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No-Deal Brexit

Impact on Insolvency and Restructuring

Multiple Proceedings?

There is increased risk of concurrent proceedings in multiple jurisdictions in relation to the same entity.

European Insolvency Regulation (EIR)

Although on-shored, its effects are virtually nullified in the UK, which means:

- no automatic recognition of EU insolvency procedures in the UK or vice versa;
- no limits on opening UK insolvency procedures in respect of EU incorporated companies.

Schemes of Arrangement/ Restructuring Plans

- Most likely unaffected by Brexit.
- Can be proposed by any company with "sufficient connection" to the UK (ie English law governed obligations)
- Never was automatic recognition under EIR, though some relied on Judgments Regulation, which is also gone.
- Likely still to be recognised across the EU using combination of private international law/Rome I/ Hague Convention (and Lugano Convention if adopted)
- Slightly more doubt in relation to restructuring plans if foreign jurisdictions deem it an "insolvency procedure" – which we don't.

Credit Institutions Winding-Up Directive (CIWUD)

- As with EIR, on-shored but of limited effect.
- UK no longer required to automatically recognise EU proceedings and vice versa.
- UK proceedings can now be opened in respect of UK branches of EU banks.

Insolvency Act 1986

- Provides for: CVAs, receivership, liquidation, administration, moratorium, ipso facto and claw-back (UK insolvency procedures)
- Because EIR is gone, UK insolvency procedures can now be applied to all EU companies where they couldn't before (in theory).

UNCITRAL/Cross Border Insolvency Regulations

- Remains available for foreign representatives to seek assistance from UK courts
- More limited in scope than EIR: only procedural relief (such as stays)
- UK representatives can also seek assistance in implementing States (including the U.S.) but in EU – only Greece, Poland, Romania and Slovenia.
- Query whether UK will implement new Model Law on Recognition of Insolvency Related Judgments

Section 426 of Insolvency Act 1986

Remains available for "cricket playing nations" to seek assistance from the UK courts to support their foreign proceedings.

Rule in Gibbs

- Common Law rule that will restrict whether a foreign compromise proceeding can impact English law contracts
- Query whether will be "switched off" by new Model Law

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