



Centre of main interest and foreign proceedings

Debtors bankruptcy petitions should be presented in the place where the debtor has his centre of main interests. This is a technical term arising from the [EC Regulation](#) on Insolvency Proceedings 2000 and defined in recital 13 of the proceedings as follows:

“The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.”

This definition is also contained in [Chapter 41.62](#) of the Insolvency Service Technical Manual.

For most of our clients it should be fairly straightforward to establish the centre of main interest as the place where they live and work or claim benefits. Where the debtor lives in two countries you will need to consider whether they own property or are employed in either country. The Specialist Debt Advice Service can help you to identify where a debtor should present a bankruptcy petition.

Where a creditor wants to present a bankruptcy petition the position can be less clear, especially where the liability has been incurred abroad.

[Section 265 of the Insolvency Act 1986](#) provides that a petition can be presented against a debtor who has his centre of main interests in England and Wales. Alternatively, as long as the debtor's centre of main interests is not in another EU member state a petition can be presented if:

- the debtor is domiciled in England and Wales on the day of the petition, or
- in the last three years ending with the day of the petition one of the following applies:
the debtor
 - has been ordinarily resident, or
 - has a place of residence, or

- has carried on a business in England and Wales

If the debtor has his centre of main interests in an EU member state the petition should be presented in that state.

Where a foreign creditor wants to commence bankruptcy proceedings against a debtor whose centre of main interest is in England and Wales, the creditor would have to commence foreign proceedings and ask for an order under the 2016 Regulations recognising the foreign proceedings.

Countries that belong to the [EU](#), [Lugano Convention](#) or [UNCITRAL Model Law](#) on Cross Border Insolvency can commence proceedings and have those proceedings recognised in the English courts. This is the first step towards pursuing a bankrupt in a foreign jurisdiction. The [Cross Border Insolvency Regulations 2016](#) provide that once the foreign proceedings have been recognised a stay will operate over the bankrupt's affairs. Further applications can be made under the 2016 regulations to seize the bankrupt's assets or to set aside antecedent transactions (preferences and transactions at undervalue).

There has been a move towards the recognition of cross border insolvency and the number of countries signed up to the UN convention on cross border insolvency has increased and is set to grow. Debtors should be aware that if they have liabilities abroad, particularly in EU countries, it will be possible, even straightforward, for their creditors to present a bankruptcy petition and seize assets in the UK. Equally, foreign assets are not protected from a bankruptcy where the petition is presented in the UK.

Where appropriate this article uses English law to demonstrate where the rules originate. Wales, Scotland and Northern Ireland have very similar regimes.