

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

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**Restructuring & Insolvency analysis:** This article looks at how the Netherlands 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 the Netherlands. Written by Michael Veder at Radboud University.

### **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)?**

The effects of the opening of insolvency proceedings in other non-EU jurisdictions (including Denmark, which has opted out of the EU regulation on insolvency) are only to a certain limited extent recognised in the Netherlands.

This recognition may be challenged if the principles of due process and fair trial have not been observed in the foreign procedure.

In cases where there was an absence of a treaty and where the predecessor or the EU regulation on insolvency did not apply, the Dutch Supreme Court has consistently decided that the foreign insolvency proceedings only have a territorial effect, meaning that they do not affect the debtor’s assets located in the Netherlands and the legal consequences attributed to the bankruptcy pursuant to the bankruptcy law of such foreign country cannot be invoked in the Netherlands to the extent that it would result in any unpaid creditors no longer being able to take recourse on the assets of the debtor located in the Netherlands (either during or after the relevant foreign insolvency proceedings).

In Dutch case law it is determined that if a foreign insolvency office-holder is allowed to invoke their rights as available pursuant to the foreign domestic insolvency law, including over assets that are located in the Netherlands. The office-holder is also allowed to sell these assets and consider the proceeds part of the assets of the foreign bankruptcy estate. Notwithstanding that the foreign insolvency procedure’s seizure is regarded as having only territorial effects of the foreign insolvency, the effects are de facto recognised in the Netherlands, because the foreign insolvency office-holder is able to exercise their power under the *lex concursus*.

Note, however, that the effect of foreign insolvency proceedings (and any actions by a foreign insolvency office-holder related thereto) on assets located in the Netherlands can be set aside by a Dutch court, if the court determines such proceedings to have been in violation of public policy.

### **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? (eg Lugano Convention, Hague Convention, Rome I or other private international law rules)**

Schemes: probably yes. In the absence of case law on this matter, no conclusive answers can be given. The prevailing opinion in the Netherlands is that a scheme of arrangement will be recognised and given effect in

the Netherlands on the basis of either the [Regulation \(EU\) 1215/2012](#) (Brussels I recast) or Dutch domestic private international law.

Restructuring plans: unclear. It is not at all certain whether the same is true for the new restructuring plan. While, in principle, a restructuring plan is likely to be recognised in the Netherlands under rules of domestic private international law, the effects of recognition will be limited if the restructuring plan is considered an insolvency proceeding for purposes of applying Dutch private international 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) is now available here: [INSOL Europe/Lexis/EPSSL Joint Project on 'How EU Member States recognise insolvency and restructuring proceedings of a third country': consolidated table](#).

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.

