

BREXIT: CROSS-BORDER INSOLVENCY PROCEEDINGS

On 31 December 2020, the European Regulation on Insolvency Proceedings (EIR) ceased to apply in the United Kingdom (UK), and the UK-European Union (EU) Trade and Cooperation Agreement (TCA) came into effect.

The TCA made no provisions for cooperation and recognition in cross-border insolvency proceedings. Thus, albeit technically there is no "No Deal Brexit", we could say that the TCA means "No Deal" in all issues relating to insolvency proceedings.

Below, we analyse the landscape after Brexit.

The Recast Insolvency Regulation (EU) 2015/848¹ allocates jurisdiction to hearing Insolvency Proceedings where a debtor's centre of main interests is, as the appropriate forum to open main Insolvency proceedings within an EU Member State, and once concluded, provides for its automatic recognition and subsequently displays its full effect before the courts of any other EU Member State where the debtor may have its assets located.

Proceedings started before 31 December 2020

Pursuant to the Insolvency Amendment Regulations 2019, the EIR continues to apply to insolvency proceedings opened before 31 December 2020. This means that the UK will continue to recognise insolvency proceedings commenced in any EU Member State before that date, and it will receive reciprocal recognition in UK soil as above explained.

Proceedings started after 1 January 2021

The recognition process of insolvency proceedings opened after 1 January 2021 will depend on the national law of such EU Member State where recognition is sought. This represents accordingly a significant change in the way that proceedings with cross border interests are governed since there would be no automatic recognition for UK Insolvency Proceedings in EU countries and vice versa.

¹ <https://www.legislation.gov.uk/uksi/2019/146/contents>

UK INSOLVENCY PROCEEDINGS: RECOGNITION AND ENFORCEMENT IN SPAIN AFTER 1 JANUARY 2021

In order to obtain the recognition of UK insolvency proceeding started after 31.12.2020 in Spain (SP), an application to the Spanish courts must be made in the appropriate local jurisdiction within SP.

Certain rules to bear in mind are set down in Section 742 of the Recast Spanish Insolvency act.

Most notably:

- I. The jurisdiction of the court or authority that has opened the foreign Insolvency proceedings must be based on Centre of Main Interests (COMI) criteria.
- II. The judgment opening the foreign insolvency proceedings must not be contrary to Spanish public policy.

Once the UK insolvency proceeding is recognised by the Spanish Court, the insolvency officeholder can apply for measures to preserve assets located within SP.

If you require further guidance please contact our Insolvency Department.

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