



## **Cyprus' foreclosure regime** Legislative amendments

### **The Supreme Court of Cyprus rules on the constitutionality of amendments to foreclosure legislation**

In July 2019, the House of Representatives of Cyprus passed the following laws (the "**amending laws**") in relation to the foreclosure regime in Cyprus:

1. The Suspension of Foreclosure of Immovable Property Proceedings (Temporary Provisions) Law of 2019; and
2. The Transfer and Mortgage of Immovable Property (Amending) (No.2) Law of 2019.

The amending laws were not immediately put in force, but were referred by the President to the Supreme Court of Cyprus to rule on their constitutionality.

On 3 June 2020, the Supreme Court held that the laws were in line with the Constitution. Following this, the amending laws were published in the Official Gazette of the Republic of Cyprus and came **into force on 12 June 2020**.

#### **Key provisions of the amending laws**

1. The Suspension of Foreclosure of Immovable Property Proceedings (Temporary Provisions) Law of 2019 (Law 60(I)/2020):

- Suspension of the foreclosure proceedings during the suspension period (*which is defined as the period starting at the date of entry into force of the above law and ending on 1 October 2019*) for mortgage debtors who satisfy the criteria for participation to the Estia Scheme.

Due to the delay caused by the court referral, the aforementioned suspension period elapsed before the enactment of the law, practically rendering the amending law without effect.

(Even though with the Covid19 measures, applications for the Estia Scheme reopened for a further period of 15 days in June 2020, the amending law does not affect foreclosure proceedings in progress. Notwithstanding, the Association of Cyprus Banks has directed its members to suspend foreclosure proceedings until August 2020.)

2. The Transfer and Mortgage of Immovable Property (Amending) (No.2) Law of 2019 (Law 61(I)/2020):

- extension of the periods concerning the right of the mortgage debtor to repay its debt or submit an appeal for the setting aside of the notice for the sale of the mortgaged property from 30 days to 45 days. It should be noted that the submission of an appeal for the setting aside of the notice does not automatically suspend the foreclosure proceedings and is usually filed together with an application for an interim injunction;
- in the case of loans, overdrafts, credit cards or financial leases up to EUR 350,000 secured or related to a primary residence or business premises, additional right of the mortgage debtor to appeal for the setting aside of the notice for the sale of the property in the event that the lender (bank, credit acquiring company, financial institution) refused to or did not proceed with a loan restructuring pursuant to the Law relating to the Establishment and Operation of a Single Agency for the Out of Court Settlement of Disputes of Financial Nature (the "**Financial Ombudsman Law**") or where such procedure is pending at the date of entry into force of the above law.

The period for which the notice for the sale of the mortgaged property is set aside is as follows:

- a. during the loan restructuring procedure but not exceeding one month;
- b. during the assessment by the Financial Ombudsman of the existence of any breaches of the Code of Conduct on the Handling of Borrowers in Financial Difficulties of the Central Bank of Cyprus (the "**Code**

**of Conduct**") but not exceeding one month from the end of the loan restructuring procedure;

c. upon the finding of a breach of the Code of Conduct, for 15 days from the date on which the debtor received notice of the breach but not exceeding one month and 15 days from the end of the loan restructuring procedure;

- introduction of a right of the mortgage debtor to submit an ex-parte court application for an order prohibiting the intended sale of the property upon finding of a breach of the Code of Conduct by the Financial Ombudsman; and
- extension of the period in which the reserve price cannot be less than 80% of the market value of the property from 3 to 6 months.

The amending laws may cause delays in certain foreclosure proceedings and thus reactions to their enactment have been mixed. Their effectiveness is yet to be determined.



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