https://doi.org/10.18800/derechopucp.202101.007

CC BY

DERECHO PUCP

Nº 86, 2021
junio-noviembre
pp. 217-239
REVISTA
DE LA FACULTAD
DE DERECHO

The Need to Update and Improve the Regulation of Cross Border Insolvency in Cuba

La necesidad de actualización y perfeccionamiento de la regulación de la insolvencia transfronteriza en Cuba

ADRIANA MAE MOLINA RIVAS*
Universidad de Oriente (Cuba)

Abstract: Cross-border insolvency is configured when insolvency proceedings are initiated and the debtor's assets are located in more than one State or there are foreign creditors. As this situation of patrimonial crisis involves several jurisdictions, nations have come to sign international agreements and reinforced their internal regulations in order to establish mechanisms that allow these conflicts to be resolved. In order to facilitate the foregoing, the United Nations Commission for the Development of International Trade Law prepared the Model Law on cross-border insolvency, whose provisions have been incorporated into the bankruptcy laws of different countries as it contains valuable rules that make possible the coordination of insolvency proceedings, the recognition of a foreign insolvency proceeding, and the access of foreign creditors and representatives to the courts of another State to participate in a process of this nature. In the case of Cuban legislation, insufficient regulation of cross-border insolvency is evident, which has a negative impact on its resolution. As a result of this problem, the present study pursues the following objective: to establish, based on a theoretical and doctrinal analysis, the need to update and improve the aforementioned regulation in Cuba both in the field of domestic law and in conventional international law.

Key words: Cross-border insolvency, international treaties, UNCITRAL Model Law on Cross-Border Insolvency, insolvency proceedings, Cuban legislation

Resumen: La insolvencia transfronteriza se configura cuando, iniciado un procedimiento de insolvencia, los bienes del deudor están ubicados en más de un Estado o existen acreedores foráneos. Como esta situación de crisis patrimonial involucra a varias jurisdicciones, las naciones han llegado a suscribir convenios internacionales y a reforzar sus normativas internas a fin de establecer mecanismos que permitan solucionar estos conflictos. Con el propósito de facilitar lo anterior, la Comisión de las Naciones Unidas para el Desarrollo del Derecho Mercantil Internacional elaboró la Ley Modelo sobre insolvencia transfronteriza, cuyas disposiciones han sido incorporadas a las legislaciones concursales de diferentes países por contener reglas valiosas que viabilizan la coordinación de los procedimientos de insolvencia, el reconocimiento de un procedimiento extranjero de insolvencia y el acceso de los acreedores y representantes extranjeros a los tribunales de otro Estado para

* Professor at the Department of Criminal, Business, and International Law of the School of Law at Universidad de Oriente, Santiago de Cuba, Cuba. Specialist in criminal law by Universidad de Oriente, and Master of Science in Management by St. Thomas University
ORCID Code: https://orcid.org/0000-0001-9530-8195. E-mail: amolina@uo.edu.cu

participar en un proceso de esta naturaleza. En el caso de la legislación cubana, resulta evidente la insuficiente regulación de la insolvencia transfronteriza, lo que incide negativamente en su resolución. A raíz de esta problemática, en el presente estudio se persigue como objetivo: fundamentar, a partir de un análisis teórico y doctrinal, la necesidad de actualización y perfeccionamiento de la referida regulación en Cuba, tanto en el ámbito del derecho interno como en el internacional convencional.

***Palabras clave*:** Insolvencia transfronteriza, tratados internacionales, Ley Modelo de la Cnudmi sobre la insolvencia transfronteriza, procedimientos concursales, legislación cubana

CONTENT: I. INTRODUCTION.- II. CROSS-BORDER INSOLVENCY: DEFINITION AND RESOLUTION THEORIES OF THIS CONFLICT.- III. A LOOK AT THE REGULATION OF CROSS-BORDER INSOLVENCY IN INTERNATIONAL INSTRUMENTS.- VI. THE TREATMENT OF CROSS-BORDER INSOLVENCY IN CUBAN LEGISLATION. THE NEED FOR UPDATING AND IMPROVEMENT.- V. CONCLUSIONS.

I. INTRODUCTION

Every company runs the risk of being temporarily or definitively unable to pay its debts in full and, in this regard, the laws provide for substantive and procedural mechanisms to deal with corporate insolvency. However, in a context in which trade and investment have spread globally, and in which companies have come to acquire assets and obligations in various countries, a special type of insolvency has emerged that affects the interests of several States and can involve more than one national system.

Cross-border insolvency[1] is a situation of patrimonial crisis in which there are assets or creditors in different territories, and which requires —due to the importance of not excluding from insolvency proceedings[2] neither the rights of foreign creditors nor the assets of the insolvent debtor located in other jurisdictions—modern rules that allow the recognition of insolvency proceedings conducted in other States, the access of creditors and representatives of those proceedings to the courts of the country in question, and the cooperation between national and foreign insolvency judges in the dispute resolution.

1 Also known as “international insolvency” or “insolvency with transnational impact.” In this paper, these terms will be used interchangeably to refer to the same phenomenon.

2 Bankruptcy and suspension of payments are the insolvency procedures used to try to resolve this situation.

To find solutions that make the above possible, the United Nations Commission on International Trade Law (UNCITRAL)[3], and the INSOL[4] began the study of the subject. The work of these bodies resulted in 1997 in the Model Law on Cross-Border Insolvency, the provisions of which by March 2021 had been incorporated into the insolvency laws of fifty nations[5] as they are valuable not only for jurisdictions already "accustomed to having to resolve numerous cross-border insolvency cases, but also for those others that wish to prepare adequately for the increasingly likely eventuality that such cases will proliferate" (UNCITRAL, 2013, p. 22).

This scenario shows that different countries have been willing to face insolvency proceedings with transnational repercussions, but this revolution has not had an impact on the Cuban legal panorama because, although the opening of the nation to foreign investment and to the search for foreign markets has created the factual context for the emergence of cross-border insolvency, the Cuban insolvency regime remains inapplicable and immutable and, therefore, devoid of tools to solve these cases. The reason for the status of the legislation on the subject is not because it is immune to these situations, since a nation devoted to the development of international trade relations, as stated in the Guidelines of the Economic and Social Policy of the Communist Party of Cuba[6], is not exempt from facing negative results in the business activity and being, as such, a victim of international insolvency.

In view of the premises of configuration of these assumptions, the legal regime must react and provide for the mechanisms that allow for the resolution of this conflict in order to safeguard the interests of all interested parties, including the debtor. These requirements would be highly beneficial for Cuban trade relations, since the "insecurity as to how to manage an eventual case of insolvency, hinders the flow of capital and puts an end to the incentive to foreign investment" (González & Pessoa de Oliveira, 2013, p. 51); and, in addition, they would make viable the protection and optimization of the insolvent's assets, as well as the preservation of companies in economic difficulties, with their respective impact on the conservation of jobs and the safeguarding of invested capital.

3 The United Nations (UN), with a view to achieving the harmonization of international trade law, created in December 1966—through Resolution 2205—the United Nations Commission on International Trade Law (UNCITRAL).

4 International Association of Insolvency Practitioners.

5 For a list of nations that have enacted regulations based on the above-mentioned pronouncements, see UNCITRAL (2021).

6 Confront with guidelines 78, 79, 80 and 81 of the Economic and Social Policy for the period 2016-2021, approved by the III Plenary Session of the Central Committee of the Communist Party of Cuba on May 18, 2017 and endorsed by the National Assembly of People's Power on June 1, 2017.

In a context of promoting foreign investment and seeking to position Cuban companies in foreign markets, what better mechanism to attract foreign capital and their credit reliability than to establish an effective insolvency regime that puts an end to the uncertainty of how to manage a situation of patrimonial crisis that transcends the borders of a State. The foregoing motivated the development of this article, based on the insufficient regulation of cross-border insolvency in Cuba, which has a negative impact on the resolution of transnational insolvency conflicts.

Although this topic has aroused the research interest of jurists from other latitudes, there is no research that analyzes it in the light of the Cuban legal reality. The most related works[7] only deal with the evolution and current regulation of insolvency proceedings in the country, without analyzing the particularities of international insolvency; thus, this research is intended to support, from a theoretical and doctrinal analysis, the need to update and improve the regulation of cross-border insolvency in Cuba in the field of domestic and international conventional law.

To this end, this article begins with an approach to the definition of the phenomenon and the theories that seek to resolve it. Secondly, the main international instruments on the subject are discussed in order to show the efforts to homogenize the way of resolving these situations in the legal systems of the different nations. Finally, the treatment that cross-border insolvency receives in the Cuban legislation is analyzed, and the need for its updating and improvement is exposed.

Now that several companies have been hit by the economic crisis caused by the SARS-CoV-2 pandemic, the study of this topic is essential because, in a context that threatens a wave of bankruptcies, it is essential to reinforce internal regulations so that they can cope with transnational insolvency.

II. CROSS-BORDER INSOLVENCY: DEFINITION AND RESOLUTION THEORIES OF THIS CONFLICT

The term "insolvency" identifies the situation of crisis in which a business person finds him or herself unable to pay the acquired debts, either due to imminent inability to pay or to insufficient assets. A broad understanding of this concept is not limited to the impossibility of the debtor to meet the demands of all its creditors, but includes the procedures recognized in the different legislations, bankruptcy and suspension of payments[8], to deal with business insolvency.

7 Among them, it is possible to cite the work of Cañizares (2012), Góngara García (2010), and Martínez and Baeza (2016).

8 Suspension of payments is the judicial procedure that occurs in cases of transitory insufficiency of assets and seeks to reach an agreement with the creditors on a payment waiver and waiting period

However, when the insolvency is classified as cross-border, this means that in this type of proceeding there are interests located in several territories. According to the UNCITRAL, for more than one nation to be involved in a conflict of this nature, there must be two key elements: "a) that an insolvency proceeding is conducted in accordance with the domestic rules of each country; and b) that there are assets in more than one State and/or creditors who are not nationals of the State where the insolvency proceeding is being conducted" (Wilches, 2009, p. 167). Thus, insolvency with transnational repercussions occurs when an insolvency proceeding is initiated and there are foreign creditors or the debtor's assets are located in different countries.

With the development of trade in recent years, in which companies have expanded their markets and acquired goods and creditors outside their original territory, it is no wonder that an insolvency situation involves interests located in several nations; but the different ways of dealing with this phenomenon in legal systems show the complexity of the phenomenon. The foregoing led Carbonell (2017) to state that when insolvency becomes cross-border, an additional problem is added, which is that "each State has a different legal framework, which causes inequality of concepts in the way it is conceived" (p. 131).

This reality has triggered the search for mechanisms to unify the regulation on this matter. For this purpose, international agreements have been adopted, which respond to the need to regulate "this phenomenon no longer internally, as it was traditionally done, but involving the cooperation of different States, either in the field of regional integrations, bilateral or multilateral treaties, or through the intervention of organizations, such as the United Nations Commission on International Trade Law" (Vásquez & Posada, 2012, p. 153).

Before analyzing the international instruments signed on this matter, it should be noted that three theories have been outlined to determine how to resolve the conflict: universality, territoriality, and qualified or moderate universality. The first of these concepts, universality, argues that only one court will have jurisdiction to hear matters relating to the insolvency of a debtor, and that its decisions will have repercussions in all States in which the debtor's assets exist and will bind all creditors regardless of the nation from which they originate, thus advocating the extraterritoriality of insolvency and the existence of a single forum to centralize the process.

that allows the continuity of the company; while bankruptcy is a procedure that, given the definitive impossibility of paying off all debts, is aimed at liquidating the insolvent party's assets in order to distribute them among the creditors. For more information on these concepts, see Uría (1997, pp. 1016 *et seq.*) and Martínez and Baeza (2016, pp. 71-72).

Under this system, the assets of an insolvent debtor located in another country must be placed at the disposal of the authorities of the jurisdiction in which the insolvency proceedings are being conducted, and foreign creditors must come to the insolvency court to verify their claims under the same conditions as domestic creditors. This theory, although it is a faithful defender of the principles of equality, universality and collectivity that govern insolvency proceedings[9], has the disadvantage that not many countries are willing to accept the decisions of a foreign judge that affect their citizens or assets located in their territory.

In an opposite sense, the territoriality theory is based on the principle of sovereignty and, as such, advocates that "the powers of the insolvency court are restricted to existing assets and actions performed by the debtor within the borders of the country in which such proceedings were opened" (Araya, 2005, p. 122). Considering the argument that insolvency concerns only the nation in which the debtor's assets exist and that each State should have autonomy to resolve these conflicts, it is advocated that as many insolvency proceedings as assets or debts the businessperson has in different countries should be processed.

In this way, the independent action of multiple insolvency forums on the same insolvency case is supported, each with its own judges, rules and procedures (Wilches, 2009, p. 169). This idea, although it is the one that has historically prevailed in the legislations of different nations, has no place in a globalized world, where having assets and creditors in different States is a common situation whose solution does not lie in processing insolvency proceedings independently.

As an intermediate position, the theory of qualified or moderate universality emerged, which has made it possible that, as a suitable mechanism to remedy cross-border insolvency, we do not speak in terms of territoriality or universality, but of international cooperation, which presupposes a central forum formed by a main insolvency proceeding and other secondary or ancillary proceedings that, on the same issue, are carried out in different jurisdictions. According to this thesis, the judge of the debtor's main place of business will be competent to hear the main insolvency proceedings and will be responsible for coordinating the actions of the ancillary proceedings.

In the author's opinion, this doctrine is a good option for solving insolvency proceedings with transnational repercussions, because

9 The principle of universality proclaims that it is indispensable to link all the debtor's assets to the insolvency proceedings. Another principle, the principle of collectivity, recognizes that all creditors must appear in the same proceeding, thus repudiating the existence of more than one insolvency proceeding and the filing of individual executive proceedings against the debtor that favor some creditors to the detriment of others. And finally, the principle of equality, as a reflection of the maxim *par conditio creditorum*, indicates that, without prejudice to the legal priority of credit, all creditors must be granted the same prerogatives within the process.

it encourages cooperation between States in order to achieve the satisfaction of debts, both of national and foreign creditors, and the inclusion in the process of all the assets that the insolvent debtor possesses anywhere in the world. The eclectic position offered by this theory resolves the conflicts arising from the concepts of universality and territoriality, so it is not surprising that this is the position adopted in the latest international treaties that have been approved on this matter, including the UNCITRAL Model Law on Cross-Border Insolvency, and that it is preferred in the resolution of the problem subject of this research.

III. A LOOK AT THE REGULATION OF CROSS-BORDER INSOLVENCY IN INTERNATIONAL INSTRUMENTS

The call to achieve a transnational insolvency regime that protects the interests of the parties involved, i.e., creditors and debtor, and eliminates the obstacles that the existing disparities between national laws impose to the resolution of this matter, was projected from the Istanbul Convention of 1990 and the Hague Conferences on Private International Law of 1900, 1904 and 1925. However, the spirit of harmonization of this regulation, according to Durán Prieto & Reinales Londoño (2003), had as its starting point "the figure of bilateral treaties between States with a common border and with high commercial traffic, such as the Franco-Belgian of 1899 or the Belgian-Dutch of 1925[10], which later extended their spectrum to multilateral treaties, such as the Treaties of Montevideo of 1889" (p. 73).

The multilateral treaties signed on this matter in areas other than Latin America include the Nordic Bankruptcy Convention, signed in 1933 and of which Denmark, Iceland, Norway, Finland and Sweden are members; and Regulation 2015/848 on insolvency proceedings, which replaced Regulation 1346 of 2000 and has been in force throughout the European Union, with the exception of Denmark, since June 26, 2017[11].

Despite being an area where cultural and ethnic characteristics are shared, Latin America does not have legislation that unifies commercial regulations and the treatment of transnational insolvency in all countries of the region. In the history of this continent, the multilateral

10 Other bilateral treaties on the subject are: The Franco-Italian of June 3, 1930, the Franco-Monégasque of September 13, 1930, the Austro-Belgian of July 16, 1969, the Austro-Italian of July 12, 1977, and the Franco-Austrian of February 17, 1979.

11 Other documents that address this issue at the international level are: the American Law Institute (ALI) project on transnational insolvency, which regulates international insolvency cases arising from the North American Free Trade Agreement (NAFTA); the Model Law on International Insolvency Cooperation and the Concordat on Cross-Border Insolvency, both from the International Bar Association (IBA); as well as other texts prepared by INSOL and by the Organization for the Harmonization of Business Law in Africa (OHADA).

documents that have addressed this issue are the Treaty of Montevideo on International Commercial Law of 1889, the Code of Bustamante or Code of Private International Law of 1928, and the Treaties of Montevideo on International Commercial Terrestrial Law and International Procedural Law of 1940.

The Treaty of Montevideo on International Commercial Law of 1889 was adopted at the First South American International Congress on Private International Law[12], signed by Argentina, Bolivia, Perú, Paraguay, and Uruguay, and Colombia adhered to it. On the other hand, the Treaties of Montevideo on International Commercial Terrestrial Law and International Procedural Law of 1940 were created in the Second South American Congress of Private International Law[13], and were ratified by Argentina, Paraguay, and Uruguay.

Although these treaties succeeded in establishing a common regime among the signatory States to facilitate the resolution of these conflicts, at the time when the first of these agreements was signed, at the end of the 19th century, the solution to insolvency proceedings—a phenomenon that was not frequent at that time—focused on the liquidation of the company and the distribution of local assets, giving preference to national creditors. This position is impossible to support in a globalized context of economic openness in which there are calls for the recognition of equality among creditors. Furthermore, it should not be forgotten that the Montevideo Treaties, especially those of the second stage, have a reduced spatial validity since very few countries ratified them, hence also their scarce relevance in current practice.

In another sense, the Bustamante Code or Code of Private International Law of 1928 emerged from the Sixth Pan-American Conference held in Havana in 1928; and, although it is more than nine decades old, it is still in force, in whole or in part, in fifteen[14] Latin American countries, since it was signed by Bolivia, Brazil, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Dominican Republic, Venezuela, and Cuba. Some of these countries made reservations about its content, but not on the chapter "bankruptcy or insolvency" which, within Book Four, dedicated to international procedural law, is in charge of regulating international insolvency.

Articles 328 and 329 of the Bustamante Code establish the rules of international jurisdiction in cross-border insolvency matters, which

12 This congress was held between 1888 and 1889 in Montevideo, Uruguay.

13 This congress was held in Montevideo, Uruguay, in two periods: the first in July and August 1939, and the second in March 1940.

14 Although twenty Latin American countries are signatories to the Bustamante Code, five nations have not ratified it: Argentina, Colombia, Mexico, Paraguay, and Uruguay.

allow us to identify the court authorized to handle these cases[15]. This provision must be complemented with Article 414, which stipulates that there will be only one insolvency proceeding if the debtor has only one civil or commercial domicile. It is thus inferred that the rule is in line with the theory of universality and, as such, defends the processing of a single proceeding in the place where the debtor has its domicile; however, by admitting, in Article 415, that there may be as many insolvency proceedings as there are entirely separate commercial establishments economically owned by the bankrupt in more than one Contracting State, the Code departs from the theory of universality and moves closer to that of territoriality.

Making an interpretation of these precepts in favor of the theory of universality, Vásquez and Acevedo (2014) recognize that this agreement only admits the plurality of insolvency proceedings in exceptional situations, since it is uncommon, in the context of multinational companies, that the same debtor owns in different nations what the Code qualifies as entirely economically separate business establishments (p. 13). Beyond discussing whether such a circumstance occurs frequently or not, what is certain is that the formula adopted by the law for the treatment of insolvency accepts, in certain situations, the existence of one or several proceedings. It is a position that, in the author's opinion, mixes both theories without being entirely affiliated to one or the other, and that could lead to multiple insolvency proceedings in different States in respect of the same debtor, which, acting independently, would hardly achieve the purpose of an insolvency proceeding.

With respect to a State recognizing insolvency proceedings held abroad, Articles 416, 418, 421, and 422 of the Bustamante Code set forth the extraterritorial effects that, with little local procedure, have the bankrupt's declaration of incapacity, the powers and functions of the trustees appointed in one of the Contracting States, the agreement between the creditors and the bankrupt, and the rehabilitation of the latter. On the contrary, Article 417 states that the order declaring bankruptcy or insolvency issued in one of the Contracting States must be executed according to the procedure established in the Code for judicial decisions. Therefore, in this case, the general conditions required by the rules for the execution of foreign judgments[16] must be complied with, which, by referring to the formalities required by the legislation of

15 Thus, it is proclaimed that in bankruptcy proceedings, when the presentation of the debtor is voluntary, the judge of the place of his domicile will be competent; and when this is promoted by the creditors, the judge of any of the places that is hearing the claim that motivates them will be competent, preferring, in case of being among them, the judge of the debtor's domicile. In this regard, see Bustamante Code (1928, p. 71).

16 See Title Ten, "Execution of Sentences Passed by Foreign Courts," of the Bustamante Code (1928, p. 91).

each country, make it necessary in many cases to apply the exequatur procedure[17].

Using the exequatur to enforce a foreign insolvency resolution produces credit insecurity, since it adds an additional process or procedure that delays the process and seriously affects the creditors (Vásquez & Acevedo, 2014, p. 14). This prejudice is evidenced by the impossibility of resorting to the application of preventive measures in order to protect the value of the insolvent party's assets until the special procedure that gives procedural effectiveness to the foreign resolution, by virtue of which they have such power, is carried out.

On the other hand, and in defense of the private international law principle of *lex rei sitae*[18], Article 420 refers to the fact that actions and rights in rem shall be subject to the law and jurisdiction of the judge of the place where the assets are located. This axiom, although it responds to the need of the different States to control the assets located in their territory, in the field of cross-border insolvency constitutes a major limitation, since the judge who is conducting an insolvency proceeding may, in principle, only dispose of the assets located in the nation.

With respect to transnational insolvency, if the regulations of the Bustamante Code are contrasted with those of the Montevideo Treaties of 1889 and 1940, it will be noted that the former, unlike the latter, does not separate the regulation of bankruptcy from that of civil bankruptcy, and does not grant preference to local creditors for the satisfaction of their credit over foreign creditors, which undoubtedly constitutes a wise position based on the maxim *par conditio omnium creditorum.*

Regardless of the rights and wrongs of each of these international instruments, it is true that States will find it impossible to resort to the provisions of an international convention on cross-border insolvency proceedings to which they are signatories if the other party with which they maintain commercial relations is not a party thereto. For this reason, regardless of the efforts that may be made in the international sphere in this regard, it is recommended to strength the domestic treatment that different nations grant to this issue.

Based on this reality, the United Nations Commission on International Trade Law developed on 30 May 1997 the Model Law on Cross-Border Insolvency with the Guide to Enactment and Interpretation.

17 The exequatur is a special process or procedure through which, through the local body or authority designated by the territorial law, the homologation of foreign judgments is produced, recognizing their equivalence to national judgments and providing for their execution and enforcement. Compare with Dávalos *et al.* (2007, p. 195).

18 This principle is also accepted by the Cuban Civil Code (1987) in Article 14.1, which states that "Civil legal acts relating to movable and immovable property and their formalities are governed by the laws of the State in which they are located" (p. 3).

The purpose of this system is not to address substantive aspects of insolvency law, but to harmonize the way to proceed with cross-border insolvency proceedings. Therefore, its regulations must be completed by the domestic law of each nation to "determine, among other things, the legal operators called upon to apply it, the name to be given to the various institutions, the specific proceedings to which it should apply, as well as those exempted from its application" (Esplugues, 2002, p. 19).

Although the respect for the regulations of each State, and the flexibility in the treatment of such a sensitive issue for the economic development of nations are elements in favor of the goal of unification pursued by the UNCITRAL, the system chosen—Model Law—fails to achieve this purpose, since this legislative text is not binding, and operates only as a recommendation to the States to integrate it, with or without modifications[19], into their domestic law. This shows the limited scope of the document which, unlike international treaties or conventions, does not contain the obligation to be incorporated into national legal systems and, therefore, does not guarantee uniformity in the treatment of cross-border insolvency.

Notwithstanding the above, the need to achieve a harmonious regime in this area, especially at the present time when there is a global financial crisis, has meant that, by March 2021, fifty countries have enacted rules based on the pronouncements of the Model Law. This regulation has even transcended to the Community sphere because, although Regulation 2015/848 is in force in this matter, it is only valid between the nations that make up the European Union, so it is not possible to resort to its solutions when an insolvency situation arises involving a Member State with another that is not part of that community.

With respect to the regulation of the Model Law[20], one cannot fail to notice that, in general terms, its objective is to introduce in the legislation of the different countries certain rules that make the resolution of cross-border insolvency feasible. In this endeavor, it outlines measures aimed at achieving the coordination of insolvency proceedings, the access of foreign representatives and creditors to national courts, and the recognition of foreign insolvency proceedings. Thus, this regulation allows creditors to claim their credits in any State that has incorporated it into its legal system, and allows the "foreign representative"[21] to appear

19 The Guide to Enactment and Interpretation notes that, in enacting the Model Law, a State may modify or delete some of its provisions. It goes on to admit that the degree of harmonization will be less than if a convention regime had been used; it therefore recommends that States, when adopting it, introduce as few changes as possible (UNCITRAL, 2013, pp. 27-28).

20 This regulation has been the subject of multiple studies; in this regard, see Rouillon (2000), González and Alda (2009), and González and Pessoa de Oliveira (2013).

21 The rule defines the foreign representative in Article 2 d). Compare with UNCITRAL (1997, p. 2).

directly[22] before a national court to request the opening of insolvency proceedings in accordance with domestic law or the recognition of the foreign[23] insolvency proceeding in which it was appointed.

In this way, the person administering an insolvency proceeding can act in another country as a foreign representative and participate, once a foreign insolvency proceeding has been recognized, in any domestic proceeding being followed with regard to the debtor. To achieve this, it is granted direct and rapid access[24] to foreign courts without having to resort to cumbersome and time-consuming procedures such as letters rogatory or other diplomatic channels that could delay the proceedings and result in the loss of the debtor's assets or their value.

However, UNCITRAL's work on cross-border insolvency did not end in 1997 with the development of the Model Law and the Guide to Enactment and Interpretation (2013), but also materialized in the development of the Legislative Guide on Insolvency Law in 2004[25], the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009), the UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (2011), and recently the Model Law on the Recognition and Enforcement of Judgments related to Insolvency Cases with the respective Guide to Enactment (2018)[26].

Of these regulations, it should only be noted that the Legislative Guide on Insolvency Law is intended to establish itself as a legislative standard in insolvency matters and, to this end, is intended to serve as a tool for the bodies of the different nations in the creation of new rules or in the revision of existing ones to create an insolvency law that fits the legal and commercial framework of the nation in question. Unlike the 1997 Model Law, this Guide addresses insolvency in its entirety and not only in its cross-border aspect; and, therefore, it does not cover international aspects, but is limited to the domestic dimension of insolvency (González & Alda, 2009, p. 15).

22 Articles 9 to 12 of this law contain provisions relating to the right of direct access of the representative of a foreign insolvency proceeding to the courts of the country adopting the Model Law. Compare with UNCITRAL (1997, p. 3).

23 Article 2(a) of the Model Law defines what is meant by foreign procedure. Compare with UNCITRAL (1997, p. 3).

24 It should be noted that the Model Law simplifies the evidentiary requirements for the recognition of a foreign proceeding, in order for it to be granted in the shortest possible time. See Article 16.2 of UNCITRAL (1997, p. 4).

25 The first and second parts of this Legislative Guide date from June 25, 2004, while the third part, "Treatment of Enterprise Groups in Insolvency," is dated July 1, 2010, and the fourth part, "Directors' Obligations in the Near Insolvency Period," is dated 2019 (2nd edition).

26 UNCITRAL also submitted in 2019 an advanced copy of the Model Law on the insolvency of enterprise groups.

IV. THE TREATMENT OF CROSS-BORDER INSOLVENCY IN CUBAN LEGISLATION. THE NEED FOR UPDATING AND IMPROVEMENT

In order to see how transnational insolvency is dealt with in Cuban legislation, it is necessary to start from the regulations of external source: international treaties or conventions. In this sense, it was found that the only multilateral treaty signed by the nation that contains provisions on this matter is the Bustamante Code. This cannot be seen as the solution to the problems raised by this matter, because the conflicts foreseen eight decades ago are not those that arise today in a context of globalization and commercial exchange, and also because not all countries that maintain trade relations with Cuba are part of it and some have even signed other international treaties.

The applicability of the precepts of the Bustamante Code in matters of transnational insolvency proceedings also runs up against the deficient regulation of insolvency in a general sense in Cuban domestic law, since the current Civil, Administrative, Labor and Economic Procedure Law (LPCALE)[27] omits any reference to insolvency proceedings. If we add to this the fact that the provisions relating to the suspension of payments have been repealed in the country[28], and that the substantive rules of bankruptcy, although they survive in the Commercial Code[29], lack the procedural guidelines for their materialization[30], it will be seen that Cuban legislation is devoid of the tools to deal with corporate insolvency.

This situation is the result of the changes that took place in Cuba in the construction of a socialist society. After January 1, 1959, the private economy was reduced in the country, an economic system based on the socialist ownership of all the people over the fundamental means of production was established and monetary-mercantile relations were marginalized in the economic functioning, considering them a remnant of capitalism. In a scenario marked by centrally planned management[31] and the almost absolute performance of the state enterprise, loss-making entities were financed by the State[32], so the regulation of bankruptcy

27 Law No. 7 of 1977, as amended by Decree Law No. 241 of 2006.

28 The law of June 24, 1911, which regulated the suspension of payments, expired in 1974, when it was replaced by the provisions of Law No. 1261 of Civil and Administrative Procedure, which was repealed by Law No. 7 of 1977, the current Cuban LPCALE.

29 The Spanish Commercial Code of 1885 became effective in Cuba on May 1, 1886.

30 In this regard, Góngara (2010) argues that the referred precepts of the Code of Commerce, like all substantial regulations that lose procedural support, have been rendered materially useless due to the null viability of its provisions (p. 96).

31 The Economic Management and Planning System was presented, analyzed and approved at the First Congress of the Communist Party of Cuba, held in December 1975. For more information, see Villalón-Madrazo (2011).

32 This reality was recognized by Marino Murillo Jorge, head of the Commission for the Implementation and Development of the Economic and Social Policy Guidelines, when he outlined the directives of the Cuban Economy Plan for 2014 and explained the changes in the relationship between enterprises and the State budget. In this regard, see Sánchez Serra (2013).

proceedings was forgotten in a commercial code that, although it has not been fully repealed by any other norm, authors such as Cañizares (2012) have pointed out that it was "materially abrogated by history, because of its inapplicability to the new economic relations that the revolutionary process generated" (p. 27).

The state of insolvency regulation in Cuba is consistent with the treatment that at certain times has been given to this issue in other socialist countries. In this sense, Del Castillo Sánchez (2020) states that "one of the criticisms traditionally received by the state enterprise in general, and particularly, the failed experience of 'real socialism,' refers to the predominance of a 'soft budget constraint' linked to the paternalistic role adopted by the State towards business organizations" (p. 2).

It is a reality that, under socialism, as a result of the confusion between state and business functions, attempts have been made to avoid business bankruptcy by various means, so that state-owned entities, even if inefficient, have received state aid to overcome financial crises. As an example of this, in China, a "regime founded on the impossibility that an enterprise within socialism could lead or be led to bankruptcy was created in 1949; however, such myth was broken after the economic reform of 1978, when state-owned enterprises were transformed by assuming sole responsibility for their own profits and losses" (Aguirrezábal *et al.*, 2011, p. 351). In the Asian country, the structural reform to which the state-owned enterprise was subjected, in which state functions were separated from business functions, necessarily led to the regulation of corporate bankruptcy.

In the case of Cuba, although with the updating of the economic model that began in 2011, some policies were reoriented and a commitment was made to decentralization, to grant greater autonomy to the socialist state enterprise, and to recognize and encourage the performance of non-state forms of management. These transformations have not had an impact on the regulation of insolvency proceedings. However, it is impossible to ignore that the changes that have taken place in Cuban society in recent years have laid the foundations for achieving this purpose. The above is supported by the provisions of Guideline 10 of the Economic and Social Policy, which embodied the projection that "enterprises and cooperatives that show sustained losses in their balance sheets, insufficient working capital, that cannot honor with their assets the obligations contracted or that obtain negative results in financial audits, may be transformed or will be subject to a liquidation process, complying with what is established" (Guidelines of the Economic and Social Policy of the Party and the Revolution, 2017, p. 54).

In this vein, Article 26 of the new Cuban Constitution, proclaimed in 2019, provides that state-owned business entities "are liable for

the obligations contracted with their assets, in accordance with the limits determined by law" (p. 74)[33]. According to the author, and in line with Moreno Cruz (2020), in order to implement the aforementioned constitutional pronouncement "it will be necessary to approve a regulation on patrimonial insolvency, [...] which will act with individuality in the case of entities of privileged state interest, for which administrative procedures should be implemented to save and preserve them, but those that, in a sustained manner, are inefficient should not be a burden for the State" (p. 54).

This would remedy the various problems currently faced in the country due to the deficient insolvency regime, which have even threatened the effective compliance with the resolutions issued by the Economic Chambers of the Provincial People's Courts[34]. This situation led the People's Supreme Court to approve in March 2007 Instruction 185, which was replaced in July of that year by Instruction 185 BIS. This Instruction attempts to remedy some of the difficulties arising from an inefficient regulatory framework for the suspension of payments in Cuba[35]; however, the main conflicts that arise in this area are still unresolved.

In a context different from that prevailing in the early years of the Cuban Revolution[36], in which commercial relations with foreign elements are encouraged, insolvency may acquire a transnational character; however, it is remarkable the impossibility of processing bankruptcy or suspension of payments proceedings in Cuban courts, and of recognizing foreign bankruptcy judgments in this instance because, as endorsed by Góngara García (2010), the means for their materialization do not exist (p. 94).

33 The preceding norm, the Constitution of the Republic of Cuba of February 24, 1976, instituted in the second paragraph of its article 17 that "enterprises and entities were liable for their obligations only with their financial resources within the limitations established by law" (p. 7). For more information on how the new constitutional pronouncement means, in contrast to its predecessor, a step towards the regulation of insolvency in Cuba, see Moreno (2020, p. 54).

34 The reasons that motivated the People's Supreme Court to approve Instruction 185 BIS of 2007 were based on the fact that, having been ordered in ordinary or executive proceedings the precautionary measure of seizure of a bank account, sometimes the monetary resources were insufficient to cover the amount of the debt. In these cases, and given the impossibility of resorting to the suspension of payments procedure, the referred account remained seized for an indeterminate period of time, which led to the paralysis of the operations of the subject in question and the impossibility of the latter to generate income with which to comply with the payment ordered by judicial resolution. See Instruction 185 BIS of 2007 of the Supreme People's Court.

35 This intention is clearly expressed in its 7th Whereas when it states that it intends to instruct on jurisdictional practice so that the Economic Chambers of the Provincial People's Courts may "provide for measures to ensure effective compliance with their resolutions, until such time as the guidelines concerning the temporary insolvency of economic entities are issued by the bodies or agencies responsible for their regulation" (Instruction 185 BIS, 2007, p. 2).

36 In order to promote the process of economic opening and achieve the country's insertion into the world market, in 1992 the 1976 Constitution was amended to provide for State ownership only of the basic means of production, to recognize other forms of ownership belonging to the private sector (such as joint ventures, companies and economic associations), and to abolish the State monopoly on foreign trade.

This situation prevents representatives and creditors, both domestic and foreign, from initiating insolvency proceedings in Cuba, or from enforcing bankruptcy or suspension of payment declarations issued by foreign courts, due to the absence of regulations on how to proceed in this regard. The satisfaction of claims in this State is thus surrounded by uncertainty, since it may be affected if more diligent or better-informed creditors take individual action against the insolvent party's assets. Thus, creditors who do not keep abreast of the financial status of their debtors domiciled in the country in question may see their interests seriously harmed by the impossibility of resorting to collective proceedings which, in defense of the principle of *par conditio creditorum*, would paralyze individual executions on the debtor's assets.

Cuban legislation also does not grant creditors the mechanisms to satisfy their credit when the assets of the insolvent debtor are located in another State. To confirm the foregoing, it is enough to appreciate that even if these assets were located in a nation signatory of the Bustamante Code, the creditors cannot make use of the precept that in this legal body recognizes the "extraterritorial effects of the declaration of incapacity of the insolvent party," since in the country there is no procedure for such state to be decreed.

Nor do they have the option of resorting to Cuban courts to obtain in any other proceeding a judicial resolution whose enforcement abroad can be urged through the mechanisms established in international law because the Law of Civil, Administrative, Labor and Economic Procedure (1977) stipulates in Article 2.3 that Cuban jurisdiction is competent to hear matters "that arise between foreign natural or legal persons with representation or domicile in the country, provided that the dispute does not involve property located outside Cuba" (p. 1).

Thus, the Cuban LPCALE does not contain a mechanism that allows creditors to access, in order to satisfy outstanding obligations, the assets of the insolvent debtor located in another State. This situation makes it difficult to satisfy all claims and opens the door to possible fraudulent actions by insolvent debtors, who "thanks to global interconnection and the ease of electronic movement of capital, can quickly hide or transfer assets to other jurisdictions" (Rouillon, 2000, p. 9), and thus evade the fulfillment of their obligations.

In the author's opinion, it is urgent to fill the gap that exists in the Cuban legal system with respect to this issue, which would respond to the current conditions prevailing in the nation and would protect the interests of all economic actors, whether they are of a state, mixed, private or cooperative nature. It would also favor the process of attracting foreign capital, since the establishment of mechanisms to solve transnational insolvency helps to strengthen predictability and legal certainty, both

indispensable values at the time of qualifying the investment risk in the country[37]. Thus, the Guide to Enactment and Interpretation of the UNCITRAL Model Law (2013) stipulates that the failure to foresee how a cross-border insolvency situation will be managed may hinder the flow of capital and discourage foreign investment, while the presence in a State's domestic law of mechanisms to coordinate the administration of this type of insolvency is considered a favorable factor for investments or business operations in that nation (pp. 23-24).

In line with the stipulations contained in the aforementioned Guide, Rouillon (2000) recognizes that the establishment of clear and non-discriminatory rules for the treatment of this type of situation is one of the factors that should have a direct impact on the reduction of the country's risk rate. And, to reinforce the above, he points out that Mexico, one of the so-called “emerging” countries, reached investment grade in the year 2000[38], and, coincidentally or not, that nation put into effect that year its new Bankruptcy Law, in which the UNCITRAL Model Law is adopted in its entirety and almost unchanged (p. 9).

Cuba is currently at Caa2 rating[39], according to Moody's risk rating agency, an assessment that considers it as a State with a “substantial risk” of default. This assessment goes against the purposes of the country to encourage the participation of foreign capital as a complement to the efforts of the national investor, and affects the results of the measures taken to attract the establishment of foreign investors in the nation, drawing a favorable climate of security and protection for business. It is worth clarifying that, although dissimilar circumstances are evaluated to grant the mentioned qualification, among the risk factors to be taken into account is the legal and regulatory system, in which the absence of a safe and predictable regime for the treatment of insolvency inevitably implies a danger for the satisfaction of the credits of foreign investors.

In the opinion of this author, regulating bankruptcy procedures would not only be one of the factors to be taken into account to lower the nation's risk rating, but would also favor the interests of the various economic actors and would also help to comply with Guideline 62 of the Economic and Social Policy of the Party and the Revolution for the period 2016-2021 (2017), which states the need to “consolidate the country's credibility in its international economic relations through strict compliance with the commitments made” (p. 12).

37 There are agencies such as Moody's, Standard & Poor's (S&P), and Fitch that, through an alphabetical system that varies according to the agency, rate the risk of a country in order to inform those wishing to invest in a certain country's financial product of the risk they run by doing so at a given time.

38 Mexico is currently at Baa1, according to Moody's, a rating that defines it as a lower medium grade country for investor safety.

39 The rating or debt qualification aims to measure the capacity of a nation, government or company to pay its debt, and therefore its purpose is to delimit the risk involved in investing in any of these. The higher the investment risk, the worse the rating will be, as there is a greater probability of default.

Now, in order to fill the gap that exists in Cuban legislation on bankruptcy with foreign elements, it is necessary to start with the development of a solid and effective bankruptcy law that achieves, through bankruptcy and suspension of payments procedures, and respecting the principles of universality, collectivity and equality, to replace the individual actions of creditors against the debtor by a joint or collective action aimed at the satisfaction of the credit and the preservation of the company, when the conditions of the company allow it.

The enactment of such a system, as dictated by the uniqueness of the matter, could be done through a special law whose conformation would take into account the legal background of these institutions in Cuba, the solutions offered by comparative law and the pronouncements of the Legislative Guide on Insolvency[40] Law presented by the UNCITRAL, which gathers the most updated international practice and doctrine on the subject.

The call for the regulation in Cuban legislation of bankruptcy proceedings, although it is the first step, is not the solution to the problems raised by transnational insolvency, since for these it is required—besides the general organization—rules that allow the recognition of foreign insolvency proceedings, the access to Cuban courts of creditors and representatives of foreign insolvency proceedings, the assistance to foreign proceedings, and the international cooperation between Cuban and foreign bankruptcy judges in the resolution of these matters.

There are two options for implementing these rules: either new international treaties containing guidelines for resolving conflicts arising from transnational insolvency are signed, or provisions of this type are incorporated into domestic legislation. These alternatives, as Rouillon (2000) points out, are not mutually exclusive; on the contrary, "they are different, they have different advantages and disadvantages [...], but they can be addressed simultaneously without the improvement obtained in one way closing the way to the efforts that can be made in the other" (p. 2).

Although it would be beneficial to adopt a new international treaty containing provisions on the subject at the regional level or with Cuba's main trading partners, choosing this as the only path to follow has the disadvantage that the measures adopted in this space will only take effect between the countries involved, leaving unanswered those

40 This Guide offers the legislator a series of legislative recommendations to enact bankruptcy regulations and the possibility of excluding certain entities, such as banks, insurance companies, public utilities, etc., from the liquidation and reorganization procedures provided for this type of situations. Thus, if the Cuban State were to take into account such pronouncements when formulating its bankruptcy regime, it could even remove certain entities, which are essential for the development of the national economy, from this type of process.

situations of transnational insolvency involving nations outside the international agreement. Therefore, regardless of the efforts to establish international agreements stipulating how to proceed in the event of cross-border insolvency, this should be reflected in the domestic insolvency legislation[41].

In the author's opinion, in order to regulate insolvency proceedings with a foreign element in Cuban law, it would be convenient to embrace the theory of qualified universality. In this way, when there are assets or creditors of an insolvent businessman in different countries, it would not be recognized as a solution a single proceeding, or several, acting independently; but a main forum and other secondary ones in which the collaboration and coordination between the bankruptcy officials of different jurisdictions would prevail in order to solve, as far as possible, the interests of each of these procedures.

In order to provide Cuban domestic law with rules that make the above possible, it is proposed that the postulates of the UNCITRAL Model Law on Cross-Border Insolvency be taken into account, since this law provides simple solutions that allow the access of foreign representatives and creditors to the courts that process an insolvency proceeding, the recognition of a foreign insolvency proceeding, the assistance to such proceedings and the international cooperation in the resolution of this type of cases.

It is essential to point out that what is proposed would not collide with the particularities that are included in the modernization of Cuban bankruptcy law, aimed at safeguarding companies of marked state interest, since the referred regulation provides in Article 3 a public order exception by means of which a court of the enacting nation may prevent the adoption of any measure set forth therein, in case it contravenes its public order. Article 1 also provides for the possibility of excluding from its scope all entities that may be subject to special insolvency regimes in the enacting country. In a similar sense, Article 6 recognizes that if there is any conflict between its regulations and those of an international treaty, those of the latter will prevail, which evidences the intention of the UNCITRAL to safeguard the international obligations of the States that decide to accept its precepts and not to try to impose criteria on nations, but to give them the freedom to update their regulations on the matter, respecting the peculiarities and interests of their economic and social systems.

41 The elements in favor of strengthening domestic insolvency provisions are based on the fact that this option requires less effort and has a wider scope of validity than the adoption of an agreement between nations, since its discussion and approval is the sole responsibility of the national legislative authorities, and its application is not restricted to a certain number of countries.

In the author's opinion, in order to update and improve the Cuban insolvency regulations, the postulates of the Model Law on Cross-Border Insolvency should be taken into account. The provisions of this regulation, applied to the national reality, would defend "equality" as an insolvency principle and would respond to the UNCITRAL's demand for the harmonization of national legislation in this area. In addition, they would provide greater legal security to trade and investments, would grant certainty of credit satisfaction and that there will be no room for international fraud, and would make possible the reorganization of companies in financial difficulties and the preservation of jobs. Thus, in view of the urgency of modernizing the insolvency regime in Cuba, the legislator should take into account these regulations "because the international insolvency law of the third millennium passes through these issues" (Rouillon, 2000, p. 2).

V. CONCLUSIONS

Commercial relations between business people of different nations are the propitious framework for the emergence of cross-border insolvency, the situation of an asset crisis in which there are assets or creditors in different States. Attempts to define how this conflict would be resolved have led to three theories: the first advocates the existence of a single proceeding (universality); the second, that of several independent proceedings (territoriality); and the third, that of a main forum and other secondary ones working in close connection for the resolution of this matter (moderate universality).

At the international level, several international treaties have been adopted on the subject, including the Nordic Bankruptcy Convention, the European Union Regulation 2015/848 on insolvency proceedings, the Montevideo Treaties of 1889 and 1928, and the Bustamante Code; however, the paradigmatic regulation on the subject is the UNCITRAL Model Law on Cross-Border Insolvency, whose text, although not binding, has been incorporated into the domestic law of 50 nations.

Although Cuba is a signatory of the Bustamante Code, the main problems posed by cross-border insolvency remain unanswered in the country, mainly due to deficient domestic bankruptcy regulations. Based on this reality, it is proposed to elaborate a regulation that achieves, through bankruptcy and suspension of payments procedures, to substitute the individual actions of the creditors against the debtor for a joint or collective action aimed at the satisfaction of the credit and the preservation of the company.

It is also advocated, regardless of the efforts to subscribe new international treaties containing provisions on how to handle transnational

insolvency, to incorporate the UNCITRAL Model Law on Cross-Border Insolvency into Cuban domestic law, in order to allow access of foreign representatives and creditors to national courts handling insolvency proceedings, the recognition of foreign insolvency proceedings, assistance to such proceedings, and international cooperation in the resolution of these cases.

REFERENCES

Aguirrezábal Grünstein, M., Pérez Ragone, A., & Vargas Pave, M. (2011). Informe del XIV Congreso Mundial de la Asociación Internacional de Derecho Procesal: el Justo Proceso en Examen (Procedural Justice). *Revista Ius et Praxis*, *17*(2), 349-370. https://doi.org/10.4067/s0718-00122011000200013

Araya, T. (2005). Tendencias actuales sobre la insolvencia transfronteriza: una visión desde Argentina. *Advocatus*, *12*(I), 119-145. https://revistas.ulima.edu.pe/index.php/Advocatus/article/view/2712/2614

Cañizares Abeledo, D. F. (2012). *Derecho Comercial*. La Habana: Ciencias Sociales.

Carbonell O'Brien, E. (2017). La insolvencia transfronteriza. *Estudios de Derecho Empresario*, *10*, 122-140. https://revistas.unc.edu.ar/index.php/esdeem/article/view/16699/16457

Dávalos Fernández, R., Peña Lorenzo, T., & Santibáñez Freire, M. C. (2007). *Derecho Internacional Privado, Parte Especial*. La Habana: Félix Varela.

Del Castillo Sánchez, L. (2020). El reconocimiento de los procesos de fusión, escisión y liquidación para la trasformación de la empresa estatal socialista. *Cofin Habana*, *14*(2). http://scielo.sld.cu/scielo.php?script=sci_arttext&pid=S2073-60612020000200005&lng=es&tlng=es.

Durán Prieto, M. C., & Reinales Londoño, A. (2003). *Insolvencia transfronteriza* [unpublished dissertation, Pontificia Universidad Javeriana]. Bogota.

Esplugues Mota, C. A. (2002). Hacia la elaboración de un standard legislativo internacional en materia concursal. La propuesta de guía legislativa sobre el régimen de la insolvencia de la Comisión de Naciones Unidas para el derecho mercantil internacional (CNUDMI/UNCITRAL). *Derecho de los Negocios*, *13*(146), 19-40. https://dialnet.unirioja.es/servlet/articulo?codigo=280057

Góngora García, Y. (2010). La insolvencia patrimonial en la jurisdicción económica cubana. *Justicia y Derecho*, (15), 94-105.

González Pascual, J., & Alda García, M. (2009). Las Insolvencias Transfronterizas; papel de la UNCITRAL. In *XV Congreso AECA - Decidir en época de crisis: transparencia y responsabilidad* (pp. 1-22). http://www.aeca1.org/pub/on_line/comunicaciones_xvcongresoaeca/cd/61d.pdf

González Pascual, J., & Pessoa de Oliveira, A. K. (2013). El papel de la UNCITRAL (CNUDMI) en las insolvencias transfronterizas. *Panorama Socioeconómico*, *31*(46), 41-57. http://www.redalyc.org/articulo.oa?id=39929212005

Martínez-Montenegro, I., & Baeza-Leiva, M. A. (2016). Nuevos escenarios que ameritan la implementación de la quiebra en Cuba. *Entramado, 12*(2), 70-83. https://doi.org/10.18041/entramado.2016v12n2.24235

Moreno Cruz, M. (2020). La nueva Constitución económica. Repercusión en el actual ordenamiento jurídico cubano. *Universidad de La Habana*, (289), 44-70. http://scielo.sld.cu/scielo.php?script=sci_arttext&pid=S0253-92762020000100044&lng=es&tlng=es

Rouillon, A. (2000). Concursos con repercusión transnacional. La Ley Modelo de la CNUDMI (UNCITRAL) sobre Insolvencia Transfronteriza. *Anales, de la Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires*, *45*(38). http://www.iiiglobal.org/sites/default/files/14-_repercussions.pdf

Sánchez Serra, O. (2013). *El desarrollo: la razón de ser de la Revolución.* Cubadebate. http://www.cubadebate.cu/noticias/2013/07/08/el-desarrollo-la-razon-de-ser-de-la-revolucion/

United Nations Commission on International Trade Law (UNCITRAL). (2013). *Guía para la incorporación al derecho interno y la interpretación de la Ley Modelo de la CNUDMI sobre la insolvencia transfronteriza*. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/es/1997-model-law-insol-2013-guide-enactment-s.pdf

United Nations Commission on International Trade Law (UNCITRAL). (2021). *Situación actual Ley Modelo de la CNUDMI sobre la Insolvencia Transfronteriza (1997).* https://uncitral.un.org/es/texts/insolvency/modellaw/cross-border_insolvency/status

Uría Meruéndano, R. (1997). *Derecho Mercantil.* Madrid: Marcial Pons.

Vásquez Valencia, M. V., & Acevedo Prada, R. D. (2014). Análisis de la regulación sobre insolvencia transfronteriza en América Latina: Chile. *Justicia Juris*, *10*(2), 9-16. https://doi.org/10.15665/rj.v10i2.323

Vásquez Valencia, M. V., & Ángel Posada, A. F. (2012). La insolvencia transfronteriza: generalidades de un fenómeno económico con impacto jurídico. *Criterio Jurídico*, *11*(2), 145-164. https://revistas.javerianacali.edu.co/index.php/criteriojuridico/article/view/367

Villalón-Madrazo, K. M. (2011). La planificación y el modelo económico cubano. *Anuario Facultad de Ciencias Económicas y Empresariales*, *1*, 37-47. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjz1YnQp7DwAhUFQjABHSV0BnwQFjABegQIAxAD&url=https%3A%2F%2Fanuarioeco.uo.edu.cu%2Findex.php%2Faeco%2Farticle%2Fdownload%2F659%2F633&usg=AOvVaw1bQUA44fUtxj7lrYg4wIyY

Wilches Durán, R. E. (2009). La Insolvencia transfronteriza en el derecho colombiano. *Revista de Derecho*, (32), 162-198. http://www.scielo.org.co/pdf/dere/n32/n32a08

Jurisprudence, regulations and other legal documents

Código Civil de la República de Cuba, Ley N° 59/1987 (Asamblea Nacional del Poder Popular, 15 de octubre de 1987). *Gaceta Oficial de la República de Cuba*, Edición Extraordinaria N° 9.

Código de Bustamante, IV Conferencia Panamericana de la Habana (20 de febrero de 1928). https://iberred.org/sites/default/files/Convencin-de-Derecho-Internacional-Privado-Cdigo-Bustamante2.pdf

Constitución de la República de Cuba (Asamblea Nacional del Poder Popular, 24 de febrero de 1976). *Gaceta Oficial de la República de Cuba*, Edición Extraordinaria N° 3, 31 de enero de 2003 (1976).

Constitución de la República de Cuba (Asamblea Nacional del Poder Popular, 10 de abril de 2019). *Gaceta Oficial de la República de Cuba*, Edición Extraordinaria N° 5, 10 de abril de 2019x.

Instrucción N° 185-BIS (Tribunal Supremo Popular, 24 de agosto de 2007). *Gaceta Oficial de la República de Cuba*, Edición Ordinaria N° 56.

Ley de Procedimiento Civil, Administrativo, Laboral y Económico de la República de Cuba, Ley N° 7/1977 (Asamblea Nacional del Poder Popular, 20 de agosto de 1977). *Gaceta Oficial de la República de Cuba*.

Ley Modelo de la CNUDMI sobre la Insolvencia Transfronteriza (Cnudmi, 1997). https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/es/1997-model-law-insol-2013-guide-enactment-s.pdf

Lineamientos de la Política Económica y Social del Partido y la Revolución para el período 2016-2021 (Partido Comunista de Cuba, 2017). http://media.cubadebate.cu/wp-content/uploads/2017/07/PDF-321.pdf

Received: 03/11/2020
Approved: 16/04/2021