

Research Opportunities following the Adoption of the Co Co Guidelines

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Academic Group Meeting
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Four challenges:

- 1. Legislature
- 2. Judiciary
- 3. Insolvency practitioners
- 4. Academics

- 1. Legislature:
- Role of Soft Law
- ALI-III Global Principles Project
 - Feasibility of worldwide acceptance of ALI Principles and Court-to-Court Guidelines
 - Principles re Conflicts of law
 - Principles on Ethics for Office Holders
 - Principles on Courts and Protocols
- Mid 2009
- Time for Hard Law?

- 2. Judiciary:
- ECJ in Eurofood, consideration 66:
Concerning more particularly the right to be notified of procedural documents and, more generally, the right to be heard,, these rights occupy an eminent position in the organisation and conduct of a fair legal process. In the context of insolvency proceedings, the right of creditors or their representatives to participate in accordance with the equality of arms principle is of particular importance. Though the specific detailed rules concerning the right to be heard may vary according to the urgency for a ruling to be given, any restriction on the exercise of that right must be duly justified and surrounded by procedural guarantees ensuring that persons concerned by such proceedings actually have the opportunity to challenge the measures adopted in urgency.

- 1. Full and fair opportunity to present facts and law
- 2. Ditto, to comment on evidence and legal arguments of opponent
- 3. (urgency:) maximum reasonable notices to parties in interest
- 4. (first day order) temporary – limited / then schedule further hearings

- Re Court-to-Court Communication:
- Normal means or Ultimum remedium?
- Procedural rights of parties?
- Procedural or Substantial?
- Agenda

- 3. Insolvency Practitioners:

EBDR Insolvency Office Holder Principles (July 07)

- 1 Qualifications & Licensing Generally
- 2 Appointment in an Insolvency Case
- 3 Review of Office Holder Appointment
- 4 Removal, Resignation & Death of Officer Holder
- 5 Replacement of Office Holder
- 6 Standards of Professional And Commercial Conduct
- 7 Reporting and Supervision
- 8 Regulatory and Disciplinary Functions
- 9 Remuneration
- 10 Release of Office Holder
- 11 Insurance and Bonding
- 12 Code of Ethics

- 4. Academics:

(11) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.

- Work on:
- Principles of European Insolvency Law (2003)
- Steps to (partial) harmonisation?
- Draft one EU business reorg proceeding?