

## Cross-border insolvency post Brexit

Whilst the political fallout following the referendum result continues to unravel, with significant legal uncertainty, what are the main issues for insolvency practitioners?

Without touching on the likely damage to UK asset realisations (i.e. time to liquidate assets and their value), there are potentially significant cross-border insolvency issues to consider.

### EC Regulation

Although the [EC Regulation on Insolvency Proceedings \(1346/2000\)](#) is currently being redrafted, serious questions will have to be asked; whether (and to what extent) the UK will play any role in the redrafted and updated Regulation. Will the UK courts see, prior to Brexit, a dearth of debtors filing for a UK insolvency order from less debtor friendly jurisdictions before 'forum shopping' (i.e. coming to the UK from other EC states purely to benefit from the UK's insolvency processes) comes to an end? Will any such UK insolvency orders stand up to scrutiny from other EC courts post Brexit?

### UNICITRAL

Although the UK will still benefit from [UNCITRAL](#) (the United Nations Model Law on cross-border insolvency) and [section 426 of the Insolvency Act 1986](#) (the UK's adoption of a commonwealth cross-border insolvency tool), it will not benefit from what is a useful European cross-border insolvency tool.

Although the fallout remains to be seen, the lack of certainty in terms of the forum of any insolvency process, the recognition of that process and COMI (COMI being a cross-border insolvency concept to determine where a company's/individual's insolvency jurisdiction is) could impact on UK businesses' trading within the EU as well pan European tax efficient structures, particularly where that company's COMI is in the UK.

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### Benn Richards

Senior associate

+44 (0)20 8394 6434

[Benn.Richards@russell-cooke.co.uk](mailto:Benn.Richards@russell-cooke.co.uk)

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