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Convener of the Economy, Jobs and Fair Work
Committee
Convener of the Justice, European and External
Relations Committees

23 May 2017

Dear Convener,

EU Insolvency Regulation (EU 2015/848) – Implementation

I refer to the above recast EU Regulation on insolvency proceedings (“the recast EU Regulation”) and the changes required to update domestic law to implement the recast EU Regulation. The recast EU Regulation is primarily a restatement and modernisation of EU cross border insolvency arrangements.

As part of that implementation, draft Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 were laid before the Scottish Parliament on 2 May 2017 for scrutiny by the Economy, Jobs and Fair Work Committee. This SSI implements the recast EU Regulation in devolved areas of insolvency, notably personal insolvency, by making minor, technical and supportive amendments to existing legislation.

The SSI broadly implements the recast EU Regulation as far as personal insolvency matters are concerned. For corporate insolvency, as you will know the current situation is complex with certain areas devolved, some fully reserved and other measures spanning both devolved and reserved competence, in particular in the mixed area of the winding-up of companies. Attempting to isolate specific devolved areas would pose serious challenges to the coherence of the legislation to be amended and for users of the legislation.

For this reason the Accountant in Bankruptcy and Scottish Government have been working closely with the UK Insolvency Service for a consistent approach to the implementation of the recast EU Regulation insofar as corporate insolvency is concerned. The Scottish Government has agreed that necessary amendments to the Insolvency Act 1986, the Insolvency (Scotland) Rules 1986 and the Cross-Border Insolvency Regulations 2006, insofar as they relate to devolved matters, should be implemented by regulations made by the Secretary of State and laid in the UK Parliament by virtue of the concurrent powers in section 57(1) of the Scotland Act 1998.

I believe this is a sensible approach, consistent with previous implementation in this field, and will help to promote the accessibility of the legislation across the reserved and devolved elements of corporate insolvency.

This approach is subject to confirmation by the UK Government and I have written to the Minister for Small Business, Consumers, and Corporate Responsibility to agree the Scottish Government's position.

While the EU obligations in question in the recast EU Regulation are directly applicable as a matter of Scots law and can be relied on, the General Election announcement and pre-election dissolution of parliament has delayed mutual agreement and the laying of the appropriate UK Statutory Instrument. However, we are continuing to work with officials from the Insolvency Service, with a view towards obtaining the UK Government's agreement to lay the instrument as soon as possible following the election. I remain hopeful that the election results and formation of government will not delay implementation.

I look forward to meeting with the Economy, Jobs and Fair Work Committee on 23 May 2017 in connection with the SSI and will be happy to answer any questions in advance of this session.

Kind regards



PAUL WHEELHOUSE