



No-deal Brexit: Impact on cross-border corporate recovery and insolvency

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While a range of outcomes, including a departure under the terms of the current Withdrawal Agreement, remains possible, it is important for businesses to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement or other deal. Here we look at the potential impact of a no-deal Brexit on cross-border corporate recovery and insolvency.

Key issues

- The UK has some of the world's most flexible and cost-effective restructuring and insolvency solutions. The combination of those regimes with highly skilled, specialist judges, regulated insolvency practitioners and the prevalence of English-law governed finance documents, has resulted in England becoming a worldwide hub for specialist restructuring services. The availability of pan-European recognition has contributed to a perception of England as the solutions gateway for distressed corporates with operations in Europe.
- Excluding Denmark, all EU member states are subject to the Insolvency Regulation, requiring that, without any formality, each member state must recognise insolvency proceedings commenced in another member state. This facilitates the realisation of assets of insolvent companies spread across Europe.
- If the UK leaves the EU without an agreement to the contrary, UK insolvency proceedings would no longer be recognised automatically by the remaining EU member states. Liquidators, administrators and other UK insolvency office holders would instead need to apply to the courts of each member state in which relevant assets may be located for recognition of their appointment and to seek assistance in recovering or realising those assets. Seeking recognition in this way would add time, cost and complexity to the recovery process. It is also dependent on the willingness of foreign courts to grant recognition orders, which has historically been inconsistent.
- European office holders would similarly lose automatic recognition in the UK. They would need to apply to the UK courts to recognise their powers and authority. There is a well-tested path to recognition in the UK via its implementation of the UNCITRAL model law on cross-border insolvency. However, recognition via the model law would still add time, cost and complexity to the recognition process, as a court application is required.
- The Judgments Regulation also plays an important role in restructuring work, by facilitating the collection of debts due to financially distressed and insolvent companies throughout Europe and by providing a potential avenue for cross-border recognition of UK schemes of arrangement. As with the Insolvency Regulation, unless otherwise agreed, it will cease to apply to the UK and alternative recognition approaches will need to be considered.
- The UK Credit Institutions Reorganisation and Winding Up Regulations (2004) and Insurance (Reorganisation and Winding Up) Regulations (2004) were introduced to implement EU directives intended to alleviate the disruption caused when financial institutions and insurance companies become insolvent. These instruments provide for recognition of insolvency processes in a similar way to the Insolvency Regulation. If the UK leaves the EU without agreement in this area, the benefit of reciprocal recognition under these instruments would be lost. Instead, the UK

and EU member states would treat each other as third countries, which would be likely to make the cross border resolution of distressed credit institutions and insurers more complex.

Both the UK Government and the EU Commission have produced guidance touching on some of these issues.

How DLA Piper can help

We continue to advise clients on the impact of Brexit in all areas. Cross border restructuring and insolvency situations may become more complex should the UK leave the European Union without agreement providing for reciprocal recognition arrangements.

For a more detailed analysis of the issues discussed or support with the impact of Brexit, please contact the authors or your usual DLA Piper contact.

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