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

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Restructuring & Insolvency analysis: This article looks at how Ireland 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 Ireland. Written by Judith Riordan, Anthony Strogen at Mason Hayes & Curran LLP.

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

Ireland has not yet adopted the UNCITRAL Model law on Insolvency. There has been much discussion on the issue and practitioners are in favour of it but, currently, there is no indicative timeframe for its adoption.

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)?

Insolvency proceedings commenced outside of EU Member States can be recognised in Ireland under common law rules of recognition. The Irish High Court has inherent jurisdiction pursuant to the common law to give recognition to insolvency proceedings in jurisdictions outside the EU. This jurisdiction can be exercised where relief is sought for a legitimate purpose and not in the nature of enforcement and derives from the underlying principle of universality of insolvency proceedings. The legitimate purpose requirement is usually satisfied by a request for relief in Ireland under the Companies Act 2014 (CA 2014) to aid the foreign insolvency proceedings. The High Court will also have regard to the equivalence between Irish insolvency law and the law of the country in which the foreign insolvency proceedings are taking place, to ensure recognition is not contrary to Irish law. If the legitimate purpose and equivalency requirements are established and there is no discretionary reason for withholding recognition (such as prejudice to a creditor in the jurisdiction or the infringement of any local law), the High Court will generally be satisfied to grant recognition and proceed to consider whatever orders are appropriate in aid of the foreign insolvency proceedings.

These applications for recognition can be made on an ex parte basis to the Irish High Court and are made in the name of the company which is the subject of the foreign insolvency proceedings. If recognition is granted, it is usually a term of the resulting order that that any party against whom the recognition and assistance order is made shall be at liberty, on notice to the foreign insolvency applicant, to challenge the jurisdiction of the court to grant recognition and assistance insofar as it affects that party.

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 Hague Convention, Rome I or other private international law rules)

While Irish courts will assess recognition applications on a case-by-case basis, applying the common law principles of relevance, we believe Irish courts would likely recognise an English scheme of arrangement or an English restructuring plan. Ireland has a similar scheme of arrangement regime under CA 2014, Pt 9, and the similarities between the Irish regime and the English provisions of CA 2006, Pt 26 should satisfy the requirement of equivalence. In turn, given the similarities between the provisions of CA 2006, Pt 26A with CA 2006, Pt 26 in Ireland, recognition of both would likely be possible in an application before the Irish High Court. It should be noted that the limited Irish case law on common law recognition of foreign insolvency proceedings has focused on liquidations and bankruptcies rather than rescue processes such as schemes of arrangement. Given the presence of rescue mechanisms in Irish insolvency law, this is not of major conse-

quence and should not be a significant hurdle to recognition, but it bears noting that the common law recognition principles are relatively untested in respect of foreign rescue regimes.

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.