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TITLE

FOREIGN TAX CLAIMS IN CROSS-BORDER INSOLVENCY PROCEEDINGS. OPTIONS APPLICABLE TO ARMENIA

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Abstract

The globalization of business implies global and straightforward legal solutions to various aspects of activities of multinational companies. This paper discusses the global regulation of one such aspect — proceedings against multinationals in economic distress.

The research provides a background of international, regional and domestic aspects of a cross-border insolvency framework. The paper focuses on one particular element in cross-border insolvency proceedings — international tax claims. In certain jurisdictions, foreign tax claims are unenforceable in the absence of respective international treaties, which might pose certain obstacles to the development of cross-border insolvency law. An implied solution is the expansion of treaty networks for mutual recognition of tax claims, which might be a more complicated solution than the removal of restrictions in domestic legal acts.

Armenia, a developing economy, is among the states, which are hesitant about shifting to a modified universalist regime of regulation of cross-border insolvency proceedings. Covering the specific case of the Armenian insolvency law, this paper will help get an insight into some aspects of cross-border insolvency law and analyze the necessity for the Armenian insolvency legislation to incorporate "modified universalist" cross-border insolvency rules in line with the international practice.

Keywords: foreign tax claims, cross-border insolvency, multinationals in economic distress, modified universalism, territorialism, UNCITRAL Model Law on Cross-Border Insolvency, European Insolvency Regulation, tax treaties, Armenian Insolvency Law.

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LIST OF ABBREVIATIONS

UNCITRAL	United Nations Commission on International Trade Law
INSOL International	International Association of Restructuring, Insolvency & Bankruptcy Professionals
COMI	Center of main interests
EIR Recast	European Insolvency Regulation (Recast)

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INTRODUCTION

The globalization of business has put the world in such a context where bankruptcy of a multinational company raises problems for the countries affected by its activities[1]. A hypothetical scenario below might illustrate in a practical manner some problems associated with bankruptcy of a multinational company. ACo, a cross-border company with establishments[2] (branches) in several countries and with the center of its main interests[3] in Country A, initiates bankruptcy proceedings in the court of Country A. Since the liquidation of ACo will have consequences for its creditors both in Country A and abroad, the foreign creditors might, where this is possible under the laws of their respective countries and where the circumstances allow so, apply to the court in their countries to enforce their rights. Moreover, due to the activities of its establishments in Country X and Country Y, ACo has accrued tax obligations in these countries. Country X tries to enforce the claims of the respective authority in its country to levy the resident taxes due, but it appears that this establishment does not have assets in Country X. Thus, the liquidation of ACo might turn into a situation, where multiple jurisdictions will conduct competing or parallel proceedings against the same company, having different levels of access to its assets. On the other hand, the court in Country Y cannot — due to the respective provisions in its domestic law — satisfy the tax obligations of the insolvent multinational through insolvency proceedings, since its law does not envisage the possibility to conduct insolvency proceedings against a branch. The tax authority in Country Y lodges a tax claim to the court in Country A which conducts insolvency proceedings against ACo. Under laws of Country A, such a claim is unenforceable, unless there is a bilateral tax treaty or mutual legal assistance treaty between Country A and the country in which a creditor lodges such claim. Therefore, since there is no respective treaty between Country A and Country Y, the enforcement of tax claims of Country Y in Country A might be impossible. In fact, each country conducting the proceedings might have different approaches to such a situation and might have envisaged

[1] Sandeep Gopalan & Michael Guihot, *Recognition and Enforcement in Cross-Border Insolvency Law: A Proposal for Judicial Gap-Filling*, 48 Vand. J. Transnat'l L. 1225 (2015).
[2] This term is discussed more in detail in Chapter 1. It is used within the meaning of any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.
[3] This term is discussed more in detail in Chapter 1. An establishment is presumed to be the registered office or habitual residence of the debtor.

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various remedies by law; however, some scholars argue that because bankruptcy is a market-symmetrical law, a global market requires a global bankruptcy law[4].

The processes aimed at developing global bankruptcy regulations has long been hindered by the traditional position of vast majority of states to refuse to recognize any extraterritorial dimension of insolvency of multinational enterprises — an approach, known as territorialism[5] . Due to various political considerations, sovereignty issues, many countries refuse to abandon this regime and to shift to subjecting insolvency of a multinational to single proceedings and equally distributing, through a single administrator, all of the debtor's assets, irrespective of the place of their location[6]. Thus, this latter approach, known as universalism, has been developed more on a theory basis, leaving much room for gaps in practice. Against this background, some flexible approaches have emerged aiming to mix certain elements of pure territorialism and pure universalism. One such approach, the "modified universalism" doctrine, bases on the key aspect of universalism — collecting and distributing assets on a worldwide basis — but "reserves to local courts the discretion to evaluate the fairness of the home country procedures"[7]. This doctrine is embraced by the UNCITRAL Model Law on Cross-Border Insolvency, a prominent legal instrument aimed at helping countries shift to the regime of dealing with cross-border insolvency through international cooperation and coordination. However, the lack of certainty surrounding cross-border insolvency regulation in general, even after the adoption of UNCITRAL Model Law on Cross-Border Insolvency (hereinafter the Model Law), makes countries, including Armenia, hesitant to initiate amendments to their national insolvency laws and to step into the regime of "modified universalism". This shift would entail envisaging by domestic law the mutual assistance of courts in insolvency proceedings, the coordination of concurrent insolvency proceedings, the automatic stay of national proceedings upon recognition of main proceedings and the provision of relief at the discretion of the court.

The analysis in the paper shows that Armenia is among the countries whose insolvency law embodies the territorialist regime. According to Article 1 of the Armenian Insolvency Law[8], domestic insolvency law and international treaties, if applicable, govern insolvency

[4] Jay L. Westbrook, *A Global Solution to Multinational Default*, 98 Mich. L. Rev. 2287 (2000).
[5] *Id.* at 2282.
[6] Gopalan & Guihot, *supra* note 1, at 1228.
[7] Westbrook, *supra* note 4, at 2300.
[8] Law of the Republic of Armenia "On insolvency" HO-51-N, *adopted* Dec. 25, 2006.

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proceedings involving foreign subjects as a debtor. Part 4 of Article 2 of the Law provides a rule on recognition of insolvency judgments or decisions of foreign courts. According to Article 1 of the Law, courts in Armenia hear and administer insolvency cases in accordance with the Civil Procedure Code of Armenia[9]. However, the research aims to show that the Armenian insolvency regime does not envisage explicit provisions on extraterritorial dimensions of insolvency proceedings involving multinational enterprises. Thus, in the absence of explicit rules on insolvency of multinationals, the research will attempt to explain the ways the hypothetical scenario could be resolved under a "universalist" Armenian insolvency regime. Further, the analysis of the Armenian Insolvency shows that there are no restrictions for foreign tax authorities to lodge tax claims in Armenian courts in insolvency proceedings, if they comply with the requirements for creditors, prescribed by Article 46 of the Insolvency Law. However, there are countries, such as the US, which do not allow foreign states to lodge tax claims in US courts in the absence of international treaties. This might create problems for adjudicating cross-border insolvency proceedings effectively and in the spirit of international cooperation and equality. Thus, the purpose of this paper is to analyze the extent to which recognition of foreign tax claims and involvement of respective foreign authorities as a creditor in cross-border insolvency proceedings is important, practical or necessary. The research will discuss the specific case of Armenia in search of ways to create possibilities for the Armenian tax authority to lodge tax claims abroad. To this end, the research will suggest including relevant provisions in tax treaties and mutual legal assistance treaties of Armenia, also discussing the obstacles, in terms of practicality, of this option. Beyond the solution of expanding the treaty framework, the research will suggest that Armenia enact the UNCITRAL Model Law with slight modifications.

In order to achieve the purpose stated above, the paper will aim to accomplish the following tasks. First, it will discuss theoretical approaches to administering cross-border insolvency regimes in an attempt to give a general picture of how a need emerged to change and expand the traditional framework of subjecting cross-border insolvency to local laws and refusing to cooperate with foreign courts in case of insolvency of multinationals. Second, the paper will describe international, regional, and domestic frameworks of cross-border insolvency proceedings contemplating the "modified universalism" doctrine. Further, the paper will

[9] Civil Procedure Code of the Republic of Armenia HO-247, *adopted* June 17, 1998.

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discuss the specific case of foreign tax claims, their importance and certain issues associated with recognition of tax claims in a foreign court. Third, the paper will analyze the Armenian insolvency law in an attempt to suggest combining certain elements of "modified universalism" with the existing Armenian territorialist framework.

This research has certain limitations, including the limitation that the scope of the analyses covers mainly theoretical considerations. In fact, the Armenian legislation does not envisage "universalist" cross-border insolvency rules, meaning that there is a legislative gap. Up to now, there has not been any case in the practice of Armenian courts regarding insolvency of multinationals within the context discussed in this paper, nor has any foreign country ever lodged a tax claim in insolvency proceedings in Armenia[10], which means that there is absence of relevant practice of courts. Therefore, these legislative and practical gaps make the analysis in the research limited to theory discussions on part of the Armenian law and practice. The other limitation in the paper is that it mainly refers to cross-border insolvency proceedings involving legal persons, not natural persons.

The paper literature includes various books and scholarly articles of world-renowned authors, such as Westbrook, Rasmussen, Anderson and Weiss, who have analyzed and advanced cornerstone approaches on administering cross-border insolvency proceedings. Further, the paper analyzes the texts of UNCITRAL Model Law and the European Insolvency Regulation (recast). To present the Armenian insolvency framework, the paper uses interviews and provides an analysis of the Armenian Law on Insolvency and the Armenian Civil Procedure Code.

The terminology in this paper covers the cross-border insolvency concepts used in the UNCITRAL Model Law and the European Insolvency Regulation (Recast)[11], the domestic insolvency laws of US and Armenia. The paper uses the terms insolvency and bankruptcy interchangeably, unless the context of their use implies some difference, namely that insolvency means a situation of economic distress and bankruptcy means a status granted by court.

This paper consists of an introduction, three chapters, a conclusion, and a bibliography. Chapter 1 refers to the cross-border insolvency framework established by the UNCITRAL

[10] Interview with Aleksey Sukoyan, Judge of the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts (March 22, 2017).

[11] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, *OJ* 5 June 2015 L 141.

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Model Law and the European Insolvency Regulation (Recast), the two fundamental legal instruments aimed at harmonization of cross-border insolvency laws at global and regional levels, accordingly. The Chapter will discuss the similarities and differences between these two instruments, and will address some aspects of the cross-border insolvency regulation of the US, which has enacted the Model Law. The Chapter will deal with the scope of application, normative nature, enforcement/enactment and main concepts of the above-mentioned instruments. This cross-analysis will provide a clearer understanding of the interplay between the international, regional, and domestic cross-border insolvency systems.

Chapter 2 will illustrate and analyze the treatment of foreign tax claims in transnational insolvency proceedings, discussing the issues surrounding foreign tax claims in certain jurisdictions, with a focus on the common law doctrine of unenforceability of foreign tax claims, known as the Revenue Rule. The Chapter will further discuss the extent to which recognition and enforcement of foreign tax claims is important or necessary in insolvency proceedings.

Chapter 3 will provide an insight into the current Armenian insolvency regime, discussing those provisions of the Armenian Insolvency Law and the Armenian Civil Procedure Code, which deal with insolvency cases involving a foreign element. The Chapter will discuss the necessity and practicality for Armenia to expand its bilateral and multilateral treaty network for ensuring mutual recognition and enforcement of foreign tax claims.

The Conclusion will succinctly outline main findings of the research and will discuss the necessity for Armenia to shift to a “modified universalist” cross-border insolvency regime by way of incorporating provisions of the UNCITRAL Model Law in the domestic law.

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CHAPTER 1. CROSS-BORDER INSOLVENCY FRAMEWORK OF UNCITRAL MODEL LAW AND EUROPEAN INSOLVENCY REGULATION

The attempts to develop a global solution to the issues caused by cross-border insolvencies and the debate over global regulations of bankruptcy have a long history of nearly 700 years[12] . The traditional dominant approach of "partitioning an insolvency along national borders[13]", regarded among scholars as "territorialism", implies that each country would seize local assets and apply them for the benefit of local creditors, with little or no regard for foreign proceedings[14]. The antithesis of the territoriality theory is "universalism", which in its pure form, suggests subjecting the bankruptcy to one proceeding with global reach to cover all assets worldwide and with the responsibility for disbursing assets to claimants[15]. In-between these two traditional approaches, there are several other hybrid scholarly opinions on cross-border insolvency law, including modified territoriality, cooperative territoriality, modified universalism, and contractualism[16]. Under the theory of cooperative territoriality, foreign representatives of various bankruptcy proceedings can enter into agreements, on an *ex post* basis, to regulate certain aspects of the bankruptcy proceeding, which in turn will ensure maximization of assets of debtors and equal treatment of creditors[17]. The theory of contractualism, supported by Professor Rasmussen, enables companies and their creditors to decide through contract the applicable insolvency law and forum in case of liquidation[18]. This rule also implies that a company may determine the applicable law in the event of insolvency in its corporate charter[19]. Professor Jay Lawrence Westbrook, a distinguished American

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[12] Kent Anderson, *The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience*, 21 U. PA. J. INT'L L. 681 (2000) (discussing a treaty signed in 1204 between Verona and Trent regarding transfer of assets of debtors).
[13] *Id*.
[14] Westbrook, *supra* note 4, at 2282.
[15] Gopalan & Guihot, *supra* note 1, at 1228.
[16] Evelyn H. Biery, Jason L. Boland & John D. Cornwell, *A Look at Transnational Insolvencies and Chapter 15 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 47 B.C.L. Rev. 23 (2005).
[17] *Id*. at 28.
[18] *Id*. at 30.
[19] Robert K. Rasmussen, *A New Approach to Transnational Insolvencies*, 19 MICH. J. INT'L L. 31 (1997).

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scholar, has described the interplay between modified universalism and modified territorialism, noting that modified universalism is universalism "tempered by a sense of what is practical at the current stage of international legal development, while modified territorialism represents a movement away from territorialism in recognition of the increasing integration of the world economy[20]." Modified universalism combines "extraterritorial statutes for local insolvencies with laws that allow for, but do not require, cooperation with foreign insolvencies"[21]. The UNCITRAL Model Law, which reflects the modified universalism approach[22], has been a notable movement toward globalization[23] and harmonization of laws regulating cross-border insolvency.

In search of ways to design harmonized cross-border insolvency rules, UNCITRAL and INSOL International held a number of meetings from 1993 to 1995 and studied comparative approaches to cross-border insolvency[24]. On 30 May 1997, the United Nations Commission on International Trade Law (UNCITRAL) adopted its Model Law on Cross-Border Insolvency as a step forward towards a universalist approach to administering cross-border insolvencies, allowing hesitant states to "acclimate" to that regime[25]. According to the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (hereinafter the Guide to Enactment), the Model Law is designed to assist states in addressing cross-border insolvency proceedings more effectively, to authorize and encourage cooperation between sovereigns, instead of attempting the unification of substantive insolvency law and disregarding the differences among national procedural laws. The Model Law defines cross-border insolvency as one where the insolvent 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. The Model Law is not binding and needs to be incorporated in national law by individual states with any modifications the states deem important[26]; however, for the purposes of satisfactory degree of harmonization and certainty, the Guide to Enactment recommends States to make as few changes as possible when

[20] Westbrook, *supra* note 4, at 2230 (referring to the Statement of Principles adopted by the American Law Institute under the Transnational Insolvency Project).
[21] Anderson, *supra* note 12, at 682.
[22] Gopalan & Guihot, *supra* note 1, at 1231.
[23] Westbrook, *supra* note 4, at 2297.
[24] Jenny Clift, *UNCITRAL Model Law on Cross-Border Insolvency - A Legislative Framework to Facilitate Coordination and Cooperation in Cross-Border Insolvency,* 12 Tul. J. Int'l & Comp. L. 307, 346 (2004).
[25] John Pottow, *Procedural incrementalism: a model for international bankruptcy*, 45 Va. J. Int'l L. 939 (2005).
[26] JONA ISRAËL, EUROPEAN CROSS-BORDER INSOLVENCY REGULATION 68 (2005).

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incorporating the Model Law. So far, legislation based on the Model Law has been adopted in 41 states, including both common law jurisdictions, such as US, UK, Canada, Australia, Singapore, and civil law jurisdictions, such as Poland, Romania, and Slovenia[27]. Detailing on the origin of the Model Law, the Guide to Enactment states that the Model Law takes account of negotiations leading to EC Regulation No. 1346/2000 of 29 May 2000[28]. The latter instrument is a set of rules, embracing the doctrine of modified universalism[29] and aimed at harmonizing cross-border insolvency regulations in Member States of the European Union.

EC Regulation No. 1346/2000 of 29 May 2000 was recast in 2015 by Regulation (EU) 2015/848[30] (hereinafter the EIR Recast), which is generally applicable from 26 June 2017[31] and is binding in its entirety and directly applicable in the Member States, without the need for transposition into national laws[32]. The scope of application of EIR Recast covers insolvency law-based public collective proceedings, including interim proceedings. There are three situations covered by the scope of the EIR Recast. The first situation is where the debtor is partially or totally divested of its assets and insolvency practitioner is appointed. Second, EIR Recast applies where the assets and affairs of a debtor are subject to control or supervision by court. The third case of application of the EIR Recast is the temporary stay of enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of restructuring of the debtor's business[33]. The analysis of the text of the Recitals of EIR Recast shows that it applies to natural persons as well as legal persons, covers public proceedings and excludes confidential ones. The EIR Recast includes proceedings based on laws relating to insolvency and excludes proceedings based on general company law not designed exclusively for insolvency situations. It extends to proceedings, which are triggered by situations where the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the actual or

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[27] *Status UNCITRAL Model Law on Cross-Border Insolvency (1997),* UNCITRAL, http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html (last visited Feb. 26, 2017).

[28] European Council (EC) Regulation 1346/2000 of 29 May 2000 on insolvency proceedings, *OJ* 10 June 2000 L 160/1.

[29] Joshua Eastby, *The Law of Unintended Consequences: The 2015 E.U. Insolvency Regulation and Employee Claims in Cross-Border Insolvencies*, 17 Chi. J. Int'l L. 131 (2016).

[30] Interview with Judge Sukoyan, *supra* note 10.

[31] See Article 92 of the EIR Recast.

[32] According to Recital 87 of EIR Recast, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation, whereas Recital 88 states that Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

[33] See Article 1 of the EIR Recast.

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future ability of the debtor to pay its debts as they fall due. According to Recital 19 of EIR Recast, insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and collective investment undertakings are excluded from the scope of EIR Recast, on the ground that they are subject to special arrangements and that the national supervisory authorities have wide-ranging powers of intervention. The modified universalist character of the Regulation is witnessed in Recital 22, which states that due to widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The Court of Justice of the European Union (ECJ) is vested with the power to give preliminary rulings regarding the validity and interpretation of the Regulation, particularly, to resolve any issue on the interpretation of provisions of the Regulation to emerge in a case pending before a national court in a Member State. The scope of the EIR Recast does not extend to cross-border insolvency proceedings in states outside of the European Union. Thus, several EU Member States – Greece, Poland, Romania, Slovenia, and the United Kingdom – have also enacted the UNCITRAL Model Law in their domestic legislations to ensure a wider cross-border insolvency framework extending outside the borders of the EU.

Article 1 of the Model Law prescribes four situations where the Model Law applies. The first two situations refer to assistance sought between courts or representatives of the enacting State and foreign state. The third situation refers to proceedings conducted in respect of the same debtor concurrently in the enacting State and a foreign State. Fourth, the Law applies when foreign creditors or other interested persons have an interest in commencement or participate in the domestic insolvency proceedings.

The discussion of the general framework of the Model Law can be started with the principle, expressed in Article 3 of the Model Law, that international obligations of the enacting State prevail over the provisions of the Model Law, if these two conflict with each other. Article 6 also prescribes the prevalence of public policy over requirements of the Model Law. Further, Article 4 of the Model Law defines a requirement for the enacting State to designate a body, which can be court(s) or other authority(ies), authorized to recognize the foreign proceedings and perform the functions of cooperation. Article 5 requires authorizing domestic bankruptcy administrators to act in a foreign State on behalf of the domestic proceedings, if so permitted under the laws of the respective foreign State. Article 9 of the Model Law, if included in the

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domestic Law, allows for direct access of foreign bankruptcy administrators to the court of the enacting State. Article 11 is designed to ensure that the foreign representative of a foreign main or non-main proceeding has standing to request the commencement of an insolvency proceeding. According to paragraph 113 of the Guide to Enactment, sufficient guarantees against abusive applications are provided by the requirement that the other conditions for commencing such a proceeding under the law of the enacting State have to be met. Article 13 of the Model Law provides that foreign creditors, when they apply to commence an insolvency proceeding in the enacting State or file claims in such a proceeding, should not be treated worse than local creditors.

To make the discussion of the framework of the Model Law more comprehendible, it is necessary to expand on the meaning of several key concepts, including "foreign proceeding", "foreign main proceeding", "foreign non-main proceeding", "COMI", "establishment", and "collective proceedings". These concepts, defined in Article 2 of the Model Law and/or explained in the Guide to Enactment, are key to understanding the nature of foreign proceedings. Article 2 of the Model Law defines foreign proceeding as a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation. Under paragraph 2 of Article 17 of the Model Law, a foreign proceeding should be recognized as either a main proceeding or a non-main proceeding. A main proceeding may have principal responsibility for managing the insolvency of the debtor regardless of the number of States in which the debtor has assets and creditors, subject to appropriate coordination procedures to accommodate local needs. In order to determine whether the proceeding is main, regard is to be had to the COMI of the debtor at the date of commencement of the foreign proceeding.

COMI is not explicitly defined in the Model Law; however, paragraph 31 of the Guide to Enactment states that the concept should be understood based on the presumption that it is the registered office or habitual residence of the debtor. The EIR Recast does not define this concept in Article 2 among the definitions; however, in Article 3 it states that in case of a legal person, the center of its main interests is presumed to be the place of the registered office in the absence of proof to the contrary. It further explains that the presumption only

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applies, if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings. Under US Bankruptcy Code §1516(c), the registered office (or place of incorporation) of the debtor is presumed to be its COMI in the absence of evidence to the contrary. This language, however, is not to be read as dispositive, since it is common practice for a company to incorporate in a jurisdiction purely for tax reasons and to have no substantive operations or employees there[34]. Chapter 15, however, offers no other attributes to assist in the determination of COMI, and its open-ended language leaves the inquiry to the discretion of the court[35].

A non-main proceeding is, according to Article 2 of the Model Law, one taking place where the debtor has an establishment. Sup-paragraph (f) of the same Article defines an establishment as "any place of operation where the debtor carries out non-transitory economic activity with human means and goods or services." EIR Recast defines the term "establishment" in a wording similar to Article 2 of the Model Law. Article 2 (10) of the EIR Recast provides that an "establishment" is any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets.

According to Article 21 of the Model Law, relief at the discretion of the domestic court is available for both main and non-main foreign proceedings. Pursuant to paragraph 1 of Article 20 of the Model Law, key elements of the relief accorded upon recognition of a foreign "main" proceeding include a stay of actions of individual creditors against the debtor or a stay of enforcement proceedings concerning the assets of the debtor, and a suspension of the debtor's right to transfer or encumber its assets. Paragraph 31 of the Guide to Enactment explains that the stay of actions or of enforcement proceedings is necessary to provide "breathing space" until appropriate measures are taken for reorganization or liquidation of the assets of the debtor. Paragraph 31 further explains that the suspension of transfers is necessary since in a modern, globalized economic system it is possible for a multinational debtor to move money and property across boundaries quickly. "The mandatory moratorium triggered by the recognition of the foreign main proceeding provides a rapid "freeze" essential to prevent fraud and to protect the legitimate interests of the parties involved until

[34] Andy Soh, *Chapter 15 of the U.S. Bankruptcy Code: An Invitation to Forum Shopping?*, 16 Norton Journal of Bankruptcy Law and Practice, 887 (2007).
[35] *Id.*

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the court has an opportunity to notify all concerned and to assess the situation." Paragraph 69 of the Guide to Enactment states that for a proceeding to qualify for relief under the Model Law, it must be a collective proceeding because the Model Law is intended to provide a tool for achieving a coordinated, global solution for all stakeholders of an insolvency proceeding. This term is not defined in the Model Law, but is explained in paragraphs 69-72 of the Guide to Enactment. Pursuant to paragraph 70 of the Guide to Enactment, in evaluating whether a given proceeding is collective, a key consideration is whether substantially all of the assets and liabilities of the debtor are dealt with in the proceeding, subject to local priorities and statutory exceptions, and to local exclusions relating to the rights of secured creditors. EIR Recast defines the term "collective proceedings as proceedings including all or a significant part of creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them.

A final point in the discussion of the Model Law framework is the issue of court cooperation, which is regulated under Chapter IV of the Model Law and is, according to paragraph 211 of the Guide to Enactment, the core element of the Model Law. The preamble of the Model Law states that the instrument is designed to promote, among others, the objective of cooperation between the courts and other competent authorities of the enacting State and foreign States involved in cases of cross-border insolvency. The objective of the cooperation, pursuant to paragraph 211 of the Guide to Enactment, is to enable courts and insolvency representatives from two or more states to be efficient and achieve optimal results. Paragraph 212 of the Guide to Enactment further explains that cooperation is not dependent on recognition of foreign proceeding and may thus occur at an early stage and before an application for recognition. Pursuant to paragraph 218 of the Guide to Enactment, the articles in Chapter IV of the Model Law leave certain decisions, in particular when and how to cooperate, to the courts and, subject to the supervision of the courts, to the insolvency representatives. Paragraph 2 of Article 25 of the Model Law enables courts, with appropriate involvement of the parties, to communicate "directly" and to request information and assistance "directly" from foreign courts or foreign representatives, avoiding the use of time-consuming procedures traditionally in use, such as letters rogatory. Pursuant to paragraph 213 of the Guide to Enactment, Articles 25 and 26 of the Model Law are designed to overcome the widespread problem of national laws lacking rules providing a legal basis for cooperation by

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local courts with foreign courts in dealing with cross-border insolvencies. In Armenia, the legal basis for international cooperation between courts of Armenia and foreign courts is the international treaty. Paragraph 215 of the Guide to Enactment suggests that in the States in which the proper legal basis for international cooperation in the area of cross-border insolvency is an international agreement based on the principle of reciprocity, Chapter IV of the Model Law may serve as a model for the development of such international cooperation agreements.

CHAPTER 2. SPECIFIC CASE OF RECOGNITION OF FOREIGN TAX CLAIMS

Foreign tax claims present a special set of problems in international insolvency proceedings. Both the Model Law and Chapter 15 of the US Bankruptcy Code provide an exception for foreign tax claims or other public law claims, recognizing that those claims may be unenforceable outside the country of origin[36]. According to the Guide to Enactment, Article 13 (2) of the Model Law makes it clear that the principle of non-discrimination leaves intact the provisions on the ranking of claims in insolvency proceedings, including any provisions that might assign a special ranking to claims of foreign creditors. According to paragraph 119 of the Guide to Enactment, few states currently have provisions assigning special ranking to foreign creditors. It further explains that if the non-discrimination principle is to be emptied of its meaning by provisions giving the lowest ranking to foreign claims, paragraph 2 of Article 13 of the Model Law establishes the minimum ranking for claims of foreign creditors: the rank of general unsecured claims. The exception to that minimum ranking is, according to paragraph of 119 of the Guide to Enactment, provided for cases where the claim in question, if it were of a domestic creditor, would be ranked lower than general unsecured claims. Paragraph 120 of the Guide to Enactment refers to the alternative provision in the footnote to paragraph 2 of Article 13 of the Model Law, stating that this provision provides wording for States that refuse to recognize foreign tax and social security claims to continue to discriminate against such claims. This means that a country can enact the Model Law and comply with its universalist principles, yet continue to discriminate against foreign tax claims.[37]

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[36] Allan L. Gropper, *The Payment of Priority Claims in Cross Border Insolvency Cases*, 46 Tex. Int'l L.J. 568 (2011).

[37] Jonathan M. Weiss, *Tax Claims in Transnational Insolvencies: A "Revenue Rule" Approach*, International

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The distribution scheme of many countries is governed by an intricate system of priorities, whose claimants are paid before general unsecured creditors; however, many countries do not offer such priorities[38]. States mainly prioritize tax claims to protect the community at large and to protect the interests of the tax authority, as an involuntary creditor of the debtor corporation, which has not deliberately chosen to do business with the debtor; instead, its claim has arisen by operation of law[39]. On the other hand, some states eliminate the priorities based on the notion that it is widening the gap between ordinary creditors and priority tax creditors. As the tax authority levies new taxes and higher tax rates, tax claims consume "more and more of an insolvent debtor's estate, leading to questions about the tax priority."[40] Additionally, critics of the priority reject the community interest argument, stating that the loss to the government is unlikely to be significant in terms of total government receipts, while loss to private creditors may cause substantial hardship and precipitate additional insolvencies [41]. Granting of priorities by many states and refusal of others to grant any priorities creates a discrepancy, which in its turn leads to the cross-priority issue.[42] Cross-priority is a mechanism of ensuring fairness and equality by way of granting foreign creditors the same priority as is granted to local creditors[43]. Granting cross-priority for foreign claims might ensure a higher level of predictability enabling creditors to identify, on an *ex ante* basis, the distribution schemes applicable in the event of default, and to make sure that random results would not occur.[44]" An argument against cross-priority is that it benefits foreign claimants at the expense of local creditors; however, if countries do not grant cross-priority, it might create obstacles for the entire structure of universalism[45].

The discussion of the roots of why certain jurisdictions traditionally refuse to recognize or enforce foreign tax claims or otherwise discriminate such claims, if recognized under international treaties, leads to the common law doctrine of "Foreign Revenue Rule". In 1775,

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Insolvency Institute, 34 (2010).

[38] Weiss, *supra* note 37, at 28.

[39] *Id.* at 29.

[40] Barbara K. Morgan, Should the Sovereign be Paid First? A Comparative International Analysis of the Priority for Tax Claims in Bankruptcy, 74 AM. BANKR. L.J. 461, 500 (2000)

[41] *Id.* at 467.

[42] Weiss, *supra* note 37, at 28.

[43] Ulrik Rammeskow Bang-Pederson, Asset Distribution in Transnational Insolvencies: Combining Predictability and Protection of Local Interests, 73 AM. BANKR. L.J. 385, 387 (1999).

[44] Weiss, *supra* note 37, at 31.

[45] *Id.*

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in deciding the contract case of Holman v. Johnson[46], Lord Mansfield wrote that "... no country ever takes notice of the revenue laws of another."[47] In the Bank of India case,[48] in which the House of Lords found that the Courts in England and Wales would not enforce in the jurisdiction a direct tax debt owed to a foreign government. The House of Lords held:

"The claim was not admissible to proof because (i) it was a well recognised rule of English law, applying equally in relation to the revenue laws of a member state of the British Commonwealth as to those of a foreign country, that the courts of this country did not enforce the revenue laws of another country (principle stated by Lord Mansfield in Holman v Johnson (1775) considered)."

The position of not enforcing a foreign tax debt is collectively known as the Revenue Rule"[49]. This rule was explicitly incorporated into American jurisprudence in the case of Her Majesty the Queen v. Gilbertson[50], which involved Canadian taxing authorities attempting to levy certain logging taxes against U.S. citizens in Oregon[51]. The Supreme Court of Canada applied the Revenue Rule in United States v. Harden[52], where US sought enforcement of a tax judgment entered in federal district court in California against a US citizen residing in British Columbia[53]. The Supreme Court upheld the refusal of jurisdiction by the British Columbian court and dismissed the appeal[54]. However, the revenue rule in Canada was circumvented in 1995 when the country entered into a bilateral agreement with US, providing, among other things, mutual assistance in collection of taxes. Under the treaty, U.S. tax claims are enforceable in Canada, and in the same way, U.S. Government is required to provide

[46] Holman v. Johnson, 1 Cowp. 341 (Court of King's Bench 1775).
[47] Stephen M. Packman & Douglas G. Leney, *United States: The Revenue Rule and the Recognition of Tax Claims in Cross-Border Cases*, (Jun. 6, 2012), http://www.mondaq.com/unitedstates/x/180374/International Tax/The Revenue Rule And The Recognition Of Tax Claims In Cross Border Cases.
[48] Government of India v. Taylor, 491 (H.L.) (A. C. 1955).
[49] *Tax: The Revenue Rule – Two conflicting decisions - Case Studies* (Jan. 23, 2013), http://www.howespercival.com/resources-and-events/case-studies/tax-the-revenue-rule-two-conflicting-decisions.
[50] Her Majesty the Queen in Right of the Province of British Columbia v. Gilbertson, 597 F.2d 1161 (9th Cir. 1979).
[51] Packman, Leney, *supra* note 38.
[52] United States of America v. Harden, 41 D.L.R. (2d) 721 (S.C.R. 1963).
[53] *Id.* at 722.
[54] *Id.* at 727.

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assistance in collection of certain Canadian tax claims in the U.S[55]. Thus, the barrier of the Revenue Rule in Canada as well as in US can be overcome through treaty network.

The introduction of Chapter 15 to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, purported to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country. Chapter 15 also gives foreign creditors the right to participate in US bankruptcy cases, and it prohibits discrimination against foreign creditors, except in case of certain foreign government and tax claims, which may be governed by treaty[56]. Because of the UNCITRAL source for chapter 15, the US interpretation must be coordinated with the interpretation given by other countries that have adopted it as internal law to promote a uniform and coordinated legal regime for cross-border insolvency cases.[57] Thus, although the United States bankruptcy court may be very willing to allocate local assets to a foreign lender, it will likely be less willing to pay the foreign government its tax claims[58]. It is vital that, barring an unlikely adoption by the nations of the world of substantive international bankruptcy laws, there at least must be procedural mechanisms in place to guide the United States, its corporations and its investors, on how foreign tax claims will be allocated in bankruptcy[59]. One possible solution would be encouraging the "United States and its counterparts to enter into either many bilateral treaties, or, better yet, a large, multilateral treaty mandating the enforcement of foreign tax claims in bankruptcy"[60]. Though this is a valid solution in the sense that it will promote international cooperation, predictability and limit the discretions of courts in deciding whether to recognize a foreign tax claim, "the benefits would not be as great as if countries unilaterally decided to grant a universal cross-priority, without regard to reciprocity or treaty"[61].

Article 27 of the OECD Model Tax Convention provides rules regarding assistance in both tax collection and taking conservancy measures. According to paragraph 3 of Article 27,

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[55] Ken Jiang, *The Rise of International Tax Collection,* Thorsteinssons LLP (Aug. 19, 2015), http://www.thor.ca/blog/2015/08/the-rise-of-international-tax-collection.
[56] *Chapter 15 — Bankruptcy Basics*, United States Court, http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics (last updated March 27, 2017).
[57] *Id.*
[58] Weiss, *supra* note 37, at 5.
[59] *Id.*
[60] Weiss, *supra* note 37, at 54.
[61] *Id.*

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when a revenue claim of a Contracting State of the OECD Model Tax Convention is enforceable under its laws and is owed by a person who cannot prevent its collection, it is subject, at the request of the competent authority of that State, to collection by the competent authority of the other Contracting State. Paragraph 3 also establishes that that revenue claim is to be collected by that other State in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State. The meaning of "revenue claim" is defined in a broad manner by paragraph 2 of Article 27 of the OECD Model Tax Convention. The term means an amount owed in respect of taxes of every kind and description, imposed on behalf of the Contracting States, as well as interest, administrative penalties and costs of collection or conservancy related to such amount. Article 25 of the OECD Model Tax Convention should, however, only be included in the Convention where each State concludes that, based on these factors, they can agree to provide assistance in the collection of taxes levied by the other State[62].

It can be inferred from the analysis above, that the enforcement of foreign tax claims in certain countries, mainly common law jurisdictions, still raises issues for full application of universalist cross-border insolvency rules in terms of direct access of foreign creditors, equal treatment of domestic and foreign claims in insolvency proceedings. With the tax burden becoming heavier due to the responsibilities incurred by modern states in all areas of human activity and in the light of prevailing concepts with respect to the justice of taxation, it is necessary to eliminate all possibilities of tax evasion or avoidance[63], including by abandoning the traditional Revenue Rule. The more complex the activities of taxpayers are, the more there is a need for a network of cooperation between states, meaning that the tax authorities must be able to follow their taxpayers beyond their own state borders[64]. Extraterritorial enforcement of tax claims is a necessity in a globalized world, ensuring "that every taxpayer pays what they owe, which increases voluntary compliance, fairness and efficiency of the tax systems.[65]"

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[62] Commentary on Article 27 concerning the assistance in the collection of taxes, OECD, http://www.oecd.org/tax/exchange-of-tax-information/39261225.pdf.

[63] Jean-Gabriel Castel, Foreign Tax Claims and Judgments in Canadian Courts, 42 Canadian Bar Review 306 (1964), http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1534&context=scholarly_works.

[64] Alessandra Bal, *Extraterritorial enforcement of tax claims*, 10 Bulletin for International Taxation, 9 (2011), http://www.ttn-taxation.net/pdfs/Essays/Aleksandra_Bal_Essay.pdf.

[65] *Id.*

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CHAPTER 3. ARMENIAN INSOLVENCY REGIME: DEBATE ON MOVING TOWARDS MODIFIED UNIVERSALISM

Examination of bankruptcy cases in Armenia is conducted in the procedure defined by the Civil Procedure Code of the Republic of Armenia and the Law of the Republic of Armenia on Insolvency. The legal basis of participation of foreign subjects in insolvency proceedings is defined in Article 242 of the Civil Procedure Code, which provides that foreign citizens and legal persons are entitled to apply to the courts of the Republic of Armenia for the protection of their rights and interests. This Article also defines equality before the law for foreign persons in Armenia. However, Armenia may prescribe, under part 4 of the same Article, counter-restrictions of procedural rights of foreign persons of the states the courts of which allow restrictions of procedural rights of Armenian citizens and legal persons. This latter provision may pose some obstacles for foreign subjects to freely apply to Armenian courts as creditors in insolvency proceedings. Since Armenian legal acts, according to Article 86 of the Law on Legal Acts of Armenia, are interpreted in accordance with the literal meaning of their words and expressions, this restriction would not apply in a scenario, where tax authorities of Armenia are restricted in the procedural right to apply to US courts in insolvency proceedings. . In such a case, the procedural rights of the tax authority or, broadly, of the state would be restricted, not of the citizens or legal persons. On the other hand, Article 128 of the

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Armenian Civil Code lists the Republic of Armenia among the subjects of civil legislation for which the rules, prescribed for legal persons in the civil legislation and other civil law acts, apply. Moreover, Article 129 entitles state bodies, including tax authority, to act and have standing at court on behalf of the state. This means, that by virtue of Article 242 of the Civil Procedure Code, if procedural rights of the tax authority of the Republic of Armenia, namely the right to apply to court, are restricted in a foreign country, Armenia may prescribe counter-restrictions of procedural rights of the respective authority of foreign state. It follows from the analysis of standing of foreign subjects in insolvency proceedings in Armenia that apart from the restriction contained in part 4 of Article 242, foreign subjects will generally enjoy the rights and bear the responsibilities under the Armenian insolvency system equally with local participants of the proceedings.

A limited number of provisions specifically applying to insolvency relations involving foreign subjects are envisaged in the Law on Insolvency. Part 3 of Article 2 of this Law stipulates that insolvency relations involving foreign nationals or stateless persons as a debtor are subject to regulation under the Armenian Insolvency Law, unless otherwise specified by international treaties. The Law does not make any reference to the participation of foreign creditors in the domestic insolvency proceedings. This issue is not explicitly regulated in any other provision in the Armenian Insolvency Law. However, Article 46 of the Law defines that creditors have to file their claims with the court within a one-month period after the announcement of bankruptcy of the debtor and stipulates certain requirements for submitting claims. There is no exclusion of foreign creditors in the Law from insolvency proceedings and from submitting claims in such proceedings, which means that foreign creditors are entitled, according to standing rules stipulated by the Civil Procedure Code, to lodge claims in insolvency proceedings in Armenia within one month after bankruptcy is announced[66]. As regards assets located in foreign countries, this aspect is, to some extent, regulated under Article 71 governing the attachment of the debtor's property. This Article defines that if the debtor owns property in other countries, the bankruptcy administrator applies to the courts of those countries with an order to attach such property. This is done through the Ministry of Justice of the Republic of Armenia, in the cases provided for by international treaties of the Republic of Armenia and pursuant to the decision of the relevant court of the Republic of

[66] Interview with Aleksey Sukoyan, Judge of the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts (March 22, 2017).

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Armenia. Attachment of the property in other countries, which belongs to the debtor, may only be carried out in the manner prescribed by the legislation of that country. The issue of accessing the assets located in foreign countries in insolvency proceedings is an important aspect of cross-border insolvency law. Under a universalist regime existing in the foreign country, the Armenian administrator would be automatically entitled to apply to the court in that country to collect and distribute the assets located in its territory. If "modified universalist" regime existed in that country, the Armenian administrator could apply to the court of that foreign country requesting to collect and distribute the assets, but the foreign court would have to assess and be satisfied in the level of fairness of insolvency proceedings in the Armenian court in order to grant this request. Thus, Article 71 reflects the territorialist approach, meaning that the foreign court in such a scenario, absent a treaty, will not enforce the order of the Armenian bankruptcy administrator. However, the spirit of univeralism based on commercial necessity "would encourage national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention"[67].

CONCLUSION

The analysis has shown that the Armenian Insolvency Law reflects the traditional "territorialist" approach to administering cross-border insolvency proceedings. Territorialism, unlike any of the alternatives to cross-border insolvency doctrines, does not require any special legislation and avoids conflicts among priority and other substantive insolvency rules, "because each court deals exclusively with local interests pursuant to local laws"[68]. On 17 June 2016, amendments were made to the Armenian Insolvency Law, aiming to bring it in line with the best international practice. Drafters of the Law on Amendments to the Armenian Insolvency Law initially intended to include provisions on cross-border insolvency; however, later this decision has been canceled[69]. The Ministry of Justice of Armenia substantiated this decision by that the Armenian legislation "was not yet ready to open itself to contemplate

[67] In Credit Suisse Fides Trust v Cuoghi ([1998] QB 818, 827 (CA)) Millett LJ said: "In other areas, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention …"
[68] Anderson, *supra* note 12, at 698.
[69] Interview with Narine Avagyan, Deputy Head, Department of Legal Support of the Ministry of Justice of Republic of Armenia (Feb. 8, 2017).

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cross-border insolvency provisions"[70]. Besides, the UNCITRAL Model Law itself had provided much room for debate and various concerns among scholars and legislators. Finally, the Ministry failed to find any strong justification for converting the current territorialist regime to modified universalism. Thus, under the current terrorialist system, extraterritorial dimensions of insolvency proceedings involving multinational enterprises heavily depend on the international treaty framework of Armenia. Tax claims, as one of the aspects of cross-border insolvency proceedings, are also dependent, in the absence of reciprocal "modified universalist" regulations, on treaties in order to be recognized and enforced in the court of a foreign country. It follows that in order for Armenian tax claims to be readily enforceable in jurisdictions, in which Armenian tax authorities seek satisfaction of their claims, it is necessary to conclude respective tax or mutual legal assistance treaties with numerous jurisdictions.

The expansion of treaty networks among countries is arguably a more complicated solution and a tool of less clarity and certainty than the harmonization of laws across various jurisdictions. In this paper, the theory of a global bankruptcy law is presented in contrast with the traditional territorialist insolvency systems which depend heavily on treaty regimes for regulating issues of court cooperation, collection or distribution of assets, recognition and enforcement, and other important aspects of insolvency proceedings.

The fact that 41 countries have up to now enacted the UNCITRAL Model Law on Cross Border Insolvency might speak about the lack of incentives for various states to make a step forward towards the regime of universal administration of insolvency proceedings. Armenia, is among such hesitant states. It would logically follow from the whole body of analysis provided in this paper to propose the introduction of cross-border insolvency provisions based on "modified universalism" in the Armenian Insolvency Law. However, this suggestion can be made only after properly analyzing the incentives for Armenia for doing so. One of the purposes of the Model Law, as stated in its Preamble, is to ensure greater legal certainty for trade and investment and to protect investment. It can be inferred that one of the main incentives for Armenia to shift to "modified universalism" could be increasing investor protection. Particularly, this can be understood as protection of assets of multinational enterprises operating in Armenia. Currently, such a need might not be obvious due to the

[70] *Id.*

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small number of Armenian companies operating in several countries and facing insolvency issues. However, it is not excluded that if such multinational insolvency occurs, some of the assets of the Armenian multinational in foreign countries might be administered insufficiently, decreasing their value for both the debtor, especially if it plans financial recovery, and for the creditors.

As regards the specific case of foreign tax claims, in the absence of enhanced "modified universalist" regulations both in Armenia and other countries, including countries which have enacted the Model Law but still enforce tax claims through territorialist approaches, this issue still has to be regulated through international treaties. The introduction of the UNCITRAL Model Law in the Armenian legislation might provide a solution for the issue, raised in the hypothetical scenario, where foreign tax authority will have a direct access to the Armenian court in insolvency proceeding, without the need for such access to be defined in tax treaties of Armenia. Since, there is no rule in the current Armenian legislation hindering the enforcement of foreign tax claims, Armenia might fully enact the Model Law. On the other hand, to ensure that other countries grant the same level of access to Armenian tax authorities as Armenia grants to foreign tax authorities, the legislature might keep the rule of counter-restrictions defined in part 4 of Article 242 of the Armenian Civil Procedure Code. This rule will serve as a guarantee for Armenia to ensure that its interests are respected in foreign courts in the reciprocal manner. This solution would be in the spirit of court cooperation stipulated in the Model Law.

To conclude, the enactment of the Model Law in the domestic legislation of Armenia might provide certain benefits in terms of better administering cross-border insolvency proceedings, and these benefits will be better illustrated through the restatement and resolution of hypothetical scenario suggested in the introduction. ACo, a multinational with the center of its main interests in Armenia, and with establishments in Country X and Country Y, initiates bankruptcy proceedings in the Armenian court. Due to the activities of its establishments in Country X and Country Y, ACo has accrued tax obligations in these countries, and consequently creditors in these countries have initiated bankruptcy proceedings against the establishments of ACo in Country X and Y, accordingly. Assume that both Armenia and Countries X and Y have enacted the Model Law in their domestic legal system, and that Armenia does not have tax or mutual legal assistance treaties with any of these countries.

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Under the universalist regime, Country X will be able to enforce the claims of its tax authority to levy the resident taxes due, even in absence of sufficient assets in Country X, through the procedure established by the respective article of the Armenian Insolvency Law on direct access of foreign creditors to proceedings in Armenia. Thus, the different levels of access to assets of the same debtor in Armenia and in Country X would no longer pose problems for proper administration of these assets, as long as the Armenian court would ensure the equal treatment of its local creditors and of the tax authority of Country X.

On the other hand, the establishment of ACo has assets in Country Y, and its tax authority, among other creditors, has lodged claims with the court in Country Y. When it becomes known to the Armenian court, conducting the main proceedings against the multinational debtor, that a court in Country Y conducts proceedings involving the same debtor, it notifies under the simplified procedure of the respective article of the Armenian Insolvency Law the creditors in Country Y of the proceedings conducted in Armenia. The creditors lodge claims with the Armenian court within the time limits mentioned in the notice. The Armenian court recognizes all these creditors, among them the claims of the tax authority of Country Y. However, assume that the foreign tax claims in Country Y are unenforceable unless there is a respective international treaty. Since there is no treaty between Armenia and Country Y, and consequently the court in Country Y would refuse to recognize the claims of the tax authority of Armenia, the Armenian court will prescribe counter restrictions against the tax authority of Country Y. The Armenian court will either decide not to recognize the tax authority of Country as a creditor, or will recognize it as a creditor, but will not ensure cross-priority, *i.e.* will not grant the tax authority the same priority as it grants to local creditors.

These two hypothetical scenarios show in a practical manner the benefits to be achieved due to the enactment of the UNCITRAL Model Law with the slight modification that Armenia will prescribe counter restrictions in case the procedural rights of Armenian creditors are violated in the courts of a foreign country. At the same time, the research suggest combining this solution with the expansion of the network of tax and mutual legal assistance treaties in order to simplify the process of court cooperation in cross-border insolvency cases.

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