

INSOL Europe/LexisPSL Joint Project on ‘How EU Member States recognise insolvency/restructuring proceedings commenced in third country states’—Denmark

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Restructuring and Insolvency analysis: This article looks at how Denmark 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 Denmark. Written by the Danish country co-ordinator for INSOL Europe, Michala Roepstorff at Plesner Advokatpartnerselskab.

Q1. Has your country adopted the United Nations Commission on International Trade Law (UNCITRAL) Model law on Insolvency? If not, does it intend to do so in the near future?

Denmark has not adopted the UNCITRAL Model law on Insolvency. Currently, there is no pre-legislative work or attempts to do so 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)?

Recognition of insolvency proceedings in EU Member States

Due to Denmark’s opt-out relating to judicial co-operation, Denmark is not part of the EU Recast Regulation on Insolvency, [Regulation \(EU\) 2015/848](#). No Danish authority applies to recognition of insolvency proceedings commenced in other EU Member States. However, the Directive on recovery and resolution of credit institutions and investment firms is applicable in Denmark and establishes the legal basis for Danish courts’ recognition of insolvency proceedings commenced against credit institutions and investment firms in EU Member States. Denmark is also part of the Nordic Bankruptcy Convention, leading to the recognition of insolvency proceedings commenced in Finland, Iceland, Sweden, and Norway.

Recognition of insolvency proceedings in Third Party States

According to the Danish Insolvency Act, the Minister of Justice may lay down regulations in pursuance of which decisions by foreign courts of law and authorities in respect of bankruptcy, restructuring and other similar insolvency proceedings are to have a binding effect and be enforceable in Denmark, provided that they have such binding effect and are enforceable in the foreign state where the decision has been taken and provided that such recognition and enforcement would not be obviously incompatible with the Danish legal system. The statutory authority has not been made use of so far.

Due to the Nordic Bankruptcy Convention, Danish courts recognise insolvency proceedings commenced in Norway. Danish courts also recognise insolvency proceedings commenced against credit institutions and investment firms in Third Party States to the extent that EU has agreed upon with the Third Party State in question. If no agreement has been entered into between EU and the Third Party State, Finansiel Stabilitet (an independent public company owned by the Danish State through the Danish Ministry of Industry, Business and Financial Affairs) may decide whether a Third Party State’s insolvency proceedings against a credit institution or investment firm must be recognised.

Apart from the situations mentioned above, Denmark does not recognise insolvency proceedings commenced in Third Party States.

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)

An English scheme of arrangement or an English restructuring plan is not enforceable in Denmark, neither prior to Brexit nor post-Brexit.

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) will be available shortly.

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.

