Panikos Fakontis
Law Degree in University of Thrace (Greece)
LLM Leicester (U.K)
The author can be contacted by e-mail at fakontis@yahoo.com

1. Introduction

On 31 May 2002, Council Regulation (EC) No. 1346/2000[1] came into force. It applies throughout the European Union apart from Denmark because the Maastricht and Amsterdam treaties' exempt Denmark from participating in legislation under Arts 61(c) and 67(1) of the EC Treaty[2].

The introduction of the regulation brings to an end a long period on the part of the European Community to co-operate in relation to cross-border insolvency cases. In particular, member states realised that a globalizing market requires a globalizing insolvency law that is as the market moves towards global dimensions, insolvency law must also become steadily global[3]. However, the regulation does not attempt any harmonization of substantive or procedural domestic insolvency law[4]. Instead, the EU has identified that the proper functioning of the internal single market requires cooperation between insolvency cases and in particular that liquidators should operate efficiently and effectively in order to achieve the best results[5].

Two core concepts are dealt with in the EC insolvency regulation. Firstly, there is the determination of the jurisdiction for opening proceedings, main or secondary, because the object was to establish clear rules to determine in which states insolvency proceedings are capable of being commenced and which legal rules are to be applied. In that way, parties can arrange their affairs on the basis of reasonably dependable predictions concerning the substantive law by which their

[1] Hereinafter "the regulation"
[2] Fletcher I, " *Living in interesting times- Reflections on the EC Regulation on Insolvency proceedings Part 1"*, 18(4) ININT 2005 at 50.
[3] Westbrook J, "*Multinational Enterprises in General Default: Chapter 15, the ALI principles and the EU Insolvency Regulation*" 76 Am. Bankr. L.J. 1.2002 at 6.
[4] n 2 above at 51.
[5] Recitals, 2,3,4, 20, 22.

rights will be governed. Secondly, there are judgements delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings[6]. However, both concepts are subject to the main principle of European law, which is the principle of proportionality[7].

This paper present the main theories having as their object the regulation of cross border insolvency it will then discuss the main issues arising from the regulation. Then, issues such as the application of the regulation and jurisdiction will be put forth. The paper considers areas such as the inter-relationship between various insolvency proceedings and applicable law. Finally, the recognition and enforcement of the insolvency proceedings are illustrated before the paper concludes with remarks concerning the on going discussion.

2.Universalism and territorial theories: what does the regulation adopt?

While in most countries' there is a national legal system for dealing with the case of companies insolvency, there is a lack of a legal system that would be efficient in order to deal with the general default of a multinational enterprise with assets and shareholders in more than one country[8]. In theory, two important theories have been developed in regard to multinational default: territorialism and universalism[9]. According to territorialism, known as the "grab rule"[10], effect of the insolvency proceedings should take place only for the benefit of the local creditors with little regard for foreign proceedings. Foreign creditors are subject to the availability of knowledge and information, their ability to be diligent and to overcome procedural hurdles[11]. The theory is based on the concept of national sovereignty and thus the law of the sovereign has to be imposed on all within its territorial reach[12]. Consequently, the sovereign law grants vested rights in assets so situated at the time an insolvency proceeding is instituted and controls the distribution of those assets[13].

[6] Recital 6 .
[7] Recital 6.
[8] Westbrook L, n 3 above at 5.
[9] Ibid.
[10] Omar P, " *European Insolvency Law*" Ashgate Publishing ,2004 at 23
[11] n 10 above, at 24
[12] Westbrook L, n 3 above, at 6
[13] Ibid.

Universalism contemplates that proceedings should commence from the state of incorporation and that court should administer all the assets of the debtor on a worldwide basis with the help of all the interested courts[14]. Basically, there is an extension of jurisdiction in order to cover all of the assets of the debtor wherever situated[15]. At the same time, universalism impacts on the use of only one procedure that coordinates and controls the debtor's assets without the interference of any other court.

The regulation adopts the universality theory but only partially because it contains significant exceptions. The territorial theory is also adopted which leads to the fact that secondary and territorial proceedings could be opened and be governed by their local law for the protection of local creditors. Thus, there is a compromise of the above theories in order that all interested parties should be protected equally.

3. Application of the Regulation

The regulation applies on proceedings opened after May 2002 and does not have retrospective effect[16]. Its application is defined in Art 1(1); it applies to all collective insolvency proceedings which entail the partial or total divestment of a debtor, where a liquidator has been appointed and where a debtor has his "centre of main interests[17]" within the European Union apart from Denmark[18].

The term "collective" as is used excludes all the proceedings that are not so in nature. Moreover, in order to determine which proceedings are collective, there is Art. 2 and Annex A, where in the latter the procedures are listed. Thus, in the U.K for instance, any form of receivership would be excluded because it is not collective and it is not administered for the benefit of all creditors[19].

[14] Ibid.
[15] n 10 above at 25.
[16] Article 43.
[17] Hereinafter referred as comi.
[18] Sealy L, Milman D, "Annotated Guide to the Insolvency Legislation"7th edn., 2004 Thomson Sweet & Maxwell at 610.
[19] Ibid.

The regulation does not apply, to Denmark, and as for Portugal, there is a reservation for Articles 26 and 37[20]. Article 1(2) excludes from the scope of its application, insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holdings of funds or securities for third parties, or collective investment undertakings. The explanation behind the exclusion of the above entities as explained by the Vigos-Schmit report is because these kinds of entities are subject to a special regulatory regime under national laws, including special procedures in the event of insolvency[21].

The regulation omits to define when a debtor is insolvent[22]. It takes as granted that the debtor is insolvent without setting any rules in order to determine whether the debtor is insolvent or not. That omission could give rise to objections from the debtor, such as that he is not solvent but is temporarily in financial difficulties. That objection could be used in order to cause delay to the proceedings. It is therefore left to each member state to decide on that issue, according to its national law and case law[23].

4. Jurisdiction

The regulations technique on jurisdiction is by establishing a hierarchical scheme of primary and subsidiary jurisdiction or main and non main insolvency proceedings[24]. Thus, there is the requirement of the comi that would be the answer to the question on which court has jurisdiction in order to commence main proceedings. Secondary proceedings are of the sort opened after the commencement of main insolvency proceedings in a member state other than that of the debtors comi while territorial proceedings are those opened before the main ones are underway[25]. Moreover, the expression "court" as explained by recital 10 in the preamble should be given a broad meaning and include a person or body

[20] EE C 183 on 30.6.2000, at 1.See Moss G, Fletcher I, Isaaks S "*The EC Regulation on Insolvency proceedings: A commentary and Annotated guide*" Oxford 2002, at 308.
[21] Vigos- Schmit Report para 54-60.
[22] n 18 above at 610.
[23] Moss G, n 20 above at 35.
[24] Fletcher I, " *The law of Insolvency*" Sweet and Maxwell, 3rd edn.2002, at 835
[25] Sealy, n 18 above at 625.

empowered by national law to open proceedings. Furthermore, the regulation stresses that proceedings do not necessarily demand the involvement of a judicial authority.

Article 3 of the regulation is titled 'international jurisdiction'. The heading of the article could be misleading because it does not establish international jurisdiction literally but only within the community as is explained in recital 14. Therefore, the regulation applies only where the centre of main interests is located in the community. Moreover, in the substantive part of the regulation there is no explanation about the case that interested parties and assets may be located within the EU while the comi is outside the community[26]. Consequently, there is a need in a later amendment for a clarification in order to avoid confusion.

The major change that the regulation introduces is that insolvency proceedings can only be commenced (COMI) in the courts of a member state where the centre of main interests of the debtor lies[27]. Moreover, the provisions of the regulation should take place instead of the national law because of the superiority of Community Law as opposed to national law. Therefore, the jurisdictional rules set in the regulation do not supplement the national law but they override it in an exclusive operation[28].

4.1 *Centre of creditors main interests. Main proceedings*

The key concept in order to determine which member state has jurisdiction to open main proceedings is the comi. A creditor has to know where his debtor's comi is, in order to commence insolvency proceedings against him. One important reason the opening of main proceedings are allowed is because insolvency is a foreseeable risk and thus it is expected from creditors and third parties in general to calculate that risk and make themselves aware of the debtor's comi[29]. The significance of an insolvency being at the comi is that all issues and disputes,

[26] Moss ,n 20 above at 38.
[27] Article 3(1).
[28] Moss, n 20above at 38.
[29] Jones, B, "*EU Regulation and director's duties*" 17(6) ININT, 2004, at 82.

apart from the case of certain specifically described claims, will be decided in accordance to the national law of the main insolvency[30].

In the main body of the regulation the meaning of comi is not defined. However, Recital 13 attempted to ratify the omission; it suggests that comi should be there where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by the parties. Despite the fact that the authors of the regulation attempted to complete the omission on the definition, there is still a problem in order to define and conclude a safe result for where the Comi could be found such as the elements which constitute the process of administration and how interests should be understood[31]and furthermore, to the problem of associated or related companies where the criterion of jurisdiction must be established for each separate legal entity[32].

Article 3(1) attempts to assist in the process of determining where the comi of a company or legal person is and introduces a presumption. Nonetheless, the presumption is not enough because it applies only to companies and legal persons and does not deal with natural persons where the regulation is also applicable (the comi for natural persons will generally be their place of habitual residence[33]). However, it should be presumed that the place of the registered office is the comi when there is absence of proof to the contrary. Fletcher[34] states that there is no reference in the regulation on the nature or degree of proof to overcome this presumption but someone could argue that it could be the normal degree of proof as in any civil law case. Moreover, in the ***Daisytek SAS***[35] the high court of Leeds applied the regulation's provisions in order to examine if it had jurisdiction to open main proceedings; the court in order to determine if English courts had jurisdiction checked if the comi of the company was in England by looking at other relevant factors. Thus it found that the comi was in Bradford because the finance function was operated there. All information, technology and

[30] Rajak, H, "*The inter-relationship between main and secondary bankruptcies*", available at: http://www.iiiglobal.org/country/european_union.html#articles at 6.
[31] Moss ,n 20 above at39.
[32] n 10 above at 98.
[33] Virgos-Schmit Report para 75, last sub-paragraph
[34] n 24 above at 836.
[35] Re Daisytek-ISA LTD [2003]BCC 562 (Ch D)

support was from Bradford, 70% of purchases were contracts negotiated and dealt with from Bradford and the Chief executive officer was visiting the German companies two days per month but 70% of his time was spent in Bradford. The Court was also assisted by recital 13 in order to determine about the comi and additionally *held* that the court should consider both the scale of the interests administrated at a particular place and their importance and then consider the scale and the importance of its interests administrated at any other place. Moreover, on the issue for the requisite proof, it was held that the petitioning party should provide sufficient proof.

Concurrently, with the above presumption there is a safeguard for creditors because it protects them from companies' incorporated in a country that gives them better legal status than any other EU country. Thus, a creditor could argue that the real seat of the company is not the incorporation seat but that the comi is situated in the EU and then the insolvency regulation should be applicable. In ***Brac Rent –a- car international***[36] the concerned company was incorporated in Delaware but had its comi in England, as was proved by the facts that the company never traded in the U.S.A, neither had its comi there but it had its comi in the UK. Thus the High Court of London *held* that it had jurisdiction to open proceedings and rejected the incorporation theory.

The rationale for having a primary jurisdiction is to allow an appropriate court to start taking all necessary actions in order to preserve the assets of the troubled company from the time that a request to open proceedings was launched[37]. Thus, on the one hand the court has the powers to order provisional and protective measures so as to avoid the dissipation and fraudulent disposal of assets, [38]and on the other hand, the liquidator that was temporarily appointed prior to the opening of the main proceedings shall have the power to ask for any

[36] [2003]1 W.L.R 1421 (Ch D).
[37] n 10 above at 99.
[38] Ibid

injunction order from the member state that the creditor has an establishment in order to preserve any assets under the law of those states[39].

4.2 *Secondary and territorial proceedings*

Secondary

Article 3(2) introduces an exception from the universality of proceedings and allows limited jurisdiction to be exercised by the courts of member states other than the comi[40]. As specified in Article 3(3), when proceedings opened at the forum of primary competence any other proceedings opened elsewhere on the basis of an establishment can only be secondary proceedings and can only be winding up proceedings. Thus, the regulation establishes main proceedings and secondary proceedings. The effects though of secondary proceedings are restricted to the territory of the state where they begin and to the assets situated within the territory[41]. However, at the same time they amount to a localized derogation from the universal effects for the protection of local interests[42] with the limitation though that they should be winding up proceedings. Nonetheless, it is noted that the winding up and realisation of assets, because of the secondary proceeding could be an obstacle to the successful rescue of the company of the main process[43]. Indeed, there is a realization of important local assets then obviously there will not be much of a chance to rescue the default company. Furthermore, there is always the chance that creditors will take advantage of that risk and deliberately attempt to kill off the companies rescue[44]. Thus the regulation provides in article 30 the possibility of making an advance payment of costs and expenses on the proceedings in order to deter applications with selfish intentions.

Secondary proceedings can be opened at any time in the courts of the member state where the debtor has an establishment and even the liquidator has the powers to ask for it subject to the above limitations. Furthermore, the

[39] Recital 16
[40] n 20 above at42.
[41] Article 3(2).
[42] Moss,20 above at 41.
[43] Moss, n 20 above at 42.
[44] Torremans P, "*Gross Border Insolvency in EU, English and Belgian Law"* Kluwer Law International 2002, at 160.

liquidator in main proceedings is entitled to request for a stay in secondary proceedings[45] or to propose measures ending secondary proceedings[46].

A prerequisite in order to commence secondary proceedings in the other member state is the debtors' establishment. The meaning of establishment is given in article 2(h) and is defined as any place of operations where the debtor carries out a non transitory economic activity with human means and goods. Thus, there must be a sustained and systematic economic activity conducted by the debtor in the state of question.[47]. In the matter of *Criss Cross Communication Italy S.r.i*[48] the Italian court after preliminary investigation carried out according to its national law found that there was not any significant element evidencing the existence of establishment in the sense of the above meaning and thus rejected the application for opening secondary proceedings. The mere presence of assets, or indeed a subsidiary company[49] is in itself insufficient to constitute an establishment. The basic element is to be a place of business which creates the impression for the creditors of a locally established business operation[50].

4.3. Territorial proceedings

Territorial proceedings can occur before the commencement of main proceedings under two conditions ; firstly, when under the law of the state within whose territory the debtors comi is situated, the law does not allow such proceedings to be opened[51]. Countries such as France, Greece, Italy, Luxemburg, Portugal and Spain have as a prerequisite in order to commence insolvency proceedings that the insolvent person is a trader[52]; they have provisions in their commercial code defining who could be considered as a trader and consequently insolvency proceedings can commence "against" them. Secondly, where the

[45] Article 33.
[46] Article 34.
[47] n 2 above, at 50.
[48] Available at: www.cimejes.com.
[49] Telia v. Hillcourt [2002]EWHC at 2377.
[50] Torremans, n 45 above, at 158. See also Fletcher, I, "Insolvency in private international law-the countdown has begun"13 (8) Insolv. Int 57, 2000, at 59.
[51] Article 3(4).
[52] Moss, n 20 above at 43.

opening of territorial insolvency proceedings is requested by a creditor who has his/her domicile, habitual residence or registered office within the member state in whose territory the establishment is situated, or whose claim arises from the operation of that establishment.[53]Moreover, the regulation provides that it might be the case that the local creditor might have to make an advance payment of costs or to provide adequate security, (if the local legal provisions provide for this) in order to minimise the risk of deliberately spoiling tactics by a largely unconnected person[54].

It is worth noting that the opening of main proceedings is not a prerequisite for the opening of territorial proceedings but the debtor must have an establishment in the country of the limited insolvency[55]. However, as soon as main proceedings have been opened, any independent territorial proceedings become *de facto* secondary proceedings[56].

5.The inter-relationship between various insolvency proceedings

The purpose of secondary proceedings is to protect local creditors but at the same time they support the main proceedings[57]. As there is an inter-relationship between secondary proceedings, they are subject to the provisions of chapter III and are necessary in order to secure the creditors' position.[58]Mainly, the key for the coordination in parallel is the close co-operation of the liquidators, thus there is a duty on the liquidators of the main and secondary proceedings (and territorial) to cooperate and inform each other[59].

It is provided in the case of liquidation that if there is a surplus of assets, then the liquidator shall transfer the surplus to the main proceedings[60]. That provision has only a symbolic meaning for two reasons; firstly, rarely is there a surplus of assets and secondly, the creditors can introduce their claims in any

[53] Article 3(4)(b).
[54] n 30 above at 18, and article 30.
[55] n 30 above at 6.
[56] n 45above at 169 and article 36.
[57] Wessels B, "European Union Regulation on Insolvency proceedings" 20-Nov Am.Bankr.Inst.J. at 25.
[58] Moss, n 20 above at 42.
[59] Article 31
[60] Article 35.

proceedings. As noted in recital 20 main and secondary proceedings can contribute to the effective realization of the total assets only if all the concurrent proceedings pending are coordinated. Additionally, the liquidator in any other proceedings can take part in the insolvency proceedings on the same basis as a creditor[61].

6.Law applicable- Choice of law rules

One of the main elements of the regulation is the creation of a uniform set of conflict of law rules for insolvency proceedings. Articles 4-15 have been successfully described as a miniature code of uniform conflict rules[62]. This is of vital importance for the diligent creditor or third parties in general to know the applicable law in order to predict the issues that could be raised; especially for the calculation of the undertaken risk and eventually from an economic point view relating to the adjustment of the price. A diligent creditor will adjust his/her final price according to the risk to which he/she might be exposed and insolvency is a very possible risk[63]. Additionally, in Daisytek SAS[64], the judge referred to the Virgos- Schmit report and stressed why it is very important for them to know where to go to contact the debtor.

The applicable law for main proceedings, subject to the stated exceptions shall be that of the member state within the territory of which proceedings are opened and according to the provisions of that law will be determined from the opening, conduct and closure of proceedings[65]. Thus the *lex cocursus* determines all procedural and substantive effects of the insolvency proceedings in the E.U community[66]. In article 4(2) a-m, a non- exhaustive catalogue of issues can be found that are determined by the lex concursus. But for secondary proceedings the applicable law should be the law of the state where secondary proceedings have

[61] Article 32(3)
[62] Moss, n 20 above at 45.
[63] Virgos-Schmit para 75
[64] Daisytek, n 36 above.
[65] Cherryman N, *"EU regulation on insolvency proceedings: other provisions"*, Tolley's Company Law and Insolvency, at 1.
[66] Wessels, Bob, "*Principles of European Insolvency law*" International Insolvency institute, available at: www.iiiglobal.org, at 1. See also Moss, n 21 above at 179.

opened, subject to the opposite provisions stated in the regulation[67]. Articles 5 to 15 set out the excepted cases where a particular issue may be governed by a law other than the state of the opening of proceedings, through the application of a special choice of law rule to the particulars of each case. Furthermore, there should be conclusive evidence of the debtor's insolvency in any later secondary proceedings.[68]

7. Recognition and enforcement of insolvency proceedings

Two important aspects in the chapter for recognition are provided[69]. Firstly, is the recognition of a judgement and the second is the recognition of the authority of the liquidator[70]. However, any member state has the right to refuse the automatic recognition of proceedings opened in another member state or enforce a judgement handed down where this recognition is contrary to the state' s public policy[71].

7.1Recognition of the judgement

The regulation establishes the general principle of direct recognition of judgement for insolvency proceedings opened according to article 3 throughout the Community[72]. Recognition must be provided without any prerequisites under local law[73].Consequently, a judgement for opening proceedings at the state where the debtor has its comi will be automatically recognized in all other member states without any further steps having to be taken. Nevertheless, nothing prohibits the opening of secondary proceedings where the debtor has an establishment[74]. In addition, Article 16 applies to all forms of proceedings whether they are territorial or secondary.

It is provided that the opening of proceedings should be recognised even from the member countries that because of their substantive law insolvency

[67] Article 28.
[68] Article 27.
[69] Chapter II articles 16-26.
[70] n 18 above at 619.
[71] Article 26.
[72] Article 16(1).
[73] Moss, n 20 above at 193.
[74] Article 16(2).

proceedings cannot be commenced[75].Additionally, recognition extends to the judgements taken from courts of the secondary proceedings, on judgements relating to the conduct and closure of insolvency proceedings and on the composition approved by the court.[76]

The effects after the recognition of the judgement is that the law of the comi will apply automatically throughout the community subject to the stated exceptions (a. if otherwise specially provided, as in articles 5-15 and b. if secondary or territorial proceedings have opened then their law will be applicable). Namely, the legal effects in accordance with the applicable substantive law are the following: the debtor will not be able to dispose his/her assets; there will be an end to any judgement executed in favour of the creditors[77], the appointment of liquidator, the inclusion of the debtor's assets in the estate regardless of the state in which they are situated[78].

7.2 Recognition of the office-holder (liquidator).

The recognition of the office-holder is a concept that could lead to many obstacles to the procedure. The regulation specially provides for the liquidators authority and makes the procedure easier by providing that he/she shall be recognised throughout the Community with minimum requirements of formality apart from the possibility of translation in the local language of the judgement appointing him/her as a liquidator[79].

The role of a liquidator in the insolvency procedure is of vital importance for the effective realisation of the total assets; especially in a cross border insolvency where there are many assets in various jurisdictions and various liquidators, then they should cooperate in order to achieve the best possible results. It should be emphasised that the powers of the liquidators in main and secondary procedures are dealt with in detail because it recognizes in its preamble that effectiveness will only be achieved if they cooperate closely and inform each

[75] Virgos –schmit report para 148 .see article 16
[76] Article 25.
[77] n 58 above at25.
[78] Virgos Schmit report para 154
[79] n 18 above at 621.

other[80]. However, the liquidator of the main proceedings has the upper-hand and detailed provisions (articles 31, 33-34) try to give effect to the above targets[81]. In practice, there will be difficulties since the liquidator will have to deal with unknown legal systems to him/her where he must comply with the local law[82]. Especially, in regard to disputes that may arise when assets must be moved form one jurisdiction to another or when realisation of assets has to take place.[83]

7.3 Public policy exception

The public policy clause is a defence of the recognition or enforcement of judgements from another member state[84]. This clause is of common practice in private international law but it is nevertheless one of the weaker points of the regulation[85]. Public policy exception could undermine its impact especially when it is interpreted widely on its sensitive areas, thus the restrictive interpretation is essential in order to maintain the regulation's aim[86]. However, there is a safeguard that this defence should be used only when the effects of the judgement are manifestly contrary to the public policy of the member state concerned in the meaning that in very exceptional circumstances[87]. In *Eurofoods IFSC Limited*[88], the High Court declined recognition of the Italian court's judgement for placing the company on extraordinary administration under Italian law and determining that the comi was in Italy on grounds of public policy. However, the Supreme Court of Ireland has asked the ECJ for a preliminary ruling in regard *inter alia* where to permit a judicial administrative petition where it is manifestly contrary to public policy because some of the affected parties did not have a fair hearing and a fair procedure.

8. Conclusion

[80] Recital 20
[81] Sealy, n 18 above at 610
[82] n 45 above at 193
[83] Ibid.
[84] n 18 above at 192
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Re Eurofoods IFSC Ltd (Unreported, March 23, 2004) (HC (Irl))

The regulation is an essential tool for the effective and efficient operation of the single market. However there is scope for addressing some of the weaknesses in it. For example it should deal with cross-border insolvency matters extending beyond EU membership[89]. Moreover, the model law on insolvency should be taken into consideration it has only been ratified by some important countries. Furthermore, the concept of comi should be clarified by the court. This should be done either by the ECJ or with a legislative reform. However the decision of the High Court of England in Daisytek provides a reasonable in5terpretation of comi and could be therefore be an appropriate example for the EU courts to follow. Moreover, Fletcher[90] suggests that the "command and control test" pertaining to the determination of the situational location of the COMI is the essence of *Daisytek*[91].

The recognition and enforcement of the judgement within the EU without further formalities is a core concept in the regulation, but the next step would entail the cooperation of judges. Moreover, what has been described as 'the Achilles heel' is the first come first served approach in deciding which court will commence main proceedings; this approach has potentially disastrous consequences, in that the justice system may be exploited by producing biased evidence.[92] However, to prevent the erosion of the mutual trust system on which the EC regime is based, the national courts prevent inappropriate applications concerning 'jurisdictional propriety' from being made.[93]Thirdly, business ventures should be dealt with by means of a network of corporate entities.[94] Finally, the public policy exception should only be used in very exceptional cases because as we have seen it can undermine the regulation's scope.

Despite the outstanding need for reform in certain areas, the Regulation has had a positive effect on the co-ordination and regulation of the company's assets when dealing internationally and when financial difficulties arise.

---

[89] Wessels, n 58 above at 31.
[90] n 2 above, part 2, at 86.
[91] Daysitek, n 36 above.
[92] n 2 above, part 2, at 89.
[93] Ibid.
[94] n 2 above, part 2, at 86.