

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

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Restructuring & Insolvency analysis: This article looks at how Czech Republic 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 Czech Republic. Written by Ernst Giese, Czech Country Coordinator for INSOL Europe and Ondřej Rathouský at Giese & Partner.

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

No, the Czech Republic does not intend to adopt the UNCITRAL Model law on Insolvency 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)?

Recognition of foreign insolvency proceedings commenced in countries outside the EU Member States is governed by the general provision contained in section 111 (5) of Czech Act No 91/2012 Coll., on international private law, pursuant to which: Foreign decisions in matters of insolvency proceedings shall be recognised under the condition of reciprocity, provided the debtor’s main interests are concentrated in the foreign state in which said decisions have been issued and provided the debtor’s property in the Czech Republic is not subject of proceedings which have already commenced. In these cases, and otherwise, if no proceedings have been commenced by a Czech court against the property which has become the subject of the insolvency proceedings abroad, the debtor’s property which is located in the Czech Republic will be submitted to the foreign court upon request, provided this involves a court in a state which preserves the principle of reciprocity. The debtor’s property may, however, only be transferred abroad, once the rights for the exclusion of an item from the assets and the priority rights of secured creditors which were acquired earlier than the request was received from the foreign court or from any other appropriate body have been satisfied.

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)

English scheme of arrangement:

It is not clear what approach the Czech court would have to the English scheme of arrangement. Generally, the Czech court might consider the scheme of arrangement from two possible perspectives (i) as a contract or (ii) as a court decision.

If the scheme of arrangement is concluded with the consent of all creditors, the Czech court might come to the conclusion that in fact even if approved by the court it is a contract between the debtor and the creditors. Subsequently, the Czech court would consider such contract applying regulation Rome I or Czech principles of private international law on the law of contracts.

If the consent of some creditors is missing the Czech courts would most likely not regard the scheme of arrangement as a contract but rather as a decision of the English court. As it is not decisive for the scheme of arrangement whether the company in question is insolvent or not, the Czech court would not regard the respective decision of the English court as a decision issued within the foreign insolvency proceedings (similarly as ruled by the English courts that the scheme of arrangement falls under the scope of EU Brussels Convention and not under the EU Recast Regulation on Insolvency 2015/84). Therefore, general provisions of Czech

international private law on recognition of the foreign court decisions would have to be applied. In this respect the Czech court shall not recognise English scheme of arrangement if:

- a) the matter falls under the exclusive jurisdiction of the Czech courts or if the proceedings could not have been undertaken by an authority in a foreign state, if the provisions pertaining to the jurisdiction of the Czech courts had been applied when assessing the jurisdiction of the foreign authority, unless the participant in the proceedings, against whom the judgement is made, has voluntarily submitted to the jurisdiction of the foreign authority,
- b) if proceedings are underway before a Czech court with regard to the same legal relations and if said proceedings commenced prior to the proceedings abroad, in which the judgement whose recognition has been proposed was issued,
- c) if a Czech court has already issued a valid judgement about the same legal relations or if the valid judgement of the body of a third state has already been recognised in the Czech Republic,
- d) if a participant in the proceedings, with regard to whom the judgement is to be recognised, has been deprived of the ability to duly participate in the proceedings by means of a procedure adopted by a foreign authority, especially if said participant has not been delivered a summons or the motion to commence the proceedings,
- e) any such recognition would clearly contravene public order, or
- f) reciprocity has not been guaranteed; reciprocity is not required if the foreign judgement is not aimed at a citizen of the Czech Republic or a Czech legal entity.

English restructuring plan:

We understand that according to the recent ruling of the High Court of England and Wales dated February 17, 2021 the English restructuring plan shall be regarded as insolvency proceedings falling outside the scope of the Lugano Convention (see News Analysis: [Gateway to recognition closed? Convening judgment determines that new UK restructuring plan falls outside scope of Lugano Convention 2007 \(Re gategroup Guarantee\)](#)). The most decisive argument in this respect is that in order for a debtor to avail itself of a restructuring plan it must have encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.

Pursuant to our opinion, the Czech court would also consider this aspect and recognise that the English restructuring plan as a decision issued in the course of the insolvency proceedings. In such case the general provision contained in section 111 (5) of Czech Act No 91/2012 Coll., on international private law, on recognition of foreign insolvency proceedings commenced in countries outside the EU Member States shall apply.

Pursuant to above statutory provision, the foreign decisions in matters of insolvency proceedings shall be recognised under the condition of reciprocity, provided the debtor's main interests are concentrated in the foreign state in which said decisions have been issued and provided the debtor's property in the Czech Republic is not the subject of proceedings which have already commenced. In these cases, and otherwise, if no proceedings have been commenced by a Czech court against the property which has become the subject of the insolvency proceedings abroad, the debtor's property which is located in the Czech Republic will be submitted to the foreign court upon request, provided this involves a court in a state which preserves the principle of reciprocity. The debtor's property may, however, only be sent abroad, once the rights for the exclusion of an item from the assets and the rights of the secured creditors which were acquired earlier than the request was received from the foreign court or from any other appropriate body have been satisfied.

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.

