

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

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Restructuring & Insolvency analysis: This article looks at how Belgium 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 Belgium. Written by Jan Ravelingien and Jari Vrebos at MVVP.

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

The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted as such in Belgium, but some provisions of national law were inspired by the UNCITRAL Model Law.

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 Belgian law of 16 July 2004 contains the national rules of international private law (Belgian IPL Code), and contains a chapter on insolvency proceedings.

A foreign judgment concerning the opening, the conduct or the closure of insolvency proceedings will be recognised or declared enforceable in Belgium in accordance with the general principles of the Code (art 121 § 1 Belgian IPL Code).

These general principles of the Belgian IPL Code stipulate that a foreign judgment will be recognised in Belgium without there being a need for the application of an exequatur procedure. A foreign judgment, which is enforceable in the State in which it was rendered, will be declared enforceable on the basis of an ex parte exequatur procedure (art 22 Belgian IPL Code). The term judgment means any decision rendered by an authority exercising judicial power.

A foreign judgment shall not be declared enforceable or its recognition can be challenged among others if the rights of the defence were violated or if the judgment would still be subject to an ordinary recourse in the originating state (art 25 § 1 Belgian IPL Code).

The recognition entails that the insolvency practitioner may exercise all powers conferred on them by the foreign judgment. They may in particular request territorial proceedings or temporary and conservative measures in Belgium.

However, there are some instances where the law of another state other than the state where the insolvency judgement was rendered will be applied, such as art 119 § 2 Belgian IPR Code:

- the effects of opening the insolvency proceedings on the rights in rem of third parties in respect of assets belonging to the debtor which are located within the territory of another state when the proceedings are opened are governed by the law applicable to those rights in rem
- the rights on the reservation of title of the seller of an asset at the time of the opening of the proceedings is located within the territory of another state are governed by the law applicable to the rights in rem on the asset
- the rights of a creditor to demand set-off of their claim against the claim of the debtor, are governed by the law applicable to the insolvent debtor’s claim

The Belgian Code of Economic Law provides further stipulations on cross-border insolvency, among others:

- the identity of the insolvency practitioner is published in the Belgian State Gazette upon request of the insolvency practitioner (art. XX.213 Belgian Code of Economic Law)
- the insolvency practitioner can exercise the competences attributed to them under foreign law (art XX.216 Belgian Code of Economic Law)

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)

Belgium recognises foreign insolvency proceedings on the basis of its national law (Belgian IPL Code).

The Belgian IPL Code states in its chapter on collective insolvency proceedings that the chapter applies to 'insolvency proceedings and procedures for collective debt settlement' (art 116 Belgian IPL Code) without further definitions, but Annex A of the European Insolvency Regulation mentioned UK voluntary arrangements under insolvency legislation as 'insolvency proceedings'.

The Belgian IPL Code is applicable without prejudice to the application of international treaties and the European Insolvency Regulation. The 2 May 1934 bilateral treaty between Belgium and the UK on the execution of judgments was not relevant pre-Brexit and has 'revived' now, but in any case this treaty is not applicable to insolvency proceedings (see art 4 (3) of the treaty).

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.

