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

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Restructuring & Insolvency analysis: This article looks at how Croatia 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 Croatia. Written by country co-ordinator for INSOL Europe, Jelenko Lehki at Lehki Law Office.

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

Croatia has not adopted the UNCITRAL Model law on Insolvency. There are no plans to adopt it in the near future since the matter (including applicable law) is already included in Chapter 11 of the Croatian Insolvency Act.

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 procedure for recognition of the foreign court decision on opening the insolvency proceedings (Third Party states outside EU Member States which would be done under EIR Recast) has been based on provisions of the Insolvency Act (National Gazette 71/15, 104/17) articles 400–427.

The petition for recognition must include:

- the original decision and a translation into Croatian language, or a certified copy
- a certificate of enforceability, and
- a list of known assets of the debtor in the territory of the Republic of Croatia

The decision will be recognised if:

- the court that delivered the decision had international jurisdiction according to Croatian law
- the decision is enforceable according to the law of the country of origin, and
- if the recognition wouldn't be contrary to public policy

The effects of the foreign decision are determined by the law of the country of origin if it is not contrary to Croatian public policy. If the foreign decision states that it will have the effect of opening the insolvency proceedings for the debtor in Croatia, the decision on recognition will have that effect and will be published in the same way as a domestic decision on opening the proceedings.

The decision on recognition can be challenged by the foreign debtor, foreign insolvency office holder and creditors.

Q3. Would your country recognise an English scheme of arrangement (under Part 26 of the Companies Act 2006) or an English restructuring plan (under Part 26A of the Companies Act 2006) now post Brexit and on what basis? (eg Hague Convention, Rome I or other private international law rules)

As per Article 427 of the Insolvency Act, provisions on the recognition of a foreign decision on the opening of insolvency proceedings shall apply mutatis mutandis to the recognition of a foreign decision approving a restructuring plan or scheme, as well as the recognition of a foreign decision made in another similar procedure.

The same applies to the recognition of precautionary measures taken in connection with a proposal to open bankruptcy or similar proceedings, as well as to other decisions taken for the implementation and completion of these recognised foreign proceedings.

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 available here: INSOL Europe/LexisPSL 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.