

COMI as the Connecting Factor for the Purposes of Cross-Border Insolvency

Summary

The purpose of this thesis is to analyze the concept of the centre of a debtor's main interests, COMI, which has become a part of the laws of the Czech Republic through Council Regulation No. 1346/2000, on the insolvency proceedings. Act No. 182/2006 Coll., Czech Insolvency Act, as amended, which refers to the regulation as directly applicable law of the European Communities, expressly mentions COMI in its chapter two, of the part three, on the relation to the countries of the European Union. Although COMI is currently a predominant connecting factor in the area of cross-border insolvency, there are still unclarities concerning COMI. The aim of this thesis is on the one hand to point out these unclarities, on the other hand to make COMI a clearer concept.

The thesis is composed of eight chapters with two levels of sub-chapters. Chapter One introduces the thesis and the aim it seeks to achieve, Chapter Eight concludes.

Chapter Two examines under which circumstances a cross-border insolvency proceeding is about to arise, it briefly mentions the principles of universality and territoriality and the modified principles derived from them and identifies when the need for a connecting factor arises in cross-border insolvency. Chapter Three is concerned with the concept of COMI in the context of Council Regulation No. 1346/2000, on insolvency proceedings, and in the context of the UNCITRAL Model Law on cross-border insolvency proceedings. Chapter Four focuses on how COMI is interpreted in practice. Chapter Five deals with the relationship between COMI and corporate groups, it particularly analyses whether COMI represents a suitable connecting factor in relation to corporate groups. Chapter Six looks at problems concerning COMI as a connecting factor. Chapter Seven briefly outlines an alternative connecting factor for the purposes of the cross-border insolvency – the registered office which is contrasted with COMI. It is concluded that although the concept of COMI is in practice not as unclear as one would expect, to increase legal certainty of creditors it would be highly desirable to achieve a new precedent that would deal with the unclarities of COMI. It is also submitted that new rules need to be created in relation to cross-border insolvency concerning corporate groups, rules that would be specific for these unique business structures and would correspond to economic reality.