

International Insolvency Law course outline

I. Introduction

1. Background: basic concepts of (national) insolvency law
 2. Introduction & theory of international insolvency law
 - cross-border bankruptcy – scope and examples of application
 - universalism vs. territoriality of insolvency proceedings
 - jurisdiction and applicable law – procedural and material aspects
 - regulatory competition. Forum shopping vs. countermeasures.
 3. Sources of international insolvency law and scope of their application
 - history of unification initiatives – regional approaches (Scandinavia, Latin America, French-speaking Africa)
 - Regulation (EC) No. 1346/2000 on insolvency proceedings (old European Insolvency Regulation, old EIR) and its predecessors
 - Regulation (EU) No. 2015/848 on insolvency proceedings (recast) (EIR)
 - national regulations of international insolvency law and UNCITRAL Model Law on Cross-Border Insolvency of 1997
 4. General structure of the EIR
 - scope of application
 - jurisdiction to open insolvency proceedings
 - recognition and effectiveness of insolvency proceedings
 - applicable law
- ### II. Main issues of international insolvency (discussed mostly under the EIR)
5. Aims of the regulation
 - avoiding forum shopping
 - coordinating restructuring or winding-up efforts across different jurisdictions
 6. Scope of application
 - drawing the line between the EIR and national law
 7. Jurisdiction
 - center of main interests (COMI) and its understanding by the CJEU and national courts
 - “race to the court”: conflicts over jurisdiction
 - jurisdiction issues in cases of group of companies
 - jurisdiction in proceedings related to insolvency proceedings
 8. Main and territorial proceedings

- secondary proceedings and independent territorial proceedings
- opening of secondary proceedings: jurisdiction, grounds for opening and right to request opening
- coordination between proceedings
- creditor rights in respective proceedings
- specific cases of solvent debtors
- reorganization in secondary proceedings?

9. Recognition and effectiveness of insolvency proceedings within the EU

- automatic effect
- scope: recognition and enforceability of other judgments (Art. 32 EIR); relation between the EIR and the Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (“Brussels Ia”)
- powers of the liquidator
- publicity of insolvency proceedings: the European system of interconnected insolvency registers
- public policy clause (Art. 33 EIR)

10. Rules on conflict of laws

- basic rule – applicability of the law of the State of opening of proceedings (*lex fori concursus*) (Art. 7 EIR)
- exceptions – protection of local interests in other Member States
- specific issues: secured transactions (Art. 8), reservation of title (Art. 10), contracts related to real estate (Art. 11), contracts for employment (Art. 13), avoidance of acts detrimental to the creditors (Art. 16)

11. Specific case: “fresh start” – international aspects of discharge of natural persons

- concept of “fresh start”
- specific cross-border issues arising in consumer bankruptcy

12. Harmonisation of substantive insolvency law in the EU:

- Directive (EU) 2019/1023 on restructuring and insolvency
 - first step in harmonisation of national insolvency laws in EU Member States
 - limited scope: restructuring proceedings and insolvency of natural persons
 - flexible approach – many options left to the discretion of Member States
- draft Directive harmonising certain aspects of insolvency law (07.12.2022)
 - focus on transaction avoidance provisions, tracing of assets and pre-pack proceedings