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The impact of the EU Regulation<sup>1</sup> on UK insolvency proceedings

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Introduction

1. Council Regulation (E.C.) No. 1346/2000 of May 29, 2000 on insolvency proceedings (“the Regulation”) will actually or potentially affect every type of insolvency proceeding in the UK. This paper will, however, generally confine itself to that part of the UK known as England and Wales (“England”). It will not generally deal with the colony of Gibraltar, which is within the concept of “UK” but is treated as a separate jurisdiction for the purpose of the Regulation.
2. References to the EU in this paper include Gibraltar but exclude Denmark, except to the extent that it becomes bound into the terms of the Regulation.
3. Since there is no case-law and little writing on the Regulation and since it is written in a language and contains concepts largely alien to lawyers and judges from the common law world, the views in this paper must be taken to be very tentative and subject to further discussion and thought.
4. The paper does not attempt to deal with every point that could be mentioned on this subject but tries to focus on the principal areas of likely interest and relevance.

Proceedings covered

5. The only types of insolvency proceedings directly covered by the Regulation are set out in Annex A to the Regulation. For England, the listed proceedings are winding up by the court, creditors voluntary winding up (with confirmation by the court – more of this below), administration, voluntary arrangements and bankruptcy. Schemes of arrangement, even when used as insolvency or reconstruction proceedings, are not listed. However, if a scheme which can be described as a “composition” and is sheltered by a listed proceeding, such as administration, it seems that once the scheme is approved by the court it will be entitled to recognition throughout the EU: see Article 25(1).
6. Annex B to the Regulation lists the sub-class of “winding up proceedings”, which consists of winding up by the court, creditors voluntary winding up (with confirmation by the court ), and bankruptcy.
7. Annex “C” lists “liquidators”, being liquidators, supervisors, administrators, Official Receivers and Trustees in Bankruptcy. To avoid confusion, this paper will refer to “office holders” rather than “liquidators”, unless liquidators are actually intended to be referred to. Note that the list does not include Administrative Receivers, although they are “office holders” under our domestic legislation.

## Exclusions

8. It is as important to know what the Regulation does *not* cover as it is to know what it does. It does not cover proceedings and processes which de facto may operate as an insolvency proceeding. Mention has already been made of schemes under section 425 of the Companies Act 1985. Administrative receivership, even insofar as it is governed by the Insolvency Act 1986, is also not included.
9. There are two particularly important general areas which are expressly excluded.

## Insurance Undertakings

10. The Regulation does not apply to insolvency proceedings concerning insurance undertakings: Article 1(2). Unfortunately, there is no definition of “insurance undertaking” in the Regulation.
11. The scope of the exclusion has to be worked out from Directive 2001/17/EC of the European Parliament and of the Council of the 19<sup>th</sup> March 2001 on the reorganisation and winding up of insurance undertakings. The text of this directive is printed as an appendix to **Moss & Others, Cross Frontier Insolvency of Insurance Companies**, Sweet & Maxwell, 2001. Recital (2) to the Directive points out that insurance undertakings are expressly excluded from the scope of the Regulation on insolvency proceedings. It seems, therefore, that what is excluded from the Regulation can be taken to be that which is *included* in the Directive. It is generally understood that the Directive is meant to plug a gap left by the Regulation. For the purposes of the Directive, “insurance undertaking” means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC. As Recital (1) to the Directive points out, the first of those directives dealt with direct non life insurance and the second dealt with direct life insurance. Neither directive dealt with reinsurance.
12. The result in relation to reinsurance is not startlingly clear. It may be that those reinsurers who have been authorised to conduct direct insurance may well be included in the Directive and excluded from the Regulation but that any reinsurer who is *not* authorised to conduct direct insurance business is not included in the Directive and therefore should be taken to be included in the Regulation. A further possibility is that a reinsurer who is authorised to write direct insurance is subject to the Regulation in respect of its reinsurance business and subject to the Directive in respect of its direct insurance business.

## Credit Institutions

13. The other very substantial general exclusion relates to credit institutions and investment undertakings which provide services involving the holding of funds or securities for third parties: Article 1(2). This will exclude banks and finance houses. Again the idea is that credit institutions will be covered by a separate directive.

## Groups

14. It is also important that no special provision is made by the Regulation for groups of companies. There is no equivalent of the position in US Chapter 11 where a group of companies can enter into Chapter 11 proceedings together and have their proceedings consolidated. Also. The Regulation has no direct application to a subsidiary in one EU State of a company which is in a form of insolvency proceeding in another EU State. The shares in the subsidiary will be an asset located in another State and the shares will therefore be affected by the provisions of the Regulation dealing with such assets.

## Jurisdiction

15. One of the most important aspects of the Regulation is that it governs the jurisdiction to commence insolvency proceedings. In considering the potential start of any insolvency proceedings in England, the party proposing to start those proceedings needs to consider where the “centre of a debtor’s main interests

is situated”: Article 3(1). It is only that jurisdiction that can open “main” proceedings. In the case of a corporation, there is a rebuttable presumption that the place of the registered office is the centre of its main interest.

16. If the centre of a debtor’s main interest is in another EU State, the English courts will have jurisdiction to open proceedings only if the debtor has “an establishment” within the UK. In that case the effect of the English proceedings will be limited to the assets of the debtor in the UK: Article 3(2).

### “Establishment”

17. Since the mere presence of assets and other traditional connecting factors accepted in English law will no longer be sufficient for jurisdiction to commence territorial or secondary proceedings where the Regulation applies, an understanding of what is meant by “establishment” is essential.
18. Article 2(h) defines “establishment” as “... any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.”
19. The concept seems not very different from the familiar idea in English company law of an “established place of business”. The reference to “goods” is unfortunate, since a narrow technical reading would equate it to “chattels”. It is suggested that that would be an unwarranted parochial reading. The word used in the French text is “biens”, which suggests some wider reading such as “property” or “assets”. In the UNCITRAL Model Law<sup>3</sup> much the same definition is used but instead of just “goods” the text reads “goods or services” (Article 2(f))

### Secondary and Territorial Proceedings

20. Where the centre of main interest is in another EU State, if the English proceedings are started *before* proceedings in that other Member State, they can conveniently be called “territorial proceedings”, although that term is not a technical term used in the Regulation. The Regulation refers to a situation where proceedings referred to in Article 3(1) are opened following the opening of proceedings under Article 3(2) under a general heading of “secondary proceedings”: see Article 36.
21. Where proceedings are first started in the State which has the centre of the debtor’s main interests, any *subsequent* proceedings in England will be “secondary proceedings”: Article 3(3).
22. There are important differences between territorial and secondary proceedings.
23. One important difference is that secondary proceedings “must be winding up proceedings”. This can have unpleasant consequences. For example, supposing a corporate debtor’s centre of main interest is in France, where the company’s business is not viable, but there is an establishment and a separate, profitable business in England. Apart from the effect of the Regulation, it might well be desirable to have an administration order in England. However, as a result of Article 3(3) of the Regulation, unless the English jurisdiction gets in first and creates a territorial administration proceeding under Article 3(2), it will not be possible to have administration proceedings in England. Administration proceedings are insolvency proceedings within Annex A to the Regulation but are not winding up proceedings listed in Annex B of the Regulation and therefore cannot be used as secondary proceedings.
24. Another important consequence of getting in first and starting territorial rather than secondary proceedings is that a series of provisions in Articles 31-35 which regulate the relationship of main and secondary proceedings and ensure the primacy of the main proceedings only apply to territorial proceedings in so far as the progress of the main and territorial proceedings permit: Article 36.
25. Article 3(4) restricts the use of territorial proceedings. There can only be opened prior to the opening of main insolvency proceedings if one of two types of condition is met. The first condition is that main insolvency proceedings cannot be opened

because of conditions laid down by the law of the State of the centre of the debtor's main interests. The other condition is where the opening of territorial proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

26. Accordingly, if the English proceedings are to get in first in the problem set out above, either it will have to be shown that there is some legal impediment to main proceedings in France or, administration proceedings will have to be started by or on the joint application of a creditor with his domicile, habitual residence or registered office in the UK or whose claim arises from the operation of the company's establishment in the UK.

### Choice of Law

27. The regulation also deals with the critical question of which insolvency law is to govern insolvency proceedings of each of the three types set out above. The Regulation has adopted a very simple general rule: the law of the State of the opening of proceedings determines the conditions for the opening of the proceedings, their conduct and their closure. Accordingly, whether the proceedings opened in England are main, territorial or secondary, they will all generally be governed by English law.

### Exceptions

28. Again, the exceptions to the general rule are as important as the general rule itself.

### Rights in Rem

29. The opening of insolvency proceedings shall not affect the rights in rem of a creditor or third parties in respect of assets belonging to the debtor which are situated within the territory of another member State at the time of the opening of the proceedings: Article 5. For example, the opening of insolvency proceedings in France should not affect a debenture holder being able to crystallise his floating charge, appoint a receiver and realise assets in the UK, as long as the assets are in the UK at the time that the French proceedings are opened. Clearly, much attention will be devoted to the location of assets both in a legal and physical sense.

### Set-Off

30. The opening of insolvency proceedings does not affect the right of creditors to demand a set-off against the claims of the debtor where such a set-off is permitted by the law applicable to the insolvent debtor's claim: Article 6. This enables an actual or potential creditor to try to protect himself from a lack of set-off rights under the law of the place of the debtor's centre of main interests by contracting that the liability to him be governed by a law which allows wide rights of set-off.
31. For example, if an English lender lends money to a borrower who has his centre of main interests in France, in a French main insolvency proceeding there would be significantly narrower rights of set-off than in English law. The English lender can therefore try to insist that the debt be governed by English law. If it is, the creditor can rely on the wider rights of set-off allowed under English law.

## Retention of Title

32. The opening of insolvency proceedings against a purchaser shall not affect a seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings: Article 7(1). Thus if there is a liquidation in England and the liquidator has bought some goods from a supplier in France, and the goods are still in France, the French seller can enforce his reservation of title in respect of the goods, whether or not that reservation of title would be valid in England under English law.

## Land Contracts

33. The effects of insolvency proceedings on a contract conferring a right to acquire or make use of immovable property is to be governed solely by the law of the Member State within the territory of which the immovable property is situated: Article 8. Thus, if a company is in liquidation in England and has the benefit of a contract to purchase land in France, the effect of the liquidation on that contract is to be governed solely by French law.

## Payment systems and Financial Markets

34. The effects of insolvency proceedings on rights and obligations of parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market: Article 9. For example, if there is a liquidation of a company in England, and a payment or settlement system in France operates a multi party set off which would be contrary to the principles in the *British Eagle* case and outside English statutory exceptions, the effectiveness of the multilateral set-off will depend on the French law and neither the *British Eagle* principle nor the English law exceptions will apply.

## Employment Contracts

35. The effects of insolvency proceedings on employment contracts and relationships is to be governed solely by the law of the Member State applicable to the contract of employment: Article 10. Thus, if a company is in liquidation in England, but employs workers in France under French law, the effect of the liquidation on the employment contract and relationships is to be governed by French law.

## Moveable Registered Property

36. The effects of insolvency proceedings on the rights of the debtor in a moveable property, a ship or on aircraft subject to registration in a public register, shall be determined by the law of the Member State under the authority of which the register is kept: Article 11. Thus, for example if a company goes into liquidation in England and owns a yacht registered in the South of France, the effect of the insolvency proceedings on the rights of the debtor is determined by French law.

## Antecedent transactions

37. The law of the State of the opening of proceedings determines the conduct of their proceedings, including “the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors”: Article 4(2)(m)<sup>4</sup>. However, where the act in question is subject to the law of another Member State, and that law does not allow any means of challenging the act in the relevant case, “Article 4(2)(m) shall not apply”. Accordingly, where the relevant act sought to be attacked occurs in another Member State, there appears to be a kind of “double actionability” test.
38. For example, if there is a liquidation in England and there is a transfer of property in France under French law at an undervalue which would be void under the Insolvency Act 1986, it will be a defence to the transferee to be able to show that the transfer could not be attacked under French law.

## Recognition

39. One of the most important provisions of the Regulation provides for the mandatory recognition of insolvency proceedings in other Member States: Article 16(1). Very importantly, the recognition has to be afforded without any “further formalities”: Article 17. Thus, if England is the debtor’s centre of main interests and a winding up order is made in England, that has to be recognised throughout the EU. This principle operates subject to the exceptions set out in the Regulation. As well as specific exceptions, such as those relating to rights in rem, retention of title etc there is also an exception where there are also territorial or secondary proceedings in the relevant other Member State.
40. Thus, for example, if a winding up order were made in respect of a debtor company with its centre of main interests in England, that would produce the effect of revoking the authority of the company’s agents worldwide as a matter of English law. Pursuant to Article 16 and 17, that effect should be reproduced, say in France, without further formalities. However, if a territorial or secondary proceeding is commenced in France, that English law effect will not apply to France. The question will then be decided by French law.

## Powers of the office holder

41. The relevant officeholder in the types of proceedings to which the Regulation applies, if they are main proceedings, may exercise all the powers conferred on him by the law of the State of the opening of proceedings in any other Member State: Article 18. This applies also only as long as no other insolvency proceedings have been opened in that State. There is a further exception where any preservation measure “to the contrary” has been taken in that State further to a request for the opening of insolvency proceedings in that State.
42. In those cases where a liquidator appointed in a main proceeding can exercise his powers in another EU country, he can in particular remove the debtor’s assets from the territory of the other Member State. This right, however, is subject to Articles 5 and 6, the provisions relating to third parties rights in rem and set off.
43. To take a practical example, supposing a liquidator is appointed pursuant to a winding up order in England in a main proceeding. The company has a Rolls Royce at its Paris office. If there are no insolvency proceedings in France, the English liquidator can remove the Rolls Royce from France. However, if another party has a right in rem in the Rolls Royce, such as a security

interest, then the liquidator cannot remove the Rolls Royce in violation of those rights.

44. In the case of a debt, for example if the asset were not a Rolls Royce but a debt owed by a French company, it should be possible to collect payment in France and remit it to England. If the debtor has a cross-claim greater than the claim, it will probably be set off under English law. In the unlikely event that (a) there is no set-off under English law and (b) there is set-off under French law, and if the debt is governed by French law, set-off can take place under French law pursuant to Article 6.

#### Public policy

45. Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be “manifestly contrary” to the State’s public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual: Article 26.
46. The word “manifestly” emphasizes that there should rarely be an occasion for a situation to be covered by this public policy exception. In particular, EU countries share the same obligations in relation to Human Rights.
47. In the past, a public policy question has arisen in relation to recognition in connection with tax matters. The question may well, therefore, arise as to how far that head of public policy is within Article 26. Since Article 39 expressly permits tax and social security authorities in one Member state to claim in an insolvency in another Member State, it may well be that for the purposes of the Regulation the tax and social security claims of one EU State cannot be regarded as being within an Article 26 public policy exception in the courts of another.

#### Special Provisions applying To Secondary Proceedings

48. The liquidator in the main proceedings has the power to request the opening of secondary proceedings: Article 29. Thus, for example, if an administrator is appointed in main proceedings in England, and there is a business which amounts to an “establishment” in France, the English liquidator can ask the French courts to open insolvency proceedings in respect of the business carried on in France. Unfortunately, as already noted, that secondary proceeding has to be of a liquidation nature: Article 27. This is a serious weakness in the Regulation as it was in the draft convention before it.
49. Any person who has the right to request the opening of secondary proceedings under French domestic law can also make the request. The secondary proceeding, of course, only has territorial effect.

#### Cross frontier co-operation and communication

50. One of the key aspects of running any cross frontier insolvency is the question of co-operation between officeholders in different countries. In the common law world, a great deal of co-operation has been achieved either by appointing partners in the same worldwide practice or by entering into cross frontier protocols approved by the courts of the respective jurisdictions.
51. Article 31 lays down express duties in respect of communication and co-operation between relevant officeholders in different EU States. These are said to be subject to the domestic law restrictions on com-

munication and co-operation, but should still be of enormous use and assistance.

52. Article 31(3) underlines the pre-eminence of the relevant officeholder in the main proceeding. It provides that the officeholder in the secondary proceeding shall give the liquidator in the main proceeding an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

### Claims By Creditors

53. Article 32(1) provides that any creditor may lodge his claim in the main proceedings and in any secondary proceedings. Article 32(2) takes the matter a step further forward. The liquidators in the main and any secondary proceedings have to lodge claims already lodged in their proceedings in the other proceedings, “provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides”.
54. Article 32(3) provides that the liquidator in the main or secondary proceedings is empowered to participate in the other proceedings on the same basis as a creditor, and in particular can attend creditors’ meetings.
55. Article 39 provides that any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings has a right to lodge claims in that insolvency proceeding in writing. This includes tax authorities and the social security authorities. There is no suggestion however that such claims should enjoy the same priority status that they may well have in their home jurisdictions.
56. Article 40 contains the important provision that the court or officeholder “shall immediately” inform known creditors who have their habitual residences, domiciles or registered offices in any other Member States about the opening of insolvency proceedings. Sadly, there is no central register of insolvency proceedings in the EU. This would be a very worthwhile project.
57. Article 41 deals with the lodging of claims. Article 42 deals with the important question of language. Information to creditors under Article 40 must be provided in the official language “or one of the official languages” of the State of the opening of proceedings. Could a Welsh liquidator write to EU creditors in Welsh? A Finnish liquidator can give notice in Finnish or Swedish. There could be work for translators here.
58. Whilst any liquidator in England can use his own official language for the Article 40 notification, he must in each case use a form which has the heading “Invitation to lodge a claim. Time limited to be observed” in all the official languages of the institutions of the European Union; Article 42(2).

### Termination of secondary proceedings

59. Reference has already been made to the unfortunate position that secondary proceedings always have to be liquidation proceedings. This is mitigated to an extent by the fact that Article 34(1) enables the officeholder in the main proceeding to propose a rescue plan, composition or “comparable measure” if the local law permits.
60. For example, to return to a situation described above, where there is a main administration proceeding in England but there has to be a liquidation proceeding for a business carried on in France which might be rescued: if French domestic law permits, the administrator can propose a rescue plan, composition or comparable measure in the French liquidation proceedings.
61. In a converse situation, where there is a rescue type proceeding say in France, which is a main proceeding, and there has to



be a liquidation proceeding in England, the scenario may play out as follows. Since no administration order could be permitted in England, unless it was applied for before the French main proceedings, a winding up petition could be presented and perhaps provisional liquidators appointed. Either the company, creditors or the French officeholder could put forward a rescue plan, composition or comparable measure. The reference to composition or comparable measure might well be apt to include (depending on its terms) a scheme of arrangement under section 425 of the Companies Act 1985.

62. Note however that a CVA may not be possible in this context because it would be a secondary proceeding, would be an insolvency proceeding in Annex A but would not be a winding up proceeding in Annex B.
63. It is also relevant in this context that a court which opens secondary proceedings is required to stay them in whole or in part on receipt of a request from the liquidator in the main proceedings, “provided that in that event it may require the liquidator in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors”. Accordingly, in the last example, the French officeholder could request a stay of the English winding up proceedings pending the English court’s sanction of a scheme of arrangement.

### Contrast with ancillary liquidation

64. It is interesting to note that whereas in the common law world system of ancillary liquidations, assets and claims are normally passed to the principal proceeding, under the Regulation, assets and claims are dealt with locally.
65. However, if assets are liquidated in secondary proceedings and all claims made in those proceedings are met, the officeholder in the secondary proceedings is obliged to transfer any surplus assets to the officeholder in the main proceedings: Article 35.

### The position in territorial proceedings

66. These are proceedings limited to the assets of a Member State which are not main proceedings but had begun before the main proceedings are started in the State with the centre of main interest of the debtor.
67. Articles 31-35 of the Regulation are applied by Article 36 to territorial proceedings “in so far as the progress of those proceedings so permits”. As noted above, this is another incentive to get in first and try and minimise interference from abroad.

### Freezing and Preservation Orders

68. Where a court with jurisdiction to commence main proceedings appoints a temporary administrator before making an order starting the proceedings, the temporary administrator can request courts in another EU State to take measures to secure or preserve the debtor’s assets in that State until the order starting main proceedings: Article 38.
69. For example, if a winding up petition is presented in England as the debtor’s centre of main interests and a provisional liquidator appointed, he could apply to the courts in France to freeze assets there until a winding up order is made in England. Article 38 only applies in respect of measures permitted by the local law. Thus, if French law did not permit a temporary freeze on the relevant asset, this facility would not be available.

### No Retrospective Effect

70. The provisions of the Regulation apply only to insolvency proceedings opened after its entry into force, ie on the 31<sup>st</sup> May 2002: Article 43. Opening in this context means for example a winding up or administration order made by the court, not the filing of a petition.

71. The Regulation has no retrospective effect, in that acts done by a debtor before the entry into force of the Regulation shall continue to be governed by the law which was applicable to those acts at the time they were done. (Article 43).

### Relationship With s.426 Insolvency Act 1986

72. There is a general exception, in relation to the UK, to the application of the Regulation “to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy and the winding up of insolvent companies from any arrangements with the Commonwealth existing at the time this Regulation enters into force”: Article 44(3)(b).
73. This appears to be a reference to section 426 of the Insolvency Act 1986. There may be a difficult puzzle here. Section 426 is in terms mandatory with regard to assisting Commonwealth countries but has been held by the Court of Appeal to contain an element of discretion. What then is the “obligation” which arises from section 426? The question of whether there is a discretion as to the *giving* of assistance (as opposed to the *mode* of giving assistance) has twice narrowly missed being considered by the House of Lords in relatively recent cases and could still be reconsidered there in the future.

### UK Domestic Law Overriden

74. Although this is not spelt out in the Regulation itself, as a matter of European law the Regulation is self-executing and indeed overrides all domestic legislation. The Regulation is not meant to be “enacted” into domestic law in the way that directives have to be. In England, therefore, we will have the curious situation of a statute, the Insolvency Act 1986 and a body of case law, all of which will be subject to the provisions of the Regulation. Provisions of the statute will in effect be reversed or amended without that ever appearing on the face of the statute. No one judging or advising in relation to English law will be able safely to read the statute or the case law and imagine that he is looking at the final determinative rules or principles applicable in England.

### Review of the Regulation

75. Unlike English legislation, which is passed and then subsequently only reviewed on a haphazard basis, the Regulation itself contains in Article 46 a mechanism for review. On the 1<sup>st</sup> June 2012 and every five years thereafter the Commission is obliged to present to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Regulation. The report is to be accompanied if need be by proposal for adaptation of the Regulation.

### Adaptations to English law and procedure

76. Although it is not permissible for the UK Parliament to change English law to incorporate the provisions of the Regulation, a number of procedural rules will have to be changed so that English law and the Regulation can work smoothly together. At the time of writing, the proposed statutory instrument has not been published. It can confidently be said, however, that there will be need, at the very least, to provide for “confirmation by the court” for creditors’ voluntary winding up. Without such confirmation the procedure will not qualify under Annex A to the Regulation and the benefits of the Regulation would not apply to it.

## Conclusion

77. It is suggested that in every insolvency proceeding in the UK we will need to consider the actual or potential EU angle. Where there is any actual or potential involvement relating to EU creditors, business or assets, we need to consider the potential effect of the Regulation. In considering whether to start proceedings and the timing of proceedings we need to consider the effect that such proceedings and their timing will have elsewhere in the EU.
78. Despite the difficulties, uncertainties and shortcomings in the Regulation, it does seem overall to be far better than the present situation. Practitioners and Judges in the UK have the opportunity to make the Regulation work in harmony with domestic law by a liberal and imaginative interpretation, forsaking any parochial concerns. In particular, the English jurisdiction is held in high esteem throughout the EU and could well set a lead in the interpretation and application of the Regulation.

### **(Footnotes)**

<sup>1</sup> Set out in Appendix 4 to Lightman and Moss, *the Law of Receivers and Administrators of Companies* (3<sup>rd</sup> ed 2000).

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<sup>3</sup> Set out in Appendix 5 of Lightman and Moss, *The Law of Receivers and Administrators of Companies* (3<sup>rd</sup> ed 2000)

<sup>4</sup> The word “all” should not be taken literally here: the provision does not just concern cases where the detriment is to every single creditor. The French version, which is equally authoritative, has “*ensemble*”, which suggests that this is a reference to the general body of creditors.