

**PROTOCOL AGREEMENT FOR THE COORDINATION OF A MAIN
INSOLVENCY PROCEEDING WITH A SECONDARY INSOLVENCY
PROCEEDING**

**FILED IN CONFORMITY WITH EUROPEAN REGULATION
n° 1346-2000 of 29 May 2000**

BETWEEN

SCP BECHERET-THIERRY-SENECHAL, a professional society of judicial liquidators registered with the national service, having their offices at 3-5-7 avenue Paul Doumer, Rueil-Malmaison (92500), France,

Acting in its capacity as judicial liquidator of the French main office of SENDO INTERNATIONAL LIMITED, located at 100 avenue Charles de Gaulle, Neuilly-sur-Seine (92200), France, a company established under foreign law

Appointed to this office by order of the Commercial Court of Nanterre, on 3 August 2005,

Represented by Marc SENECHAL, Esq., judicial liquidator,

hereafter referred to as the « **French liquidators** »

AND

Alastair P Boweridge and Simon J Appell (the 'Joint Administrators') of KROLL, Corporate Advisory & Restructuring Group, having its offices at 10 Fleet Place, London EC4M 7RB, England, acting in their capacity as Joint Administrators of the Cayman Islands company SENDO INTERNATIONAL LIMITED, having its offices at Filling Centre, BP 613 George Town Grand Cayman (Cayman Islands) and is registered as a foreign company in the United Kingdom

Appointed to this office by order of the High Court of Justice, Chancery Division of London, on 29 June 2005, such order has subsequently been amended by Court order dated 20 December 2005,

Represented by Reinhard DAMMANN, Esq., Member of the Paris Bar, Cabinet White & Case, having his offices at 11 boulevard de la Madeleine, Paris (75001),

hereafter referred to as the « **Joint Administrators** »

WITNESSETH THE PARTIES HERETO:

That, by a motion on 20 June 2005, the directors of SENDO INTERNATIONAL LIMITED filed before the High Court of Justice in London an insolvency proceeding under Article 3 of the European Regulation on Insolvency Proceedings 2000 (n° 1346/2000) of May 29, 2000 (hereinafter the « (EC) Regulation ») against SENDO INTERNATIONAL LIMITED,

That by order of 29 June 2005, the High Court of Justice, Chancery Division of London, ruled in favor of the application of a proceeding of judicial administration (*Administration*) to SENDO INTERNATIONAL LIMITED and appointed Alastair P Beveridge and Simon J Appell as Joint Administrators. The appointment of the Joint Administrators was extended to 28 December 2006 by order of the High Court of Justice, Chancery Division, on 20 December 2005.

In a motion filed on 6 July 2005 with the Examining Magistrate of the Commercial Court of Nanterre, the Joint Administrators requested the opening of a secondary proceeding of insolvency against the French establishment of SENDO INTERNATIONAL LIMITED in conformity with Article 29 (a) of the (EC) regulation,

That under a decision dated 3 August 2005, the Commercial Court of Nanterre ruled in favor of the application of a secondary proceeding of judicial liquidation (*liquidation judiciaire*) to the French establishment of SENDO INTERNATIONAL LIMITED and appointed SCP BECHERET-THIERRY-SENECHAL in its capacity as liquidator and Mr. Jérôme MANDRILLON in his capacity as judge in charge of the proceedings,

That this insolvency proceedings is a secondary proceedings under Articles 3.2 and 3.3 of the (EC) Regulation,

WHEREAS :

The Joint Administrators and French Liquidators have come to understand that the (EC) regulation establishes only very general operating principles,

Consequently, the Joint Administrators and the French Liquidators have concluded that they wish to enter into an informal agreement for the purpose of defining a practical means of functioning which would allow for the efficient coordination of the two insolvency proceedings and would respect the general operating principles established by the (EC) regulation,

This protocol is established in respect of the insolvency of SENDO INTERNATIONAL LIMITED only, and the particular circumstances of this company. It is not intended to create a binding precedent and should not be considered appropriate for all other secondary proceedings in France pursuant to the EC Regulations, however may be regarded indicative of achieving good practice. It is established for the purposes of implementing such operating means by the Joint Administrators and the French Liquidators agreeing to act in conformity with the following principles :

- Mutual trust,
- Adherence to the duty to communicate information and to cooperate as defined by Article 32 of the (EC) regulation,
- Precedence of the main proceeding over the secondary proceeding.

THEREFORE THE PARTIES NOW HEREBY AGREE :

That there is a genuine need to establish a practical means of treating the liabilities (I) and the assets (II) of the French branch of SENDO INTERNATIONAL LIMITED.

I- PRACTICAL MEANS OF TREATING THE LIABILITIES OF SENDO INTERNATIONAL LIMITED

I-1. Practical means of treating notification sent to the creditors of SENDO INTERNATIONAL LIMITED

The obligation to notify the creditors is regulated by Article 40 of the (EC) regulation, which holds that « *As soon as insolvency proceedings are opened in one Member State, the court having jurisdiction in such State or the liquidator appointed by such [court] shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in other Member States* ». This article further specifies the content of such notification.

Consequently, given the relative lack of precision of Article 40 of the (EC) regulation, the parties consider that this protocol must specify the means of implementation of this article. The practical means agreed upon by the parties are as follows :

► The Joint Administrators in the main proceeding, having a direct contact with the manager and the accounting departments of SENDO INTERNATIONAL LIMITED, as well as direct access to the entirety of the accounting documents of this company, will notify by regular mail and in conformity with the terms and conditions of Article 40.2 of the (EC) regulation all of the debtor's creditors based in France, without exception. Such notice shall be in the form of an individual notice and shall set forth the required formalities and penalties provided by English law and applicable to the main proceedings. It has been agreed in this instance, following the appointment of the French Liquidators, that all French claims are to be notified to the French Liquidators following which the French Liquidators will then make one overall claim in the Administration.

► The French Liquidators shall send a notice :

- To the Joint Administrators in order for them to be able to implement, under Article 32.2 of the (EC) regulation, the overall claims lodged under the main proceedings;
- To any possible liquidators appointed in the context of secondary proceedings filed against SENDO INTERNATIONAL LIMITED in other Member States of the European Union ;
- To all known creditors only of the secondary establishment, including those possibly residing abroad, and a list of such creditors shall be provided to the French Liquidators by the head of such establishment. The creditors thus notified shall be qualified as « local » in this protocol agreement. The creditors not known to the secondary establishment shall not be notified by the French Liquidators.

This notice shall respect both Article 40.2 of the (EC) regulation and the terms and conditions of French law, applicable only to the secondary proceedings. Such notice shall specify all of the time periods and formulae to be observed as well as any penalties that may be incurred by creditors and/or foreign liquidators appointed in other secondary

proceedings under French law in the case of failure to lodge a claim or the tardy lodging of claims with the liquidator.

The Joint Administrators and the French Liquidators shall exchange their lists of creditors in France that have been notified in order to identify those who have been so notified by both the Joint Administrators and the French Liquidators.

I-2. Practical means of treating the claims lodged by the creditors of SENDO INTERNATIONAL LIMITED

- Under Article 32.1 of the (EC) regulation, any creditor may lodge on its own behalf its claim in the main proceedings and in the secondary proceedings.
- Under Article 32.2 of the (EC) regulation, the Joint Administrators and the French Liquidator must in principle produce the global amount of liabilities claimed with such Joint Administrator or the French Liquidators to the other proceedings. The Joint Administrators and the French Liquidators are nonetheless exempted from such production when such production is not in the interest of the creditors it represents. In the case of SENDO INTERNATIONAL LIMITED, the assets previously situated in France were of minimal value.

Accordingly, the Joint Administrators, given regular notification by the French Liquidators in conformity with I-1 hereinabove, are exonerated from production to the secondary insolvency proceeding of the liabilities for the proceeding for which it was appointed given the poor assets included in the scope of the secondary proceeding. Redistribution among creditors is not possible in the secondary proceeding ; therefore the lodgment of claims by the Joint Administrators in the secondary proceedings holds no interest for the creditors they represent.

The French Liquidators must however and given the interest that such represents for the « local » creditors, produce to the Joint Administrators appointed under the Main proceeding, the amount of claims lodged with it.

In conformity with the same rules and regulations, the French Liquidators will produce this amount to all secondary proceedings filed or to be filed against SENDO INTERNATIONAL LIMITED within European territory.

Each of these such productions shall be accompanied by a list providing the names of the creditors with claims which make up this debt. As per Article 41 of the (EC) regulation, in addition to the names of each of these such creditors, the list must also state the creditor's address, the amount and nature of the claim lodged and any possible security interests, or other encumbrances attached thereto.

I-3. Practical means of verification of claims made against SENDO INTERNATIONAL LIMITED

I-3.1. Independence of the proceedings of verification of the liabilities

Whilst it is preferred that each party shall verify the amount and the form of the claims made directly to each such party in conformity with the applicable national legislation, in the case of SENDO INTERNATIONAL LIMITED, it was agreed that the French Liquidators would collect details of claims and subsequent to verifying same, would provide a listing of proved debts to the Joint Administrators.

In conformity with Articles 4.2 (h) and 28 of the (EC) regulation, such verification shall be made independently in conformity with the national legislation applicable to each of the two insolvency proceedings.

I-3.2. Dual-Verification Obligation

Given the European dimension of the insolvency proceedings in question, each of the Joint Administrators and the French Liquidators must check and double check, for each of the claims accepted by each of them if such claim has not been filed twice under I-2 hereof in conformity with Article 32 of the (EC) regulation.

Such verification shall be made by each of the Joint Administrators and French Liquidators by using the list of creditors which is to be annexed to the production made to the other Joint Administrator or French Liquidators in conformity with Article I-2 hereof.

Each claim lodged twice by the foreign liquidator in conformity with Article 32.2 of the (EC) regulation on the one hand and by the creditor itself in conformity with Article 32.1 of the (EC) regulation on the other hand, may be counted only once in the liabilities total for each of the insolvency proceedings.

Each Joint Administrator or French Liquidators shall thus ensure that it does not make multiple distributions to the same creditor in the insolvency proceeding to which it has been appointed.

I-4. Treatment of Legal costs

Article 30 of the (EC) regulation foresees only the theoretical instance of the opening of a secondary insolvency proceedings if the debtor's assets are sufficient to cover in whole or in part the costs and expenses of such proceedings.

Internal French law does not require such financial coverage in the context of French insolvency proceedings prior to the opening of such proceedings.

Nevertheless, to the extent where the opening of the secondary proceeding was requested by the Joint Administrators in conformity with Article 29 of the (EC) regulation, it is

hereby stipulated and agreed by the parties that Article 30 of the (EC) regulation shall be applicable.

The financial burden of all legal costs in connection with the opening of the secondary insolvency proceeding filed on French territory, and specifically the fees due to the French Liquidators for the actions and rates for such established by Decree n° 85-1390 of 27 December 1985 setting the remuneration and rates for judicial liquidators in the context of judicial liquidation and bankruptcy proceedings for companies shall be borne from the assets of SENDO INTERNATIONAL LIMITED as an expense of the administration in England. It has been agreed that in the case of the secondary proceedings of SENDO INTERNATIONAL LIMITED, the fees payable as expenses of the administration in England shall be subject to a limit of € 3604,05, to be determined by the judge.

The actions and tariffication for such under Decree n° 85-1390 of 27 December 1985 for the practice of the mission of judicial liquidator are as follows :

- verification of claims lodged (art. 13)
- establishment of statements of wages due (art. 14)
- recovery of the assets created by actions initiated or pursued by the judicial liquidator (art. 18)

Furthermore, the French Liquidators will receive, under Article 12-1 of the Decree n° 85-1390 of 27 December 1985, a fixed fee in the pre-tax amount of 2,287.00 € to be paid from the assets of SENDO INTERNATIONAL LIMITED as an expense of the administration in England.

The amount of the fees that the French Liquidators will receive for its actions, the rates for which are established under Decree n° 85-1390 of 27 December 1985, is set by the judge having jurisdiction in conformity with Articles 16 and 22 of Decree n° 85-1390 of 27 December 1985.

Coverage of the fees of the French Liquidators under the secondary proceeding defined by the application of Decree n° 85-1390 of 27 December 1985 are subsidiary in the event where the recovery of assets included in the scope of the secondary proceeding would allow for all or part of such coverage.

II- PRACTICAL MEANS OF TREATING THE ASSETS OF THE FRENCH BRANCH OF SENDO INTERNATIONAL LIMITED

II-1. Treatment of the recovery of assets in time

II-1.1. Preparation of the transfer by coordination between and among the various proceedings

In conformity with the principles defined by the (EC) regulation :

► The sections of Article 31 of the (EC) regulation relating to the obligation to cooperate and inform, provide that :

- Each Joint Administrator and French Liquidators establishes individually, prior to any disposition of such, a list of assets, limited to those assets in France, entering into the scope of the proceeding for which such Joint Administrator or French Liquidators has been appointed. Once established, this list is produced to the other Joint Administrator or French Liquidators.

- The Joint Administrators shall provide to the French Liquidators in the secondary proceeding, at the earliest opportunity and in any case after receipt of the list cited above, proposals concerning the assets of the debtor in France in conformity with Article 31.3 of the (EC) regulation.

► Article 33.1 of the (EC) regulation provides that the Joint Administrators may request of the court where the secondary proceeding was filed to stay for a three-month period, which period shall be renewable, all judicial liquidation proceedings carried out in the context of the secondary proceeding.

► Article 28 of the (EC) regulation provides that the law applicable to the secondary proceeding is the law of the Member State within whose territory the proceeding was opened.

The parties hereto accept and agree to apply harmoniously the following principles :

- In order to privilege the best means of recovery of the assets of SENDO INTERNATIONAL LIMITED in France or to enable their use in support of adoption of a winding-up arrangement or any comparable measures, the Joint Administrators undertakes not to request, for a three-month period from the date of the pronouncement of the filing of the secondary proceeding, the stay of liquidation proceedings within French territory by the French Liquidators.

An extension of such delay may be made upon agreement by both of the parties hereto.

- In compensation for and, again, to allow a possible transfer of all of the assets, or a winding-up arrangement, the French Liquidators undertake not to proceed, for the same (renewable) three-month period, with the forced recovery of assets entering into the scope of the secondary insolvency proceeding.

If the recovery of such assets is required of the French Liquidator prior to the expiration of this (renewable) three-month period, the French Liquidator shall notify the Joint Administrators that this latter may request the Commercial Court of Nanterre to stay liquidation proceedings in conformity with Article 33 of the (EC) regulation.

- As soon as it has established the list of inventoried assets, and no later than two months from the pronouncement of the opening of the secondary proceeding, the French Liquidators shall produce such list to the Joint Administrators.

- Within one month from the receipt of such list, the Joint Administrators shall submit to the French Liquidators its recovery proposals, and will request the French Liquidators' opinion as to such. If the proposals include all or part of the assets falling under the scope of the secondary proceeding, it must in any case respect, with regard to the recovery of such assets, the provisions of French law, in conformity with Article 28 of the (EC) regulation.

In the absence of agreement, and subject to a stay of the secondary proceeding upon the Joint Administrators' request in conformity with Article 33 of the (EC) regulation, the French Liquidators will recover the assets in the scope of the secondary proceeding in conformity with applicable French law.

II-1.2. Operating proceedings for the disposal of the assets

The proposals that the Joint Administrators in the Main proceeding, makes, must be taken into consideration by the Commercial Court of Nanterre, but are in no way binding; the Commercial Court of Nanterre has supreme jurisdiction to rule on the destiny of the assets included in the scope of the secondary proceeding, opened within French territory.

In the event where the Joint Administrators submits to the French Liquidators a proposal for the global transfer including all assets included in the scope of the secondary proceeding, the French Liquidators will submit such proposal, along with its opinion as to such, to the French court having jurisdiction to authorize or order the transfer of these assets.

In the event where the proposal submitted by the Joint Administrators receives the approval of the French court having jurisdiction to authorize the transfer of the assets included in the scope of the secondary proceeding, the decision of the judge in charge of proceedings (in the case of transfer of isolated assets) or the decision of the Court (in the event of transfer of the business) ruling on the transfer of these assets will appoint the taking-over party selected in the context of the main proceeding. The acts of transfer of the assets shall go through the French Liquidators in conformity with applicable French legislation.

II-2. Treatment of the distribution of the income from the recovery of the assets

Article 20.2 of the (EC) regulation aims to protect equal treatment for each category of creditors by excluding any creditor who has obtained a dividend in one of the insolvency proceedings from distributions made in the context of another proceeding when creditors of the same rank or category as that creditor have not received, in the other proceeding, an equivalent dividend.

Articles 4.2 (i) and 28 of the (EC) regulation provide that operations concerning distribution of the income from the recovery of assets included in the scope of the secondary proceeding are governed by French law.

The parties hereby stipulate that the income from the recovery of assets included in the scope of the secondary proceeding shall be paid, including in the event of a total transfer of the assets as defined in II-1 hereof, to the French Liquidators to be deposited with the *Caisse des dépôts et consignations* for later distribution to those creditors whose claims were entered as a liability in the accounts in the secondary proceeding.

In order to avoid the risk, incurred by the plurality of insolvency proceedings, of granting a creditor an amount that is greater than his or her receivable, each Joint Administrator or French Liquidator is required to send to the other Joint Administrators or French Liquidators of the other proceedings, main or secondary :

- after the payment of sums, the list providing the names of the creditors who have received a dividend. This list shall provide the name and address of each of the creditors paid, the amount and nature of the claim and the amount of the dividend paid.
- prior to any payment, the draft distribution plan based on which the payment of dividends will be made. The Joint Administrators or the French Liquidators to whom this draft is sent shall respond to such within fifteen days from the date of receipt of such draft. Failure to respond within this time period shall be considered as acceptance of the draft plan.

The Joint Administrators or the French Liquidators who carries out the distribution shall enter such amounts as have been paid and notified to him by his foreign colleagues.

In Paris, on June 1, 2006

In 5 original counterparts,

SCP BECHERET-THIERRY-SENECHAL

Represented by Mr. Marc Sénéchal, Esq.

Alastair P Beveridge and Simon J Appell of KROLL

Represented by Maître Reinhard Dammann

Before Mr. Jérôme MANDRILLON, Bankruptcy Judge with the Commercial Court of Nanterre