

## Enquiry of the month

### **Brexit – does it currently impact on insolvency and cross-border enforcement?**

We have dealt with recent consultancy enquiries where the client has incurred debts in the EU, and the adviser has asked how the debt would be enforced in the UK post-Brexit and how those debts would be viewed from an insolvency perspective post-Brexit respectively.

As you may be aware, the UK left the EU on 31 January 2020. The Withdrawal Agreement<sup>1</sup> came into force from 1 February 2020 and applies during the ‘transition period’. As it stands, EU law will still apply during the transition period – in effect, the UK will continue to be treated as a member state until 31 December 2020.

Note that the UK will need to decide on whether to request an extension to the transition period beyond 31 December 2020, and will need to do so before 1 July 2020<sup>2</sup>.

### **Insolvency**

During the transition period, the UK will still be subject to the Recast Regulation on Insolvency<sup>3</sup> because the withdrawal agreement adopts the existing law and continues to apply until this is changed. Therefore, UK bankruptcies and Individual Voluntary Arrangements will still be recognised in the EU (this does not apply to DROs). However, this could change during the transition period.

Advisers still need to check whether clients’ are domiciled in England and Wales and whether their ‘centre of main interests’ (COMI) is in the UK. Please see our Spotlight article “[Centre of main interests and foreign proceedings](#)” from our May 2018 ebulletin for more information.

### **Enforcement**

Similar to insolvency, there are various options open to the creditor within a member state of the EU to enforce the debt in the UK, and on the whole, this does not change during the transition period. Again, this could be subject to change during the transition period.

These are detailed in the IMA’s Quarterly Account Issue 38 by Graham O’ Malley called “Enforcement of foreign debts in England and Wales” and discussed on pages 319 – 323 of the CPAG Debt Advice Handbook 12<sup>th</sup> Edition / pages 333 – 337 of the CPAG Debt Advice Handbook 13<sup>th</sup> Edition.

We will keep an eye on what develops over the course of the year and report any major changes as time goes on.

---

<sup>1</sup> <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

<sup>2</sup> Article 132(1) of the Withdrawal Agreement

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015R0848>

