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**PROBLEM OF IMPERFECTION OF THE  
CROSS-BORDER BANKRUPTCY PROCEDURE:  
THEORETICAL-METHODOLOGICAL ASPECT**

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***Abstract***

The relevance of the research is due to the presence of a number of problems in the framework of the methodology of cross-border insolvency. The article focuses on the need to disclose information about the obligations of the group and affiliated organizations in the framework of the cross-border insolvency procedure, to exclude the possibility of manipulation and abuse of jurisdictions in determining the center of primary interest (COMI-standard) when declaring members of a group or interdependent persons bankrupt. The main approach is to change the principle of limited liability, the ability to open the main and minor parallel (auxiliary) proceedings in a bankruptcy case based on the criterion of incorporation of controlling persons, expanding the concept of controlled debt in order to prevent the initiation of fictitious and deliberate bankruptcies and damage to the economic system of the host country. The materials of the article are of practical value for public authorities that control the cases of cross-border insolvency (bankruptcy), practicing experts in the field of bankruptcy of members of a group of legal entities that have branches and separate subdivisions in two or more receiving countries. At the heart of a research of the procedure of cross-border insolvency, the following methods are used:

- theoretical (collecting basic data);
- statistical (collecting, the report and the analysis of data, processing of the obtained data);
- empirical (studying of the national and international legislative standards regulating holding procedures of bankruptcy and cross-border bankruptcy, standard documentation; observation).

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**Keywords:** Insolvency of group of companies, COMI standard, corporate group, cross-border bankruptcy, procedures of insolvency, insolvency assessment.



## 1. Introduction

The modern world economy is characterized by a high degree of concentration of capital, which, naturally, leads to the formation of dominant subjects controlling production sectors and market segments in many countries of the world. A distinctive feature of such economic entities is the existence of a system of effective control over the activities of the whole group, a single center of business activity and key decisions. The peculiarity of the economic situation of such subjects of the market is considerable autonomy in relation to the states, since related companies are created in several countries - the principle of transnationalization.

It is known, that the main indicator of the effectiveness of economic regulation of relations in the field of economic activity of economic entities and groups of individuals is to ensure sustainable economic growth in the host country (the recipient country). The institution of insolvency (bankruptcy), as part of the control mechanism, is aimed at creating a stable market environment. At the same time, the result of control is expressed not only in the preservation of the economic entity, but also in the distribution of the competitive mass (taking national rules into account), which implies a balance of interests of the parties involved in the cross-border insolvency procedure (bankruptcy), including government agencies.

As the process of international economic integration intensifies, legal relations are increasingly emerging within the framework of several legal orders. Relations that arise in the insolvency of individuals are no exception. Crisis phenomena of the world economy contribute to an increase in the number of international bankruptcies (Sobina, 2012). In case of such persons, open bankruptcy cases may be opened in several countries. One bankruptcy case may be instituted, however, the debtor's creditors or its property may be located in other states, therefore, during the consideration of a cross-border insolvency case, two or more legal systems may be applied.

Modern groups of people can conduct financial and economic activities (not always public) exclusively on the back - capital outflows and inflows; they have a diverse corporate structure based on contracts of subordination, which makes it difficult to determine the center of core interests, the jurisdiction to initiate a case and system of group of persons. Quite often, structural units are independent legal entities based on a system of participation in authorized (share and joint) capital and subordination agreements (joint activity and association agreements, licensing, distribution agreements, franchising) formally or implicitly set out the relationship of economic dependence of subjects and acting under the laws of the host states. Such groups of individuals may not be affiliated, but they are subject to a single management system, may include up to 500 legal entities, including in low-tax jurisdictions, may actually not conduct business and are used exclusively to hold assets, loans and operating profits, bypassing the legislation on controlled foreign companies and masking deals with elements of transfer education.

Modern associations of legal entities may include credit institutions, telecommunications holdings, insurance and auditing companies, production associations, non-state pension funds in the group, which naturally leads to the need for additional research to identify the causes of bankruptcy. Increased market share controls, active mergers, and international criticism force companies consisting of groups to move production (including hazardous) to host countries, usually with low wages, and to continue their business activities through controlled, isolated regional legal entities.

Quite often, the standard form of behavior of companies with cross-border capital is the unfair use of benefits, which provide opportunities for doing business through the corporate form and building a business model divided into risky and risk-free parts. That, in turn, allows such companies to recognize, if necessary, in a short time bankrupt the risk part of the holding structure and continue to conduct business, without losing the core assets. Thus, the control of the company, including risky and risk-free assets, is centralized and in a single system of subordination.

It is important to note that for the purposes of this article the terms “group of persons” and “interdependent companies” or “affiliated companies” are not used interchangeably..

## **2. Problem Statement**

The main objectives of the study are:

1. Clarification of the basic principles in the field of regulation of relations involving cross-border insolvency.

When trying to resolve the relationship associated with cross-border failure, two main models emerged universalism and territorialism (Mokhova, 2007, 2012). The model of universalism is based on two independent principles - the universality and unity of the proceedings on the insolvency (bankruptcy) case.

The principle of universality presupposes that all the property of the debtor is included in the bankruptcy procedure (both located in the state that initiated the procedure and abroad), and the judicial acts in a bankruptcy case acquire an extraterritorial effect.

The principle of unity of bankruptcy proceedings means that only one court (the court of the debtor’s base country) has jurisdiction over all the assets of the debtor and distributes them in accordance with national law. The main advantages of universalism, as indicated by Torremans (2002), is the maximum observance of equality of creditors and the possibility of combining all the assets of the debtor in a single procedure. Lenders are prevented from acting on an individual basis, and the cross-border bankruptcy procedure makes the process uniform. When all debts and all property of the debtor are concentrated in one place, one manager is appointed, and the procedure is carried out according to uniform national rules.

Wood (2007) considers the advantages of the universalism model: facilitating control over the actions of all creditors; low cost of the procedure; equality of creditors (all creditors participate in the procedure on an equal basis); application of uniform rules for limiting the actions of creditors; predictability.

Universality has two manifestations: internal versatility, manifested in the inclusion in the competitive mass of the main production of all debtor’s assets, including those located abroad and external universality, which consists in recognizing foreign production and its consequences in other states. Interest is the principle of external universality, because it allows giving extraterritoriality to judicial acts adopted in the framework of the insolvency case and acts as a mechanism for regulating relations of cross-border insolvency in the absence of international treaties.

Currently, the problem of low coordination in the conduct of insolvency procedures requires the consolidation of universal rules for the conduct of insolvency procedures and the need to expand the

existing models for managing cross-border insolvency. The evolution of consolidated groups demonstrates the need to expand approaches in initiating major and secondary cross-border insolvency cases, effectively coordinate actions and eliminate violations of the principle of equality of creditors. In order to achieve a balance, initiatives of states should be developed in terms of creating effective mechanisms to control the cross-border insolvency procedure.

2. Identification and evaluation of contractual relations in the group of interdependent legal entities and identification of controlled debt.

A distinctive feature of a group of legal entities is the separation of its assets and liabilities, formed by a set of constituent and other contracts from other assets and liabilities owned by shareholders, which can be transferred to a legal entity, subsidiary or associated company. The independent legal capacity of the corporation contributes to the transfer of the totality of contracts and resources in general. A set of contracts of a corporation is formed by various types of agreements, differing in type, composition, terms, amount and amount of sanctions. From an economic point of view, the contract serves for the exchange of property rights and a mechanism for the efficient allocation of resources.

The form of financial statements may not always reflect information about related, interdependent and controlled entities, and the flexible reflection of active balance sheet items under IFRS allows for the reflection of reserves in the composition of short-term and long-term payables, regardless of the timing of obligations. In addition, the disclosure in the reporting of information on estimated liabilities is not strictly regulated, and therefore complicates the assessment of insolvency and determination of the fictitiousness of liabilities based on financial statements prepared under IFRS (Baneeva & Samedova, 2016). These circumstances are used in the manipulation of jurisdictions when initiating a procedure for cross-border bankruptcy, precisely due to controlled debt in the broad sense of the term, and not only for tax purposes.

The term controlled debt is applied in international tax treaties providing characteristics of associated enterprises for tax control purposes and for the avoidance of double taxation (for example: a convention between the USSR Government and the Government of Japan dated January 18, 1986 on Avoiding Double Taxation with respect to income taxes), between the Government of the Russian Federation and the Government of the French Republic of 11.26.1996 "On the avoidance of double taxation and the prevention of tax evasion and violation of tax legislation in respect of taxes on income and property ", etc.). Currently, the rules on controlled debt in the laws of the Russian Federation are contained exclusively in Art. 269 of the Tax Code of the Russian Federation and a number of judicial acts of the highest courts in disputes on the accrual of income tax on receiving dividends (Rostoshinsky, 2017)

As a rule, bankruptcy occurs due to an increase in the amount of property claims and in order to create unobvious controlled debt, which allows the insolvency procedure (bankruptcy) of the dependent person to influence the arbitration manager and, in fact, is the controlling person of the debtor, but formally individuals.

It is important to note that the term controlling debt in order to classify the debtor's transactions in cross-border bankruptcy is not currently applicable.

### **3. Research Questions**

The international term corporate group or group of companies includes a set of parent and subsidiary companies that function as a single economic entity through a common management system. The concept of a group of companies is often used in tax law, accounting, and (less commonly) company law to attribute the rights and obligations of one group member to another or to the whole. Formation of corporate groups usually involves consolidation through mergers and acquisitions, although often the concept of a group is aimed at forming a business model when reorganization in the form of joining a group is not carried out and the group or its share belongs to an affiliated or dependent / interdependent person as a financial investment with which does not conduct operations, and the relationship between them is built on the outflow of capital from a dependent company under the guise of imaginary transactions. Thus, in Germany and Japan, where complex corporate legislation is developed taking into account the domestic economy of countries, the law of corporate groups is a fundamental aspect of its corporate law. In Germany, an affiliate corporate law has been created that provides for situations in which one company is responsible for the debts of another company. In New Zealand, the law provides that the assets of related companies may be combined to pay creditors if one of the companies is liquidated (case *Lewis Holdings Ltd v Steel & Tube Holdings Ltd*. 2014). Similarly, many other European jurisdictions apply corporate law, while the United States adheres to a formal doctrine that gives corporations the advantage (Williams, 1958), which are processed without taxation and accounting as completely separate legal entities.

The economic unity of corporate groups does not mean unity legal. From a legal point of view, corporate groups are not a single subject of law (a commercial organization having its own separate divisions in various countries of the world), but a set of formally independent legal entities created in accordance with the laws of various countries. Structural subdivisions are legal entities independent from the legal point of view, which are registered and operate on the basis of laws of the receiving states.

The key problems in the regulation of cross-border bankruptcy are: the principle of limited liability of a shareholder (participant) for the obligations of a subsidiary (limited liability principle); the choice of an effective model of the cross-border insolvency procedure in the framework of the main and non-main proceedings; deliberate distortion of financial statements in order to form an incorrect opinion about material facts of a group of persons or a specific member of a group of persons, including the real value of its property, security and liabilities (including controlled debt).

#### **3.1. Principle of limited liability of corporate groups**

Within the framework of vertically integrated cross-border corporate groups based on the participation of the parent corporation in the authorized capital of subsidiaries and affiliates directly or through a system of holdings, the issue of recognizing responsibility is one of the key issues. In accordance with the principle of limited liability, a corporation and its shareholders are recognized as independent legal entities whose rights and obligations are different. The liability of shareholders (participants) of a legal entity for its debts is limited to the limits of the value of the contributions made to the share capital or paid-up shares. In foreign legislation, the rules on the delimitation of obligations of legal entities and their shareholders (participants) are also widely enshrined. In accordance with Art. 73 of

the Law on Trade Partnerships of France, a joint-stock company is a partnership with its own legal personality (Code de Commerce de France No. 66-537, 1966). For the company's obligations to creditors, only the partnership's property is liable. In the UK, the principle of limited liability of shareholders (participants) is formulated in the Companies Act 2006. The leading precedent on this issue is still the decision of the House of Lords in 1897 in the case of *Salomon v. Salomon & Co. Ltd* (case *Salomon vA Salomon & Co Ltd* (1896) UKHL 1, (1897) AC 22). The main conclusion of the House of Lords was the conclusion that the main purpose of company law was to provide all entrepreneurs with the right to incorporate their business with the goal of subsequent exemption from personal responsibility. A similar approach to recognizing the limited liability of shareholders (participants) in practice is demonstrated by the US courts. In *Dole Food Co. v. Patrickson* The US Federal Court of Appeals for the Ninth Circuit ruled that the recognition of the corporation and its shareholders as separate legal entities is a dogma (tenet) of US corporate law (ca *Dole Food Company v. Patrickson*.538 U.S. 468, 2003). Moreover, in 1944 in the *Anderson v. Case*. The Abbott Supreme Court of the United States concluded that the principle of limited liability is a rule, and not an exception, on which large business entities rely, huge enterprises are created and huge amounts of investment are attracted (case *Anderson v. Abbott*, 321 U.S. 349, 1944).

Thus, at present, the principle of limited liability is the foundation of corporate law, since the parent corporation creates legal entities in order to avoid liability when carrying out high-risk projects, for which the minimum share capital is maintained without allotment and transfer of assets to dependent and controlled legal entities.

### **3.2. Choice of effective model of holding procedure of cross-border bankruptcy**

World practice has approved a special criterion for international jurisdiction of the debtor's core interests, known as the COMI standard based on the principle of territoriality (Council Regulation (EC) No. 1346/2000 "On insolvency proceedings"). Territorialism is a model for regulating relations associated with cross-border insolvency (bankruptcy), in which bankruptcy (multiple proceedings) may be initiated against a debtor in different states (Devos, 1999; Torremans, 2002). In this case, cases are limited to the domestic law of the state that initiated the bankruptcy proceedings, their bankruptcy estate only includes the property of the debtor that is on its territory, property on the territory of such state, and cannot be included in foreign bankruptcy proceedings and there is no possibility of interaction with other industries. The principle of territoriality is based on the doctrine of an individual object and, following it, creditors are entitled to make claims only in respect of the assets of the debtor located in the territory of the state that initiated the bankruptcy procedure. In that case, if the bankruptcy estate in this state is not enough, to fully satisfy their claims, creditors can participate in foreign bankruptcy proceedings according to the rules of the national law and order of the country to which the lender has applied. When using such a model of regulation of cross-border insolvency, all issues arising in this case should be resolved based on national law.

In addition, Torremans (2002) indicates that territorialism implies a strict limitation of the bankruptcy procedure to the territory of the state conducting the procedure, which results in the initiation of a separate process in each country where the debtor has property (bankruptcy estate). The question of

international jurisdiction is decided by the state independently, in each state the courts apply the law of their own country and independently appoint the managers in bankruptcy proceedings. The main consequence of such regulation is the multiplicity of proceedings (initiation of proceedings on the recognition of the same person as insolvent in two or more states). Devos (1999) notes that the principle of territoriality leads to the initiation of procedures according to the number of countries in which the assets and divisions of the debtor are located.

Thus, proceedings against a legal entity can be initiated both at the place of incorporation (location or place of registration), and at the location of the assets or business. However, the provisions of the UNCITRAL Model Law on Cross-Border Insolvency, international agreements, acts of recommendatory nature and universal principles do not have rules in themselves and have no alternative to initiate primary and / or parallel (non-basic, secondary, additional) proceedings in a separate jurisdiction - by location or by the criterion of incorporation of controlling persons (including non-residents) of the debtor, separately from the COMI standard.

The term COMI-standard is known in world practice and there is a positive experience of its use. The COMI standard specifies that the center of the debtor's main interests, determined by the location of the registered office of the company (presumption of incorporation), may shift to the legal system of another state under two conditions: if the place of management of the interests and business activity of the debtor is different from the place of incorporation, state (control criterion); if it was obvious to the debtor's creditors (criterion of evidence). Both conditions change the location of the center of the main interests of the debtor (and therefore, the jurisdiction to start production).

The main advantage of the COMI-standard is that it allows initiating insolvency proceedings in the state with which the potential debtor has contact, without causing harm to creditors due to the predictability of bankruptcy law and the court. However, the mobility of the provisions of the COMI-standard has created a problem in cross-border insolvency cases in international private law - manipulation of jurisdictions and the choice of the most advantageous to the detriment of the interests of interested parties. Thus, at the stage of establishing the practice of applying the core interest center, it is possible to strategically manipulate and choose law, taking into account not only the most profitable insolvency law, but also the most profitable corporate law (Walters & Smith, 2009; Westbrook, 2013).

At the same time, the approach can be considered conservative, according to which debt relief obtained in the course of a foreign bankruptcy does not have a cross-border effect: it is not recognized by another state and is not considered as generating any legal consequences on its territory. Such an opinion was expressed by the courts of some states in the USA at the end of the 19th – mid-20th centuries. In the period when the regulation of cross-border insolvency only passed through the first stages of its formation and when the principle of universalism was not considered as the basis for bankruptcies with a foreign element (Honsberger, 1980). There was support for the position on the European continent in countries such as Finland and Norway (Bogdan, 1985). In the future, in the states of the Anglo-Saxon legal family, the approach was developed, according to which debt relief in bankruptcy can be grounds for termination of obligations in another jurisdiction only under the condition that the debtor's bankruptcy is subject to the law to which the canceled obligations were subordinated commitments (Chitty et al., 1855). In such a situation, debt relief obtained in a foreign bankruptcy procedure is considered as a substantive basis for

termination of obligations, and for elimination of accounts payable, two legal orders will be required: both the rules of the bankruptcy law and the law of *lex causae* will be taken into account (Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, 2003).

### **3.3. Reliable detection of obligations, sources of uncertainty and assumptions**

The economic understanding of a corporate group often does not take into account regulatory requirements established by national legislation that affect external and internal factors. A corporation can be defined as a set of private contracts between all interested parties that can take different forms and be governed by special rules. The main element is the separation of assets and liabilities that can be transferred to another legal entity, subsidiary or associated company. Transactions with a related or interdependent party are the transfer of assets, resources, services, or especially liabilities, regardless of the fact of payment for a transaction. An example is EBITDA (Podshivalova, 2016), which is popular among investors, rating agencies and international auditing companies. EBITDA is used as a company, whose shares are listed and listed on stock exchanges, or having foreign investors / lenders, or planning an initial issue of shares, use these indicators and companies at the regional level, if in the future they want to attract a foreign investor. However, there are technical ways to overstate the value of EBITDA. The indicator value may change if a company with foreign exchange earnings does not take into account exchange differences in the calculation. A simple way to manipulate EBITDA (as the creation and reflection of technical receivables or payables) is the sale of products to conditionally controlled companies. EBITDA does not take into account cash flows and actual payment is not required to change the indicator, which makes the way to distort key indicators is simple and transparent, including in the framework of an independent audit.

International Standard (IAS) 1 “Presentation of Financial Statements”, introduces a requirement - an entity must disclose information on assumptions regarding the future and other major sources of uncertainty of estimates at the end of the reporting period, which include a significant risk of the need to make significant adjustments to the carrying amount of assets and obligations. The basis is a sign of due diligence in the form of creating reserves, including impairment, and mandatory disclosure of information to interested parties. The types of reserves created include: mineral extraction tax; export customs duties; the obligation to rehabilitate and the costs of rehabilitating the work sites and protecting the environment; deferred income tax; provisions for pension liabilities and liabilities related to environmental damage, liabilities related to the decommissioning of fixed assets, warranty liabilities; research costs; maintenance costs; undisclosed reserves (profit of the year, not confirmed by an audit report); reserves of revaluation of certain assets: revaluation of fixed assets, as well as the “hidden” revaluation of securities reflected on the balance sheet at the purchase price, held for a long time; general reserves for covering doubtful debts (general reserves for covering losses on loans); hybrid capital instruments (having at the same time both capital and borrowing properties); other reserves.

According to IAS 37, a provision is an obligation with an indefinite period of performance or an obligation of an unspecified amount. A commitment (for the purpose of recognition in financial statements) is an existing obligation of an enterprise arising from past events, the settlement of which is



expected to result in the retirement of resources from an enterprise that contain economic benefits. The risks and sources of uncertainty that accompany many events and determine the circumstances should be taken into account when determining the estimate of the provision and the disclosure of the sources of uncertainty related to the value of the expected costs should be presented in the financial statements.

Given that events can be divided into reliable, impossible and random (according to probability theory), then in the absence of reserves in the financial statements of a group of individuals (as a set of conditions, while a sufficient amount of reserves guarantees solvency), bankruptcy as a future event is inevitable and this event it will be no coincidence. The initial moment of a future event is the failure to fulfill the obligation to form and reflect a reserve, which clearly indicates the presence of the fact of intentional bankrupt.

#### **4. Purpose of the Study**

The purpose of the study is to prevent and prevent the recognition by courts and government agencies of fictitious and intentional cross-border bankruptcies excluding controlled debt as a basis for declaring a debtor - an interdependent person bankrupt and developing recommendations for managing the debtor by changing the principle of the COMI standard. Today, cross-border bankruptcy is rarely intended to terminate liabilities, especially in other jurisdictions, the bankruptcy mechanism is used to preserve assets through the consistent deliberate liquidation of individual members of a group of interdependent legal entities, which makes it impossible to seize and sell the debtor's property, including intellectual property. The termination of the obligations of a group member and the release of the latter from debts due to its liquidation in a foreign jurisdiction is a secondary condition, while the purpose of a cross-border bankruptcy is to preserve assets, property rights and business reputation in case of possible fictitious and / or deliberate bankruptcy should be fully aimed at preventing and protecting host states (recipient countries) from harm by corporate misconduct the needs of groups or their members.

An increase in the growth of bankruptcies of groups of legal entities should contribute to the creation of a mechanism for the courts to reasonably recognize their insolvency and conduct bankruptcy proceedings without harming the economy of the host country. This is especially important when the company is a dependent, joint venture or controlled entity, and the center of decision-making and business activity is located in the territory of another state. In some cases, the use in the specific country of the criterion of incorporation for the initiation of insolvency proceedings generates a circumvention of the law on the part of the business of any state affiliation, which has the corporate form of a foreign legal entity and continues its activities beyond the reach of bankruptcy law (Shaposhnikov, Nechkin, Dorozhkin, & Tkacheva, 2017). Inadequate full disclosure of financial and economic information on the activities of groups of individuals during their further bankruptcy makes it impossible to fully compensate the damage to the host country, the return of intellectual property, patents, scientific and research developments and other intangible assets, especially when intellectual rights are a competitive mechanism, in the framework of which the main value is the ability to eliminate competitors and a change in control of market share.

The influx of foreign investment in host countries brings new jobs, contributes to the introduction of modern technologies into production, but at the same time significantly hinders the development of

national production, due to the dominant position in the market and systemic importance, but the excess of the amount transferred to a foreign person over income and subsequent bankruptcy legal entity (and not the trademark holder) is a characteristic cause of state conflicts with corporate groups, especially GDS controlled foreign entity operates in the host country for a long period of time and leakage of revenue from investments far exceeds the inflow of new capital.

The institution of cross-border bankruptcy as part of the mechanism should be aimed at the formation of a sustainable national economy and pursues the goal expressed in streamlining market relations. The direct result of the control is expressed not only in the preservation of the economic entity, but also in the distribution of the debt to bankruptcy creditors, following the observance of national norms. The objectives of cross-border bankruptcy must respect the balance of interests of the subjects of economic relations involved in cross-border insolvency procedures, including government agencies.

## 5. Research Methods

At the heart of a research of the procedure of cross-border insolvency, the following methods are used:

- theoretical (collecting basic data);
- statistical (collecting, the report and the analysis of data, processing of the obtained data);
- empirical (studying of the national and international legislative standards regulating holding procedures of bankruptcy and cross-border bankruptcy, standard documentation; observation).

The pilot, case law and trial base was the United Nations Library of International Trade Law Library (UNCITRAL) as of July 2017 in terms of the implementation of the 1958 Convention on Recognition and Enforcement of Foreign Arbitration Decisions (New York) and documents V Working Group of the United Nations Commission on International Trade Law on the Law and Practice on Insolvency (Bankruptcy), European Union Regulations on Proceedings insolvency, regional acts. In addition, the European experience of crisis management has become a source of practical developments and economic concepts (Bufford, 2014).

The study was conducted in three stages:

1. Theoretical analysis of existing methodological approaches to the initiation of bankruptcy proceedings, including collective procedures.
2. Creating, modeling and forecasting the initiation of parallel proceedings in relation to groups of companies and the parent company in the course of cross-border insolvency.
3. Summarizing and systematization of the results obtained, identification of defects in the amendments of the European Union Regulation No. 2015/848 on the protection of creditors' rights and asset management in initiating bankruptcy cases of members of a group of persons.

## 6. Findings

Cross-border insolvency (cross-border bankruptcy) is an economic institution consisting of a set of norms that regulates relations arising from the insolvency of a debtor who is in a different legal order than his assets and (or) creditors. Currently, the international problem of cross-border bankruptcies requires the

consolidation of universal rules for conducting parallel proceedings of insolvency cases. The development of consolidated groups demonstrates the need to expand approaches in initiating major and secondary insolvency cases, effective coordination and unconditional elimination of violations of the principle of equality of creditors. The economies of the countries of the world have a systemic relationship, especially when a company goes bankrupt, whose assets or assets are located in several countries. Given that, a bankruptcy case may be initiated and the debtor's creditors or its property may be located in other states, during the consideration of a cross-border insolvency case two or more legal systems may be applied.

The main recommended acts include the legislative guide on insolvency; The UNCITRAL Practical Guide (currently national legislation based on the Model Law has been adopted in the following countries: Australia (2008), United Kingdom (2006), British Virgin Islands and the territory of the United Kingdom of Great Britain and Northern Ireland (2005), Canada (2009), Colombia (2006), Mauritius (2009), Mexico (2000), Poland (2003), Romania (2003), Serbia (2004), Slovenia (2002), United States of America (2005), Montenegro (2002), Japan (2000), etc., unified act of OHADA "On the organization of collective percents liquidation ", principles of cooperation in bankruptcy cases between NAFTA countries. The regional insolvency agreements include the Montevideo agreements of 1889 and 1940, the bankruptcy convention between Denmark, Iceland, Norway, Finland and Sweden (concluded in 1933 with amendments made in 1977 and 1982), the Scandinavian Bankruptcy Convention (Copenhagen, 1933), the Danish Bankruptcy Law of 04.02.1997. No. 118 (Konkursloven), Canadian Debt Settlement Act 1985.

In 2015, a reform took place in the European Union, because of which the current EU Regulation No. 1346/2000 on insolvency proceedings was replaced by EU Regulation No. 2015/848. The innovation is the bankruptcy rules of cross-border groups of companies, the specification and clarification of signs of the debtor's core interests center (COMI standard), the procedure for initiating the main and auxiliary production, protection of a bona fide purchaser, etc. At the same time, advisory acts proposed by bankruptcy practitioners do not solve the problem of low efficiency of a cross-border bankruptcy procedure and the necessary protection of bankruptcy creditors from artificially created payables due to a foreign court decision executed by national courts based on the principle of reciprocity of court proceedings. The process of manipulation of jurisdictions creates special problems in order to cause damage to host countries due to capital outflows following bankruptcy and liquidation of the debtor. In addition, the problems of interstate relations affect the effectiveness of a cross-border bankruptcy procedure.

1. Governments of countries where legal regimes, de jure or de facto, provide for the state's priority over other creditors (or where the state may withdraw debts outside the legal field) are generally not interested in a constructive dialogue.

2. Strengthening the confrontation of transnational companies and credit institutions.

3. Differences in national insolvency laws, in terms of the priority of creditors on the priority of compensation claims. The state policy of many countries regarding insolvency does not comply with international requirements and principles.

4. The distrust of the governments of most countries of the world to persons appointed by a foreign bankruptcy court.

5. The problem of obtaining reliable information to analyse the financial condition and determine the assets of the debtor.

6. The inability to apply national legislation regulating the exchange of information.

7. The lack of a single established procedure for the distribution of assets of the debtor after the sale of his property.

8. The duration of the procedure for the international harmonization of the protocol on the agreement on the conduct of a cross-border bankruptcy procedure.

9. Unjustified expansion of the powers of the courts at the place of opening the main proceedings before the courts at the place of opening the secondary proceedings (Council Regulation (EC) No. 2015/848).

10. Decrease in the value of assets within the framework of individual proceedings in the course of the sale of the debtor's property (Galen, 2003).

## 7. Conclusion

The establishment of a bankruptcy institution does not set the goal of liquidating an organization and its group if there are signs of insolvency, however, the current and applied mechanism of cross-border bankruptcy is not able to perform the tasks for which it was created - to restore the solvency of an economic entity, to carry out remediation, financial recovery or debtor management including due to the fact that they have too high degree of abstractness and uncertainty, have a liquidation orientation disregarding host economies.

The economic features of cross-border bankruptcies and the management of groups of legal entities require the extension of the concept of the debtor's controlled debt and its interdependent persons in order to prevent property damage to creditors, including States, in the framework of compensation for harm as a result of harmful and hazardous industries. Controlled debt should be excluded as a basis for declaring the debtor bankrupt and commencing production. As an analogy, it is possible to apply IFRS which indicate that the operations for which the debt is subject to exclusion include: operations to extend loans and credits to each other; advance payments; accounts receivable and payable from the sale of assets; budget debt and value-added tax (VAT) to the budget as a result of transactions between enterprises of the consolidated group; reserves formed by the results of relations between enterprises of the association; the debt of the parent company and its subsidiaries for contributions to the authorized capital of other subsidiaries is not limited to the consolidated group, but including dependent, related, associated and affiliated legal entities.

The application of modified universalism, according to which the main bankruptcy proceedings, initiated at the center of the debtor's main interests, can be supplemented with secondary (parallel) territorial proceedings, initiated at the place of actual location of the debtor's local enterprises or its property, by changing the principle of operation COMI-standard and the initiation of secondary production, since the territorial production has only liquidation I and apply exclusively to property located in the state of the place of their excitation.

In this case, the use of the criterion of incorporation of controlling persons in the models of territoriality or modified universalism in the initiation of primary or secondary production will reduce the

manipulation and abuse of jurisdictions in determining the centre of interest (COMI-standard). In addition, it will provide an opportunity to eliminate the liquidation orientation of the bankruptcy proceedings and will allow more control over the persons who determine the actions of the corporate group and interdependent persons and will allow to bypass the principle of limited liability and delineation of obligations in order to release the perpetrators from personal responsibility; members of the liquidation commission or a person whose authority is based on a power of attorney, a regulatory legal act, and special powers and that can make transactions on behalf of and in favor of the debtor. An important condition is that such a person can be recognized as an individual and / or legal entity that controls and manages the debtor as part of corporate governance or contractual relations.

The use of the criterion for incorporation of controlling persons in conjunction with the recommendation acts - the UNCITRAL Model Law on Cross-Border Insolvency, EU Regulation No. 2015/848, the draft Federal Law on Cross-Border Insolvency (Bankruptcy), allowing to open the main and parallel proceedings in cross-border insolvency proceedings based on the criteria for incorporating controlling persons and classifying the debtor's obligations in order to identify a controlling debt mechanism to prevent fictitious and deliberate cross-border bankruptcies by classifying transactions and excluding controlled (and in some cases artificial) accounts payable, and when recognizing debt by a court, conducting a procedure of cross-border bankruptcy by parallel proceedings against controlling persons for efficient management of the debtor and whose sole purpose will be to restore the solvency of a legal entity or corporate group.

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