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APPROXIMATION OF THE LAW OF UKRAINE IN THE SPHERE OF CROSS-BORDER INSOLVENCY TO THE EU STANDARDS

This paper gives an insight to the issue of approximation of the law of Ukraine in the sphere of cross-border insolvency to the EU standards. It demonstrates that the European law has effective mechanisms to resolve cross-border insolvency cases. Ukraine, in its turn, has only recently introduced such mechanisms. Moreover, the latter seem to be wrongly implemented to the legislation of Ukraine which impedes effective resolution of cross-border insolvency cases. In this connection the paper provides the analysis of the EU Regulation 1346/2000 On Insolvency Proceedings and the proposals to change it to define better solution and effective rules to operate on the legislation of Ukraine.

The main emphasis is made to the jurisdictional matter, i.e. what concepts should prevail when deciding what court has jurisdiction to commence either main or non-main insolvency proceedings.

This paper proved that the key concept to determining the jurisdiction to open a main insolvency proceeding should be "debtor's centre of main interests" (COMI), and "establishment" should be the correct concept to entitle a court of a relevant state to commence a non-main (secondary, territorial) insolvency proceeding. The author demonstrates that these concepts are to have an autonomous meaning, without a need to search for equivalents in the home legislation of a particular state. Another important issue to pay attention in order to approximate the law of Ukraine to the EU standards is comity. It is proposed to exclude the requirement to have an international treaty to be able to recognize and enforce foreign judgments (acts) in the sphere of cross-border insolvency. It is suggested to introduce a presumption of comity to facilitate effective recognition and enforcement in the territory of another state, etc.