

Council regulation (EC) No 1346/2000 of 29
May 2000 on insolvency proceedings (repealed)

CHAPTER I **U.K.**

GENERAL PROVISIONS

Article 1 **U.K.**

Scope

- 1 This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.
- 2 This Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

Article 2 **U.K.**

Definitions

For the purposes of this Regulation:

- (a) ‘insolvency proceedings’ shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;
- (b) ‘liquidator’ shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
- (c) ‘winding-up proceedings’ shall mean insolvency proceedings within the meaning of point (a) involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets. Those proceedings are listed in Annex B;
- (d) ‘court’ shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) ‘judgment’ in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) ‘the time of the opening of proceedings’ shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) ‘the Member State in which assets are situated’ shall mean, in the case of:
— tangible property, the Member State within the territory of which the property is situated,

Status: Point in time view as at 21/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I. (See end of Document for details)

- property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
 - claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) ‘establishment’ shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

Article 3 **U.K.**

International jurisdiction

1 The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. 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.

2 Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3 Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.

4 Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:

- a where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
- b where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

Article 4 **U.K.**

Law applicable

1 Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the ‘State of the opening of proceedings’.

2 The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

- a against which debtors insolvency proceedings may be brought on account of their capacity;

Status: Point in time view as at 21/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I. (See end of Document for details)

- b the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
- c the respective powers of the debtor and the liquidator;
- d the conditions under which set-offs may be invoked;
- e the effects of insolvency proceedings on current contracts to which the debtor is party;
- f the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- g the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
- h the rules governing the lodging, verification and admission of claims;
- i the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- j the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- k creditors' rights after the closure of insolvency proceedings;
- l who is to bear the costs and expenses incurred in the insolvency proceedings;
- m the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 5 **U.K.**

Third parties' rights in rem

1 The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2 The rights referred to in paragraph 1 shall in particular mean:

- a the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- b the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- c the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- d a right in rem to the beneficial use of assets.

3 The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4 Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Status: Point in time view as at 21/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I. (See end of Document for details)

Article 6 **U.K.**

Set-off

1 The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2 Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 7 **U.K.**

Reservation of title

1 The opening of insolvency proceedings against the purchaser of an asset shall not affect the 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.

2 The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3 Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 8 **U.K.**

Contracts relating to immovable property

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

Article 9 **U.K.**

Payment systems and financial markets

1 Without prejudice to Article 5, the effects of insolvency proceedings on the rights and obligations of the 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.

2 Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Status: Point in time view as at 21/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I. (See end of Document for details)

Article 10 **U.K.**

Contracts of employment

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

Article 11 **U.K.**

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of the debtor in immovable property, a ship or an 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 12 **U.K.**

Community patents and trade marks

For the purposes of this Regulation, a Community patent, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).

Article 13 **U.K.**

Detrimental acts

Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
- that law does not allow any means of challenging that act in the relevant case.

Article 14 **U.K.**

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

- an immovable asset, or
- a ship or an aircraft subject to registration in a public register, or
- securities whose existence presupposes registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

Status: Point in time view as at 21/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I. (See end of Document for details)

Article 15 **U.K.**

Effects of insolvency proceedings on lawsuits pending

The effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending.

Status:

Point in time view as at 21/04/2005.

Changes to legislation:

There are currently no known outstanding effects for the Council regulation (EC) No 1346/2000 (repealed), CHAPTER I.