GOV.UK

Part of
Brexit (https://www.gov.uk/transition)

- The Insolvency Service (https://www.gov.uk/government/organisations/insolvency-service)

Guidance

Cross-border Insolvencies: Recognition and Enforcement in EU Member States from 1 January 2021

Published 15 January 2021

Contents

Denmark
Estonia
Finland
Hungary
Latvia
Lithuania
Luxembourg
Malta
Portugal
Slovakia
Sweden

Print this page

This publication is available at https://www.gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states-from-1-january-2021/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states-from-1-january-2021

Introduction

The UK has left the EU, and 31 December 2020 marks the end of the transitional period in which the EU rules continue to apply in and to the United Kingdom under the Withdrawal Agreement with the EU. The end of the transitional period affects the way that insolvencies can be managed across borders with EU member states: the legal framework provided by the EU Insolvency Regulation (EU 2015/848) no longer applies to main insolvency proceedings opened after 31 December[footnote 1].

This represents a significant change in the way that insolvency proceedings with cross-border assets and interests between the UK and EU are governed. The EU Regulation sets the rules for the opening of insolvency proceedings within the EU; it provides automatic recognition to insolvency proceedings across the EU, legitimising their status in each of the member states that have adopted it; and subject to certain safeguards it ensures that the insolvency proceedings can be enforced, allowing insolvency officeholders to deal with assets wherever they may be in the bloc.

After 31 December, the law of the UK and the relevant domestic laws of each of the individual member states instead apply. New EU insolvency proceedings can seek recognition and enforcement in the UK under our Cross-Border Insolvency Regulations[footnote 2], our implementation of the UNCITRAL Model Law on Cross-Border Insolvency

The international standard and best practice in this area. This process already applies to non-EU insolvency proceedings originating from countries across the world. It requires a court application and is subject to greater court scrutiny than the EU Insolvency Regulation, and represents a well-tested framework under which foreign insolvency officeholders can seek assistance to deal with assets in the UK.

To date four of the remaining EU member states have implemented the UNCITRAL Model Law. The procedure that applies to UK insolvency proceedings seeking to deal with assets in the other EU jurisdictions is dependent on each country’s own approach, and the assistance available varies quite widely.

The change in the legal framework therefore has implications for UK insolvency officeholders wishing to deal with assets in EU states in future.

Contents of this Guide

This guide seeks to provide insolvency officeholders with some basic information regarding the applicable frameworks in the different EU member states, as a starting point towards seeking recognition for UK insolvency proceedings and dealing with assets in the EU.

Information is provided below primarily regarding seven of the UK’s most significant EU trading partners by total volume of trade, in the hope that this will prove useful. This includes a summary of the arrangements for recognition of foreign insolvency proceedings (where “foreign” should be read to mean non-EU proceedings not covered by the EU Insolvency Regulation, otherwise known as “third country” insolvency proceedings; and “insolvency proceedings” should be read as including any relevant insolvency process but excluding reorganisation proceedings for which additional considerations apply), and further information that may assist those interested in seeking recognition of UK insolvency proceedings in that jurisdiction.

Some additional information has also been provided on the remaining EU states. In those cases this is limited to a very short description of the arrangements for the recognition of foreign insolvency proceedings.

The entries do not cover all the nuance of recognition: individual assets may be subject to particular treatment under local law, and it would not be possible to cover such issues in any useful way in this short guide; similarly, local application of the law may vary even where a similar approach has been adopted in several jurisdictions. In some cases the position of UK insolvency proceedings in particular is unclear and has not been tested at the time of publication. In addition, for the purposes of this guide, we have not distinguished between in-court and out-of-court UK insolvency appointments. Out-of-court appointments may not be recognised to the same extent as in-court appointments under the domestic laws of each EU member state.

Recognition and Enforcement

Recognition and enforcement of foreign insolvency proceedings takes on different meanings in different jurisdictions, as does the phrase “automatic recognition”. In a small number of jurisdictions, “automatic recognition” takes on a similar meaning as that used in the EU Insolvency Regulation (EU 2015/848), namely that the foreign insolvency proceedings are automatically recognised and the foreign officeholder can exercise more or less a full toolkit of powers without needing to apply to court. Conversely, other jurisdictions use the phrase “automatic recognition” to mean simply that the jurisdiction recognises that the foreign insolvency proceedings exist and the foreign officeholder has standing to apply to court to be permitted to enforce the foreign judgment opening the insolvency proceedings (but they cannot meanwhile exercise any powers in the name of the debtor). In this latter category, where the receiving court will recognise and grant enforcement of the foreign insolvency proceedings without a review of the merits of the foreign judgment, this is similar to the position under the UNCITRAL Model Law on Cross-Border Insolvency, which the UK has implemented in the Cross-Border Insolvency Regulations[footnote 3] and should be familiar to UK practitioners. For consistency, this guide uses the term “automatic recognition” to refer to the former category unless otherwise clarified by the surrounding text.

There are still more jurisdictions that fall somewhere in between the above two categories, namely that the foreign insolvency proceedings are automatically recognised for some (usually very limited) purposes, but for anything more (usually including dealing with assets) an application to court will be required.

Finally, some jurisdictions do not recognise foreign insolvency proceedings at all (outside of the EU Insolvency Regulation). For this last category, parallel insolvency proceedings may be required.

Exequatur

The term “exequatur” is used in this guide to mean a formal recognition from an EU state which is issued by a court or through some other official procedure and which authorises a UK insolvency officeholder to exercise the powers of their office in the relevant EU jurisdiction.

Use of the Guide

It is hoped that the information provided in this guide will prove helpful. The individual entries represent a snapshot in time of the position as it is currently understood at the date of publication, for insolvency officeholders and others wishing to further explore these issues. Insolvency office holders seeking to operate outside the UK are strongly encouraged to take appropriate professional advice.

The contents of this document do not represent professional or legal advice of any kind, and are not a substitute for such advice. The guide should not be treated as comprehensive or as endorsing any organisation or course of action; its accuracy should not be relied upon. No liability is accepted for any loss or damage suffered from the use of this information.

Acknowledgements

Assistance in the preparation of this material was provided by:

- Belgium: Ashurst LLP
- France: Ashurst LLP
- Germany: Ashurst LLP
- Ireland: A&L Goodbody
- Italy: Studio Legale Associato ad Ashurst LLP
- Netherlands: NautaDutilh N.V.
- Spain: Ashurst LLP
- Austria: Eisenberger & Herzog Rechtsanwalts GmbH
- Bulgaria: Wolf Theiss
- Croatia: Wolf Theiss Rechtsanwälte GmbH & Co KG
- Cyprus: Elias Neocleous & Co LLC
- Czech Republic: Wolf Theiss
- Denmark: Accura Advokatpartnerselskab
- Estonia: Sorainen
- Finland: Krogerus Attorneys Ltd.
- Greece: Bernitsas Law Firm
- Hungary: Wolf Theiss Faludi Erős Attorneys-at-Law
- Latvia: Sorainen
- Lithuania: Sorainen
- Luxembourg: Ashurst LLP
- Malta: Camilleri Preziosi Advocates
- Poland: Wardyński & Partners
- Portugal: PLMJ
- Romania: Wolf Theiss Rechtsanwälte GmbH & Co KG
- Slovakia: Wolf Theiss Rechtsanwälte GmbH & Co KG, organizačná zložka, Slovakia Branch
- Slovenia: Wolf Theiss Attorneys-at-law, Slovenian Branch
- Sweden: Advokatfirman Schjødt

Belgium

In brief

The Belgian Code of Private International Law (the “CPIL”) allows for the recognition and enforcement of UK insolvency proceedings upon application to court.

Recognition in Belgium

Recognition and enforcement of UK insolvency proceedings that are considered to be insolvency proceedings under Belgian law (such as UK administration) is governed by Articles 116-121 of the CPIL. Whilst Belgian law recognises UK insolvency proceedings, an application to court is required to deal with assets. Upon application to court the CPIL provides that the Belgian court will, without reviewing the merits of the UK judgment opening the UK insolvency proceedings, permit its enforcement by means of an exequatur.

Once an application for exequatur is granted, the UK insolvency officeholder is entitled to various assistance under Book XX of the Belgian Code of Economic Law (the “CEL”), including to:

1. request that the details of the insolvency proceedings be published in the Belgian Official Gazette;
2. exercise the powers they would usually have when in their home jurisdiction; and
3. deal with the insolvent’s assets in Belgium.

In exercising their powers and dealing with assets in Belgium, UK insolvency officeholders must comply with the provisions of Belgian law.

Pending the resolution of the court application for an exequatur, the UK insolvency officeholder can ask the court to order measures to ensure the preservation of the debtor’s property.

Process

Applications may be made to the Belgian enterprise courts. Insolvency officeholders will require legal representation in order to make requests of the court, and may therefore wish to take advice on the expected costs of doing so and the likelihood of success before proceeding to deal with assets in Belgium.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers and translators: https://www.gov.uk/government/publications/belgium-list-of-lawyers (https://www.gov.uk/government/publications/belgium-list-of-lawyers)

The European e-Justice Portal includes basic information regarding legal fees in Belgium: https://e-justice.europa.eu/content_costs_of_proceedings-37-be-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-be-en.do)

France

In brief

Limited recognition of UK insolvency proceedings is automatic under French law, but a court application for exequatur will be required to deal with assets in France.

Recognition in France

Unusually for France, the rules of private international law are not codified in the written civil law: this area is instead governed by jurisprudence.

The opening of UK insolvency proceedings automatically grants a limited degree of recognition to the UK insolvency officeholder. This allows the UK insolvency officeholder appointed in a particular case to, for example, represent the debtor in court and realise funds from a French branch bank account.

However, absent a court order recognising the insolvency officeholder (an exequatur), the debtor will retain all its powers to deal with the companies’ assets. Similarly, creditors also retain their rights to bring legal proceedings in France.

Without an exequatur, the debtor is not considered in France to be the subject of insolvency proceedings, the effects of which (such as the debtor’s dispossession or the stay of proceedings) do not apply.

In order to deal with and dispose of assets in France, a UK insolvency officeholder must apply to court for the right to enforce the insolvency proceedings (exequatur).

Once UK insolvency proceedings have been recognised in respect of a debtor, the French courts will not generally open local insolvency proceedings but instead, will apply the foreign regime, including as the case may be the right for the UK insolvency officeholder to dispose of the assets. Exceptions may be made, for example in cases of fraud.

Process

Applications for exequatur must be made before a judge in France. Before granting the application, the judge will have to confirm that (i) the UK court had the authority to open the insolvency proceedings, (ii) the insolvency order is not manifestly contrary to French public policy, and (iii) no fraud has been committed in the opening of the insolvency proceedings.

As with any court action, before proceeding UK insolvency officeholders may wish to take professional advice on the expected costs involved; the likely timescale; and the likelihood of success.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers: https://www.gov.uk/government/publications/france-list-of-lawyers (https://www.gov.uk/government/publications/france-list-of-lawyers)

The European e-Justice Portal includes basic information regarding legal fees in France: https://e-justice.europa.eu/content_costs_of_proceedings-37-fr-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-fr-en.do)

Germany

In brief

Recognition of UK insolvency proceedings is automatic under the German Insolvency Code.

Recognition in Germany

Germany has adopted a broadly equivalent approach to that found in the EU Insolvency Regulation into its domestic law to deal with the recognition of non-EU insolvency proceedings.

Section 343 of the German Insolvency Code provides for the automatic recognition of foreign insolvency proceedings as long as:

1. the courts of the country where insolvency proceedings are opened have jurisdiction in accordance with German law; and
2. Recognition does not violate German public policy.

Recognition of insolvency proceedings originating from the debtor's "centre of main interests" (for example, UK insolvency proceedings dealing with a company primarily based in and operating from the UK) is therefore generally automatic regardless of whether the debtor is incorporated inside or outside of the EU.

Generally, the UK insolvency officeholder can take possession of, or otherwise deal with, assets of the debtor in Germany upon their appointment. However, the UK insolvency officeholder has the option to apply for official recognition from a German insolvency court, which in some circumstances may be helpful. In the course of such an application, the German insolvency court can demand a notarised translation of the appointment order.

Process

Recognition of insolvency proceedings will generally be automatic (i.e. no application to court is required). Applications for official recognition / publication of insolvency proceedings can be made to the appropriate court with jurisdiction over insolvency matters in such district in which the insolvency debtor has a branch (or where such branch does not exist, where the assets of the debtor are located).

As with any court action, before proceeding insolvency officeholders may wish to take professional advice on the expected costs involved; the likely timescale; and the likelihood of success.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers and notaries: https://www.gov.uk/government/publications/germany-list-of-lawyers (https://www.gov.uk/government/publications/germany-list-of-lawyers)

The European e-Justice Portal includes basic information regarding legal fees in Germany: https://e-justice.europa.eu/content_costs_of_proceedings-37-de-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-de-en.do)

Ireland

In brief

Recognition and enforcement, where available, is likely to require an application to Irish courts.

Recognition in Ireland

Historically, there has been close cooperation on insolvency matters between Ireland and the UK. Ireland is one of a limited number of jurisdictions to which UK courts will provide assistance under section 426 of the Insolvency Act 1986. In turn Northern Ireland and Great Britain were, previously, the only jurisdictions recognised by Ireland under section 250 of its Companies Act 1963, which allowed for automatic recognition of winding-up proceedings.

However, the above Irish provisions recognising UK insolvencies became broadly redundant in effect (but not repealed) following the introduction of the EU's Insolvency Regulation. Following the UK's exit from the EU, it is possible that section 250's successor (section 1417 of the Companies Act 2014) may be revived such that winding-up proceedings commenced in the UK will once again be automatically recognised in Ireland. However, that would require a ministerial order to be made, specifying that section 1417 applies again to Northern Ireland and Great Britain. Furthermore, section 1417 would only facilitate the recognition of winding-up proceedings and no other UK insolvency process.

There are no applicable treaties with Ireland in this area; insolvency cooperation is not covered by either the Belfast Agreement or the Northern Ireland Protocol annexed to the Withdrawal Agreement with the EU. Ireland has not adopted the UNCITRAL Model Law on Cross-Border Insolvency at

present, although there are ongoing discussions between law reform groups and the Irish government concerning its adoption.

In the absence of any codified recognition for UK insolvency proceedings, recognition can only be obtained under the general principles of private international law. Ireland (like the UK, and in contrast to many other countries in the EU) takes a common law approach to legal matters, with the judgments that are made on a case by case basis setting binding precedent that will be taken into account in future matters. The existing precedents dictate that Irish courts have an inherent jurisdiction to recognise orders of foreign courts, and may allow them to recognise insolvency proceedings originating in the UK where:

1. there is equivalence between UK law and Irish law in relation to the procedure;
2. recognition is being sought for a legitimate purpose; and
3. there is no public policy reason why assistance should not be granted by the Irish court.

Process

An application to court is likely to be required. As the legal position is not settled, insolvency officeholders seeking to deal with assets in Ireland may wish to take professional legal advice regarding the most appropriate course of action, including the likely costs, timescale and the prospects of success.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of Irish lawyers for the benefit of UK nationals:https://www.gov.uk/government/publications/ireland-list-of-lawyers (https://www.gov.uk/government/publications/ireland-list-of-lawyers)

The law society of Ireland provides a “find a firm” search: https://www.lawsociety.ie/find-a-solicitor/ (https://www.lawsociety.ie/find-a-solicitor/)

The European e-Justice Portal includes basic information regarding legal fees in Ireland: https://e-justice.europa.eu/content_costs_of_proceedings-37-ie-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-ie-en.do)

Information on court rules and common court fee costs is provided by the Irish court service: https://www.courts.ie/content/court-rules (https://www.courts.ie/content/court-rules) and https://www.courts.ie/content/common-court-fees (https://www.courts.ie/content/common-court-fees)

Italy

In brief

Limited recognition of UK insolvency proceedings is automatic under Italian private international law, but a court application will be required for dealing with assets in Italy.

Recognition in Italy

Italian private international law allows for the automatic recognition of the order opening the foreign insolvency proceedings for limited purposes (such as recognising the insolvent status and altered capacity of the debtor) provided the necessary conditions are met. If recognition is challenged, the court will need to be satisfied that:

1. the court opening the foreign proceedings had competence to do so;

2. no breach of the debtor's basic human rights has occurred;
3. the judgment opening the foreign proceedings is definitive and not manifestly contrary to Italian public policy; and
4. the judgment or proceedings is/are not in conflict with any other judgment that has been issued in Italy in a dispute involving the same parties.

However, for most purposes including dealing with assets and other enforcement, an application to court for recognition (exequatur) is required.

Following exequatur, a UK insolvency officeholder will have only the powers that would have been exercisable by an Italian officeholder. Recognition may be challenged by Italian creditors, for example, on the basis that the UK insolvency proceedings will not provide them with the same rights to payment that they would have been granted in an Italian insolvency.

Process

A court application (exequatur) will be required to enforce the order opening UK insolvency proceedings and to deal with assets located in Italy.

As with any court action, before proceeding insolvency officeholders may wish to take professional advice on the expected costs involved; the likely timescale; and the likelihood of success.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers and notaries: https://www.gov.uk/government/publications/italy-list-of-lawyers (https://www.gov.uk/government/publications/italy-list-of-lawyers)

The European e-Justice Portal includes information regarding legal fees in Italy (at present this page is only available in Italian; certain web browsers, online services etc. may allow for its translation): https://e-justice.europa.eu/content_costs_of_proceedings-37-it-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-it-en.do)

The Netherlands

In brief

UK insolvency officeholders can deal with assets in the Netherlands without obtaining a court order, although this automatic recognition has limitations.

Recognition in the Netherlands

There is no relevant Anglo-Dutch treaty. Recognition of cross-border insolvency proceedings must rely on the appropriate Dutch domestic law.

The rules for recognition of insolvency proceedings and the effect of recognition primarily follow from case law. Historically in jurisprudence the recognition of foreign insolvency proceedings was limited, but as of the turn of the century the situation changed and the Supreme Court has restated the rules in its Yukos judgment of 18 January 2019. A foreign insolvency judgment (and its effects, for example the authority of the insolvency officeholder to sell assets) is automatically recognised in the Netherlands if:

1. the jurisdiction of the foreign court is based on a ground which is generally acceptable under international standards;

2. the foreign proceedings meet the requirements of a fair trial;
3. recognition of the foreign judgment does not violate public policy; and
4. there is no conflicting judgment recognizable in the Netherlands.

However, this automatic recognition is subject to certain limitations. In an earlier judgment the Supreme Court decided that foreign insolvency proceedings do not have effect in the Netherlands insofar as they would prevent creditors from seeking recourse for their claims against assets which form part of the bankruptcy estate and (at or after the commencement of the insolvency proceedings) are located in the Netherlands.

Process

No court application is required to obtain the recognition that is available to UK insolvency officeholders.

Care should be taken not to violate any existing restrictions that have been placed upon assets, and court action cannot be ruled out in all cases. Depending on the circumstances and the asset(s) in question, insolvency officeholders may therefore wish to take professional advice regarding the most appropriate way to proceed.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers: https://www.gov.uk/government/publications/netherlands-list-of-lawyers (https://www.gov.uk/government/publications/netherlands-list-of-lawyers)

The European e-Justice Portal includes basic information regarding legal fees in the Netherlands: https://e-justice.europa.eu/content_costs_of_proceedings-37-nl-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-nl-en.do)

The Netherlands Commercial Court provides information regarding the costs of court proceedings: https://www.rechtspraak.nl/English/NCC/Pages/costs.aspx (https://www.rechtspraak.nl/English/NCC/Pages/costs.aspx)

Spain

In brief

A court application will be required in order for UK insolvency proceedings to be recognised and enforced in Spain.

Recognition in Spain

UK insolvency proceedings are not automatically recognised in Spain: a court application is required.

Specific rules for the recognition of foreign insolvency proceedings are set down in section 742 of the Recast Spanish Insolvency Act. Most notably:

1. the jurisdiction of the court or authority that has opened the foreign insolvency proceedings must be based on “centre of main interests” criteria or equivalent; and
2. the judgment opening the foreign insolvency proceedings must not be contrary to Spanish public policy.

The application to court for recognition must be made in the appropriate local jurisdiction within Spain, in accordance with articles 951-958 of the Spanish Civil Procedure Act / Code of Civil Procedure.

Foreign officeholders may also apply to court for provisional measures to preserve assets, in advance of the court's decision on the recognition of the foreign insolvency proceedings.

Broadly speaking, once the opening of foreign insolvency proceedings is recognised in Spain, the insolvency officeholder can exercise their normal powers under the foreign (i.e. UK) law, provided for example those powers are compatible with Spanish law. Following the recognition of the foreign insolvency proceedings, other judgments handed down in those proceedings are automatically recognised provided they fulfil the necessary conditions prescribed by section 742 of Spain's Recast Insolvency Act.

Process

A court application will be required. The initiation of legal proceedings in Spain attracts a tax in addition to the other relevant fees and costs.

As with any court action, before proceeding insolvency officeholders may wish to take professional advice on the expected costs involved; the likely timescale; and the likelihood of success.

Additional resources

The Foreign, Commonwealth and Development Office provides a list of English-speaking lawyers: https://www.gov.uk/government/publications/spain-list-of-lawyers (https://www.gov.uk/government/publications/spain-list-of-lawyers)

The European e-Justice Portal includes basic information regarding legal fees in Spain: https://e-justice.europa.eu/content_costs_of_proceedings-37-es-en.do (https://e-justice.europa.eu/content_costs_of_proceedings-37-es-en.do)

UNCITRAL Model Law on Cross-Border Insolvency: Greece, Poland, Romania and Slovenia

Four EU member states – Greece, Poland, Romania and Slovenia – have implemented the UNCITRAL Model Law on Cross-Border Insolvency. This provides a uniform set of rules for the recognition and enforcement of foreign insolvency proceedings, streamlining the process.

An application must be made to the court in the relevant jurisdiction, which will assess the level of assistance that can be provided based on where the insolvent's "centre of main interests" is located or if there is an establishment in the jurisdiction where the foreign insolvency proceedings have been opened.

The Model Law has been implemented by the UK in its Cross-Border Insolvency Regulations[footnote 4]. Cross-border insolvency cooperation with other implementing countries such as the above four EU member states (and Australia, Japan and the United States) is therefore based on mutually understood rules and processes.

More information regarding the Model Law is provided by UNCITRAL at: https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency (https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency) A list of the implementing jurisdictions is available at: https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status)

Austria

Recognition is available by operation of law under the Austrian Insolvency Code, which recognises the effects of foreign insolvency proceedings provided the “centre of main interests” is in the foreign state and the proceedings are comparable to Austrian insolvency proceedings (which in particular means that Austrian creditors are not discriminated against). However, this recognition will not be available to the extent that insolvency proceedings have already been opened, or interim measures imposed, in Austria, or if recognition would violate Austrian public policy. Additional requirements apply if enforcement measures are to be taken in Austria.

Provided that insolvency proceedings are recognised in Austria according to the above rules, a UK insolvency officeholder may exercise all its powers in Austria, but must adhere to Austrian law (in particular regarding dealings with the debtor’s assets and the provision of information to employees) and must not exercise coercive actions or assume judicial functions.

Bulgaria

Foreign insolvency proceedings can only be automatically recognised in Bulgaria if mutually agreed reciprocity is provided for in an international treaty to which Bulgaria is a party. There is currently no such treaty between Bulgaria and the UK. Therefore automatic recognition in Bulgaria is not available for UK insolvency proceedings. In order for UK insolvency officeholders to deal with assets in Bulgaria they will need to follow the exequatur procedure under the local Bulgarian private international law rules to recognise the court judgment opening the UK insolvency proceedings.

Croatia

A UK insolvency officeholder does not generally require recognition from the Croatian court in order to be able to dispose of assets located in Croatia. However if additional assistance or protective measures are needed, the order opening UK insolvency proceedings can be recognised by the Croatian court under general conflict of law provisions and the Croatian Bankruptcy Act, provided certain conditions are met, notably that the proceedings do not contravene Croatian public policy.

Cyprus

Recognition of UK insolvency proceedings is subject to the private international law of Cyprus. UK insolvency officeholders must seek court recognition in Cyprus. Before court recognition is obtained, the UK insolvency officeholder cannot deal with the debtor’s assets located in Cyprus.

Czech Republic

Recognition of foreign insolvency proceedings requires: reciprocity of recognition with the state from which the proceedings originate; that the debtor’s “centre of main interests” is in the foreign state; and where the debtor has an establishment in the Czech Republic, that Czech insolvency proceedings have not been commenced. Recognition of UK insolvency proceedings under these conditions is untested. Czech law is unclear but it is likely that a UK insolvency officeholder cannot deal with the insolvent’s assets in the Czech Republic without a court order or some other form of court endorsement.

Denmark

Denmark has no formally codified rules regarding the recognition of foreign restructuring or insolvency proceedings, with the exception of the Nordic Bankruptcy Convention (to which the UK is not a party). Recognition in Denmark is not currently available for UK insolvency proceedings and

therefore UK insolvency officeholders have no legal power to deal with assets in Denmark without opening local Danish proceedings.

Estonia

Recognition and enforcement of UK insolvency proceedings is governed by the Estonian Code of Civil Procedure and is not automatic in Estonia. An Estonian court order is required declaring that the UK court's judgment opening the insolvency proceedings is recognised and enforceable in Estonia. A UK insolvency officeholder will need to obtain this court declaration before dealing with the insolvent debtor's assets in Estonia.

Finland

Recognition of UK insolvency proceedings will require a court application. Until the Finnish court has recognised the UK proceedings, the UK insolvency officeholder does not have any authority regarding the insolvent's assets in Finland.

Hungary

Recognition and enforcement of foreign insolvency proceedings requires reciprocity of recognition with the state from which the proceedings originate. The recognition of UK insolvency proceedings is untested, but as there is no formal reciprocity treaty regarding insolvency proceedings in place between Hungary and the UK, it is therefore understood that Hungarian law would not enable the courts to recognise UK insolvency proceedings.

Latvia

Recognition and enforcement of UK insolvency proceedings is governed by Latvian Civil Procedure Law and is not automatic. Therefore, an insolvency officeholder in UK proceedings will need to obtain prior endorsement from the competent national court before dealing with an insolvent debtor's assets in Latvia.

Lithuania

Recognition and enforcement of UK insolvency proceedings is governed by the Code of Civil Procedure of the Republic of Lithuania. Therefore, an insolvency officeholder in UK proceedings will need to obtain prior endorsement from the competent national court before dealing with an insolvent debtor's assets in Lithuania.

Luxembourg

A court order will not be required in the majority of cases for the recognition of UK insolvency proceedings in Luxembourg. These are automatically recognised, provided that the "centre of main interests" is in the originating country, due process has been followed and the proceedings do not contravene Luxembourg public policy. UK insolvency officeholders have the power to deal in a limited way with assets in Luxembourg without the endorsement of a Luxembourg court but for most asset dealings, recognition (exequatur) proceedings will be necessary.

Malta

Recognition of foreign insolvency proceedings is not automatic, but Maltese courts will recognise and enforce a foreign insolvency judgment unless any of the grounds for non-recognition set out in either the Maltese Code of Organisation and Civil Procedure (e.g. where the judgment contains a

disposition contrary to Maltese public policy) or the British Judgments (Reciprocal Enforcement) Act apply. However, a UK insolvency officeholder does not generally (unless challenged) require a recognition and enforcement order from the Maltese court in order to be able to dispose of assets located in Malta.

Portugal

A court application to the Portuguese courts is required for both the recognition and enforcement of UK insolvency proceedings in Portugal and the realisation of assets by a UK insolvency officeholder. The Portuguese courts will recognise the UK insolvency proceedings if certain conditions are met, including:

1. the debtor's centre of main interests is in the UK
2. the debtor's registered office or its domicile is in the UK, or
3. the jurisdiction of the UK court opening the insolvency proceedings is based on an equivalent connecting factor.

In addition, the UK insolvency proceeding will not be recognised if they contravene Portuguese public policy (e.g. due process).

Slovakia

Recognition of foreign insolvency proceedings in Slovakia requires a court application and in particular is based on reciprocity of recognition from the originating state. Without a court order recognising the UK insolvency proceedings, the UK insolvency officeholder cannot deal with the insolvent's assets in Slovakia. The recognition of UK insolvency proceedings is untested.

Sweden

Recognition of UK insolvency proceedings in Sweden is automatic (without the need for an application to court) and includes the power to deal with assets. However, the UK insolvency officeholder's right to deal with assets located in Sweden is not protected against competing claims to the assets. Competing claims are likely to emerge from:

1. secured or unsecured creditors of the debtor, or
2. a Swedish insolvency officeholder appointed by a Swedish court to carry out local Swedish insolvency proceedings.

Swedish insolvency proceedings can be opened on request from a creditor and, possibly also the UK insolvency officeholder.

---

1. The EU Insolvency Regulation (EU 2015/848) will continue to apply to main proceedings opened in an EU member state or the UK on or before 11pm on 31 December 2020, and any related secondary proceedings.
2. The Cross-Border Insolvency Regulations 2006 (SI 2006/1030) and The Cross-Border Insolvency Regulations (Northern Ireland) 2007 (SR 2007/115).
3. The Cross-Border Insolvency Regulations 2006 (SI 2006/1030); The Cross-Border Insolvency Regulations (Northern Ireland) 2007 (SR 2007/115).
4. The Cross-Border Insolvency Regulations 2006 (SI 2006/1030); The Cross-Border Insolvency Regulations (Northern Ireland) 2007 (SR 2007/115)

Print this page