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

02/03/2021

Restructuring and Insolvency analysis: This article looks at how Lithuania 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 Lithuania. Written by Frank Heemann, Lithuanian Country Coordinator for INSOL Europe and Andrius Juškys 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.

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)?

Lithuanian legislation lacks special legal regulation on insolvency proceedings commenced in third-party states. The recognition of related court judgments follows the general exequatur recognition procedure established in Art 809 et seq of the Code of Civil Procedure (CPC).

Pursuant to Art 810 CPC, judgments of foreign courts are recognised in accordance with the rules in international bilateral agreements if they exist. In the absence of such agreements, the Court of Appeal of Lithuania as the competent institution for the recognition of foreign decisions ex officio checks there are no grounds for refusing recognition of a judgment on the grounds listed in the Art 810(1) CPC. The relevant criteria are inter alia: the entry into force of the judgment in the country of origin, adherence to the obligation to duly inform all affected parties who were not participating in the court proceedings, non-violation by the foreign judgment of rules of public order (ordre public). The court has no power to analyse the application of law and facts of the judgment, for which recognition is sought.

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 recognition of an English scheme or a restructuring plan would require a related approving judgment or other decision of an English court. This decision would have to be formally recognised by a Lithuanian court.

A request submitted by the interested parties will be assessed by the competent Court of Appeal under the general procedure as stated in Art 809 et seq CPC. The court will not analyse the application of law and facts of the related judgment and its powers to review the decision will be limited. However, a recognition request may be rejected based on grounds listed in Art 810 CPC, inter alia due to violation of the public order principle (ordre public) or the violation of an obligation to duly inform all parties affected by the English scheme or restructuring plan.

It remains uncertain if English schemes or restructuring plans would be recognised in Lithuania. This uncertainty stems from (i) the lack of special provisions on the recognition of insolvency-related decisions taken in third-party states, (ii) the absence of a bilateral treaty between the UK and Lithuania that would cover the subject-matter, (iii) the lack of relevant precedent case law, and (iv) the case-by-case nature of the exequatur procedure.

The relevant procedural norm for a refusal of recognition, Art 810 CPC, is phrased as an exemption. It could be understood that the court should refuse recognition only in exceptional cases. This understanding is confirmed by existing court practice that has interpreted the norm rather narrowly. Despite this, the risk remains that recognition requests could be rejected.

The court for its recognition decision would carefully examine particularities of the procedures for the adoption of the English scheme and restructuring plan, including: timely notice to all creditors affected by the scheme or restructuring plan, so that all affected parties have a possibility to defend their interests; the possibility to form different creditor classes (which does not exist in Lithuanian law, where restructuring proceedings know only two classes: secured and unsecured creditors), cross-class cram down (which is not possible in Lithuanian law), and the possibility to compromise the position of secured creditors (not foreseen in Lithuanian 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) 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.