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

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**Restructuring & Insolvency analysis: This article looks at how Bulgaria 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 Bulgaria. Written by Stela Ivanova LL.M. at bnt attorneys in CEE, Sofia.**

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

Bulgaria has not adopted the UNCITRAL Model law on Cross-Border Insolvency. A reform on insolvency and insolvency-related law is pending (as at March 2021) but is not expected to bring in changes in respect to this.

## 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 current legislation contains a limited number of inter-state recognition rules. These are partially related to insolvency and partially to international civil procedure law. They apply independently of EU-membership and read:

Recognition rules related to insolvency: Applicable articles are article 757 through article 760 of the Commercial Act.

Article 757 Recognition of a Foreign Act of Court on Insolvency: The Republic of Bulgaria will, under the premises of mutuality, recognise an act of a foreign court proclaiming insolvency given the foreign court is the court of a state in which the debtor is seated.

Article 758 Rights of an Insolvency Practitioner appointed by a foreign court: The IP appointed by a foreign court's act has the rights entrusted to him/her by the law of the state where the insolvency proceedings have been opened as long as these rights do not contradict the public order in the Republic of Bulgaria.

Article 759. Ancillary Insolvency Proceedings: (1) Upon application by the debtor, the foreign IP or a creditor the Bulgarian court can open ancillary insolvency proceedings with regard to a merchant with substantial assets in Bulgaria, given a foreign court has declared insolvency in respect of that merchant.

(2) The act of (the Bulgarian) court under section 1 is only effective over the debtor's assets in Bulgaria.

Article 760. Effects of Ancillary Insolvency Proceedings (1) Claims to challenge certain transactions initiated by the main or ancillary IP are considered initiated in both proceedings.

(2) A creditor who has received partial payment in the main proceedings only participates in the recoveries of the ancillary proceedings when the part such creditor would be entitled to receive is bigger than the respective part the remaining creditors in the ancillary proceedings would be entitled to.

(3) A plan under article 696 (scheme of arrangement) in the ancillary proceedings can only be adopted with the main IP's consent.

(4) After attribution to the creditor the remaining recoveries of the ancillary proceedings are transferred to the mass under the main proceedings.

Main recognition rule related to international civil procedure law: Applicable article is article 117 from the Code on International Private Law. Competent court is the City Court in Sofia.

Article 117. Decisions and acts by foreign courts and other foreign authorities are recognised and their execution is permitted when:

- the foreign court or authority was, under Bulgarian law, competent to issue the act in question; however, such competence cannot be based only on the claimant's citizenship or registration in the state of the foreign court
- the debtor has been served a transcript of the claim, the parties have duly been summoned and basic principles of Bulgarian law on fair hearing have not been violated
- no decision by a Bulgarian court between the same parties on the same legal grounds and for the same claim has entered into force
- no claim between the same parties, on the same legal grounds and for the same claim is pending before a Bulgarian court when the Bulgarian procedure was initiated before the foreign one
- recognition and execution would not contradict Bulgarian public order

## 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).

It is questionable whether Bulgaria would recognise an English scheme of arrangement or an English restructuring plan. The main points of concern are: (1) Lack of explicit legislative regulation covering recognition of such plans. Bulgarian courts tend to follow a formalistic approach and face difficulties when dealing with untypical cases; (2) International jurisdiction in England based on centre of main interests other than the place of debtor's formal registration might cause problems; (3) Such plans cause the loss of rights by creditors against their will. This might raise issues of public concern although the notion is not unfamiliar in Bulgarian law. The risk is especially high in the case of a cram down by an English restructuring plan as functionally similar instruments in Bulgaria challenge the contractual nature of the plan; (4) Bulgarian legislation encourages ancillary insolvency proceedings and there is practically no instrument permitting the main IP to prevent them.

The chances for recognition and execution appear higher for a scheme of arrangement with no cram down in the case of a debtor formally registered in England. However, formal arguments and the mutuality requirement can prevent recognition here, too.

Apart from this, Bulgaria is bound by the Lugano Convention, the Rome I Convention and The Hague Convention of 30 June 2005 on the Choice of Court Agreements.

## 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.


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YEARS
1981-2021
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