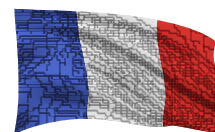




In this section of *eurofenix* we bring you short updates from our members including insolvency measures in response to the COVID-19 crisis in their jurisdictions. To contribute to a future edition, please contact: [paulnewson@insol-europe.org](mailto:paulnewson@insol-europe.org)

## Towards a French code of private international law for insolvency proceedings



**JEAN-LUC VALLENS**  
Honorary judge,  
Professor emeritus,  
University of Strasbourg

**In March 2022, a French think tank, the French Committee on Private International Law (*Comité français de droit international privé*), which brings together judges and academics in coordination with the Ministry of Justice, drew up a draft code of private international law. This is a major step towards the introduction of a text codifying private international law in French law. The draft covers all matters of civil and commercial law, including insolvency law.**

Specific jurisdictional rules adopt the criteria of the debtor's centre of main interests and secondary establishment based on the European Insolvency Regulation. They also neutralise the transfer of the registered office to a non-EU state within six months before any application: in such cases, the draft maintains the jurisdiction of French courts. The draft determines a broad scope of application, extended to proceedings for dealing with company difficulties, which is broader than the term of 'insolvency proceedings'. The aim is to cover the preventive proceedings recommended by the European Directive of 20

June 2019.

The draft code then contains conflict-of-law rules inspired by the terminology of the European Insolvency Regulation. On the model of the European Insolvency Regulation, the law of the opening state applies to questions relating to any proceedings, but also to the guarantees and privileges of employee claims as well as the liabilities of managers. As regards financial claims, all creditors will of course be able to lodge their claims by virtue of the universality principle of insolvency proceedings.

Proceedings opened abroad will be recognised, while their enforcement will be subject to the rules of *exequatur*. In this respect, the draft code adopts common rules for all civil and commercial disputes as well as for insolvency proceedings based on French case-law.

### What are the conditions of enforcement?

- The dispute must have a clear and sufficient link (*'lien caractérisé'*) with the foreign court.
- Recognition and enforcement must not be contrary to international public policy on substance and procedure.

- The foreign judgment must not be obtained by fraud.
- The foreign judgment must not be irreconcilable with a decision already delivered in France as, for example, a pending insolvency proceeding toward the same debtor.

The *exequatur* judgment will be the responsibility of the French judicial court (i.e. the civil court, and not the commercial court), determined by the place of enforcement of the foreign judgment, and will be granted under an accelerated procedure, ensuring rapid processing.

Given this perspective, the new principles will be consistent with the guidelines provided by the UNCITRAL Model Law on Cross-Border Insolvency: the future code will grant predictability and efficiency to most of foreign insolvency proceedings. It only remains for the French legislator to enshrine this project into positive law. ■



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