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London Schemes industry set back? Are we about to see an end to aggressive “schemes forum shopping”.

An extraordinary coincidence of timing at the International Restructuring Conference in London today. Global Turnaround Editor, John Willcock’s informative market update featured “London’s Scheme Industry keeps on rolling” as a keynote topic. He pointed out the recent COMI shift objections in the Codere and Indah Kiat cases to what the Court described in Codere as “... an extreme form of forum shopping” and “grabbing someone else’s debt just to get rid of it”. But just two days before reports had emerged that a German Court in ruling on Bond holder claims written under Austrian law, whilst rejecting a German insolvency filing had stated that Scholtz’s COMI was in Germany; this whilst Scholtz’s advisors have been active in migrating certain management functions to UK to establish a UK COMI and sufficient connection to proceed with an English Scheme of Arrangement to restructure Scholtz’s debt.

Whilst scrutiny of the detail of the judgment is awaited it is interesting that apparently “contrived” aggressive forum shopping is being seriously questioned by Courts in both England and Germany. In a further conference session on developments from the European Union the concept of “COMI at the transaction date” was mentioned. Maybe this will appear in a forthcoming Directive and further undermine post distress COMI migration. This would certainly be too late to affect the Scholtz restructuring but what is evident is that Courts are alert to spurious forms of forum shopping and are taking a more demanding look at the underlying reality.

In the short term the advisors of Scholtz may have to go back to the drawing board unless they can convince an English Court judge to take a contrary view to his German counterpart. Now that would be interesting!!

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