eurofenix®

The journal of INSOL Europe
Spring 2018

INSOL EUROPE

IP Lottery

Comparing the systems

Cyber Security

Not if but when

Also inside this edition:

- Judicial Administrators in France
- Strategic insolvency in Romania
- Employer succession in Spain
- EIR Case Register updates

... and more

€30 ISSUE 71
ISSN 1752-5187

eurofenix

Spring 2018

Welcome from the Editors


FRANK HEEMANN


CATARINA SERRA

2018: Progress despite turmoil

2018 is still young but I am sure that it will be a very exciting year.

This is only in part owed to President Trump's ability to stir up turmoil. Other developments and unresolved conflicts will do their part to influence the framework for businesses and insolvency practitioners.

The Brexit clock is ticking relentlessly, and the EU and UK negotiators will have to gear up their negotiation process in order to stand a chance of meeting the tight Brexit schedule. In Italy, the general elections evidenced anti-European and anti-establishment feelings on the rise, mainly a result of the migrant crisis. In Syria, the situation has become even more complex after Turkey got involved in the war and conflict and its spill-over risk continue to be a worrisome and destabilising factor at the doorstep to Europe.

Other developments, however, promise a more positive outlook. Germany has a functioning government after months of political limbo. The country's economy is doing well, as usual, one might be tempted to say, whereas France's economic engine seems to have finally kick-started in 2017, as also affirmed by the statistics in our President's column and in the French country report. The political stability and economic progress in these two important countries augurs well for 2018, as does the recent economic headway in other Eurozone countries, including Austria, Spain, Portugal, the Netherlands and even Italy.

This issue draws your attention to the importance of cyber security and data protection, which businesses in Europe will no longer be able to ignore. The article on cyber security is a timely reminder that some serious homework has to be done (also by IPs) to ensure compliance with the General Data Protection Regulation, which will enter into force this May.

Another data processing related topic in this edition might also catch your interest: experiences gained in Lithuania, Slovakia and Hungary with automated and random IP selection systems. Future contributions to *eurofenix* might want to explore in more depth chances and risks of Legal Tech or even artificial intelligence.

Personally, I will follow with great interest how the new proceedings for group insolvencies will pass practical tests, no matter if such proceedings will be handled under the EIR (Recast) or under evolving domestic laws, like the German Insolvency Code. Speaking about the EIR and the valuable source that judgements rendered by courts of one Member State can become for solving disputes in other jurisdictions, in his article, Professor Bork explains extensively our marvelous tool, the INSOL Europe EIR Case Register, while Myriam Mailly, in her technical update, provides an overview of cases published there following the entry into force of the EIR (Recast).

The deliberations on the proposed Directive on a Preventive Restructuring Framework will surely progress in 2018 prompting lawmakers to start reviewing their domestic laws as to their compliance with this Directive proposal, should they not have already started to do so. However, modernisation of domestic insolvency frameworks is happening irrespective of the Directive proposal. Therefore, I found inspiring the updates in the articles about the insolvency laws in Belgium, Finland, Italy and Latvia. And, though not directly related to changes in the law, I must thank I. Didier for her very instructive article that allowed me to finally understand the different roles of judicial administrators in France.

Some evergreen topics remain, such as directors' liability (country-report Turkey), credit risk management (US column) and employee related rights in the context of a sale of business (article on the situation in Spain).

Not to be forgotten, part of INSOL Europe's activities is the presence at the UNCITRAL Group V working section. F. Bruder reports.

All in all, this spring issue, which will accompany the EECC conference in Riga, Latvia, is full of positive things happening in Europe and inside our Association, thus inviting you to rely on the information in our Journal and on the capacity of INSOL Europe to organise conferences and events as reliable as a Swiss clock.

Finally, as pointed out by my fellow editor-in-chief, Catarina Serra, in our last editorial: any ideas and recommendations that help to further improve eurofenix are more than welcome!

Cheers,

Frank

18
IP APPOINTMENT LOTTERY

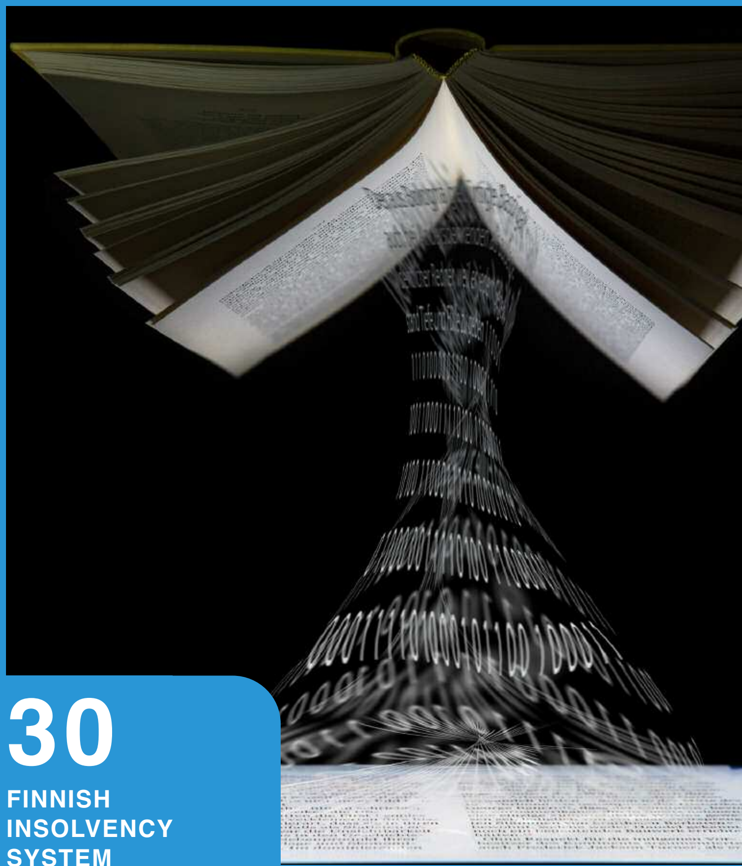
22
CYBER SECURITY

eurofenix

Edition 71 Spring 2018

CONTENTS

CONTENTS



30 FINNISH INSOLVENCY SYSTEM

40/42 INSOL EUROPE CASE REGISTER

Planning for the year ahead and beyond

RADU LOTREAN
INSOL Europe President

Radu Lotrean puts his plans for INSOL Europe into context and compares the latest insolvency trends around Europe

> "HAVING A LOT OF CONSTRUCTION WORK GOING ON IN AN ORGANISATION CAN SEEM A BIT MESSY, BUT IT SENDS OUT A MESSAGE OF VITALITY"

I want to share with you some thoughts about INSOL Europe's future strategy. Any organisation is under construction from its conception to its death.

One might argue that the death of an organisation is actually stopping the construction work, regardless of the reason why it stopped. Having a lot of construction work going on in an organisation can seem a bit messy, but it sends out a message of vitality that builds up the confidence of its present members and attracts prospective ones. What gets people invested is seeing energy, seeing that things are happening. I believe in this organisation and, as its president, I want to bring my contribution towards realising its potential. This is my personal challenge for 2018. It can be easily summarised in one word – growth.

I don't just want to mend some fences, fix the cracks, I want to take a hard look at its foundation. Together with the INSOL Europe task force, the Executive, the Council and the Secretariat, we have spent last year collecting and compiling data that might help us get a better sense of INSOL Europe's place today. The INSOL Europe Task Force 2025 members' questionnaire and interviews have come back and revealed some interesting facts about our organisation, facts that have made us think and rethink our role, the organisation's growth, footprint and target groups. What most intrigued me, was the footprint aspect of the data; we have a huge potential of attracting members from big countries underrepresented today, regarding their membership ratio, such as France, Italy, Spain and Germany, and also from countries that are not represented in the Council, such as Cyprus, Hungary, Belgium, Portugal, Luxembourg and Finland. We need to observe the membership, its needs, the content we deliver and how we market our organisation.

I must say, this construction work requires a careful balancing act. Although our stronghold consists of insolvency administrators, insolvency advisors and academics, we also want to target other insolvency/restructuring related groups, but can we assume the risks that come with this narrower focus? How much can we change without losing the INSOL Europe identity? There is certainly a lot to think about and to discuss. These new goals and steps towards accomplishing them are already being discussed and taken on by our working group chairs and the Council members. Hopefully, this long-term new strategic plan will take shape after our April Council Meeting in Sibiu, Romania.

Forging ahead

Taking advantage of this occasion I want to mention an important ongoing project of INSOL Europe: the **High-Level Course on Insolvency Law**.

After the successful completion of Romania's High-Level Course on Insolvency Law, we are going to continue the story. Choosing between Poland, Slovakia or Cyprus, we decided that this year we will organise the course in Cyprus. This will enable us to increase membership (currently only four INSOL Europe members) and it also provides an opportunity for the local insolvency professionals to analyse in depth, through an international best-standards lens, their legislation's recent changes.

The 2016 reform of the insolvency statutory framework was one of the terms of the Memorandum of Understanding between the government of Cyrus, the International Monetary Fund, the European Central Bank and the European Commission, agreed upon in 2013, during the banking crisis. The new insolvency regime mirrors to some extend the model which was adopted by Ireland and thus, this course is just what the doctor would order. There are around 300 insolvency practitioners in Cyprus and a lot of insolvency procedures, as well as a very active non-performing loan market. We hope to have an open debate with all insolvency stakeholders in the same room, IPs, creditors, judges and estate representatives.

Around Europe

I think 2018 is going to be a most interesting year, not only for our organisation, but also for the European insolvency market: the number of insolvencies are expected to decrease in 2018, continuing the 2017 trend. Exceptions are the UK, due to the Brexit context, and the Eastern and Central Europe, marked by political turmoil.

In **Germany**, we have seen a steady decline of the number of corporate insolvencies in the last

Share your views!

couple of years. The majority of experts put 2017 with a 4% decrease, from 2016's approximately 23,100 insolvencies, followed by another 4% in 2018. Others warn us that we will be seeing larger companies facing distressed situations and thus, the overall value of distressed debt is therefore expected to rise as well. The German legislation is also evolving: in April 2018 the group insolvencies' provisions will come into effect, allowing proceedings of companies within a corporate group to be concentrated at a single German insolvency court and to be administrated by one insolvency administrator.

In the **UK**, Brexit is weighing heavily on the economy and insolvencies are on an upward trend. The trade body for UK Insolvency Professionals recently undertook a survey of its members, approximately 1700 IPs. The overwhelming majority of insolvency and restructuring experts who responded believed that the UK's decision to leave the EU would lead to an increase in corporate insolvencies in 2017 and 2018 and that Brexit had already hurt the financing of many businesses.

Spain is having its fourth year of expansion and job creation, which makes experts forecast for 2018 a 7% decrease in the number of insolvencies.

As **Italian** firms are recovering, experts have predicted a 5% decrease in the number of insolvencies in 2017 and a further 4 % decrease in 2018. But the number of insolvencies still remains relatively high, approximately 14,000. With the Law 155/2017, that came into force on 14 November 2017, the Italian Parliament delegated the Government to adopt, within the next twelve months, a comprehensive and organic reform of the insolvency proceedings and the rules governing the business crisis.

As the economies of **Greece**, **Portugal** and **Ireland** also grew, we have seen steady declines in insolvencies in 2017 and there are

predictions that the number of insolvencies will decline by 8% in Greece, 6% in Portugal and 3% in Ireland.

In **Romania**, we are living a paradox; even though the country's macroeconomic financial performances puts us at the top concerning economic growth in Europe, the insolvency sector is still very active and tumultuous. Constantly for the last four years, Romania has seen an important decrease in the number of insolvencies. From 20,000 yearly insolvencies in 2014, to 10,000 in 2015, followed by a 20% decrease in 2016 and a forecasted 5% decrease in 2017. The prognosis was not right, as 2017 brought an almost 9% increase in their number. In Romania, 2018 now brings new unpleasant surprises that may lead to an increased number of insolvencies.

In November 2017 the government has adopted new legislation, self-proclaiming as a "fiscal revolution". This legislation has entered into force in 1 January 2018 and it modifies the social securities taxes, income taxes and it increases the minimal wage, putting in danger the companies which rely heavily on cheap workforce. It is only March, but the government has already issued some other new legislation in order to correct some of the effects of the *fiscal revolution*.

Regardless of the country, I am sure 2018 will bring unexpected challenges for insolvency, business reconstruction and recovery professionals and INSOL Europe will continue to support their efforts.

Invitation to Riga

I will finish this article with an invitation to the **Eastern European Countries' Committee Conference 2018** in Riga. The conference will focus mainly on new approaches across Europe towards insolvency, how local and European laws have developed and the European Commission's plans for harmonisation of the Member States' insolvency laws. We also intend to keep it practical presenting some very interesting restructuring study cases. The cherry on the cake: we'll have two very reputed key-note speakers: The Latvian Prime Minister and the Minister of Justice. Don't miss it! ■

> "REGARDLESS OF THE COUNTRY, I AM SURE 2018 WILL BRING UNEXPECTED CHALLENGES FOR INSOLVENCY, BUSINESS RECONSTRUCTION AND RECOVERY PROFESSIONALS"

We welcome proposals for future articles and relevant news stories at any time. For further details of copy requirements and a production schedule for the forthcoming issues, please contact Paul Newson, Publication Manager: paulnewson@insol-europe.org

Annual Congress 2018, Athens: Registration Now Open!

Just by saying the word "Athens" one can't help but think of the oldest and biggest civilization in Europe, stretching back more than 3,000 years. Imagine walking on the hill of Pnika or strolling the Ancient Market, places where people used to meet to discuss important public issues, places where democracy first appeared.

It is therefore a great venue for such an important business event like our 37th INSOL Europe Congress. '**Breaking the Chains**', the theme of our Congress is truly fitting for Greece. The resilience, the calm and the strength of the Greek nation helped them overcome their economic crisis.

Athens will be the perfect place for brainstorming, creating new connections, networking and meeting other like-minded professionals. After the Congress, what could be better than having a great conversation, in the Greek spirit, with a new friend, listening to some traditional Greek music, while enjoying a glass of wine and beautiful weather! We look forward to seeing you there!

Visit our website for details or to register your place: www.insol-europe.org/events

In Search of Athenian Wisdom: The Academic Forum

Ancestral home of democracy; birthplace of law; City of Pallas Athena, goddess of wisdom, whose symbol is the owl: Athens is one of the world's oldest cities and can claim some of the most iconic ancient ruins of Hellenic civilisation.

This autumn, the Academic Forum conference moves to Greece for two days (3-4 October 2018) on the Saronic Gulf, inlet of the Aegean Sea and location of the famous battle of Salamis, one of the defining events of the Ancient World.

For the academic symposium this year, the theme is "**Party Autonomy and Third-Party Protection in Insolvency Law**". The idea is to trace the links between contract law, property law, company law as well as private international law and insolvency law. These closely related areas, which influence the discourse of insolvency and restructuring, are vital adjuncts to understanding the way insolvency interacts with other legal themes. The intention behind the meeting in Athens will be to provide the opportunity to challenge existing approaches, stimulate debate and ask profound questions about a range of issues within these subject areas.

At time of writing, responses to the Call for Papers, issued in January, have been coming in and are being fielded by the management board. The programme is being assembled and a full list of speakers will feature in the next edition of Eurofenix. Already though, the flavour of the offers to present in Athens is decidedly comparative. In addition, a number of proposals have been forthcoming from members of the Younger Academics Network of Insolvency Law, who also have their own dedicated session within the conference programme.

The conference looks set to be an occasion to challenge ideas and preconceptions, to learn new things, to form friendships and working collaborations and, of course, to also enjoy Greek hospitality and to catch sight of its landscapes and monuments, redolent with history. Join us in Athens on this journey back in time to the fount of civilisation!

Jennifer Gant and Paul Omar

INSOL Europe contributes to the UNCITRAL Working Group V (Insolvency law), 52nd session

INSOL Europe attended the 52nd session of Working Group V (Insolvency law) held in Vienna from 18-22 December 2017 in its capacity as an invited international non-governmental organisation ("NGO") with observer status. Other observers included, *inter alia*, World Bank, European Investment Bank, European Banking Federation, the American Bar Association, the International Bar Association, INSOL International, International Insolvency Institute, European Law Institute.

Our INSOL Europe delegation was headed by its President Radu Lotrean and included past-president Steffen Koch, Frank Tschentscher and Florian Bruder. The delegation engaged in numerous discussions with delegations of the Working Group at this 52nd session so as to provide INSOL Europe's views on the matters discussed as we believe that our organisation has specific national and international insolvency expertise.

During the 52nd session, the UNCITRAL Working Group mainly focussed on the following topics based on the respective working papers, namely:

1. Recognition and enforcement of insolvency-related judgments: draft model law and draft guide to enactment of the model law – *A/AC.9/WG. V/WP.150 and WP.151*
2. Facilitating the cross-border insolvency of multinational enterprise groups: draft legislative provisions and obligations of directors of enterprise group companies in the period approaching insolvency – *A/CN.9/WG. V/WP.152 and WP.153*
3. Proposal by the United States of America for the development of model legislative provisions on civil asset tracing and recovery – *A/CN.9/WG. V/WP.154*

The above documents together with additional working papers (namely commentary and notes prepared by the Secretariat) are available on the UNCITRAL webpage: *www.uncitral.org/uncitral/en/commission/working_groups/5Insolvency.html*.

It is intended to present the work on the draft model law on recognition and enforcement of insolvency-related judgements in more detail in a further contribution.

We are looking forward to continuing the work at the 53rd session which is tentatively scheduled to take place in New York from 7–11 May 2018 and in particular to assisting in finalising the revised text of the draft model law on the recognition and enforcement of insolvency-related judgements and to progressing as expeditiously as possible, the work on multinational enterprise group insolvencies.

Florian Bruder and Frank Tschentscher were amongst the attendees from INSOL Europe

A full report by Florian Bruder (DLA Piper, Munich) can be found on the INSOL Europe website here: www.insol-europe.org/news/uncitral-working-group-v-52nd-session

Linked in

INSOL Europe now has several LinkedIn groups which you can join and then engage with its members:

- INSOL Europe (main group)
- Eurofenix: The Journal of INSOL Europe
- INSOL Europe Turnaround Wing
- INSOL Europe Financial Institutions Group
- Eastern European Countries' Committee
- INSOL Europe Anti-Fraud Forum

To join one of the groups, visit: **www.linkedin.com** and search for the group by name.

Share your views!

You will have noticed that we have added QR Codes to every main article to encourage readers to give us their views. The QR codes take you the LinkedIn group for *eurofenix* (see above).

Of course, you are welcome to pass on your comments to any member of the Executive Committee, whether by email or in person!

Make a comment!

The Leiden Business & Liability Research Network's Inaugural Conference on "Business Resilience"

Photo by Joyce de Vries

The opening and first international conference of the Business & Liability Research Network (BLRN) took place at Leiden University, 25-26 January 2018. *Professor Reinout D. Vriesendorp reports on the event.*

The BLRN is a joint research and expertise network of the Company Law and Business Administration departments of the University and is led by Professors Iris Wuisman, Reinout Vriesendorp, Jan Adriaanse and Jean-Pierre van der Rest. Over a hundred academics and practitioners, domestic and international, gathered to debate fundamental aspects of business resilience, including long-term value creation, the impact of technology and directors' liability, over the two-day event.

The issues on the second day, in particular, had a close connection to insolvency, with a keynote address by Michał Barłowski (Wardyński & Partners, Poland) focusing on liability in the twilight zone. In his view, a clear and uniform definition of the twilight zone does not yet exist, though a common understanding of the onset of a twilight zone and whether pre-insolvency situations require specific European legislative response may be needed. Action for reform has, however, not yet become critical. Continuing the theme, Professor Reinout Vriesendorp (Leiden University; De Brauw Blackstone Westbroek, Amsterdam) spoke about the complexity of decision-making under financial duress. Advocating trust as a baseline when scrutinising directors' behaviour, his view was that no liability should exist unless fraud or abuse of corporate opportunities can be shown. The presentations were followed by a panel discussion and two workshops run in parallel on the themes of "The Behavioural Implications of Failure and Directors' Liability" and "Cause Investigations in Insolvency".

The BLRN's conference on "Business Resilience" has led to new insights, such as how behavioural biases should be taken into account when assessing directors' liability, the importance of long term value creation as an enforceable legal norm to advance sustainable companies and the impact of technology on business and law firms. The multidisciplinary background of various speakers and the interactive workshops will undoubtedly pave the way for future research projects and conferences in the field of business and liability.

Further information on the conference topics and outcomes is available on the Leiden University website: www.universiteitleiden.nl/blrn

R3 & INSOL Europe International Restructuring Conference 2018

London, 7 June 2018 – Full details and programme to be announced soon

With the European Commission's Restructuring and Second Chance Directive on the horizon and Brexit negotiations on the future of the UK-EU cross-border insolvency and restructuring framework set to conclude, 2018 is shaping up to be a pivotal year for insolvency and restructuring in Europe.

To discuss the latest developments and the potential impact of a changing European insolvency and restructuring landscape, R3, the UK's insolvency and restructuring trade body, and INSOL Europe are holding their 15th annual International Restructuring Conference on 7 June in London.

Designed to bring delegates up to speed on the current state of play and upcoming changes, the conference will feature practical sessions, debates and discussions led by insolvency and restructuring experts from across Europe.

The conference will also be a chance to hear from R3 about the work being done to make sure insolvency and restructuring issues remain on the UK government's radar as it negotiates the terms of its exit from the European Union. The Government has already listened to the UK profession and has said it is aiming to 'mirror' the existing EU-wide agreements on the mutual recognition insolvency and restructuring as part of any Brexit deal.

The conference comes as the Government continues its deliberations over how it will implement the EU's Restructuring and Second Chance Directive. Plans for corporate insolvency reform in the UK, which match many of the EU's proposals, were originally put forward in May 2016 but since stalled.

INSOL Europe's Vice President, Piya Mukherjee, will be providing an update on current projects and forthcoming plans.

Save 15% with early bird bookings! Prices from £290 + VAT when booked and paid by 7 May 2018. Visit www.r3.org.uk for details or email courses@r3.org.uk.

INSOL International / INSOL Europe / FILA One Day Joint Seminar, Helsinki, Finland

Registration is now open for our one day seminar in Helsinki, Finland on 13th June 2018, in association with Finnish Insolvency Law Association and INSOL Europe. We anticipate this will be an exciting and well attended seminar, with a stimulating technical programme including sessions on:

- The basic principles for harmonisation under the EU Draft Directive and the Nordic-Baltic recommendation.
- Case study looking at the tools available in a restructuring.
- Multinational enterprise groups and cross-border restructuring and insolvency issues.
- Hot topics in insolvency and restructuring in the region.

The seminar will culminate with a dinner, which gives ample opportunity for you to catch up with old friends and new. For accommodation, there is a group rate at the Hilton Helsinki Strand. Visit the INSOL International website for further details:
www.insol.org/page/846/insol-international--insol-europe--fila-helsinki-one-day-joint-seminar-

Eastern European Countries' Committee Conference 2018 31 May & 1 June, Riga (Latvia)

Conference Main Sponsor

BDO RESTRUCTURING

www.bdo.de/restructuring

Conference Sponsors

CNAJMJ - www.cnajmj.fr
bnt attorneys in CEE - www.bnt.eu
Schiebe und Collegen - www.schiebe.de
Troostwijk - www.troostwijkauctions.com

With thanks to our Conference Supporters

AIJA - www.aija.org

If you are interested in sponsoring an event at this conference, please contact Hannah Denney: hannahdenney@insol-europe.org

Digital assets in insolvency and restructuring

Emmanuelle Inacio takes a closer look at the impact of the protection and recovery of digital assets on insolvency and restructuring practice

EMMANUELLE INACIO
INSOL Europe Technical Officer

> THERE ARE MORE THAN NINE HUNDRED CRYPTOCURRENCIES TODAY AND THE ENTIRE CRYPTOCURRENCY MARKET WILL REACH A TOTAL VALUE OF $1 TRILLION THIS YEAR

Cryptocurrencies, tokens and ICOs

Cryptocurrencies such as Bitcoin, Ethereum or Ripple, use **blockchain** (*see box right*) to transfer economic value. Bitcoin is a technology that was first proposed in 2008 in a whitepaper written by Satoshi Nakamoto. The term Bitcoin refers both to a private currency and the network of computers that runs the currency. However, governments do not issue Bitcoins, but instead a decentralised network of computers does so[3]. There are more than nine hundred cryptocurrencies today and the entire cryptocurrency market will reach a total value of $1 trillion this year[4].

Blockchain is not limited to cryptocurrencies and can also store, transfer and record tokens of values. The token is a digital asset personalised by its author, emitted and exchangeable via blockchain and which has all the characteristics of a cryptocurrency.

Recently promoters have been selling virtual coins or tokens in **Initial Coin Offerings** (ICOs) or token sales which are a new form of crowdfunding. Purchasers may use fiat currency (e.g., U.S. dollars) or virtual currencies to buy these virtual coins or tokens. Promoters may tell purchasers that the capital raised from the sales will be used to fund development of a digital platform, software, or other projects and that the virtual tokens or coins may be used to access the platform, use the software, or otherwise participate in the project. Some promoters and initial sellers may lead buyers of the virtual coins or tokens to expect a return on their investment or to participate in a share of the returns provided by the project. After they are issued, the virtual coins or tokens may be resold to others in a secondary market on virtual currency exchanges or other platforms[5].

Legal qualification

The first question which arises is that of the legal qualification of the cryptocurrencies.

In France, Article L. 111-1 of the French Monetary and Financial Code states that the currency of France is Euro. Therefore, cryptocurrencies cannot be qualified as currencies in France.

Similarly, in the US, the US Bankruptcy Court of the Northern District of California, in the case Hashfast v/ Mark Lowe, stated on 22 January 2016, that "*Bitcoin is property, not currency*"[6].

What about the legal qualification of the token and its value? Is it a currency? A personal property?

Many values can be transposed on a token: a property title, a copyright, means of payment, miles, credits, etc. which makes its legal qualification impossible. The hybrid nature of many tokens will defy the clear categories within which the law is typically structured. In France, by default, the legal qualification of a token could be that it is a personal property.

Another question is that of the legal qualification of the ICO. In France, no clear legal framework has been laid down so far. The French *Autorité des Marchés Financiers* launched a public consultation on the question of the regulation of the ICOs, which ended on 22 December 2017[7].

In the US, depending on the facts and circumstances of each individual ICO, the virtual coins or tokens that are offered or sold may be securities. If they are securities, the offer and sale of these virtual coins or tokens in an ICO are subject to the federal securities laws.

As for China and South Korea, the decision was taken of prohibiting the organisation of ICOs[8].

Digital assets and insolvency

Therefore, if a company becomes insolvent, and if this company has digital assets, the question arises whether a creditor can lodge its claim e.g. in Bitcoins.

According to Article L. 622-25 of the French commercial code, the lodging of a claim consists in stating the amount of the claim due on the date of the judgement opening the insolvency proceedings and where the claim is expressed in a foreign currency, the conversion to euros shall be made at the exchange rate prevailing at the same date.

As we have seen above, Bitcoin is not a currency according to Article L. 111-1 of the French Monetary and Financial Code and cannot be considered as a foreign currency as it does not belong to a country. Therefore, the French insolvency judge would not recognise the

Blockchain technology

To quote former IBM IOT division head Paul Brody, Blockchain is "the glue that is going to drive a productivity revolution across the globe on par with what Henry Ford did with the automobile".

Blockchain is a distributed register made up of digitally recorded and encrypted data in the form of blocks, which when connected via the distributed network of computers storing the blocks, forms the blockchain.

Each computer holds all or part of the entire blockchain and applies the particular blockchain's computational algorithm to verify a block and permit it to be added to the chain. Since each instance of the data is held in many places simultaneously, and a block may be verified and added to the chain by any number of computers, the chain is hack-resistant.

Data added to the chain is cryptographically "hashed" which means that a short digest of the data is created and not a complete record. This hash of data is stored simultaneously in a block across multiple computers and transferred in encrypted form via the blockchain and not the actual, underlying data itself. As a digest, the hashed data can't be decrypted to reproduce the full underlying document or transaction data. However, within the chain, the hash can verify a copy of the underlying document or transaction existing outside of the blockchain[1].

Therefore, blockchain is not based on the trust of powerful intermediaries such as governments and banks, but on a proof system.

To sum up, the blockchain is an incorruptible digital register of economic transactions that can be programmed to record not just financial transactions but virtually everything of value. Melanie Swan, the founder of the Institute for Blockchain Studies explains: "Think about the blockchain as another class of thing like the Internet - as a comprehensive information technology with tiered technical levels and multiple classes of application for any form of asset registry, inventory, and exchange, including every area of finance, economics, and money; hard assets, and intangible assets"[2].

> DIGITAL ASSETS CREATE COMPLEX ISSUES FOR INSOLVENCY PROFESSIONALS AND IT IS DIFFICULT TO PREDICT OUTCOMES IN INSOLVENCY SCENARIOS

lodging of claim in Bitcoins.

In the US, in the above-mentioned case, Hashfast v/ Mark Lowe, the US Bankruptcy Court of the Northern District of California ruled that Bitcoin should be classified as "*intangible personal property*". Therefore, the trustee was allowed to recover this property for the benefit of the estate, or the value of the property, at $1.3 million. Indeed, the judge ultimately agreed with the trustee's citation of the Commodity Futures Trading Commission (CFTC) and the Internal Revenue Service (IRS) which characterise Bitcoin as a property or commodity.

Thus, if Bitcoin is not currency but property, it can be the subject of an action for recovery of the digital assets[9]. And as Bitcoin is fungible, it lacks a stable value and significant problems will arise. Bitcoin will also defy the rules of private international law[10].

However, Moscow's Arbitration Court ruled on March 2018 that the laws of the Russian Federation do not recognise the cryptocurrency as property. Indeed, the Russian legislation does not provide a definition of cryptocurrency and there are no requirements for its circulation. There is no way to tell if it is property, information or "surrogate", the court notes, stating that it is impossible to regulate the relations involving cryptocurrency. It was also noted that the use of cryptocurrency presents a potential danger, including a risk of being prosecuted for money laundering or financing terrorism. The court had, therefore, refused to include cryptocurrency discovered on the accounts of the insolvent debtor in the bankruptcy estate even if the insolvency practitioner argued that if the court refused to include it, this would enable some debtors to hide their property in Bitcoin[11].

As a result, digital assets create even more complex issues for insolvency professionals and it is difficult to predict outcomes in insolvency scenarios.

In response to recent illegal activities facilitated by Bitcoin use, the states are beginning to propose cryptocurrency regulations. Moreover, it is not by accident that the Central Bank Governors and Finance Ministers of France and Germany have written to the Argentinian Finance Minister requesting the inclusion of cryptocurrency regulations on the G20 Summit Agenda[12]. If 2017 was the year of the ICOs, it seems that 2018 is destined to become the year of regulation.

These challenging questions of the impact on insolvency and restructuring practice of protection and recovering of digital assets will be debated during the Annual Congress of INSOL Europe from 4 to 7 October 2018 in Athens, whose main theme is "Breaking the Chains". We look forward to meeting you all in Athens! ■

Footnotes

1 http://www.legalalignment.com/blog/blockchain-for-lawyers-101-part-i#http://scet.berkeley.edu/wp-content/uploads/BlockchainPaper.pdf
2 http://www.blockchainstudies.org/
3 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620309
4 https://coinmarketcap.com/
5 https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings
6 https://www.davispolk.com/files/bitcoin-def-brief.pdf
7 http://assaslegalinnovation.com/2018/03/26/la-reglementation-des-icos-un-defi-crucial-pour-le-legislateur-francais/
8 https://medium.com/@wulfkaal/initial-coin-offerings-the-top-25-jurisdictions-and-their-comparative-regulatory-responses-4b8c9ae7e8e8
9 http://www.fusions-acquisitions.fr/article/dossiers-5/blockchain-et-procedure-collective-du-partage-aux-interrogations-2743
10 http://leidenlawblog.nl/articles/the-end-of-comi-as-we-know-it-insolvency-rules-in-the-era-of-decentralisati
11 https://news.bitcoin.com/russian-bankruptcy-court-orders-debtor-disclose-cryptocurrency-holdings/
12 http://www.rapsinews.com/judicial_news/20180312/282170768.html
13 http://www.ldjcapital.com/single-post/2018/02/15/Crypto-Regulation-France-and-Germany-Want-Issue-Included-in-G20-Summit-Agenda

Share your views!

The status of Judicial Administrators in France

Isabelle Didier explains the roles and responsibilities of a French judicial administrator

ISABELLE DIDIER
Judicial Administrator and Provisional in the French system

“JUDICIAL AND INTERIM ADMINISTRATION, WHETHER FOR PRIVATE OR COMMERCIAL ORGANISATIONS, ARE COMPLEMENTARY PREVENTIVE MEASURES”

It is not an easy feat for a trained lawyer to sift through the different roles and responsibilities that a French judicial administrator is empowered to address. Even more so when the person seeking information has no legal training whatsoever.

I will therefore take this opportunity to thoroughly explain, once and for all, and in layman's terms, the roles of the two very distinct insolvency professions operating under judicial authority in France.

The two types of insolvency practitioners that I refer to are the Judicial Administrator and the Receiver-Liquidator.

The reason for the existence of the two separate professions is to avoid any appearance of or potential for conflict of interest; the Administrator oversees the interests of the debtor and/or distressed business while the Receiver looks after the interests of creditors and employees.

Both professionals act as officers of the Court that appoints them. If the Receiver intervenes almost exclusively in insolvency proceedings, the **Administrator's role is much larger in scope and can go beyond the classic role of debtor's representative and counsel for distressed business.** For example, the Administrator is sometimes appointed by the Courts to administer companies or estates confronted with an internal conflict which risks jeopardising the continued operation and/or financial solvency of the entity. Such an administrator therefore acts while the entity is solvent and is called **temporary or interim administrator**.

These legal and financial professionals are appointed by the French courts (both civil and commercial) to treat all distressed entities, whether commercial enterprises or private estates. Thus, the **judicial administrator** is a professional who belongs to a regulated profession and whose title is protected by licence, **while being an interim administrator is one of many roles performed by the judicial administrator**. The table opposite describes the various notions, roles and responsibilities ascribed to the Officers appointed by the Court: receivers, judicial administrators and interim Administrator.

The Judicial Administrator and the Interim Administrator are therefore one and the same, whether a private practice or incorporated firm. The first term

Job category: Officer of the Court		
Profession: Insolvency Practitioner		
Judicial Administrator Professional appointed to assist or replace the management body of a company in order to preserve its interests.		**Receiver-Liquidator** Represents the interests of creditors and employees and performs the role of liquidator.
Missions		**Missions**
Judicial Administrator during insolvency proceedings The French law provides judicial administrators with a monopoly over the treatment of distressed businesses, when the suspension of payments has occurred. They assist the director during the reorganisation phase and draw up proposals and/or establish plans for wiping-out the debt, and if this is not feasible they take the necessary actions to have the company sold as a going concern.	**Interim Administrator for civil or commercial entities** This is a secure management option which the Courts have at their disposal when faced with a conflictual management situation within a business or estate which may potentially jeopardise the continued existence of the entity. The scope of the mission given to the interim administrator is determined and set by a judge. The Interim Administration concerns provisional measures which the judge can widen in order to include such steps as transfers meant to secure the assets. The administrator looks after all the day-to-day management functions for a time and during this period all corporate bodies and employee organisations are to step down from their prerogatives. The company is not in payment default but the loss of its decisional bodies or a persistent and ongoing dispute is a real cause of concern regarding the company's survival.	The Receiver-Liquidator intervenes almost exclusively in insolvency proceedings as the creditors' representative.

denotes the profession as well as the mandate of assistance to distressed business, while the second term refers to the Judicial Administrator when he carries out a mission of interim administration.

The guiding principle in French Law is that judicial administrators, in addition to their monopoly over insolvency proceedings, also enjoy a monopoly over interim administration missions pursuant to Article L811-1 of the Commercial Code: "*The Judicial Administrators are the agents, whether natural person or legal entity, mandated by decision of justice to administer the property of others or to perform an advisory or supervisory role as regards the administration of these assets*".

Judicial and interim administration, whether for private or commercial organisations, are complementary preventive measures in the treatment of distressed entities; they are not to be mistaken for the same mandate.

The criterion for distinction between the two mandates, which are both performed by the Judicial Administrator, is the condition of payment default. Moreover, the French Law recognises the judicial administration of distressed business on the one hand and the interim administration of **solvent** estates, condominiums (shared properties), non-trading companies, as well as trading, associations … on the other hand). These two procedures are limited by a precise time marker which is payment default. So it is possible that one procedure follows the other depending on whether payment default has transpired or not… which raises the question as to the possibility of having the same administrator in both procedures. To conclude, we will see how the French law deals with this question.

"THE GUIDING PRINCIPLE IN FRENCH LAW IS THAT JUDICIAL ADMINISTRATORS ALSO ENJOY A MONOPOLY OVER INTERIM ADMINISTRATION MISSIONS"

AN INTERIM ADMINISTRATOR SHOULD NOT BE CONFUSED WITH THE JUDICIAL ADMINISTRATOR APPOINTED BY THE COURT

The cases of appointment of a Judicial Administrator in insolvency proceedings

Insolvency Proceedings Missions confided to Judicial Administrators

Nature of the mandate	Normal reason for appointment
Safeguard	Concerns any person operating a commercial or crafts activity, a farmer, a natural person in a liberal profession, independent workers, as well as any legal entity under private law. Imposes the condition of absence of payment default and the existence of insurmountable difficulty that the company is not able to face alone.
Accelerated Safeguard	During conciliation, the administrator must justify having established a plan to ensure the continuity of the business.
Judicial Reorganisation Solutions: 1 Reorganisation plan in view of continuing the business 2 Reorganisation plan in view of continuing the business through funds transfer or transfer of company shares Possible via the Prepack business transfer	Impossibility of dealing with liabilities as they fall due, because of the lack of available assets; implies payment default.

Appointment of judicial administrators

The table above shows the cases when a judicial administrator is appointed in an insolvency proceedings, whilst the table on page 19 shows the cases when a judicial administrator is appointed as interim administrator.

When a judge is solicited to pronounce an interim administration measure, the parties must demonstrate, and this most of the time through an urgent motion, that an abnormal functioning is likely to jeopardise the assets. This circumstance justifies the intrusion of the courts in the affairs of a solvent group or estate. This requirement is more significant when it concerns an association. In fact the intervention directly affecting the exercise of a right guaranteed by the constitution, the proof of the danger or of the trouble, must be reported. It is because of this interference by the courts that the supreme jurisdiction requires that an interim administration should respect three conditions: be exceptional, be temporary and be for protective purposes! Other principles and considerations have presided over the development of rules governing judicial administration which in itself rarely results in management bodies being relieved of their duties, while this is the first consequence of an entity placed under interim administration.

The succession of interim and judicial administrations with the same administrator for the two missions

An interim administrator should not be confused with the judicial administrator appointed by the Court. Moreover, in the event of the opening of insolvency proceedings, it is difficult to know if an interim (judicial) administrator of an estate will be appointed as judicial administrator for the same estate.

Due to the lack of reference in the texts, the French jurisdictions have never really pronounced themselves in the matter, and have preferred to decide on a case by case basis. To this end, the courts have gone either way.

Often the reasoning put forward by judges in their refusal to designate the Interim Administrator as Judicial Administrator was the potential for absence of legal representation of the company, the judicial administrator rarely acting as a legal representative of the company during receivership.

Summary

All in all, the scope of the mission of an interim administration is still unexplored and can be extended to assumptions, not yet supported by the litigants.

Thus the director of a French subsidiary of an Italian head office, both companies being subject to insolvency proceedings, exposed himself to legal action in France for misuse of corporate assets due to having favoured a redundancy plan benefiting the employees of the Italian head office to the detriment of the French subsidiary. No action could have been taken against this director if

Share your views!

The classic cases of appointment of the judicial administrator in interim administration

Circumstances triggering the recourse to an Interim Administrator	The different cases of abnormal functioning likely to cause an imminent danger
Interim administration of an estate	
As estate representative appointed by the courts to temporarily administer the estate.	Due to the inertia, the incapacity or the fault of one or several heirs to the estate, to their disagreement, to conflicting interests among them or due to the complexity of the estate situation. In the specific case of joint possession, when a joint tenant is not able to manifest his/her will, or in the event of a blocking of the decision-making process.
Interim administration of a solvent condominium (co-ownership) group	
Interim Administrator of the distressed condominium.	Financial stability compromised or the continued possession of the building not realistic
The Administrator is responsible for convening the Assembly of joint tenants in view of the designation of a co-ownership trustee.	In the absence of the convening of the General Assembly of joint tenants, in the cases where the condominium corporation does not have a management agent, or, In the event of incompetence or incapacity of the management agent and for lack of provisions in the condominium regulations.
Mandated with taking all necessary and useful measures to ensure the return to normal operations as regards the condominium corporation and its property complex.	If the financial stability of the condominium corporation is seriously compromised or if the corporation is not able to provide the amounts necessary for the preservation of the building.
Responsible for reporting the state of deficiency.	For lack of a meeting of the General Assembly or in the event of the rejection of the proposals in the Safeguard Plan and if the difficulties of the built property or the building complex compromise the preservation of the building.
Interim administration of civil and trading companies	
The Interim Administrator has all the power and authority in the management of the company along with the powers of a director. ✓ With special authorisation possibility of selling off non-essential assets or at-risk assets. ✓ Negotiation in view of resolving disputes. ✓ Convening to and holding of General Assembly to appoint new director or to approve the accounts.	Exceptional circumstances: Deficiency whether absence, incompetence or incapacity in the management body with impossibility of legally appointing replacements: Dismissal, resignation, death, disappearance, criminal proceedings, absence due to a case of absolute necessity, disqualified from managing. Conflict between the constituent parts of the company making it impossible for them to function normally: disagreement, conflict between associates/management bodies, imminent danger for the company.

an interim administrator had replaced the director and made this decision in his place (which depended on the parties requesting the interim administration being able to justify the need for such an intervention). In fact, for the serious acts of disposal, the interim administrator would always act under the authority of the judge, as opposed to other systems in Europe where the administrator acts under his own authority with prior authorisation from the Court. This can explain why foreign professionals favour selling the business rather than pursuing the activity, like in France. ■

> "THE SCOPE OF THE MISSION OF AN INTERIM ADMINISTRATION IS STILL UNEXPLORED"

IP appointment lottery:

Experiences in Lithuania, Slovakia and Hungary with random IP selection systems

How does the new Lithuanian system compare to those in Slovakia and Hungary?

> THE MAIN AIM OF LAWMAKERS WHEN INTRODUCING RANDOM IP SELECTION SYSTEMS WAS TO TACKLE THE LACK OF TRANSPARENCY

Three years ago, Lithuania introduced a new system for the appointment of insolvency practitioners ('IP') in certain insolvency proceedings. The basics of this new system were already described in Eurofenix.[1]

The aim of this article is to provide a first assessment and to compare this system to similar random selection systems in Slovakia and Hungary.

Legal frameworks

Which types of insolvency proceedings exist?

All three jurisdictions have three general categories of insolvency proceedings: bankruptcy and restructuring proceedings for legal persons, as well as insolvency proceedings for natural persons. Variations exist. Noteworthy are the out-of-court bankruptcy proceedings under Lithuanian law.[2]

When were the random selection systems introduced?

Slovakia started to introduce random IP selection systems already in 2005.[3] Hungary followed in 2009, Lithuania in 2015.

What were the aims?

The main aim of lawmakers when introducing random IP selection systems was to tackle the lack of transparency (perceived or real) attached to the previous rules

of selecting and appointing IPs. These rules had allowed stakeholders to propose 'their' IPs, and/or permitted judges to appoint IPs with little transparency or real oversight.[4]

The previous appointment systems did therefore not strengthen the trust in the impartiality and functioning of the insolvency systems and IPs were frequently regarded as running a shady but often lucrative business.

How does random IP selection work and which proceedings does it apply to?

In **Lithuania**, the random selection of IPs is restricted to in-court bankruptcy proceedings of companies on the basis of the Enterprise Bankruptcy Law No IX-216, 20 March 2001 (EBL) and the Selection Rules for Bankruptcy Administrators as approved by Government Order No 647 of 9 July 2014.

Therefore, it does not apply to insolvencies of natural persons, at least not if the filing natural person uses the right to propose a specific administrator according to the Law on Bankruptcies of Natural Persons (cf. Art. 4 paras 5-7). Neither does it apply to restructurings of companies (cf. Art. 6 Enterprise Restructuring Law No IX-218, 20 March 2001) and to out-of-court bankruptcy proceedings, (cf. Art. 13 para. 2 EBL) in which the filing party proposes the IP to be appointed by the court (in restructurings) or by the creditors' assembly (in out-of-court proceedings). The 'lottery' system is based on a categorisation of insolvent companies (three groups based on size: small, medium, large) and IPs (three groups based on criteria supposedly showing the experience of an IP).

The computer-run system used by the judge randomly selects the IP for the case at hand from the pre-categorised pool of registered IPs. The general idea is to get the most experienced IPs for big cases, less experienced ones for medium-sized cases and the least experienced IPs for small cases (while also considering the workflow of the registered IPs).

The **Hungarian** random selection system applies to bankruptcy and restructuring proceedings of companies, not to insolvencies of natural persons.[6] There are, however, certain exceptions. A special legal regime applies to insolvencies of financial institutions or insurance companies and to so-called major economic operators of preferential status for strategic purposes. In case of the former group of companies, the debtor's business activity triggers the application of special provisions for the appointment of the IP. In case of the latter, a company might qualify for such a status by governmental decision.

In both cases the random selection system does not apply and a state-owned company is appointed as IP. In standard cases, in which the random selection applies, IP selection is performed with a special software with access to the register of IPs and certain data, such as the seat or branch of IPs and the number of past and current cases handled by them. The software scales the IPs based on such information and suggests the IP to be appointed in the case at hand.[7]

Different from Lithuania and Hungary, in **Slovakia** the random selection applies to all categories of insolvency proceedings.[8] The court appoints the IP randomly selected from the pool of registered IPs. The Register of IPs has three sections: IPs for restructuring, for bankruptcies of legal persons and for bankruptcies of natural persons. IPs may register in all three sections. The main criteria used by the random selection programme is the location of the IP, i.e. the IP must have an office in the district of the competent court. In contrast, the Slovakian random selection system does not take into count other criteria, such as the number of employees working for the respective IP and the previous insolvency cases dealt with.

Experiences

Lithuania

During the first three years of its existence, the Lithuanian random selection system faced several challenges, some of which were successfully addressed, but others remain, some appearing to be inherent in the random selection system.

Initial problems were caused by unforeseen possibilities of abuse. As mentioned, the overall number of administered insolvency procedures affects the IPs' priorities in the appointment system. Initially, this number was calculated separately for natural person IPs and (additional) companies established by them.[9] Some persons used this leverage and established many companies using their personal IP certificate, in order to increase the chances of getting an appointment.[10]

Other issues were caused by insufficient planning. Many

FRANK HEEMANN
Partner,
bnt attorneys in CEE (Vilnius)

DR. ARNAS STONYS
Senior Associate,
bnt attorneys in CEE (Vilnius)

MGR. HERMAN PIKALY
Junior Associate,
bnt attorneys in CEE (Bratislava)

DR. RICHÁRD BÓDIS
Senior Associate,
bnt attorneys in CEE (Budapest)

by a reasoned decision of the court. Such deviation from the electronic appointment occurred most often in cases of debtors active in special branches of economy, such as agriculture or construction. The possibility of deviation by court decision was abolished in 2014.

A still existing method for avoiding the general appointment provisions is the awarding of a preferential status to the debtor by the government, for strategic purposes. In some cases this status might be justified due to a special economic role of the debtor in the Hungarian economy (e.g. national air carriers, public utility suppliers). In other cases, however, awarding such a status might seem to be a political tool. Since its introduction in 2012, more than 100 companies were able gain this status.

The consensus amongst IPs is that the introduction of the lottery system clearly led to a more equal distribution of insolvency cases. The current regulation leaves less space for deviation from the random selection method. The system, however, is criticised because the court has no option to deviate from the random appointment in proceedings requiring special experience or knowledge.

Slovakia

As the random selection system in Slovakia is applicable to all types of insolvency proceedings, it may seem to be a mighty tool against corruption, as well as a means to strengthen the trust in the impartiality of the courts with regard to the appointment of IPs. But assigning cases randomly causes problems of ensuring professional administration of insolvencies, since many IPs are registered in all sections of the IP register and because the system does not take into consideration important factors, such as the IPs' resources and experience. Thus, bigger and more complex cases can be entrusted to a randomly selected IP who has no sufficient skills or resources to successfully handle the case.

“THE EXISTENCE OF A RANDOMISED SELECTION SYSTEM HAS NOT COMPLETELY ELIMINATED THE POSSIBILITY TO APPOINT A ‘DESIRED’ IP”

debtors in Lithuania are small companies. The randomised selection rules prioritise less experienced IPs to be selected for such small companies. This prioritisation left the more experienced practitioners without work for several months until some bigger companies went bankrupt, while the 'rookies' were overloaded. Though these issues were promptly addressed, others remain. As explained, the system is not fully automatic. Thus, it leaves room for the court to decide in which category the debtor should be placed: big, medium or small. This discretion for judges with usually little or no expertise in insolvency and economic matters produces unexpected and sometimes detrimental results.[11] Also, the assessment of an IP's experience for categorisation purposes is based on rather formal criteria, i.e. type and number of past cases. These do not necessarily reflect the required competence.

The existence of a randomised selection system has not completely eliminated the possibility to appoint a 'desired' IP. As indicated, the 'lottery" is only applicable for in-court bankruptcy cases. It is therefore not mandatory for out-of-court bankruptcy proceedings, where the IP is still proposed by the filing party. Statistics[12] show that the number of out-of-court proceedings has mushroomed after the introduction of the randomised selection system: during 2015 such proceedings more than doubled, reaching 103 (compared to 48 in 2014) and continued to increase to 175 (in 2016) and 235 (in 2017).

Even though the absolute number of extrajudicial bankruptcy procedures remains rather low (about 8% of all proceedings in 2017), the tendency is clear. Creditors and other stakeholders might feel a need to entrust the administration of more complex proceedings to an IP of their choice, having the required expertise and resources. However, one cannot rule out that for certain cases out-of-court proceedings are used, in order to circumvent the random selection and to bring in an IP who would give priority to the filing party's particular interests to the detriment of the other stakeholders.

Hungary

The main reason for introducing the lottery system in Hungary was to address a lack of transparency. At first, however, random selection could easily be avoided

Share your views!

Conclusion

Experiences in Lithuania, Slovakia and Hungary show that randomised IP selection might further transparency and impartiality of the IP selection process and thus strengthen the general trust in this profession and in the functioning of the insolvency system as a whole.

This is certainly to be welcomed, in particular in central and eastern Europe, i.e. a region that to a certain extent still faces allegations of corruption. However, impartiality and transparency of such lottery systems come at a price: even the comparably complex Lithuanian categorisation and selection system has, at the end of the day, similar drawbacks as the Hungarian and Slovakian ones, that is the elimination of the human error also eliminates or severely restricts the possibilities to have a fitting individual solution (IP) for the particular case (debtor).

Moreover, taking into account the trend towards restructuring, there is an increased need for individual solutions, including IPs, tailored to the particular case. This begs the question to what extent standardised random selection processes will ever be able to address this need.

Finally, the trust gained by a transparent and impartial selection through 'lottery' might very well be outbalanced if society and stakeholders do not trust the outcome of insolvency proceedings, i.e. the best possible satisfaction of creditors and/or the rescue of viable businesses. ■

> “ IMPARTIALITY AND TRANSPARENCY OF SUCH LOTTERY SYSTEMS COME AT A PRICE ”

Footnotes

1 Cf. Heemann/Gasparkė 'Lottery and liability', Eurofenix 2015, Spring Edition.
2 Others examples include certain simplified forms of bankruptcy and restructuring proceedings in Lithuania.
3 Since 2005 for bankruptcy proceedings; since 2017 also for restructuring proceedings.
4 Other goals include protection of small creditors, ensuring equal distribution of work among IPs, helping new IPs to enter the market.
5 For more details see Heemann/Gasparkė 'Lottery and liability', Eurofenix 2015, Spring Edition.
6 In private persons' insolvencies another selection method applies. Basically one of the major creditors acts as IP.
7 The legal basis is Act XLIX of 1991 on Restructuring and Bankruptcy Proceedings.
8 The legal basis is Act 7/2005 Coll. on Bankruptcy and Restructuring.
9 Legal and natural persons may be certified as IPs and there is no limit on how many IP license holding companies one natural person may establish using his/her personal certificate as an IP.
10 From January 2015 till October 2015 114 licenses were issued to new companies, while the overall number of licensed companies before the system implementation was 522. (http://www.bankrotodep.lt/veiklos-sritys/nemokumas-2/administratoriai/bankroto-administratoriai/#Juridiniai)
11 Lithuania does not have specialised courts or judges for insolvencies.
12 p. 5 in the 7 Feb 2018 Survey for 2017 of Enterprise Bankruptcy and Restructuring Proceedings et al, prepared by the Department of Audit, Accounting, Property Valuation and Insolvency Management under the Ministry of Finance,

Cyber Security: A threat for all businesses

Christophe Szwedo and Laurent Le Pajolec look into the ramifications of the new General Data Protection Regulation (GDPR) on all businesses

CHRISTOPHE SZWEDO
CYLRESC, France

LAURENT LE PAJOLEC
EXCO A2A Polska – INSOL PL

Share your views!

Nowadays, a company, whatever the business sector, relies on an information system which must be protected with specific means.

With a rising number of cyber-attacks, cyber-security is a hot topic and companies are trying to secure their information systems. Though, the sole fact of putting a firewall or using a VPN connection to access your information system is not enough, besides, those must be installed and configured properly by cyber-security experts. Implemented means against cyber-attacks and cyber-criminals should neither be overlooked, nor underestimated.

One often hears things like: "I don't need to audit or strengthen my information system, who would attack my company? I have no enemies and I don't handle any sensitive data".

The part about not having enemies and handling sensitive data might be true, but your company may be an intermediary to the real target and hackers will try to reach any person close enough to it. As a law firm, you may be the perfect target for hackers because, through your company's information system, they can get access to sensitive data about your customers. Moreover, even if you are not their true target, hackers are greedy and if their penetration test succeeds, they might just as well drop a ransomware on your network and ask you to pay if you want to recover your data. Of course, it is NOT recommended to pay: 53% of the companies which pay do not recover their data after paying. The success of the recent attacks known as "Not Petya" and "WannaCry" proved that companies are not spending enough time thinking about how to improve their cyber-security system.[1]

A few figures here: 55% of the French companies declare having been victims of a cyber-attack in 2016. Half of them declare the cyber-attack had an important impact on their productivity. 23% declare having issues maintaining their reputation after an attack. 60% of the small companies attacked close in six months after a cyber-attack.[2]

Cyber-security: How to be protected?

Protecting the company against cyber threats forces the companies to formalise processes, identify sensitive data and sensitive areas in their information system and strengthen them by implementing cyber-security means such as firewalls, a password policy, mandatory Full Disk Encryption (FDE), etc. It is important to understand that formalising processes and strengthening cyber-security becomes essential for a company to exist. Today, the management of cyber-security seems to be reserved for companies handling sensitive data, whereas it should be part of any company's life cycle.

An attacker can easily compromise an unprotected information system by sending e-mails with infected attachments to the whole company. It is called *phishing*. Phishing attacks aimed at an individual will try to steal his/her social media account or bank account credentials. In the case of a company, it can simply send an attachment, which once it has infected one computer will spread through the whole network like a worm. Phishing attacks are usually paired with ransomware attacks. The amount of phishing e-mails containing a form of ransomware grew to 97.25% during the third quarter of 2016, up from 92% in the first quarter.[3] The form of such an email is realistic (copy of email address / copy of format, for example, false "energy invoice"…)

Security strength is evaluated according to the weakest link in the information system.

Hackers have well understood this concept, and that is why there are growing numbers of phishing attacks. It is true that you can have the most sophisticated security, a state-of-the-art defensive system with strong restrictions on networks streams, but an employee can undo everything just because of one mistake such as opening the wrong file, plugging a USB flash drive found on the parking lot with the name of a competitor on it, and so on.

Experts in cyber-security can do an *audit* of your company, consisting in taking a picture of your information system, analysing it through code reviews, architecture reviews and configuration reviews and thus ensure that it is well secured and compliant with known cyber-security standards.

Penetration testing is also useful, and it consists in testing the security of the company's information system in real conditions. An auditor comes to your premises and acts like an evil employee trying to harm the company, without, of course, doing anything that might impact the productivity, unless the auditor has the company's approval to do so. The audit and the penetration test result in a report that contains all discovered vulnerabilities and the recommendations associated to those vulnerabilities.

Awareness training is also important because one cannot "configure" a human being as it is done with a computer. Employees should feel concerned about the cyber-security of their company and for this, simple gestures, such as locking the computer when away (even for three minutes), using complex passwords or a password manager to access professional and internal web services, are contributing to reinforce the cyber-security of the company.

Becoming "GDPR-Ready"

Nowadays the European Parliament intends to strengthen data protection for all individuals within the European Union through the General Data Protection Regulation (GDPR or the Regulation, in this article), which will be in force in May 2018.

If a company does not meet the requirements defined in the GDPR, it may receive a fine of 20m euros or 4% of the annual worldwide turnover of the company (whichever is higher). 52% of the companies believe they will be fined for non-compliance. (Article 83 from GDPR)[4]. The GDPR aims to the have the following personal data protected by all companies:

- Name, address and ID numbers
- Location, IP address, cookie data and RFID tags
- Health and genetic data
- Biometric data
- Racial or ethnic data
- Political opinions
- Sexual orientation.

The Regulation defines, for example, that the company needs to be able to locate and, if requested, provide all personal data they have collected on an individual. If the company is not able to fulfill that request and an individual decides to file a complaint, it may receive a fine.

Being GDPR-compliant, proves that the company:

- has created processes and is mature enough to locate and protect all stored personal data;
- can identify which application uses these personal data; and
- can identify who has access to it.

A strong principle of the GDPR, is the "accountability". If a hacker succeeds to steal personal data from one of the partners of a company, the company itself is considered just as responsible of that leak as your partner's company, and so even if the company is GDPR-compliant. This is the main reason of why being "GDPR-Ready" is a *pledge of trust*. It means the GDPR could really become a competitive advantage or at least, a necessary means to cooperate with other companies.

Going through the GDPR-compliance process helps every company not only to protect personal data of its employees, clients, suppliers and other stakeholders, but also to strengthen the company's cyber-security (firewall protection, data encryption, least privilege principle …), to implement *basic* security means in order to ensure that no personal data leak or are accessible to unauthorised persons.

Conclusion

- All companies will be attacked directly or indirectly. It is a question of time.
- Cyber-security is a universal topic:
    - for companies and their clients;
    - for small and large businesses.
- Any company processing personal data of European citizens will have to be compliant with GDPR.
- **As a member of INSOL Europe, you should take care to see that your company becomes GDPR-compliant!** ■

Footnotes

1 www.orange-business.com/fr/blogs/securite/actualites/infographie-barometre-cybersecurite-2017-ou-en-est-l-industrie-francaise-
2 www.inc.com/thomas-koulopoulos/the-biggest-risk-to-your-business-cant-be-eliminated-heres-how-you-can-survive-i.html
3 http://cofense.com/wp-content/uploads/2017/10/PhishMe_Malware_Review_2016_Q3.pdf
4 www.privacy-regulation.eu/en/article-83-general-conditions-for-imposing-administrative-fines-GDPR.htm

"

AS A MEMBER OF INSOL EUROPE, YOU SHOULD TAKE CARE TO SEE THAT YOUR COMPANY BECOMES GDPR-COMPLIANT!

"

Strategic insolvency in Romania

Nicoleta Munteanu sets out how a 'strategic insolvency' is defined in Romania, and its consequences for insolvency proceedings

NICOLETA MUNTEANU
PhD, Coordinating Practitioner,
Euro Insol SPRL

> INSOLVENCY HAS THE EFFECT OF CLEARING AND REMOVING FROM THE ECONOMIC CIRCUIT THOSE UNDERTAKINGS THAT DO NOT COMPLY WITH THE RULES OF THE GAME

Through early restructuring and second chance, the European Union has been concerned with a reality less understood in the economic environment.

As a state of things, insolvency is an element of the economic circuit, an imperative marker for the efficiency, dynamics and purpose of the economic mechanisms. As an effect, the insolvency of failing companies is determined, alongside subjective causes, by objective causes as well, by an economic and financial context that places the debtor undertaking in an undesirable situation beyond its control. From this point of view, we must understand the EU's efforts that insist on preventive mechanisms and on the possibility for the undertaking to return to the economic circuit.

Understanding insolvency as a "necessary evil", as an imbalance that must prepare a new balance, as a "critical point" meant not only to draw a serious warning signal but also to constitute a "new beginning", is the closest to the relevant EU philosophy. Moreover, insolvency also has the effect of clearing and removing from the economic circuit, where appropriate, those undertakings that do not comply with the rules of the game and are trying to take advantage of them. But what if there are undertakings that simply cannot be removed from the economic circuit?

Practical experience in managing the insolvency of several insolvent companies allows for drawing a number of conclusions about the whole process:

- Many companies enter into insolvency proceedings because of an economic and financial context they cannot control, often generated by economic, social, political crises, etc.
- Many companies enter into insolvency proceedings due to faulty, customised, group-interest-focused management. Often this management is politicised, so that the managers selected do not have the professional skills and managerial capabilities recommending them for such a position.
- Many companies enter into insolvency proceedings because, as creditors to other insolvent companies, they

suffer from the so-called "domino effect".
- The managerial dimension in the insolvency proceedings is suffocated by the legal dimension, as the insolvency practitioner cannot put into practice a management policy of his own, but strictly follows the proceedings, most of the time just supervising the management's operational activity, without being directly involved.
- Finally, often among the debtor companies there are very important companies for the national economy and for the State's safety and security, whose insolvencies can generate windows of vulnerability and risks in the national security field. In that case, such undertakings should not be removed from the economic circuit.

This conclusion comes directly from discussions among practitioners, and indirectly, from a bibliographic study and long scientific research[1]: there are certain companies in any national economy, whose bankruptcy could generate threats both to the economic security and to the national security.

An analysis of such insolvencies is thus necessary, by supplementing the legal dimension with the dimensions of security studies and of management and it leads to the concept of "strategic insolvency", which is nothing more than the "classical" insolvency process applied to undertakings of "strategic" value, which cannot be removed from the economic circuit because this would generate threats to the State's security interests.

Furthermore, the insolvency analysis in terms of management leads to understanding how important the managerial skills are in the insolvency practitioner's profile, especially when managing undertakings of interest to the State's national security.

According to the relevant Romanian law, the definition of insolvency refers to the debtor's shortage of funds available for the payment of debts which are certain, due and of a fixed amount.

"Strategic insolvency" refers to a debtor which belongs to the national security system, but whose situation is also characterised by the shortage of funds available for the payment of the debts.

As it can be seen, the distinction between an ordinary insolvency and a strategic insolvency consists only in the debtor's standing within the national security system.

The following questions stand at the basis of the analysis.

1. **How should be identified and analysed the debtor's standing so as to consider it important enough for the national security system?**
2. **How can the managerial dimension of the "strategic insolvency" be structured?**

Regarding the first question, the notion of "national security system" is very broad and, following a general analysis, it includes any organised entity, directly or indirectly tied to the national security.

Practical and easily trackable indicators have to be found in order to see how an economic entity is included in the national security system, as well as a set of instruments which can lead to a decision as to whether or not an economic entity (state-owned company, company) is part of the national security system. The instruments to be used are:
- the critical infrastructure of the state;
- the strategic areas of interest for national security; and
- the risk/vulnerability for national security brought about by the company's insolvency.

Nowadays in Romania, the critical infrastructure consists in a list of the ICN[2] sectors and the public authorities in charge, which could allow to easily identify the debtor entities that are part of the ICN. This list includes, *inter alia*, the sectors of energy, information and communication technology, water supply, food, health, national security, administration, transportation, chemical and nuclear industry, etc.

Concerning the strategic areas of interest for national security, the State has the possibility, through Government Decision, to establish which economic entities may belong to this category. The research conducted also took into account private companies which have a great importance for the national security system, because any discrimination between private and public companies is detrimental to the State.

The final tool, accounting for the risk/vulnerability brought about by a 'strategic' company to national security, makes it possible to analyse and decide at the strategic level[3] which can be the effects of the bankruptcy of such entities in terms of national security.

Through this strategic analysis, the State may include in the national security system those organisational entities that, by liquidation, generate major risks and vulnerabilities to national security. The strategic analysis will also include the means by which the State assumes such an insolvency. But rescuing of undertakings through judicial restructuring should not be taken, under any circumstances, for a State aid. The success of restructuring can be ensured through the implementation of efficient management and through market economy instruments provided for by the the national and the European Community legislation.

As to the second question, namely *how can the managerial dimension of the 'strategic insolvency' be structured*, the building of a *management model* is necessary, able to provide a coherent vision on the implementation of the measures required for the recovery of the debtor and to develop a style of

"THE NOTION OF "NATIONAL SECURITY SYSTEM" IS VERY BROAD AND INCLUDES ANY ORGANISED ENTITY, DIRECTLY OR INDIRECTLY TIED TO THE NATIONAL SECURITY"

Share your views!

> THE CONCEPT OF "STRATEGIC INSOLVENCY" WILL CERTAINLY LEAD TO FUTURE DEBATES AND POSITION-TAKING BY SPECIALISTS IN THE FIELD

management which is direct, proactive, visionary, assumed and involved at all levels of society.

Thus, *the strategic insolvency management* should deal with the crisis and risk situations by developing managerial instruments specific to this branch, which would allow the insolvency practitioner to directly implement the measures he or she deems necessary.

From this point of view, *the concepts of risk and risk analysis* become very important in the effort to build such a management model, because they are the basis not only of the management, but also of the proposals concerning the stages of the process and the structure of the risk management documentation plan proposed by the doctoral thesis mentioned (see footnote 1).

Conclusion

In conclusion, the *strategic insolvency* management may lead both to the development of the insolvency practitioner's skills and competences, and, of course, to the debtor undertaking's recovery through reorganisation, and to its reintegration into the economic circuit, as part of the national security system.

The concept of "strategic insolvency" will certainly lead to future debates and position-taking by specialists in the field.[4] Even if, at this moment, the insolvency practitioners find it difficult to understand insolvency management as a security issue, the new geo-economic realities, doubled by the States' wishes to ensure economic security, will surely lead to the acceptance of this concept as a viable solution for those economic sectors with direct impact upon the national security.

As an example, the success of *Hidroelectrica's*[5] reorganisation was primarily due to the direct management exercised by the receiver at all company levels, and by the change of the business attitude and mentality, not only of the top managers in the company, but also of those at intermediate levels.

In conclusion, "the rescuing of the undertakings of strategic interest" from bankruptcy should not be understood or associated with the phrase "State aid", because the State only recognises the importance of the undertaking in terms of national security and shows flexibility assumed in the implementation of the economic measures necessary for the return of the debtor undertaking to the economic circuit. ■

Footnotes

1 See "Strategic Insolvency Management and National Security", doctoral thesis publicly presented on September 27, 2017 by the author of the article
2 National Critical Infrastructure
3 In Romania, by CSAT –The Supreme Council of National Defence
4 Contact the author for further discussion
5 The largest hydropower producer in Romania

Reforms to employer succession in Spain

Agustín Bou outlines recent reforms that enable employer succession following the sale of productive units

AGUSTIN BOU
Partner, Jausas Legal, Spain

"IN THE PAST, SPANISH COURTS HAD RULED THAT THE TRANSFER OF A PRODUCTIVE UNIT DID NOT REPRESENT AN EMPLOYER SUCCESSION"

The Spanish Insolvency Act (hereinafter, "IA") propose as one of its main objectives to maintain the continuity of the economic activity in companies involved in insolvency proceedings.

During recent years, due to the regulation, it has been possible to save numerous jobs and business units through the sale of productive units within the context of insolvency proceedings. The reason behind this achievement was that this type of sale made it possible to keep business units economically viable by leaving behind insolvency liabilities, combined with subrogation of employment contracts as a necessity in order to ensure this continuity.

In the past, Spanish courts had ruled that the transfer of a productive unit did not represent an employer succession, which meant that debts owed in relation to salaries and Social Security were not assumed by the acquirer. However, although the most recent reforms to Spain's IA were theoretically designed to make such sales more flexible, they have in practice done just the opposite. Its new provisions force the purchasers of productive units to assume debts related to employee and Social Security claims.

The latest reforms of the Spanish Insolvency Act

Royal Decree-Law 11/2014 of 5 September, on Urgent Measures Related to Insolvencies, which became, after the corresponding parliamentary process, the Spanish Law 9/2015 of 25 May, on the Amendment of Insolvency Act, changes significantly the regulation contained in the IA regarding the sale of productive units within insolvency proceedings.

This reform introduces article 146 bis to the IA in order to establish special rules for the transfer of productive units. Pursuant to this article, the acquirer shall be subrogated in the debtor's contracts and administrative licenses whose termination has not been requested, and such a transfer will not give rise to the obligation for the acquiring party to settle debts unpaid by the insolvent company prior to the transfer. However, it also includes the exception "*without prejudice to the provisions found in article 149.4 IA*".

The aforementioned article 149.4 IA states that when a productive unit is transferred, it will be understood, for purposes of employment and Social Security, that an employer succession is taking place. Hence, the legislator deprives the acquiring party of the possibility of getting rid of the debts related to employee and Social Security claims.

Initially, some Commercial Court judges ruled that the reference made by article 146 bis. 4 IA to article 149.4 IA had to be interpreted in the sense that the acquirer only had to assume debts owed to the employees and to the General Social Security Treasury (hereinafter "TGSS") derived from employment contracts that were in force at the time of the transfer or adjudication. Therefore, at that time, the acquiring party did not also assume debts owed from contracts that had already been extinguished at the time of the effective adjudication.

However, this interpretation, previously held by the majority of the Commercial Court judges, has been contested and challenged both by the employees and the TGSS, generating a very strong sense of legal uncertainty until the Employment Chambers of various regional appeal courts (*Tribunales Superiores de Justicia* or *TSJ* in Spanish) have issued several rulings providing clarification on this matter.

Consolidation of the employer succession during 2017

With respect to the underlying issue, during 2017 the Employment Chambers of various regional appeal courts have affirmed that in situations regulated by the new legislation (i.e., when the liquidation phase of the insolvency proceedings were opened on, or after 26 May 2015), article 44 of the Spanish Employees' Statute shall apply if a productive unit is sold. This means that employer succession does exist at the employment level, and the party acquiring the productive unit, hence, becomes jointly and severally liable for the salary-related and Social Security debts of the insolvent company with respect to all employees (including both those who are subject to subrogation and those who are not), by virtue of the provisions of articles 146 bis. 4 and 149.4 of the IA.

The very same conclusion has been achieved in rulings by the Employment Chamber of the TSJ of Galicia on 16 June 2017 (appeal 325/2017), by the Employment Chamber of the TSJ of Andalusia (Seville) on 22 June 2017 (appeal 2581/2016), and by the Employment Chamber of the TSJ of Catalonia on 18 October 2017 (appeal 4177/2017).

This last ruling cited is especially significant because it contains an analysis of how the amendments made to articles 146 bis and 149.4 of the IA, as part of the latest legislative reforms, have represented a 360-degree turnaround on this issue: whereas previously liquidation plans were able to limit the liability of a party acquiring a productive unit in terms of debts owed to employees and the TGSS, such limitation is no longer possible, because article 149.4 IA is a mandatory provision that expressly establishes the existence of employer succession for purposes of salaries and Social Security.

Finally, it should be noted that the Spanish Supreme Court (*Tribunal Supremo*) has ruled that Spain's regional Employment Courts (*Juzgados de lo Social*) are competent to rule upon the existence of employer succession under circumstances involving the sale of productive units during insolvency proceedings.

Impact of the new regulation and its convenient reform

The reform introduced by the Spanish Law 9/2015 of 25 May, on Amendment of Insolvency Act, and its subsequent interpretations have consolidated the employer succession in sales of productive units within insolvency proceedings. This new Law represents the granting of a privileged status, that the IA does not establish in principle, to all debts related to salaries and Social Security since the acquirer will be compelled to pay such debts.

And what is more important, this new Law could checkmate the sale of productive units, since such rulings increase the amount that parties interested in acquiring productive units will have to invest and probably will scare off prospective buyers, leading instead to the disappearance of the insolvent company which included a productive unit and to the loss of all jobs.

Therefore, the approval of the Spanish Law 9/2015 and its subsequent interpretation have seriously restricted the opportunities to purchase productive units as they force the acquirers to inherit both current and past debts owed to employees and Social Security. What is more desirable now is for the legislature to finally understand that the only way to preserve the country's industrial fabric and the associated jobs is to once again reform articles 146 bis.4 and 149.4 of the Spanish Insolvency Act, in order to clearly and expressly state that when the transfer of a productive unit occurs during insolvency proceedings there is no employer succession, given that this type of sale is overseen by the insolvency judge, and it is taking place in an effort to maintain the viability of the business units.

Although such further reform is desirable, until it occurs any parties interested in acquiring productive units will have to carefully analyze the insolvent company's debts related to employees' salaries and Social Security, so that they can adapt their offers to the existence of such contingencies and avoid unpleasant surprises after the acquisition. ■

"THE APPROVAL OF THE SPANISH LAW 9/2015 AND ITS SUBSEQUENT INTERPRETATION HAVE SERIOUSLY RESTRICTED THE OPPORTUNITIES TO PURCHASE PRODUCTIVE UNITS"

Share your views!

Finland: Fine-tuning a stable insolvency system

Prof. Tuula Linna and Sami Uoti outline the recent updates and developments

TUULA LINNA
Professor of Procedural Law at the University of Helsinki and Member of the EU Commission's Experts Group on Restructuring and Insolvency

SAMI UOTI
Partner in HPP Attorneys Ltd and Chair, Advisory Board for Bankruptcy Affairs

Share your views!

In Finland, insolvency proceedings and enforcement procedures are currently stable. On the whole, the Finnish insolvency system is quite modern, although minor streamlining is needed.

Insolvency legislation consists of three pieces of law: the Bankruptcy Act (120/2004), the Restructuring of Enterprises Act (47/1993), and the Act on the Adjustment of the Debts of a Private Individual (57/1993). Additionally, according to the Enforcement Code (705/2007), attachment and other civil enforcements are to be administered by enforcement officers (that is, bailiffs and their staff).

In the Finnish insolvency system, there are no joint procedures; thus, the most suitable insolvency procedure has to be selected in the opening phase on a case-by-case basis. This can easily lead to problems regarding the coherence of and coordination among the different procedures (e.g., how to shift from liquidation to restructuring and vice versa). Furthermore, the scope of the Debt Adjustment Act has been extended to entrepreneurs, which is expected to increase the number of such proceedings.

As for digitalisation, enforcement proceedings operate efficiently on the basis of a countrywide electronic system (ULJAS) and the majority of attached property, including real property, is sold via internet auctions. Additionally, an electronic system (KOSTI) was launched in 2015 to assist insolvency practitioners and creditors with bankruptcy and restructuring procedures. However, digitalisation has not been implemented in debt adjustments in respect of private persons. Some progress is expected in this area once the municipal debt advisory service is brought under the jurisdiction of the Ministry of Justice in early 2019.

Bankruptcy

Presently, on assignment from the Ministry of Justice and the Ministry of Environment, an expert group is working on the problem of 'environmental bankruptcy': that is, whether or not the bankruptcy estate is responsible for cleaning and abolishing harmful environmental pollution. According to the assignment letter (2015), one of the tasks of the expert group is to evaluate whether the environmental liabilities of a bankruptcy estate should be dealt with by statute and, if so, how this should be done. The group is also tasked to consider different kinds of environmental hazards as well as their severity and acuteness.

Indeed, underlining the fact that this is a 'live' issue, environmental liability was raised recently in a case before the Finnish Supreme Administrative Court (KHO 2017:53), which held that the bankruptcy estate is responsible for the handling of dangerous waste, even if the operation of the debtor company has otherwise ended. The court noted that this is not a matter of debt, but a question of compulsion through public administrative law.

The terminal date for the work of the expert group is end-March 2018. If the work of the group leads to legislation, Finland will be, to the best of our knowledge, one of only a few countries with legislation concerning the environmental liabilities of a bankruptcy estate. In addition, the expert group will also evaluate the efficiency of bankruptcy proceedings. Presently, these proceedings are considered overly time-consuming, particularly in their initial phases, where the workload is regarded as much too heavy considering that approximately 75 percent of opened bankruptcy proceedings lapse due to the debtor's lack of funds.

Restructuring of enterprises

Current Finnish restructuring legislation works quite effectively. A surprisingly high percentage of Finnish restructuring cases concern SMEs. The competence to hear restructuring cases is concentrated in nine district courts (out of 27). However, the expertise of district judges to estimate the viability of a company has at times been called into question.

The Ministry of Justice has given a law firm the assignment of preparing an international report concerning debt-equity swaps. The purpose of the review will be to offer policy-makers information that will allow them to estimate the need for reforms to the Finnish system, regarding, on the one hand, the efficiency of the bond market, and, on the other hand, the need to protect the interests of debtor companies. These efforts are linked to the EU Commission's proposal for a

> THE FINNISH ENFORCEMENT SYSTEM IS REGARDED AS VERY EFFICIENT AS IT OPERATES AS A SINGLE UNIT ON THE BASIS OF A COMMON IT SYSTEM

preventive restructuring directive as well as schemes of arrangement.

Within the Ministry of Justice, an international survey is also being prepared concerning the post-bankruptcy debt liability of entrepreneurs, which will address whether there is a need to facilitate the discharge of former entrepreneurs in debt adjustment proceedings. The regular duration of a payment plan in debt adjustment is three years; however, in cases where the debtor is not able to make repayments, the duration of the payment plan is five years.

Enforcement system

The Finnish enforcement system is regarded as very efficient as it operates as a single unit on the basis of a common IT system. Bailiffs acting as office-holders are vested with the authority to obtain information about the economic situation and income of debtors, including, *inter alia*, access to bank accounts. The enforcement officers are also vested with the authority to set aside various kinds of artificial legal arrangements, such as lifting up the corporate veil, especially where debtors attempt to avoid enforcement.

The EU Commission's initiative to develop secondary markets for non-performing loans and distress assets, as well as protect secured creditors from borrower default,[1] is largely not relevant in Finland, as bailiffs are normally able to sell pledges and mortgaged real estate at good prices without incurring high costs. To the best of our knowledge, the banks are quite satisfied with the current system.

Finland pays particular attention to the protection of debtors, as is evidenced by policies regarding *beneficium* (debtor's exempted property) and exempted months in attachment of earnings. In addition, a recent amendment law was enacted to promote the employment of debtors by ensuring 'enforcement free months' when a debtor obtains a position after a long period of unemployment.

Summary

On the whole, the Finnish legal insolvency system is functioning well. However, early preventive frameworks, such as pre-insolvency proceedings or schemes of arrangement in company and insolvency law, are not as advanced and will require review. Discussion concerning the responsibilities of management to avoid the insolvency of a company is also needed. ■

Footnotes

1 See the public consultation published 10 July 2017: <https://ec.europa.eu/info/consultations/finance-2017-non-performing-loans_en>.

The new Belgian Insolvency Code: A step towards the law of tomorrow

Belgian reformsto codify and improve existing law in line with European best practices

SOPHIE JACMAIN
Partner, NautaDutilh

STAN BRIJS
Partner, NautaDutilh

LEONARD MAISTRIAUX
Junior Associate, NautaDutilh

Share your views!

Over the past few years, the Belgian legislature has consolidated various pieces of legislation regulating businesses into a single instrument: the Code of Economic Law (*Code de droit économique/Wetboek van economisch recht*). Insolvency law has not escaped this trend.

In the summer of 2017, the Belgian Parliament enacted Book XX of the Code of Economic Law, entitled 'Insolvency of Undertakings' (hereinafter the 'Insolvency Code'). The new rules will enter into force on 1 May 2018 and will be applicable to insolvency proceedings opened after this date. The primary purpose of the Insolvency Code is to centralise and integrate the existing rules of Belgian insolvency law, previously found in the Bankruptcy Act of 8 August 1997 and the Business Continuity Act of 31 January 2009. Its secondary purpose is to modernise insolvency proceedings. Some new features of the Insolvency Code are presented below.

An 'undertaking' rather than a 'merchant'

The most important change introduced by the Insolvency Code is the extension of the scope of insolvency proceedings. Previously, insolvency proceedings (in particular bankruptcy) were only available to persons that qualified as a 'merchant', a narrow legal concept dating back to the Commercial Code of 1807. This limited, and in many respects antiquated, concept was considered to no longer reflect current (European and Belgian) business and legal reality. The Insolvency Code replaces the concept of merchant with that of an 'undertaking' (*entreprise/onderneming*). This concept encompasses most legal forms under which independent economic activity can be conducted. The result is that many more economic operators will become subject to insolvency law. For example, the so-called liberal professions (e.g. lawyers and architects), farmers, non-profit associations and unincorporated organisations (such as the *maatschap/société de droit commun*), which were excluded from the old insolvency legislation, will fall under the scope of the new code. This means that they can be declared bankrupt but can also benefit from reorganisation proceedings.

Digitisation

In keeping with the ongoing digitisation of the Belgian judiciary, the Insolvency Code strives to make insolvency proceedings fully digital. All information related to insolvency proceedings will henceforth be consolidated in an online central solvency register, which will be accessible to magistrates, debtors, creditors and their lawyers. The register that will be connected to the registers of other Member States, pursuant to the Recast Insolvency Regulation. Digitisation will not only reduce the cost and length of insolvency proceedings but also ease the workload of the judiciary and enhance transparency.

Strengthening of the 'fresh start' rules

The Insolvency Code also reforms the so-called "fresh start" rules. The idea behind these rules is that insolvency should not be a stigma and that natural person debtors should be given a genuine second chance to start over. To this end, the Insolvency Code replaces the rather complex rules on debt forgiveness (*excusabilité/verschoonbaarheid*) with a new regime on debt discharge (*effacement/kwijtschelding*). Under the new rules, the remaining debts of an entrepreneur will be discharged unless an interested party (e.g. a creditor or the trustee in bankruptcy) actively opposes discharge by demonstrating that gross and serious misconduct on the debtor's part contributed to the bankruptcy. To further strengthen the fresh start rules, income from a new activity arising after the start of the proceedings will be excluded from the bankruptcy estate (*masse de la faillite/massa van het faillissement*), whereas today such income falls within the estate until the close of the proceedings.

Settlement possibilities

Pursuant to the European Union's wish to promote out-of-court settlements as an alternative to formal insolvency proceedings, the Insolvency Code strengthens the existing settlement possibilities. The parties to a confidential settlement will now be able to petition the court to approve their agreement and/or to issue an enforceable order for the debts covered by the agreement.

Liability actions

Liability claims against directors raised in the context of insolvency proceedings will henceforth form an integral part of the Insolvency Code.

The rules governing claims for gross and serious negligence (*faute grave et caractérisée/kennelijk grove fout*) have been reformed. Under the old rules, only the trustee in bankruptcy could, in practice, bring such an action. Under the new rules, if the trustee in bankruptcy fails to act, an individual creditor has the right to bring an action on behalf of the bankruptcy estate. Furthermore, the creditor will be indemnified for the costs of the proceedings

(i) when the trustee in bankruptcy takes over the suit, or
(ii) if the trustee does not take over the suit, if the proceedings are ultimately successful.

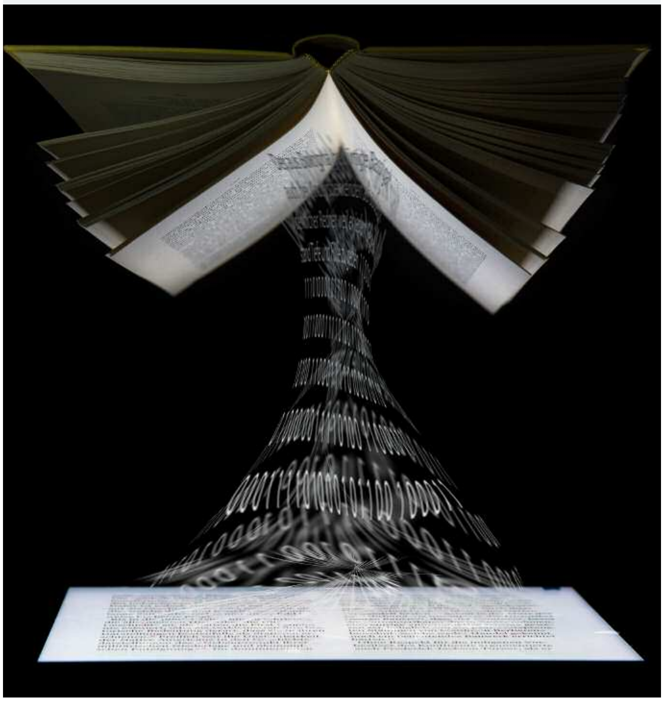
In addition, in certain cases, the liquidation proceeds are distributed on a *pro rata* basis amongst all creditors, without regard to security interests or statutory liens.

In addition, a separate liability action for 'wrongful trading' has been introduced. This type of action, which already exists in other countries, can be brought against a director who knew or should have known that there was no reasonable possibility to continue the business or avoid bankruptcy and yet failed to act as a reasonably prudent person would have done under the same circumstances. The underlying purpose is to improve the diligence of directors of struggling businesses.

Internationalisation

The Insolvency Code provides for a robust framework of rules to support cross-border insolvency proceedings, in accordance with the Recast Insolvency Regulation. In this respect, the Insolvency Code distinguishes between

(i) European insolvency proceedings, and
(ii) other international insolvency proceedings.



With respect to the former, the Insolvency Code provides for complementary rules in support of the Recast Insolvency Regulation. With respect to the latter, the Belgian legislature opted for consistency and replicated, insofar as possible, the rules applicable to European insolvency proceedings.

Reinforced preventive measures but no prepack

The Insolvency Code amends and improves the existing rules on preventive measures. The powers of the offices for firms in difficulty (*chambres des entreprises en difficulté/kamers voor ondernemingen in moeilijkheden*) are reinforced, specifically *vis-à-vis* dormant companies. The bill initially contained an interesting framework for prepack transfers. However, at the end of the parliamentary process, the European Court of Justice issued its *Estro* judgment, in the aftermath of which the government decided to drop, for the time being, this new mechanism and await further developments at the European level.

Conclusion

In the words of Justice Minister Koen Geens, the codification and modernisation of insolvency law form part of an effort "*to make strides towards the law of tomorrow*". While not a revolution, the new Insolvency Code is nonetheless a substantial step forward. The result is a more accessible and up-to-date statutory framework with more balanced insolvency rules that allow the flexible and efficient restructuring of undertakings, while taking into account creditors' and other stakeholders' concerns and facilitating a fresh start for debtors. ■

"DIGITISATION WILL NOT ONLY REDUCE THE COST AND LENGTH OF INSOLVENCY PROCEEDINGS BUT ALSO EASE THE WORKLOAD OF THE JUDICIARY AND ENHANCE TRANSPARENCY"

Managing credit risk in the supply chain

David Conaway explains why companies should apply credit risk analysis to their supply chain

DAVID H. CONAWAY
Shumaker, Loop & Kendrick LLP (USA)

Companies expend substantial resources managing the credit risk of customers, to protect the value of their sales. Many companies, however, do not always apply credit risk analysis to their supply chain, focusing instead on procurement at the lowest cost and compliance with a myriad of regulatory issues.

However, credit risk in the supply chain may actually pose a greater potential risk of loss. If a supplier fails to deliver the product on time, the manufacturing process can be interrupted or halted, potentially idling plants at a significant daily cost to the company.

In addition to diversity in the supply chain, companies can manage their supply chain "credit" risk, before and after financial distress or insolvency of a key supplier.

Early warnings of supply chain risk

The key to avoiding risk is identifying the primary sources of risk, including a supplier's key relationships with third parties. Is the supplier's lender providing working capital or term loans to provide necessary operating liquidity? Or, is the supplier funded by a 2nd or 3rd tier "asset based" lender who provides funding based on fluctuating inventory and accounts receivable, the advance rates for which are constricted and largely discretionary? Does the funding provide sufficient liquidity to operate? Note that lenders have a contractual advantage over the supplier, they can move quickly to restrict financing and recover collateral in the event of any business issues. A company dependent on such a supplier should seek early warnings of covenant violations or defaults under the loan agreements.

Companies should review their supplier's financial records, including operating performance, budgets and balance sheets. Does the supplier have long-term contracts with the component-parts suppliers? Is the supplier current with the vendors?

Suppliers may also receive funding from bond-holders who also have a contractual advantage over the supplier and second lien positions on the supplier's inventory and accounts receivable. In addition, many suppliers are funded by private "equity", which is increasingly not equity, but rather asset-based loans or convertible equity. These normally involve management participation or control through board majority or management contracts. As part of the C-suite, private equity has contractual and legal advantages over the supplier.

A manufacturer who is a significant customer for the supplier is in essence a co-venturer of the supplier and of the supplier's financiers. A material manufacturing company should assert its bargaining position to obtain information about the supplier's ongoing financial condition and notices from the supplier and the financiers of defaults or covenant violations.

> "A MANUFACTURER WHO IS A SIGNIFICANT CUSTOMER FOR THE SUPPLIER IS IN ESSENCE A CO-VENTURER OF THE SUPPLIER AND OF THE SUPPLIER'S FINANCIERS"

Minimise supply chain risk after default

If a supplier defaults in the delivery of parts or products for the manufacturing company, the company should not hesitate to enforce its rights upon such default under the Uniform Commercial Code (UCC). In addition, companies should be aware of an available remedy when the supplier is not in default, but the company is concerned about the supplier's ability to continue performing as agreed. UCC Section 2-609, Right to Adequate Assurance of Performance *aka* "anticipatory default", allows the company to withhold performance (or, payment of outstanding accounts receivable), if the company has "reasonable grounds for insecurity … with respect to the performance" of the supplier. The company must demand in writing adequate assurances of performance and, until receipt of such assurances, may suspend performance if commercially reasonable.

Contract Tip: The supply agreement should specifically include UCC 2-609 (among other provisions) as a remedy, and provide that the company may suspend payment of any accounts receivable owed upon the failure of the supplier to timely deliver goods.

Practical Tip: If time is not critical, it is advisable to demand assurances and ask for a notice of suspension of performance prospectively, perhaps in five to ten days.

Note that the accounts receivable owed by the manufacturing company to its suppliers and the goods produced by the supplier to be sold to the company are also the collateral of the supplier's lender. Upon the failure of early warning signals, the first notice of a problem may be the lender's notice to the company, to make payments owed for goods purchased, directly to the lender. This is a clear indication that the lender is in collateral recovery mode. The lender could attempt to extract non-ordinary course payment from the company in order to obtain uninterrupted delivery of the goods.

To the extent that the company has title or an ownership interest with respect to the goods produced, or has tools, equipment or other assets under bailment or consignment to the supplier, the lender could also attempt to assert its lien as superior when the parties' rights to title are not clear. The company may need to act quickly by asserting potential claims of tortuous interference with contract or conversion of assets in response.

Practical Tip: In addition to complying with the requirements of the UCC, the company should obtain a written acknowledgement by lenders, mentioning the company's superior title of owned property, and the agreement between the company and the supplier, both of which should reduce these risks.

Navigating risks upon a supplier's insolvency

Should the supplier file for Chapter 11, the company will face two primary issues. First, will the supplier successfully reorganise or will it liquidate assets, perhaps in the form of a Section 363 sale of all of the assets? The second issue facing the company will be the impact of the Chapter 11 filing on any sales or supply contract.

With respect to the ultimate outcome of the Chapter 11 case, the so-called "first day" motions filed by the supplier are an indicator of the eventual outcome of the Chapter 11 case. In particular, it is customary for a Chapter 11 debtor to secure "debtor-in-possession" (DIP) financing, usually from its pre-petition lenders. If the DIP financing is short-term, such as 60 or 90 days, and the budget associated with the DIP financing appears highly restricted, it is likely that the lender does not contemplate funding a reorganisation. Moreover, if milestones under the DIP financing agreement include securing a stalking horse bidder and filing a motion to sell assets, it is clear the lender is using the Chapter 11 proceedings to liquidate its collateral.

By contrast, if the DIP financing is long-term and milestones are tethered to filing a business plan or a plan of reorganisation, then it is more likely that the parties intend a successful Chapter 11 reorganisation plan. In either case, it is important for the company to determine whether it will have an uninterrupted flow of goods purchased during the Chapter 11 proceedings and thereafter. The company is entitled to understand the Chapter 11 debtor's ability to continue to supply goods in the ordinary course of business. The company is well advised to engage with the company and other stakeholders in the Chapter 11 proceedings, in order to obtain as much information as possible, including the supplier's Chapter 11 budget.

If the company and the supplier are doing business on a purchase order and invoice basis, it is more likely that the parties do not have an "executory contract", which is a Bankruptcy Code term for any contract where both parties owe material performance to the other. With no executory contract, the company is free to seek alternative suppliers to hedge the risks in the event that the supplier is not able to successfully reorganise. On the other hand, if the supplier and the company are doing business pursuant to a written sales or supply agreement, the Bankruptcy Code provides that the Chapter 11 debtor has the right to assume or reject the executory contract, which usually occurs in connection with the filing of a plan of reorganisation at the end of the Chapter 11

proceeding. Pending this decision, the parties are obligated to continue performing under the contract. If the supplier assumes the contract, the supplier is required to cure all pre-petition defaults, and the company will be obligated to continue doing business with the supplier. However, the company has the right to evaluate the supplier's ability to perform prospectively and the feasibility of any plan of reorganisation and to object to an assumption of the contract and any proposed plan of reorganisation.

In the event the Chapter 11 supplier seeks to sell substantially all of the assets to a third-party purchaser pursuant to Section 363 of the Bankruptcy Code, the Chapter 11 debtor also has the right to "assume and assign" executory contracts to the third party buyer. Similarly, the company would have an opportunity to evaluate a third-party purchaser and obtain assurances of the ability to perform prospectively. Also, to the extent of the company's intellectual property rights, the supplier may not be able to assume and assign a contract without the company's consent.

Contract Tip: The sales or supply agreement should expressly provide for termination of licenses or other use of the company's intellectual property rights upon default, change of control or assignment of the contract absent consent. ■

> "IT IS IMPORTANT FOR THE COMPANY TO DETERMINE WHETHER IT WILL HAVE AN UNINTERRUPTED FLOW OF GOODS PURCHASED DURING THE CHAPTER 11 PROCEEDINGS AND THEREAFTER"

Share your views!

Country Reports

Spring 2018

Updates from France, Turkey, Italy, Latvia

CATHERINE OTTAWAY
Partner, and Marine-Océane Perrin-Terrin (HOCHE Avocats)

"ONLY COMPANIES ACTIVE IN AGRICULTURE AND TRANSPORT/ WAREHOUSING CONTINUE TO SHOW AN INCREASE IN THEIR DIFFICULTIES"

France: Decline in the number of French collective proceedings opened by the courts confirmed

While in 2016 France showed a slight recovery in its economic activity and a certain decline in the opening of collective proceedings, 2017 marked a significant revival, with figures approaching those prior to the 2011 crisis. Moreover, INSEE announced on January 30th, 2018, a 1.9% GDP growth for the year 2017. Applauded by all, some economists and the media have even called this year '*the year of take-off*'[1].

The figures

Collective proceedings clearly reflect this phenomenon. France shows a total decrease of 5.8%[2] in the opening of all collective proceedings (safeguarding, administration and liquidation) over the twelve months of 2017 compared to 2016. Representing a total of 54,572 cases opened in 2017 compared to 57,947 in 2016.

While the decrease in winding-up and adjustment procedures reached 7% in 2017, it was in the safeguard procedures that the largest setback occurred. Figures show a decrease of 10.5% in pronouncements by French courts to initiate safeguard proceedings.

The sectors

This change in the economic conditions is obvious in all sectors. Only companies active in agriculture and transport/ warehousing continue to show an increase in their difficulties. Small and medium-sized companies are also less and less prone to collective proceedings (-6%). All young companies (less than three years old) seem to be the most favored (-10%); only hotels and restaurants still show difficulties in maintaining themselves.

The benefits

As a result, there has been a sharp decline in wage problems.

On the one hand, with a reduction in the number of jobs at risk: this phenomenon is illustrated by the drop in the triggering of wage guarantee procedures and the activities of the 'AGS' (*Association for the management of the scheme to guarantee employees' claims*, an employers' organisation based on the inter-professional solidarity of employers and financed by their contributions), which fell by 9.2%, that is to its lowest level in 15 years.[3]

On the other hand, by reducing the number of redundancies: many employment contracts were maintained after the opening judgment. This shows that companies are less likely to lay off workers in order to survive.

Finally, since alternative procedures show no sign of development, growth is the only reason for this development. France seems to be returning to figures close to those known before the last stock market crash in 2011. ■

Footnotes:

1 (i) Mathieu Plane, economist at the "*Observatoire français de la conjoncture économique*". (ii) Europe 1 – "*L'économie*" – January 30th, 2018

2 Data published by the "Banque de France" on March 16, 2018.

4 Stat-ags – n°19 – January 2018

Turkey:

Holding a company's legal representative liable for unpaid public debts does not violate property rights

Turkey's Constitutional Court recently confirmed that a company's legal representatives are jointly responsible with the respective legal entity for public debts if they were payable during their time of influence at the company. The court held that this does not upset the balance between public benefit and an individual's constitutional right to property.

The applicant ('Applicant') was a board member for a company ('Company') between 1996 and 1999. The Company took three different loans from Yaşarbank A.Ş. ('Yaşarbank') during 1994 and 1995, before the bank was transferred to the Savings Deposits Insurance Fund ('Fund') in late 1999. The Fund's purposes are to protect the depositors' rights, strengthen financial structures and pursue the receivables of banks which have been transferred to the Fund by the Banking Regulation and Supervision Agency ('Agency'). In this case, the Agency transferred Yaşarbank to the Fund due to mismanagement. Upon being transferred to the Fund, Yaşarbank's receivables, including the Company's loans, became public debts.

The Fund executed payment protocols with the Company for payment of the public debts. However, the Company subsequently failed to comply with these protocols. Therefore, in May 2008, the Fund initiated execution proceedings, seeking to recover the uncollected public debts from the Applicant, as per Repetitive Article 35 of the Law on Collection Procedure of Public Receivables number 6183 ('Law'). The provision states that a legal entity's legal representatives will be personally responsible for public debts which cannot be collected from the legal entity.

The Applicant filed a lawsuit seeking to cancel the Fund's payment order. The Applicant argued that he is not liable because:

- The Company's debt became a public receivable in August 2001, after he was a board member.
- Article 35(5) of the Law does not apply because the Constitutional Court had struck out a key empowering part of the provision (Article 35(5)) for pending cases, as well as Article 35(5) itself.

However, the Istanbul 8th Administrative Court dismissed the cancellation law suit and the decision became final after being reviewed by the Supreme Court.

The Applicant then applied to the Constitutional Court on the grounds that his property rights were violated by being held responsible for the Company's debts, which had become public debts after he resigned as the Company's representative, despite the Constitutional Court having annulled Repetitive Article 35(5).

The Constitutional Court noted that Repetitive Article 35(5) had been annulled to remove the responsibility of legal representatives for debts which were not payable when they were representatives.

In these circumstances, the Constitutional Court decided that the Applicant's liability was not affected by the enforcing article being annulled. The Constitutional Court underlined that Article 35(5) was annulled because it was causing representatives to be held liable for public debts arising from transactions which they could not have intervened in.

However, the Constitutional Court ruled that in the case at hand, the unpaid debt had been payable during the Applicant's term as a board member. Therefore, he had the chance to intervene. Accordingly, the Constitutional Court ruled that holding the Applicant responsible, in circumstances where he neglected his duty to pay the debt from the Company's sources, is not an excessive and disproportionate burden. The Court ruled that this does not upset the essential balance between public benefit and an individual's constitutional property right.

Consequently, the Constitutional Court held that legal representatives are jointly responsible with the respective legal entity, from the date the public debt became payable.

The decision is important as it sets a distinct framework for company representatives' liability in the face of property rights protected by both the Turkish Constitution and the European Convention of Human Rights. It is now crystal clear that company representatives can be held personally liable if they neglect their duty to pay public debts from the company's sources. ■

" IT IS NOW CRYSTAL CLEAR THAT COMPANY REPRESENTATIVES CAN BE HELD PERSONALLY LIABLE IF THEY NEGLECT THEIR DUTY TO PAY PUBLIC DEBTS "

ORÇUN ÇETINKAYA
Partner, Moroğlu Arseven, Istanbul, Turkey

BURAK BAYDAR
Senior Associate, Moroğlu Arseven, Istanbul, Turkey

EUGENIO VACCARI
PhD Candidate at City,
University of London

Italy:
Systemic reforms

On 11 October 2017 the Senato della Repubblica approved the final version of a law aimed at systemically reforming Italian insolvency law, which in its fundamentals dates back to 1942. Law no. 155/2017 ('the act') has been published on the Gazzetta Ufficiale on October 30, 2017 , and entered into force on 14 November 2017 (Year 158, No. 254).

This reform is based on the preparatory work of the 'Rordorf Commission', a group of experts appointed by the Ministry of Justice in January 2015 with the task of writing a reform proposal to modernise insolvency statutes. Both the commission and the government have been inspired by the desire to introduce and comply with international best practices set out by the UNCITRAL and the EU (although quite oddly no mention is made to the 2016 Proposal for a EU Directive on Insolvency, Restructuring and Second Chance).

This act does not *materially* change the current legislation. It gives the government the authority (and twelve months) to amend the law by means of one or more law decrees, which have to conform to the guidelines described below. Their enactment will determine a change in the applicable law.

The act promotes rescue over liquidation, and it aims at reducing the duration and cost of judicial insolvency proceedings. It pleads for the introduction of the notion of a 'situation of crisis' alongside with 'insolvency', and for the adoption of a single procedural model applicable to all in-court proceedings irrespective of the nature of the debtor (with the sole exclusion of public entities).

It proposes to replace the term 'failure' with 'liquidation' in order to reduce the stigma associated with insolvency.

> "LAW NO. 155/2017 PROPOSES TO REPLACE THE TERM 'FAILURE' WITH 'LIQUIDATION' IN ORDER TO REDUCE THE STIGMA ASSOCIATED WITH INSOLVENCY"

The act also significantly enhances the powers of the curator in liquidation cases. This represents a sea-change for the Italian tradition, as the country has always preferred to rely on procedures that maximised fairness and transparency (by means of judicial supervision) over maximisation of returns to creditors.

The act recommends the introduction of group proceedings for entities subject to Italian jurisdiction. Should the parties opt for separate proceedings, the act prescribes the implementation of co-ordination practices.

Another hallmark is the introduction of the 'alert and composition procedure', i.e. a non-judicial and confidential procedure carried out under the supervision of the Chamber of Commerce. Such a procedure should help the early emersion of a crisis, as the debtor is assisted by a professional body with the objective to turn around his business and reach an agreement with creditors. The debtor may also apply to the court to obtain some protections, including a stay on executory actions.

Some elements however militate against the preventive use of this procedure. In particular, the alert and composition procedure can be triggered against the debtor's will by some public entities. Furthermore, should the parties not be able to reach an agreement, this circumstance would be publicly advertised by the Chamber of Commerce, thus giving away any benefits that might arise from its confidential nature. Finally, if an insolvency status is ascertained at the end of the failed procedure, the public prosecutor is obliged to file a liquidation petition.

As it appears, the act is by no means perfect. However, it represents a much needed improvement. The next twelve months will tell if the first organic reform of insolvency law since Mussolini's times will get the green light. ■

Latvia:
Restructuring administrators no more: lax requirements disproportionately in favour of creditors' interests?

Following amendments to the Insolvency Law which entered into force on 6 January 2017, restructuring proceedings no longer call for the involvement of insolvency administrators, as the prior concept has been replaced by restructuring supervisors.

Whereas restructuring procedures were so far overseen by certified insolvency administrators who had to satisfy strict requirements in terms of their education and compliance with statutory norms, this oversight shall now be carried out by restructuring supervisors, whereby the requirements are merely that they be natural persons with full legal capacity.

In view of the prevalence of restructuring activities containing an international element, and taking into account freedom of

establishment and freedom to provide services, restructuring supervisors must be able to legally reside and work in Latvia for the duration of the restructuring proceedings. Hence, foreign restructuring experts are also a viable choice for creditors when determining their preferred candidate. One ought to note that foreign restructuring supervisors are obliged to abide by national standards for positions equivalent to that of restructuring supervisors in accordance with the statutory norms of their country of domicile.

In addition, restructuring supervisors must not have been convicted of an intentional crime, must not have had insolvency proceedings launched against them in the last five years, and must not have caused the insolvency of a legal entity. Similarly, within the past five years a proposed insolvency supervisor must not have been dismissed or suspended from public office or released from overseeing restructuring proceedings due to abuse of authority.

The most notable restriction, however, remains the prohibition imposed upon anyone involved in drawing up a restructuring plan, as they are barred from becoming restructuring supervisors in the particular case. Considering that restructuring plans have to be approved by the very supervisor delegated by creditors, it seems at least somewhat questionable whether legislators have achieved their intent to provide for a roughly proportionate equilibrium between the interests of creditors and the interests of debtors.

None-the-less, as for other requirements, restructuring supervisors need not comply with the extensive qualification and education prerequisites traditionally imposed upon insolvency administrators.

Restructuring supervisors are appointed by courts at the suggestion of both secured creditors whose main claims form two thirds of total secured creditors' claims and non-secured creditors whose main claims form half of total unsecured creditors' claims. However, the consent of the debtor is also required. Notwithstanding, the amendments are seen as heavily factoring in creditors' interests, giving them substantial influence over who oversees the restructuring process.

So long as the proposed supervisor complies with the above requirements, the adjudicating court need not assess the candidate, since the majority creditors' vote must be adhered to. However, should things go awry, along with the right to propose candidates, creditors are equally entitled to remove the supervisor at any point, and propose another candidate.

Failure to nominate a supervisor results in the termination of restructuring proceedings along with a prohibition on filing for restructuring over the course of the next four months. Repeated failure to nominate a supervisor leads to insolvency proceedings.

Besides, as opposed to restructuring administrators, restructuring supervisors are remunerated by the majority creditors who approved the restructuring plan, the amount being subject to the creditors' generosity, in turn giving rise to doubts about impartiality.

The amendments have been additionally criticised for failing to cover circumstances where the tax authority has the decisive vote among majority creditors, as it does not participate in the supervisor's remuneration scheme, yet its voting rights remain intact. Consequently, restructuring might become unrealisable due to the tax authority's involvement. ■

“RESTRUCTURING SUPERVISORS NEED NOT COMPLY WITH THE EXTENSIVE QUALIFICATION AND EDUCATION PREREQUISITES TRADITIONALLY IMPOSED UPON INSOLVENCY ADMINISTRATORS”

NIKLĀVS ZIEDS
Lawyer, Junior Associate,
bnt attorneys in CEE, Riga (Latvia)

Find your case: The INSOL Europe "European Insolvency Regulation Case Register"

Professor Reinhard Bork explains the history and purpose of the Register, and how to contribute

PROF. REINHARD BORK
University of Hamburg, Germany

"THE EIR CASE REGISTER PROVIDES A UNIQUE PLATFORM WHICH BRINGS TOGETHER RELEVANT COURT DECISIONS BASED ON THE EIR FROM THROUGHOUT THE EU"

First launched in 2011 at the INSOL Europe Annual Conference, the INSOL Europe European Insolvency Regulation Case Register is a database that summarises cases from first instance and appeal courts of Member States of the European Union, as well as the CJEU, that deal with a significant point relating to the European Insolvency Regulation (both Regulation EC 1346/2000 and Regulation EU 2015/848).

It is an internet-based system within which information on court decisions and judgments relating to the European Insolvency Regulation ('EIR') is collected and disseminated. Since 2014 the Case Register has been hosted by LexisNexis.

The goals of the EIR Case Register are threefold. Firstly, it aims to enable practitioners, insolvency office holders, judges and academic scholars to take into account relevant court decisions from other Member States when dealing with matters pertaining to the EIR. Secondly, it aims to promote and facilitate uniformity in the interpretation and application of the Insolvency Regulation. Thirdly, the final, overarching, aim of the EIR Case Register is to promote and facilitate worldwide awareness of the EIR.

The EIR Case Register provides a unique platform which brings together relevant court decisions based on the EIR from throughout the European Union. With case summaries dating from 2001 onwards and containing over 600 summaries of cases applying the EIR from every Member State, the EIR Case Register is a unique resource for anyone with a practical or an academic interest in judgments which consider the EIR.

How does the EIR Case Register develop?

The EIR Case Register relies on a network of National Correspondents in close collaboration with the Case Register's Management Board. The former are practitioners and academics in the fields of insolvency law who are situated within each Member State of the European Union. The general task of a National Correspondent is to monitor and collect court judgments and decisions from within their jurisdiction, determine which of those they consider relevant, and then prepare case summaries (abstracts) in English. Their distribution throughout the European Union, combined with their closeness to the most recent legal developments, allows National Correspondents to promptly and precisely surmise recent cases. These in turn are uploaded onto the EIR Case Register, ensuring that it consistently contains the most up-to-date and relevant summaries of cases. The latter Management Board is currently composed of Chris Laughton, Stefan Ramel and Professor Reinhard Bork. The Management Board, as well as the national abstracts moderators (Professor Reinhard Bork, Hamburg, together with Professor Kristin van Zwieten, Oxford, who ensure linguistic uniformity and clarity) and the CJEU cases moderator (Stefan Ramel, London) are assisted by the Technical Officers of INSOL Europe.

The intensive work of both the National Correspondents and the Management Board allows the EIR Case Register to constantly expand, as new case summaries are provided by National Correspondents and incorporated into the Register on an ongoing basis, ensuring that it consistently contains the most up-to-date and relevant cases. Accordingly, in 2017, the number of case summaries within the EIR Case Register increased to over six hundred. Moreover, in January 2018 alone, an additional fifteen cases were added to the EIR Case Register.

How are the case summaries structured?

At two- to five-hundred words and no more than two pages long, the case summaries in the EIR Case Register provide only the most salient and relevant points taken into account in judicial decisions which apply or consider the EIR.

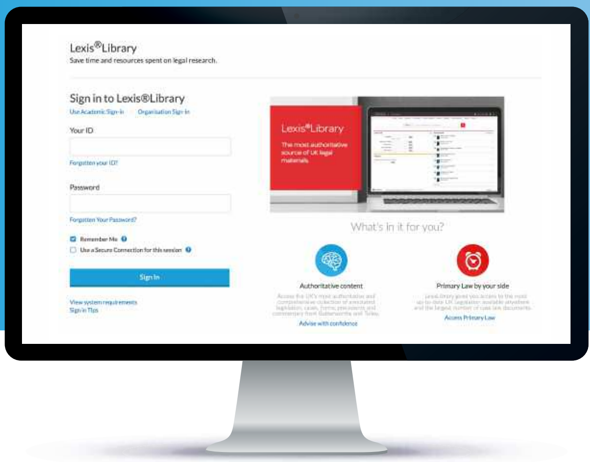
National Correspondents are all provided with, and work to, a standardised layout which prescribes a fine and detailed set of objective data and specific rules, and allows for easy accessibility and comprehensibility. This ensures that every case summary is identical in format, irrespective of its original provenance. Furthermore, National Correspondents also work with a list of themes which are used to provide key words for the case summaries and reflect the legal and technical details necessary for optimal functioning of the Register.

How to access the Case Register

While the Case Register's management and moderation remains the responsibility of INSOL Europe, since 2014, the Case Register has been hosted by LexisNexis and, accordingly, is accessible under: ***http://tinyurl.com/y7tf2zc4***

INSOL Europe members should have received an email with individual login details (user name) and passwords. If these have been forgotten, or the email lost, there is a LexisNexis dedicated mailbox for INSOL users (**INSOL-Users@lexisnexis.co.uk**) which can be contacted to be sent a reminder.

Non INSOL Europe members can contact the technical officers of INSOL Europe at **technical@insol-europe.org** who will arrange access to LexisLibrary and for the Lexis Team to send new user information.



For increased depth, and to enable further and more detailed research, the case summaries on the EIR Case Register contain information such as the original public source of the full judgment from the relevant Member State, the relevant case law from the CJEU, and, in many cases, a commentary on the case.

What is the Case Register useful for?

The broad and unrivalled scope of the EIR case register makes it a particularly useful tool which allows practitioners and academics alike to access and consider the case law relating to the European Insolvency Regulation from within the European Union.

Any jurisprudence handed down from the CJEU is binding on the Member States within the EU. Yet relatively little case law or guidance is available. Subsequently, the treatment of the Regulation in the national courts of other Member States becomes of significant importance as guidance in cases where the respective Member State has either little, or no, case law considering or answering a particular question. Although cases from first instance or appeal courts of other Member States would not be binding, they can be of significant use as guidance when considering how the European Insolvency Regulation may be applied within another Member State. However, many such decisions are taken by first instance or appeal courts within the different Member States. This means that they are generally only published in the native language of the Member State from which they originate and, accordingly, are often inaccessible or are only accessible through multiple paywalls, and present the risk of mistranslation or inaccurate translation to those wishing to access them.

The case summaries that make up the EIR Case Register, as they are supplied by native practitioners and academics from every Member State of the European Union, circumvent this problem. The case summaries are all written and published in English for easy accessibility and consistency throughout the Register, but come from the jurisdiction where the original judgment was pronounced. While not binding, they allow practitioners and academics to consider different interpretations of potentially problematic articles of the European Insolvency Regulation to which they would not otherwise have access and which could be persuasive within their native jurisdictions.

Incorporation of the EIR Recast into the Case Register

Following the entry into force of the European Insolvency Regulation Recast 2015/848, the aforementioned standardised layout was adjusted to allow for cases which apply the Recast EIR to be quickly easily identifiable, as well as to allow for immediate incorporation of these cases into the EIR Case Register.

Since 26 June 2017, case summaries applying the Recast EIR have been incorporated into the EIR Case Register. As of early February 2018, six case summaries applying the Recast EIR have been composed and uploaded onto the EIR Case Register and more are in the pipeline.

This further development keeps the EIR Case Register at the forefront of judicial development and ensures that those who use it do not run the risk of relying on out of date information.

A concrete illustration of using the Case Register

Once a case summary has been written and submitted by a National Correspondent, reviewed by the board and added to the EIR Case Register, it becomes available to those who have access to the Register.

Accessing the case summaries is then simple. It is possible to either search by key word and use relevant criteria such as the case name, its citation, judgment date, court (note the court name must be accurate), relevant section of the Recast EIR or EIR 2000. Alternatively, a search by browsing features is available, which allows for browsing through case summaries submitted, by country, or all case summaries submitted from a certain country. ■

> **THE BROAD AND UNRIVALLED SCOPE OF THE EIR CASE REGISTER MAKES IT A PARTICULARLY USEFUL TOOL**

Share your views!

New cases applying the Regulation (EU) 2015/848 to insolvency proceedings

Myriam Mailly writes about new cases published on the Lexis-Nexis INSOL Europe EIR Case Register following the entry into force of the European Insolvency Regulation (Recast) on 26th June 2017

MYRIAM MAILLY
INSOL Europe Co-Technical Officer

Like its predecessor, the European Insolvency Regulation (Recast) (hereafter 'EIR (recast)') sets out rules to (among others) establish which court has jurisdiction to open a cross-border insolvency case. In terms of 'jurisdiction', main insolvency proceedings still take place before the courts of the European Member States where the debtors' centre of main interests ('COMI') are situated.

Recent case examples

The EIR (recast) now expressly specifies that in the case of an individual running a business or a professional activity, the debtor's COMI should be located at the principal place of the business, while in the case of any other individual, the COMI is where that individual usually lives.

A case from Gibraltar (*Re Advalorem Value Asset Fund Limited*) stressed the importance to determine whether an individual was exercising an independent business or a professional activity under Article 3(1) of the EIR (recast). The question was important as the debtor's COMI would have been located in Gibraltar if he fell into that category, while his COMI would have been in Spain if he was not.

In another case (*R.L. Bezuijen Holding B.V.*) from The Netherlands, it was stressed that the fact that a natural debtor was member of the board and a shareholder of a company owning immovable property in another Member State in which lived his family did not suffice to rebut the presumption in favour of his place of habitual residence.

In the case of a company or a legal person, the debtor's COMI is presumed (as before) to be located at its registered office in the absence of proof to the contrary. The EIR (recast) adds that this presumption should only apply if the registered office has not been moved to another Member State within the three-month period prior to the request for the opening of insolvency proceedings.

It was legitimate to expect that these provisions would have ended the procedural fight with regard to the location of a debtor

> "THE EIR CASE REGISTER IS DEFINITELY A USEFUL TOOL FOR THE IP'S DAY-TO-DAY BUSINESS"

company's COMI. This is not the case at all! Indeed, four decisions from Germany in the *NIKI Luftfahrt GmbH* 'saga' demonstrate the opposite.

In that case, it was finally ruled that German courts did not have international jurisdiction pursuant to Article 3(1) of the EIR (recast), because the debtor's COMI was located in Austria. More importantly, these decisions clearly underline the remaining difficulties linked to the determination of the decisive factors to be taken into account by the judges seized of a request to open insolvency proceedings against a debtor company to rebut for each case the presumption in favour of the registered office.

Conclusion

To conclude, the Lexis-Nexis INSOL Europe European Insolvency Regulation Case Register enables all insolvency professionals to be aware of the recent developments in relation to the application of the EIR (recast) by national jurisdictions. It is definitely a useful tool for the IP's day-to-day business! ■

Access the Lexis-Nexis INSOL Europe EIR Case Register here: http://tinyurl.com/y7tf2zc4

For updates on new technical content recently published on the INSOL Europe website, visit: www.insol-europe.org/technical-content/introduction or contact Myriam Mailly by email: technical@insol-europe.org

Links

Email:
technical@insol-europe.org

LinkedIn:
www.linkedin.com

Twitter:
@INSOLEurope

Resources
www.insol-europe.org/resources

Glossaries
www.insol-europe.org/technical-content/glossaries

Updated Insolvency Laws
www.insol-europe.org/technical-content/updated-insolvency-laws

State Reports
www.insol-europe.org/technical-content/state-reports

How to become an insolvency practitioner across Europe?
www.insol-europe.org/technical-content/how-to-become-an-ip-across-europe

National Insolvency Statistics
www.insol-europe.org/technical-content/national-insolvency-statistics

National Case Law
www.insol-europe.org/technical-content/national-case-law

EIR Reform – Process
www.insol-europe.org/technical-content/european-insolvency-regulation

EIR Case Register
http://tinyurl.com/y7tf2zc4

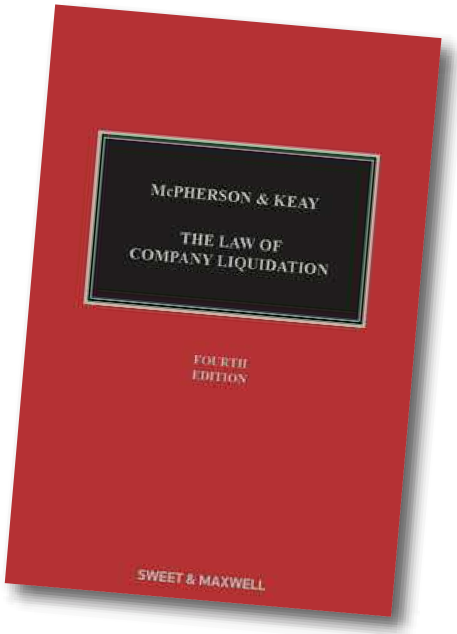
INSOL Europe Studies
www.insol-europe.org/technical-content/insol-europe-studies

Working Groups
www.insol-europe.org/about-us/about-our-working-groups

Got a new book to review or preview?

Let us know and we will consider it for a future edition.
Contact Paul Newson for more details on:
paulnewson@insol-europe.co.uk

McPherson and Keay: The Law of Company Liquidation



Andrew Keay (4th edn), 2017, Sweet and Maxwell, London, £240, ISBN 978-0-414-06151-4

McPherson & Keay is, simply, utterly indispensable to an ever increasing circle of legal practitioners, judges, civil servants, insolvency practitioners and scholars. What was generally seen up to less than 2 generations ago as a boring, even despised, area of dull legal practice with no intellectual interest and served entirely by way of practitioner texts consisting of a brief final chapter to books devoted to Company Law, has blossomed beyond any imagining. English practitioners who wanted or needed more by way of textual guidance to the dry statutory material by which their worlds were governed, found their way to the first Common Law book devoted solely to liquidation – Bruce McPherson's Australian Law of Company Liquidation, first published in 1968.

Happily for English practitioners, this revolutionary publication was both outstanding and suitable for the Common Law world at large. And, equally happily, Andrew Keay, deeply schooled in both practice and the academies of Australia and UK, was on hand to mastermind the transfer and extension of the McPherson publication to the UK. This has been no mean task and it has been brilliantly performed, having to take account of the remarkable expansion in the circle of those interested in the field. This is no longer a "practitioner-only" field. Scholars have seized on an area of research which has been shown to be rich in international, comparative and social scientific approaches. It is no exaggeration to describe yet another revolution which has been effected by this publication and this field of endeavour –scholars and practitioners working together and each group palpably benefitting from the work of the other.

Hence, an utterly indispensable volume, meticulously presented – author and publisher co-operation on a huge scale – and more than bang up to date. It provides the best tools for tracking down in the future, the new materials yet to come, until, they, too, will undoubtedly be incorporated in the next edition.

Harry Rajak, Emeritus Professor, Sussex Law School

The Law of Insolvency

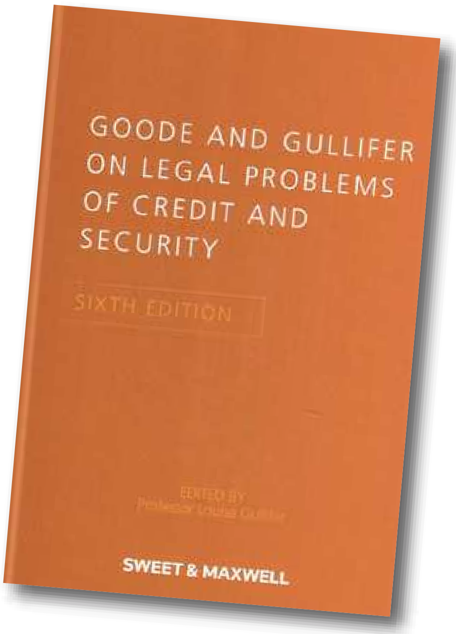
Ian Fletcher (5th edn), 2017
Sweet and Maxwell, London,
cxliii and 1098 pp, £295,
ISBN 978-0-414-02842-5

The Insolvency Act of 1986, fruit of the work of the Cork Committee, was the high-water mark of an advancing tide of insolvency law reform that brought about the concept of rescue to the United Kingdom. Shortly after the Act came into force, commentary arrived in 1989 in the shape of the 1st edition of Fletcher's "The Law of Insolvency". In the preface, the work set out its quest to "recast the traditional textbook treatment" of insolvency in order to bring together in one text what, hitherto, had been dealt with in works devoted, separately, to bankruptcy (or personal insolvency) and corporate insolvency. That it succeeded in its wish is reflected in the high regard in which this work is held.

Now in its 5th edition, much is still familiar: its division into three major parts (bankruptcy, corporate insolvency and international insolvency); the wealth of references to the case-law and the rich literature in this field; the way in which the author's views clearly emanate from discussions, in which trends in the law, positive or negative, are debated; and the detail of the contextual information meant to explain the situation and functioning of the procedures being dissected, in particular the two prefatory chapters on the nature of insolvency and the evolution of its administrative machinery.

The preface of this latest edition outlines the novelties, preparation for which had begun almost as soon as the 4th edition had appeared, anticipating the review of the European Insolvency Regulation of 2000 and the Insolvency Rules of 1986. The delay in both these processes, which did not culminate till 2015 and 2016 respectively, explains the large gap between editions. Nonetheless, incorporating changes till well into the production process means that this work is as up-to-date as it is possible to be, covering these and other smaller reforms intervening between the editions. Other alterations to the text are represented by the volume of new cases contained in this edition of the text, some 300 cases overall, a roll call of which reads like a history of insolvency, particularly recent major restructurings and cross-border cases.

In summary, this is a work without which no library of insolvency law can be complete. As a text, the work reads well and can be explored by any neophyte, seasoned researcher, judge, policy-maker and legislator alike, all of whom will find the text exceedingly useful.



Goode and Gullifer on Legal Problems of Credit and Security

Roy Goode and Louise Gullifer (6th edn), 2017, Sweet and Maxwell, London), lxxvii and 441pp, £195,
ISBN 978-0-414-06442-3

This is the sixth edition of a very well-known work. Originally begun by Roy Goode, doyen of commercial law and expert in particular on credit and asset-security issues, editorial responsibility from the third edition passed to Louise Gullifer, who also joins him as co-author for the latest edition. The work begins logically with an outline of the nature and types of consensual security, followed by a description of the steps necessary for the successful creation of security interests. The difference between the general scheme for attachment and perfection and that applicable to non-documentary receivables is the meat of the third chapter, covering also legal impediments to taking security. Chapter Four returns the reader to the institution of the floating charge, while Chapter Five unfolds a quite lengthy exegesis on priority rules with interests in financial collateral and set-off and netting occupying the next two sections of the work. Concluding the whole is a discussion of suretyship insofar as contractual and insolvency law principles may have an impact on validity and effectiveness of devices commonly found in practice.

The overall work does not stray far from the sequence in previous editions as it has been built up over the years. Every chapter contains a full outline of the relevant institutions and structures, a deep discussion of the salient issues and how they are resolved through hard law, but chiefly the jurisprudence, this latter being exceptionally well-analysed. Apart from the voluminous case-law mentioned in the preface, changes highlighted include ratification of the Cape Town Convention 2001, the changes introduced by the Small Business, Enterprise and Employment Act 2015 as well as more recent movements in the practice in relation to financial collateral. Anticipating the future, the work also looks at how proposals for reform to floating charges and the possible impact of new technologies on the creation and taking of security interests.

In summary, this is an indispensable work. It is not just a point of reference for the law and practice in relation to credit and security, but also the pre-eminent academic work in this area. Few works achieve this status, but this is one of them. In that light, it is a useful first port of call for anyone exploring this area of law and can be recommended to all who wish an insight into this very complex and challenging field.

Paul J. Omar, Technical Research Co-ordinator, INSOL Europe

INSOL Europe *Contacts*

INSOL Europe
PO Box 7149, Clifton, Nottingham NG11 6WD

Enquiries: Caroline Taylor
carolinetaylor@insol-europe.org

Tel/Fax: +44 (0) 115 878 0584
Website: www.insol-europe.org

The Executive

President: Radu Lotrean
radu.lotrean@citr.ro

Deputy President:
Alastair Beveridge
abeveridge@alixpartners.com

Vice President: Piya Mukherjee
pmu@horten.dk

Immediate Past President:
Steffen Koch
steffen.koch@hww.eu

Treasurer: Chris Laughton
Chrislaughton@mercerhole.co.uk

Director of Administration:
Caroline Taylor
carolinetaylor@insol-europe.org

Secretariat

Communications Manager:
Paul Newson
paulnewson@insol-europe.org

Membership & Conference Registrations Co-ordinator:
Wendy Cooper
wendycooper@insol-europe.org

EECC Secretary: Florica Sincu
floricasincu@insol-europe.org

Technical Officers:
Emmanuelle Inacio, Myriam Mailly
technical@insol-europe.org

Sponsorship Co-ordinator:
Hannah Denney
hannahdenney@insol-europe.org

Technical Research Co-ordinator
Paul Omar
khaemwaset@yahoo.co.uk

Working Group Chairs

Academic Forum: Michael Veder
m.veder@jur.ru.nl
Secretary: Anthon Verweij
anthon.verweij@gmail.com

Anti-Fraud Forum: David Ingram
david.ingram@uk.gt.com
Eitan Erez eitan@eitan-erez-law.com

Athens 2018 Congress Technical Committee: Frank Tschentscher
FTschentscher@schubra.de
George Bazinas
gbazinas@bazinas.com
Secretary: Emmanuelle Inacio
emmanuelleinacio@insol-europe.org

Constitution: Catherine Ottaway
ottaway@hocheavocats.com

EECC: Evert Verwey
Evert.Verwey@CliffordChance.com
Radu Lotrean, radu.lotrean@citr.ro

EU Research:
Robert Van Galen
robert.vangalen@nautadutilh.com

Financial Institutions Group:
Florian Joseph
florian.joseph@helaba.de
Alastair Beveridge
abeveridge@alixpartners.com

INSOL International:
Catherine Ottaway
ottaway@hocheavocats.com

IOH Forum:
Marc André, Mandrelaw@aol.com
Daniel Fritz, Daniel.Fritz@hww.eu
Robert Haenel
Robert.Haenel@anchor.eu
Stephen Harris, sharris@uk.ey.com

Judicial Wing: Heinz Vallender
hvallender@t-online.de

Sponsorship: David Rubin
davidr@drpartners.com
Frank Tschentscher
FTschentscher@schubra.de

Strategic Task Force 2025:
Wolf Waschkuhn
ww@onesquareadvisors.com

Turnaround Wing:
Alberto Nunez-Lagos
alberto.nunez-lagos@uria.com
Rita Gismondi, rgismondi@gop.it

YANIL: Jenny Gant
JenniferL.L.Gant@gmail.com

Young Members Group
Sabina Schellenberg
sschellenberg@froriep.ch
Georges-Luis Harang
harang@hocheavocats.com
Anne Bach, ABach@GOERG.de

DATES FOR YOUR DIARY

Further Information:
www.insol-europe.org/events

2018

31 May–1 June 2018	INSOL Europe EECC Conference *Riga, Latvia*
28–29 June 2018	INSOL Europe & DAV Joint European Insolvency & Restructuring Conference *Brussels, Belgium*
3 & 4 October	INSOL Europe Academic Forum Conference *Athens, Greece*
4–7 October	INSOL Europe Annual Congress *Athens, Greece*

2019

25 & 26 September	INSOL Europe Academic Forum Conference *Copenhagen, Denmark*
26–29 September	INSOL Europe Annual Congress *Copenhagen, Denmark*

2020

30 Sept. & 1 Oct.	INSOL Europe Academic Forum Conference *Sorrento, Italy*
1–4 October	INSOL Europe Annual Congress *Sorrento, Italy*

ACADEMIC FORUM SPONSORS:

SPONSORSHIP OPPORTUNITIES:

General and Congress Sponsorship Opportunities exist within INSOL Europe together with advertising in our quarterly journal 'eurofenix'

For a list of promotional sponsorship benefits, please contact:

David Rubin at david@drpartners.com

or Hannah Denney at hannahdenney@insol-europe.org

For information on sponsorship packages, please contact Hannah Denney: hannahdenney@insol-europe.org

INSOL Europe General Sponsors