

THE IMPACT OF RECAST LAW ON INSOLVENCY ON CROSS-BORDER LITIGATION BY NATIONAL INSOLVENCY PRACTITIONERS: AN *ACTIO PAULIANA* CASE STUDY

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Abstract

Purpose – The purpose of this article is to analyze the impact of the new recast Law on Insolvency of Legal Persons of the Republic of Lithuania (hereinafter – Law on Insolvency) on cross border litigation by national insolvency practitioners. Jurisdiction of claims filed by insolvency practitioners is a delicate matter, often giving rise to disputes whether the courts’ jurisdiction should be based on Regulation (EU) No 1215/2012 of the European Parliament and of the Council of December 12 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereafter – Brussels Ibis regulation) or Regulation (EU) 2015/848 of the European Parliament and of the Council of May 20 2015 on insolvency proceedings (hereafter – Insolvency Regulation). In insolvency related matters, national regulation and its implementation are very important for demarcation between Insolvency Regulation and Brussels Ibis regulation. Thus, this article will provide some insights on whether the new recast Law on Insolvency addressed the issues insolvency practitioners continue to face when suing persons domiciled in another member state.

Design/methodology/approach – Systematic analysis, comparative and historical methods of legal research were used. These methods were used to systematically evaluate the legal changes, compare them with legal regulation of other Member states as well as previous legal regulations.

Finding – Despite the stated goal of efficiency, comprehensive changes in the Law on Insolvency to the insolvency procedure resulted in uncertainty for cross-border litigation. Despite not directly addressing the issue, changes to other spheres (rebranding the procedure from bankruptcy to insolvency) made a notable negative impact on the still contested boundary between the Insolvency Regulation and Brussels Ibis regulation. Changes to *actio Pauliana* in Law on Insolvency seem to indicate a deviation from the general rule. Moreover, all fundamental changes (the new insolvency procedure) in the

Law on Insolvency are not included in Annex A of the Insolvency Regulation. This fact in itself is a significant issue since the Court of Justice of the European Union has established that only proceedings that are listed in Annex A fall within the scope of the Insolvency Regulation. Thus, with the recent changes in Law on Insolvency, Lithuanian insolvency practitioners face significant legal uncertainty in all cross-border disputes.

Research limitations/implications – This article does not cover the in-depth impact of different remedies (i. e. in pre-insolvency and hybrid proceedings) on jurisdiction used by insolvency practitioners due to their broad and complex nature.

Practical implications – Clear jurisdiction in matters of insolvency leads to a foreseeable and efficient procedure, as time is one of the most essential aspects of insolvency/bankruptcy proceedings. Since national regulation and Insolvency Regulation share a somewhat symbiotic relationship, the impact of one on the other is of paramount importance.

Originality/Value – Due to the fact that Law on Insolvency entered into force just recently, no research regarding this topic exists.

Keywords: law on insolvency, bankruptcy disputes, insolvency disputes, bankruptcy jurisdiction, insolvency jurisdiction.

Research type: general review.