HCCH Note on the concept of "purposeful and substantial connection" of the February 2017 draft Convention of the Judgments Project

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) has just issued a Note on the concept of "purposeful and substantial connection" in Article 5(1)(g) and 5(1)(n)(ii) of the February 2017 draft Convention of the Judgments Project for the attention of the *Special Commission meeting of November 2017 on the Recognition and Enforcement of Foreign Judgments*. The February 2017 draft Convention is available here.

This Note was prepared by **Professor Ronald A. Brand** and **Dr Cristina M. Mariottini**. Professor Geneviève Saumier provided comments.

Article 5(1)(g) and 5(1)(n)(ii) reads as follows:

Article 5(1)

"A judgment is eligible for recognition and enforcement if one of the following requirements is met" – […]

(g)

"[T]he judgment ruled on a contractual obligation and it was given in the State in which performance of that obligation took place, or should have taken place, in accordance with

(i) the parties' agreement, or

(ii) the law applicable to the contract, in the absence of an agreed place of performance

unless the defendant's activities in relation to the transaction clearly did not

constitute a **purposeful and substantial connection to that State**;" (our emphasis)

(n)(ii)

"[T]he judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and – […]

(ii) the law of the State of origin is expressly or impliedly designated in the trust instrument as the law governing the aspect of the trust that is the subject of the litigation that gave rise to the judgment[, unless the defendant's activities in relation to the trust clearly did not constitute a **purposeful and substantial connection to that State**];" […] (our emphasis)

Other information relating to the meeting is available at https://www.hcch.net/en/projects/legislative-projects/judgments/special-commission.

Please note that the meeting above-mentioned is open only to delegates or experts designated by the Members of the Hague Conference, invited non-Member States and International Organisations that have been granted observer status.