

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

02/03/2021

Restructuring & Insolvency analysis: This article looks at how Slovakia 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 Slovakia. Written by the Slovak Country Coordinator for INSOL Europe, David Orsula at bnt attorneys in CEE.

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

No. There is no chance it will 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)?

Act No 97/1963 on International Private and Procedural Law (‘Private International Law Act’) contains the following rules, which prevent recognition:

- res judicata
- exclusive jurisdiction of Slovak courts
- the decision is not final or enforceable in the country of issuance
- the decision is not on the merits
- the defendant did not receive notice of the proceedings in sufficient time to enable him to defend, and
- order public

If none of the rules above apply, the court may recognise the judgment.

If the question applies exclusively to commencement (meaning opening) of insolvency proceedings, then most probably such a decision will not be recognised as it would not be considered a decision on the merits.

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)

Schemes of arrangement and restructuring plans are confirmed by a court’s decision.

If England accedes to the Lugano Convention and the court decision qualifies within the definition of Article 32, they may be recognisable. The Slovak courts might, however, reject recognition based on public policy grounds.

As a last resort, general recognition rules under the Private International Law Act apply. However, the Slovak courts might reject recognition based on public policy grounds.

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.

