Chapter 2
Cross-Border Insolvency Law in BRIC: Framework and Reforms

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ABSTRACT

The effective cross-border insolvency regimes are absent in many emerging economies around the world, and the BRIC nations are not the exception to this fact. Nevertheless, law on cross-border insolvency, which establishes the international standard in this area, is not addressed by domestic laws of these nations. This has led to a glaring gap in international insolvency regime. Where there is the absence of any uniform and stable law, however, the UNCITRAL model law on cross-border insolvency establishes the international standard that could be followed by any country. The chapter addressed the insolvency law regime in BRIC nations and has made an attempt to analyze the cross-border insolvency regulations in said countries in light of UNCITRAL model law on cross-border insolvency.

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INTRODUCTION TO BRIC AND ITS PRESENCE IN GLOBAL BUSINESS

The journey of recognising BRIC started in the year 2015 when the World Bank released a report on world economies and the figures that popped out of the report clearly stated that apart from OECD countries, even countries like China, India, Russia and Brazil have grown to become one of the largest economies in the world. Soon following the end of Cold War, the BRIC countries started to transit their market economies in setting up of private industries (Mannan, 2015). Through a various combination of low production cost, extraction of natural resources, utilising resources in sustainable way, involvement of investor friendly laws are the few factors which lead to substantial growth and rise of these countries’ world trade (Purugganan, 2014).

The importance of these countries’ vision and objects were quite clear from the very beginning as they always expressed their stance on international trade and investment and as a result of which, they established Asian Infrastructure Investment bank (AIIB) and BRIC New Development Bank, the sole purpose being to reduce their dependence on the World Bank and International Monetary Fund for the finances (Ayres, 2014).

However, the opening up of economy always has few setbacks as the financial investment is always prone to the financial risk which the economy might have to face. And the world saw the biggest fear of the time which was 2007 world recession which affected many of the developed and developing countries to its core and the main reason was sub-prime credit crisis which the United States faced along with consequences affecting most parts of the world (Moshirian, 2011). As most of the countries were affected by the recession, economies of the BRIC nations were also largely affected but were affected in degrees. For instance, Russian economy, because of the crisis, was not able to service the bad debts and the financial market was providing liquidity and capital (Evgeniev, Fангulov and Tasturova, 2012). Indian economy too faced difficulties that time and as a result of which the exports revenue and the Foreign Direct Investment (FDI) fell as there was no international trade which was happening as the money was stuck for paying off the bad debts and hence there was quite a less scope of investments that were possible (Nocera, 2008).

However, the need to bring about a solid transnational insolvency law framework was important as important as due to the advent of trade being carried out internationally; the need for insolvency laws grew as the interests of not just one party but all the parties, namely, creditors, debtors and employees have to be seen. This was thought of because even the international trade works on the principle where all the parties look for predictability, effective remedies for any problems and