

## Leave or remain? What the EU referendum means for restructuring and insolvency lawyers

02/11/2015

**Restructuring & Insolvency analysis:** A referendum on whether the UK should remain a member of the EU is scheduled to take place by the end of 2017. John Alderton, partner at Squire Patton Boggs, and Helen Kavanagh, senior associate and professional support lawyer, look at the possible impact of the referendum on restructuring and insolvency lawyers and their clients.

### What issues currently arise in restructuring and insolvency in relation to the UK's relationship with Europe?

In March 2014, the European Commission published a recommendation containing detailed provisions seeking to harmonise insolvencies and restructurings throughout the EU and setting out minimum standards for how it suggested this could be achieved. This year, the UK government carried out a consultation into how this would affect the UK, if implemented.

Perhaps unsurprisingly, the results of the consultation concluded that the UK's existing regime is aligned with the Commission's recommendation and is recognised globally for its 'efficiency, emphasis on business rescue and high level of returns to creditors'. Indeed, this is supported by the Commission's own research.

### What are your key concerns about a future EU referendum?

The media have been talking about the effect a Brexit would have on:

- o trade
- o British jobs
- o migration and border controls
- o taxes
- o the economy as a whole, and
- o whether our political influence would be affected

I am also concerned about what would be the effect of losing the very sensible arrangements for dealing with cross border insolvencies across the Member States which has been governed by the Regulation on Insolvency Proceedings (EC) 1346/2000. This is not something which members of the public are likely to be thinking about when deciding how to vote in the referendum.

### Are there any areas of EU law that you would like to keep?

The aim of the Regulation on Insolvency Proceedings is to improve the efficiency of insolvency proceedings with cross border aspects. It provides, within the EU, rules for determining:

- o the proper jurisdiction for a debtor's insolvency proceedings
- o the applicable law to be used in those proceedings, and
- o the mandatory recognition of those proceedings in other Member States

It works very well.

If the UK leaves the EU, there will either have to be similar rules put into effect to deal with cross-border insolvencies in Europe or the Cross Border Insolvency Regulation 2006, SI 2006/1030 which implements the UNCITRAL Model Law for non-European countries, would have to be expanded.

### Do you think there are any issues that may not receive enough attention or consideration?

According to the polls carried out by Ipsos MORI between May 2014 and June 2015, around 60% of participants have consistently said they would vote in favour of staying in the EU. There seems to be a sudden drop in the most recent poll in September 2015 to only 52% in favour. This may have been influenced by the migrant crisis and problems in Calais over the summer.

Campaigning has not yet fully begun. I hope that the voices of those such as Bank of England Governor Mark Carney who has spoken out in support of Britain's continued membership, highlighting its economic benefits, will be as vigorously discussed as those who suggest that this is simply about protecting the UK's borders and keeping British jobs.

### **What would a vote to leave the EU mean in practice for restructuring and insolvency lawyers?**

The date of the UK referendum has not yet been set but David Cameron has promised it will be before the end of 2017. UK businesses won't be able to benefit from the changes if the UK has left the EU before 26 June 2017 when the Recast Regulation on Insolvency Proceedings (EU) 2015/848 is due to come into force. The goal of the amendments is to facilitate the rescue of European companies in distress. Ultimately, the amendments are aimed at changing the focus away from liquidation and to focus on restructurings, as well as making cross-border insolvency proceedings--especially of groups operating across multiple jurisdictions--more efficient. Restructuring and insolvency lawyers have been eagerly anticipating these positive changes.

### **What would a vote to leave the EU mean in practice for clients?**

One of the biggest effects if the UK leaves the EU may be that many of the global and US banks who currently have their European headquarters in London will consider options to relocate. The winners may be Frankfurt, Paris or perhaps Dublin. What is certain is that London's distinctive history as a European banking hub will certainly be affected and this will have a knock on effect for UK insolvency practitioners who, to date, have enjoyed and benefited from their proximity to the key decision makers in London.

*Interviewed by Alex Heshmaty.*

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