

The UK left the European Union (EU) on 31 January 2020 and the transition period in which EU rules continued to apply ended on 31 December 2020. As such, for insolvency proceedings opened in England after 31 December 2020, they will no longer benefit from automatic recognition in an EU member state.

Therefore, insolvency practitioners (IP) of a company with multijurisdictional operations or assets will be required to make an application in the relevant EU jurisdiction to have proceedings recognised in that jurisdiction.

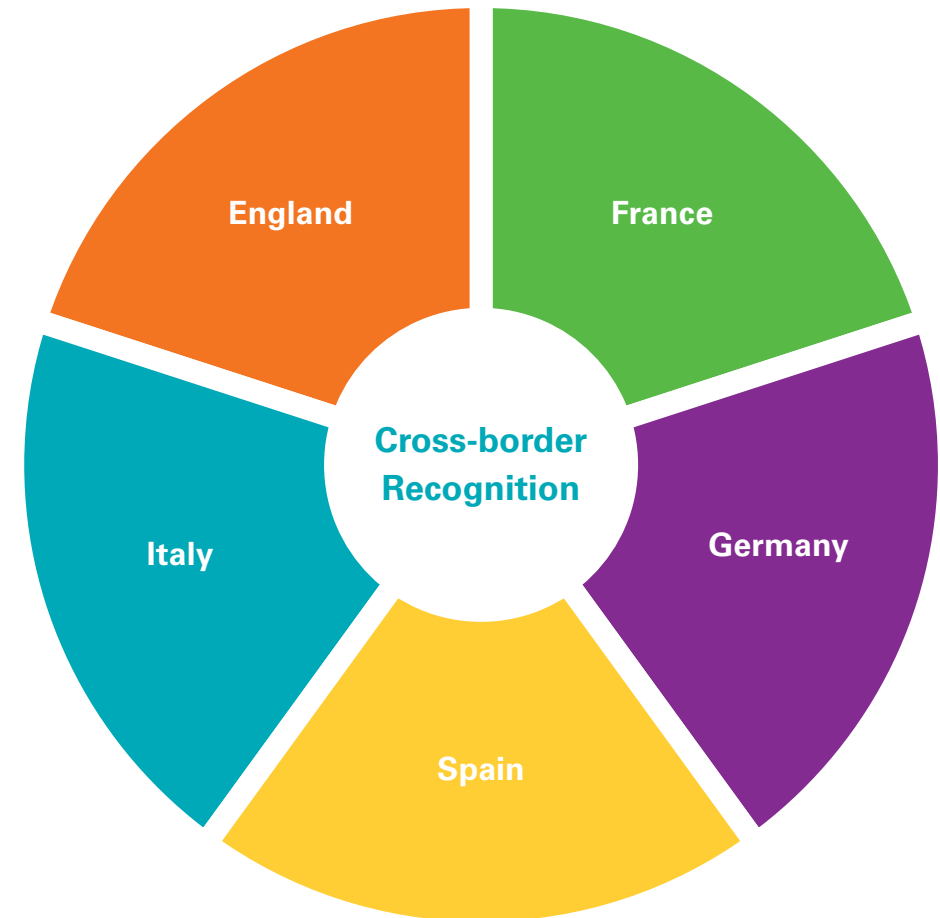
This guide outlines the process for obtaining recognition of an English IP's appointment as administrator over a UK registered company that has its centre of main interests (COMI) in England. It considers the process for obtaining recognition in France, Germany, Spain and Italy ("Outbound Proceedings") and has been prepared in conjunction with colleagues from those jurisdictions.

In addition to those jurisdictions, we have colleagues in other EU member states who can assist with obtaining recognition and we also have a network of associate lawyers who can assist in EU countries not listed at the end of this guide.

This guide also covers recognition of main and establishment proceedings opened in the EU in England ("Inbound Proceedings").

This guide does not address specific local foreign laws that could impact the ability of an English IP to deal with an asset or particular creditors in that jurisdiction. Neither does it deal with obtaining recognition where the insolvency proceedings in England have been opened based on the "establishment test". In those cases, there may be additional points or challenges to consider.

This note is not intended to, and does not, constitute legal advice and Squire Patton Boggs (UK) LLP accepts no liability for any losses occasioned to any person by reason of any action or inaction as a result of the contents of this note.



Outbound Proceedings

France

Can an English IP obtain recognition of their appointment in France?

Yes, France automatically grants a limited degree of recognition to foreign insolvency proceedings. This limited recognition grants IPs the right to represent the debtor in court and carry out conservatory or administrative acts, such as taking an inventory of assets and debts, or realising funds from a French bank account. To obtain further powers, the IP must apply for an exequatur judgment. This will allow the IP to bring an action in France to challenge wrongful trading and recover assets.

How does an English IP obtain recognition?

To obtain an exequatur judgment, the IP will need to file a writ of summons against the French public prosecutor, together with an official translation of the foreign judgment opening the insolvency proceedings.

When will the French court grant recognition?

For a French judge to grant an exequatur judgment, they must be satisfied that:

- The foreign court had authority to open insolvency proceedings
- The insolvency order is not manifestly contrary to French public order
- No fraud had taken place in the opening of the foreign insolvency proceedings

An exequatur judgment can take up to six weeks to obtain.

Does the English IP need to take any steps once recognition is obtained?

The exequatur judgment needs to be published in a French official legal announcement to inform third parties and potential creditors. After publication of the exequatur judgment, the IP will be able to deal with any assets in France following the applicable French rule of procedure. Any potential French creditors will have to file their claims to the IP and English law will apply, including the ranking of creditor claims.

Can recognition be challenged?

The exequatur judgment could be challenged, for example, where the transfer of assets or payments made by the IP is resisted by hostile management in France. Recognition might be challenged on the grounds that the French establishment is still solvent and trading, the French establishment has a future despite the foreign COMI being insolvent and recovery of the assets by the IP is, therefore, unfair/unlawful. Any challenges to the exequatur judgment will delay the recognition of foreign insolvency proceedings.



Germany

Can an English IP obtain recognition of their appointment in Germany?

Yes, recognition of foreign insolvency proceedings is automatically recognised in Germany as long as the court of the country where the insolvency proceeding is opened is where the debtor has its COMI and the recognition of the insolvency proceeding is not incompatible with essential principles of German law. In practice, however, an IP will likely need to obtain official recognition through the German courts before third parties will allow them to access assets in Germany. This official recognition will, therefore, allow them to evidence their authority in a formal and undisputable manner.

How does an English IP obtain official recognition of their appointment?

An IP will need to apply to the competent court to prove their appointment. The competent court is where the debtor has its establishment, or where the debtor does not have an establishment, it is the location of the assets of the debtor. The IP must submit a certified duplicate copy of the judgment under which they were appointed together with a translation of the judgment.

How long will it take to obtain recognition?

Official recognition through the German courts could take up to six months to obtain.

Can recognition be challenged?

Yes, creditors can challenge recognition. However, creditors will not be heard in the recognition procedure, therefore, a challenge by creditors will most likely arise after recognition. A challenge to recognition would then trigger a review of the decision by the competent court to recognise foreign insolvency proceedings. Alternatively, a creditor may seek to challenge indirectly, by filing for the debtor's insolvency in Germany before an IP is appointed in the UK, arguing that the COMI is in Germany.

Spain

Can an English IP obtain recognition of their appointment in Spain?

Yes, foreign insolvency proceedings can be recognised through an exequatur judgment in the Spanish competent court if certain conditions are met. Once recognition is obtained, subsequent decisions in the foreign insolvency proceeding will automatically be recognised.

How does an English IP obtain recognition?

A power of attorney must be granted to a procurator who is an "attorney at law" authorised to appear at court. The procurator will then file a claim seeking recognition in the appropriate jurisdiction in Spain (being where the debtor resides or has assets) together with (i) an original or certified copy of the foreign judgment duly legalised or apostilled, (ii) verification that the defendant was notified of the decision, (iii) confirmation that the judgment is final and enforceable in the country of origin, and (iv) the power of attorney of the procurator.

When will the Spanish courts grant recognition?

The Spanish courts will grant recognition if the following conditions are met:

- The foreign decision refers to collective proceedings
- The foreign decision is final
- The competence of the court that has opened foreign insolvency proceedings is based on the COMI (or equivalent)
- The decision was not made in the absence of the debtor, or without the debtor having sufficient time to properly defend itself
- The foreign decision is not against Spanish public policy

Recognition may be refused if it would be contrary to public policy, conflict with an earlier judgment or where the relevant documents have not been served in good time.

Recognition in the Spanish courts could take up to two months.

Does the English IP need to take any steps once recognition is obtained?

If there is a Spanish subsidiary, the IP must publicise the insolvency by registering the insolvency declaration in the Spanish Commercial Registry.

Can recognition be challenged?

Yes, creditors can challenge the decision of the Spanish court. This can be appealed before the Court of Appeals, and before the Supreme Court in Spain. However, an IP can request an injunction to protect the assets in the meantime and any injunction ordered by the English court will be recognised in Spain.

Italy

Can an English IP obtain recognition of their appointment in Italy?

Yes, Italy grants a limited degree of automatic recognition to foreign insolvency judgments under Italian international private law if certain conditions are met. Automatic recognition gives effect to the foreign judgments but a court application will be required before an IP can deal with the assets in Italy.



What requirements must be met for automatic recognition to be granted?

The following requirements must be met before a foreign judgment is automatically recognised in Italy:

- The judge who issued the judgment had jurisdictional competence to decide the matter on the basis of the Italian principles of jurisdiction
- The writ of summons has been brought to the knowledge of the defendant in accordance with the law of the country where the trial took place and the essential rights of defence were not violated
- The parties participated in the judgment in accordance with the law of the country where the trial took place or their absence was declared in accordance with that law
- The judgment is final and no longer subject to appeal in the country where it was issued
- The judgment is not contrary to any other Italian judgment that has become final and binding
- There are no pending proceedings before an Italian court on the same matter and between the same parties that began before the foreign proceedings
- The provisions of the judgment do not produce effects contrary to public order

How does an English IP obtain recognition?

As explained above, foreign judgments are automatically recognised if certain conditions are met. However, in the event that recognition of the foreign judgment is challenged, or in order to enforce the foreign judgment and deal with the assets in Italy, an IP can apply to the Italian competent court for verification that the conditions for automatic recognition are satisfied. An application for a declaration of enforceability, together with a certified copy of the foreign judgment and a certified translation of the judgment, must be filed at the competent territorial appeal court.

When will the Italian court grant recognition?

The Italian court will grant recognition if the conditions under Italian private international law (noted above) are met. Recognition in Italian courts can take up to one year.

Can recognition be challenged?

Yes, recognition of the foreign judgement can be challenged; for example, Italian creditors could argue that the foreign insolvency proceeding will not provide them with the same rights to payments that they would have been granted in an Italian insolvency.

Also under the Italian Insolvency Act, a foreign debtor having its main place of business abroad can be declared bankrupt even if it has already been declared bankrupt in another country. Therefore, an English insolvency appointment could be disregarded by an Italian court when declaring bankruptcy in Italy.

Inbound Proceedings

England

Can an EU member state appointed office holder obtain recognition of their appointment in England?

Yes, foreign officer holders can obtain recognition under the Cross-Border Insolvency Regulation (CBIR), which implements the UNCITRAL Model Law on Cross-Border Insolvency.

How does an EU member state office holder obtain recognition of foreign insolvency proceedings in England?

Under CBIR, an EU office holder can apply for recognition of their appointment in main or establishment proceedings in an EU member state by filing an application and a sworn affidavit with the court. The affidavit must also include (i) a certified copy of the decision to commence foreign proceedings and appoint the insolvency practitioner; (ii) a certified English translation of the documents; (iii) a statement identifying any other proceedings; (iv) evidence that the debtor has its COMI or establishment in the country where foreign proceedings are taking place; and (v) any other evidence that might assist the courts. Once issued, the application must be served on certain prescribed persons before the hearing, at which the court will decide whether to recognise the appointment.

It is important that the office holder files notice of any substantial changes with the court and provides full and frank disclosure.

How long will it take to obtain recognition?

If the procedural requirements under CBIR are met, the court will usually grant recognition as a formality. Recognition can take up to three months.

If urgent interim relief is required to protect the debtor or the interest of creditors, then the office holder can make an urgent application to court.

Does the EU member state office holder need to take any steps once recognition is obtained?

If the court grants a recognition order, the office holder must (i) send a sealed copy of the order to the debtor as soon as reasonably practicable; (ii) give notice to the relevant persons listed in CBIR and the Registrar of Companies; (iii) file an advertisement in the Gazette and one other newspaper; and (iv) if the debtor is the registered proprietor of a registered estate or charge, apply to the Chief Land Registrar to register a restriction on the title.

Can recognition be challenged?

Yes, recognition of foreign proceedings under CBIR can be challenged; for example, if the foreign proceeding did not qualify as "foreign proceedings" for the purposes of CBIR or that it is contrary to public policy for the proceedings to be recognised.

Sign Up to Our Blog



Restructuring GlobalView

Updates on restructuring topics across the globe

[Subscribe to our blog.](#)

Contacts

England



John Alderton

Partner, Leeds
T +44 113 284 7026
E john.alderton@
squirepb.com



Russ Hill

Partner, Birmingham
T +44 121 222 3132
E russell.hill@
squirepb.com



Susan Kelly

Partner, Manchester
(retiring 30 April 2021)
T +44 161 830 5006
E susan.kelly@
squirepb.com



Devinder Singh

Partner, Birmingham
T +44 121 222 3382
E devinder.singh@
squirepb.com



Mark Prior

Director, Manchester
T +44 161 830 5266
E mark.prior@
squirepb.com

Germany



Andreas Lehmann

Partner, Frankfurt
T +49 69 1739 2420
E andreas.lehmann@
squirepb.com

France



Antoine Adeline

Partner, Paris
T +33 1 5383 7398
E antoine.adeline@
squirepb.com

Spain



Fernando Gonzalez

Partner, Madrid
T + 34 91 426 4843
E fernando.gonzalez@
squirepb.com

Italy



Fabrizio Vismara

Partner, Milan
T +39 02 1241 27707
E fabrizio.vismara@
squirepb.com