

## **INSOL Europe/LexisPSL Joint Project on 'How EU Member States recognise insolvency/restructuring proceedings commenced in third country states'—Italy**

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**Restructuring & Insolvency analysis:** This article looks at how Italy would recognise insolvency or restructuring proceedings commenced in a third country state. In particular, it considers whether the English Part 26 scheme or Part 26A restructuring plan would be recognised in Italy. Written by Italian Country Coordinator for INSOL Europe, Giorgio Corno at Studio Corno.

### **Q1. Has your country adopted the UNCITRAL Model law on insolvency? If not, does it intend to do so in the near future?**

It has not been adopted. We do not expect it to be adopted in the near future.

### **Q2. What are your country's private international law provisions for the recognition of insolvency proceedings commenced in countries outside of the EU Member States (ie Third Party States like the UK)?**

The existing provisions are limited. Specifically:

- with regard to jurisdiction, art 9 and 161 of Italian insolvency law established jurisdiction with regard to winding up (fallimento) and restructuring (concordato preventivo) proceedings
- with regard to recognition and enforcement of third countries' foreign judgments, art 64 and ff of Law 218/1995, on Italian private international law, apply

### **Q3. Would your country recognise an English scheme of arrangement†(under Part 26 of the Companies Act 2006 (CA 2006)) or an English restructuring plan†(under CA 2006, Pt 26A) now post-Brexit and on what basis? (e.g. Lugano Convention, Hague Convention, Rome I or other private international law rules)?**

The situation is still unclear.

No specific convention exists between the UK and the Republic of Italy for matters regarding restructuring and insolvency.

The UK and the Republic of Italy entered the Convention between for the Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters, which was signed in Rome on 7 February 1964, with an amending Protocol signed in Rome on 14 July 1970.

While UK was a member of the EU because of [Regulation 1346/2000](#) and, afterwards, [Regulation 2015/848](#), such a Convention was not considered applicable by Italian scholars (De Cesari-Montella, *Insolvenza transfrontaliera e giurisdizione italiana*, Milano, 42).

Following UK's withdrawal from the EU, the said Convention could be applicable to recognition of judgments in bankruptcy proceedings (art. IV.3.c). (Leandro, *Brexit and cross-border insolvency. Looking beyond the withdrawal agreement*, in *Dir. Comm. Intern.* 2020, 179-180, n. 57 states: "As regards the relations between Italy and the UK, even envisaging the revitalization of the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 7 February 1964 and amended with Protocol of 14 July 1970 (which is not listed in Art. 85, EIR), that Convention slightly touches upon insolvency matters as it only governs the circulation of judgments 'in bankruptcy proceedings' (the Italian version refers to them as "sentenze su controversie in materia fallimentare"). Furthermore, the Convention provides that, in the case of judgments in bankruptcy proceedings, "the jurisdiction of the original court shall be recognized in all cases where such recognition is in accordance with the country of the court applied to" (Art. IV (3): by comparing with the Italian version, this means that the assessment as to so-called 'indirect jurisdic-

tion', as a ground of recognition, lacks a common provision to the parties, being operational upon the law of the requested State).

Recognition and enforcement of court orders issued at the sanctioning hearing approving the plan or the scheme could be sought under the said Convention. Otherwise, recognition and enforcement could be sought under the above-mentioned existing rules on recognition and enforcement of third countries' foreign judgments (art 64 and ff of Law 218/1995 on Italian private international law).

### **INSOL Europe/LexisNexis table of 'How EU Member States recognise insolvency/restructuring proceedings commenced in third country states'**

A table produced by INSOL Europe in partnership with Lexis Nexis (also incorporating information from Lexology Getting The Deal Through) is available here: [INSOL Europe/Lexis/EPNL Joint Project on 'How EU Member States recognise insolvency and restructuring proceedings of a third country': consolidated table.](#)

We look at how EU Member States would recognise insolvency or restructuring proceedings commenced in a third country, such as the UK (post-Brexit), the US, Japan, Australia or Canada. As always, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.

