that the newly proposed Acts should provide for the required protection and access to financing which should increase the chances of successful restructuring action plans.