

Cross-Border Insolvency under Serbian Law



The Serbian Insolvency Act (Official Gazette of RS nos. 104/2009, 99/2011, 71/2012) introduced international insolvency rules in Serbia, enabling recognition of foreign insolvency proceeding in Serbia.

Legal basis

Serbian international insolvency rules are based on the 1997 UNCITRAL Model Law on Cross-Border Insolvency (the EU Insolvency Regulation is not applicable). Accordingly, foreign insolvency proceedings may have an effect in Serbia, enabling, *inter alia*, (i) stays on proceedings and enforcement over a debtor's assets in Serbia and (ii) cross-border co-operation and coordination between courts and insolvency representatives.

Eligible proceedings

Foreign insolvency proceedings eligible for recognition in Serbia are any collective distribution judicial or administrative proceeding in a foreign state under which the debtor's assets and affairs are subject to control or supervision by a foreign court or other appropriate body for the purpose of reorganisation or compulsory or voluntary liquidation. Hence, out-of-court workouts and receiverships, in principle, are not recognisable.

Application for recognition of a foreign proceeding

A foreign insolvency representative may file a petition to a Serbian court for recognition of the foreign proceeding in which the foreign representative has been appointed. A foreign representative is understood as a person or entity, including one appointed on an interim basis, authorised in a foreign proceeding to administer reorganisation or liquidation (bankruptcy) of the debtor's assets or affairs. Such foreign representative is entitled and has standing to apply and participate directly before a court in Serbia (including initiating claw-backs of voidable preferences).

For the recognition of foreign insolvency proceeding in Serbia, the foreign insolvency representative must file in Serbia: (i) a petition for recognition of the foreign insolvency proceeding; (ii) the decision on commencement of the insolvency proceeding abroad and appointment of the foreign representative, or a confirmation issued by a foreign court or other authority evidencing the existence of the insolvency proceeding and foreign representative's authority, or any other evidence (to the court's satisfaction) showing that the insolvency proceeding abroad has commenced and foreign representative has been appointed; and (iii) a statement that identifies all foreign proceedings of the debtor that are known to the foreign representative,

All documents must be submitted as duly legalised originals, together with official translations into Serbian. The Serbian court may, however, waive the legalisation requirement.

Recognition of the foreign insolvency proceeding

The Serbian court may recognise the foreign insolvency proceeding as a foreign main proceeding or a foreign non-main proceeding. A foreign main proceeding is one commenced in the state where the debtor has the centre of its main interests (COMI) or one conducted in the state where the debtor has its registered office—if the law of the state where the debtor has its COMI does not permit a specific insolvency ground. A foreign non-main proceeding is one conducted in the state where the debtor has an establishment (defined as a place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services).

Recognition relief

Together with the petition for recognition of the foreign proceeding, the foreign representative may request from the Serbian court an interim relief, such as a stay of individual actions and enforcement against a debtor and its assets in Serbia. The court will grant this stay only if it determines that it is urgently needed to protect the debtor's assets or its creditors' interests. This interim stay lasts only until the court decides on the recognition of the insolvency proceeding commenced abroad, and thus may serve as a valuable device for preserving the debtor's assets while the decision on recognition is pending.

After the court has recognised the foreign insolvency proceeding, the following automatic statutory types of relief will come into effect in Serbia: (i) a stay on individual actions and proceedings concerning the debtor's assets, rights, obligations or liabilities (however, this does not pre-empt initiation of concurrent insolvency proceeding in Serbia); (ii) a stay on enforcement against the debtor's assets; and (iii) a prohibition of disposal of the debtor's assets. Recovery of claims would thus be governed only by the applicable mandatory insolvency collective distribution and priority regime.

Lifting the automatic stay

A Serbian court may lift the stay on enforcement against the debtor and its assets (i) if it is necessary to protect the secured creditors' rights concerning the collateralised assets or (ii) in order to safeguard Serbian creditors, for example if the court deems that the foreign proceeding, although recognised, will not adequately protect the rights of Serbian creditors.

Foreign insolvency proceedings may have an effect in Serbia, enabling, inter alia, stays on proceedings and enforcement over debtor's assets in Serbia and cross-border co-operation between courts and insolvency representatives.