

Recognition and Comity in Cross-border Insolvency Proceedings, Chapter 1

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A court presiding over a multi-jurisdictional insolvency case is faced with a dilemma: should the court apply its own laws and rules as if the case had no international aspects, or defer to the laws and rules of another jurisdiction that has a greater connection to the debtor and its affairs (for example, where the company is incorporated, where its executive offices are located or where its assets are centred)? Put another way, should a 'territorialist' approach apply, where the country applies its own insolvency rules to administer assets within its territory (and potentially purports to bind creditors and assets everywhere), or should a 'universalist' approach be used, allowing the insolvency proceedings and rules of another jurisdiction govern where the 'other' jurisdiction is the focal point of the debtor's affairs (however that may be defined). This issue must, to a greater or lesser degree, be confronted in every cross-border insolvency case.

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