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All contributions in this book are subject to academic review.

List of Abbreviations

ADR	Alternative Dispute Resolution
BITs	Bilateral Investment Treaties
CJEU	Court of Justice of the European Union
COMI	Centre of Main Interests
CRS	Common standards on reporting and due diligence for financial account information
e-arbitration	electronic arbitration
EC	European Commission
ECOFIN	Economic and Financial Affairs Council
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
FATCA	Foreign Account Tax Compliance Act
HKIAC	Hong Kong International Arbitration Centre
IAC at the BelCCI	International Arbitration Court at the Belarusian Chamber of Commerce and Industry
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICSID Convention or the Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965

ICT	Information and Communication Technologies
ILC Articles	Articles on Responsibility of States for Internationally Wrongful Acts
JAB	Joint Appeals Board
JDC	Joint Disciplinary Committee
LCIA	London Court of International Arbitration
MCAA	Model Competent Authority Agreement
MFN	most-favored-nation
Model Law	UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006
New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958
ODR	Online Dispute Resolution
OECD	Organisation for Economic Cooperation and Development
Regulation 2000 or Original Regulation	Regulation (EC) 1346/2000 of the Council (EC) of 29 May 2000 on insolvency proceedings
"Regulation 2015 or New Regulation"	Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
SCC	Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Centre
technology SMEs	Small and Medium-Sized Technology Enterprises
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

UNADT	United Nations Administrative Tribunal
UNAT	United Nations Appeals Tribunal
UNCTAD	United Nations Conference on Trade and Development
UNDT	United Nations Dispute Tribunal
VCLT	Vienna Convention on the Law of Treaties
VCLT	Vienna Convention on the Law of the Treaties
WIPO	WIPO Arbitration and Mediation Center

Articles

Alexander Sergeev | Tatiana Tereshchenko

The Recognition of Cross-Border Insolvencies and Bankruptcies

Key Words:
bankruptcy | insolvency | cross-border | transnational | foreign | recognition of foreign cross-border insolvency and bankruptcy | UNCITRAL Model Law on insolvency | soft law on insolvency

Abstract | *Globalization has spurred an active movement of capital across borders and the expansion of commercial traffic at an international level. One consequence of such activity is the inevitable associated risks of insolvency and bankruptcy which are becoming international. Moreover, the global trend is that the initiation of these proceedings are often directed not so much at the liquidation of the debtor assets and their distribution among the creditors, but with the preservation, rehabilitation and restoration of the business.*

However, in the case of cross-border insolvency, the debtor, assets and creditors are located in completely different jurisdictions, ensuring that these goals become more difficult. The effects of the acts of the competent authorities who initiate insolvency/or bankruptcy proceedings are limited to the territory of the certain state. This does not meet the interests of either the debtor or the creditors. If the unified regulation on cross-border insolvency/bankruptcy) is absent, it inevitably creates numerous problems such as the multiplicity of bankruptcy proceedings, the inability to include all the property of the debtor in the bankruptcy assets, the infringement of the rights of foreign creditors, and a significant increase in the costs of implementation of the procedures, which considerably reduce the debtor's assets. This article analyzes the key approaches of universalism and territorialism and the different modes recognition on which each is based. These include (1) conventional exequatur; 2) recognition

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requiring special procedures; and 3) automatic recognition,. Our analysis shows that the automatic recognition mode is a growing modern trend, demanded by practice and reflected at the level of the majority of international instruments, because it meets the current needs of international business to balance the rights of the debtor and creditors.

I. Introduction

13.01. The long-recognized need for a uniform approach to the legal regulation of transnational bankruptcies[1] which corresponds to current economic needs, allows more efficiency in procedures and ensures the balance of the interests of debtors and creditors[2], as well as the conceptual principle of bankruptcy law - the principle of equality of creditors [3].

13.02. The implementation of this approach to legal regulation is associated with a variety of difficulties. One initial problem is the existing differences in national bankruptcy legislation ranging from pro-debtor to pro-creditor or mixed models that sit between these extremes. An additional problem is the refusal of one state to give up its sovereignty by recognizing the validity of foreign competent authority' acts, which have opened foreign bankruptcy proceedings. However, as international experience shows, many difficulties can be successfully overcome, if the importance of the implementation of bankruptcy procedures in most efficient manner would be fore grounded.

II. Terminology

13.03. In various legal systems the term 'insolvency' and 'bankruptcy' are used interchangeably or they may have significantly different meanings., Meanwhile the debate about the relationship between these concepts continues in legal scholarship[4].

[1] See for example: Jay L. Westbrook, *Global Development: the Transnational Insolvency Project of the American Law Institute*, 17 Connecticut Journal of International Law (Fall 2001).

[2] See also: Joseph D. Becker, *International Insolvency: the Case of Herstatt*, 62 A.B.A. J. 1290 (1976); John Lowell, *Conflict of Laws as Applied to Assignments for Creditors*, 1(6) Harv. L. Rev. 259, 264 (1888).

[3] See more about equality of creditors' principle: Mark Gross, *Foreign Creditor Rights: Recognition of Foreign Bankruptcy Adjudications in the United States and the Republic of Singapore*, 12(1) U. Pa. J. Int'l L. 127 (1991); Ulrich Huber, *Creditor Equality in Transnational Bankruptcies: the United States Position*, (19) Vand. J. Transnat'l L. 741, 742 (1986).

[4] See, for example: G.F. Shershenevich, Course of trade law, Kazan 580 (1912); L.P. Anufrieva, Private International Law, Moscow: Beck 2 (2001); V.N. Tkachev, *The terms 'bankruptcy' and 'insolvency': the nature and value*, (3) 'Lawyer' (2003); V.V. Stepanov, Insolvency (bankruptcy) in Russia, France, England, Germany, Moscow 13 (1999); E.A. Vasilyev; A.S. Komarov, Civil and

However, in this article, the terms 'insolvency' and 'bankruptcy' are used interchangeably for the following reasons. Regardless of the choice of the term, in international practice, the signs of insolvency or bankruptcy are determined on the basis of one of two criteria – either default or inability to pay at all. Therefore, we can assume common understanding of insolvency or bankruptcy as a situation where the court as an authorized body has established that 'the debtor is generally unable to pay its debts as they mature, or when the amount of liabilities of the debtor exceeds the value of its assets.'[5]

13.04. In the case 'where the debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place,'[6] it is common to speak about the presence of a foreign element in the bankruptcy, which acquires a cross-border character. These bankruptcies are also called trans- or multinational, international, or foreign bankruptcies but still involve the same phenomenon, the inability to pay debts.

13.05. Of course, there are different points of view about what exactly the foreign element in such bankruptcies is. However, it does not matter whether the focus is on the nature of the debtor as a trans-national company[7], or whether there are several independent foreign bankruptcy proceedings operating in parallel or primary and secondary in respect to the debtor[8], or if the creditors come from several countries,[9] for example. The point is that the foreign element can manifest itself in various combinations such as on the side of the debtor, the creditor, as well as in the location of the debtor's assets[10]. This

commercial law of foreign countries, Moscow 398 (2008).

5 Subpara. 's' para. 12 section 2 of the Glossary (part B) of Introduction of the UNCITRAL Legislative Guide on Insolvency Law, Parts One and Two (2004), available at: http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf (accessed on 30 September 2015).

6 Para. 1 subsection A section I of the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, available at: http://www.uncitral.org/pdf/russian/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-r.pdf (accessed on 30 September 2015).

7 See for example: Timothy E. Powers, *The Model International Insolvency Cooperation Act. A Twenty-First Century Proposal for International Insolvency Cooperation,* in Current Developments in International and Comparative Corporate Insolvency Law, Oxford 687 (1994); A. P. Kuzmina, *The European model of cross-border insolvency*, (4) International public and private law 42 (2005).

8 See for example: S. S. Trushnikov, Initiation of insolvency proceedings in Germany and Russia, SPb 155 (2006).

9 See for example: Samuel L. Bufford; Louise DeCarl Adler; Sidney B. Brooks; Marcia S. Krieger, International Insolvency, Federal Judicial Center 1 (2001).

10 See for example: Ian A. Fletcher, Cross-Border Insolvency: Comparative Dimensions, United Kingdom National Committee of Comparative Law XIX, XXVI (1990).; Douglas A. Doetsch; Aaron L. Hammer, *Observation on Cross-Border Insolvencies and Their Resolution in the NAFTA Region: Where Are We Now?* 10 United States - Mexico Law Journal 61 (2002); Explanatory Report on European Convention on Certain International Aspects of Bankruptcy (Istanbul Convention), 05.06.1990, available at: http://conventions.coe.int/Treaty/en/Reports/Html/136.htm (accessed on 30 September 2015); para. 3 of Art. 29 of the Federal Law 'On Insolvency (Bankruptcy)' as of 26.10.2002 N 127-FZ // 'Russian newspaper',

allows us to take as a universal the above mentioned approach to understanding cross-border bankruptcy, adopted by United Nations Commission on International Trade Law (hereinafter - UNCITRAL) as a bankruptcy complicated by a foreign element.

13.06. The inevitable consequence of the presence of a foreign element in cross-border bankruptcy is its relationship with the various jurisdictions, when, as rightly pointed out in the literature, there is an interaction of the laws of the various states[11]. Any national legislation on bankruptcy is a complex branch of international private law at the junction of substantive and procedural law. We should therefore consider the recognition of foreign bankruptcies as one of institutions of international private law, along with institutions of international jurisdiction in bankruptcy matters, the law applicable to cross-border insolvency (*lex fori concursus*[12]), and so on.

13.07. This institution has significant value. In cases of cross-border insolvency characteristic effects include bankruptcy proceedings as a moratorium on satisfaction, the suspension of previously commenced enforcement proceedings, the prohibition on the disposal of property, the discharge of the sole executive bodies of the legal entity from the management process, and the meeting of the requirements in the order of priority, for example. But from the point of balancing the interests of the debtor and the creditors, these features are effective only if they are spread equally on the territories of all the states where the debtor, assets and creditors are located.

13.08. Therefore, there is a need for an effective mechanism for the recognition of bankruptcies complicated by a foreign element. A solution to this problem must reckon with a number of interrelated issues, associated with the effects of the opening, conduct and termination of bankruptcy proceedings. Such a solution must be effective not only within a single jurisdiction as is the case with the internal bankruptcy, but within the territories of other states. These are the specific cross-border implications of bankruptcy.

13.09. Scholarly doctrine rightly points out that for the purpose of ensuring the extraterritorial effects of cross-border implications of bankruptcy there is a need for the competent authority on behalf of the state to recognize final and non-final acts issued

N 209-210, 02 November 2002.

[11] Donna McKenzie, *International Solutions to International Insolvency: an Insoluble Problem?* 26(3) University of Baltimore Law Review 15 (1996).

[12] *Lex fori concursus*: the law of the State in which the insolvency proceedings are commenced(subpara. 'x' para. 12 section 2 of the Glossary (part B) of Introduction of the UNCITRAL Legislative Guide on Insolvency Law, Parts One and Two (2004), available at: http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf (accessed on 30 September 2015).

by a foreign court which has initiated bankruptcy proceedings. Such recognition allows the state in question to acknowledge the jurisdiction of the foreign court and the powers of the bankruptcy commissioner or liquidator assigned by it[13]. In other words, the question of recognition should be understood in the broadest sense, including not only the fact of declaration of the debtor as insolvent, but also all the consequences associated with the opening, conduct and termination of foreign bankruptcy proceedings.

13.10. The choice of the approach to the recognition of foreign bankruptcy is of paramount importance, since the choice of applicable law depends on it. The reason is that according to the connecting factor rule *lex fori concursus*, the applicable law is determined by the law of the court, which initiates the case proceedings on insolvency[14], and is applied to all issues related to the opening, conduct and termination of bankruptcy procedures. For example, para. 2 Art. 4 of the European Council Regulation on insolvency procedures N 1346/2000 of 29 May 2000 (hereinafter - EC Regulation on insolvency procedures N 1346/2000) provides for the following non-exhaustive list of matters governed by the applicable law:

a) against which debtors insolvency proceedings may be brought on account of their capacity;
b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
c) the respective powers of the debtor and the liquidator;
d) the conditions under which set-offs may be invoked;
e) the effects of insolvency proceedings on current contracts to which the debtor is party;
f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;

[13] L. Y. Sobina, The recognition of foreign bankruptcies in private international law, Moscow (2012), Para. 3 Chapter 2.

[It] is disputable issue whether the recognition of non-final acts which are carried out upon the opening, conduct and termination of bankruptcy proceedings such as the inclusion the creditors' claims in the register, are admissible if they do not settle a case on the merits (see also: *Ibid*). However, due to the nature of bankruptcy proceedings that require a plurality of acts, there is every reason to join the consensus on the need for the recognition and enforcement of judicial non-final acts within the whole frame of cross-border insolvency.

[14] See for example: Harald Koch; Ulrich Magnus; Peter Winkler von Morenfels, Private International Law and Comparative Law, Moscow 307 (2003).

h) the rules governing the lodging, verification and admission of claims;
i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
k) creditors' rights after the closure of insolvency proceedings;
l) who is to bear the costs and expenses incurred in the insolvency proceedings;
m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.[15]

13.11. In other words, the bankruptcy procedure is a collective proceeding by nature, especially when it is complicated by the foreign element. Thus, the rights and obligations of the debtor and creditors, their content and effective implementation will largely depend on what kind of approach to the recognition of foreign bankruptcies is supported by the one state or another.

III. Approaches

III.1. Main questions

13.12. There is an intricate debate on the theoretical and practical complexity of developing a common approach. Conditionally we can say that the there are two broad approaches: one of universalism (known as the universality approach) and one of territorialism (the territoriality approach). Such approaches can likewise be mobilized in pure or in mixed form[16], and these constitute the basis of the possible legal regulation models for the recognition of cross-border bankruptcies. Generally, the difference between the approaches of universalism and territorialism arise from how one responds to the following questions:

1) What is the competent court?
2) Should the consequences of cross-border bankruptcy be given extraterritorial effects, and,

[15] See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000R1346 (accessed on 30 September 2015).

[16] See also: A. A. Ryaguzov, *Methods of regulation of cross-border insolvency*, 36(3) International public and private law 2 (2007).

3) Which applicable law should be chosen?

13.13. The basis of the universality approach is that the particular state should reduce the priority of its sovereignty and protectionism with regard to national bankruptcy proceedings.[17] This services an important purpose, namely ensuring the effectiveness of cross-border bankruptcy procedures. This leads to two important facts about cross-border bankruptcy. First, it should be encompassed within one single procedure, determined by the main location of the debtor. Thus the court of that location should have jurisdiction over all the debtor's assets and should apply the law of its country. This is referred to as the principle of unity of production or the unity principle [18]. Secondly, regardless of the location of all assets of the debtor and place of business of all creditors of the debtor, binding their business, the effects of the bankruptcy should be declared as extraterritorial in nature. This is known as the principle of universality.[19]

13.14. In other words, such a model of the legal regulation of cross-border insolvency can be described as 'one law, one court'[20]. This allows the focusing of all of the debtor's assets within a united bankruptcy estate, the consideration of all creditors' claims in a single process and the appointing of a bankruptcy commissioner or liquidator for the implementation of bankruptcy procedures as a whole, regardless where the debtor, assets and creditors have their location. Obviously, the practical realization of such a model is possible only within the framework of an international treaty containing the necessary connecting factor rules[21].

13.15. On the other hand, the idea of territorialism limits the legal consequences of bankruptcy proceedings only to the territory of a particular state where the procedure is commenced. In

[17] For more about the problem of discrimination against foreign bankruptcies see: Kurt H. Nadelmann, *Discrimination in Foreign Bankruptcy Law Against Non-Domestic Claims*, (47) American Bankruptcy Law Journal 147 (1973).

[18] In this case the opening of independent concurrent proceedings, including with respect to foreign structural units of the debtor, is not permitted (see: Diego Devos, *Specific Cross-Border Problems Regarding Bank Insolvencies and European Harmonization Efforts*, in International Bank Insolvencies. A Central Bank Perspective 311 (M. Giovanoli and G. Heinrich eds., 1999).

[19] In other words, as was correctly noted in scholarly doctrine:

> [the] universality describes the limits of bankruptcy proceedings consequences: a) 'outer limits '- orientation of the proceedings to "inward' ' (claims of law order to include foreign assets in its bankruptcy estate, i.e., factually, claims for the extension of its actions' sphere on the territory of other states); b) 'internal limits' – direction to 'inward' (willingness to accept and recognize on its territory the effects of the foreign proceedings) (see: L.Y. Sobina, *supra* note 13, Para. 2 Chapter 1.

[20] Fred Tung, *Is International Bankruptcy Possible?* 23(1) Michigan Journal of International Law 10 (2001).

[21] For the experience of the implementation of this model in France, Switzerland, Belgium, Italy, Monaco and Austria, see: Vasily Stepanov, Bankruptcy in Russia, France, England, Germany, Moscow 186 (1999).

the case of cross-border bankruptcy this inevitably leads to the opening of multiple parallel uncoordinated proceedings, depending on where the debtor, assets or creditors are[22]. This is known as the principle of plurality. Accordingly, each court has opened the proceedings according to the national law of its state as the applicable ones and has jurisdiction only within territory of its state. It does not recognize the acts of foreign courts relating to the same debtor bankruptcy proceedings, and likewise cannot rely on the judicial effect of its acts in other legal systems, creating a lack of cooperation. As a result, the debtor's assets, located abroad, are not considered part of the bankruptcy estate. [23]

13.16. The idea of universalism is obviously more conducive to effective bankruptcy procedures, if one takes into account the current needs of international business to balance the rights of the debtor and all creditors, as well as considering the trends of the rehabilitation-like character of bankruptcy proceedings. This is due to the possibility to combine the claims of all creditors into single proceeding with the formation of a single bankruptcy estate[24]. In addition, it allows effective control over the procedure as a whole and, most importantly, minimizes the costs of the bankruptcy proceedings.

13.17. In this regard, any advantages to the legal regulation model, built on the idea of territorialism and the protection of local laws, procedures and creditors [25], will still lose out when measured against its main drawback, namely the existence of parallel proceedings. Because of the lack of coordination and unity of legal regulation, parallel proceedings deprive the creditors of equality and prevent the cost-effective disposal of the debtor's estate, especially if it is located in different jurisdictions.

13.18. Of course, the Universalist approach is not free from disadvantages. For example, there are significant issues related to the difficulty of its implementation in general, which calls for a uniform rejection of the sovereignty of states and the deprivation of national legislation on insolvency. There are also problems with its imperative character in the case of transnational bankruptcies, as well as a mass of other practical nuances, when, for example, creditors are required to take part in

[22] See also: Paul Torremans, Cross-Border Insolvencies in EU, English and Belgian Law, Kluwer Law International 3 (2001).

[23] For the experience of the implementation of this model in Japan (up to April, 1, 2000) see: Shoichi Tagashira, International *Effect of Foreign Insolvency Proceedings: Analysis of "Ancillary" Proceedings in the United States and Japan*, (29) Texas International Law Journal 1, 6–9 (1994).

[24] See also: Paul Torremans, *supra* note 22, at 4.

[25] Jay L. Westbrook, *Choice of Avoidance Law in Global Insolvencies*, (17) Brookline Journal of International Law 499, 514 (1991).

foreign proceedings with which they are not familiar. However, as discussed below, the growing harmonization of legislation shows that such drawbacks are gradually being overcome.

13.19. It should be noted that implementing any idea in its pure form is quite a difficult task in the mechanism of legal regulation[26]. This has led to the emergence of the combined models of legal regulation, based on a combination of the ideas of universalism and territorialism in an effort to combine their advantages and to overcome their disadvantages. For example, one approach is a modified model of universalism, which combines primary and secondary proceedings of cross-border insolvency[27].

13.20. In this case, one

> assumes the existence of the main insolvency proceedings with universal (extraterritorial) effect and territorial secondary proceedings with limited (territorial) effect, subject only to the property, located in the territory of that State, and its residents. In such a case parallel proceedings are coordinated in such a way that secondary proceedings are subject to the main one[28].

13.21. Indeed, the modified model is also not free from drawbacks, but the model is efficient and contributes to the improvement and development of a mechanism of legal regulation of cross-border insolvencies.

III.2. Modes of recognition

13.22. In turn, the understanding of the basic ideas that underpin a particular model of transnational bankruptcy legal regulation, as well as a shift of emphasis in the direction of universalism or territorialism allows us to classify modes of recognition of foreign bankruptcies. The most important criteria for such classification is whether or not there is a need for international agreement for the recognition, as well as whether or not there is a need for a special formal recognition procedure before acts

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[26] Andre J. Berends, *The UNCITRAL Model Law on Cross-Border Insolvency:* a *Comprehensive Overview*, (6) Tulane Journal of International and Comparative Law 309, 314 (spring 1998).

[27] See also: Ian A. Fletcher, The Law of Insolvency, London: Sweet & Maxwell 687 (2nd ed., 1996); Jay L. Westbrook, *A Global Solution to Multinational Default*, 98 Michigan Law Review 2278 (2000); John Pottow, *Procedural Incrementalism: a Model for International Bankruptcy*, 45(4) Virginia Journal of International Law 1 (2006).

[A] detailed analysis of the characteristics of ideas of universalism and territorialism in pure and combined forms within comparison of the advantages and disadvantages of them see: L.Y. Sobina, *supra* note 13, Para. 1 Chapter 1.

[28] *Ibid*., Para. 2 Chapter 1. There are other combined models including the model of territorialism based on cooperation (cooperative territoriality) - for details see: Lynn M. LoPucki, *The Case for Cooperative Territoriality in International Bankruptcy*, 98 Michigan Law Review 742 (2000).

of a foreign court have the legal effect automatically as they are in a foreign state's jurisdiction. Scholarly doctrine has offered a variety of such classifications[29], but for the purposes of this article, we ignore some controversial exceptions and join the conventional opinion that all modes of recognition of foreign bankruptcies can be divided into: 1) a conventional exequatur mode; 2) a recognition mode, which requires special procedures or; 3) an automatic recognition mode[30]. We will elaborate on each of these in turn.

13.23. The *Conventional exequatur mode* allows the recognition of a foreign bankruptcy only in the event of an international agreement's existence in force, or under conditions of reciprocity. For example, according to para. 6 Art. 1 of the Federal Law of Russian Federation 'On Insolvency (Bankruptcy)' as of 26 October 2002 N 127-FZ[31]

> Decisions of foreign courts in cases of insolvency (bankruptcy) are recognized on the territory of the Russian Federation in accordance with international agreements of the Russian Federation. In the absence of international agreements of the Russian Federation, decisions of foreign courts in cases of insolvency (bankruptcy) are recognized on the territory of the Russian Federation on the basis of reciprocity, unless otherwise provided by federal law[32].

13.24. An obvious disadvantage of this approach is the presumption that a foreign bankruptcy does not create any legal consequences in another state. There are several results in such cases. It is impossible to ensure the introduction of a moratorium with respect to all assets and activities of the debtor. A foreign

[29] For example, the modes of recognition of foreign bankruptcies are divided into two types (complete non-recognition and full / partial recognition) and four degrees (automatic, retroactive, non-retroactive, limited recognition) (see for details: Philip R.Wood, Principles of international insolvency, London: Sweet & Maxwell 242 – 270 (1995)). It is also worth remembering the classifications for a number of modes of recognition for judicial acts in general. For example, Russian scholars consider three modes: (1) with the check only from a formal point of view, as well as the establishment of non-contradiction to the public policy; 2) issuing the exequatur; 3) only registration of the foreign judgment in a special register under certain conditions - see: M. M. Boguslavskiy, Private International Law: Textbook, Moscow 320 (2005). Others consider there to be only two modes (1) the system of issuing the exequatur when the state, which requires the recognition, oversees foreign judgments, and 2) a system in which a foreign judgments are executed in foreign state in the same manner as the solutions of their own national acts - see: T. N. Neshataeva, Private international law and international civil procedure: Textbook, Moscow 527 (2004).

[30] See for details: L. Y. Sobina, *International legal trends in the formation of a mode of recognition of foreign bankruptcies*, (1–2) Arbitration and civil procedure 20–23, 32–35 (2011); L.Y. Sobina, *supra* note 13, Para. 5 Chapter 2.

[31] 'Russian newspaper', N 209-210, 02.11.2002.

[32] On the experience of other states adhering to the principle of the conventional exequatur mode, see, for example: Philip R.Wood, *supra* note 29, at 244.

bankruptcy commissioner or liquidator lacks the necessary authority for the formation of a full-fledged bankruptcy estate and for the control over debtor' activities. Finally, foreign creditors cannot assume the satisfaction of their claims against the debtor in another jurisdiction. There are sometimes attempts to find a way out of such situations on a private level, such as by filing the claim directly in a foreign jurisdiction regardless of what the national one demands to overcome the 'unfriendliness' of national legislation. However, this gives rise to such phenomena as 'bankruptcy tourism'[33], the affordability of which has become a subject of intense debate. For example, it was extremely resonant in Russia the bankruptcy case of Mr. Vladimir Abramovich Kekhman in England. The London High Court decided on 9 April 2014 that a well-known Russian businessman, Mr. Kekhman, could present his own bankruptcy petition in London even though he was resident and domiciled in Russia, had no real connection with England (he was only in England for two days) and there were very few assets in England for distribution to Mr. Kekhman's creditors. The Court decided that Mr. Kekhman's bankruptcy order should stand by looking at all the circumstances of the case, even if though it seemed at first sight like self-serving opportunistic 'forum shopping' by Mr. Kekhman. These circumstances included the absence in Russia of any personal bankruptcy regime in force at that time, and the necessity to plug that gap by providing a system that enabled a proper investigation of Mr. Kekhman's affairs, as well as an orderly realization of his assets for the benefit of his creditors. [34].The case received mostly negative assessments of the admissibility of such the bankruptcy of in England[35]. However, the main arguments of the opponents of this 'bankrupt conduct' do not seem quite as convincing as a detailed analysis shows. From a legal point of view it is hard to find features contrary to public policy of the Russian state or abuse of the rights by Mr. Kehman. Another thing is that a situation has arisen due to the extreme closeness of the Russian legislation regarding foreign bankruptcies, the imperfection of national regulation and a narrow understanding by the most experts of the principle of reciprocity for the recognition of foreign acts. This once again demonstrates the shortcomings of the legal regulation of

[33] See more: E. V. Mokhova, *Cross-border insolvency: the Russian legal realities and prospects*, (6) Zakon 62–73 (2014).

[34] See for details: http://www.fieldfisher.com/publications/2014/07/bankruptcy-tourism-russian-banks-fail-to-annul-english-bankruptcy-of-russian-businessman#sthash.ZLJg0atb.dpuf (accessed on 30 September 2015).

[35] See for details: http://zakon.ru/blog/2014/8/11/dmitrij_dozhdev_o_trudnostyax_transnacionalnyx_bankrotstv__videoblog_prepodavatelej_shaninki (accessed on 30 September 2015).

bankruptcies on the closed (non-transnational) basis and non-compliance of the legal mechanism with the modern needs.

13.25. *The mode of recognition of foreign bankruptcies which requires prior special formal procedures* is more flexible. It is based on the assumption that there is a need to incorporate foreign bankruptcy courts' acts and to give them the necessary legal effect on the territory of another state. However, this is only under the condition that a particular procedure is passed to verify that foreign bankruptcy acts match with the national legislation. Beyond some special formal procedures preceding the recognition can be retroactive or non-retroactive. In the first case the moratorium is valid retroactively, and allows the challenging of the transactions made by the debtor and the creditors until the recognition of a foreign bankruptcy (i.e. committed after the opening of a foreign bankruptcy proceeding). In the second case the moratorium is valid only for the future. It does not allow the application of foreign bankruptcy effects to the debtor's and creditor's actions if they were committed before the recognition of a foreign bankruptcy. This is obviously less preferable from the standpoint of compliance with the balance of the rights of the debtor and creditors, and the ensuring of the conduct of bankruptcy proceedings in the most effective way[36].

13.26. Evidence of the preference and effectiveness of the retroactive recognition procedure can be found in the fact that such an approach is recorded in the UNCITRAL Model Law on Cross-Border Insolvency (as of 30 May 1997, adopted at the 30th session of UNCITRAL, Vienna[37]) (hereinafter - the UNCITRAL Model Law) and in the national legislation of states that have implemented it[38]. In particular, according to para. 1 Art. 20 of the UNCITRAL Model Law

> upon recognition of a foreign proceeding that is a foreign main proceeding: (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed; (b) Execution against the debtor's assets is stayed; and (c) The right

[36] For more about the experience of non-retroactive recognition procedures see: L. Y. Sobina, *supra* note 13, Para. 5 Chapter 2.

[37] See http://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf (accessed on 30 September 2015).

[38] Legislation based on the UNCITRAL Model Law has been adopted in the following countries: Australia (2008); Greece (2010); Canada (2005); Colombia (2006); Mauritius (2009); in Mexico (2000); New Zealand (2006); Poland (2003); The Republic of Korea (2006); Romania (2003); Serbia (2004); Slovenia (2007); United Kingdom of Great Britain and Northern Ireland (2006) and the British Virgin Islands - Overseas Territory of the United Kingdom (2003); United States (2005); Uganda (2011); Montenegro (2002); Chile (2014); Eritrea (1998); South Africa (2000) and Japan (2000), available at: http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html (accessed on 30 September 2015).

> to transfer, encumber or otherwise dispose of any assets of the debtor is suspended[39].

13.27. Accordingly, *the automatic recognition mode* for foreign bankruptcy is even more flexible than the recognition mode with prior special procedures. Foreign acts of competent authorities for bankruptcy proceedings are recognized in a foreign country *ipso jure*[40], i.e. automatically and immediately as they are without any special checks on compliance with national law.

13.28. As in the case of the retroactive procedure, a moratorium over the debtor's assets and activities is introduced with retroactive effect, and the powers of a foreign bankruptcy commissioner or liquidator are valid on the territory of a foreign state. This allows the identification of the property and form the bankruptcy estate in the most efficient way, as well as to exercise control over the debtor at general. In this sense, automatic recognition comes the closest to the idea of universalism, although in some cases to overcome the practical difficulties it does not preclude the opening of ancillary proceedings together with the main bankruptcy proceedings[41]. Currently, there is reason to believe that the automatic recognition mode for the cross-border bankruptcies is a growing modern trend, demanded by practice and reflected at the level of the majority of international instruments and various recommendations in soft law.

IV. Modern Trends

13.29. In particular, the provisions on the automatic recognition of foreign bankruptcies include the following acts:

13.30. According to *EC Regulation on insolvency procedures N 1346/2000*

> 'This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member

[39] For more about the judicial practice regarding the recognition of foreign bankruptcies, based on the UNCITRAL Model Law, see: L. Y. Sobina, *supra* note 13, Para. 5 Chapter 2.

[40] *Ipso jure* from latin means: rightly, a legal right, lawful manner; legally valid, available at: http://www.echr.ru/documents/doc/2440005/2440005.htm (accessed on 30 September 2015).

[41] For more about the experience of USA and England: Philip St J Smart, Cross-Border Insolvency, London : Butterworths (2nd ed., 1998); Philip Wood, Principles of International Insolvency, London: Sweet & Maxwell 245 (1995).

> States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognized in the other Member States without those Member States having the power to scrutinize the court's decision (para. 22 of Preamble).

13.31. The effect of recognition means that

> The judgment opening the proceedings …shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred … are opened in that other Member State. The effects of the proceedings… may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent (Art. 17).

13.32. This principle of mutual trust[42] leads to a retroactive effect of bankruptcy proceedings and that ensures the principle of equality of creditors' rights.

> A creditor who, after the opening of the proceedings… obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator… In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in

[42] More about interpretation of the principle of mutual trust see: Judgment of the Court of Justice of the European Union. Luxembourg, 21 January 2010, Case C-444/07, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.063.01.0002.01.ENG (accessed on 30 September 2015).

> those other proceedings, obtained an equivalent dividend (Art. 20).

13.33. According to *Uniform Act Organizing Collective Proceedings for Wiping off Debts*[43] (in force since 1 January 1999)

> Where decisions to initiate and close collective proceedings as well as decisions settling disputes arising from the said proceedings and decisions on which collective proceedings have legal impact, pronounced in the territory of a Contracting State have become irrevocable, they shall be res judicata on the territory of the other Contracting States (Art. 247).

13.34. Later in the act, it is noted that

> A receiver appointed by a competent court may exercise, on the territory of another Contract State, all the powers conferred on him by this Uniform Act as long as no other collective proceedings have been initiated in that State. The appointment of a receiver shall be established by presentation of a certified true copy of the original of the decision appointing him or by any other certificate drawn up by the competent court. A translation of this document into the official language of the Contracting State on whose territory the receiver wants to act may be required (Art. 249).

13.35. A good example of how these provisions about automatic recognition work can be found in the bankruptcy proceedings of Air Afrique[44].

13.36. The *Nordic Bankruptcy Convention* (of 7 November 1933)[45] was binding in cases of cross-border bankruptcy on the territories of Denmark (which didn't join the EC Regulation on insolvency procedures N 1346/2000), Norway and Iceland (which are not in European Union) and, if involved in cooperation with those named countries, for Finland and Sweden as well (which are in EU). This Convention notes that

> A domiciliary bankruptcy declaration that has been issued in any of the Nordic countries is immediately

[43] See: http://www.ohadalegis.com/anglais/AUProcedColl_gb.pdf (accessed on 30 September 2015).

[44] See: http://www.africanaviation.com/Air_Afrique_goes_bankrupt.html (accessed on 30 September 2015).

[45] See more: Carl Hugo Parment, *The Nordic Bankruptcy Convention - An Introduction*, available at: http://test.iiiglobal.org/downloads/country%20resources/Norway/Articles/1~_Nordic_Bankruptcy.pdf (accessed on 30 September 2015); see: http://uk.practicallaw.com/5-504-9659?sd=plc (accessed on 30 September 2015); Samuel L. Bufford; Louise DeCarl Adler; Sidney B. Brooks; Marcia S. Krieger, *supra* note 9, at 53.

recognized in all of the other contracting States, without the need of any exequatur proceedings» (Art. 1 Section 1). «Such a bankruptcy declaration has therefore immediate effect in all Nordic countries. From this follows, that if a domiciliary bankruptcy has been declared, then there can be no other concurrent bankruptcy proceedings in any of the other Nordic States. A domiciliary bankruptcy proceeding will therefore consequently comprise all of a bankruptcy debtor's property that is situated within the Nordic area[46].

13.37. According to *Principles of Cooperation in Transnational Insolvency Cases Among the members of the North American Free Trade Agreement; Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases, CoCo Principles*[47] the consequences of insolvency should not be due to formalities, and should be recognized as fast as possible following the presentation of documents opening any proceedings in the state. Such a state must, of course, be a member of NAFTA (item A, general principle II, section III; topic B, subtopic 1, section IV)[48].

13.38. Given Principle N 24 of the *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* (published by the World Bank in April 2001)[49]:'Insolvency proceedings may have international aspects, and insolvency laws should provide for rules of jurisdiction, recognition of foreign judgments, cooperation and assistance among courts in different countries, and choice of law.'[50]

13.39. The automatic recognition is considered a key point in international regulation in Principle N 1 of *International Bar Association, Committee J Cross-Border Insolvency Concordat* (as of 17 September 1995)[51]: 'If an entity or individual with cross-border connections is the subject of an insolvency proceeding, a single administrative forum should have primary responsibility for coordinating all insolvency proceedings relating to such entity or individual'[52].

[46] Carl Hugo Parment, *supra* note 45, at 4.

[47] See: http://iiiglobal.org/component/jdownloads/finish/557/5932.htm (accessed on 30 September 2015).

[48] See also Matlack case (2001), PSI Net case (2001), Systech Retail Systems Corp. case (2003), Androscoggin Energy LLC case (2005).

[49] See: http://www.worldbank.org/ifa/ipg_eng.pdf (accessed on 30 September 2015).

[50] *Ibid.*

[51] See: www.ibanet.org/Document (accessed on 30 September 2015).

[52] It is important to mention that there are some important reservations in this Convention on the recognition of powers of bankruptcy commisioners or liquidators:

> [if] there is more than one forum, the official representatives appointed by each forum shall receive notice of, and have the right to appear in, all proceedings in any fora. If required in a particular forum, an exequatur or similar proceeding may be utilised

13.40. In this case, the automatic recognition of foreign bankruptcy acts is necessarily balanced by a restraining mechanism. In particular, the automatic recognition of foreign acts *ipso jure* means giving them a legal effect on the territory of the recognizing state. This avoids lengthy and costly procedures for recognition, but it is not the same as automatic enforceability.

13.41. Preventing of the penetration of foreign acts into a particular jurisdiction which are alien and non-conforming to its legal bases is provided for in a separate trial. In such a trial a national competent authority, deciding on the admissibility and enforcement of a foreign act, shall decide on the consequences of this under the normal execution of public order and policy, i.e. the compatibility with the legal, economic, social and political systems of a state[53].

13.42. For example, according to Art. 6 of the UNCITRAL Model Law 'Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State'[54]. The main point here is an indication of the obviousness and explicitness of the breach of public order and policy. Therefore, a simple non-compliance between national and foreign legislation on bankruptcy issues could not prevent the effective implementation of the procedures within transnational bankruptcy[55].

V. Conclusion

13.43. Two factors are important with respect to the increasing focus on the rehabilitation approach of bankruptcy procedures, as well as the need to balance the interests of debtors and creditors in compliance with the principle of equality. The first one is the timely introduction of a moratorium across borders, which

to implement recognition of the official representative. An official representative shall be subject to jurisdiction in all fora for any matter related to the insolvency proceedings, but appearing in a forum shall not subject him/her to jurisdiction for any other purpose in the forum state (Principle 3a).

53 For more about the concept of public order and policy, see: 2 Ernst Rabel, The Conflict of Laws, Chicago: Callaghan and Co. 557 (1947); Y. G. Bogatina, The public policy exception in private international law: theoretical problems and contemporary practice, Moscow 4 (2010); A.G. Goyhbarg, International law, Moscow 45 (1928).

54 Similar provisions are contained in many other national laws. For example, in accordance with Articles 21, 22, 121 of the Belgian Law 'On the Code of Private International Law' (as of July, 16,2004, - see the text of the law: http://pravo.hse.ru/intprilaw/doc/041801) foreign bankruptcy decisions are recognized without judicial procedures - 'de plano', but for the enforcement of the bankruptcy commissioner or liquidator's powers or if they are challenged by the appeal, the national court should take into account the provisions of public policy (see also: Eric Dirix; Vincent Sagaert, *Cross-border insolvency in Belgian Private International Law*, 15(1) Int. Insolv. Rev. 57–69 (2006)).

55 For example, in Ephedra Products Liability Litigation (2006) it was not considered a violation of the public order and policy that the Canadian law, unlike US law, does not provide for the participation of jurors in a bankruptcy case (see for details: In Re Ephedra Products Liability Litigation, 349 B.R. 333, 56 Collier Bankr. Cas. 2d (MB) 734 (S.D.N.Y. 2006).

helps to prevent abuses by unscrupulous debtors and allows the inclusion of all the property of the debtor into the bankruptcy estate. This gives the powers of the bankruptcy commissioner or liquidator a transnational effect, allowing them to identify the property and to exercise control over the debtor's business. The second factor is cost and the possibility of its minimization. The elimination of multiple uncoordinated insolvency proceedings produces a great efficiency in the disbursement of the debtor's property, to satisfying creditors' claims. Creditors, in turn, also receive the possibility of reducing their financial expenses for participation in the bankruptcy procedure.

13.44. Therefore, the movement of international regulation in recent decades to align more closely with automatic recognition of foreign bankruptcy' court acts is understandable. It meets the needs of modern economic globalization, the impacts on the investment climate in a particular state and strikes a reasonable compromise between the ideas of universalism and territorialism at the legislative level, ensuring the effectiveness of cross-border insolvency/bankruptcy proceedings.

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Summaries

DEU [***Anerkennung grenzüberschreitender Insolvenzverfahren und Insolvenzen***]

Die Globalisierung hat vermehrt zu aktiven grenzüberschreitenden Kapitalbewegungen geführt, sowie generell zur Ausweitung kommerzieller Aktivitäten auf internationaler Ebene. Eine der Folgen dieser Entwicklung ist das mit ihr untrennbar verbundene Risiko der Insolvenz und des Bankrotts im internationalen Maßstab. Hinzu kommt der globale Trend, mit der Einleitung von Insolvenzverfahren nicht so sehr die Liquidation des Vermögens des Schuldners und die Aufteilung der Erlöse unter den Gläubigern zu verfolgen als vielmehr den Erhalt, die Erneuerung und die Stärkung des schuldnerischen Unternehmensbetriebs.

Nun ist es aber im Falle eines Insolvenzverfahrens mit grenzüberschreitenden Folgen so, dass der Schuldner, die Masse und die Gläubiger sich in verschiedenen Staaten befinden, was die Erfüllung des vorgenannten Verfahrenszwecks verkompliziert. Die Amtshandlungen der zuständigen Stellen, die über die Insolvenz entscheiden, sind in ihrer Wirkung auf das Territorium des jeweiligen Staats beschränkt - was freilich den Interessen

des Schuldners ebenso wie den Interessen der Gläubiger zuwiderläuft. Das Fehlen einer vereinheitlichten Regelung für grenzüberschreitende Insolvenzverfahren zieht unvermeidlich eine Reihe von Problemen nach sich. Beispielhaft seien genannt: parallele Verfahren; die Unmöglichkeit, das gesamte schuldnerische Vermögen der Insolvenzmasse zuzurechnen; die Verletzung von Rechten ausländischer Gläubiger; eine erhebliche Verteuerung des Verfahrens und damit die Minderung der verwertbaren Masse. Der vorliegende Artikel analysiert die Schlüsselkonzepte des Universalismus und Territorialismus sowie die verschiedenen Arten der Anerkennung, auf denen sie fußen. Dies umfasst (1) das gängige Exequaturverfahren; 2) eine Anerkennung, die ein gesondertes Verfahren erforderlich macht; sowie 3) die automatische Anerkennung. Unsere Analyse zeigt, dass die automatische Anerkennung dem immer populärer werdenden modernen Trend entspricht, der auf Forderungen aus der Praxis beruht und der von den meisten internationalen Instrumenten berücksichtigt wird, weil er die aktuellen Bedürfnisse des internationalen Handelsverkehrs in punkto Gleichstellung der Rechte von Schuldner und Gläubigern befriedigt.

CZE [***Uznávání přeshraničních insolvenčních řízení a úpadků***]
Globalizace vedla k nárůstu aktivního přeshraničního pohybu kapitálu a k expanzi komerčních aktivit na mezinárodní úrovni. Jedním z důsledků takového vývoje je s ním nevyhnutelně spojené riziko insolvence a úpadku v mezinárodním rozměru. Navíc globálním trendem je, že zahájení takových řízení není v současnosti tak často zaměřeno na likvidaci majetku dlužníka a rozdělení výnosu mezi věřitele, nýbrž na zachování, obnovu a posílení jeho podnikatelských aktivit.
Nicméně v případě přeshraničních důsledků insolvenčního řízení, dlužník, podstata a věřitelé se nacházejí v různých státech, což znamená, že naplnění účelu tohoto řízení se komplikuje. Efekty úkonů příslušných orgánů, které rozhodly o úpadku, jsou omezeny na území určitého státu. To ovšem odporuje zájmům ať již dlužníka nebo věřitelů. Absence unifikované úpravy přeshraničních insolvenčních / úpadkových řízení nevyhnutelně způsobuje řadu problémů, jako paralelní řízení, nemožnost zahrnout veškerý majetek dlužníka do podstaty, poškozování práv zahraničních věřitelů a podstatné zvýšení nákladů řízení a tedy snížení podstaty. Tento článek rozebírá klíčové přístupy universalismu a teritorialismu a různé způsoby uznávání, na nichž jsou tyto přístupy založeny. To zahrnuje (1) standardní exequaturní řízení; 2) uznávání vyžadující zvláštní řízení; a

3) automatické uznávání. Náš rozbor ukazuje, že automatické uznávání představuje rostoucí moderní trend na základě požadavků praxe, který zohledňuje většina mezinárodních nástrojů, protože tento způsob naplňuje současné potřeby mezinárodního obchodu ohledně rovnosti práv dlužníka a věřitelů.

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POL [***Uznawanie międzynarodowych postępowań upadłościowych i upadłości***]

Artykuł zawiera ogólną charakterystykę różnych postaw wobec uznawania międzynarodowych postępowań upadłościowych w sytuacji, kiedy dłużnik, majątek i wierzyciele znajdują się w różnych państwach. W sytuacji, kiedy postępowanie upadłościowe zostaje wszczęte przez odpowiednie organy, których uprawnienia są ograniczone terytorialnie, należy zapewnić, by postępowanie było prowadzone w możliwie najbardziej efektywny sposób. Artykuł analizuje kluczowe kwestie uniwersalizmu i terytorializmu oraz różne sposoby uznawania, na których są one oparte. Obejmuje to (1) standardowe postępowanie o udzielenie exequatur, 2) uznawanie wymagające odrębnego postępowania, oraz 3) automatyczne uznawanie. Nasza analiza pokazuje, że w związku z wymogami praktycznymi automatyczne uznawanie wykazuje tendencję rosnącą, przy czym takie podejście jest uwzględniane przez większość narzędzi międzynarodowych, spełniając obecne wymagania handlu międzynarodowego w zakresie równości praw dłużnika i wierzycieli.

FRA [***La reconnaissance des procédures d'insolvabilité et de faillite transfrontalières***]

Le présent article se consacre à une description générale des différentes approches dans la reconnaissance des procédures d'insolvabilité / de faillite transfrontalières dans des situations où le débiteur et les créanciers se trouvent dans des États différents. Dans le cas où la procédure d'insolvabilité / de faillite est initiée par des organes dont la compétence est limitée territorialement, il est important de s'assurer que la procédure d'insolvabilité / de faillite est menée de la manière la plus efficace. Le présent article analyse les approches clés de l'universalisme et du territorialisme et les différents types de reconnaissance sur lesquels ces approches sont fondées. Cela comprend (1) les procédures d'exequatur standards ; 2) les reconnaissances demandant des procédures

particulières ; et 3) les reconnaissances automatiques. L'analyse montre que la reconnaissance automatique constitue une tendance qui se développe sur la base des nécessités de la pratique, cette procédure prenant en compte la plupart des outils internationaux et remplissant les besoins actuels du commerce international vis-à-vis de l'égalité des droits du débiteur et des créanciers.

RUS [***Признание Транснациональных Банкротств***]
Настоящая статья посвящена общей характеристике различных подходов к признанию трансграничных процедур несостоятельности (банкротства), когда должник, его активы и кредиторы находятся в разных юрисдикциях. Поскольку любые акты компетентных органов, с помощью которых открыты процедуры несостоятельности (банкротства), ограничены территорией, важно выбрать такое регулирование соответствующих вопросов, чтобы обеспечить осуществление процедур несостоятельности (банкротства) наиболее эффективным образом. Анализ ключевых идей универсализма и территориализма и основанных на них различных режимов признания, таких, как 1) признание посредством выдачи экзекватуры; 2) признание посредством специальных процедур; 3) автоматическое признание, показывает, что режим автоматического признания стал современной тенденцией, будучи востребованным практикой и закрепленным на уровне большинства международных актов, потому что он отвечает текущим потребностям международного бизнеса и позволяет сбалансировать права должника и всех кредиторов.

ESP [***Reconocimiento de los procedimientos de insolvencia transfronterizos y quiebras***]
Este artículo está dedicado a la descripción general de los diversos enfoques para el reconocimiento de los procedimientos de insolvencia transfronterizos/ quiebras en una situación en la que el deudor, el crédito y los acreedores se encuentran en diferentes Estados. En una situación en la que el procedimiento de insolvencia/quiebra está iniciado por las autoridades competentes, su jurisdicción territorial es limitada, es importante asegurarse de que el procedimiento de insolvencia/quiebra se realizará de la manera más eficaz. Este artículo analiza los enfoques clave universalista y teritorialista y las diferentes formas del reconocimiento en las que se basan estos enfoques. Esto incluye (1) el procedimiento estándar de exequatur; 2) el

reconocimiento que requiere un procedimiento especial y 3) el reconocimiento automático. Nuestro análisis muestra que el reconocimiento automático representa una tendencia moderna al alza de conformidad con los requerimientos de la práctica, y la mayoría de los instrumentos internacionales toman en consideración este procedimiento, ya que este método satisface las necesidades actuales del comercio internacional respecto a la igualdad de los derechos del deudor y de los acreedores.

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