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Draft Notes on cooperation, communication and coordination in cross-border insolvency proceedings

Compilation of comments by Government

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Jordan

1. The national understanding of insolvency in line with the actual working mechanisms of the national committee mandated with the formulation of a draft legal framework for insolvency, bankruptcy and liquidation is the restructuring of the enterprise in order to allow the company to continue its activities after overcoming the reasons for its difficulties. This restructuring would be a task assigned to the Department of Companies Control and not to the judiciary, according to this framework. Therefore, one of our comments is that, in the case of Jordan, restructuring measures are coordinated between the Department (another competent authority) and the judiciary.
2. Further elaboration of the terminology and its interpretation, as an international guiding reference, in order to avoid any ambiguity or vagueness at any phase of litigation or proceedings.
3. Cross-border insolvency proceedings should cover a businessman (owning a commercial enterprise) provided the enterprise carries on work and activities similar to those of a company in its different forms.
4. Any agreement between the insolvency representatives should involve a role for the other relevant authority.
5. There should be prior agreement concerning coordination, organization and communication mechanisms between courts in the different relevant jurisdictions.
6. There should be agreement on legally acceptable means of communication in the relevant jurisdiction.
7. In order to safeguard the debtor's rights, and allow the possibility for the company to continue its activities, decisions must be made by the court or the competent authority to liquidate the insolvency acquisitions to the most limited extent, for specific purposes and for a legal and practical justification.
8. Coordination of proceedings between the judiciary and the other authority is likewise essential in order to reduce insolvency proceedings costs.
9. In order to prevent the submissiveness of the authority of one jurisdiction to another in a manner that could harm the interests of the debtor, an inventory must be taken of the insolvency acquisitions in the relevant jurisdiction before the proceedings are initiated.
10. The interests of the (governmental) creditors must be taken into account when taking the inventory of the insolvency acquisitions.
11. Coordination between the insolvency representatives in all relevant jurisdictions and all creditors, secured and unsecured, and between debtors, courts and/or other relevant authorities.
12. The possibility of a supervisory and coordination role between the jurisdiction and the other competent authority (the government) when concluding primary and secondary insolvency agreements.

13. Proceedings related to insolvency phases must be bound by specific and agreed time limits leading to restructuring or to liquidation.
14. Adoption of an official international language with the agreement of the insolvency representatives, in addition to the language of the location or the jurisdiction or the judiciary. For example if the jurisdiction is in Jordan, Arabic and English will be adopted, if it is in Turkey, then Turkish and English are adopted, and so on.
15. The fees and honorarium of official agencies and the insolvency representatives and others must be specified in advance and included in the agreement.
16. Technical and financial support and training for national courts so that there will be judges capable of handling insolvency cases at an international level as attested by the United Nations and other organizations.
17. Creditors in all jurisdictions must benefit from the assets that can be distributed and be allowed the opportunity to submit their claims within specific time limits and that such information be published through legal means.
18. Distribution of the revenues generated by a sale must be made according to the agreement between the insolvency representatives, and not according to the principle of similar treatment, and the distribution of the revenues generated by the sale of assets must be made with the national interest in mind as a universal principle.
19. One of the main duties of the insolvency representative is to submit periodical reports on the insolvency proceedings according to the agreement.
20. Time limits must be specified by the judiciary or the other authorities for every proceeding, starting with the nomination of the insolvency representatives through the restructuring to the initiation of the proceedings, as well as when the proceedings are suspended or discontinued.
21. The applicable law must be the one agreed to by the insolvency representatives. When such an agreement is reached, all creditors must be subject to the national treatment.
22. We propose the establishment of coordination contact points when the cross-border insolvency involves more than two jurisdictions.
23. Insolvency representatives should attach greatest importance to reorganization schemes.
24. In addition to according creditors the national treatment, the agreement between the insolvency representatives must include a ranking of the creditor's priorities according to the jurisdiction accepted by the insolvency representatives pursuant to that agreement.
25. We propose that insolvency proceedings should not involve subsidiaries or branches in other states if their work is running well, and that protection should be provided to the debtor in these companies (the subsidiaries or branches).
26. The insolvency representative should guarantee that the company will assume no new obligations, and secure the legal approval for that.

27. Investigating the assets by a party in interest must be made through the court or the other authority and with the knowledge of the insolvency representative.
28. Working mechanisms of the judiciary must be observed in correspondence or communications with other judiciaries.
29. Means of communication and notification mechanisms must be specified in the agreement concluded between the insolvency representatives.
30. We propose that there should be, within the UNCITRAL project on cooperation, communication and coordination concerning cross-border insolvency proceedings, proposed model agreements between the insolvency representatives, notifications, fees and any other expenses and other such models, with a view to adoption of these models in form and content at the international level by the judiciary and other authorities concerned with cases of cross-border insolvency.
31. Without prejudice to insolvency proceedings and all parties, the interests of a company must be protected in all cases, including safeguarding the confidentiality of information, data and all sensitive company activities that have a impact on its rights and existence. Also, fair evaluations must also be made of intellectual property rights, authorizations and taking inventory of the assets. The level of confidentiality is to be determined by the court having jurisdiction. We should point out that Jordan is needs to develop technical expertise in this field.
32. The original agreement must be the basis for any subsequent secondary agreement in the same jurisdiction or in another one, with due regard to the legal differences between different jurisdictions.
33. Matters need to be clarified concerning jurisdiction over companies located in free zones (outside the customs domain of a certain country where insolvency procedures are taking place).
