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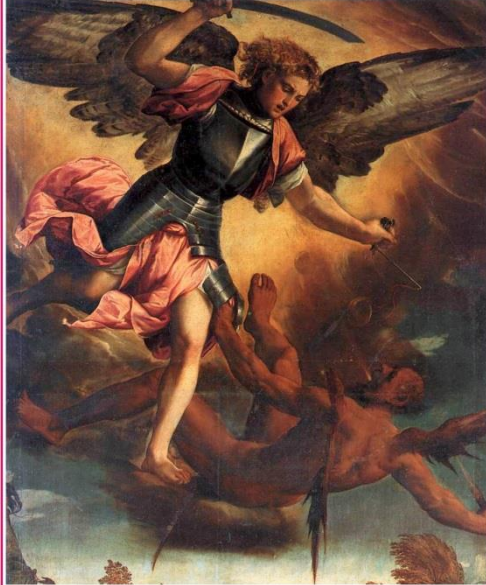
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# **Comparative Examination of the Competent Court in International Bankruptcy Cases with a specific Approach towards Iran's Law**

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## **Abstract**

**One of the most important issues in cases of international bankruptcy is determining a competent court. The approach of Iran's current laws and the international laws are not the same in this regard. On this basis, if any elements of bankruptcy cases exist in different countries, which court will be competent in one of these countries, and how will it be enforced in Iran's law if it is issued in one of these courts? Based on the findings of the present study, which has been done in a descriptive analytical method, if international bankruptcy proceedings are brought in Iran, determining the competent court will be based on the criteria set forth in Articles 21 and 22 of the Civil Procedure Law, but if the proceedings are brought outside of Iran, a court will be considered competent as the competent court for a substantive foreign prosecution, which is the center of main interests of the debtor in his area. In addition, the court located at the debtor's establishment will be competent to deal with a foreign non-main proceedings.**

**Key words: Jurisdiction, Center of Main Interests, Establishment, Foreign Main and Non-main Proceedings**

## **Examen Comparativo Del Tribunal Competente En Casos De Bancarrota Internacional Con Un Enfoque Específico Hacia La Ley De Irán**

### Resumen.

Una de las cuestiones más importantes en los casos de quiebra internacional es la determinación de un tribunal competente. El enfoque de las leyes actuales de Irán y las leyes internacionales no es el mismo en este sentido. Sobre esta base, si existen elementos de casos de quiebra en diferentes países, ¿qué tribunal será competente en uno de estos países y cómo se aplicará en la ley de Irán si se emite en uno de estos tribunales? Sobre la base de los hallazgos del presente estudio, que se ha realizado con un método analítico descriptivo, si se inician procedimientos internacionales de bancarrota en Irán, la determinación del tribunal competente se basará en los criterios establecidos en los artículos 21 y 22 de la Ley de Procedimiento Civil. , pero si los procedimientos se llevan a cabo fuera de Irán, un tribunal se considerará competente como el tribunal competente para un proceso sustancial en el extranjero, que es el centro de los principales intereses del deudor en su área. Además, el tribunal ubicado en el establecimiento del deudor será competente para tratar con un procedimiento no principal extranjero.

Palabras clave: Jurisdicción, Centro de intereses principales, Establecimiento, Procedimientos principales y no principales extranjeros.

### Introduction

Bankruptcy can be considered as one of the normal business outcomes. Since companies are borrowing under different burdens for different reasons while, in certain circumstances, companies may not be able to pay off their debts. Bankruptcy law deals with what happens in these circumstances.<sup>3</sup> On the other hand, since centuries ago, crossborder trades have been commonplace, especially in countries that have had stable sovereignty and relative security. Muslim merchants have been trading for centuries

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3 - Hert Oliver Translation: Caviani Cyrus and Shami Aqdam Shahin. Different Approaches to Bankruptcy. Legal Law Faculty, Faculty of Judicial Sciences and Administrative Services. 1385, pp. 89 - No. Forty and thirty four

from China to Spain, and during the Safavid era (the seventeenth century), Iranian businessmen had a vast network of trading (especially silk trade) from India to the westernmost parts of Europe, such as the Netherlands And even to Sweden, which brought a lot of revenue to the Iranian government.<sup>4</sup> However, it can be argued that the issue of jurisdiction, as it is now contemplated in the contemporary international trade law, had not been discussed in the past. As a result, the current issues of the international private law, including international bankruptcy issues, did not exist then. However, the manifestation of international bankruptcy law has existed since the nineteenth century, which was the starting point for the creation of massive and multinational businesses that caused transferring the major share of business from real persons to legal entities. The first treaty in this regard is Section X of Montevideo's Agreement approved in 1889, which was mostly regarding bankruptcy issues between Argentina, Bolivia, Colombia and Peru. The manifest feature of multinational companies<sup>5</sup> is the scattering of their operations and activities in several countries or even continents.

In addition to the dispersion of the range of activities of these companies, the difference in the location of the headquarters with subsidiaries has raised new issues.

Facilitating the trade between countries through the creation of shipping lines and railroads was the basis for the overseas outreach activities of large commercial companies and activities that could cause international bankruptcy and involve the courts of several countries in such a case. For this reason, International legal bankruptcy law is less recent and younger<sup>6</sup> than other business legal issues. For example, in Iran's trade law, there is no debate about international bankruptcy, and even among the authors of trade law, they skip this issue and they consider them very briefly and shortly.<sup>7</sup>

However, not only in Iran but in other countries due to the economic life

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4- Thriving boom. World of Economy Newspaper. 12/12/94.

5 - To define the multinational corporation: Karim Arani Tile. Reza. Contradiction of Courts in the Case of the Stop of Multinational Companies. Humanities and Cultural Studies. Pp.163-186

6 - Bufford. Samuel L., Adler. Louise DeCarl, Brooks. Sidney B. and Krieger. Marcia S., International Insolvency, Federal Judicial Center (2001), at 43 (footnotes omitted), available at [www.fjc.gov/public/pdf.nsf/lookup/IntlInso.pdf/\\$file/IntlInso.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/IntlInso.pdf/$file/IntlInso.pdf) (last visited Feb. 29, 2016)

7 - For example, in Iran's trade law, no regulation has been devised for international bankruptcy.

of businessmen, whether real or legal, there has been a growing trend in codifying and compiling regulations of the international bankruptcy. This process began with compiling bilateral or regional treaties<sup>8</sup> after UNCITRAL<sup>9</sup> published its model law on international bankruptcy<sup>10</sup>, many countries edited or rewrote their domestic legislation based on this model law, and also in Iran for the first time a chapter regarding the international bankruptcy was written in the new bill on commerce, in which an adaptation of UNCITRAL Model Law is evident.

There are two points of view about bankruptcy: First, if a trader's wealth is enough to pay the debt, his bankruptcy shall not be adjudicated. Second, non-actual payment of the debit will cause a merchant to bankrupt, even if the merchant has other property which he cannot use for any reasons to pay it. Of course, these two situations are often consistent.<sup>11</sup>

Based on the Trade Law of Iran, firstly, if the merchant is not able to pay his debts.<sup>12</sup> Secondly, when the debtor merchant, his creditor, or his property, are located in more than one country.<sup>13</sup> However, it is a matter of dispute in determining which of the above elements the bankruptcy will be defined as international. But the emphasis is on the place where the property is owed and the residence of the creditors is agreed by more people<sup>14</sup>. Since it is the matter of a foreign element, this discussion can be considered as one of the subjects of Private International Law. Now, if a lawsuit is filed in more than one country to deal with an international bankruptcy dispute, which court is considered competent? If an international bankruptcy is instituted in foreign courts, can the Iranian court consider itself competent? If a bankrupt is in possession of property in Iran or if the execution of a decision related to the territory of Iran is in force and the Iranian court is applying for the ballot<sup>14</sup>, then what criteria the identification and enforce-

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8 - Such as the Nordic Treaty (1933) Chapter X, the Montevideo Protocol, 1889, and the Bostmann Treaty (Havana Convention), adopted in 1926, and read: idib

9- UN Commission on International Trade Law United Nations Commission on International Trade Law (UNCITRAL) 10 - UNCITRAL Model Law on Cross-Border Insolvency

11- Khudabakhshi. Abdullah. The Legal Dimensions of Bankruptcy Cases. Quarterly Excellence Law / New Volume / Issue2. 7-30

12 - Article 412 of the Iranian Trade Law

13 - Fletcher. L. Insolvency in Private International Law (2nd Ed.). Oxford University Press.2005 .p:43 available at <https://global.oup.com/academic/product/insolvency-in-private-international-law-9780199214952>. (Last visited 14/9/2018

14 - Chapter ninth of the Civil Criminal Law Articles 169 to 179 is intended to apply to foreign law and regulations.

ment of the ruling adopted from the foreign courts by the court of Iran will depend on? What is the criterion for the jurisdiction of the hearing court? Since the jurisdiction of this court varies according to the type of international bankruptcy dispute. What is the difference between the foreign main proceeding and foreign non-main proceeding?

In this research, besides investigating the competent court to for international bankruptcy

proceedings in terms of Iranian law and some legal systems, it is attempted to answer the questions raised in this regard.

1: Competent Iranian court to deal with an International bankruptcy dispute

1-1: Residency as the criterion for jurisdiction of the Iranian court

In the event of an international bankruptcy dispute in a court in Iran, the court must, before entering into the nature of the dispute, answer the question whether it is competent to deal with such a dispute. If the answer is positive, which domestic court is competent? There are no specific provisions in this regard in Iran's legal system, even under the provisions of the new bill on trade law, the determination of the competent court is in accordance with the rules of the Civil Procedure Law. As in any other cases, the court, in accordance with Articles 21 and 22, will proceed if it is competent. However, it is not always the case that the lawsuit is brought merely or in the first instance in the Iranian court, but it is possible that the case will be dealt with in other countries. If so, would the Iranian court still consider itself competent?

The jurisdiction of the Iranian court to deal with such cases before the Iranian court or at the same time it is handled in a foreign court can be found in Article 971 of the Civil Code, according to which a lawsuit in a foreign court does not render jurisdiction for the courts of Iran.<sup>15</sup> Therefore, proceedings in foreign courts will not prevent the Iranian court from proceedings if they consider themselves competent.

Some argue that in international relations, there exists no organization above all courts, and the internal judgement of the countries of the world are not depend on a single authority, unless in case of agreement. So compelling the domestic courts to declare their lack of jurisdiction because the

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15 - Article 971 of the Civil Code: ... The notion of being the same as a lawsuit in a foreign court of law will not render the jurisdiction of the Iranian court.

case is being dealt with in a foreign court, is against the sovereignty of the state.<sup>16</sup> In the new bill on trade in Iran, Article 1182 provides such jurisdiction to the domestic court. Of course, in accordance with the provisions of the Civil Procedure Code<sup>17</sup>, according to Articles 10 to 30, and in particular Articles 21 and 22 of the Criminal Code, the principle of determining jurisdiction, the jurisdiction of the court of the bankrupt's residence because, according to presumption of innocence, no one owes another; except in the case of a fault proof which proves the debt of the defendant to the claimant. This is a global principle accepted by most legal systems in the world.

#### 2-1: The Competent Court in international bankruptcy litigations, versus the merchants who are residents in Iran

Considering that "lawsuits, in terms of jurisdiction of the court and relevant laws apply to the principles of trials follow the law of the place where the proceedings are initiated"<sup>18</sup>, and Article 21 of the Code of Civil Procedure determines the competent court in bankruptcy laws, then the proceedings regarding insolvency and bankruptcy must be filed in a court where the bankrupt or the insolvent is residing.

In order to determine the residence, the criteria in the Iranian legislation, especially Articles 1002 to 1010 of the Civil Code, should be referred to. So, if the Iranian court finds that the merchant's residence or the main center of the company is located in Iran, it can handle the lawsuit, whether the defendant is Iranian or non-Iranian. In the case of real persons, the place of residence of the person is considered as the center of his important affairs and his residence unless it is proven contrary.<sup>19</sup> If the main center of a person's affairs is apart from his/her place of residence, his/her residence will be the center of his/her affairs.<sup>20</sup> In civil law, in addition to mentioning the place of living as the residence of a person, some of the legal residences of

16 - Safaee Seyed Hossein. Topics of Private International Law, Tehran. Mizan. First edition, 1374. p. 207

17 - Article 1155 of the new bill on trade

18 - Article 971 of the Civil Code: Claims in respect of jurisdiction and recurrences are subject to the principles of local law proceedings, which shall be filed...

19 - Safaie Seyyed Hossein and Qasemzadeh Seyyed Morteza. Civil rights of people and insolvents. Tehran, Samt, 2008, p. 118

20 - Article 1002 of the Civil Code



individuals are also mentioned as well. The concept of compulsory residence is a place where the law of the state presumes it as the center of important affairs of a person, and necessarily recognizes it as the residence of a person.

The legislature has used the word Main Center for commercial companies. What is the ratio between the main center of the company and the residence? The company's main center is typically mentioned in the Company's Articles of Association. In this case, it is enough to refer to the Articles of Association to determine the company's main center. What should be done if the site of the operation or the workshop of the company or the place where the contracts are set is apart from the office of the company? According to Article "1002" of the Civil Law, the residence of legal persons is their center of operations", and according to the article" 590 ", the residence of legal person is where the legal entity's establishment is located.

By virtue of the science of the principles and the special consideration of the law of commerce in relation to the civil law and the primacy of the special law (even prior) over the general (even posterior),<sup>21</sup> it can be said that the residence of legal person is where his organization and administration is.<sup>22</sup> The first article of the company registration law,<sup>23</sup> according to which the criteria to distinguish if a company is Iranian or foreign, is the main center not the operation center. So the company's residence is considered to be the very center of the company. Also based on the last part of the article "1173" of the new bill of the law, the residence of the legal person, is Center of Main Interests (COMI), and according to this article, it is the registration center of the legal person. In clause 2 of article 1153 of the new bill, according to the UNCITRAL Model Law in the case of international

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21 - Al Ansari Sheikh Morteza. Fayyad Al-Osoul al-Ma'arof Belsarayel. Qom. Al-Nasir al-Islam's institution al- Butah al-Mudasin al-Baqm al-Mahdasya. Al-Tasbah 1417 Lunar. 2nd p. 750 p

22 - Safai Seyyed Hossein and Ghasemzadeh Seyyed Mortazi. Civil rights of persons and the insolvent. Tehran, 1387, p. 179

23 - Article 1 of the company registration law, dated 2/3/1310, states: "Any Iranian company that is based in Iran and its main center in Iran is considered as Iranian company."

bankruptcy, the term “center of the main interests of the debtor” has been mentioned. In the event of the adoption of a new bill on trade, with respect to the attention of the legislature to both laws, it can be argued that the word “Main Center” is set out in article 22, is the same as the center of main interests of the debtor in the new bill. Since most countries have taken steps to harmonize their domestic laws regarding international bankruptcy with exemplary law, it can be said that international bankruptcy laws have been affected by UNCITRAL Model Law on international standard bankruptcy law in many countries.<sup>24</sup>

3-1: The competent court in international bankruptcy laws, versus the merchants who do not have a residence in Iran.

According to the recent part of Article 21 of the Civil Procedure Code, “... If (the insolvent or bankrupt) does not reside in Iran, (a lawsuit concerning insolvency or bankruptcy) is filed in a court where the insolvent or bankrupt has a branch or representative in its jurisdiction for conducting transactions. This article replaces Article 34 of the former Civil Procedure Code. Comparing these two articles, lack of the term “Establishment” in Article 21 can be the most important difference between them. It also has or may have a license for the Iranian court to expand its jurisdiction with the broad interpretation. That is, if a businessman or a trading company does not currently have a branch or representation in Iran, but used to have previously, the court can consider itself competent to handle a bankruptcy suit. This view shows the legal system of Iran in this matter closer to the territoriality of bankruptcy regulations.<sup>25</sup> The removal of the term “Establishment” could lead to discussions regarding non-main foreign proceedings, since, according to article 6, paragraph “1153” of

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24 - Khumalo. Sandile, International Response to the UNCITRAL Model Law on Cross-Border. Available at: [Http://www.iiiglobal.org/international/cross\\_border/](http://www.iiiglobal.org/international/cross_border/).

25 - Skini Rabiyyah. The Law of Trade, Bankruptcy and Liquidation of the Insolvent, Fifth Edition, Tehran, Samt Publication, 2002, p. 11

the new bill, an establishment is any place where the debtor is man-power and the goods or services is doing non-temporary economic activities. This article is a translation of Article 2 of the UNCITRAL Model Law. Thus, this article speaks of a new bill of authority that is not named in the current Iranian laws, and article "1155" of the same bill also refers to the determination of jurisdiction in accordance with the rules of the Iranian Civil Procedure Law.

This lack, considering that according to the new article and UNCITRAL Laws, in the Foreign Non-main Bankruptcy Proceedings, is the only competent court in which the insolvent business enterprise is involved, it will cause that in case of adoption of the bill, the provisions of Articles 3 and 6 of its article "1153" and As a result, the issue of foreign non-main proceedings would be useless for those who want to file a lawsuit against a merchant who does not reside in Iran and then request for identification elsewhere. Since based on the article "21" there will be no possibility for a foreign non-main proceeding in Iran.

## 2. The competent foreign court for Foreign Main Proceedings in international bankruptcy disputes

### 2-1 The main center of the interests of the debtor, a criterion of determining the competent court

Collective Judicial or Administrative proceedings are international bankruptcy proceedings in the foreign court and the issuance of a ruling in that court are called Foreign proceedings.<sup>26</sup> This proceeding includes an interim proceeding under a bankruptcy or debt adjustment law in such a way that the property and debtor's assets are under the supervision and control of the foreign court for identification and settlement.

as the foreign proceeding, recognizes it as qualified; recognizes it and executes the ruling with considering it in terms of being the Main.

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26 - Elkin Judith. CHAPTER 15 OF THE U.S. BANKRUPTCY CODE: OVERVIEW OF PROCEDURES FOR CROSS BORDER INSOLVENCIES Haynes and Boone, LLP New York p: 3. available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=BE80C276-B299-45E4-8F35-CA9>

This discussion can be put forward in two forms of Real and Legal entities.

2-3: The center a debtor's main interests in American and Canadian law

About the legal persons, in the American Bankruptcy Law, in the fifteenth section, the center of a debtor's main interests is mentioned. Part C of Article 1516 of this Act seeks to clarify the meaning of a debtor's center of main interests, and to establish a presumption to determine the main center of the interests of the debtor. According to this article: "In the absence of evidence to the contrary, the debtor's registered office or habitual residence in the case of an individual is presumed to be the center of the debtor's main interests." The above-mentioned article presumes the location of the debtor's registered office or the habitual residence of the real individuals, as the center of the main interests. Of course, this assumption is valid until proved to be the opposite. Given the similarity between these regulations and the UNCITRAL Model Law in this regard, seems to be the best way to interpret Section 15 and refer to the texts inspired by this part of the American Bankruptcy Law, such as Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency or the European Convention on International Bankruptcy.

This concept is identical in America's bankruptcy law with the same main place(main center).

Under the Fourth section of Canada's Bankruptcy Law, the foreign main proceeding is a litigated prosecution out-of-Canada-based where the debtor's main center of interest is located. The second part of Article 268 of this law stipulates that, in case there is no evidence for the fault, the place of the debtor's registered office is assumed to be the debtor's center of main interests.

Various opinions have been issued in confirmation of the compliance of the debtor's center of main interests with location of the registered office. For example, in the case of "In re Artimm", the court decided that, as the debtor had a registered office in Rome, the debtor's center of the main interests would be presumed in Rome.

In case of "In the Tri-continental ITD", the court stated that the debtor's office or place of operations should be recognized as the debtor's

center of main interests, given that the compliance of the debtor's center of the main interests with the location of the registered office is hypothetical, contrary to that permissible.

It is argued that in the aforementioned case, it has been stated that other locations may also represent, to a degree, the debtor's center of the main interests. Provided that the

aforementioned presumption can be violated by presenting some reasons. Like any other issues, violating the accepted assumption by the legislature and, therefore, the existence of the debtor's center of the main interests, in the non-assertion of Article 1516, alleges who is here the foreign representative.<sup>27</sup>

In another case, the debtors were of a number of insurance companies operating under Caribbean Islands St. Vincent & Granada SVG. Laws. The bankruptcy lawsuits was brought in the courts of these islands and the High Court of the Eastern Caribbean had appointed the settlement directors.

Objecting to the court's decision, one of the creditors had claimed that the case should be considered a foreign proceeding. Because the debtor's residence is often located in the United States, the courts of these islands do not have jurisdiction. In response to this objection, the court stated that because the registered office of debtors is located on these islands, the center of their main interests is there; their nationality will not be the criterion, therefore the court will have jurisdiction.<sup>28</sup>

#### 2-4: Debtor's Center of Main Interests in the EU regulations

In terms of EU regulations on international bankruptcy, each Member State, if it is qualified, has jurisdiction to deal with a main bankruptcy dispute and, in case of rendering judgement, this order on all the debtor's assets will be effective anywhere in the territory of the member states.<sup>29</sup>

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27 - P1528: 2013 (Robert J & Goldstein, Karen S Malione) <https://www.lw.com/thoughtLeadership/bankruptcy-center-of-main-interest-ruling-77>. St. Vincent & Granada SVG. Caribbean

28 - Proving COMI: Seeking recognition under chapter 15 of the Chan ho . US Bankruptcy Code. Deringer.2007:p 636 Electronic copy available at: <http://ssrn.com/abstract=1014452>

29 - Last visited 28/9/2018 <https://eur-lex.europa.eu>TXT> Available at( insolvency regulation Art 3(2) EU

From this perspective, the center of main interests is also the place where the debtor's registered office is located; of course, it is a presumption that can be proven wrong.<sup>30</sup> Two important points are noticeable about the European Union's regulations on international bankruptcy:

One: If the main center interests is identified in one of the member states of the union, the verdict will include all the property and assets owned by the debtor anywhere in the territory of the union states. In this way, the courts of all the member states are required to recognize and enforce the judgment. This matter is important in practice because if the center of the main interests of a company is located in one of the member states, the person who starts the commercial transactions with the company will ensure that the verdict will be enforced at least about the property located in the member states.

Two: If the center of main interests is in one of the member states of the Union, and the court of that country opens the proceedings, other courts of the Union member states can only open the non-main proceedings, and the scope of effect of this proceeding will only be limited to the debtor's assets in that country.<sup>31</sup> Naturally, the court's eligibility requirement for such a country for non-main proceedings will depend on the existence of the debtor's commercial institution in that country. In other words, only one of the courts of the member states will be competent for the main proceeding.

Discussing this matter in terms of the EU regulations, one of the significant cases is "Euro food". The case was handled by the European Justice Court (EJC) in "2006".<sup>32</sup> In this case, the company "Euro food" owned one of the "ParmaLate" Branches. The company had been formed in Italy and had subsidiaries in different countries.

The registered office of the company was in located Dublin, the cap-

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30 - Idib: Art 3(1)

31 - Idib

32 - The Scorecard so Far: Emerging Issues in Cross.O Flynn. Megan R Bankruptcy Code. Northwestern Journal of International Law & Business, Volume 32 | Issue 2 Winter 2012. : 407, .available at: <http://scholarlycommons.law.northwestern.edu/njilb/vol32/iss2/5>

ital of southern Ireland. And its main task was to provide capital for other subsidiaries of "Parma Late". In the financial crisis of 2003, "Parma late" Group of Companies was in trouble and dissolved. Hence both Italy and Ireland claimed that the center of main interests of "Euro food" was located in those countries and therefore, it considers the country a competent place for bringing the proceedings. This disagreement in the jurisdiction was referred to "EJC". EJC passed a judgement in favor of Ireland, that is, Ireland was recognized as the center of main interests. Because, although there were several of its subsidiaries and its mailbox in Italy, the company's registered office was in Dublin. In determining the center of main interests between the two places, the tribunal for reviewing the jurisdiction disputes did not violate the presumption of compliance of the center main interests with the place of the registered office due to the location of a branch or mailbox in another country. Because, according to the foregoing, factors other than the location of the registered office must be so important to make it possible to dismiss the action by presumption of law. The judge is in charge of assessing the significance of these factors and their potential superiority to the legal presumption, due to lack of regulations in this regard; and his taste for retaining the rights of creditors or additional assistance to the debtor has a major role in adhering to the legal presumption or deviating from it. In fact, the presumption of the existence of the debtor's center of main interests at the registered office of the company, can only be violated if there are objective and verifiable factors to prove that of the debtor's center of the main interests is different from that of the debtor's registered office.

#### 1.4.1: Reports known as 33 Recitals

1. Reports known as 33 Recitals: These reports are used as notices of announcement to interpret the concept of the debtor's center of main interests. One of the European courts on February 7, 2003, commented on the recitals during the course of hearing a case. These recitals can be used to interpret the EU approved regulations on international bankruptcy.

#### 2-4-2: The Virgos-Schmitt Report:

This report was set up in 1996. This report considers the Center of

Main Interests as the place where the debtor manages its assets on a regular basis and hence is identified and recognized by third parties.<sup>33</sup>

It seems that this description, in addition to having a legal aspect, describes the economic aspects of bankruptcy proceedings, too. Because a company succeeds in attracting the other side of a contract which is able to gain credibility. Given that bankruptcy is one of the relatively natural events for commercial firms, international jurisdiction to deal with an international bankruptcy should be somewhere known to business partners who could be likely their potential creditors. This will definitely cause that presumptive risks become measurable and manageable.

About the main center of the interests of real people, two places can be as the center of main interests from the perspective of European law. The first place could, naturally and like any legal system, be the place of residence or location where a person stays more than a year. The second place that today has more advocates in European law, can be either the commercial or professional residence. As a preferable analysis, it can be said that this difference between the place of residence and the place of business will be useful when these two places are located in the two countries, but assuming that they are both in one country, discussing it will not be practically useful.

In case that these two places are in two countries, given that more commercial sides are familiar with the business residence of the merchant than place where he lives and, in fact, they mostly meet him in his office, determining the second place as the center of interests is preferable.

In confirmation of this opinion, the dispute between *Geveran Trading Co Ltd v Kjell. Tore Skjevesland* is significant. The case concerns a man who was born in Norway and, alternatively, lived in England,

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33 - Wessels. *Bob International Jurisdiction to open Insolvency Proceedings in Europe, in particular against (groups of) Companies* Institute for Law and Finance WORKING PAPER SERIES NO. 17



Spain and Switzerland. The court decided that if the main center of his interests was normal and unprofessional, his center of main interests would be his habitually residence. But if his center of main interests is professional and specialized, his professional residence is the main center of his interests, he does not live there, though.

#### 2-5: The UNCITRAL Model Law and Iran's Law

The book "UNCITRAL Legislative Guide on International Insolvency Law" about the Center of Main Interests Says: "It is the place where the debtor manages its interests based on law, and may, of course, be contested by third parties.

Article 17 of this law discusses the debtor's center of main interests, the provisions of which are reflected in Article 1173 of the new bill. According to this article, the debtor's center of main interests will be his residence. In the case of legal entities, the place of registration is considered as their center of main interests, unless proven otherwise. If, according to Article 21 of the Civil Procedure Code, the court of residence is competent to deal with a bankruptcy dispute, in accordance with Article 1002 of the Civil Code, the residence of the debtor can be considered as the center of main interests. In the case of a legal person, the situation is slightly different. On one hand, Article 590 of the Commercial Code recognizes the residence of a legal person as the place where his/her office is located. And on the other hand, the new bill considers the place of registration as the center of his main interests, unless proven otherwise. So registering a legal entity in a country can be a good indication that the country is the debtor's center of main interests. In fact, legal entities naturally register themselves where they can better protect their center of main interests according to the laws of that place. But in some cases, as the American and European laws were reviewed in this article, the place of registration may differ from the place of the debtor's center of main interests. In that case, the claimant can, based on the given reasons, prove that the debtor's main of center interests of is in a place other than its place of registration.

The truth is that, in Iran's legal literature, due to the lack of legislation of provisions of the relevant laws, basically among the legal texts, there are either no discussions regarding the elements of violations

of the notion of adaptation of the center main interests with the place of registration, or there is merely a translation of the discussions in other legal systems. It seems that if Iranian legislatures are doubting about updating and ratifying all the new bill on trade, they shall not hesitate more at least in the context of international bankruptcy related matters.

Because the adoption of the provisions adapted by the UNCITRAL Model Law on International Bankruptcy is due to the fact that most countries have adopted this Act as the basis for drafting regulations, first, has caused more adaptation and similarity of Iran's legal texts to globally accepted and credible texts. Secondly, it makes it possible to use the discussions made about the laws of other countries to resolve the raised issues in interpretation of these materials. 3: A Foreign Competent Court for Foreign Proceedings on International Bankruptcy Disputes

1-3: The business enterprise as the criterion for determining the competent court in a foreign non-main proceeding

If a proceeding is brought in a country where the debtor's establishment is located, that proceeding could be recognized as a Foreign Non-main Proceeding. The main difference between these two proceedings is in the effects on which the recognition court relies. Chapter four of the provisions of the new bill on the International Trade Law of Iran,

regarding the international bankruptcy, is allocated to the Effects of Foreign Recognition. This section is an extract from Article 20 of the UNCITRAL Model Law.

In scrutinizing the competent court on foreign non-main proceedings, what matters is the receipt of the proceeding in the location of the debtor's establishment. Paragraph 6 of Article 1153 defines a new bill on establishment as follows: "Any place where the debtor carries out non-temporary economic activities by workforce and goods or services". Both clauses "3" and "6" of Article "1153" have been adapted from Article 2 of the UNCITRAL Model Law.

Establishment is defined in Article 2 of the UNCITRAL Model Law as: "Any place where the debtor carries out non-temporary economic activities with workforce, goods or services." Article 2 of the Euro-

pean Union's Regulations on international bankruptcy has the same definition for an establishment, but does not mention services. In accordance with Section 2 "Article 1502" of the American Bankruptcy Law, an establishment is any operational place where the debtor carries out non-transitory economic activities.

#### 2-3: Two Views on Foreign non-main proceedings

If a proceedings is brought in a court where the debtor's establishment is not located, that is, the existence of neither the debtor's center of main interests nor his establishment is not attained at the place where the bankruptcy proceedings are conducted, the Iranian court cannot recognize it as a foreign proceedings, neither as a Main and nor as Non-main.

While in Canadian law, a Foreign Main Proceedings happens where the debtor's center of main interests is not and there is no need to identify the establishment. In this way, the judge is allowed to recognize a Foreign Non-main Proceedings, and he can easily recognize the proceeding as foreign non-main. Therefore, according to the new bill of the Iranian Trade Law, in order to recognize a foreign proceeding as a non-main proceeding, it is necessary to prove the existence of an establishment at the place of the claim, otherwise, that court will not be competent for proceeding.

#### 4. Effects of Recognition of Foreign Proceedings

##### 4-1: Effects of Recognition as Main Proceedings

In the current law, only the existing text on the recognition and enforcement of foreign judgments is the law of Enforcement of Civil Judgements, in which there is no specific text to mention the effects of recognition of sentences issued by foreign courts on international bankruptcy proceedings. There is also no distinction between Foreign Main and Non-main Proceedings, and it is impossible to talk about the effects of recognizing these two methods of proceedings in the Iranian legal system.

According to Article 178 of this law, foreign laws and regulations are enforced in accordance with the provisions of Civil Judgement enforcement. Therefore, the judgements identified by the courts of Iran should be enforced in the implementation stage in accordance with the provisions of this law.

In this way, the same effects the bankruptcy laws issued by Iran's courts have regarding property and individuals, can be reconciled with the recognized foreign judgement.<sup>34</sup>

#### 4.2 In the New Bill of Trade

Under the article "1179" of the new bill of trade, in the case of recognition of foreign proceedings, the provisions of Articles 951, 952, 957, 958, 959. 1078 of the new bill is about the debtor will be enforced. The legislator brought this material in chapter three, entitled "The Effects of Declaration of Insolvency". "According to article "951" of this bill, if the court orders not to begin or stop the proceedings for or against a merchant, all the claims must be prosecuted against the trustee or in favor of him". The word "Trustee" in article "1179" of the new bill has changed, because of the discussion regarding Foreign Judgement, into Foreign Representative.

Clause "4" of Article 1153 of the new bill regarding the definition of the Foreign Representative says: "A Foreign Representative is a person who, under the law, carries out foreign proceedings, the restoration, administration or liquidation of property, or the debtor's affairs; or as appointed persons, he will act as a representative in the interim proceedings." Therefore, one of the most important effects of foreign proceedings recognition by the Iranian court as the Main, is recognition of the foreign representative as the debtor's successor, so that it would no longer be possible to directly file a lawsuit against the debtor.

Articles "957, 958" of the new bill refers to the debtor's transactions and legal possessions. Given that the court has recognized the foreign proceeding as the foreign main proceeding, it is natural that it considers all the trades and legal possessions of the merchant that are harmful to the creditors, void and ineffective.

Also, according to article "959" of the new bill, individuals who have an optional claim against the insolvent merchant's assets, can prove it at any time and have it enforced. Also, according to the article "1078" of the bill, from the date of the insolvency, compensation of delay in fulfilling the obligation is not applied for the merchant. With regard to recognition of foreign judgement under Article 1183, the court can issue orders to protect the debtor's property or the interests of

creditors. The court may, pursuant to Article 1184, at the request of the foreign representative, delegate all or part of the debtor's assets in Iran to a person designated by the court. Of course, this is conditional on the court finding that the interests of domestic creditors are sufficiently protected. And finally, if a foreign proceeding is recognized as the main proceedings, the foreign representative can enter the debtor's or his property claims. By reviewing the new articles of the bill in this section, it can be seen that if a foreign proceeding is recognized as the Main, the legislator has transferred almost all the effects of the domestic proceeding into foreign main proceedings. In other words, if the foreign proceeding is recognized as the main, the Iranian court presumes that a foreign proceeding has been carried out validly and legally by an Iranian court, and all the effects of such proceeding shall be given to it. Although, according to Article 1182 of this bill, application of Article 1179 and recognition of foreign main proceedings in Iran, does not deny the jurisdiction of the Iranian court to deal with an international bankruptcy dispute. However, the natural result of recognizing a foreign proceeding as the main one, and considering that only the main proceeding can exist, is that the probable proceedings of other courts, whether Iranian or non-Iranian, will be merely non-main proceedings, provided that from the point of view the law of the place of deployment of the court, that court is competent to handle non-main proceedings.

### Results

Principally, in dealing with international bankruptcy laws, according to Articles 21 and 22 of the Civil Procedure Law, a competent court is a court where the residence of the bankrupt is located. Given the impact of the UNCITRAL Model Law on the new bill on the law of commerce of Iran, the central point stipulated in Article 22 can be aligned with the debtor's center of main interests mentioned in the new bill. The jurisdiction of a foreign court in dealing with international bankruptcy claims and as a result of the recognition of the ruling by the courts in Iran, depends on the type of proceedings. If a bankruptcy suit is brought in a foreign court located at the debtor's center of the main interests, it is referred to as a foreign main proceeding. And if foreign proceeding is in the country where the

debtor's establishment is located, it is considered as a foreign non main proceeding. And if the Iranian court recognizes it, the scope of the verdict will be limited to a part of the debtor's property, not all of it. In other words, given that in non- main proceedings, the ruling relates to certain property of the debtor and how they are possessed, so the Iranian court cannot recognize that group of proceedings that relate to property which, according to Iranian law, their administration and possession must be based on Iran's law and not by foreign law.

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