

Changes to European cross border restructuring and insolvencies - something for everyone?

On 26 June changes aimed at boosting the efficiency of cross-border insolvency proceedings will come into effect in the form of a Recast European Insolvency Regulation. For the most part the changes offer clarity on how cross border proceedings in Europe already operate.

Extends scope to pre-insolvency and rescue

There are some changes, for example, for businesses trying to restructure there is welcome news regarding the scope of the automatic recognition for proceedings across member states. Recognition is no longer to be limited to formal insolvency proceedings, but includes rescue and debtor in possession style processes. You can also have rescue style proceedings in more than one jurisdiction in respect of the same debtor. As is currently the case, these can take place where a debtor has its main operations (COMI) which will be considered to be "main proceedings". Now as a result of the Recast Regulation separate "secondary proceedings" may now also take the same rescue form in a different jurisdiction as long as the debtor has an "establishment" there i.e. it conducts business there on a regular basis. Under the previous regulation, secondary proceedings were limited to winding up only. The purpose of this change to secondary proceedings (which are still ancillary to the main process) is to facilitate the rescue process and assist the main proceedings. However, it should be

noted that in an attempt to reduce multiple proceedings overall in respect of a single entity with operations across a number of EU jurisdictions, there's also the ability to avoid secondary processes altogether. This is achieved by the insolvency practitioner in the main proceeding offering an undertaking to treat creditors in another member state in accordance with their expectations under the local law.

Exemptions for security rights retained

For other stakeholders such as investors and lenders, the status quo is continued with the special exemptions for certain arrangements from the effects of the insolvency being maintained. This means, for example, that security rights and set off rights located in jurisdictions other than where the proceedings are taking place are protected from the effects of the proceedings.

Group companies

Also included in the offering is a potential solution for groups of companies operating across different jurisdictions. Under the Recast

Regulation, solutions for group companies in distress may take a number of different forms. They include those currently available by way of protocols or co-operation agreements. More formal arrangements are introduced by the Recast Regulation, known as co-ordination proceedings. Co-ordination proceedings are designed to be an overarching formal process for groups, which act in conjunction with individual proceedings already taking place in respect of each member of the group in the separate jurisdictions. They are only effective when the individual insolvency practitioner, acting in the separate proceedings in the different member states voluntarily agrees to be part of them.

The Recast Regulation has direct effect in all Member States for proceedings commenced after 26 June.

If you would like more information on how the changes may affect transactions you are involved with please contact your usual Clifford Chance Contact or any of our experts in the restructuring practice listed on the following page.

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