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**Inside Story – May 2019**

**Jurisdictional Conflict in a Recent Estonian Case**

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*Introduction*

By its order of 10 October 2018, the Supreme Court of Estonia refused permission to appeal in Civil Matter No. 2-17-17487, thereby approving the order of the Tallinn District Court dated 27 July 2018. In this matter, the bankruptcy of an individual was declared in Estonia, despite the fact that the debtor argued that his centre of main interests (“COMI”) was in the United Arab Emirates. The Estonian courts took the position that the debtor could not rely on the Recast EIR in cases where the COMI of the debtor lies outside the EU. As a result, the Estonian courts declared the bankruptcy of the debtor in Estonia by applying the Estonian Bankruptcy Code and the Code of Civil Procedure without determining the COMI, relying on the argument that the debtor lived in Estonia.[[1]](#footnote-1) Overall, the outcome is unusual. On the one hand, Estonian courts found that COMI was outside the EU and that the EIR was inapplicable, but, on the other hand, they nonetheless opened a main insolvency procedure in Estonia by declaring the bankruptcy of the debtor in Estonia.

*Implementation of the National Law instead of EIR to Determine Jurisdiction*

The Estonian courts stated that, according to Preamble Recital 25 of the EIR, the EIR applies only to proceedings in respect of a debtor whose COMI is located in the EU. Estonian courts have also established that the debtor claimed his COMI to be outside the EU, which meant that the debtor could not rely on the EIR in determining the COMI. Article 4, section 2 of the Bankruptcy Code of Estonia stipulates that bankruptcy petitions shall be filed with a court pursuant to the general jurisdiction applicable to the debtor. Pursuant to Article 79, section 1 of the Code of Civil Procedure of Estonia, the general jurisdiction of the natural person is the court of his or her place of habitation. As a result, the Estonian courts did not implement the EIR to determine the COMI of the debtor and instead declared the bankruptcy of the debtor in Estonia by applying the jurisdiction rules of the Estonian Bankruptcy Code and Code of Civil Procedure.

*Implementation of the EIR by Opening a Main Proceeding in Estonia*

According to Article 3(2) of the EIR, in cases where insolvency proceedings are opened in the territory of a Member State, the courts of another Member State shall have no jurisdiction to open insolvency proceedings against that debtor, except a secondary proceeding, if the debtor possesses an establishment within the territory of that other Member State. The opening of a territorial insolvency proceeding before the main proceeding is possible only in the exceptional cases stipulated in Article 3(4) of the EIR. None of these applied in the Estonian case. In fact, Estonian courts opened the main insolvency proceeding of the debtor by declaring the bankruptcy of the debtor in Estonia. Even if the courts did not rely on the EIR, the declaration of the bankruptcy of the debtor under Estonian laws cannot ignore the rules of EIR. If the COMI test shows the debtor’s COMI to be outside the EU, the COMI jurisdiction cannot be set aside completely.

*Conclusions*

Preamble Recital 27 of the EIR stipulates that before opening insolvency proceedings, the competent court should examine on its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction. Thus, Estonian courts must determine the COMI of the debtor by implementing the EIR, which they did. In cases where the COMI of the debtor is outside Estonia, bankruptcy of the debtor should not have been declared simply be using Estonian jurisdiction rules. It follows from the EIR that only if the COMI of the debtor was in Estonia, the opening of the main insolvency proceeding of the debtor was justified. If Estonian courts find the COMI of the debtor to be somewhere else, the decision to open main proceedings still seems contradictory.

1. The reason was that the debtor was ostensibly living in Estonia, though only because he was not allowed to leave the country under a court order made in a separate insolvency case. [↑](#footnote-ref-1)