

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

- a a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;
- b the assets and affairs of a debtor are subject to control or supervision by a court; or
- c a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.

2 This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:

- a insurance undertakings;
- b credit institutions;
- c investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or
- d collective investment undertakings.

Article 2

Definitions

For the purposes of this Regulation:

- (1) 'collective proceedings' means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;
- (2) 'collective investment undertakings' means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European Parliament and of the Council⁽¹⁾ and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council⁽²⁾;

Status: Point in time view as at 31/12/2020.

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- (3) ‘debtor in possession’ means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor’s assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;
- (4) ‘insolvency proceedings’ means the proceedings listed in Annex A;
- (5) ‘insolvency practitioner’ means any person or body whose function, including on an interim basis, is to:
- (i) verify and admit claims submitted in insolvency proceedings;
 - (ii) represent the collective interest of the creditors;
 - (iii) administer, either in full or in part, assets of which the debtor has been divested;
 - (iv) liquidate the assets referred to in point (iii); or
 - (v) supervise the administration of the debtor’s affairs.
- The persons and bodies referred to in the first subparagraph are listed in Annex B;
- (6) ‘court’ means:
- (i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;
 - (ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;
- (7) ‘judgment opening insolvency proceedings’ includes:
- (i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and
 - (ii) the decision of a court to appoint an insolvency practitioner;
- (8) ‘the time of the opening of proceedings’ means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;
- (9) ‘the Member State in which assets are situated’ means, in the case of:
- (i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;
 - (ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary (‘book entry securities’), the Member State in which the register or account in which the entries are made is maintained;
 - (iii) cash held in accounts with a credit institution, the Member State indicated in the account’s IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit

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- institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;
- (iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;
- (v) European patents, the Member State for which the European patent is granted;
- (vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;
- (vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;
- (viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);
- (10) ‘establishment’ means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;
- (11) ‘local creditor’ means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;
- (12) ‘foreign creditor’ means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;
- (13) ‘group of companies’ means a parent undertaking and all its subsidiary undertakings;
- (14) ‘parent undertaking’ means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council⁽³⁾ shall be deemed to be a parent undertaking.

Article 3

International jurisdiction

1 The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings (‘main insolvency proceedings’). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

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. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

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In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2 Where the centre of the 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 it 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 in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

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

- a 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 the opening of territorial insolvency proceedings is requested by:
 - (i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or
 - (ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

Article 4

Examination as to jurisdiction

1 A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).

2 Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings

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the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Article 5

Judicial review of the decision to open main insolvency proceedings

1 The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.

2 The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

Article 6

Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

1 The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.

2 Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3 For the purpose of paragraph 2, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 7

Applicable law

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 (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. In particular, it shall determine the following:

- a the debtors against which insolvency proceedings may be brought on account of their capacity;
- b the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;

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- c the respective powers of the debtor and the insolvency practitioner;
- 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 pending lawsuits;
- g the claims which are to be lodged against the debtor's insolvency 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 the general body of creditors.

Article 8

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 immovable 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 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, based on which a right *in rem* within the meaning of paragraph 1 may be obtained shall be considered to be a right *in rem*.

4 Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

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Article 9

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 a 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 point (m) of Article 7(2).

Article 10

Reservation of title

1 The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are 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 the 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 point (m) of Article 7(2).

Article 11

Contracts relating to immoveable property

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

2 The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:

- a the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and
- b no insolvency proceedings have been opened in that Member State.

Article 12

Payment systems and financial markets

1 Without prejudice to Article 8, 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.

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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.

Article 13

Contracts of employment

1 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.

2 The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

Article 14

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of a 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 15

European patents with unitary effect and Community trade marks

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

Article 16

Detrimental acts

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

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

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Article 17

Protection of third-party purchasers

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

- (a) an immovable asset;
- (b) a ship or an aircraft subject to registration in a public register; or
- (c) securities the existence of which requires 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.

Article 18

Effects of insolvency proceedings on pending lawsuits or arbitral proceedings

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

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- (1) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([OJ L 302, 17.11.2009, p. 32](#)).
- (2) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ([OJ L 174, 1.7.2011, p. 1](#)).
- (3) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ([OJ L 182, 29.6.2013, p. 19](#)).

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