Applying the Regulation (EU) 2015/848 on insolvency proceedings (Part 3)

Myriam Mailly writes about the tools available to insolvency practitioners (hereafter, 'IPs') who will need to conclude cross-border insolvency agreements or protocols under the scope of the EIR 2015 (recast).



The Recast Insolvency Regulation aims at fostering a proper cooperation between IPs taking into account best practices as set out in the Guidelines adopted by European and International organisations such as UNCITRAL.

In particular, Recital 49 of the EIR 2015 (recast) states that IPs "should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. (...) Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings (...)".

It is also important for IPs to consider the need to conclude insolvency protocols in light of the fact that, pursuant to the applicable national law, such protocols "may be approved by the courts involved, where the

national law so requires."

In order to help IPs in that regard, guidelines have been published by a number of organisations dealing with crossborder insolvency matters. Apart from the tools necessary for the application of the EIR 2015 per se such as the publication of standard forms in order to inform known foreign creditors and to object with regard to group coordination proceedings or the publication of updated information on national proceedings listed into Annex A of the European Insolvency Regulation (see Part 1), other

IPS SHOULD BE
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INSOL EUROPE'S
INSOLVENCY
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CASE REGISTER
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texts have to be put on the scene where there is a need to conclude cross-border insolvency protocols.

For example, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009) provides relevant information on practical aspects of cross-border cooperation and communication between IPs. In particular, Part III of the Practice Guide deals with cross-border insolvency agreements and provides relevant information on when and how to use them. This third part was built on practical experience and the Annex I of the Practice Guide contains an interesting list of case summaries to illustrate how different issues had been addressed in practice, such as claims resolution including employees' claims (Sendo) or intra-group transactions (Calpine Corporation), coordinated asset sales (AgriBioTech Canada, Inc. or Alphastar Television Network, Inc.), coordinated restructuring

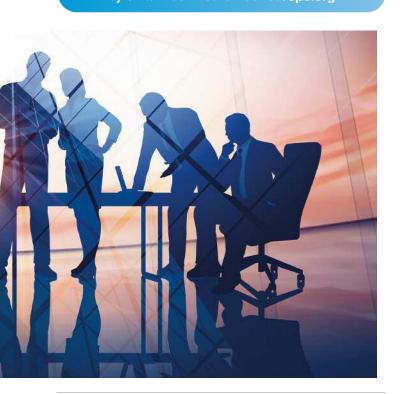
plans (Smurfit-Stone Container Corporation) or determination of IPs' fees (360Networks Inc.), and so on... Furthermore, IPs should be aware that the University of Leiden has made public a part of the International Insolvency Institute's ('III') protocols database.

At last but not least, IPs should be aware that INSOL Europe's Insolvency Regulation Case Register could also be helpful for their day-to-day practice as the first decisions delivered by national courts under the EIR 2015 (recast) are now available on the Lexis Nexis dedicated platform.

Links relating to this article and other relevant information are available on the INSOL Europe website at: www.insol-europe.org/ technical-content/europeaninsolvency-regulation



For updates on new technical content recently published on the INSOL Europe website, visit: www.insol-europe.org/technical-content/introduction or contact Myriam Mailly by email: technical@insol-europe.org



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