

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

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Restructuring and Insolvency analysis: This article looks at how Estonia 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 Estonia. Written by the Estonian country coordinator for INSOL Europe, Signe Viimsalu at SIGN9, Estonia.

Q1. Has your country adopted the UNCITRAL Model law on insolvency?

No, and it has never been considered for adoption. UNCITRAL Model laws have instead been a source of good inspiration or good examples for law makers in law making in Estonia.

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)?

Provisions regarding forum can be found in the Bankruptcy Act and more relevantly in the Code of Civil Procedure as in insolvency matters, which are not directly regulated by the Bankruptcy Act, the Code of Civil Procedure is applicable. The Bankruptcy Act § 3 (2) stipulates that the Code of Civil Procedure is applicable for bankruptcy proceedings if the Bankruptcy Act does not regulate differently in a particular matter. Thus, special norms are stipulated in the Bankruptcy Act and general norms in the Code of Civil Procedure. According to the Code of Civil Procedure § 8 (1), the conduct of civil proceedings by the court in a matter is based on the Estonian civil procedure law. Recognition and enforcement of court decisions in civil matters (including insolvency matters) and other enforcement instruments of foreign states (including third party states like the UK) is stipulated in Chapter 62 of the Code of Civil Procedure.

The relevant provisions are the following:

§ 620. Recognition of court decisions of other foreign states in civil matters

(1) A court decision in a civil matter made by a foreign state is subject to recognition in the Republic of Estonia, except in the case where: [RT I 2008, 59, 330—entry into force 01.01.2009]

- 1) recognition of the decision would be clearly contrary to the essential principles of Estonian law (public order) and, above all, the fundamental rights and freedoms of persons
- 2) the defendant or other debtor was unable to reasonably defend the rights thereof and, above all, if the summons or other document initiating proceedings was not served on time and in the requisite manner, unless such person had a reasonable opportunity to contest the decision and the person failed to do so within the prescribed term
- 3) the decision is in conflict with an earlier decision made in Estonia in the same matter between the same parties or if an action between the same parties has been filed with an Estonian court
- 4) the decision is in conflict with a decision of a foreign court in the same matter between the same parties which has been earlier recognised or enforced in Estonia
- 5) the decision is in conflict with a decision made in a foreign state in the same matter between the same parties which has not been recognised in Estonia, provided that the earlier court decision of the foreign state is subject to recognition or enforcement in Estonia
- 6) the court which made the decision could not make the decision in compliance with the provisions of Estonian law regulating international jurisdiction

(2) A court decision of a foreign state is recognised in Estonia only if the decision has entered into force pursuant to the law of the state which made the decision unless, pursuant to law or an international agreement, such decision is subject to recognition and enforcement as of the time such decision can be enforced in the state of the location of the court which made the decision.

(3) A court decision of a foreign state is recognised in Estonia without the need to conduct separate court proceedings. However, resolution of the matter of recognition may be requested in accordance with the rules prescribed in this Chapter for declaring a decision enforceable if there is a dispute on recognition or if it is necessary to a person due to another reason for the purpose of exercising his or her rights.

[RT I 2008, 59, 330—entry into force 01.01.2009]

§ 621. Rule concerning enforcement of court decision of foreign state

Unless otherwise provided by law or an international agreement, a court decision of a foreign state is eligible for enforcement in Estonia only after the decision has been declared to be subject to enforcement by the Estonian court.

§ 622. Petition for declaring court decision of foreign state enforceable

(1) A petition for declaring a court decision of a foreign state enforceable is submitted in writing, and the following is annexed thereto:

- 1) a transcript of the court decision authenticated pursuant to the requirements of the law of the state of the location of the court which made the decision
- 2) a document which confirms that the action, summons or other document initiating proceedings has been served in time on at least one occasion pursuant to the law of such state on the defendant or, according to the decision, on another debtor who did not participate in the proceeding
- 3) a document which certifies that the decision has entered into force pursuant to the law of the state where the decision was made and has been communicated to the defendant or based on the decision, another debtor
- 4) documents concerning the enforcement of the decision if enforcement has already been attempted
- 5) documents concerning the enforcement of the decision if the decision has already been enforced
- 6) translations into Estonian of the documents specified in clauses 1–5 of this subsection made by a sworn translator

[RT I, 23.12.2013, 1—entry into force 01.01.2020]

(2) A court may set the petitioner a term for submission of the documents specified in subsection (1) of this section. If the circumstances allow, the court may resolve the matter without requiring such documents.

(3) In order to secure a petition by way of provisional legal protection, the court may apply the measures for securing an action.

§ 623. Order on declaring court decision of foreign state enforceable

(1) When dealing with a petition for declaring a court decision of a foreign state enforceable, the court examines the prerequisites for recognition of the court decision. The court does not verify the correctness of the court decision in the part of the merits of the matter.

(2) [Repealed (I 2008, 59, 330) entry into force 01.01.2009]

(3) If necessary, the court may hear the debtor and the claimant, and obtain an explanation from the court whose decision is to be recognised or enforced. [RT I 2008, 59, 330—entry into force 01.01.2009]

(4) If enforcement of a decision depends on the provision of a security by the person who, based on the decision, is the claimant, or on other circumstances, or if declaration of enforceability of a decision is requested by a person other than the person specified in the decision as the claimant, or if enforcement of a decision is requested in respect of a person other than the person specified in the decision as the debtor, the court evaluates the existence of the prerequisites for enforcement of the decision based on the law of the state of the location of the court which made the decision and based on the evidence provided by the participants in proceedings.

(5) [Repealed (RT I 2008, 59, 330) entry into force 01.01.2009]

(6) In an order, the court makes a reference to the right of the claimant to submit the court decision declared to be subject to enforcement to an Estonian bailiff for enforcement.

(7) The order denying the petition is served on the claimant. The order granting the petition is served on the claimant and the debtor.

§ 624. Amendment or annulment of court decision declared to be subject to enforcement

(1) If a court decision declared to be subject to enforcement is annulled or amended in the state of the location of the court which made the decision, and the debtor can no longer rely on such fact in proceedings for declaring the decision enforceable, the debtor may file a petition for annulment or amendment of the declaration of enforceability of the decision with the court which declared the decision to be subject to enforcement.

(2) The court resolves the petition specified in subsection (1) of this section in accordance with the rules for resolving petitions for declaration of a court decision enforceable.

(3) Among other things, the court may, in order to secure a petition by way of provisional legal protection, suspend enforcement proceedings arising from the decision declared to be subject to enforcement, permit continuation of enforcement proceedings only against a security or revoke the enforcement action.

(4) If a petition is granted, the court annuls or amends the declaration of a court decision to be subject to enforcement.

§ 625. Filing of appeal against order

(1) The claimant may file an appeal against an order on refusal to declare a court decision of a foreign state to be subject to enforcement or an order on annulment of declaring such decision enforceable.

(2) The claimant and the debtor may file an appeal against an order on declaring a court decision of a foreign state to be subject to enforcement or an order on amendment of declaring such decision enforceable. The term for filing an appeal against an order is one month after the date of service of the order or, in the case of service of the order in a foreign state, two months after the date of service thereof.

(3) Until the end of the term for filing appeals against an order on declaring a decision of a foreign state to be subject to enforcement or the entry into force of a decision made concerning an appeal against the order, only the measures prescribed for securing an action may be applied for the compulsory enforcement of a court decision of a foreign state. The debtor has the right to prevent compulsory enforcement by providing a security in the amount in which the petitioner is entitled to request compulsory enforcement of the judgment. However, seized movables may be sold in the course of an enforcement proceeding and the money received from the sale may be deposited with the permission of the court if the seized property could otherwise be destroyed or its value could significantly decrease or if deposition of the property is unreasonably expensive.

§ 626. Compensation for damage caused to debtor

If an order on declaring a court decision of a foreign state to be subject to enforcement or a declaration of such court decision to be subject to enforcement is annulled or amended, the claimant shall compensate the debtor for the costs incurred by the debtor as a result of enforcement proceedings or the costs incurred thereby in order to prevent compulsory enforcement.

§ 627. Recognition of other enforcement instruments of foreign states

(1) The provisions of this Chapter correspondingly apply to the recognition and enforcement of enforcement instruments notarially authenticated in a foreign state or other public enforcement orders, unless otherwise provided by this section.

(2) A public document prepared in a foreign state is recognised in Estonia as an enforcement instrument if:

- 1) its format complies with the requirements set for enforcement instruments subject to immediate enforcement prepared in Estonia, and

- 2) it is subject to immediate enforcement is the state of its preparation, and
- 3) it is not contrary to Estonian 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 appears based on information received from the Ministry of Justice that Estonia would apply other private international law rules, including the Code of Civil Procedure (Chapter 62) in these situations and would recognise an English scheme or English restructuring plan in Estonia.

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.

