A commentary of the Argentine Cross-border Insolvency Bill of 2018

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Abstract:

Whether it is a question of systemic crises in some countries or regions of countries that have no experience in the solution of corporate crises or insolvencies of multinational companies, or whether it is a question of countries that have reasonable and modern legislation, insolvency law has been put to the test in the last thirty years, requiring the response of the lawmaker to renew the regulations in the face of their age, obsolete nature, and inability to face the modern challenges that the practice of multinational businesses poses to private international insolvency law.

The Treaties of Montevideo of 1889 and 1940 were at that time a great advance around cross-border insolvency, but they are extremely limited to respond to the current needs, and furthermore, they only apply to a small number of South American countries. Cases of cross-border insolvency usually present many complex issues that Argentine law currently in force does not resolve in an adequate manner.

In 2002 a commission appointed by the Argentine Ministry of Justice and Human Rights issued a Cross Border Insolvency Bill. In August 2018, another Argentine Draft Bill on Cross-Border Insolvency Law was submitted by a commission appointed by the same agency, which follows the criteria and principles of the 2002 Draft bill with some differences, subtractions, and additions.

The Argentine Bill of 2018, echoes the problems covered by cross-border insolvency, in four cases in which the debtor has assets in more than one country; or those matters in which some of the claims against the debtor are not enforceable in the country where the insolvency proceedings have been opened; or those which in respect of the same debtor or a group of related companies are configured by the existence of insolvency proceedings opened in different national jurisdictions.

The Draft includes numerous institutions that govern, organize, and distribute justice or equitable solutions to the main problems posed by

modern private international insolvency law, starting with the law of the most advanced countries in the field, through the international organizations devoted to proposing rules by the different countries in various forums, such as UNCITRAL Cross-Border Insolvency Model Law of 1997 (among others) and the World Bank and, finally, by the national or international federations of professionals dedicated to insolvency, such as the American Bankruptcy Institute, INSOL International, INSOL Europe and the International Institute of Insolvency. This confers certainty, reliability in the methodology adopted and independence with respect to the solutions adopted and proposed.

In addition, the rules proposed, since they have been negotiated with an open mind, by means of a sufficient consensus and a high level of participation of the legal experts specialized in the matter and a clear sense of pragmatism, are free from any type of arbitrariness, and, on the other hand, they contemplate adequate levels of freedom to adopt (or not) the solutions. And within the viable options, those adopted by this 2018 Argentine Preliminary Draft are respectful of the nature of the regulated institutions, with coherence, order and adjusted to the prudence they demand.

For all these reasons explained in each commentary of the Draft provisions and in general, in the opinion of the author, this lawmaking activity, for its methodology and for its final product, is worthy of praise, reasonable, timely, fair, and relevant.

Keywords: Cross-Border Insolvency Law; UNCITRAL Cross-Border Insolvency Model Law of 1997; Argentine Insolvency Law; Argentine Cross-Border Insolvency Law; Argentine Cross-Border Insolvency Bill of 2018

A. Introduction: purpose of this paper

Whether it is a question of systemic crises in some countries or regions of countries that have no experience in the solution of corporate crises or insolvencies of multinational companies, or whether it is a question of countries that have reasonable and modern legislation, insolvency law has been put to the test in the last thirty years, requiring the response of the lawmaker to renew the regulations in the face of their age, obsolete nature, and inability to face the modern challenges that the practice of multinational businesses poses to private international insolvency law.

Commercial and investment relations have become increasingly international, interrelated, and electronic, which will lead to an increase in the solutions that the lawmaker will have to consider and implement prudently to face these recent problems, especially in the field of reorganization and liquidation of multinational companies.

The legal vision on current bankruptcy problems has evolved from the traditional problems and solutions of private international law of the second half of the 19th century and the beginning of the 20th century—such as the distribution of local bankruptcy assets and the treatment of foreign claims—to the emergence of new international insolvency problems.

The Treaties of Montevideo of 1889 and 1940 were at that time a great advance around cross-border insolvency, but they are extremely limited to respond to the current needs, and furthermore, they only apply to a small number of South American countries. Cases of cross-border insolvency usually present many complex issues that Argentine law currently in force does not resolve in an adequate manner.

In 2002 a commission appointed by the Argentine Ministry of Justice and Human Rights issued a Cross Border Insolvency Bill. In August 2018, another Argentine Draft bill on Cross-Border Insolvency Law was submitted by a commission appointed by the same agency, which follows the criteria and principles of the 2002 Draft bill with some differences, subtractions, and additions.

The Argentine Bill of 2018, echoes the problems covered by cross-border insolvency, in four cases in which the debtor has assets in more than one country; or those matters in which some of the claims against the debtor are not enforceable in the country where the insolvency proceedings have been opened; or those which in respect of the same debtor or a group of related companies are configured by the existence of insolvency proceedings opened in different national jurisdictions.

The Draft includes numerous institutions that govern, organize, and distribute justice or equitable solutions to the main problems posed by modern private international insolvency law, starting with the law of the most advanced countries in the field, through the international organizations devoted to proposing rules by the different countries in various forums, such as UNCITRAL and the World Bank and, finally, by the national or international federations of professionals dedicated to insolvency, such as the American Bankruptcy Institute, INSOL International, INSOL Europe and the International Institute of Insolvency. This confers certainty, reliability in the methodology adopted and independence with respect to the solutions adopted and proposed.

In addition, the rules proposed, since they have been negotiated with an open mind, by means of a sufficient consensus and a high level of participation of the legal experts specialized in the matter and a clear sense of pragmatism, are free from any type of arbitrariness, and, on the other hand, they contemplate adequate levels of freedom to adopt (or not) the solutions. And within the viable options, those adopted by this 2018 Argentine Preliminary Draft are respectful of the nature of the regulated institutions, with coherence, order and adjusted to the prudence they demand.

For all these reasons explained in the article, in the opinion of the author, this lawmaking activity, for its methodology and for its final product, is worthy of praise, reasonable, timely, fair, and relevant.

B. Historical context of the new national and international insolvency rules

Since the early years of the 20th century, the literature on private international insolvency law issues in the different countries of Europe and the Americas has increased dramatically, both in terms of monographic works on international insolvency in general, as well as in monographs on specific topics of international insolvency. Particularly in the last three decades, the internationalization of business, economic, and financial activity led to greater conflict between creditors and debtors in multinational forums, especially in cases of groups of companies operating in various countries. This is not only between the disputing parties but also between courts of different countries regarding bankruptcy assets or liabilities of the same debtor operating in them, which raises issues of competition, jurisdiction, and applicable law. As there is frequently no superior authority to settle such competition disputes, domestic or international rules on coordination, cooperation, and communication between the involved courts have been implemented, such as the European Union Regulation on Insolvency Proceedings ('Regulation') of 2000, the European Union Regulation of 2015 or the UNCITRAL Model Law on Cross-Border Insolvency ('Model Law') of 1997 (the latter will be referred to by the acronym MLCBI).

It has been emphasized that only predictable insolvency legal regimes, applied in a consistent manner by an independent, impartial, and efficient judiciary, encourage creditors to negotiate with debtors to avoid the closure or winding up of a company in hardship, rather than withdrawing the flow of credit and launching into individual execution of assets at the first sign of financial or economic hardship. In addition, healthy insolvency laws, if well enforced, promote the efficient redistribution of assets from failed businesses to other ventures with better prospects, both in the case of corporate reorganization and winding up.

Thus, modern, and healthy systems of insolvency and legal regulation of the relations between creditors and debtors constitute one of the foundations of investment, credit, and lasting economic development, contribute to the stability of the financial system of a country, and provide a safety valve at the time of business failures, preserving value, jobs, and social protection.

After the Asian crises of 1997 and 1998, the issue of national insolvency law was installed in numerous meetings and agendas of multilateral organizations and groups of countries such as the G-7 and G-22. In April 1998, the G-22 Working Group on International Financial Crises drafted a report identifying the objectives and key features of any insolvency regime, which was the origin of two major subsequent initiatives: the World Bank's Principles and Guidelines for Effective Insolvency and Credit Rights Systems (2001) and UNCITRAL's Legislative Guide on Insolvency Law (2004). The common foundation of these two initiatives has been systematized by legal scholars in the sense of recognizing that, although national treatments may differ, effective insolvency systems should aim at the following objectives, namely:

- integration with the remaining commercial legislation of the country.
- maximization of the value of the assets of the company in operation by providing a comprehensive system of reorganization, both in terms of economic and legal aspects.
- establishment of a balance between liquidation and reorganization.
- provision for equal treatment of various categories of creditors, including local and foreign creditors.
- provision for the timely, efficient, and impartial resolution of insolvencies.
- avoidance of the premature dismemberment of the debtor's assets by individual creditors seeking quick judgments.
- provision of a transparent bankruptcy procedure that contemplates incentives to gather and disclose necessary information for the parties.
- recognition of the pre-existing rights of creditors and respect for the priority of claims through a predictable and established bankruptcy process; and

– putting in place a framework for transnational insolvencies, with recognition of foreign proceedings.

These new perspectives and orientations in comparative insolvency law have been reflected not only in the domestic substantive and procedural law of some countries, but also in the field of Private International Insolvency Law.

C. The Argentine 2018 Draft on cross-border insolvency

I. General aspects

In 2002 a commission appointed by the Ministry of Justice and Human Rights issued a Cross Border Insolvency Bill in Argentina. In August 2018, another Argentine Draft Bill on cross-border insolvency was submitted by a commission appointed by the Ministry of Justice and Human Rights, which follows the criteria and principles of the 2002 Draft bill with some differences, subtractions, and additions.

In the *Exposé des Motifs* to the Argentine Bill of 2018, the Commission of Experts in Insolvency Law has highlighted some of the relevant facts and elements that characterize it. They can be summarized as follows:

1. It echoes the problems covered by cross-border insolvency, in cases when the debtor has assets in more than one country; when those matters in which some of the claims against the debtor are not enforceable in the country where the insolvency proceedings have been opened; when the same debtor or a group of related companies are configured by the existence of insolvency proceedings opened in different national jurisdictions.
2. Cases of cross-border insolvency usually present many complex issues that Argentine law currently in force does not resolve in an adequate manner.
3. The Treaties of Montevideo of 1889 and 1940 were at that time a great advance in cross-border insolvency, but they are extremely limited to respond to the current needs, and furthermore they only apply to a small number of South American countries.
4. The rules of domestic law contained in Articles 2(2), 3(5) and 4 of Argentine Bankruptcy Law No. 24522 are insufficient to respond to most of the modern and critical cross-border insolvency problems,

and do not encourage international cooperation and coordination to achieve adequate and fair legal solutions. In cross-border cases, these rules do not facilitate the rehabilitation of companies in financial difficulties or insolvency, do not ensure the protection of the debtor's assets against their dispersion, and do not allow the optimization of the value of such assets. Nor do they impede quickly and effectively certain operations by insolvent debtors aimed at transferring or hiding assets in foreign jurisdictions, a problem that may be aggravated, in its frequency and magnitude, by the ease with which irregular or fraudulent operations may be conducted due to a currently interconnected world. To effectively address such situations, international judicial cooperation is essential and must be supported by a legal framework that facilitates direct communication and the prompt adoption of appropriate measures to preserve and recover assets fraudulently transferred to foreign jurisdictions.

5. The project duly submitted in 2018 by the Committee of Experts in Bankruptcy Law appointed by the Ministry of Justice and Human Rights of the Nation, has adapted to the local needs and the particularities of Argentine Insolvency law the text of the Model Law on Cross-Border Insolvency prepared by the United Nations Commission on International Trade Law (UNCITRAL) and approved by the United Nations General Assembly by resolution 52/158 of December 15, 1997.
   The draft incorporates the necessary amendments to the uniform text to adapt it to Argentine law but maintains the guidelines of such text to achieve the international harmonization and certainty to which this regime aspires.
6. Among its main objectives, the Project mentions:
   - to encourage international cooperation in the field of multinational insolvencies,
   - to enhance legal certainty,
   - to protect the interests of all subjects affected by international insolvencies,
   - to protect the debtor's assets seeking the optimization of their value, and
   - to facilitate the reorganization of companies in financial difficulties to protect the invested capital and preserve employment.
7. With respect to the legal definitions, the project defines the main terms used, as is usual in international legal instruments. To the definitions proposed by the Model Law, others have been added to specify the

meaning and scope in the Argentine context of certain terms used in the project.

8. With respect to the general provisions in the Preliminary Draft there are critical issues to be considered when applying this legal regime for which the following general provisions are established:
   a) If there is a conflict between this regime and the international treaties or agreements that are binding in the Republic, the latter shall prevail.
   b) The jurisdiction to recognize foreign proceedings and in matters of cross-border cooperation shall be determined in accordance with the rules of Argentine bankruptcy law.
   c) The trustee or representative of the Argentine bankruptcy proceeding shall be empowered to act in another State in accordance with Argentine law or with foreign law if the former is compatible with the latter.
   d) The Argentine court may refuse to adopt a measure contemplated in this regime when it is contrary to Argentine public order.
   e) Additional international assistance may be provided based on other rules, but such assistance shall be subject to certain requirements aimed at:
      – protecting the equal treatment of local and foreign creditors.
      – avoiding harm to local creditors in their claims in the foreign bankruptcy.
      – preventing fraud; and
      – respecting the priority of the claims in the distribution of the bankruptcy in accordance with the order established by Argentine law.
   f) The interpretation of the rules of the project will consider:
      – international origin,
      – the need to promote uniformity and coordination of its application, and
      – the observance of good faith.

9. With respect to the specific provisions, the preliminary Draft includes among its objectives the following:
   a) the right to direct access of the representative of the foreign insolvency proceedings to the courts of the Republic.
   b) According to the Argentine legislative tradition and the doctrine and jurisprudence prevailing in Argentina, a foreigner is defined as a creditor whose claim is payable exclusively outside the territory

of the Republic. Foreign creditors are recognized as being equal to local creditors in requesting the opening of the insolvency proceeding in the Republic or in participating in it.

c) The Draft establishes that the privileges will be governed by the law of the forum, so that in the local insolvency proceeding the existence and degree of a priority will be governed by Argentine law.

d) The recognition of the foreign bankruptcy judgment must be made without any formalities such as diplomatic letters rogatory or letters of request, and the recognition must be made in a prompt manner to enable the award of the provisional measures that may be necessary to preserve the debtor's assets or activity.
The foreign insolvency proceeding will be recognized as a 'principal' proceeding if it takes place where the debtor has the centre of its main interests, or as a 'non-principal' proceeding if it takes place where the debtor has an establishment. But Article 16 of the Draft indicates that the registered office of the debtor legal entity, or the domicile or habitual residence if he or she is a natural person, will be presumed to be the centre of its main interests, following a typical Argentine legal qualification criterion.
Likewise, the Bill provides that the company incorporated abroad that has its seat in the Republic or its main purpose is intended to be fulfilled there, shall be deemed to be a company incorporated in the Republic, to determine the centre of its main interests.

e) The Draft considers the possibility of ordering provisional measures to ensure evidence, protect the debtor's assets from the action of creditors, or preserve them by avoiding the performance of acts of disposition of the debtor himself.

f) The Draft establishes the principle/duty of cooperation of the local judge and the local organs of the Argentine insolvency proceeding with the court and the representatives of the foreign insolvency proceeding, as far as possible.

g) Cooperation may be achieved by any appropriate means, including the possibility of appointing a person or body to act in the direction of the court. In all cases, direct communication shall respect the guarantees of due process and shall not give rise to waivers of the parties' rights or of the court's powers or authority.

h) There are provisions for coordinating proceedings in cases of multiple bankruptcy proceedings, whether one of them is considered as a prior 'principal' foreign proceeding and another as a subsequent 'non-principal' local proceeding, or all of them as simultaneous proceedings (one abroad and one local), with rules if the principal proceeding is the local one.

i) Two other rules that were already established in the Argentine bankruptcy law are enshrined. The first one establishes that the recognition of a foreign main proceeding is grounds for opening a bankruptcy proceeding in the Republic under Argentine law. The second reproduces the payment rule for parallel proceedings, which seeks to equalize the dividends finally received by the creditors when one or several of them collect their claims abroad and in the local bankruptcy proceeding as well.
j) There are important cases of cross-border insolvency that do not necessarily involve the same debtor but multinational groups of companies. The Project contemplates these cases by establishing that its rules on international cooperation, communication and coordination will also apply, to the extent that they are compatible, in the cases of multinational corporate groups.

10. With respect to the amendments to the Argentine Bankruptcy Law No. 24522, it is proposed to replace articles 2, 3, and 4 of the Law by texts like the current ones, but with some modifications in the wording and several innovations aimed at ensuring their compliance with the 2014 new Argentine Civil and Commercial Code and the new legal regime for cross-border insolvency.

II. Analysis of the regulations

The 2018 Draft consists of forty articles distributed in six chapters. The following is an analysis of the project, with a specific critical evaluation of each article.

III. Chapter I. General provisions

Article 1 regulates the scope of application of the law on Argentine Private International Insolvency Law (PIIL) issues, establishing that it will be applicable to four insolvency cases with multinational elements, defined as:

- those in which a foreign court or foreign representative requests assistance in the Republic in connection with a foreign proceeding; or
- assistance is requested in a foreign State in connection with a proceeding being conducted under Argentine bankruptcy law; or,
- a foreign proceeding and a proceeding in the Republic are being conducted simultaneously in respect of the same debtor under Argentine bankruptcy law; or, finally,
- creditors or other interested persons from abroad, who have an interest in applying for the opening of a proceeding or in participating in a proceeding being conducted under Argentine bankruptcy law.

As we have seen, these assumptions express a more modern and respectful conception of new hypotheses of multinational cases than the current Argentine bankruptcy law.

This rule expressly excludes its application in cases of reorganization or collective proceedings of financial entities, insurance companies, and other subjects excluded from the Argentine bankruptcy regime by special laws in the domestic sphere, to the extent that such exclusions are legally in force. This rule seems to be historically due to the double fact that, at a domestic level, in the Argentine regime some entities are traditionally excluded from the preventive bankruptcy or reorganization proceedings, being otherwise under a special regime of liquidation under the authority of an administrative agency and/or before a court of law (in most of the cases with the declaration of bankruptcy by a judge), such as in the case of banks, insurance companies, trusts and others, by special laws or in the Argentine bankruptcy law itself. The second reason for the exclusion is that the UNCITRAL MLCBI excludes such entities, which are usually excluded from administrative or judicial bankruptcy proceedings, in many jurisdictions around the globe.

However, we believe that nothing prevents the application of cross-border insolvency law to such entities, and, on the contrary, it is not only convenient but necessary that they be included in that law, considering the advantages and benefits of the system. In practice, there will undoubtedly be banks, insurance companies, trusts, and other entities with special bankruptcy regimes, which will have assets or claims enforceable in other jurisdictions and, therefore, we believe that this regulation we are commenting on can be perfectly applied to them. Therefore, I think *de lege ferenda* that it is necessary to eliminate in a future modification of this regime this exclusion clause and to write an inclusive one, due to analogy reasons. Although other insolvency laws do not usually regulate the reorganization of banks and insurance companies, they do regulate their liquidation in the respective insolvency laws. Under such conditions, we think that the system of the rule we are commenting on should be applied to such local and foreign entities, based on this circumstance, the spirit of the rule pertaining to the legal equality of local and foreign subjects and the analogy of the case.

Article 2 defines, for the purposes of the law, some concepts. These definitions are useful to unify terminology in the field and to avoid semantic conflicts that may result in a significant loss of time and a useless waste of jurisdiction.

The terms of the definitions are broad and all-encompassing of all situations, as will be seen below. Thus, for example, the concept of 'foreign proceeding' includes both reorganization and liquidation proceedings, judicial, or administrative proceedings and provisional proceedings.

With respect to the 'foreign proceeding', it is defined as a collective/universal proceeding, whether judicial or administrative, including that of a provisional or preventive nature, that is followed in a foreign State under a law relating to insolvency and by virtue of which the assets and business of the debtor are subject to the control or supervision of the foreign court, for the purposes of its reorganization or liquidation.

'Foreign principal proceeding' is defined as the one followed in the State where the debtor has the centre of its main interests, except for legal entities incorporated or registered in the Republic and companies subject to Argentine law under Article 16(3). According to the purpose of this article, we will use 'principal proceeding' and 'main proceeding' as synonyms.

'Non-principal foreign proceeding' means a foreign proceeding, other than a principal foreign proceeding, which is followed in a State where the debtor has an establishment within the scope of the rule.

'Foreign representative' means the person or body, including the one appointed on an interim basis, which has been empowered in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or business or to act as a representative of the foreign proceeding, if it proves its legal representation under Argentine law.

'Foreign court' means the judicial or other authority that has jurisdiction for the purposes of control or supervision of a foreign proceeding.

'Establishment' means any place of operations where the debtor conducts in a non-transitory manner an economic activity with human means and goods or services.

'Foreign creditor' means the holder of a claim payable exclusively outside the territory of the Republic.

'Local creditor' is understood as the holder of: (a) a credit payable exclusively in the Republic; (b) a credit with more than one alternative place of payment, at the creditor's option, provided that one of the places of payment is in the territory of the Republic; (c) a credit that may be paid in the Republic. As we can see, this is an all-encompassing criterion.

'Republic' means the Argentine Republic.

'Argentine bankruptcy legislation' means any legal rule in force in the Republic, or the one that replaces it in the future, applicable to reorganization proceedings, liquidation in bankruptcy proceedings, or any collective reorganization or liquidation procedure that had insolvency as a premise.

'Bankruptcy proceeding' means any collective reorganization or liquidation proceeding that had insolvency as a necessary premise.

'Court' means the judicial authority with competent jurisdiction under Argentine law for the purposes of control or supervision of a bankruptcy proceeding.

'Argentine territorial jurisdiction'. Any property registered in an Argentine registry, any tangible property of a debtor located within the Argentine territory, any intangible property registered or subject to deposit in an Argentine registry under the applicable Argentine law. That is, the legislator includes any property subject to execution or seizure that may be properly seized or attached abroad by an action filed in an Argentine court. This concept was added in 2018 with a broad definition.

'Cross-border insolvency agreement' means an agreement entered for the purpose of facilitating coordination of cross-border insolvency proceedings and cooperation between the courts, between the courts and the insolvency representatives, and between the insolvency representatives with the authorization of the courts involved and, if applicable, other interested parties. This concept was added in 2018. It is important because it constitutes the final cause of the system established by this law: the coordination of cross-border insolvency proceedings. It is to be expected that it will obtain fair solutions from the substantial law point of view in the framework of international insolvency.

'Priority' or 'privilege' shall mean the quality resulting from insolvency law permitting that a claim be paid with preference or priority over another. This is a definition added in 2018 that follows the tradition of the *lex fori* in matters of privileges.

For the purposes of this law, 'group of companies' shall mean two or more companies linked to each other by some form of control contemplated in the corporate legislation; the group of companies shall be considered multinational when two or more participants are in different States. This concept was added to the previous Draft and is designed in sufficiently broad terms to cover all types of corporate groups or 'companies'.

The term 'company' means any entity, regardless of its legal form, which conducts an economic activity and to which, because of the case, the bankruptcy or insolvency legislation applies. This one is another concept in a broad sense added to the previous Bill of 2002.

The term 'attorney representation' shall mean the technical legal advice which, by virtue of the rule of law, the parties must have to act in a judicial proceeding in the Republic. This concept has been added.

'Ordinary course of business' shall mean the operations conducted in accordance with the way the debtor's business is usually conducted, and with the ordinary management practices of its respective activity. This concept was added in 2018.

Article 3 establishes the solution to the possible conflict between this law and the obligation of the country under a treaty or other form of agreement to which the Republic is a party with one or more States, and it is resolved that the provisions of that treaty or agreement shall prevail.

Article 3(2) of the previous 2002 Draft disappeared, which required reciprocity as a requirement for the application of the rule. The elimination of the rule is consistent with the principles of international cooperation and recognition of the foreign phenomenon inherent in every country's private international law. Therefore, it is undoubtedly worthy of praise and auspicious in the 2018 project, which improves the previous one to a great extent. This is the first legal text that does not contain such a requirement and therefore means remarkable progress in international law matters.

Article 4 provides that the functions referred to in this law, relating to the recognition of foreign proceedings and in matters of cooperation with foreign courts, shall be performed by the court having jurisdiction under Argentine bankruptcy law. It also provides that if there is already a bankruptcy proceeding opened in the Republic, the competent court shall be the one before which such proceeding is carried out. This is consistent with the jurisdictional principles in bankruptcy law matters in Argentina.

Article 5 authorizes the trustee or representative of the body in charge of administering the reorganization or liquidation of an Argentine bankruptcy proceeding to act before a foreign State in accordance with the Argentine bankruptcy law to the extent permitted by the applicable foreign law, or in the absence thereof, in the manner authorized by the latter law, if it is compatible with Argentine law. This wording further improves the previous text of the same article of the 2002 Argentine Bill.

Article 6 regulates any conflicts between public order and this law, with the pre-eminence of the former, establishing that nothing in this law shall prevent the court from refusing to adopt a measure regulated therein, if that measure is contrary to Argentine public order. The judge must interpret public order in the light of the principles of Argentine private international law, under penalty of incurring self-contradiction, according to the regime established by this Bill.

Article 7 provides additional assistance under some other rule. It provides that, subject to the limitations set forth in this law, if the foreign proceeding has been recognized, the Argentine courts or authorities with competent jurisdiction have broad powers to provide the foreign representative with additional assistance under Argentine law, if this will ensure the following:

(a) equality of treatment of local and foreign creditors' rights over the debtor's assets,
(b) due protection of the interests of local creditors against prejudice or inconvenience with respect to their claims in the foreign proceeding,
(c) prevention of preferential or fraudulent dispositions in relation to assets owned by the debtor; and
(d) distribution of the product of the liquidation of the debtor's assets substantially in accordance with the order prescribed by Argentine law.

The first three paragraphs are consistent with the principles of private international law, but the last one may be subject to conflict and in our view is at least ambiguous with respect to the principles. This situation requires further research in the future. In any way it should respect the equality of foreign and local creditors as a desirable rule of interpretation of the law.

Article 8 establishes a principle of interpretation of the law, according to which its interpretation must consider its international origin and the need to promote uniformity in its application and the observance of good faith. These three criteria are timely and relevant, since they are respectful of the nature of the international standards proposed by UNCITRAL for all countries by consensus.

IV. Chapter II. Access of foreign representatives and creditors to Argentine courts

Article 9 regulates the right of direct access of any foreign representative, according to which such representative shall be entitled to appear directly before an Argentine court of competent jurisdiction, to request the recognition of the foreign procedure, or to act before the Argentine court in connection with rights or claims over the debtor's assets, with the representation of an attorney qualified to practice before the court of competent jurisdiction in the Republic.

This eliminates any other procedure as necessary for such an appearance, which is remarkable and worthy of praise for what it means in terms of simplification and cost-saving. However, it must be considered that the intervening court will have to control the veracity and legality of the documents provided by the intervening parties to adequately preserve the legal certainty of the proceedings, so that it is not a cause or reason for promoting procedural fraud. The rule is like the previous one of the 2002 Argentine Bill.

Article 10 establishes the limits of the jurisdiction of the Argentine court according to which the mere fact of the filing of a request, under this law, before an Argentine court by a foreign representative does not imply the submission of the foreign representative or the debtor's assets and business abroad to the jurisdiction of the courts of the Republic for any effect other than the request.

This limitation is consistent with the applicable principles of international substantive and procedural law, respects the equal treatment of local and foreign creditors, and avoids any possible local or foreign prejudice, and is therefore commendable.

Article 11 establishes the power of any foreign representative to request the opening of a proceeding under Argentine bankruptcy law if, otherwise, the conditions for the opening of such proceeding are met. This is consistent with the entire system of the Draft, the equality of local and foreign creditors and respect for the local procedural rules applicable to the case.

Article 12 establishes the power of the representative of a foreign proceeding, as from the recognition of a foreign proceeding, to participate and enforce the rights it represents in any bankruptcy proceeding opened with respect to the debtor under Argentine law. This equality of treatment is commendable and fair and a fundamental objective of the law, in contrast with the traditional regime that establishes the pre-eminence of treatment of local creditors with respect to foreign creditors, both in the procedural order and in the order of substantive rights. This standard is therefore to be commended.

Article 13 regulates the access of foreign creditors to a proceeding followed under Argentine bankruptcy law. Section 1 provides that, except for the provisions of Section 2 of this article, foreign creditors shall enjoy the same rights as local creditors with respect to the opening of a proceeding in the Republic and the participation in such proceeding in accordance with the Argentine bankruptcy law and the provisions of this law.

Article 13(2) provides that the existence of privileges and their order of priority shall be governed by the Argentine bankruptcy law and that the provisions of paragraph 1 of this Article shall not affect the existence or the order of priority of the claims in a bankruptcy proceeding opened in the Republic. It also provides that the claims of foreign creditors shall not be assigned a lower priority than unsecured claims, except if the claim verified in the Republic, equivalent to the foreign one in question, was subordinated to the unsecured claims under the Argentine bankruptcy legislation or had a lower priority than the latter under the applicable foreign legislation. This rule is like the previous one but with more detailed wording. Thus, the procedural and substantial equality of treatment of local and foreign creditors is fully ensured, placing them all at an equal rank, which is adequate to justice criteria, to the purposes of international law and to the most modern trends. Therefore, it is worthy of praise.

Article 14 regulates the notification of creditors abroad. This rule is consistent with the bankruptcy principles for notices and another consistent example of how the equality of local and foreign creditors is protected.

Paragraph 1 establishes equal treatment of local creditors and creditors abroad through mandatory notification of the bankruptcy proceedings opened in the Republic, both in the country and abroad. The court is empowered to order the appropriate measures of notification of any creditor whose address is not yet known.

Paragraph 2 establishes the obligation to give notice to each foreign creditor separately, unless the court considers that some other form of notice is more appropriate to the circumstances of the case. No rogatory letters or any other similar formality is required.

Paragraph 3 provides guidelines for the notification of commencement of the proceedings on foreign creditors, establishing requirements such as:

a) indicating a reasonable period for the filing of the claims, with the pertaining documentation and evidence, and indicating the place where such filing is to be made;
b) indicating whether creditors with secured claims need to file such claims; and
c) containing any other information required for such notice under the laws of the Republic and the orders of the court.

This rule facilitates the notification of creditors, especially foreign creditors in their own domicile, thus preserving legal certainty. It is reasonable because the debtor generally knows those domiciles or knows the cities where the creditor's establishments are located, it preserves the equality of treatment between local and foreign creditors, it is not economically burdensome because it can be done by electronic means; we must consider that, most likely, all communication between the creditors and the debtor until the bankruptcy filing has been done like that. Furthermore, it is commendable because it allows another form of notification according to the circumstances of the case. And, finally, it eliminates all kinds of formalities, whose demand or necessity can be avoided by means of modern electronic notification systems with full legal procedural effects, which nowadays have a reasonable degree of certainty. The requirements for the notification of the opening of the insolvency proceedings to foreign creditors are also part of these characteristics and are in harmony with the substantial internal rules on this matter, which are usually regulated by the insolvency proceedings provisions (procedural law).

V. Chapter III. Recognition of a foreign proceeding and measures that may be awarded

Article 15 regulates the application for recognition of a foreign proceeding in six paragraphs, extending its 2002 version.

Paragraph 1 recognizes the power of the foreign representative to apply to the court in recognition of the foreign procedure in which he or she has been appointed.

Paragraph 2 establishes the necessary documents that must accompany the request for recognition:

(a) A copy duly certified or legalized in accordance with the requirements of Argentine law for documents issued abroad; evidence of the decision to open the foreign proceeding, of the final nature of such decision; of the jurisdiction of the court; and of the appointment of the foreign representative; or

(b) a certificate issued by the foreign court, in turn certified or legalized in accordance with the requirements of Argentine law for documents issued abroad, evidencing the declaration commencing the foreign proceeding, if such decision is final, the jurisdiction of the court and the appointment of the foreign representative. This rule is more specific than the previous one of 2002, which is healthy.

Paragraph 3 establishes that all requests for recognition must be accompanied by a statement duly indicating, if applicable, the list of verified creditors, detailing the amount of each of the claims and the percentages that have been received, together with the information on the foreign proceedings opened with respect to the debtor of which the foreign representative is proceeding. This rule is like the previous one, which preserves legal certainty and the completeness of the information.

Paragraph 4 provides that the court shall require that any document submitted in support of an application for recognition be translated into the official language of the Republic (Spanish). This rule reinforces the previous one, according to which it was a power, not a duty, of the court. Therefore, it improves legal certainty.

The new fifth paragraph provides that the request must indicate whether the debtor has been legally notified in the foreign proceeding and indicate the debtor's domicile for notification of the request for recognition, in a period established by the court.

Paragraph 6 provides that the application for recognition of a foreign proceeding must:

(a) be entered in the appropriate registry of bankruptcy proceedings;
(b) notify the debtor and any interested person at their domicile for a period and in such manner as the court may specify.

This rule, on the one hand, is flexible with respect to the formalities that must be met by the request for recognition by the local court and, on the other hand, preserves the legal predictability and certainty of the existence of the foreign proceeding and the appointment of the petitioning official. On the other hand, in addition to this documentation, the possibility—which may or may not be provided for by law—of using modern means of communication by telephone and Internet, with respect to the verification of these points to be accredited by the local court, and with respect to the communication itself between the courts and the representatives of the foreign proceeding and between them. The 2018 rule is more detailed than the previous one.

Article 16 establishes presumptions regarding the recognition of the foreign proceeding in three paragraphs, in accordance with the new wording of Article 15 of the new 2018 Draft law in commentary.

Paragraph 1 states that if the decision or certificate referred to in Article 15(2) indicates that if the foreign proceeding is a proceeding within the meaning of Article 2(a) and if the foreign representative is a person or body within the meaning of Article 2(d), the court shall follow the indications on the certificate or decision.

Paragraph 2 provides that the court shall have the authority to presume that the documents submitted to it in support of the application for recognition are authentic, if they are certified or legalized in accordance with the preceding article.

The rules are flexible. In any case, and since the foreign bankruptcy documents are usually certified by a judicial officer and legalized according to the regime of the Hague Convention ('Apostille'), it may be preferable to place an 'and' instead of an 'or' in the text, to provide legal certainty. It is a procedure that does not take many days to achieve, as well as the translation into Spanish of all the foreign documentation or at least of the substantial parts of the documentation. We think that even in the case that the members of the court or the interested parties or the bankruptcy organs know the source language of such foreign documentation the certification, legalization, and translation would be necessary because they are official documentation.

Paragraph 3 provides that, in the absence of evidence to the contrary, the registered office of the debtor legal entity, or the domicile or habitual residence if it is a natural person, shall be presumed to be the centre of the debtor's main interests. Likewise, the company incorporated abroad that has its headquarters in the Republic or its main purpose is intended to be fulfilled there, shall be considered as a company incorporated in the Republic.

These presumptions are reasonable and are based on the documentary reality of the ordinary business of the company in bankruptcy and of the current possibilities offered by the telephone and internet means of communication. The *factum* of the third paragraph will usually have been determined by the foreign judge at the time of declaring the opening of the bankruptcy proceeding and will usually have been declared by the debtor at the time of requesting such opening abroad. Hence, the reasonability of the legal consequence pointed out. Furthermore, it is consistent with the developments that have taken place within UNCITRAL with respect to the Centre of Main Interest ('*COMI*') in recent years.

Article 17 regulates the recognizing a foreign proceeding.

Paragraph 1 provides for the recognition of the foreign proceeding, unless *Ordre Public* is compromised (as provided by Article 6), when these four requirements are met:

(a) the foreign proceeding is a proceeding within the meaning of Article 2(a) (definition of 'foreign proceeding');
(b) the foreign representative applying for recognition is a person or body within the meaning of Article 2(d) (definition of 'foreign representative');
(c) the application meets the requirements of Article 15 (application for recognition of a foreign proceeding);
(d) the application has been submitted to the court with jurisdiction in accordance with Article 4.

Paragraph 2 provides that the foreign proceeding shall be recognized considering its individual characteristics, namely:

(a) as a foreign main proceeding, if it is being conducted in the State where the debtor has the centre of his or her main interests, under Article 2(b) and Article 16; in case of doubt, it is established that the Argentine court shall decide on the matter, preventing any procedural abuse; or,
(b) as a foreign non-principal proceeding, if the debtor has an establishment in the territory of the State of the foreign court within the meaning of Article 2(f) (definition of '*establishment*').

Paragraph 3 provides that the decision regarding the recognition of a foreign proceeding shall be rendered as soon as possible.

Paragraph 4 provides that the provisions of Articles 15, 16, 17, and 18 shall not prevent the modification or revocation of the recognition if it is proved that the reasons for which it was granted are partially or totally absent, or if those reasons have ceased to exist.

The rule is prudent when dealing with documentation from abroad, with its limitations that may lead to error in the local court.

Paragraph 5 provides that the resolution of a foreign proceeding must be published for five days in the manner provided in the Argentine bankruptcy law, making it known that such resolution does not affect the right of local creditors to request the commencement of a bankruptcy proceeding in the Republic or to file their claims in the foreign proceeding, if applicable.

The rule resolves the case of double verification, if it is appropriate according to applicable law, in a broad and reasonable manner. The effects of a 'payment' in respect of the creditor satisfied, both in the foreign country and in the Argentine Republic, and in any case, the principles of unjust enrichment are applicable here.

This regulation establishes precise, reasonable, and adequate requirements for the request to recognize the foreign proceeding, in a prompt manner, and, on the other hand, effectively provides for the case of the inexistence of the reasons that motivated the previous recognition, or their subsequent disappearance, which preserves legal certainty and the reasonable limits of *res judicata* in this case. However, the court must be diligent in evaluating the evidence accompanied by the petitioner to avoid any possible procedural fraud, as we have already pointed out above.

Article 18 regulates the information after the request for recognition of the foreign procedure. In this regard, it provides that from the time the application for recognition of a foreign proceeding is filed, the foreign representative must inform the court without delay of the following:

a) Any notable change in the status of the recognized foreign proceeding or in the appointment of the foreign representative and any other foreign proceeding that is being followed with respect to the same debtor and of which the foreign representative is aware.
b) Any other foreign proceeding followed with respect to the same debtor and of which the foreign representative is aware.

This rule provides transparency, publicity, and visibility to the foreign proceeding and legal certainty to local bankruptcy proceedings and is in accordance with the principles of professional ethics of bankruptcy officials. It should be added that, with the electronic means currently available with respect to the information of many international bankruptcy proceedings, these circumstances may be quickly known by the court, especially by websites of the bankruptcy proceedings abroad or websites of the foreign representative and even of the insolvent debtor. Nevertheless, the rule is consistent with the law and is prudent.

Article 19 regulates the measures that may be awarded from the request for recognition of a foreign proceeding until the resolution of the request.

In this sense, in paragraph 1 the rule provides that from the filing of an application for recognition until the resolution of such an application, the court may award provisional measures, at the request of the foreign representative and when the measures are necessary and urgent to protect the assets of the debtor or the interests of the creditors. The list of the provisional measures that may be awarded is not exhaustive or restrictive and, among other orders, the law mentions the following:

- paralyzing any enforcement measure against the debtor's assets,
- entrusting the foreign representative, or any other person appointed by the court, with the administration or liquidation of all or part of the debtor's assets located in Argentine territory, to protect and preserve the value of those assets which, due to their nature or to other concurrent circumstances, are perishable, subject to devaluation, or threatened by any other cause,
- applying any of the measures provided for in Article 21(1)(c), (d), and (g), on measures that may be awarded upon recognition of a foreign proceeding,
- notifying the interested or affected parties, if applicable, according to Argentine law.

Paragraph 2 provides for the expiration of the provisional measures awarded when a decision is rendered on the application for recognition, unless they are extended as provided in Article 21(1)(f), on measures granted upon recognition of the foreign proceeding.

Paragraph 3 provides for the possibility of the rejection of any measure by the court under this article when that measure affects the ordinary course of a foreign principal proceeding.

This rule allows for the adequate and prompt protection of bankruptcy assets since the measures are not subject to the prior decision recognizing the foreign proceeding, provided that the measures are necessary and urgent and that the measures will expire at the time of the decision on the application for recognition. This solution and the safeguards are fair, reasonable, and flexible. At the same time, the rule is respectful of the foreign principal proceeding by providing for the rejection of measures that may affect it.

Article 20 regulates the effects of the recognition of a foreign principal proceeding.

Section 1 provides for such effects:

(a) the stay of the commencement or continuation of all individual actions or proceedings that are being conducted with respect to the debtor's assets, rights, obligations, or liabilities in the Argentine territorial jurisdiction. This does not prevent a party from commencing or resuming a proceeding in another jurisdiction;
(b) the stay of all enforcement actions against the debtor's assets in the Argentine territorial jurisdiction; and
(c) the suspension of any right to transfer or encumber the debtor's assets, as well as to otherwise dispose of such assets, unless the acts of disposition do not affect registrable assets and/or are carried out in the ordinary course of business of the debtor.

Paragraph 2 provides that the scope, modification, and extinction of the effects of the stay and suspension referred to in paragraph 1 of this article, and the procedure to be attributed to the administration and/or liquidation and distribution of the assets upon recognition, if there is no Argentine proceeding, shall be adjusted and subject to the provisions of Argentine law and jurisdiction for such cases.

Paragraph 3 provides that paragraph 1(a) of this article shall not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

Paragraph 4 provides that paragraph 1 of this article shall not affect the right to request the commencement of a proceeding under Argentine bankruptcy law or to submit claims in any such proceedings.

These institutions are typical of the effects of an opening of the bankruptcy proceeding, which, in the case of multinational bankruptcies, is operated at the time of the recognition of the foreign proceeding. This provision is in line with several foreign bankruptcy laws. On the other hand, the effects are counterbalanced by protecting local creditors by allowing the commencement of the necessary individual actions or proceedings and by allowing the right to request the initiation of a bankruptcy proceeding under Argentine bankruptcy law or to file claims in such proceeding. This preserves, also, the equality of treatment of local and foreign creditors already mentioned above. The rule is consistent with the law and prudent in its solutions, and wide in coverage. In addition, it foresees the different circumstances through which the Argentine process may go through in view of the consequences of the foreign process, leaving open the needs of each proceeding without limiting them too much.

Article 21 establishes the regime of the measures that can be awarded as from the recognition of a foreign proceeding.

In this respect, paragraph 1 provides that upon recognition of a foreign proceeding, whether principal or non-principal, the court may award any appropriate measure mentioned below, including but not limited to the following, if it is necessary to protect the assets of the debtor or the interests of the creditors, at the request of the foreign representative:

(a) to paralyze the initiation or continuation of individual actions or proceedings relating to the assets, rights, obligations, or liabilities of the debtor, to the extent that they have not been paralyzed pursuant to Article 20 (1)(a);
(b) to stay any enforcement action against the property of the debtor to the extent that it has not been stayed under Article 20(1)(b);
(c) to suspend the exercise of the right to transfer or encumber the debtor's assets, or to otherwise dispose of those assets, to the extent that that right has not been suspended under article 20;
(d) to provide for the examination of witnesses, the presentation of evidence or the provision of information regarding the debtor's assets, business, rights, obligations, or liabilities;
(e) to entrust the foreign representative, or any other person appointed by the court, with the administration or liquidation of all or part of the debtor's assets which are in the territory of the Republic;
(f) to extend any protective measures awarded under Article 19(1) on measures available upon application for recognition of a foreign proceeding; and
(g) to grant any other measure that, under Argentine law, is appropriate for the administration, reorganization, or liquidation of the debtor's assets.

Article 21(2) regulates another effect of the recognition of a foreign proceeding, whether principal or non-principal, in the sense that the court, in the case of an absence of an Argentine proceeding already opened, shall determine the procedure to be attributed to the administration and/or liquidation and distribution of all or part of the assets, which shall be adjusted and subject to the provisions of Argentine law for such cases.

Likewise, Article 21(2) provides that, at the request of the foreign representative, the foreign representative or any other person appointed by the court to that effect, if it is deemed appropriate, may be entrusted with the administration and/or liquidation and distribution of all or part of the debtor's assets located in the territory of the Republic, provided that the court ensures that the rights of the local creditors are sufficiently protected, and that the Argentine bankruptcy law is observed and/or the necessary measures are taken to that end.

Article 21(3) provides a guideline for the grounds for the court's decision on measures that may be granted, in the sense that when awarding any measures under this article to the representative of a foreign non-principal proceeding, the court must ensure that:

- the measures relate to assets that, under Argentine law, must be administered within the framework of the foreign non-principal proceeding or
- they relate to information required in that foreign non-principal proceeding and
- they do not interfere with other insolvency proceedings, with the principal proceeding.

The lawmaker went further in 2018 to include the case of 'liquidation' of assets. One author suggested that addition in 2018 on the Spanish edition of a book on the Private International Insolvency Law in Argentina, commenting the 2002 Argentine Bill on Cross-Border Insolvency[1].

This rule protects the debtor's assets and creditors, both local and foreign, of an equal rank, in a reasonable and proportionate manner. The non-restrictive nature of the measures that may be granted provides flexibility and adaptation to the circumstances of the case. This article is perfectly in harmony and consistency with the award of provisional measures under Article 19. The protection of local creditors is also expressly assured as a prerequisite for the court's decision. The rule in paragraph 3 is an adequate manifestation of the parallelism of the forms and powers that govern the proceedings of a foreign non-principal proceeding, in keeping with a local non-principal proceeding. The concept and purpose of the local or foreign non-principal proceeding could be further developed in the future.

Article 22(1) regulates the protection of creditors and other interested people in that, in awarding or denying a measure under Article 19 or 21 or in modifying or terminating such measures under paragraph 3 of this article, the court shall ensure that the interests of creditors and other interested persons, including the debtor, are adequately protected.

Article 22(2) provides that the court may make any relief awarded under articles 19 or 21 subject to certain conditions as it deems appropriate.

1 Miguens, 2018, 89.

The lawmaker has considered the special need for coordination between local and foreign proceedings, especially the principal ones.

Finally, Article 22(3) provides that, at the request of the foreign representative or of any person affected by any measure granted under articles 19 or 21, or *ex officio*, the court may modify or terminate the awarded measure.

This rule provides the court with flexible guidelines to protect both the debtor and the creditors, both local and foreign, respecting the equality between them and ensuring the prudence of the decisions by expressly and reasonably providing for the requirements to award or waive them, at the request of a party or *ex officio*. This protects all parties involved, the court does not waive its leading role in the local bankruptcy with multinational significance and ensures equal treatment of local and foreign creditors. We all agree with the measures explained above.

Article 23 regulates the regime of actions to challenge acts detrimental to creditors, according to which paragraph 1 provides that upon recognition of a foreign proceeding, the foreign representative shall be entitled to file bankruptcy actions or other non-bankruptcy actions (called usually *ius commune* in countries of the European Continental Law such Argentina) to revoke, to make ineffective, or to declare ineffective acts detrimental to creditors. Finally, it is provided that if there is an Argentine bankruptcy proceeding in progress, such actions must be adjusted to the status, manner, and procedure of any such proceeding.

Article 23(2) provides that when the foreign proceeding is a non-principal one, the court must ensure that the action affects assets that, under Argentine domestic law, must be administered in the context of the foreign non-principal proceeding.

The rule broadly protects creditors with respect to the detrimental acts of the debtor since the recognition of the foreign proceeding. With respect to paragraph 2, the nature and purpose of this parallelism of forms and powers between the local and foreign non-principal proceedings is consistent with legal standards but may be further discussed in the future.

The term ‘administered’ should be interpreted in a broad sense, including administration, liquidation, and distribution, according to our opinion.

Article 24 regulates the standing of a foreign representative in a proceeding in Argentina, providing that from the time a foreign proceeding is recognized, the foreign representative may intervene, under the conditions established under Argentine domestic law, in any proceeding to which the debtor is a party.

This rule preserves the equal treatment of local and foreign trustees in bankruptcy or bankruptcy officials or representatives and is therefore consistent with the spirit and letter of this project, one of whose purposes is to achieve such equal treatment between the parties involved in local and foreign proceedings, which is worthy of praise.

VI. Chapter IV. Cooperation with foreign courts and representatives

Article 25 regulates cooperation and direct communication between an Argentine court and foreign courts or representatives.

Article 25 (Paragraph 1) provides that regarding the provisions of Article 1 on the scope of application of the regime, the court must cooperate to the extent possible with the foreign courts or foreign representatives, either directly or through the relevant bodies of the bankruptcy proceeding, or by authorized persons, according to the *lex fori*.

Article 25 (Paragraph 2) empowers the court to communicate directly with foreign courts or representatives or to seek information or direct assistance from them.

This rule enshrines the legal possibility of greater communication among courts themselves and among courts and representatives (and of course among representatives themselves, as provided for in Article 26), following the modern trends proclaimed by UNCITRAL and the other institutions mentioned in the introduction of this work, which we consider to be pertinent and fair. This structure is so because it:

a) allows a more fluid communication on the issues related to the insolvency proceedings of the same debtor in multiple countries;
b) increases the amount of information available to all parties involved;
c) increases the possibilities of defence in court, and, finally,
d) allows for the coordination of decisions by the courts, especially about the reorganization of the multinational company in operation, or the liquidation and distribution of assets in each country. In the case of communication, the legal regime of the legal effects of telephone and internet communication technologies must be observed. Nowadays all the online acts of the court can be properly and legally recorded.

Article 26 regulates the cooperation and direct communication between the relevant body of the Argentine bankruptcy proceeding and foreign courts or representatives.

Article 26(1) provides that in matters within the scope of the rule being commented (Article 1 of the Draft), the trustee or representative of the body in charge of administering the reorganization or liquidation of an Argentine bankruptcy proceeding must cooperate—in the exercise of its functions and under the supervision of the court—, with foreign courts and representatives.

Article 26 (2) provides that the relevant officer of the Argentine bankruptcy proceeding ('Trustee in Bankruptcy') shall be empowered, in the exercise of its functions and under the supervision of the court, to communicate directly with foreign courts or representatives, under the *lex fori*.

The purpose of this rule is to enable, facilitate, and encourage cooperation and direct communication between the officers and courts involved in the various bankruptcy proceedings opened in different countries, in a prompt, accurate, and effective manner. The terms of cooperation and communication (which in turn aim at the coordination of the different insolvency proceedings) are sufficiently broad, flexible, and pragmatic. Thus, the results that may be obtained from this communication activity are as adequate as possible to the applicable regulations (at least to the general principles and the main institutions of the insolvency law of each State whose law is applicable) and to the circumstances of each case. The provision follows the trends of UNCITRAL, and other institutions mentioned above.

It should be noted that the success of these tasks will depend on:

- the efficiency and preparation of the jurisdictional structures of each country,
- the willingness of the parties involved to cooperate,
- the time available and
- the language used, which may well be business and legal English.

We believe that this rule is a good attempt to modernize the jurisdictional structures, to speed up the procedures of reorganization or liquidation of bankruptcies, to promote more expeditious, effective, practical, and equitable solutions for all parties involved. And for these reasons we think it is worthy of praise.

Article 27 establishes in detail the different forms of cooperation which can be carried out by all appropriate means.

Among other means, the article provides a list of means of cooperation, such as:

(a) the appointment of a person or body to act under the direction of the court;
(b) communication of information by any means the court deems appropriate;
(c) coordination of the administration and supervision of the debtor's assets and business;
(d) approval or implementation by the courts of agreements concerning the coordination of proceedings;
(e) coordination of simultaneous proceedings regarding the same debtor;
(f) coordination of proceedings where claims are to be submitted in more than one proceeding and requiring the insolvency representatives to exchange lists of creditors, the claims admitted, their privileges or priorities and even the payments made. If necessary or appropriate, efforts should be made to harmonize the time periods and procedures for the submission of claims.
(g) coordination of the treatment granted or to be granted to the claims, ensuring the recognition in other States of the claims verified and admitted in the Argentine proceeding and for the recognition in the local proceeding of the claims verified in foreign proceedings; establishing the priority of the claims and other measures necessary for such purpose.

Article 27(2) provides that the court may communicate directly with foreign courts or representatives to obtain information or request direct assistance from them, as long as due process guarantees are respected. In particular, the rule provides that communications shall be subject to the following requirements:

(a) The time, place, and manner of communication must be determined in advance between the court and the foreign courts or between the court and the foreign representatives;
(b) all proposed communications must be notified sufficiently in advance of the parties interested in the corresponding insolvency proceeding;
(c) the court, when deemed appropriate, may authorize the personal participation of the trustee or representative of the body in charge of administering the reorganization or liquidation of the Argentine

bankruptcy proceeding, as well as of another interested party, in the communication;

(d) the court shall determine whether the communication may be recorded by any technical means, in which case any such recording shall become part of the court file; and
(e) all communications observe the mandatory rules of the countries between which the communication is made, as well as with the rights of the interested parties, regarding the confidentiality of the information, if applicable.

Article 27(3) provides that communications involving the court and foreign courts shall not give rise to:

(a) any waiver by the court of any power or responsibility on its part or of its jurisdiction;
(b) a decision on the merits of any matter before the court;
(c) a waiver by any party of any of that party's substantive or procedural rights;
(d) modification or invalidation of resolutions already issued by the court.

Article 27(4) provides that the court may hold hearings in coordination with a foreign court provided that the substantive and procedural rights of the parties to the bankruptcy proceeding and the jurisdiction of the court are safeguarded. To hold these hearings, prior agreement must be reached on the rules for:

- the development of the hearing,
- the requirements for notification,
- the method of communication,
- the conditions that must govern the right to appear and be heard,
- the form of presentation of documents and the limitation of the jurisdiction of each court to the parties that appear before it.

This rule provides a non-exhaustive and non-restrictive list of the possible forms of communication and cooperation for the coordination between the different proceedings that enable the courts and the insolvency agencies to implement these activities. This approach may be useful not only to legally enable these forms of cooperation but also as models to be adopted by the courts or by the insolvency agencies. For the rest, we refer to the comments on the previous article. The court clerk may take minutes of the hearings for inclusion in the paper or electronic case file or proceed to legalize the recordings of the acts of the court.

We believe it is important to include among the possible subjects of communication not only the debtor who has been subject to a preventive reorganization proceeding but also the debtor's former representatives or directors, since they are the ones who knew or should have known about the debtor's business before the commencement of the local or foreign bankruptcy proceedings.

VII. Chapter V. Parallel proceedings

This chapter establishes the regime of parallel proceedings in the different countries where the debtor has assets or obligations.

Article 28 regulates the commencement of a proceeding under Argentine bankruptcy law after the recognition of a foreign principal proceeding.

In this respect, the article establishes that from the recognition of a foreign main proceeding, a proceeding may only be initiated under Argentine bankruptcy law when the debtor has assets in the Argentine territorial jurisdiction or when it has a branch or establishment in the country, in this case even if it has no assets at all. The effects of this proceeding shall be limited to the debtor's assets located in the Argentine territorial jurisdiction and, to the extent required for the implementation of the cooperation and coordination provided in Articles 25, 26, and 27, to other assets of the debtor located abroad which, under Argentine domestic law, must be administered in this proceeding.

We understand, as we have expressed above when commenting on Article 21(3) of the Draft, that when the rule says 'administered' the meaning should be interpreted broadly and therefore including both the administration of the assets and their disposal, liquidation, and distribution, in the case of a liquidation proceeding or disposal in any form in a bankruptcy or reorganization proceeding.

Article 29 regulates the coordination of a proceeding followed under Argentine bankruptcy law and a foreign proceeding.

In this respect, as a general guideline, the law provides that when a foreign proceeding and a proceeding under Argentine bankruptcy law are being conducted simultaneously with respect to the same debtor, the court shall endeavour to collaborate and coordinate its actions with those of the other proceeding, pursuant to the provisions of Articles 25, 26, and 27, as set forth below:

The terms of the cooperation are the following, according to the different paragraphs of the regulation, namely:

(a) When the procedure followed in the Republic is in progress at the time of filing the application for recognition of the foreign procedure:
    (i) Any measure awarded under Article 19 or 21 must be compatible with the proceeding commenced in the Republic; and
    (ii) If the foreign proceeding is recognized in the Republic as a foreign principal proceeding, Article 20 shall not be applicable.
(b) When the proceeding brought in the Republic commences after the recognition, or once the application for recognition of the foreign procedure has been filed:
    (i) Any measure that was in force under Articles 19 or 21 shall be re-examined by the court and modified or revoked if it is incompatible with the Argentine proceeding;
    (ii) If the foreign proceeding has been recognized as a foreign principal proceeding, the stay or suspension referred to in Article 20(1) shall be modified or revoked under Article 20(2) if it is inconsistent with the proceeding commenced in the Republic.
(c) When awarding, extending, or modifying a measure awarded to a representative of a foreign non-principal proceeding, the court shall ensure that such measure affects any assets which, under Argentine domestic law, must be administered in the foreign non-principal proceeding or concerns information required for such proceeding.

This rule is consistent with the system of measures that may be awarded and consequently respects the equal treatment of local and foreign creditors, not only procedurally but also substantively. It also observes the applicability of the Argentine bankruptcy law with respect to any assets located in the country, by application of the *lex fori*. In accordance with our opinion above, we interpret ‘administered’ in a broad sense regarding the assets.

Article 30 provides for the coordination of several foreign proceedings, according to which, as a rule of general scope, it is established that in the cases contemplated as within the scope of the project (Article 1), when more than one foreign proceeding is followed with respect to the same debtor, the court shall seek cooperation and coordination in accordance with the provisions of Articles 25, 26, and 27, and the following rules shall apply:

(a) Any relief awarded under Articles 19 or 21 to a representative of a non-principal foreign proceeding, after recognition of a foreign principal proceeding, shall be consistent with the latter.
(b) If a foreign principal proceeding is recognized, after recognition or after an application for recognition of a foreign non-principal proceeding has been filed, any measure that was in effect under Articles 19 and 21 shall be reviewed by the court and modified or revoked if it is inconsistent with the foreign principal proceeding.

If, after recognition of a foreign non-principal proceeding, another foreign non-principal proceeding is recognized, the court shall grant, modify, or terminate any appropriate measure to facilitate the coordination of the proceedings.

These rules respect the parallelism of the forms and powers of the local and foreign principal and non-principal insolvency proceedings, which is fair and equitable. They also assure equality of local and foreign creditors.

Article 31 establishes that the recognition of a foreign main proceeding is grounds for the opening of a bankruptcy proceeding under Argentine bankruptcy law.

We consider this rule as a rebuttable presumption, to the extent that, unless otherwise proved, the recognition of a foreign principal proceeding shall constitute valid evidence that the debtor is insolvent for the purposes of the commencement of a collective proceeding under Argentine bankruptcy law. We understand that this presumption is rebuttable because we do not consider an automatic extension of bankruptcy as desirable in our country, given how serious it is from an institutional point of view to declare an individual and his or her estate as insolvent when that is not the economic reality, according to the concept of state of cessation of payments as ground for the opening of a bankruptcy proceeding in Argentine law.

This rule coincides with the current Article 4 of the Argentine bankruptcy law, but it is not irrebuttable evidence like that one, which in our opinion is fairer and more appropriate, both because the insolvency can be limited to one country or several but not necessarily and automatically to all possible countries and, on the other hand, a presumption of insolvency, as far as it is exceptional or of institutional relevance, must be adequately limited to the forums in which it actually exists, after verification of the requirements of universality and permanence that any bankruptcy proceeding (at least the Argentine one) demands in order for its commencement to be appropriate.

Article 32 establishes the rule of payment in parallel proceedings.

In this respect, the rule provides that, notwithstanding the rights of the holders of privileged or secured claims, a creditor that has received a partial collection with respect to its claim in a proceeding followed in a foreign State pursuant to a rule concerning insolvency may not receive a new dividend for that same claim in an insolvency proceeding followed under the Argentine bankruptcy legislation with respect to that same debtor, as long as the dividend received by the other creditors of the same category is proportionally lower than the collection already received by that creditor.

This rule proportionally equates local and foreign creditors, is consistent with the project system and with the principles of Private International Insolvency Law and with the legal effects of a 'payment' of the same obligation and, finally, with the rules of unjust enrichment.

VIII. Chapter VI. Multinational groups of companies

Chapter VI is innovative regarding the previous Argentine Project of 2002 and regulates multinational groups of companies.

Article 33 regulates in general international cooperation, communication, and coordination in cases of insolvency of multinational groups of companies to the extent that they are compatible with the Draft system.

Article 34 provides for cooperation between courts in the context of multinational groups of companies. In this respect, the rule provides the following as powers of the court when dealing with an insolvency affecting a multinational group of companies, under Argentine domestic law:

(a) To provide for cooperation with the courts dealing with insolvency proceedings involving members of a multinational group of companies commenced in different States.
(b) To authorize cooperation between the courts and the foreign representatives and the trustee or representative of the body in charge of administering the reorganization or liquidation of the debtor of an Argentine bankruptcy proceeding.
(c) To facilitate and promote the use of various forms of cooperation to coordinate insolvency proceedings involving different members of an enterprise group located in different States and to determine the conditions and safeguards to be applied in such forms of cooperation

to protect the rights of the interested parties and the authority and independence of the courts.

The rule is a consistent derivation of the principles of communication, cooperation, and coordination (and fair solutions) of any international modern insolvency proceeding regulations this time applied to corporate groups. The authorization and powers of the court are timely and appropriate because few things cause such uncertainty as a multinational group in insolvency.

Article 35 provides for cooperation between the Argentine court and foreign courts or representatives.

It establishes the duty of the Argentine court to cooperate with foreign courts or foreign representatives, to the extent of its ability, either directly or through the trustee or representative of the body in charge of administering the reorganization or liquidation of an Argentine bankruptcy proceeding. The purpose of the cooperation is to coordinate the local proceedings, and the insolvency proceedings commenced in other States with respect to a company belonging to the same group of companies. The forms of cooperation established above will be applicable to a multinational group of companies.

We assume that coordination entails a set of fair solutions in cases of multinational insolvency proceedings that have been or are not bankrupt, since the final cause of any legal system is a fair solution to the situation of each individual case. The commentary to the previous article is applicable here.

Article 36 establishes direct communication between the court and the foreign court or representative.

It provides for the possibility of direct communication between the court and foreign courts or representatives in cases of multinational groups of companies for the purpose of:

(a) seeking information or direct assistance from them with respect to the local proceeding and proceedings in other States concerning members of the enterprise group; or
(b) coordinating hearings.

All of this is in accordance with the provisions on communications and coordination of hearings of this law.

The article attempts to introduce order and agreement into the complex scenario of a multinational group of companies that are totally or partially insolvent. It is therefore worthy of praise.

Article 37 provides for the possibility of cooperation and communication between the Trustee of an Argentine bankruptcy proceeding of a multinational group with foreign representatives or foreign courts, under the supervision and authorization of the court and in accordance with Argentine law. They may consist of:

(a) exchanging or disclosing information about the participants of a multinational group of companies, ensuring the confidentiality thereof;
(b) entering into cross-border insolvency agreements to facilitate the coordination of the insolvency proceedings of the parties of the multinational group;
(c) coordinating the administration and supervision of the assets and businesses of the members of the multinational group that are subject to insolvency proceedings.

By means of what is mentioned in paragraph (b), above all, the court and the insolvency officers have the tools to arrive at fair solutions in cases of groups of companies, which do not necessarily have to be delayed in time, counted by years or months. In this respect, the experience of General Motors Corporation is an example of a supersonic bankruptcy entire solution that could be imitated by other countries.

Article 38 provides for the replacement of Articles 2, 3, and 4 of Law No. 24522 with the texts formulated therein, namely:

Art. 2. Subjects covered. Human beings, private legal entities, and companies to which the National, Provincial or Municipal State is a party, can be declared bankrupt, regardless of the percentage of their participation.

These are the entities included:

(1) The estate of the deceased, as long as it is kept separated from the estate of the successors.
(2) Debtors domiciled abroad in respect of assets existing in the country or when they have a branch or establishment in the country, even if they have no assets.

Public legal entities, insurance companies, financial institutions, persons regulated by Law No. 24241, as well as other subjects that may be excluded from the application of the Argentine bankruptcy legislation by special laws within the scope of domestic law, may not be declared bankrupt. Therefore, they are excluded from the application of this regulation in comment.

In our view, the special insolvency regimes of the entities mentioned in the proposed Article 2, last paragraph, should not prevent the possible application to them of the cross-border insolvency regime designed here in liquidation (not reorganization) cases. This is based not only on the analogy with the other subjects to which this regime applies, but also because such foreign entities may exist in the Republic, or which have interests or assets in the Republic. Therefore, we propose a modification of the text to authorize this application of the regime in a future amendment of this preliminary Draft.

Art. 3. Competent Court in bankruptcy proceedings.

The court of competent jurisdiction in bankruptcy matters shall intervene in the insolvency proceedings, in accordance with the following rules:

(1) In the case of individuals, the court of the place of the administration of their business; in the absence of this, the court of the place of domicile.
(2) If the debtor has several administrations, the court of the place of the administration of the main establishment has competent jurisdiction; if this quality cannot be determined, the judge who first acted in the case shall have competent jurisdiction.
(3) In case of insolvency of private juridical persons (legal entities) and the companies in which the National, Provincial or Municipal State is a party—with the exclusions foreseen in article 2—the court of the domicile has competent jurisdiction.
(4) In the case of entities not incorporated in accordance with legal figures, the court of the place of the domicile has competent jurisdiction; otherwise, the judge of the place of the establishment or main exploitation shall have competent jurisdiction.
(5) In the case of debtors domiciled abroad, the court of the place of the administration in the Republic shall have competent jurisdiction; in the absence of the latter, the court of the place of the establishment, exploitation, or main activity. If according to Argentine law the jurisdiction cannot be established, the court of the place where the assets are located shall have competent jurisdiction. In the event of multiple properties located in different areas of territorial jurisdiction of the Republic, the court which first acted in the case shall have competent jurisdiction.

This last solution may be inappropriate, unfair, or untimely, depending on the insolvent group, so another less mechanical solution shall be preferred to the one established by the last part of the provision in that case. This will have to be analysed on a case-by-case basis by the court, following the principles of jurisprudence.

Art. 4. Insolvencies Declared Abroad.

The future new article 4 states that the declaration of an insolvency proceeding abroad is grounds for the opening of the insolvency proceeding in the country, at the request of the debtor or the creditor whose claim must be made payable in the Republic. The court must check that the foreign judgment meets the procedural requirements of the Law on Cross-Border Insolvency for its recognition.

Without prejudice to the provisions of international treaties, the insolvency proceeding declared abroad that has not been subject to a recognition process in accordance with the provisions of the Cross-border Insolvency Law cannot be invoked against creditors whose claims must be paid in the Republic, to dispute their rights over the assets existing in the Argentine territorial jurisdiction, or to annul the acts that they have entered with the insolvency party.

Multiple bankruptcy proceedings. When a bankruptcy proceeding is opened in the Republic, the creditors belonging to a foreign bankruptcy proceeding that has not been subject to recognition in accordance with the provisions of the Law on Cross-Border Insolvency, when requesting the verification of their claims in the local proceeding, must report their belonging to the foreign bankruptcy proceeding and, if applicable, prove the amount for which they have the obligation of the debtor been verified in such proceeding and the payments they receive or have received from their claim, since in any case they will be subject to the rule of parity in dividends.

Parity in dividends. Any collection of unsecured claims after the opening of the local bankruptcy proceeding made abroad will be charged to the dividend corresponding to their beneficiaries due to common claims.

Foreign creditors. When a bankruptcy proceeding has been opened in the Republic, the creditors whose claims are payable abroad and who do not belong to a foreign bankruptcy proceeding may be verified and collected in parity with the local creditors.

Article 39 establishes that the law becomes effective after its publication in the Official Gazette. Article 40 is of a procedural nature.

With respect to the commentary to Article 38, since it is a different issue from the one in chapter number VI, on multinational groups of companies, and, taking into account that it is a rule applicable to all multinational insolvencies equally (whether or not they are groups of companies or corporations) we understand that the insertion of a new chapter in the text of the Bill, which would be 'Chapter VII', on the replacement of rules of the Argentine insolvency law in force, with a new title, would have been justified.

Undoubtedly, only the commentary to article 38 of the law would deserve a whole monograph like the ones that can be quoted in our Argentine doctrine. Let us just say here that the replacement of the international rules of the current Argentine bankruptcy law is consistent with the entire system of this Cross-Border Insolvency Law, to which we must add what will be expressed below.

IX. General and critical assessment of the Argentine Draft 2018 in totum

According to the characteristics of the Preliminary Project previously analysed, and to make a global and critical evaluation of it, the following considerations can be made.

Following the analysis of some articles of the Preliminary Project, a specific critical assessment of them has been made above, to which we refer the reader. Here, I will make an evaluation of the preliminary project in general.

1. The Draft includes numerous institutions that govern, organize, and distribute justice or equitable solutions to the main problems posed by modern private international insolvency law, starting with the law of the most advanced countries in the field, through the international organizations devoted to proposing rules by the different countries in various forums, such as UNCITRAL and the World Bank and, finally, by the national or international federations of professionals dedicated to insolvency, such as the American Bankruptcy Institute, INSOL International, INSOL Europe and the International Institute of Insolvency. This confers certainty, reliability in the methodology adopted and independence with respect to the solutions that can be adopted and proposed *de lege ferenda*.
2. In addition, the rules proposed, inasmuch as they have been negotiated with an open mind, by means of a sufficient consensus and a high level

of participation of legal experts specialized in the matter of insolvency and a clear sense of pragmatism, are free from any type of arbitrariness, because on the one hand they are respectful of due justice and of the bankruptcy and corporate institutions of the different legal systems already in force and, on the other hand, they contemplate adequate levels of freedom to adopt (or not) the solutions.

3. And within the practical options, those adopted by this Preliminary Draft are respectful of the nature of the regulated institutions, with coherence, order and adjusted to the prudence they demand.
4. For all these reasons, this law-making activity, for its methodology and for its final product, is worthy of praise, reasonable, timely, fair, and relevant to the problems raised that must be solved at present with respect to international bankruptcies.
5. The concepts, the situations described, and the solutions addressed are conceived with great amplitude in the formulas used by the legal text, which have flexibility in the interpretation relative to the addressees of the regulation, which is worthy of praise.
6. This rule regulates in detail and with precision the concepts, requirements, elements, safeguards, and equitable solutions, to achieve adequate communication, cooperation, and, as a final goal, the coordination of the final substantial solutions among the different bankruptcy proceedings of the same debtor in different countries, which is also worthy of praise. However, the ultimate purpose of the solutions to international bankruptcy problems must be based on the choice of fair substantial solutions, beyond the least or most successful coordination that has existed. In our view, the latter is merely an instrument or means for the justice of substantial solutions, not a goal.
7. In this sense, the project follows the most modern trends in comparative law of those countries that are leading reforms in bankruptcy law, in Europe and North America, adopting them with equanimity and proposing them in their right measure.
8. This modernized vision of the recent problems that have arisen in the last three decades is fully reflected in this project.
9. In the first Spanish edition of a monograph in 2018 we had suggested including rules on the insolvency of groups of companies, on the reorganization of companies and on the liability of company directors (on all these subjects, in multinational cases), including the controlling parties, to the fairest possible extent, which could be done in a new Draft that could be conceived. The 2018 Draft added a reasonable set of

rules in Chapter VI on Multinational Groups. Now there may be a lack of rules on reorganization of companies in insolvency and on liability of directors. These rules are already projected in part three (of the year 2010) and part four (of the year 2013) of the UNCITRAL Model Law on Cross-Border Insolvency. So, the path for future work on the issue is clear.

10. The same can be said of other institutions regulated by the European Regulation of 2015, which can inspire new provisions. This requires further study in the future by the authors.
11. Regarding the entities excluded in this Draft, this rule seems to be historically due to the double fact that, at a domestic level, in the Argentine regime some entities are traditionally excluded from the preventive bankruptcy or reorganization proceedings, being otherwise under a special regime of liquidation under the authority of an administrative agency and/or before a court of law. In most of the cases they include a formal declaration of bankruptcy by a court, such as in the case of banks, insurance companies, trusts, and others, by special laws or in the Argentine bankruptcy law itself. The second reason for the exclusion is that the UNCITRAL Model Law of Cross-Border Insolvency of 1997 excludes such entities, which are usually excluded from administrative or judicial bankruptcy proceedings, in many jurisdictions around the globe.
    However, we believe that nothing prevents the application of regulations like the one in this commentary to such entities and, on the contrary, it is not only convenient but necessary that they be included in that law, considering the advantages and benefits. In practice, in the future there will undoubtedly be local and foreign insolvency proceedings of banks, insurance companies, trusts, and other entities with special bankruptcy regimes, which will most probably have assets or claims enforceable in other jurisdictions. Therefore, we believe that this regulation we are commenting on can be perfectly applied to them. The lawmaker could have acted here with slight inadvertence that those international problems should be solved. Therefore, a future modification of this regime requires eliminating this exclusion clause; instead, it is required to write an inclusive one. Moreover, in the worst case, otherwise, it is proper to apply this regulation by analogy de lege lata, once in force, to these local or foreign entities.
12. Notwithstanding the above, we thought that one of the last obstacles to be removed to achieve fuller respect for the foreign and multinational

phenomenon is the requirement of reciprocity, provided for in Article 3 of the 2002 Argentine Draft. But in the Project of 2018 this requirement disappeared, fortunately. We thought and still think that the rule of art. 3(2) of the Project of 2002 on the requirement of reciprocity for the authorization of the application of the proposed rules is subject to criticism because it certainly limits the recommended equal treatment of local and foreign creditors; also, it notably reduces the applicability of the rule we are commenting on, and, finally, it results in many aspects retrograde, inconvenient, and unnecessary. The latter is not only due to the foregoing, but also because it is inconsistent with basic objectives or principles of private international law, such as respect for foreigners and the consequent equality of treatment among domestic and foreign subjects and obligations. Countries that have adopted the UNCITRAL Model Law, such as, for example, the United States, in Chapter 15 of the U.S. Code, have eliminated this requirement from their multinational insolvency law, and this may well be the first step in that direction for other jurisdictions. We are of the opinion that in future Drafts this rule should be eliminated to ensure the full operation of the institutions of a just Private International Insolvency Law. This is one of the great steps that the 2018 Draft has taken and for which it deserves to be worthy of praise.

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