

UK Insolvency Proceedings for Debtors who have European Validity.

Lothar Mueller - iD-intertrace, Berlin, Germany - www.iD-intertrace.com



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 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.

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

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 debtor 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

FEATURE



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 leave there or rather to fabricate employment contracts.

According to information from the "Insolvency Services," a significant number of German indebted individuals use the English insolvency procedures to offload their debts.



In quite a few facts 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.

According to information from the "Insolvency Services," a significant number of German indebted individuals use the English insolvency procedures to offload their debts. With the growing 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 stated to live separated 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.



iD-intertrace
 Detektivbüro Lothar Müller
 Hessische Straße 12
 D - 10115 Berlin Germany
 Phone +49(0)30-28391477
 Fax +49(0)30-28391478
 info(at)iD-intertrace.info



iD-intertrace: Lothar Mueller, graduated at Humboldt University Berlin with a diploma in criminology and can look back on many years of professional experience.

In 2005 -2007, he completed a two-year MBA postgraduate course at the state approved School of Governance Risk & Compliance der Steinbeis-Hochschule Berlin (www.risk-and-fraud.de) which he completed as Master of Business Administration with the specialisation "Risk & Fraud Management" attaining certification as a risk & fraud consultant in order to assist in identifying and investigating economic criminal behaviour with improved efficiency and thus meet the growing demands of his clients.

He is a member of Berlin's Chamber of Industry and Commerce and a certified lecturer of criminology at a private training institution in Berlin. He has published several articles on security-related issues in specialist

magazines.

After the usual application period and completion of an aptitude test, Lothar Mueller joined the Federal Association of German Detectives (BDD). He is also a member of the Austrian Detective Association (ÖDV), the Professional Association of Swiss Private Investigators (FSPD), the Association of British Investigators (ABI), and the World Association of Detectives, Inc. (WAD) all of which are affiliated to the Internationale Kommission der Detektivverbände (IKD; International Commission of Detective Associations). He is a member of the California Association of Licensed Investigators, Inc. (CALI).

In 2001, Lothar was elected onto the Board of Directors of the World Association of Detectives. Now in 2007, he still remains actively involved in the association.

He is a founding member of the World Anticriminal and Antiterrorist Forum (WAAF) and of the Deutsche Gesellschaft für Kriminalistik (German Society for Criminology; DGfK). Lothar is a member of Transparency International (TI).

Since May 1990, Lothar has been working on behalf of various companies and private clients including attorneys..

His co-workers are professional, experienced and university educated. They are specialists in criminology, law and forensic sciences.

In recent years, problems concerning nearly all areas of law have been handled and solved.

The activities of iD-intertrace extend over the whole of Germany and a range of Western and Eastern European countries, including Russia.

Lothar was the organiser of the 76th Annual Conference of the World Association of Detectives held in Berlin in 2001, which was attended by 196 detectives from 29 countries as well as many guests and media representatives.