

European Restructuring and Insolvency

Chris Laughton

12 May 2010

mercer & hole
chartered accountants

European Issues

- Chris Laughton
- Partner in Mercer & Hole
- Deputy President, INSOL Europe
- TAGLaw Insolvency Speciality Group Co-Chair
- chrislaughton@mercerhole.co.uk
- insolvencyblog.com



mercer & hole
chartered accountants

Key Issues

- Networking
- European Insolvency Regulation/UNCITRAL
Model Law
- Centre of Main Interests – “COMI”
- Cultural Issues

Networking



[http://ec.europa.eu/civiljustice/bankruptcy/
bankruptcy_ec_en_form1.doc](http://ec.europa.eu/civiljustice/bankruptcy/bankruptcy_ec_en_form1.doc)

(es) «Convocatoria para la presentación de créditos. Plazos aplicables»
(cs) "Výzva k přihlášení pohledávký. Závazné lhůty"
(da) »Opfordring til anmeldelse af fordringer. Vær opmærksom på fristerne«
(de) „Aufforderung zur Anmeldung einer Forderung. Etwaige Fristen beachten!“
(et) "Nõude esitamise kutse. Järgitavad tähtajad"
(el) «Προσκληση για αναγγελία ή απαιτησίως. Προσροή στις προθεσμίες»
(en) "Invitation to lodge a claim. Time limits to be observed"
(fr) «Invitation à produire une créance. Délais à respecter»
(it) «Invito all'insinuazione di un credito. Termine da osservare»
(lv) "Uzaicinājums iesniegt prasījumu. Termiņi, kas jāievēro"
(lt) "Kvietimas pateikti reikalavimą. Privalomieji terminai"
(hu) "Felhívás követelés bejelentésére. Betartandó határidők"
(mt) "Stedina għal preżentazzjoni ta' talba. Limiti taż-żmien li għandhom jiġu osservati"
(nl) „Oproep tot indiening van schuldvorderingen. In acht te nemen termijnen”
(pl) "Wezwanie do zgłoszenia wierzytelności. Przestrzegać terminów".
(pt) «Aviso de reclamação de créditos. Prazos legais a observar»
(sk) "Výzva na prihlásenie pohľadávky. Je potrebné dodržať stanovené termíny"
(sl) "Poziv k prijavi terjatve. Rok, ki jih je treba upoštevati!"
(fi) "Kehotus saatavan ilmoittamiseen. Noudatettavat määräajat"
(sv) "Anmodan att anmäla fordran. Tidsfrister att iaktta"

mercer & hole
chartered accountants

Pan-European IP Networks

- TAGLaw Insolvency Speciality Group
- INSOL Europe
- hww international cooperation partners
- TMA, IWIRC, IBA, III

mercer & hole
chartered accountants

Why network?

- To win work
- Deliver existing skills and services
- An additional source of referrals

Networking opportunities

- TIAG/TAGLaw Conference
- INSOL Europe: Vienna, 14-17 October
 - 2010 Annual Congress
- Commercial courses

European Insolvency Regulation

- Council Regulation (EC) No 1346/2000 of 29 May 2000
- Effective from 31 May 2002
- Directly part of member states' law
 - eg Article 42 notice

European Insolvency Regulation - details

- Objectives
 - Rules on opening and choice of law
- Key concepts
 - COMI
 - Secondary proceedings
- Universality

European Insolvency Regulation – application

- Asset location
- Small cases
- Opportunity for UK professionals!

UNCITRAL Model Law

- Chapter 15
- COMI
- Main and non-main proceedings

Centre of Main Interests

“the centre of main interests 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”

Recital 13, EIR

COMI – statute law

“in the case of a company or legal person, the
place of the registered office shall be presumed
to be the centre of its main interests in the
absence of proof to the contrary”

Article 3(1), EIR

COMI – case law

“the presumption can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at the registered office is deemed to reflect”

Eurofood IFSC Ltd (case C-341/04), ECJ

Forum Shopping

- The presumption being rebuttable means that the location of the COMI may change
- This inevitably gives opportunities for forum shopping
- Forum shopping is allowed (if you do it properly!)

Forum Shopping - examples

- Failing to avoid German tax debts
- English bankruptcy annulled
- Hans Brochier Holdings

Cultural Issues

- Important in any cross-border work
- Your familiar local law approach may not apply
- Sometimes you will not be right and the matter will not be resolved in your local courts

Cultural solutions

- Get good local advice – preferably from a friend you have got to know
- Don't try to act in another jurisdiction – use your network (and if you give work, you'll get it)

Conclusions

- Cross-border insolvency and restructuring offers plenty of opportunities to interested professionals
- Networking is vital – get good help!

European Restructuring and Insolvency

Chris Laughton

12 May 2010

mercer & hole
chartered accountants