

# A Plan for all Reasons: Six Months On

**Author: George Kounis**

Consultant<sup>Ω</sup>

**Date Created: 27<sup>th</sup> January 2013**

Proposed Solutions for the resolution of misselling disputes  
in the Cyprus Property Market

*This document contains the personal opinions of the author, freely expressed to  
aid a better understanding of the issues, without prejudice to the legal position  
Maxwell Alves Solicitors may hold as a firm*

<sup>Ω</sup> non solicitor

---

Maxwell Alves Solicitors 75 Farringdon Road, London, EC1M 3JY

[g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com) DDI: +44 (0) 208 882 6864

Main: +44 (0)20 7632 6950 Fax: +44 (0)20 7632 6959 [www.maxwellalves.com](http://www.maxwellalves.com)

Maxwell Alves Solicitors is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales, SRA No. 383557

Partners: Dr Alan Ma and Daniel T.Y. Cheung (see website for other personnel)

## Executive Summary

1. Six months have elapsed since our Discussion Document 'A Plan for All Reasons' regarding the problems purchasers were facing with their property transactions in Cyprus. Six months on, we are very encouraged by the willingness of the banks to discuss a settlement in individual cases although line managers do not appear to understand the nature of the problem and consequently the inadequacy of the solutions offered. We continue to believe, however, that a practical/commercially viable/politically sensible settlement is far more realistic, painless and beneficial for all parties than years of litigation, bad publicity and stagnation of the property market.
2. Purchasers fall into different categories ranging from those who purchased a property for their own use with a loan in domestic currency through to those who have ended up, out-of-pocket, without a property and a foreign currency loan. Property developers blame anyone but themselves for their failure to deliver; banks appear to believe that they can coerce purchasers to pay up; and the Government of Cyprus still believes that these are civil matters in which they should not get involved. This recipe has not worked and those involved must know by now that it will not work. Furthermore, it is the recipe that will be looked back on in years to come as the cause of the continuing stagnation of the property market and a major contributor to the recession that the Cypriot economy is experiencing.
3. A Herculean effort is needed to clean up what has turned out to be the Stables of Augeas. It will cost money to do it but there can be little doubt that continuing on the present course will cost far more. The only viable solution is for the sector to crystallise and accept the losses as a starting point of enticing existing purchasers to retain their properties on the right terms and allowing whoever cannot or will not agree to walk away. This is the only realistic way for the property sector to breathe again and recover.

---

For further information contact: George Kounis - Consultant (non-solicitor)  
DDI: +44 (0)20 7632 6950 Fax: +44 (0)20 7632 6959 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

## **Section 1**

### **What happened and why?**

The explanation offered by the banks and the developers as to what led to this situation is that there was an economic downturn in Europe and people caught with negative equity are finding excuses for evading repayment of their loans. This diagnosis is analogous to claiming that someone is suffering from a common cold when the patient is about to die from pneumonia.

At the root of the problem are excess profits, oversupply and misselling. Excess profits naturally led to oversupply and oversupply led to misselling in a desperate bid to get rid of properties before reaching saturation when developers would be stuck with them. The result is numerous disgruntled victims of overselling that banks are treating as bad debtors and numerous unsold properties that will not shift mainly because purchasers from new markets can see the ghost towns at various locations in Cyprus, amenities that never materialised and nightmare sites on the internet each with a story to tell.

Banks and developers will deny that this version of events is correct. We can think of no better evidence as to what went on, however, than the Directives issued by the Central Bank of Cyprus (CBC) throughout the preceding period, which were largely ignored by the banks. As far back as 24/11/2003, the CBC issued a circular that warned that a property bubble was being created by increased lending and directed the banks to press the brakes. Most banks did not. A number of Directives followed (28/04/2004, 13/06/2006, 27/07/2006, 26/03/2007, 12/07/2007, 22/08/2007, 02/10/2007 and 27/05/2008) as the CBC frantically tried to restrain the banks from their lending frenzy and it was only when the train derailed that it came to a stop.

The bubble took a long time to burst. It was fuelled by easier mortgages (in complete defiance of CBC Directives), up to 20% commission to unlicensed sales agents and rental

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

guarantees which were invariably added to the price so that the purchaser ended up pre-paying the rental and being deprived of the property for periods of 3 – 5 years. Higher profits inevitably lead to an increase in supply of new properties when demand could not possibly keep up at the same pace. It was a foregone conclusion that demand would eventually dry up as precisely predicted by the CBC but the banks and developers refused to see it.

To maintain momentum and sell more properties, the sales pack included a mortgage on pre-agreed terms (offered by the bank that was financing the development) turning these mortgages into Conditional Loan Agreements (i.e. an agreement that is tied to the sales contract and is no longer binding if the Sales Agreement is nullified for whatever reason) . For larger developments, some banks crossed EEA borders to come to the UK to participate in road shows and offer these mortgages to potential buyers when they were not licensed to do so.

With so much commission at stake and easy availability of mortgages, sales agents were willing to say anything to convince purchasers to buy. It became a measure of achievement for sales agents to convince a purchaser, not only to buy a property for family holidays but also a couple of studios or small apartments for rental. Banks accommodated by putting additional properties in the names of relatives to overcome regulations. The deals were made to sound so good that clients describe the proposals as a “no brainer”. Buyers were lead to believe that they had lots to gain and the only possible risk was to lose their outlay. This, arguably, made these advances and non-recourse loans.

Misselling was commonplace. Completely ignoring the EU Unfair Commercial Practices Directive 29/2005/EC which was implemented in Cyprus as Law 103(1)/2007, “*ego straono tse poulo*” (which means “my job is to conceal the truth so that people will buy”) became the motto.

Some proposals by developers and their agents went even further than selling for long-term investment by introducing the idea of “flipping” properties for quick profit on the basis that buying off-plan was 20% cheaper and with a bullish market a purchaser could invest a few thousand Euros in reservation deposits and then sell before their deposit was due to be paid (again in defiance of the CBC Directive of 27/07/2006 requiring the purchaser to pay the deposit as the first instalment not as the last one).

During this period, the CBC found it necessary to impose a number of measures of restraint. They imposed strict Loan to Value (LTV) ratios. They had to differentiate between home loans and other property loans and even found it necessary to clarify that home loans could only be made available to residents of Cyprus (as if that needed clarification). They had to impose lower LTV ratios on other property loans (70% as opposed to 80%) and to lower them again when the frenzy continued (from 70% to 60%).

Again and again, the regulators at the CBC tried to close every loophole that the banks exploited in order to continue lending unabated. A classic example of this is offers made to borrowers in writing, stating that the CBC will only allow a maximum loan period of 15 years, and then going on to explain that the repayments had been calculated over 30 years but the term stated was only 15 years with a balloon payment at the end when the bank would renew the loan for a further period. Defiance not obedience was the rule.

Banks also appeared to accept over-inflated prices on which to calculate LTV ratios. The CBC had to define the meaning of “market value” (as if it needed explanation); it had to specify that valuations should be carried out by certified professional valuers; that the instructions to value a property had to be given by the bank, not by a third party; that the valuation had to be addressed to the bank and that the valuation had to specify that it had been carried out for “mortgage purposes”. All common sense, prudent banking practices that the CBC had to highlight because the banks chose to forget them.

Lending on holiday homes at 80% LTV remained the norm and in some cases we have seen up to 95% LTV. Over-inflated valuations also remained the norm making nonsense of any LTV ratio imposed. Not surprisingly, the banks we spoke to are not prepared to produce the valuations they had at the time despite the fact that they charged purchasers for obtaining them.

One may wonder why the banks chose to expose themselves to such risks. What is even more incredible is that they chose to expose themselves even further by lending in foreign currencies. According to the CBC, there was a substantial increase in foreign currency loans in the first 8 months of 2006 overtaking lending in Cyprus Pounds. As a result a Directive specifically regarding the requirement to advise clients of the dangers of lending in foreign currencies was sent by the CBC to all banks on 11/10/2006. It required banks to provide clients with a detailed explanation of the dangers with specific examples and it required borrowers to sign a statement that no borrower in his right mind would sign if the dangers had been explained.

Banks were meant to keep this statement as evidence that they had done their best to dissuade. Borrowers did not sign the statement because no explanation was provided and no statement was presented for signature in complete defiance of the CBC Directive. Instead, foreign currency loans increased geometrically from this period on until the bubble burst.

What the banks were doing with purchasers, they were also doing with loans to the property developers. For this reason, the CBC had to explain that LTV ratios applied to property developers also and that when lending against development costs, these should not include transfer, mortgage, advertising, administrative and other similar expenses since such expenses do not increase the value of the property. And, in another effort to curtail lending, they had to demand that banks cancel all commitments to developers unless construction had already commenced and cancel all commitments to lend to purchasers under package deals the banks had been making with developers.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

By the time the bubble burst, developers failed to deliver the promised amenities, reneged on the rental guarantees and purchasers were left with loans they could not afford either because of the burden of foreign currency appreciations (up to 40% in the case of the Swiss Franc and up to 60% in the case of the Japanese Yen) or because they were flipping and were caught on the hop or because they relied on mythical rental income that never materialised.

There can be little doubt that the Cyprus Property Bubble was home-made and the economic downturn in Europe was merely the catalyst that flicked the dominoes that were already lined up to fall.

### Why was it allowed to happen?

Given the number of warnings one may well wonder why developers continued unabated, why the Government did not intervene and why the Banks continued to fuel the bubble. To understand this, we need to look into the motives:

#### Banks

1. Gone are the days when banks made profit from prudent lending and by keeping customers happy. Banking today works on volume and statistical risk assessment whereby banks are prepared to consider even marginal cases and take the extra risk in order to maximise their profit from the sector as a whole. This has been true of many industries in the last 20 years or so throughout Europe and Cyprus is no exception. Motor insurance companies settle their own claims (because it is cheaper) and complaints departments are happy to pay off the few who do complain on the basis that they have made more than enough from those who do not. The same applies to bad debts.

2. Banks in Cyprus also had another motive. We believe that most of them profited on foreign currency loans by speculating against their own clients, a practice the writer has coined in the past as the 'Swissgate' scandal. All the evidence points in that direction and the banks have so far refused to comment other than to dismiss the allegations as "how the bank makes its money is not your business". This, of course, is not true but more importantly their response explains their motive to continue to deal in these currencies without advising clients in complete defiance of CBC Directives.
  
3. And finally, there was yet another motive. Unlike lending against a property that has its own title number and the money going to a third-party vendor, off-plan sales allowed banks to hold a charge on the piece of land that was being developed for the money lent to the developer. By lending to a purchaser, the bank simply debited a new loan account and credited the amount against the liabilities of the developer. Given that in most cases, the developer was required to guarantee the purchaser's loan, if the borrower fails to repay, the bank only loses what it has allowed the developer to take out of the system by way of profit. If anything, it has improved the value of its security, reduced the LTV ratio on its lending to the developer and profited from the repayments and the foreign currency appreciation. No real reason to cry over a bad debt, or to use the popular analogy, cry over spilled milk. The milk did not spill to go anywhere. It remained in-house. In truth, so long as prices were rising, developers and banks could profit from bad debts. All they had to do was to pocket the purchaser's outlay and re-sell at a higher price. This probably explains why banks did not heed to warnings about exposure. In the case of off-plan sales, there was no exposure until properties started not selling anymore.

### The Government

The Government has been earning huge amounts from the property sector. VAT, Stamp Duties, Transfer taxes, Property Taxes, Local Authority Taxes, Capital Gains and Corporation Tax not to mention Income Tax from all those people employed by all this frenzy and the

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

multiplier effect in the economy. The success of the Cyprus property sector was good news for everyone and to pull the plug on it would have been unthinkable. Why should the Government of Cyprus go out of its way to stop bad practices if it was these very practices that brought in the customers that kept the whole thing going?

#### Developers and Sales Agents

It is inevitable that individual entities within a sector will not see the bigger picture and will pursue profit for the sake of it. They would not be doing their job otherwise. Developers and Sales Agents did precisely what they were expected to do, namely, bring more and more properties into the market until it saturated. It is in anticipation of this saturation point that banks would have been prudent to control so that they would not be left holding unwanted properties and it is the expectation that developers and sales agents would continue unabated until saturation that was the reason that Government was required to intervene.

This situation would not have arisen had banks not continued to fuel the frenzy until well beyond saturation and had Government intervened to ensure that developers could not start selling until separate title deeds had been issued for each unit under construction, that they had to be or had to go through licensed sales agents to ensure that there was no misselling, that unlicensed sales agents and those using them were fined and Sales Contracts they introduced were nullified, that banks understood clearly that pre-agreed loans 'packaged' as part of a property sale is a conditional loan that is automatically cancelled if the Sales Contract is nullified for whatever reason and that breaching LTV limits particularly for non-residents removes the ability of the bank to take recourse beyond realising its security.

Neither the banks nor the Government did their job leaving developers free to do theirs.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

## **Section 2**

### **What can be done now?**

**Let us begin by stating what cannot be done:**

1. Purchasers cannot be held responsible for the mess.
2. Property developments cannot be allowed to suffer dereliction.
3. Misselling cannot be allowed to happen again.

#### **The responsibility of purchasers**

Most officials, the writer has encountered in Cyprus in the past six months, continue to blame buyers for failing to be more astute when entering into these contracts forgetting that these buyers relied for advice on the two professionals out of the three parties they dealt with, namely the bank and the lawyer they were introduced to and the last thing they expected was for the two professionals to be at best bystanders and at worse participants in the conspiracy against them.

This may sound harsh, particularly to professionals who did act professionally and developers and sales agents who did act honestly, and where this happened there have been no complaints. They are the exception to the rule and they ought to be praised for not allowing the wave of bad practices to overtake them. It is people with such moral fibre that are now called upon again to stand up for what is right and be a catalyst to change. Without admission of wrong doing, developers and lawyers will continue to shirk their responsibility for what happened, Government officials will continue to insist that these are civil disputes that should be resolved through the courts and bank officials will continue to follow their instructions that the signed piece of paper they hold gives them a rightful claim against purchasers and that their bank had acted in good faith all along.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

It is clear from the foregoing, that these positions are untenable morally and seriously in doubt legally. Furthermore, the sector is doing precisely what got it into this mess, namely, to miss the bigger picture. The problem cannot be resolved by holding these purchasers responsible and trying to squeeze every cent, sent or centime out of them in the hope that most will heed to the threats. Most will not and the outcry for this major injustice will haunt Cyprus for decades to come.

There can be little doubt that, ultimately, even if purchasers are forced to pay, Cyprus will be forced to pay compensation to each and every one of them for blatantly failing to implement EU Directives, failing to protect EU nationals from these outrageous abuses and failing to investigate complaints and the 'Swissgate' scandal, which we asked them to do. It is, therefore, in the interests of all concerned that the matter is settled sooner rather than later.

Purchasers were not responsible for what happened and, where they contributed, their degree of responsibility can only be limited to their outlay. For banks to choose to ignore their security, which comprises of the property and in most cases, the developer's guarantee, and opt instead to claim the full amount (including foreign currency appreciations, irregular interest rate hikes, charges and penalties), from purchasers failing which they intend to take recourse on the purchaser's other assets, is highly questionable in any circumstances and outrageous in these circumstances given the background. When the rest of Europe is adopting the widespread practice of mortgage debt forgiveness, Cyprus is moving in the opposite direction.

At the time of writing, we are not aware of any cases where a bank has succeeded in a contested claim in such cases. The court system in Cyprus is grinding to a halt under the pressure of the sheer volume of cases and the recent High Court judgment in England on jurisdiction in the case of Barclay-Watt & Others and Alpha Panareti & Others will have sent a strong message to banks that purchasers will not take this lying down. It is time for banks to change course.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

### Dereliction of developments

Retention not alienation must be the obvious course of action. Banks should be fighting hard to entice purchasers to retain their properties, where that is possible, instead of alienating them with unreasonable claims.

The unreasonable claims of these banks against purchasers has a ripple effect on a development. Purchasers do not respond positively but negatively. Instead of trying to maintain the asset, they give up and stop making any repayments to the bank and stop paying the service charges, the estate is not maintained, rental income diminishes and even more purchasers are forced into default as the estate around them starts falling apart and becoming derelict . Before long, these estate become ghost towns that no-one wants to live in. This is a classic case of banks shooting themselves in the foot.

### The breeding ground for misselling

Unlicensed sales agents continue to act as intermediaries to bring new buyers to Cyprus, title deeds are still not available on off-plan sales, performance bonds from developers are not required by law. The only change to what happened in the last ten years is that banks are reluctant to finance such purchases, which leaves a market only for wealthy individuals. This probably explains the slow uptake and the reason the Cyprus property market continues to experience slow growth.

Given that these potential buyers are wealthy and are looking for the more expensive villas or that they are attracted by the possibility of getting a Permanent Residence Permit (which requires an investment in excess of €300K) and given that the problem of title deeds deters them from buying off-plan, this leaves a limited number of properties that would appeal to them. We are aware of numerous cases, where property prices have been pushed above the €300K threshold to make them suitable purchases – another mini bubble in the making.

There is little convergence between the 2003-2008 purchaser and the post 2010 purchaser and this means that the market cannot rely on new purchasers coming in to buy existing

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

properties that have been abandoned. It is imperative, therefore, that existing purchasers are retained and more is done, both in terms of Government action and availability of finance to attract potential purchasers of abandoned and/or unsold properties.

### Let us now look at what can be done:

The simple answer to cleaning up the Stables of Augeas is to nullify most of these transactions, write-off all the debts, pay purchasers the compensation they are due, sell the properties that can be sold and demolish properties that are not fit for purpose. The cost would be enormous but this does not mean that this is not the right solution. What it means is that ways need to be found to minimise the losses and this entails categorisation of developments and cases.

Misselling cases can be broadly categorised into the following areas:

- (a) Cases involving mortgage misselling only;
- (b) Cases involving property misselling only; and
- (c) The vast majority which involve both property and mortgage misselling.

### Mortgage misselling

To remedy mortgage misselling, it is a matter of re-calculation and applying a refund/compensation. It leaves the banks with the issue of writing down assets or profits they relied on but this is a matter of quantification and assessment of impact on the balance sheet of each bank and also raises the question of what actually are the losses

Banks point to the loan balances of these purchasers as their potential losses; developers, point to unsold properties for their losses and purchasers point to their outlay for their losses. The only losses that are accurate are the losses incurred by the purchasers. What is referred to by banks as losses are paper losses and what is referred to losses by developers does not take into account what has already been recouped on that development from the properties that have been sold. At the same time, the Government has profited from tax income that would otherwise not have been received if the selling frenzy had not occurred.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

The first step, therefore, is to identify the real losses on each development which is the actual expenditure on land, construction and other costs less taxation paid and the realistic current value of these properties in order to arrive at the actual cost of these properties as if they had not been sold. Against this, we have the amounts paid by each stakeholder less taxation.

This equation alters the figures, our thinking and our approach in these matters. It removes the profit made by the banks and the developers on these transactions, it provides tax refunds, and introduces a new target for all involved: maximizing the current value of the development.

#### Property misselling

Whereas mortgage misselling can be resolved by write-downs, property misselling, poses a much more difficult issue to resolve. It requires careful consideration otherwise the industry will end up with:

- permanent ghost towns;
- compensation claims; and
- being forced to apply the only remaining solution which would be huge expenditure to carry out remedial work and sell quickly at huge loss or worse still to bring in the demolition squad and pay to get rid of dangerous structures.

If we take the developments around Tersefanou, for example, they are now ghost towns for three main reasons:

- (i) The Tersefanou golf course was never built; and in some cases
- (ii) the construction does not meet building regulations; and in most cases
- (iii) purchasers are saddled with an unaffordable foreign currency mortgage so even if they wanted to take possession they have walked away and they are being chased for defaulting.

There is no easy solution to this situation, particularly if the standard of construction is doubtful (there has been serious subsidence and the properties already look old), and even if the golf course is ever built by the time it is ready, these properties will be too old to be fit for purpose.

There is nothing else in Tersefanou that would attract buyers looking for holiday homes. What attracted them was the championship golf course that was never built, the proposed water and theme park, 'Wonderworld', at Maroni that also never materialised and a David Lloyd tennis academy that also remained on paper. But the properties were sold and the money taken under this pretext.

Providing these amenities after sale is almost impossible because, with the exception of 'Wonderworld', their provision is dependent on making a profit from property sales. The Tersefanou golf course requires water and due to the water shortage in Cyprus, the only way to overcome the problem is to pay for a desalination plant which cannot be justifiably absorbed by membership fees or by charging extra for meals at the clubhouse. Even if that problem was to be overcome, whole blocks will need to be demolished and rebuilt, because they are suffering from subsidence and no civil engineer will guarantee their safety as building regulations do not appear to have been observed. The cost of resolving the problem will be enormous.

Nevertheless, inaction is not the answer and, in our opinion, to start clearing the Stables of Augeas, property developments need to be categorised as follows:

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

	No of Units	Value/Cost
Sold/Completed/Occupied	Box 1	Box 2
Buyer Outlay/Compensation	Box 3	Box 4
Unsold/Not-Completed	Box 5	Box 6
Remedial work required	Box 7	Box 8
Cost of demolition	Box 9	Box 10
Cost to complete units	Box 11	Box 12
Cost of amenities required	Box 13	Box 14
Annual cost of maintaining amenities	Box 15	Box 16

This will provide an overview for each development. The next step would be to ascertain which of the existing purchasers can be enticed to retain their properties, which purchasers will need to be released, how many properties remain and at what price they can be sold.

This will involve classifying cases into the following broad categories:

	No issues with the development and/or the construction	Issues with the development and/or the construction
Euro Loan	Box 1	Box 7
Foreign Currency Loan	Box 2	Box 8
For owner use	Box 3	Box 9
Buy-to-let or mixed use	Box 4	Box 10
Purchaser cannot afford repayments	Box 5	Box 11
Purchaser unable to keep the property	Box 6	Box 12

Depending on which boxes are ticked different remedies need to be applied. If for example only boxes 1 and 3 are ticked it is unlikely that the purchaser will have anything to complain about other than overpricing. If boxes 8, 10 and 11 or 12 are ticked, on the other hand, a full

complement of remedies needs to be available. Depending on circumstances, these must include:

1. Remedies where there are issues with the development

Considering that the aim is to maximize the value of the development and to entice not to coerce existing owners to retain their properties it is imperative that the assessment as to the maximization of value retains the right mix of owners. If, for example, it is decided that the championship golf course is too expensive to build, the decision must take into account underwriting the cost of compensating existing purchasers in full so that they can be replaced with new owners who will be given a different selling proposition and the value equation will vary substantially from the original.

If on the other hand, it is clear that by providing the 5-star Spa amenities at the Grove Spa Resort in Mazotos, most of the existing owners will be enticed to remain and new owners of similar profile will be attracted to the resort, it will make perfect sense to finance completion and settle the matter.

Different equations would apply if the development simply needs finance to complete, finance to carry out remedial work or if whole blocks need to be demolished and the new sale/retention/compensation proposition will need to be geared accordingly.

2. Remedies where purchasers have suffered foreign currency appreciation

As mentioned previously, the CBC alerted the banks as early as 11/10/2006 regarding lending in foreign currencies and directed that clients should be dissuaded from borrowing in foreign currencies. If anything most banks did the exact opposite.

No borrowers in their right mind would have ignored the danger of borrowing in foreign currency if the dangers were explained to them in the detailed manner required by the Central Bank Directive. They ignored the danger because they were not made aware of the

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

danger. The detailed examples highlighting the dangers required by the Central Bank Directive were not given or even offered. Instead, borrower after borrower reports that they only agreed to the foreign currency loan at the assurance of the bank that they were the lowest cost mortgages available. There was no mention of the likelihood of a currency appreciation or the interest rate hikes that were to be imposed soon after and make them the most expensive. If this is not misselling, it is difficult to imagine what is.

Borrowers, therefore, are right to complain that they were misled into borrowing in these foreign currencies and given the dangers, which were well known to the banks, the only explanation for their insistence to lend in those currencies is that they had an ulterior motive and they profited unduly from these transactions.

Whether they did or not, it is only right that the banks should compensate borrowers thus providing them with an immediate relief from the burden of a mortgage usually more than 50% higher than what was intended.

### 3. Remedies where rental income was relied on

This is perhaps the most difficult aspect of misselling that requires a remedy. A large percentage of people purchased on the assurance that rental incomes would be more than enough to cover the repayments. There is a moral and a practical aspect to this.

The moral aspect is that this assurance was untrue and this was not due to the economic downturn. It was untrue because the market had reached saturation. The potential number of holiday makers requiring short lets could never reach the numbers entertained by the promises (certainly not without some other form of stimulus) even if the European economy was booming. Furthermore, the likelihood that a holiday maker would choose to let an apartment in Peyia when there was no shuttle service to the beach was nil, unless they intended to rent a vehicle. This was obvious, but they were given assurances that not only a shuttle service to the beach was going to be provided by the developer but that tour

operators such as Thomas Cook and Thomsons were keen to take-up the whole development. Not surprisingly this was completely false and is one step beyond conceal the truth. This is just one example. In other cases, as mentioned previously, they went as far as to offer a Guaranteed Rental Agreement, which invariably appears to have been pre-loaded on the price and, of course, the guarantee was not honoured.

Attracting holiday rentals to some of these places will take organised concerted marketing which requires some form of Government assistance and we do not anticipate that this will be forthcoming any time soon. Furthermore, the likelihood that these properties could have long-term lettings from the domestic market is even more remote.

Worst still, short-term holiday lettings (less than 30 days) require a Cyprus Tourist Office (CTO) licence which is not available to small units unless the whole complex is licensed and larger properties need to be detached villas, with a swimming pool in at least 1,000 sq metres of land to be considered. Needless to say, purchasers were not advised of this crucial detail at the time of purchase.

These people, therefore, were clearly misled by the developer and/or the developer's agent but they were also not protected by their lawyer, who could not possibly have been that naïve and by the bank who could not possibly believe that someone was buying 2 or more apartments for their use or that they had any hope of letting them and certainly not without a CTO licence. This is the moral side of the problem.

The practical aspect of this affair is that without the rental income, purchasers cannot afford the repayments. Granted, if their loan is reduced by receiving the foreign currency refund, repayments will become more affordable but the income will still not be there. In a lot of these cases, they will have to relinquish the extra properties so that someone else will buy them for cash or who can afford to maintain the repayments from their own resources.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

It is not inconceivable, however, to organise suitable developments into resorts so that they can be CTO licensed and for the necessary amenities or attractions to holiday makers to be actually provided so that they appeal to tour operators and organised holiday let marketing. For example, the local authority in Peyia could provide regular transport from all these hillside developments to Coral Bay and/or these lettings could come with a rental vehicle. Whatever is needed to attract volume holiday lettings needs to be undertaken and this will be a permanent legacy to the property and the tourist sector of Cyprus. It takes imagination, organisation and determination but it needs to be done.

#### 4. Remedies where purchasers cannot afford the repayments

Even when all the above remedies have been applied there will still be cases where the purchasers may be willing to keep the properties but the rental income and/or their own income is not enough to service the remaining loan.

To avoid adding more properties for sale, where purchasers would be willing to keep their properties but cannot afford the repayments, they may be facilitated through shared ownership whereby the bank can retain part ownership of the property and sell it to the purchaser in stages as their income increases or the property is sold when market prices rise. This remedy may help to regulate the number of re-possession over the next, say, five years or so until the market picks up again.

#### 5. Remedies where new buyers are required

As much as every effort should be made for purchasers to retain properties, inevitably, properties that remain must be sold to new buyers from overseas.

The Government needs to stimulate the market as a matter of urgency and to look into why previous measures taken have not worked as well as expected. For example, the possibility

of acquiring Permanent Residency Permits (PRP) by purchasing a property above €300K is an attractive proposition but it would be made even more attractive to potential investors, say from China, if the investment could be spread over more than one property and/or they were allowed to let the properties and/or they were allowed to pay in stages over, say 7 years, thus overcoming Chinese exchange control limits which currently act as a deterrent to sales.

At the same time, the Government must be careful about encouraging further abuses. The idea of paying €200K to developers directly (not by way of an escrow deposit) pending a successful PRP application is a bad one. Equally, the requirement to pay the whole amount of €300K in one lump sum for a PRP does require Chinese people to find ways around their Government's Exchange Control annual limits and this has already been exploited by intermediaries in China.

### Covering the losses

It is difficult to suggest how to apportion the losses without knowing how much they are, the extent each party is responsible and how much each party has benefited. This information will no doubt become more readily available as the parties realise the need for candour and that there is a way out which is fair to all.

As already mentioned, in the first instance, the banks and developers need to be prepared to forgo their profits and Government needs to refund taxes that would otherwise not have been made if there is any hope of resolving this mess. It is true that refunds are easier said than done particularly if liquidity is no longer available to make them. Quantifying the losses, however, and identifying the problems is one step closer to finding solutions.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

## **Section 3**

### **How can it be implemented?**

All parties involved need to accept that this matter needs to be sorted effectively, efficiently and quickly. By far the largest cost of this affair to banks, developers and the Government of Cyprus is procrastination. By leaving it unresolved or pursuing an untenable solution this issue has become cancerous and is threatening economic recovery.

The only way to implement this plan is through adoption by policy makers: Managers at banks need instructions from the main Board of Directors (whether this is in Nicosia or in Athens) and Government officials need instructions from Ministers. Developers need to be reined in by common sense, their lenders and/or Government intervention.

On the understanding that some or all of the remedies are made available, in our opinion, there are three ways of implementing this plan:

1. One approach would be to have these remedies available on application. This approach may become adversarial (which is similar to the arrangements in place with the only difference that more effective remedies will be available), will take a long-time to settle and may not eradicate the problem.
2. Another approach would be for different agencies (banks and ministries) to act independently of each other to apply the remedies. This uncoordinated effort may be wasteful and the results will be uncontrolled. To deal effectively and quickly with the problem, a blanket approach will need to be applied that will have to offer more than necessary in order to ensure that it is acceptable in every case, otherwise the disgruntlement will continue. As a result, this application of the plan will not be efficient.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)

3. The preferable approach would be for all parties to work jointly to apply the plan. We have cases where we are looking at the development as a whole, where cases are classified on the basis of whether they qualify and if so, whether they qualify only for a refund or full compensation, the property developer is co-operating with us to work out the figures and find new buyers for units whose existing owners wish to walk, agree settlement figures for those purchasers who are willing to keep the properties they contracted to purchase and the banks have indicated that they will entertain releasing owners from their mortgage obligations. These are fairly easy cases and although we fear that line managers at the respective banks are currently not fully authorised to reach a realistic settlement, the main point is that such an arrangement is workable. If applied universally, implementation using this approach can provide an effective, efficient and prompt solution for all parties.

## **Conclusion**

Cyprus has been set to become the Switzerland or the Luxembourg of the Middle East and despite strong openings in this direction, it has been let down by its institutions. This is a unique opportunity, born out of necessity, to show that Cyprus and its institutions can rise above the natural reaction to grab and run and can do the right thing. There is no other alternative that can resolve the problem in the least costly way and give Cyprus the shine of the trustworthy responsible partner within the European Community. We trust that those who are in a position to decide or influence decision makers will do so in order that the desired solution will be implemented without delay.

---

George Kounis DDI: +44 (0)20 8 882 6864 [g.kounis@maxwellalves.com](mailto:g.kounis@maxwellalves.com)