

How The UK General Election Might Influence The Recast EU Insolvency Regulation

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Tomorrow the UK voting public goes to the polls to select the next government but do the Great British Public realise the effect of their decisions for Cross Border Restructurings and Business Reorganisation across the EU?

Both the European Commission and European Council have adopted the text of the Recast Insolvency Regulation. This will enable the European Parliament to adopt the text at its sessions in May or June 2015. The Recast Insolvency Regulation would then come into force two years later in 2017.

This is all good news for businesses which operate across Europe. The Recast Insolvency Regulation contains changes aimed at rescuing companies in distress. The changes include:-

- in an attempt to prevent forum shopping which adversely affects creditors, a company's centre of main interest will be presumed to be where its head office is located but only if this has not been moved within the 3 months immediately before an insolvency is commenced;
- introducing a set of procedural rules aimed at ensuring the efficient administration of insolvency proceedings relating to different companies forming part of a group; and
- a requirement for member states to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register to improve the information for creditors and courts involved and prevent the opening of parallel insolvency proceedings.

This all looks good news for UK companies but the question is, will the UK still be part of the EU in 2017 when the Recast Insolvency Regulation comes into force? Several of the UK political parties are standing on a manifesto to hold a referendum to bring the UK out of the EU. Here are some of the headlines:-

- the Conservatives have pledged to hold an "in-out" referendum on Britain's renegotiated EU membership by 2017;
- the United Kingdom Independence Party have pledged to leave the EU following a referendum 'out' vote and return all legislative powers to rest with Westminster; and
- the Greens have pledged to hold a referendum on the UK's membership of the EU.

What do the more pro-European parties have to say?

- Labour say they would legislate for a “lock” that guarantees no further transfer of powers from Britain to the EU without an in/out referendum;
- similarly, the Liberal Democrats would only hold an in/out referendum if there is a plan for a “material transfer of sovereignty” from the UK. Otherwise they want to stay in the EU; and
- the Scottish National Party oppose a referendum on membership of the EU. Unless England, Scotland, Wales and Northern Ireland each vote to leave the EU, the UK would remain a member.

Further information on all the parties’ policies on the EU and other matters can be found on the [BBC website](#).

What would the effect be on cross-border restructurings involving UK companies if the UK was not a party to the Recast Insolvency Regulation? Denmark have never been party to the Council Regulation (EC) 1346/2000 on insolvency proceedings. Instead they are a member of the Nordic Bankruptcy Convention of 1933 with Sweden, Norway, Finland and Iceland. They are also party to the Brussels Regulation on the Enforcement of Judgments which does not apply to insolvency but does deal with certain related matters such as retention of title disputes. They have not yet passed the necessary Danish legislation to adopt the Recast Brussels Regulation. It is likely to be more complicated for the UK actually leaving the EU after being a party to the EU Insolvency Regulation for 17 years. We may have to rely on the Cross Border Insolvency Regulations 2006 which implement the UNCITRAL Model Law on Insolvency in the UK and are currently used for recognition of insolvency proceedings with non-EU countries such as the U.S.

All very uncertain. The only thing that is certain is that it would be a complicated muddle which would take a long time to unpick!

So let’s hope that the Great British Public vote carefully tomorrow.

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