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# Norway
## Developments in Norwegian International Insolvency Law

**As a non-EU member, Norway has never been a part of the European Insolvency Regulation (EIR), and the international elements of Norwegian Insolvency law have arguably been ready for revision for decades.**

After Brexit it is highly likely that the EIR will no longer apply to Britain, and Britain will be in a similar situation as EIR outsiders like Norway and Denmark. The question of mutual recognition of bankruptcies between EIR-countries and "outsiders" therefore seems to be a hotter topic after Brexit.

Norwegian Insolvency legislation has, until recently, had only a domestic focus with the only international elements being the incorporation of the Nordic Convention on Bankruptcy from 1933 (!). With The Nordic Convention bankruptcies are fully recognised between the Nordic countries, and the Convention has been an important tool for insolvency practitioners in the Nordic countries since its implementation.

With the exception of our neighbouring countries, Norway has not formally acknowledged foreign insolvency proceedings. On the other hand, Norwegian law does not territorially limit Norwegian insolvency proceedings to Norway. In principle, Norwegian insolvency proceedings assume universal application and are only limited by the possible non-acceptance in other States.

This inconsistency, together with an increasingly international Norwegian industry, seemingly moved the Norwegian Ministry of Justice to initiate work on a new Norwegian International Insolvency legislation in 2009. The new legislation was passed by Parliament in 2016, and is reflected in a new fourth chapter in the Norwegian Bankruptcy law, concerning the recognition of foreign insolvency proceedings in Norway. The law amendment has not entered into force due to technical issues at the Norwegian Company Registry, and the Norwegian Ministry of Justice has recently announced that an exact date for its implementation is not yet determined.

The law amendment entails that Norwegian legal venue rules will be in agreement with the EIR and UNCITRAL model law, for example by introducing the Centre of Main Interest (COMI) as forum clause, and by allowing for secondary insolvency proceedings in Norway.

The main feature of the law amendment is that foreign insolvency proceedings - assuming that they fulfill certain criteria - are immediately and automatically recognised in Norway. The foreign liquidator can notify publicly the main insolvency proceedings in Norway through the Norwegian Company Registry. By a public notification, the liquidator obtains legal protection, can seize assets in Norway directly and can challenge transactions based on the (Norwegian) rules for recovery in Bankruptcy.

However, not all foreign insolvency proceedings will be recognised. The law amendment lays down a condition of reciprocity as its sets out that "*the insolvency proceedings are commended in a State which in accordance with its national law recognises corresponding bankruptcy proceedings commenced in Norway*". Several countries (amongst others Britain) have rules for recognition that do not pose such a requirement.

The preparatory works indicates that insolvency proceedings opened in States having incorporated the UNCITRAL Model Law will most likely be recognised in Norway when this new Insolvency regime enters into force. It will definitely be interesting to see how this condition will be interpreted by Norwegian courts in the future.

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# Latvia:
## Amendments to Insolvency Law

**A set of amendments to the Latvian Insolvency Law and the Civil Procedure Law was adopted on 31 May 2018.** The amendments partially entered into force in July, another part will enter into force in 2019 and some of the amendments still require adoption of secondary legislation. The scope of the amendments is rather broad and this review focusses on several of the issues covered by them.

*Change of the name of the supervisory institution*
The name of the governmental institution in charge of supervising insolvency and restructuring proceedings has been changed and the Insolvency Administration has now become the Insolvency Control Service. From the legislator's perspective, the new name delivers a message regarding the role and functions of the institution better than the previous one.

*Random appointment of administrators*
Until now, administrators have been appointed in insolvency proceedings pursuant to a roster. Despite several targeted measures implemented over the last couple of years, the current system of appointment was assessed as still being vulnerable to interference. Therefore, the amendments aim to introduce random automated appointment of administrators.

*Introduction of the electronic insolvency registration system*
The amendments introduce an online platform called electronic insolvency registration system, which is aimed to become an unprecedented comprehensive platform having the functions of storing information on insolvency administrators and restructuring supervisors, insolvency and restructuring proceedings, submission of creditor's claims, exchange of information among different players (e.g. an administrator and a debtor's representative) etc.

*Resolution of disputes related to creditors' claims*

Special procedural rules have been introduced for resolving disputes concerning creditors' claims. Previously, if an administrator rejected a creditor's claim, the creditor had to challenge the administrator's decision in the court charged with adjudicating the insolvency proceedings of the debtor. However, the insolvency proceedings are not designed for the resolution of substantive disputes (e.g. as regards the existence or the amount of a creditor's claim), and the only vehicle for the resolution of such disputes under the Latvian Civil Procedure Law is the so-called claim proceedings (proceedings by way of an action). Hence, if the court established that there was a substantive dispute, it merely ordered the creditor to bring a claim into court having jurisdiction over the said dispute, which may or may not have be the same court that hears the insolvency proceedings. It often resulted in a lengthy litigation running alongside insolvency proceedings, procedurally independent and disconnected from them.

Now such disputes will be heard by the same court and in an expedited manner. Namely, the case must be examined in a written procedure within 30 days from the submission of explanations to the claim by other involved parties, while the court ruling may only be appealed once, provided that the specific preconditions for the initiation of appellate proceedings are established by the court of appeal.

In addition, the creditor whose claim has been rejected by the administrator on the grounds of a dispute will be entitled to bring the claim into court for the resolution of a dispute right away, without the need to separately challenge the administrator's decision *per se*.

## Italy:
## New Code of Company Crisis and Insolvency is close to being approved

**On 8 November 8 2018, the Council of Ministers approved the Legislative Decree implementing the Law 155/2017. It consists of 390 articles, divided into four parts:**

Part I: Crisis and insolvency Code
Part II: Changes to the Civil Code
Part III: Guarantees for buyers of buildings to be built
Part IV: Final and temporary provisions

The purpose of the Legislative Decree is to reform the insolvency system by providing a systematic and organic framework, thus overcoming the discontinuous and fragmented approaches that had characterised the reforms of the provisions which took place in the last 15 years.

***Key points of the reform:***

- ✓ The replacement of the term 'bankruptcy' with the expression "judicial liquidation" in accordance with the terminology in other European countries, in order to avoid the social discredit that historically accompanies the term "bankrupt";
- ✓ The priority of dealing with proposals that lead to the overcoming of the crisis by ensuring business continuity;
- ✓ The uniformity and simplification of the legislation of the various special proceedings previously existing on insolvency matters;
- ✓ The reduction of the duration and costs of insolvency proceedings;
- ✓ The establishment, at the Ministry of Justice, of a register of individuals delegated to perform, on behalf of the Court, the functions of management or control in the insolvency proceedings, with an indication of the requisites of professionality and independence necessary for being registered.

Furthermore, the Legislative Decree makes changes to the provisions on alert procedures and assisted settlement of the crisis, i.e. out-of-court procedures aimed at anticipating the appearance of the crisis, thus allowing a fast analysis of its causes. In fact, differently from the previous provisions, the Legislative Decree foresees the possibility for the company concerned to challenge the symptomatic imbalance indices of the "crisis" and significantly modifies the thresholds beyond which the reporting charges are charged to the qualified public creditors.

In addition, the Legislative Decree broadens the obligation of the Public Prosecutor to file an appeal for the opening of the judicial liquidation, providing it in all cases in which the public prosecutor becomes aware of a state of insolvency, differently from the previous provisions, which provided for it only in specific cases. Some changes are also made to the provisions on the composition with creditors, where the independent professional has to certify the truthfulness of the company data declared by the applicant and the feasibility of the proposed plan. This becomes a condition for admission to the composition with the creditors in order to decide upon the business' continuity and the maintenance or re-hiring of a number of employees equal to at least 30% of those employed at the time of filing the plan, for the next two years.

The final wording will depend on any possible amendments made by the Commissions of the competent Ministries where the Legislative Decree is currently analysed. The next step is the approval from the Council of Ministers which, most probably, will happen no later than 13 January 2019. The reform will start with the entry into force of the new Code of the Company Crisis and Insolvency that will represent a real revolution for the Italian bankruptcy law, where some provisions will be effective after 30 days from the publication in the Official Gazette, while the most relevant part will be effective only in 2020. ■

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