

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

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Restructuring and Insolvency Analysis: This article looks at how Poland 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 Poland. Written by the Polish Country Coordinator for INSOL Europe, Michał Barłowski at Wardynski & Partners.

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?

Yes

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 UNCITRAL Model Law enacted by the Bankruptcy and Recovery Act of 9 April 2003.

Q3. Would your country recognise an English scheme of arrangement (under Part 26 of the Companies Act 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)

Both an English scheme of arrangement and restructuring plan would be recognised on the basis of Part II of the Bankruptcy Law: '*Regulations dealing with international bankruptcy*' if no exclusive jurisdiction of a Polish court applies and there is no breach of general principles of the legal order of Poland (similar to a public order exemption) (see art 392 of the Bankruptcy Law). In practice, it may well be that if one deals with an English scheme opened against a debtor who is not endangered by insolvency, then recognition may be denied. In such a case, the rules of the Private International Law which is based on the Rome I (and Rome II) convention would apply.

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.

