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# Cross-border trusts in flux: understanding the implications of the EU's proposed insolvency directive for trustees. [Blog post].

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## **Cross-Border Trusts in Flux: Understanding the Implications of the EU's Proposed Insolvency Directive for Trustees**

**[Charles Ho Wang Mak](#) (Robert Gordon University)**

Insolvency law has emerged as a complex yet vital domain in a world increasingly entangled by complex financial transactions and obligations. It acquires a new layer of complexity when we turn our gaze towards cross-border insolvencies, and in the middle of it all stand the insolvency practitioners—also known as trustees in bankruptcy. I have recently penned a comprehensive article titled [‘Trusts Across Borders: Steering through the European Union's Insolvency Directive and Its Implications for Trustees’](#). This article serves as an invaluable resource for legal practitioners, academics, and policymakers interested in understanding the multifaceted roles and responsibilities of trustees in cross-border insolvencies, particularly in the context of the European Union (‘EU’).

### **Why the Focus on the EU?**

The EU recently proposed a directive to harmonise insolvency law across its Member States. Such an endeavour is not merely an exercise in legal consistency; it reflects the EU’s aspiration to establish an efficient and unified marketplace. This move towards harmonisation offers both challenges and opportunities for insolvency practitioners, who play a pivotal role in the collection and redistribution of assets during insolvency proceedings.

### **Navigating Complex Terrain**

The article begins by painting a complex landscape of insolvency law, emphasising that practitioners bear numerous unique responsibilities and liabilities. These practitioners are personally liable and, at the same time, entitled to an indemnity from the insolvent estate's assets. While their role is analogous to trustees in express trusts, the duties and risks they face are derived from insolvency laws.

In the article, I have examined the proposed directive and its potential ramifications on insolvency proceedings and trusts. The proposed directive aims to standardise insolvency laws across EU Member States, focusing on asset recovery, the efficiency of proceedings, and equitable distribution of reclaimed assets among creditors. Several key provisions within the directive could significantly affect the roles and responsibilities of insolvency practitioners, commonly referred to as trustees in bankruptcy. For instance, directors are required to initiate insolvency proceedings within three months of recognising a state of insolvency. Furthermore, new frameworks such as 'pre-pack proceedings' and the obligation to trace assets could bring about new complexities, particularly for insolvency practitioners overseeing trusts. They may need to adjust their asset management strategies to adhere to the directive's proposed changes, especially when dealing with cross-border issues.

The proposed directive also presents unique challenges and opportunities for trustees, which were outlined in the article. While it introduces additional responsibilities and potential liabilities, especially in instances where trustees serve as directors, it also offers benefits such as improved asset tracing and a more unified legal landscape across the EU. For effective adaptation, it is recommended that insolvency practitioners acquaint themselves thoroughly with the directive's specifics and potentially ambiguous areas, such as the criteria for determining insolvency. Given the evolving nature of this legislative initiative, staying informed about any amendments and engaging in cross-border collaborations can enable insolvency practitioners to manage their responsibilities effectively in this changing landscape.

### **Preparing for a Changing Landscape**

The proposed directive heralds a new era of greater harmonisation, efficiency, and transparency. For insolvency practitioners, this necessitates a proactive and dynamic approach. They must adapt to changes as they unfold and cultivate relationships with their counterparts in other EU Member States and beyond. The article emphasises the importance of meticulous planning, active engagement, and adaptability. As the proposed directive progresses through the legislative process, insolvency practitioners must remain vigilant and ready to modify their strategies when necessary.

### **Final Thoughts:**

The need for uniform laws, especially in complex areas like insolvency, is increasingly palpable in a globalised world. My article offers theoretical insights and practical guidance for insolvency practitioners. My article suggests that while the path to a harmonised insolvency law system in the EU is fraught with challenges, it also offers unprecedented opportunities for increased efficiency and broader cooperation.

The article serves as a road map for those navigating these shifts, particularly insolvency practitioners. The proposed directive signals not an end but a beginning of a new chapter in EU insolvency law. To navigate this uncharted territory, practitioners will need more than just legal understanding; they will need the agility to adapt, the foresight to plan, and the wisdom to execute.