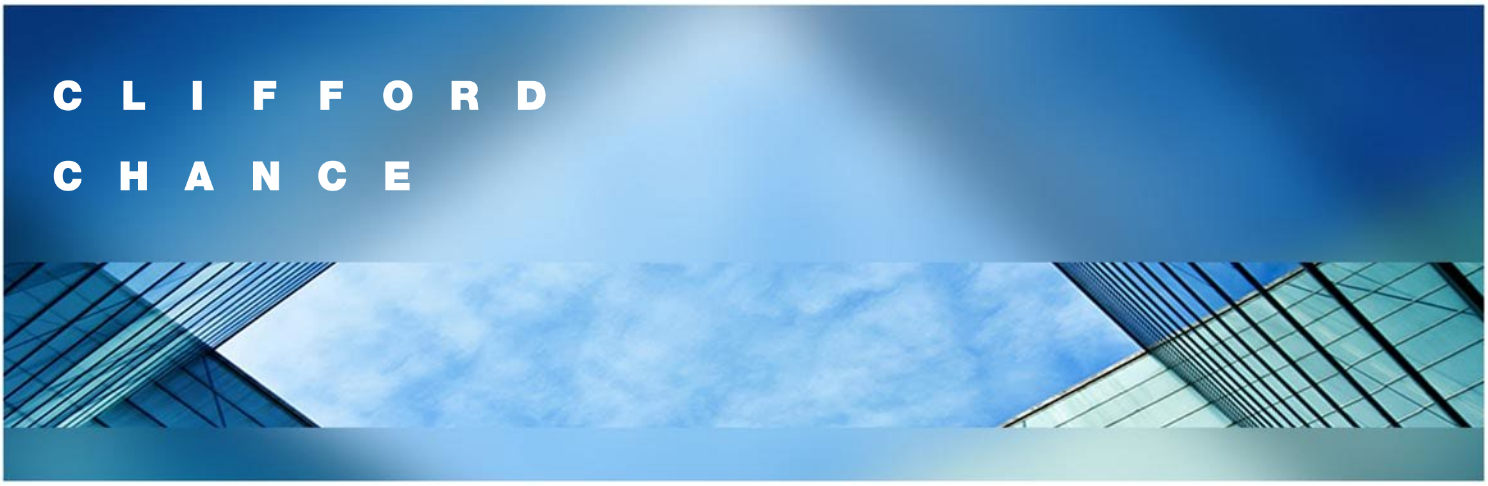

ANOTHER STEP CLOSER: DRAFT EU DIRECTIVE HARMONISING CERTAIN ASPECTS OF INSOLVENCY LAW

On 12 June 2025, the European Council issued a press release: EU insolvency law: Member States agree position on bringing national insolvency standards closer (see the press release). The harmonisation of insolvency laws forms part of the core Capital Markets Union legislation, across EU Member States.

The draft directive is expected to:

- Boost cross-border investment.
- Reduce the cost of capital.
- Make it easier for investors to assess risks.

Since the initial publication of the draft directive on 7 December 2022, several changes have been made following feedback from a wide range of stakeholders, including Clifford Chance. Our contributions highlighted areas needing additional clarity, and it is encouraging to see that some of these key recommendations have been incorporated.

The European Council's recent consideration of the draft directive focuses on three substantive areas:

- **Pre-pack:** Amendments have been made to the draft which are designed to maintain flexibility and so that the pre-pack sales procedures are not overly burdensome. While sales of businesses in a pre-pack scenario are expected to be conducted mostly by a specially appointed monitor, the draft directive also includes provisions that allow them to take place by public auction or upon approval by creditors. The draft directive also includes changes to ensure that contracts which are essential to the continuation of the business can also be transferred without the counterparties' consent. However, Member States under the current draft are allowed to require consent depending upon the type of contract. Examples are provided in the draft directive relating to netting agreements, including close-out netting agreements in the financial markets, energy, or other commodities sectors, but some commentators suggest that these are insufficiently clear. One interesting development (which is subject to existing national restrictions on termination rights) allows Member States to permit contracting parties to terminate their agreements with a minimum 3 months' notice.

- **Creditors' Committees:** The draft directive provides for greater flexibility and simplification in setting up a committee. It also recognises that committees might not be necessary in all cases. For example, the changes allow Member States the possibility to limit them to large enterprises and when there is a proportionate benefit.
- **Winding up micro enterprises:** This has been removed from the draft directive, on the basis that there were concerns over its practicality.

For more detailed information, see the latest draft directive: https://data.consilium.europa.eu/doc/document/ST-9257-2025-INIT/en/pdf

You can also revisit our previous briefings "EU proposal for a directive of the European Parliament and of the Council harmonising certain aspects of insolvency law" (December 2024) and "More harmonisation of insolvency laws is on its way across Europe" (December 2022), for insights into the original proposals.

C L I F F O R D
C H A N C E

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