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1: Coming to Terms with the COMI Concepts in the European Insolvency Regulation - CORE

Torremans, Paul. "Coming to Terms with the COMI Concepts in the European Insolvency Regulation." In International Insolvency Law: Themes and Perspectives,

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intellectual property rights as a Human Right. Holyoak and Torremans Intellectual Property Law 5th. European Harmonisation of Intellectual Property Rights. Themes and Perspectives Aldershot: Three dimensional trade marks and designs for packaging. The Widening Reach of Exclusive Jurisdiction: The ongoing copyright as an essential facility saga. The Questioning of the Principles of Territoriality: Determination of Territorial Mechanisms of Commercialisation. Legal issues pertaining to the restoration and reconstitution of manuscripts, sheet music, paintings and films for marketing purposes. Questioning the principles of territoriality: European patent law and ethics: The agenda for the future.

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2: Recast European Insolvency Regulation

Coming to Terms with the COMI Concepts in the European Insolvency Regulation. By Paul Torremans.

Whilst this may seem a tiny window in which to contemplate such a tome of proposals, I am certain that those for whom this holds most interest already will have spent quite some time over the last two months absorbing the proposals. The fundamental question being asked by the Service is: Even with my zero personal experience and limited understanding of the work of cross-border insolvencies, it seems to me a no-brainer well, the way the Service has argued it anyway. The Call for Evidence also asks questions on elements of the proposals likely to impact most on UK insolvency with a view to developing a negotiating mandate for the UK. By opting in, the UK can engage in negotiations in order to finalise the proposals, but it will not be able to opt out subsequently and so the UK will be bound by the final Regulation, whatever its form. If the UK does not opt in to the final Regulation at all, it may mean that the UK will remain bound by the existing Regulation. An alternative scenario if the UK does not opt in is that the European Council may decide that the existing Regulation in its current form could no longer apply to the UK. The Service describes the consequences as: From scanning commentaries on the EC proposals, it appears to me that not opting in is very unlikely. As the EC proposes to retain the power of each Member State to decide whether a national insolvency procedure should be included, it seems to me that this is a weak reason for not opting in. And in any event, I would have thought there would be value in having Schemes of Arrangement acquire recognition across the EU. This is where the idea that Schemes of Arrangement will be wrapped up in the Regulation comes from. Also as mentioned above, the Member State can decide whether to notify a particular national insolvency procedure to be included, but it is proposed there will be a new mechanism whereby the EC then will scrutinise the procedure to ensure that it fits the defined scope of the Regulation. Jurisdiction for opening insolvency proceedings The concept of COMI is proposed to be retained, consistent with the body of case law that has developed. The proposals seek to extend the concept to individuals. The EC proposes to introduce a duty on the court or IP that opens the insolvency proceedings to examine the COMI of the debtor and specify the ground on which their jurisdiction is decided. Creditors from other Member States shall have the right to challenge the decision. The proposal removes the restriction that secondary proceedings must be winding-up proceedings; it is proposed that they can be any proceedings available under the law of that Member State, including restructuring. In addition, it is proposed that the courts in the main and secondary proceedings be obliged to communicate and cooperate with each other and that a similar obligation will be on the office-holder to communicate and cooperate with the court in the other Member State involved in the proceedings. The register will contain basic information on the insolvency albeit more than is currently on Companies House; for example, the information must include the court and reference number plus a date for lodging claims. The EC proposes the provision of two standard forms for foreign creditors â€" a notice of insolvency and claim form â€" which will be made available by whom? I think by the European e-justice portal in all official EU languages. Foreign creditors must be given at least 45 days to lodge a claim, irrespective of any national laws specifying shorter timescales. Thus courts and office-holders involved in different proceedings on group companies will be obliged to communicate and cooperate. It is proposed that the office-holder of an insolvent group company will be entitled to be heard in any opening proceedings on any other group company and will have the right to request a stay. The proposals are not intended to interfere with a strategy of pursuing a single set of insolvency proceedings over a highly integrated group of companies when it is determined that their COMI is in one jurisdiction. Of course, this is all subject to negotiation and timeâ€¦ probably lots of timeâ€¦. On 15 April , it was announced that the Government has decided to opt in to the proposal. This followed a unanimous response in favour of opting in by those who responded to the consultation. The written ministerial statement and the consultation responses can be accessed from:

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3: Coming to Terms with the COMI Concepts in the European Insolvency Regulation

Part III International Insolvency Initiatives: Coming to terms with the COMI concept in the European insolvency regulation, Paul Torremans; The dominance of main insolvency proceedings under the European insolvency regulation, Margreet B. De Boer and Bob Wessels.

American Law Institute European comparative company law. Liability of corporate groups: Kluwer Law and Taxation Publishers. Who Should Make Corporate Law? EC Legislation versus Regulatory Competition. Boston College Law Review. Federalism and the Corporation: Where Do Firms Incorporate? Deregulation and the Cost of Entry. Tulane Journal of International and Comparative Law. Theory of Enterprise Entity, The. Texas International Law Journal. Incrementalisms in Global Lawmaking. Brooklyn Journal of International Law. The multinational challenge to corporation law: Transformation of Modern Corporation Law: The Law of Corporate Groups, The. Choice of corporate law in the EU following the judgment in Vale. International and Comparative Law Quarterly. European cross-border insolvency law. The Parmalat and Daisytek Controversies. Columbia Journal of European Law. Journal of Business Law. Harvard International Law Journal. Future of Corporate Federalism: Lifting the corporate veil: English and German perspectives on group liability. International Company and Commercial Law Review. Principles of Modern Company Law. Reviewing and Revitalizing Liability for Corporate Groups. European fears and reactions. Limited Liability and the Corporation. University of Chicago Law Review. Race for the Bottom in Corporate Governance, The. European Business Organization Law Review. Incorporating under European Law: Shareholder Engagement and Identification. The journal of business law. European Company and Financial Law Review. Prolegomena to a theory on supranational forms of association. Common Market Law Review. Insolvency in private international law: Harmonisation of insolvency law at the EU level. The mysteries of freedom of establishment after Cartesio. European Business and Organisation Law Review. The Case for Comprehensive Harmonisation. Principles of corporate insolvency law. American Bankruptcy Institute Law Review. In Defense of Universalism. International journal of the sociology of law. Corporate control and accountability: Essential Role of Organizational Law, The. The proposal for a European private company. A Low-Cost Sweetener for Lemons. Washington University Law Quarterly. Journal of International Banking Law and Regulation. Cross-border observations derived from my Lehman judicial experience. The Clifford Chance millennium lectures: The EEIG - a major step forward for community law. Rules on digital solutions and efficient cross-border operations - European Commission: The false conflict between due process rights and universalism in cross-border insolvency. The English limited company - ready to invade Germany? Nationality of International Enterprises, The. Is Chapter 15 Universalist or Territorialist? Wisconsin International Law Journal. Globe Law and Business. Cooperation in International Bankruptcy: Global and out of Control. American Bankruptcy Law Journal. American Journal of Comparative Law. An invasive top-down harmonisation or a respectful framework model of national laws? A critique of the Societas Europaea model. Control and corporate rescue - an Anglo-American evaluation. Jurisdictional competition and forum shopping in insolvency proceedings. Universalism in Insolvency Proceedings and the Common Law. Oxford Journal of Legal Studies. European Business Organisation Law Review. Centralising insolvencies of pan-European corporate groups: European insolvency law in a global context. Insolvency within multinational enterprise groups. Is the future bright for enterprise groups in insolvency? Journal of Private International Law. On the road to universalism: The future of cross-border insolvency: Cross-Border Insolvency of Enterprise Groups: The Choice of Law Challenge. Cardozo Journal of International and Comparative Law. Transaction Avoidance in Bankruptcy of Corporate Groups. Chapter 15 - a new era for COMI disputes? Daisytek followed in new German case. The European Insolvency Regulation - the case for urgent reform. Group Insolvency - Choice of Forum and Law: Multinational enterprises and the law. Corporations in international litigation: Centros, Uberseering and beyond: International company and commercial law review. The European initiative

on wrongful trading. The mutual influence of French and English commercial laws in insolvency.

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4: Chapter 15 Petition Date "Anchors" COMI Analysis - Insolvency/Bankruptcy - United States

Professor Torremans has acted as an expert for the World Intellectual Property Organisation, the European Commission (most recently on 21st April for the European Group on Ethics in science and new technologies in relation to synthetic biology patents) and other international organisations.

Connections at Firm October 17, , will mark the eighth anniversary of the enactment of chapter 15 of the U. Bankruptcy Code as part of the comprehensive U. The Model Law has now been adopted in one form or another by 20 nations or territories. In Morning Mist Holdings Ltd. Krys In re Fairfield Sentry Ltd. In making such an inquiry, the Second Circuit cautioned, "a court may consider the period between the commencement of the foreign insolvency proceeding and the filing of the Chapter 15 petition to ensure that a debtor has not manipulated its COMI in bad faith. The Second Circuit concluded that the exception is to be narrowly construed and that in the case of the foreign proceeding at issue in Fairfield Sentry, restricted access to documents in a British Virgin Islands liquidation proceeding "is no basis on which to hold that recognition of the BVI liquidation is manifestly contrary to U. Because more than one bankruptcy or insolvency proceeding may be pending against the same foreign debtor in different countries, chapter 15 contemplates recognition in the U. An "establishment" is defined in section 2 as "any place of operations where the debtor carries out a nontransitory economic activity. Cross-Border Insolvency Regulation of , S. The EU Regulation provides that COMI "should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties. Following recognition of a main or nonmain proceeding, a bankruptcy court may also provide "additional assistance" to a foreign representative. Moreover, any relief under chapter 15, including recognition itself, is subject to the caveat contained in section , which states that "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States. Pursuant to its organizational documents, Fairfield administered its business interests from the BVI, where its registered office, registered agent, registered secretary, and corporate documents were located. Morning Mist appealed to the Second Circuit. Writing for the court, chief judge Dennis Jacobs first looked to the language of section b , which provides that a "foreign proceeding shall be recognized. However, the Fifth Circuit, albeit in dicta, left open the possibility of looking at a broader time frame to frustrate possible bad-faith COMI manipulation. Overall, the judge concluded, "international sources are of limited use in resolving whether U. However, the judge determined that "the EU Regulation does not operate as an analog to chapter 15" because, under the regulation, a main insolvency proceeding filed in one EU member state is automatically recognized by all other EU member states, making a recognition petition, such as the petition required under chapter 15, unnecessary. I, WL E. On the basis of these considerations, Judge Jacobs adopted a hybrid approach: He also ruled that the evidence did not support a finding that Fairfield manipulated its COMI in bad faith between the initiation of the BVI liquidation and the chapter 15 petition date. Among other things, Judge Jacobs wrote that "any relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis. According to the judge, the "confidentiality of BVI bankruptcy proceedings does not offend U. In fact, an UNCITRAL working group considering various proposed changes to the Model Law adopted a proposal in to amend the Model Law to clarify, among other things, that the date of commencement of a foreign insolvency proceeding should be used to determine both COMI and the related concept "establishment. It remains to be seen whether these proposals will be adopted and, if so, what bearing the change would have on rulings under chapter Even nearly eight years on, chapter 15 continues to be fertile ground for first impressions and new departures in U. Kemsley, however, had lived in the U. The court ruled that, because Kemsley was living in the U. The court acknowledged that the result may well have been otherwise if COMI had been tested as of the chapter 15 petition date. In addition, on the basis of its conclusion that Kemsley did not even have a "place of operations" in the U. The content of this article is intended to

provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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5: International Insolvency Law : Paul Omar :

International insolvency is a newly-established branch of the study of insolvency that owes much to the phenomenon of cross-border incorporations and conduct of business in more than one jurisdiction.

United Kingdom October 1 was a seminal year for restructuring and insolvency professionals in the U. Nearly five years on and it is clear that the Enterprise Act of , apart from generating a relatively modest amount of case law around the edges, largely on procedural matters, is a reasonably well-understood piece of legislation. The Regulation is anything but well understood. It can no longer be assumed, for example, that an English-registered company can be placed into English insolvency proceedings in every case. One is forced to look to the recitals for any sort of guidance. Recital 13 of the Regulation provides that: The history of the Regulation since its inception is one of advisors and courts in various member nations grappling with: The paucity of the definition has been brought into sharper focus in recent years, with increasing amounts of capital finding a home in increasingly complex capital structures of companies that do business on a cross-border basis. With the proliferation of cross-border commercial activity, it is inevitable that a proportion of these businesses will become distressed, and as they do, the opportunity to use the Regulation and the potentially powerful concept of COMI increases. Where a company produces its finished goods in one jurisdiction, has employees in another jurisdiction, is initially financed by its local bank which might then sell its position to a number of international hedge funds , and has customers throughout the EU and possibly beyond, working out where its COMI is located can be a daunting task. Some have argued that, even though a stated aim of the Regulation is to prevent forum shopping, this is exactly what it has encouraged â€" by removing certainty as to where insolvency proceedings can be opened against a particular company. This has led to instances where there has been a conscious shift of COMI as a means of implementing a financial restructuring. Such an approach has been de rigueur in Germany of late. Deutsche Nickel and, more recently, Schefenacker successfully shifted COMI to England as a prelude to entering into Englishcompany voluntary arrangements with their creditors. The Regulation classifies insolvency proceedings in one of two ways. Secondary proceedings can coexist with main proceedings, and indeed, a key aspect of the Regulation is the way in which it governs how main proceedings and secondary proceedings operate in conjunction with one another. Main proceedings in one member state will be recognized automatically in other member nations such that the law governing the main proceedings, subject to a number of exceptions, will govern the insolvency proceedings in relation to the company across all jurisdictions of the EU. The mainproceedings office holder a legal entity akin to a bankruptcy trustee in the U. However, the jurisdiction of the main-proceedings office holder is ousted in a particular member nation if secondary proceedings are opened in that member nation. Office holders appointed in relation to territorial or secondary proceedings i. An appointment as a main-proceedings office holder is the holy grail for insolvency practitioners, and COMI is central in achieving this. This is the key question to which, unfortunately, there is still not a clear answer. Arising out of the Parmalat collapse, Eurofood IFSC Ltd, an Irish subsidiary in the Parmalat group, was first placed into provisional liquidation in Ireland and, shortly afterwards, was placed into extraordinary administration in Italy. The extraordinary administration was categorized by the Italian court as main proceedings. In the main, these have been decisions of lower courts, often in response to uncontested ex parte applications.

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6: New EU Regulation on Insolvency Proceedings

Part III International Insolvency Initiatives: Coming to terms with the COMI concept in the European insolvency regulation, Paul Torremans The dominance of main insolvency proceedings under the European insolvency regulation.

M International element in Insolvency proceedings with an emphasis of recent Recommendations of the European Commission Abstract As companies become increasingly international, there has also been a growing need to regulate insolvency proceedings, including the international element that will undoubtedly satisfy needs for businesses focused in more than one country. The EU Insolvency Regulation1 was adopted in in response to these needs for an effective approach to cross-border insolvency. Although this Regulation does not cover all issues of insolvency, it is a big step forward in the effective dealing with insolvency proceedings within the EU. The purpose of this paper is to analyze EU Insolvency Regulation and recent Recommendation of the European Commission, emphasizing their main goal, to present a package of measures to modernize these insolvency rules. PDF accessed April 4, If too many of these risks materialize, however, people may become unable to pay all their debts as they fall due. In such instances legal systems, usually make available insolvency proceedings. One thing these proceedings have in common is that they are collective proceedings: In international life, the chances are that people and businesses have assets or liabilities in more than one state. If insolvency occurs in this case, the same collectivity cannot be attained by a single state alone. While this can be seen as a benefit during solvent periods of trading, bringing prosperity and run off businesses to other areas, the harsh reality is that the impact of insolvency proceedings is no longer limited by geographic boundaries and can strike a devastating blow to creditors located across the globe. A number of difficulties arise when insolvency proceedings commence in respect of a company with assets located in many jurisdictions. Even in small cases, assets may be located in various countries, for good or for bad reasons. A domestic business may have foreign branches or subsidiaries, or a foreign business may have foreign branches or subsidiaries. Property located in a foreign country may provide security for a debt so that domestic assets can 2 Letter to Horatio G. Spafford 18 March 3 l, Jona. European cross-border insolvency regulation: Foreign creditors may have valid claims in domestic bankruptcy cases, and domestic creditors may have valid claims in foreign bankruptcy cases. Any one of these situations raises a transnational insolvency problem. The increase in transnational insolvency arises from the growth in international trade. While business has encountered relatively few obstacles in transcending national borders, the same cannot be said for the legal regimes that attempt to govern such activity. For a cross-border system to effectively address the failures of a multinational company it must recognize the need for cooperation and coordination. If a number of creditors were owed money and all pursued the rights and remedies to them a chaotic race to protect interests would take place and this might produce inefficiencies and unfairness. Federal Judicial Center, Cambridge University Press, The Regulation contains rules on jurisdiction, recognition and applicable law and provides for the coordination of insolvency proceedings opened in several Member States. The Regulation applies when the debtor has an establishment or creditors in another Member State than his own. The overall effect of those rules is to make it easier to deal with the affairs of an insolvent who has affairs in more than one EU country. Commission recommends new approach to rescue businesses and give honest entrepreneurs a second chance. The EU Regulation recognizes two types of proceedings: A main proceeding must be opened in the member state where the center of main interests of the debtor is located. The EU Regul tion expl in it in p t follow: This will also fit in the unity p inciple. Thi flexible c ite ion i thought to provide a link to the place where the debtor was economically active and where one is likely to find assets. The aim is to have one court that is competent to open a single set of insolvency proceedings, leading to a single worldwide insolvency case. If the center of main interests concept is used to identify this court, it should lead to a single pl ce. It does not deal with the issue which court in th t membe t te will h ve ju i diction. Under the EU Regulation, a court order opening an insolvency proceeding must be automatically recognized in all other member states. Following the opening of

a main insolvency proceeding, a secondary insolvency proceeding may be brought my the liquidator in the main insolvency proceeding or by any party with standing under local law. The opening of a secondary insolvency proceeding makes the domestic law of the forum state applicable, instead of the law of the state where the main insolvency proceeding is opened. This does not involve that the secondary proceedings are completely separated from the main proceedings and that the main liquidator has become broken-winged. On the contrary, as the main insolvency proceedings and the secondary proceedings are interdependent proceeding, the liquidator in the secondary proceedings has to fulfil his task under the dominance of the main liquidator. Coordination of the secondary proceedings and the main proceedings is essential for the effective realization the total assets. Any EU creditor will have the right to lodge a claim. Officeholder in one set of proceedings will be entitled to be treated as creditors in proceedings against the debtor in another state. While the EU Regulation permits a creditor to keep a distribution that temporarily gives that creditor more than other creditors of equal rank, it disqualifies such a creditor from receiving any further distributions to the other creditors of the same class have caught up. The various liquidators in the main insolvency proceeding and in related secondary insolvency proceedings are required to exchange information and to cooperate in many respects. The EU Regulation will take effect on May 31, Commission Recommendation of The European Commission on The Commission wants to give viable enterprises the opportunity to restructure and stay in business. Some research shows that business set up by re-starters grow faster than business set up by first timers in terms of turnover and jobs created. But acting on second chance would bring an even larger impact on entrepreneurship: Facilitate the restructuring of businesses in financial difficulties at an early stage, before starting formal insolvency proceedings, and without lengthy or costly procedures to help limit recourse to liquidation; 2. Allow debtors to restructure their businesses without needing to formally open court proceedings; 3. Give businesses in financial difficulties the possibility to request a temporary stay of up to four months renewable up to a maximum of 12 months to adopt a restructuring plan before creditors can launch enforcement proceedings against them; 4. Facilitate the process for adopting a restructuring plan, keeping in mind the interests of both debtors and creditors, with a view to increasing the chances of rescuing viable businesses; 34 A second chance for entrepreneurs: However, they do have a political weight. The aim of a Recommendation is to encourage member states to prepare legislation to address the issues identified. The Recommendation asks member states to enact appropriate measures within one year, The Commission will assess the situation months after adoption of the Recommendation, based on the yearly reports from member states, to evaluate whether further measures are needed to strengthen the harmonization. Conclusion The aim of the Insolvency legislation is to balance two contrary sides. Regulation of cross border insolvency means creating effective and efficient tools for harmonization insolvency law regimes between member states and coordination between institutions which are empowered for the proceedings. In order to overcome the obstacles that came to the contemporary business activities, the European Commission presented Recommendation which emphasizes her support for return of honest failed entrepreneurs to the market. New legal reforms represent a major step forward for the merchants and greater optimism about future traders and most importantly, guaranteed security for creditors. Federal Judicial Center, ; 3. A second chance for entrepreneurs: Commission recommends a new approach to rescue businesses and give honest entrepreneurs a second chance.

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7: EC Regulation on Insolvency (archived) - International restructuring a

International Insolvency Law by Paul Omar, , available at Book Depository with free delivery worldwide.

Please enter your email address Please enter a valid email Please enter a maximum of 5 recipients. Use ; to separate more than one email address. Please enter an email address Please enter valid email addresses Recipient name s: Please enter a recipient name Email yourself a copy? Are there any significant current debates taking place in the market? The UK framework is, however, coming under increasing competitive pressure from insolvency reform in other jurisdictions and Brexit poses several challenges, not least for the continued recognition across Europe of UK restructuring and insolvency processes. Continued recognition post Brexit is particularly relevant for UK schemes of arrangement and company voluntary arrangements, and their use by foreign companies. The market is waiting to see whether, and if so how, UK corporate insolvency reforms put forward in will progress considering the challenges of Brexit. Following a string of recent high profile corporate insolvencies, the role of corporate stakeholders is under the microscope. Questions are being asked whether existing governance structures are fit for purpose. Consultation published in March on Insolvency and Corporate Governance considers a broad reform package to reduce the risk of major company failures resulting from weak governance or stewardship. Its proposals could significantly expand the duties of directors to consider a wider range of interests when disposing of distressed subsidiaries, create new powers to reverse value extraction schemes, and lead to a shift in the behaviour expected from institutional investors. However, the consultation is at an early stage and the proposals lack detail. Parliamentary time is limited, so it remains to be seen how they will progress. Changes to UK insolvency law in the last year have been aimed at modernising its procedural aspects such as new decision making and deemed consent procedures â€" e. However, there has been no major reform of substantive insolvency law and the proposals put forward in , noted above, appear to have stalled. The issue of how businesses should deal with large pension deficits remains topical. Recent first instance case law has confirmed the principle that a foreign law compromise of English law debt will be ineffective unless there is a requirement to recognise the compromise, eg under the EU Insolvency Regulation. It remains to be seen whether the issue will face appeal. Last year also saw the continued use of UK schemes by foreign companies. Processes and procedures 2. Do groups of companies receive special treatment? English insolvency law operates along legal entity lines. There is no concept of a single group insolvency proceeding and limited scope for treating the assets of one group company as belonging to another group company. Formal collective insolvency procedures under the Insolvency Act the Act consist of: More recently, it has been used to deal with obligations under unprofitable leases. It is unable to bind secured creditors without their consent; administration â€" ostensibly a corporate rescue process, although more often used to rescue the business through a going concern sale â€" frequently arranged in advance of filing and known as a pre-pack; and liquidation â€" a terminal procedure typically resulting in the piecemeal sale of assets rather than the business , distribution of the proceeds to creditors and dissolution of the company. In a solvent liquidation, surplus proceeds are returned to shareholders. Large financial restructurings are usually achieved consensually without recourse to an insolvency filing, often using contractual powers under an intercreditor agreement to implement the solution. In the absence of contractual mechanisms, a statutory scheme of compromise or arrangement may be available. The scheme is a company law, rather than insolvency law, mechanism but provides a useful tool for corporate restructuring where there are dissenting creditors. A state of insolvency is unnecessary to support a scheme or CVA filing. Are contractual termination rights affected? Are security or individual enforcement actions stayed? Insolvency practitioners have powers to limit the terms essential suppliers can impose directly or indirectly as a condition for the continued supply of their service and compel continued supply by restricting the effect of existing insolvency-related terms in an essential supply contract. The restrictions apply, broadly, to utilities and IT-related supplies. However, in practice, there are limits as to what they can achieve. Filing for

administration automatically gives rise to a broad stay preventing, for example, the commencement or continuation of legal proceedings or secured creditor enforcement action. The moratorium may only be lifted with the consent of the administrator or the court. It does not, however, apply to certain financial collateral arrangements. There is a limited procedural stay in liquidation but it does not prevent secured creditor enforcement. Other than for qualifying small companies, a CVA does not give rise to a stay. The court has discretion to grant a temporary stay of creditor action where a scheme is being implemented and appears to have a reasonable chance of success with majority creditor support. For large financial restructurings, financial creditors often refrain voluntarily from bringing disruptive action or agree to a temporary stay contractually to assist stability during the negotiation of a consensual deal. Both a CVA and a scheme can bind dissenting or non-voting unsecured creditors, but only a scheme may do so in respect of secured claims. While creditors within a class may be crammed down in a scheme, it is not possible to cram down an entire class, since each class must vote in favour for the court to sanction it and for it to take effect. A pre-pack sale is not a special type of insolvency procedure but generally refers to: In practice, a pre-pack to a secured creditor would usually involve the purchase by a special purpose vehicle SPV owned by the secured creditors. Directors of English companies must comply with a range of statutory, common law and fiduciary duties, including a duty, where a company is facing financial difficulties, to have regard to the interests of creditors. In particular, liability may arise if the court is satisfied that the director knew or should have known that, at some time before insolvency proceedings began, the company had no reasonable prospect of avoiding going into insolvent liquidation or administration; and once it had become clear to that director that there was no longer a reasonable prospect of avoiding insolvent liquidation or administration, he or she did not take every step to minimise the potential loss to creditors that they should have taken. The Act enables a liquidator or administrator to set-aside a range of pre-insolvency transactions, including transactions at an undervalue, preferences, extortionate credit transactions, certain floating charges and transactions defrauding creditors. The look-back period during which transactions are at risk ranges from six months to two years, depending on the circumstances. Amendments are made to the order of priority when security involves financial collateral. Modified insolvency regimes are typically found in the financial industry such as the special resolution regime for banks or the utilities, transport and health sectors. In some sectors or industries, special factors may become relevant in an insolvency situation, eg where the business operates in a highly regulated or politically sensitive area eg prisons, schools. The Act may also be modified in its application to certain types of company or bodies eg partnerships or insurers , although they have no separate special insolvency regime as such. Comi is the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. For a corporation, there is a rebuttable presumption that its Comi is the place of its registered office. Ultimately, Comi is fact specific. The EIR creates a common regime for the taking of insolvency law jurisdiction and the recognition and effect of insolvency proceedings throughout the EU. It does not, however, purport to create uniform insolvency laws. The English court also has jurisdiction to wind up a foreign debtor as an unregistered company based on a sufficient connection test. This must be viewed against the backdrop of the EIR, so that the jurisdiction may only be exercised provided the foreign company does not have its Comi anywhere within the EU. Exercise of the winding-up jurisdiction remains, in any event, discretionary. It may be possible to commence insolvency proceedings by the provision of assistance under the methods specified in question 3. In addition to the EIR, there are three main methods under which the English courts may assist in insolvency matters: Section of the Act enables the English court to give wide assistance to the courts of certain designated jurisdictions mainly common law countries; they do not include the US , subject to judicial discretion. The court has an inherent power to recognise and grant assistance to foreign insolvency proceedings under the common law, although recent judicial authority has shown it is limited in scope. Other material considerations 4. Employees, pension trustees, government or regulatory bodies could all have an impact on the outcome of a restructuring depending on the situation and what is proposed. For example, obligations to consult with employees on a business transfer or where there may be redundancies

could have an impact on timing. It is expected that in the next year, we will see greater clarity on the direction of travel for UK corporate restructuring and insolvency reform. A key issue facing the UK as an international hub is whether UK proceedings and judgments will continue to benefit from recognition across the EU following Brexit. This will depend on how negotiations progress for a Withdrawal Agreement. The Brexit challenge must also be seen amid a wider European insolvency reform agenda. For example, there are proposals for EU member states to have increasingly similar restructuring and insolvency frameworks. This could result in a directive being passed during requiring implementation by Whether or how the UK will implement such changes remains unclear, as does their impact on the stalled UK corporate insolvency reform proposals. The UK will consider both carefully. Domestically, following a spate of high profile collapses, there is renewed political tension between protecting the rights of employees, pensioners, consumers and unsecured creditors while best enabling the restructuring efforts of financially troubled debtors. This is evident in the Insolvency and Corporate Governance consultation referred to earlier, as well as a White Paper published on protecting defined benefit pension schemes. There could also be change, for example, in dealing with insolvent airlines following the Monarch repatriation exercise and questions over how public services are best provided in the wake of the Carillion collapse. Further reforms to pre-pack sales involving connected parties are also possible.

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Regulation (EU) / of the European Parliament and of the Council of 20 May on insolvency proceedings (recast) (the "Regulation") reforms the former European Regulation on Insolvency proceedings (EC) / (the "Original Regulation").

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throughout the various member nations attempt to come to terms with the concept of COMI, only one major case (Re Eurofood IFSC Ltd) has been referred to the European Court of Justice ("ECJ") with respect to this issue.

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