France

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

France has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. About two years ago, it entrusted a group of experts and academics with the task of preparing a code of private international law covering all private law matters, including insolvency. This work is still in progress.

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 only French law provisions in force for the recognition of foreign insolvency proceedings relate to the exequatur procedure which is an adversarial procedure between a claimant (the foreign insolvency practitioner, a creditor, the public prosecutor or the debtor) and a defendant (as a rule, the debtor).

The procedure is conducted before the President of the Judicial Court (C Org Jud, art R 212-8). The judgment rendered is subject to appeal. The Code of Civil Procedure lays down a general rule followed by special provisions on the enforcement of judgements given by courts of the EU Member States and the Member States of the European Free Trade Association (CPC, Art 509 et seq). The applicant is not to be assisted by a lawyer before the court.

The conditions for the recognition of foreign judgments are defined by case law and have not yet been codified. Several judgments of the French Supreme Court have defined these conditions (Civ 1, 7 January 1964 (Munzer); Civ 1, 4 October 1967 (Bachir); Civ 1, 20 February 2007 (Cornelissen); Civ 1, 6 February 1985 (Simitch)).

These conditions are as follows:

- the foreign court must have jurisdiction: there must be a sufficient connection between the application and the court seized by a party
- the foreign procedure must comply with international public policy in terms of substance and procedure; with a flexible approach adopted by the case law, these conditions concern the means of defence open to the defendant and the fairness of the procedure; as regards substance, the case law considers that the stay of individual proceedings and the principle of an equal treatment of creditors are part of international public policy; the approach is more flexible as regards the actual content of the foreign law

- the foreign decision must not be obtained by fraud (abuse of legal rules or fraudulent forum shopping)
- finally, no insolvency proceedings must be pending in France against the same debtor (by reference to the classic condition of incompatibility with another decision)

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)

The Lugano Convention could apply to the extent that the UK has applied to accede to it, but it would not be applicable if the UK scheme of arrangement was to be considered a procedure similar to insolvency proceedings. There is no case law from the French courts on this point yet.

Conversely, one should observe that English courts have recognised a French conciliation procedure as insolvency proceedings under the Cross Border Insolvency Regulations 2006 (based on the UNCITRAL Model Law on Cross-Border Insolvency).

An agreement could also be recognised, not by the exequatur procedure, but as a contract, according to the provisions of the Rome I Regulation in order to define the law applicable to the effects of such an agreement. This recognition is not equivalent to the exequatur of a foreign judgment because only a court decision could be subject to an exequatur and to enforcement measures. This additional condition was taken into account when drafting Regulation (EU) 2015/848, where the creditors' voluntary winding up procedure 'with confirmation by the court' is recognised as proceedings under its scope and listed in Annex A.

As mentioned above, the Lugano Convention would not be applicable if the UK scheme of arrangement procedure is considered to be a procedure similar to insolvency proceedings. The same applies if the withdrawal of the United Kingdom would make applicable (again) the Convention concluded between the United Kingdom and France on the recognition of judgements on 18 January 1934. According to the analysis of the Legal High Committee for Financial Markets of Paris (Haut Comité pour la Place Financière de Paris) this Convention seems to exclude from its scope bankruptcies and similar proceedings.

It is therefore private international law that is currently applicable.

As to an agreement sanctioned by a court under CA 2006, Pt 26A (introduced by the Corporate Insolvency and Governance Act 2020), recognition probably could be granted as soon as an English court approves it: an analysis of the grounds (financial difficulties) and of the rules (an agreement similar to a scheme of arrangement with a judicial sanction) however could lead French courts to apply the same process as the one provided for insolvency proceedings. The procedure of exequatur therefore seems likely applicable.

As regards the Hague Convention, it could be applied subject to the exclusions provided for in its Article 9, in particular the refusal of recognition or enforcement if the agreement was null and void under the law of the State of the chosen court, in case of fraud, conflict with local public policy or inconsistency with an earlier judgment given in another State between the same parties on the same cause of action.