

UK Insolvency Proceedings for Debtors who have European Validity.

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Two physicians ran a medical practice together in a small town in Eastern Germany until one of them was offered a position of Chief Physician in a prestigious German hospital. The lucky one accepted this offer and left the practice team. However he left his former partner with open credits for a significant sum of money. This was the consequence of their joint investments.

The chief physician refused to pay, stating he was insolvent. He prepared this plan very thoroughly: In the meantime, he and his wife moved their residence to London, where she founded a company for medical services. She offered these services to the German hospital in which her husband, the debtor, would be employed as a Chief Physician. A service provider contract was concluded between the physician and his wife who has now become an entrepreneur. This included that the contractor performed services on behalf of his wife's company as chief physician. The German hospital paid to the English service company (company of doctor's wife) an adequate monthly salary. The doctor received from this company, 500 pounds monthly. That is an amount not only far below the usual salary of any physician but also below the seizure exemption limits. After a year of weekly travel the chief physician was back in his German residence. He had declared his personal insolvency in an English Court and filed an application for exemption from any of its residual debts. That request was granted.

His former partner, once the co-owner of the joint practice became now a sole debtor of about EUR 600.000.

What is the problem? According to German law, the so called "Good Behaviour Period" lasts 6 years. During this time, the whole income of the debtor is on an earnings limit. After these six years he has been discharged of residual debts. If all goes well, he is free from the rest of his debts: he has no more debts, he has no entries in relevant registers, and he can receive new credits and is able to perform a new economically independent life.

From the perspective of creditors, the scheme is an appropriate measure of the risk of financial loss in the awarding of loans to decrease. Precisely because of this condition, they have also granted the loan.

In England and Wales, the debtor is released of his debts after one year. The English law orients itself to make the "unfortunate" debtor independent from his debt quickly in order to regain his economic independence as soon as possible.

This different perspective is reflected in the different national laws. This system would be used by a significant number of German debtors who prefer to submit to English Insolvency Law. This complies with European legal regulations.

According to European legislation, decisions of courts of the member countries of the European Union will be recognized by every member country and have legal power.

The possibility of insolvency proceedings in another EU member state appears both from the European Insolvency Regulation (Council Regulation (EC) No. 1346/2000) and the German Insolvency Proceedings (Insolvenzordnung, InsO) and the English Insolvency Act 1986.

The problem lies in the fact that some



German debtors misuse the legal differences to the disadvantage of their creditors. They deceive the creditor and make false statements to the English courts about their actual financial situation, which means they make false statements about their actual "Center of Main Interests" (COMI).

To protect the interests of German creditors and on behalf of German law enforcement private investigators are appointed to check whether the debtors' "Center of Main Interests" has effectively moved to England, e.g. whether they have rented apartments to live there or rather to fabricate employment contracts. In quite a few ways it is possible to prove that creditors and English courts have been deceived about the actual conditions of the debtor. This is a criminal act. These debtors are liable to prosecution for fraud. In violation of the "public policy", section 26 Council Regulation (EC) No. 1346/2000, criminal proceedings could be commenced.

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number of requests for discharge of residual debt in the UK, the possibilities of an effective verification and control of the applicants by the Official Receiver decrease. Occasionally it is said that because of the high number of requests the Official Receivers are not able to deal with them in a thorough manner. It is also interesting that a number of law firms offer "support" for personal insolvencies in England.

In cooperation with colleagues in London it could be proved that a debtor was continuing his life in Germany as usual, contrary to his testimony in front of the English court. For example he continued his marriage although he started to live separate from his wife.

In London he rented a one room flat with a kitchenette and a simple bed. The toilet was shared with other residents of the

house. He has chosen this lodging together with his wife.

The landlord was ready to swear an affidavit about the fact that he had seen the tenant only once, with another tenant, with whom he wanted to share this space. The landlord received from the debtor pre-addressed envelopes to forward incoming mail to Germany.

Furthermore, it was proved that the debtor operated with a letterbox company with which he entered an alleged employment contract. The German entrepreneur provided the same service for other German debtors.

If a discharge of residual debt was granted by an English court on the basis of false statements by the debtors, the interests of British creditors are rarely affected, and the English insolvency law is thus hardly broken. However of particular significance here is the disregard of the authority of the English courts and the Official Receiver.

In another case : A German private School was opened. Among other things, financial support came from the European Union and the national Ministry for Education and Science. Through falsification of account books and statements of excessive numbers of students, the educational institution got funds of millions of Euros by deception. For example more than twice as many students were declared than the school effectively educated. The person responsible had fled to England, filed for private insolvency proceedings and applied for discharged of residual debts. The currently accessed damages amount to 29.8 million pounds. In this case the considerable part of the damages has been inflicted on the European Union. COUNCIL REGULATION (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings. In German „Lebensmittelpunkt“, means centre of life.

Article 26, Public policy. Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.