

RE DOBB WHITE & CO

Gabriel Moss QC (sitting as a deputy High Court judge), unreported, 2 December 2003.

The FSA brought a winding up petition against an accountancy partnership and bankruptcy petitions against the partners alleging, amongst other matters, insolvency and that they were involved in a collective investment scheme which was not authorised.

The FSA also alleged that the petitions were within the EC Regulation on insolvency proceedings and were not within the exclusion in Article 1(2) relating to "collective investment undertakings".

The court referred to paragraph 60 of the Virgos-Schmit Report on the draft Convention on Insolvency Proceedings (reproduced in Moss, Fletcher and Isaacs: The EC regulation on Insolvency Proceeding, OUP 2002) and held that the exclusion for "collective investment undertakings" was limited to those which were authorised and fell within the definition set out in Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended. It thus applied to authorised bodies whose sole aim was the joint investment of securities from capital collected from the public, whose operations were subject to the principles of risk sharing, and the shares of which are, on the bearer's request, bought or paid back, directly or indirectly, from the assets of those bodies.

Accordingly, a body of this type which was not authorised fell outside the exclusion and the EC Regulation applied to the proceedings.