

THE BANKRUPTCY AND COMPANIES OFFICE  
ROYAL COURTS OF JUSTICE  
CHICHESTER STREET  
BELFAST BT1 3JF  
Telephone 35111 ext. 237

25th June 1981,

Dear Muir,

As arranged, I have prepared and now enclose, a note on the question of unity of the bankruptcy within the U.K. for your consideration in connection with the chapter on EEC. We have received no evidence on this matter and it was I who mentioned it to the committee. If you feel that it would be better not to deal with the topic at all I would not press for its inclusion. I would have an opportunity to bring it to the attention of the D of T when the bill to implement the Convention is being drafted, as I assume that Northern Ireland will then be consulted.

In any case, if you do decide to take up the point in the EEC chapter, please feel completely free to alter my note in any way which you think appropriate.

I will be on holiday after to-morrow, for three weeks, but I will attend the meeting on 13 July, as I hope to be back in Ireland on 11 July.

Yours sincerely,



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Unity of the bankruptcy within the U.K.

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1. Article 2 of the <sup>draft</sup>EEC Bankruptcy Convention provides that the proceedings to which the Convention applies, when opened in one of the Contracting States, have effect ipso jure in the other Contracting States and so long as they have not been closed, preclude the opening of any other such proceedings in those other States.
  
2. The adoption of the Convention by the U.K. will highlight the fact that at present the principle of the unity of the bankruptcy enshrined in Article 2 does not operate within the U.K.
  
3. Although the enforcement of orders in bankruptcy and company winding-up throughout the U.K. is adequately provided for under section 121 of the Act of 1914, section 276 of the Act of 1948 and section 246 of the Companies Act (Northern Ireland) 1960, concurrent bankruptcies and, to a more limited extent, concurrent winding-up orders in different parts of the U.K. are possible.

Bankruptcy of individuals

4. The jurisdiction of a court in one part of the U.K. to make the appropriate order commencing bankruptcy proceedings against a debtor is not excluded by the fact that any such order has already

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been made in a court of another part, although this may be a reason for exercising the court's discretion not to do so. Whether or not a court has jurisdiction depends on the law of that part of the U.K. in which it operates.

5. Section 12 of the Act of 1914 goes some way to discourage concurrent bankruptcies within the U.K. That section empowers a bankruptcy court in England to rescind a receiving order or dismiss a bankruptcy petition if it appears that a majority of the creditors in number and value are resident in Scotland or Northern Ireland, and that from the situation of the debtor's property or other causes his estate ought to be distributed under the bankruptcy law in Scotland or Northern Ireland. There is a corresponding provision in section 43 of the Bankruptcy (Scotland) Act 1913, but no such provision in Northern Ireland bankruptcy law.

#### Winding-up of companies

6. A company registered in England may be wound up by the court in England, but not in Scotland (section 218 of the Act of 1948), and a company registered in Scotland may be wound up by the court in Scotland but not in England (section 220 of the Act of 1948).

7. However, the position as regards companies registered in Northern Ireland is somewhat complicated and unsatisfactory. In certain circumstances a company registered in England or Scotland under

/either



either the Act of 1929 or the Act of 1948 may be wound up by the court in Northern Ireland as an unregistered company under section 349 of the Companies Act (Northern Ireland) 1960, and this jurisdiction is not expressly excluded by the fact that the company is being wound up in England or Scotland. A company registered in Northern Ireland may be wound up by the court in Northern Ireland (section 209 of the Companies Act (Northern Ireland) 1960) and may not be wound up by the court in England or Scotland if the registration was effected under any of the legislation for the winding-up of companies which applied to Ireland as part of the United Kingdom, i.e. up to and including the Act of 1908 (section 398 (b) of the Act of 1948); but if it was registered under the Companies Act (Northern Ireland) 1932 or the Companies Act (Northern Ireland) 1960 it may be wound up in England or Scotland as an unregistered company if the conditions of section 399 or 400 of the Act of 1948 are fulfilled; and this jurisdiction is not expressly excluded by the fact that the company is being wound up in Northern Ireland.

∟NOTE by J.M.H. Dicey & Morris, Conflict of Laws, 10th. edn. p. 737 says that a N.I. company may not be wound up under section 399 of the 1948 Act, but I think this overlooks that the relevant listed exception in section 398 defining an unregistered company relates only to N.I. companies registered under the 1908 and earlier Acts and not under the N.I. Companies Acts.7

8. The jurisdiction of the courts in one part of the United Kingdom to wind up an unregistered company under section 399 of the Act of 1948 or section 349 of the Companies Act (Northern Ireland) 1960, as the case may be, is not excluded by the fact that the company may be in the course of winding-up in another part. The term "unregistered company" is defined in section 398 of the Act of 1948, and includes trustee savings banks <sup>and</sup> any partnership, association or company other than -

- (a) a railway company~~y~~ incorporated by Act of Parliament,
- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts, the Act of 1862, the Act of 1908, the Act of 1929 or the Act of 1948,
- (c) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company,
- (d) a limited partnership registered in England or Northern Ireland.

The definition in section 348 of the Companies Act (Northern Ireland) 1960 is similar, ~~with the exception of the fact that~~ companies registered in England or Scotland under the Act of 1929 or the Act of 1948 are not excluded.

#### Recommendation

9. It would be anomalous if, notwithstanding that, by the operation

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of Article 2 of the Bankruptcy Convention an order of adjudication or a winding-up order in England would, for example, preclude the opening of bankruptcy proceedings in any other EEC State, our domestic law should continue to permit concurrent bankruptcy or winding-up proceedings in another part of the U.K. We are of the opinion that U.K. law should be amended so as to provide that any insolvency order to which the Convention applies made in one part of the U.K. should preclude the opening of any other such proceedings in any other part.