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Conflict regulation of across-the-border insolvency (Draft of the new Russian regulation)

For across-the-border insolvency is typical the situation of legal uncertainty. The differences in the legal regulation in different states do not allow to fully realize the capabilities and objectives of the institution of bankruptcy, including protecting the rights and interests of foreign creditors. The conflicts of different legal orders create the contradictions in the character and spirit of the bankruptcy proceedings. Currently, there is an objective need for uniform regulation of the institute of across-the-border insolvency. In this regard, the United Nations Commission on International Trade Law (UNCITRAL) in accordance with UN General Assembly on December 2, 2004 N 59/40 encouraged all states to consider the adoption of the Model Law "On the Across-the-Border Insolvency."

The institute of across-the -border insolvency is the independent branch in the system of PIL. There are some fundamental difficulties with seeking to resolve such traditional matters of PIL/ICP, as the questions of competent jurisdiction and the choice of law. In this connection a model of the legal regulation of the institute of across-the-border insolvency is very important. Modern national legal regulation of these problems may be classified into five groups:

1. Bankruptcy law includes the separate special norms, which regulate particular questions of across-the-border insolvency (Italy, Liechtenstein, Moldova). The most modern legislators all over the world prefer this way. But at the moment, this model is outdated and least meet modern challenges of across-the-border insolvency regulation.

2. Some units are included in general bankruptcy laws which are focused on

solving complex of the most difficult questions of across-the-border insolvency (Spain – "The Law of Competitive Proceeding" (2003) (Unit IX "The Rules of PIL"); Germany – Ch. 11 "The Provision of the Insolvency" (1994) and art. 102 of the Introductory Law to him; Georgia – "The Law on the Production of Insolvency Proceedings" (2007) (Ch. VII "The Proceedings of Insolvency abroad"); United States – "The Bankruptcy Code" (Title 11, U.S. Code of Federal Regulations, Ch. 15 "Auxiliary Procedures and other International Affairs")). This is a more modern model of the regulation. But such way is not to be optimal from the point of view of the inclusion of across-the-border insolvency in the structure of PIL.

3. The adoption of particular laws regulated the most important questions of across-the-border insolvency (Japan – "The Law on the Recognition of Foreign Insolvency Proceedings and Cooperation" (2000)), or separate laws which are entirely devoted to the management of this institute (Romania – "The Law on Private International Law in the Area of Bankruptcy" (2002); United Kingdom – "The Insolvency Act" (2000) and Rules on across-the-border insolvency (2006)). This is a higher standard of normative regulation. Perhaps because of the difficult and complex nature of across-the-border insolvency, this approach seems the most appropriate for a modern legislator.

4. A national legislator includes in the acts of the codification of PIL/ICP some certain provisions devoted to across-the-border insolvency regulation (art. 2105 Civil Code of Peru (1984), art. 41 "The Law on Private International Law" of Venezuela (1998)). This approach suggests the recognition of across-the-border insolvency as a part of PIL/ICP.

5. The last point is the inclusion of some units for the regulation of across-the-border insolvency in general codification's acts of PIL/ICP (Switzerland – "The Law on Private International Law" (1987) (Ch. 11 "The failure of the settlement agreement and in bankruptcy proceedings"), Belgium – "The Code of Private International Law" (2004) (Ch. XI "Production on wealth distribution in bankruptcy"), the Czech Republic – a draft "The Law on Private International Law" (2012) (Ch. 6 "Bankruptcy"). This legislative solution in terms of PIL is the

highest and the best standard of the regulation.

Russian regulation

The current Russian legislation adheres to the first model of the regulation of across-the-border insolvency. In the modern Russian legislation acts the Federal Law 26.10.2002 "About Insolvency (Bankruptcy) ". The Act mentions the term "the across-the-border insolvency", but it contains no legal definition of this institution. There was a question on the official website of the Federal Registration Service in 2005 – how should we understand the term the across-the-border insolvency? The Russian Federal Registration Service noted the absence of legal definitions and suggested sending to UNCITRAL Model Law of Across-the-Border Insolvency.

The law defines authorized in the across-the-border insolvency authorities, but does not set any rules relating to bankruptcy, associated with foreign law. In particular, the law does not provide the possibility of excitation in Russia further proceeding under the insolvency of foreign debtor.

In theory, international agreements about the legal aid constitute the legal basis for regulating the across-the-border insolvency in the Russia. At the moment Russia did not sign any special international agreement, devoted to the across-the-border insolvency. Russian Bankruptcy Law provides that in the absence of international agreements the decisions of foreign insolvency courts recognize in the territory of the Russia on a reciprocal basis.

Currently, there is integrated, inter-regulation of the institution of the across-the-border insolvency in Russia. There are basic standards:

1. The rule in art. 65 Civil Code of the Russian Federation. This Rule defines that bankruptcy is the special order of a corporation's liquidation.
2. The rule in art. 1202 Russian Civil Code. This Rule defines, that the termination of a corporation is resolved by their personal law.
3. Some Rules in Russian Bankruptcy Law 2002 г. (art. 1, 131).
4. Some Rules in Arbitrazh¹ Procedure Code of the Russian Federation about

¹ Arbitrazh – Arbitration (Business) Court of the Russian Federation, the State Arbitration.

the order of recognition and enforcement of foreign judgments and cases involving foreign parties.

Russian and foreign creditors, who participate in the proceeding in the bankruptcy case, have equal rights. Art. 131 Russian Bankruptcy Law provides for the inclusion in the bankruptcy estate all debtor's property, including abroad. This suggests that the Russian bankruptcy law focuses on the implementation of the principle of universality.

If the Russian company is the parent company for foreign one, the bankruptcy petition of the Russian company does not serve under Russian law as grounds for the institution of the bankruptcy case of foreign company. Such bases are determined in accordance with applicable foreign law. A Russian court has no power to declare as bankrupt a foreign company registered abroad. However, the Russian legislation gives the administrator the duty to take measures to search for, identify and return the debtor's property, including those located abroad. Law of the State in whose territory the debtor's property is, shall apply to the foreign assets of Russian companies. If it is a subsidiary of a Russian legal entity, then the bankruptcy proceedings should apply a foreign law. The Russian legislation doesn't contain the provisions regulating the bankruptcy of multinational companies.

Russian Bankruptcy Law (art. 1) provides for the recognition of foreign court's decisions of insolvency. Foreign bankruptcy claims administrator must apply to the court competent for the issuance of exequaturs and get an appropriate definition of acceptance. This position is broadly consistent with the provisions of UNCITRAL Model Law of Across-the-Border Insolvency.

Art. 248 Russian Arbitrazh Procedure Code includes the disputes, which are connected with the establishment, liquidation or registration in Russian territory of legal entities, are in the exclusive competence of the Russian state arbitrazh courts. Thus, a foreign decision to declare the bankruptcy of debtor registered in Russia, but having a center of main interests in another country, shall not be recognized.

Special complex conflict regulation of the across-the-border insolvency in

Russian PIL is completely absent. There are no clearly articulated conflict rules in Russian PIL, which would determine the statute of the across-the-border insolvency. In Russian law doctrine expressed the view that Bankruptcy law is an act, which rules are *lex fori concursus*. Unfortunately, the Act does not allow to define the limits of the application of *lex fori concursus* or delimit its application to other conflict rules. For example, it is unclear which law should apply to labor relations related to bankruptcy, or how to set the law applicable to the real right of the debtor.

Only conflict rule which can be adequate to situations of across-the-border insolvency is art. 1202 Russian Civil Code (about the application *lex societatis* of the insolvent company to the questions of its creation, reorganization or liquidation). Such an interpretation stems from that that the bankruptcy is a special order of the liquidation of a legal entity (art. 65 Russian Civil Code, art. 149 Bankruptcy Law).

This conclusion was confirmed in practice of Federal Arbitrazh Court of the Moscow District (2005): Russian organization filed a lawsuit from a failure of contractual obligations to the American firm. The American bankruptcy claims administrator notified that the defendant was under bankruptcy. For this reason, all proceedings against the defendant shall be suspended (art. 362 U.S. Bankruptcy Code).

Federal Arbitrazh Court decided, that the questions of the liquidation relate to the personal statute of a legal entity and regulate by his personal law. According to art. 1202 Russian Civil Code the personal law of the defendant is the law to the U.S. (the defendant established and registered in Houston). In this regard, the FAC found that issues relating to bankruptcy must also be addressed by U.S. law. On this basis, the FAC has stopped proceeding.

At the same time it should be noted that a rate art. 1202 Russian Civil Code is not able to provide the necessary conflict-law regulation of relations in the across-the-border insolvency. In particular, this rule may not apply to legal relationships arising during rehabilitation procedures. *Lex fori concursus* is the main but not the

sole conflict rule that determines the law applicable to the across-the-border insolvency. At the moment we have a unique situation – decisions of Russian courts of bankruptcy are not recognized and enforced abroad. The situation is mirrored in respect of foreign decisions of bankruptcy in Russia – as a rule they are not recognized and enforced.

Currently, the practice of dealing with cases of across-the-border insolvency in Russia is limited to cases involving foreign creditors (for example, the cassation decision of the Federal Arbitrazh Court of the Moscow District on September 26, 2006 in the case N KG-A40/7072-06-A). In addition, the Russian arbitrazh courts consider questions of the recognition in the Russian Federation the foreign judgments in the cases of the insolvency (for example, the determination of the Arbitrazh Court of St. Petersburg and the Leningrad region of 26 February 2006 on the case N A56-56528/2005, the determination of the Supreme Arbitrazh Court of the Russian Federation on 11 March 2008 N 14334/07). But these cases are very isolated. The statistic on bankruptcy cases involving foreign persons absents at all.

In accordance with the decision of the United Nations Commission on International Trade Law (UNCITRAL) and the UN General Assembly on December 2, 2004 № 59/40 in the Russian Federation developed a draft “The Law on the Across-the-Border Insolvency (Bankruptcy)” (25.02.2011). An independent expertise of this project is conducted, and the professional community continues its discussion.

The rules established by the project, determine the features of the regulation of relations connected with the across-the-border insolvency: the competence of the Russian arbitrazh courts in cases of across-the-border insolvency; the applicable law, the procedure and the reasons of the recognition and the enforcement of foreign courts’ judgments in cases of bankruptcy. The project proposes the definition of the across-the-border insolvency – there are relations related to the bankruptcy of legal entities and (or) individual entrepreneurs, complicated by a foreign element. A foreign element is defined quite complex and detailed:

- the property of the debtor is abroad;
- the creditor is a foreign national or a foreign legal entity;
- a judicial or an administrative proceeding, including an interim proceeding, in a foreign country according with the legislation on insolvency (bankruptcy) is initiated and carried out in respect of the debtor;
 - within the framework of such proceeding the property and the activities of the debtor are subjects to control or supervision by a foreign court, in order to restore solvency and (or) liquidation.

The project offered an interesting glossary of key terms:

- a foreign proceedings is a judicial or an administrative proceeding, including an interim proceeding, which is initiated and carried out in a foreign country in accordance with its legislation, and in which the property and the activities of the debtor are subjects to control or supervision by a foreign court, in order to restore solvency and (or) liquidation;
- a foreign court is the court or other authority of a foreign country, who is competent to initiate proceedings in the bankruptcy case, to open bankruptcy proceedings or to make decisions within the framework of these procedures, as well as to control or supervise a foreign proceeding;
- a bankruptcy claims administrator of a foreign proceeding is a natural or a legal person, including one appointed on an interim basis, which in a foreign proceeding is authorized to carry out actions aimed at restoring the debtor's solvency or its liquidation and (or) the proportionate distribution of its assets among the creditors, as well as to act as a representative of creditors in a foreign proceeding;
- a non-main proceeding is the proceeding of the bankruptcy, excited and placed in the state in which is the permanent establishment or the property of the debtor;
- a main proceeding is the proceeding of the bankruptcy, excited and placed in the state in which is the center of main interests of the debtor;
- a permanent establishment is the branch office, the department, the bureau,

the office, the agency or any other separate unit or other place of business of a foreign legal entity through which it regularly carries out a non-transitory business activities in the Russian Federation;

- the debtor's center of main interests is the debtor's place of registration as a legal entity or as an individual entrepreneur, unless otherwise provided by law, or follows from the activity of the debtor or any other or other circumstances of the case.

The cases of the across-the-border insolvency of the debtors – Russian and foreign legal entities and individual entrepreneurs – are considering arbitrazh courts of the Russian Federation, if:

- the center of main interests of a debtor – a Russian or a foreign legal entity or an individual entrepreneur – is located in the territory of the Russian Federation, and if the center of the debtor's main interests of a controlling Russian or a foreign legal entity or an individual entrepreneur is in the territory of the Russian Federation (a main proceeding);

- the permanent establishment and (or) the property of the debtor – a Russian or a foreign legal entity or an individual entrepreneur – is located in the territory of the Russian Federation, and the center of the debtor's main interests is located in a foreign country (non-main proceeding).

The bankruptcy proceeding against the debtor which carries on business and the center of its main interests is located in the Russian Federation, refers to the exclusive jurisdiction of arbitrazh courts of the Russian Federation. Russian arbitrazh courts consider cases on the recognition and the enforcement of foreign judgments acts on an initiation of bankruptcy proceedings, on the approval of settlement agreements, on the appointment of the manager in bankruptcy.

The draft of the new Russian law establishes as a basic jurisdictional criterion the debtor's center of main interests. This decision is consistent with the main modern approaches outlined, including in EU law. In addition, the project establishes a list of default jurisdictional criteria (in order to clarify the main criterion).

For the determination the debtor's center of main interests are taken into account circumstances occurring during the three years prior to the date of application for a bankruptcy:

- the location of the fixed assets of the debtor;
- the location of the majority of the creditors of the debtor;
- the location of productive resources of the debtor;
- the place of business of the debtor;
- the place of extraction of most of the profits of the debtor;
- the place in which is the reorganization of the debtor;
- the nature of the basic obligations of the debtor, in particular, the place of their origin and execution;
- the location of the debtor's control persons;
- other circumstances that indicate a significant association of the debtor with the territory of the state.

The court in the determination of the debtor's center of main interests may consider the evidence for the creditors of these circumstances. If these circumstances to the creditor were not obvious, the court can not consider them.

The draft of the new Russian law provides for the possibility of non-main proceeding's instituting in the case of across-the-border insolvency in Russia:

1. If the debtor's center of main interests is located abroad, the arbitrazh court of the Russian Federation shall have the right to institute the proceeding in the bankruptcy case:

- if the debtor's seat has the permanent mission in the Russian Federation,
- if an application for a bankruptcy the creditor submits, having a residence or a location in the territory of the Russian Federation,
- if an application for a bankruptcy is based on the requirements associated with the activities of debtor's permanent representative office in the Russian Federation.

2. When the debtor's center of main interests is located abroad and there is no permanent establishment of the debtor in the Russian Federation, the arbitrazh

court of the Russian Federation shall have the right to consider the case on across-the-border insolvency in case a debtor's property is in the territory of the Russian Federation, if:

- the bankruptcy proceedings do not may be instituted against the debtor in the state where is the center of its main interests;
- in accordance with the law of the state in which initiated the main proceeding in the case of bankruptcy, the foreign proceeding as a whole (or a separate procedure) covers only the debtor's assets situated in the territory of that state;
- the arbitrazh court of the Russian Federation refused to recognize the main proceeding opened on the territory of a foreign state;
- the arbitrazh court of the Russian Federation initiated the proceeding in the bankruptcy case in Russia as a part of the recognition of an foreign court's act in a bankruptcy which has the nature of the main proceeding.

The non-main proceeding applies to debtor's property situated in the territory of the Russian Federation.

The most important change in Russian legislation proposed in the project is the detailed regulation of rules of law applicable to the relationship of the across-the-border insolvency (art. 7):

1. By the bankruptcy proceedings and their consequences, except the cases specifically provided by in the law, the applicable law is the law of the country in which the bankruptcy's proceedings have been initiated.

2. Law of the country in which the proceedings have been initiated in the bankruptcy case, determines the base necessary for the initiation of the bankruptcy proceedings and the opening of individual bankruptcy, the order of their implementation and termination, in particular:

- the list of persons against whom the bankruptcy proceedings may be instituted;
- the debtor's property, to be added to the bankruptcy estate, as well as for the assets acquired or alienated by the debtor after the commencement of the

bankruptcy case;

- the rights and responsibilities of the bankruptcy claims administrator, the debtor, creditors and other parties involved in the bankruptcy case;

- the grounds and the admissibility of set-off;

- the consequences of initiation of bankruptcy proceedings and the introduction of separate bankruptcy proceedings in respect of the obligations entered into by the debtor;

- the consequences of the initiation of bankruptcy proceedings and the introduction of separate insolvency proceedings against litigation, including enforcement proceedings, to which the debtor is a party;

- the requirements that may be brought against the debtor's property and how they meet after the commencement of the bankruptcy case and (or) the introduction of separate bankruptcy proceedings;

- the admissibility and the procedure for establishing, testing and listing of requirements;

- the allocation of funds after the sale of property of the debtor, the order and the priority of creditors,

- the rights of creditors who have received the partial satisfaction of their claims after the commencement of the bankruptcy case;

- the bases and the consequences of termination of the bankruptcy proceedings, including the approval of the settlement agreement;

- the creditors' rights after the termination of the bankruptcy proceedings;

- the allocation of costs associated with the production of the bankruptcy proceedings;

- the procedure for challenging transactions that violate the rights and legitimate interests of creditors (committed to the detriment of creditors).

3. Said the applicable law does not affect labor relations and employment contracts of employees of the debtor, as well as contracts and rights to immovable property situated in the territory of the Russian Federation.

4. The right of set-off counterclaims, as well as proprietary and (or) the

security rights of creditors arising before the commencement of the bankruptcy proceedings are not affected by the excitation of the proceedings of bankruptcy and may be implemented in accordance with the law applicable to these relations.

The main point of contact is *lex fori concursus*. In project details and lists in detail the specific situations in which certain conflict rule applied. This approach is broadly consistent with the recommendations of the UNCITRAL Legislative Guide on Insolvency Law (2005), which is a reference document for the preparation of new laws and rules.

In 2009 the UNCITRAL (the Working Group V) has prepared Draft UNCITRAL Notes on cooperation, communication and coordination in the proceeding in cases of the across-the-border insolvency. The Draft UNCITRAL states that when the production of the insolvency proceedings involve parties or assets in different countries, there may be difficult questions in the choice of law rules to be applied to the validity and effectiveness of rights in such assets or claims against these assets, these assets to the regime, to the rights or needs of the parties outside of the state, where it was opened insolvency proceedings. The production of the insolvency proceedings are generally governed by the law of the State in which it is brought (*lex fori concursus*), but many states have adopted exceptions to this rule. The list of such exceptions, as well as their coverage and the basic rationale are different in different countries. The differences in the number and scope of these exemptions create uncertainty and unpredictability for the parties involved in the proceeding of the across-the-border insolvency. A concrete decision in the insolvency law issues choice of law rules can contribute to the elucidation of the effects of cases of insolvency for the rights and claims of the parties.

It seems that art. 7 of the draft of the new Russian law takes into account the Recommendations of the UNCITRAL (2009).

From the application of *lex fori concursus* the Russian draft excludes labor relations and employment contracts of employees of the debtor, as well as contracts and rights to immovable property situated in the territory of the Russian

Federation. Unfortunately, the project competent to these questions right is not explicitly defined. For example, with respect to employment contracts should provide for special (often mandatory) protective measures in the form of creating financial security for workers, imposing restrictions on the termination or change of employment contracts in the event of insolvency. The justification of such provisions is the protection of reasonable expectations of employees in respect of their employment contract, the principle of "protecting the weaker party". In respect of contracts and property rights for the Russian immovable property should just install the application *lex rei sitae*.

The right of set-off counterclaims, as well as the proprietary and (or) the security rights of creditors arising before the commencement of the bankruptcy case may be implemented in accordance with the law applicable to these relations (*lex causae*).

As a rule, from the application of *lex fori concursus* are excluded payment or settlement systems and regulated financial markets. Following the appeal to the law applicable to the system or a regulated market, it is possible to avoid interference with the operation of payment and settlement mechanisms, which avoids a systemic risk. The consequences of the production of the insolvency proceedings on the rights and obligations of participants in a payment or settlement system or a regulated financial market shall be governed solely by the law applicable to that system or market. Unfortunately, the Russian project does not provide such rule.

The recognition and enforcement in the territory of the Russian Federation of foreign courts decisions of bankruptcy are determined by Russian law, unless otherwise provided by international treaty. In the absence of an international treaty the judicial decisions by foreign courts in cases of bankruptcy, are recognized in the territory of the Russian Federation on the basis of reciprocity. When the recognition of a foreign act depends from the reciprocity, it is assumed that it exists, unless proven otherwise. Thus, the Russian draft did not put the possibility of recognition and enforcement of foreign decisions in bankruptcy cases in directly

dependent on the presence of an international agreement. In the absence of such agreement, the principle of reciprocity is crucial, and the presence of reciprocity is presumed, but it must prove its absence.

The cases on the recognition and enforcement of foreign judgements in bankruptcy cases are considered by the arbitrazh court according to the norms of arbitrazh procedure legislation of the Russian Federation, with the corresponding features, where international treaties of the Russian Federation stipulate otherwise.

The application for recognition of an act of a foreign court in a bankruptcy can be filed the bankruptcy claims administrator of foreign proceeding, the debtor, creditors and other stakeholders. If the location of the debtor is abroad, the application is made on the location of the permanent mission of the debtor or if there is no permanent establishment of the debtor or his whereabouts are unknown, on the location of the debtor's property. If the debtor has few permanent missions relating to the jurisdiction of several arbitrazh courts, or if the debtor's property belongs to the jurisdiction of several arbitrazh courts, the case is considered by the arbitrazh court, which the first made a statement to his production. If the debtor's property in the territory of the Russian Federation is the right to claim that the location of this property is the location of the debtor under this requirement.

For the recognition and enforcement in the territory of the Russian Federation a decision of a foreign court shall enter into force. Russian arbitrazh court must take into account the urgency of the application for the recognition of an act of a foreign court. After making a statement declaring an act of a foreign court in a bankruptcy an arbitrazh court at the request of the applicant or any other person involved in the case, may take interim measures to ensure the safety of property of the debtor's property interests or security of the applicant (creditor), and the debtor. The determination to take measures to ensure the interests of creditors and the debtor shall take effect immediately and may be appealed. The appeal of this definition does not suspend its execution.

A Russian arbitrazh court refuses to recognize the act of a foreign court in a bankruptcy whole or in part, if:

- an judicial act according to the law of the State in which it was adopted, has not entered into force;
- the debtor's creditors were not timely and properly notified of the opening of foreign proceeding, provided that the participation of these creditors in the proceedings could materially affect the outcome of the bankruptcy case, and in the event of a material breach of the procedure for compiling and maintaining of the register of creditors' claims, in other cases a substantial violation of the rights of creditors or the debtor and other persons involved in the proceedings, including a foreign proceeding;
- the debtor was not timely and properly notified about the opening of a foreign proceeding against him;
- the examination of the case in accordance with the international treaty or federal law within the exclusive jurisdiction of a court in the Russian Federation;
- a foreign proceeding does not meet the criteria of a foreign production, as they are defined in the Russian legislation on the cross-the-border insolvency;
- the recognition of the act of a foreign court would be contrary to the public policy of the Russian Federation.

The decision of an arbitrazh court to recognize the act of a foreign court in a bankruptcy must indicate the legal consequences of the act of recognition of a foreign court in a bankruptcy. If the decision of the arbitrazh court to recognize the act of a foreign court in a bankruptcy provides an indication of the recognition of a foreign main proceeding without following the commencement of, or opening separate procedures in Russia, the decision of the arbitrazh court shall entail the same legal effect as the act of a foreign court to institute a foreign production.

The decision of arbitrazh court to recognize the act of a foreign court in a bankruptcy case shall take effect immediately and may be appealed by the bankruptcy claims administrator of foreign proceeding, the debtor, creditors and other stakeholders. The appeal of this decision does not preclude the making of the proceedings in the bankruptcy case and the basis for the suspension of such action.

If the decision of an arbitrazh court to recognize the act of a foreign court in a

bankruptcy case provides an indication of the recognition of a foreign proceeding without following the commencement of, and (or) the opening of separate procedures in Russia, all the relations associated with the bankruptcy procedure will be governed by the law of the country whose territory was open foreign proceeding (art. 14). This rule establishes the absolute priority of *lex fori concursus*. In this case, the application of the rules of a foreign *lex fori concursus* not be contrary to the public policy of the Russian Federation and does not affect the operation of the rules of direct application of Russian law, under art. 1192 of the Civil Code, and except as otherwise is provided by law (obviously, this refers to exceptions to the *lex fori concursus* listed in art. 7).

The bankruptcy claims administrator of foreign proceeding shall be entitled in the territory of the Russian all powers that the administrator has under the law of the state where the excitation of the main production (according *lex fori concursus*), including:

to submit an application for the recognition of a foreign court for an act of bankruptcy;

to include the property located in the territory of the Russian Federation or of a foreign country, in the bankruptcy proceedings in the foreign bankruptcy proceedings.

The arbitrazh court on the application of the person whose rights and interests are violated by the actions of bankruptcy claims administrator of foreign proceeding taking place in the territory of the Russian Federation, may issue an order prohibiting the implementation of the powers of a foreign proceeding, if they are contrary to the public policy of the Russian Federation.

The bankruptcy claims administrator, approved by the arbitrazh court of the Russian Federation in the main proceedings in the case of the across-the-border insolvency, shall be entitled to a foreign country all the powers that the liquidator has, in accordance with Russian law and his authority:

- to intervene in any proceedings instituted in the foreign country in which the debtor is a party or called for the production of the debtor;

- to submit to a foreign court application (petition), including the application for recognition of acts of bankruptcy proceedings of the arbitrazh court of the Russian Federation, to apply for change or terminate any prescribed law of a foreign state judicial assistance as is necessary to protect the property of the debtor or the interests of creditors;

- to include the property located in the territory of a foreign state, in the bankruptcy of the main proceedings on the bankruptcy proceeding, instituted in the territory of the Russian Federation;

- to cooperate with foreign courts or foreign control in cases of the across-the-border insolvency.

The applicant and other interested persons may apply for a bankruptcy and initiate non-main proceedings in the bankruptcy case and (or) the opening of bankruptcy proceedings in the proceedings in the bankruptcy case in Russia, which would be a consequence of the recognition of the primary production open in a foreign country.

If the decision of an arbitrazh court to recognize the act of a foreign court in a bankruptcy provides an indication of the subsequent stimulation of production and (or) the opening of individual procedures in the production of the bankruptcy proceedings in the territory of the Russian Federation, the subsequent production is regulated in accordance with Russian law.

If the debtor has no assets sufficient to meet all claims of creditors involved in the bankruptcy proceedings on which is carried out in the territory of the Russian Federation, the creditors whose claims have not been satisfied in full, may seek satisfaction of their claims in a foreign proceeding. The requirements of these creditors are after them lenders equal to the queue (having uniform requirements) will also receive a corresponding proportional satisfaction of their claims. If after payments to creditors in the bankruptcy of the debtor, which was carried out in the territory of the Russian Federation remains the property of the debtor the said property is transferred to a foreign proceeding in a bankruptcy debtor.

Cooperation in cases of across-the-border insolvencies done in the case of the

discovery of several productions in the bankruptcy case in several states, between which there is no international agreement. Cooperation in the case of across-the-border insolvency may take the following forms:

- the transmission of information by any means which the courts having jurisdiction over the bankruptcy case, deem appropriate;
- the exchange of information between the bankruptcy claims administrator of foreign proceeding and arbitrazh administrator, approved in bankruptcy;
- the coordination of asset management and affairs of the debtor and their supervision;
- the approval or implementation by courts dealing with the case of bankruptcy, the agreements on the coordination of proceedings in cases of bankruptcy;
- the cooperation in identifying the debtor's property, as well as its safety to satisfy the claims of creditors in a variety of productions.

The draft of federal law "On the Across-the-Border Insolvency (Bankruptcy)" has been prepared pursuant to p. 104-106 of the Plan of actions for the implementation of anti-crisis measures of the Government of the Russian Federation (2009), and p. 77 of the Plan of mainstream anti-crisis measures and policies to modernize the Russian economy of the Government of the Russian Federation (2010). The draft of the new Russian law allows for the modern trends in the international regulation of across-the-border insolvency – UNCITRAL Model Law on Across-the-Border Insolvency (1997), EU Council Regulation on the production of the insolvency of May 29, 2000 N 1346/2000.

In the case of the adoption of this act Russia will enter the group of countries that have introduced in its legislation the third model of the across-the-border insolvency regulation (the presence of a specific law, entirely dedicated to the regulation of across-the-border insolvency).