RECOVERY OF MAINTENANCE IN ASIA PACIFIC AND WORLDWIDE: NATIONAL AND REGIONAL SYSTEMS AND THE HAGUE 2007 CHILD SUPPORT CONVENTION AND PROTOCOL

The Permanent Bureau of the Hague Conference on Private International Law (HCCH), through its Asia Pacific Regional Office, will hold a global conference on the recovery of child support and family maintenance in Hong Kong from 9 to 11 November 2015.

Please Save the Date. A conference program and further details will be circulated in due course. Note that the conference will begin at approximately 1:00 pm on Monday 9 November, and finish by 1:00 pm on Wednesday 11 November 2015.

The event is jointly sponsored by the HCCH and the Department of Justice of the Hong Kong Special Administrative Region of the People's Republic of China, in collaboration with a number of other partners.

This international conference will provide an opportunity to discuss the dynamic development of family law and policy in the Asia Pacific region, and represents an excellent occasion for professionals working in this field from throughout the world to meet colleagues, make new contacts, expand networks and fill knowledge gaps. The meeting will allow for the further building of a global professional network in the child support / family maintenance field and for follow up on the 5-8 March 2013 Heidelberg Conference on the International Recovery of Maintenance in the EU and Worldwide. It will include exciting academic and hands-on workshops and lectures.

CALL FOR PROPOSALS

The conference organisers invite the submission of conference presentation

proposals. Please send abstracts of 200-300 words, along with a short bio of no longer than 200 words, to Ms Alix Ng (HCCH Asia Pacific Regional Office) at before 15 June 2015. Limited funding is available for speakers requiring assistance to attend.

Legal practitioners, caseworkers, judges, enforcement officers, academics, and others engaged in the child support / family maintenance field are invited to submit proposals. The organisers in particular invite presentation proposals on the following themes:

• Current regional and national challenges or developments in Asia Pacific in relation to the recovery of child support and family maintenance, both domestically and in the cross-border context; evolutions in national policies on child support and family maintenance, and descriptions of recent legal reform in this field (or suggestions for such reform);
• The benefits of the Hague 2007 Child Support Convention and perspectives on its adoption and implementation in the Asia Pacific region and worldwide;
• Research and statistics in relation to demographic and sociological shifts (e.g. prevalence of single parent families) and migration patterns in the Asia Pacific region and globally bearing on the national and cross-border recovery of child support and family maintenance;
• Enforcement challenges and best practices in the field of child support and family maintenance;
• Perspectives on high functioning administrative systems for the recovery of child support and family maintenance (e.g., Australia, Norway, U.S.A.) and their potential in the Asia Pacific region;
• The roles of various 'system actors' and their potential for collaboration in the field of child support and family maintenance, e.g., caseworkers, judges, enforcement officers, private practitioners, etc.;
• Lessons learned from existing systems (e.g., Canada, EU, U.S.A.) for the cross-border recovery of child support and family maintenance;
• Data protection, privacy laws and duty of information policies with respect to income and assets of debtors in particular—developing best practices in the Asia Pacific region and globally;
• The use of information technology for the effective collection of child support and family maintenance at the national and international levels;
• The Hague 2007 Protocol on the Law Applicable to Maintenance Obligations;

• Economic and human rights dimensions (e.g., child poverty, UNCRC Art. 27, etc.) and issues of access to justice with respect to the national and cross-border recovery of child support and family maintenance;
• Other topics pertinent to the recovery of child support and family maintenance in the Asia Pacific region and worldwide.

For more information, please contact Ms Alix Ng (HCCH Asia Pacific Regional Office) at an@hcch.nl.

The European Private International Law of Employment (book)

"The European Private International Law of Employment" that has just been published by Cambridge University Press.

Abstract:

The European Private International Law of Employment provides a descriptive and normative account of the European rules of jurisdiction and choice of law which frame international employment litigation in the courts of EU Member States. The author outlines the relevant rules of the Brussels I Regulation Recast, the Rome Regulations, the Posted Workers Directive and the draft of the Posting of Workers Enforcement Directive, and assesses those rules in light of the objective of protection of employees. By using the UK as a case study, he highlights the impact of the 'Europeanisation' of private international law on traditional perceptions and rules in this field of law in individual Member States. The author shows how the goals and policies of the European Union, in particular the protection of employees, are fundamentally reshaping the regulation of transnational private relations. The book also provides for a separate examination of the choice-of-law treatment of claims based on breach of employment contract, statute and in tort, thus offering an accessible explanation of choice-of-law issues

arising in connection with the three main types of employment claim. Finally, it presents new insights about the influence of EU private international law on the Member States' domestic private international law regimes, and offers recommendations for improving the existing rules of jurisdiction and choice of law.

About the author:

Uglješa Gruši is an assistant professor at the School of Law of the University of Nottingham, where he teaches commercial conflict of laws, arbitration and the law of torts.

Regulation on Insolvency Proceedings (Recast) Published in the OJ

The Regulation (EU) 2015/848 of the European Parliament and of the Council , of 20 May 2015, on insolvency proceedings (recast), has been published today, OJ L 141.

La Ley Unión Europea, May 2015

The latest issue of the Spanish monthly journal *La Ley Unión Europea* has just been released. Besides the sections on case law and an update on on-going events and news at the EU level these are the main contents (with English abstract as provided by the authors):

Doctrina

Consuelo Alonso García, "La consideración de la variable ambiental en la contratación pública en la nueva Directiva europea 2014/24/UE". *This paper analyzes the changes introduced by the new European Directive 2014/24/EU in the Spanish legal system of green public procurement, particularly as regards the obligations that the contracting authorities have to meet when they intend to introduce environmental criteria in the processing of contracts.*

Pascual Martínez Espín, "Control de abusividad sobre cláusulas contractuales que se refieren a la definición del objeto principal del contrato o a la adecuación del precio". *The paper makes an analysis of the recent jurisprudence of the CJEU on the interpretation of article 4 (2) of Council Directive 93/13/EEC of 5 April 1993, on unfair terms in consumer contracts; specifically, on assessment of the unfairness of the contractual terms and the exclusion of terms relating to the main subject matter of the contract or the adequacy of the price and the remuneration provided they are drafted in plain intelligible language.*

Tribuna

Pedro A. de Miguel Asensio, "Impugnación de actos perjudiciales en procedimientos de insolvencia: cuestiones de Derecho aplicable". *Article 13 of the EU Insolvency Regulation is one of its most complex provisions in the field of applicable law. It establishes an exception with regard to the law applicable to avoidance actions concerning detrimental acts, leading to the application of the law that governs the challenged act and not the lex fori concursus. The recent case law of the CJEU clarifies the scope of that provision, in particular with respect to the law applicable to issues such as the prescription and limitation of avoidance actions.*

Sentencia seleccionada

Pilar Concellón Fernández, “Derecho de acceso a los documentos y actividad judicial: la transparencia alcanza a los escritos de los Estados miembros”. *The Court of Justice considers that the documents produced by the Member states within judicial proceeding do not belong to the Court but are ruled by Regulation no 1049/2001. This Judgment would guarantee open access to documents which belong to the institutions of the EU.*

José A. Fernández Amor, “El principio de libertad de establecimiento y la deducibilidad en el régimen de consolidación fiscal de las bases imponibles negativas de sociedades filiales no residentes”. *The sentence of ECJ of February 2, 2015, analyzes if the British law about deduction of losses from no-residents companies under consolidation group tax regime is not contrary to the European right of establishment freedom. The Court completes its interpretation line exposed on sentence Marks&Spencer (C-446/03) about the states obligation of not restrict the mentioned freedom allowing the deduction of the non-resident subsidiary losses as long as they are definitive.*

Ricardo Pazos Castro, “El control judicial de las cláusulas abusivas existentes en los procesos de ejecución hipotecaria”. *In proceedings for enforcement in which the sum of the order sought has already been fixed, the Spanish law concedes a period of ten days for the party seeking enforcement to recalculate that sum. The new calculation must comply with a limit of three times the statutory rate of interest, applied to the default interest on loans for the purchase of a habitual dwelling secured by a mortgage on that same dwelling. The ECJ analyzes if such legislation contravenes the Directive on unfair terms.*

Paper on relief in small and simple matters in an age of austerity

A general report presented at the XVth World Congress of Procedural Law of the *International Association of Procedural Law* dedicated to effective judicicial relief and remedies in an age of austerity (Istanbul, 25-28 May) on **relief in small and**

simple matters in an age of austerity, authored by Xandra Kramer (Erasmus University Rotterdam) and Shusuke Kakiuchi (University of Tokyo), is available as a working paper on SSRN.

> *Austerity measures have a big impact on the court financing, legal aid system, and civil procedure in general in many countries. This paper analyses the various types of procedures for small and simple matters from a comparative perspective, based on nineteen national reports, and explores the design and use of these procedures against the background of austerity. The main questions are whether, and if so, in what regard, austerity has affected the availability and use of simplified procedures in the jurisdictions involved in the research, and how these procedures tie in with austerity schemes.*

Research Handbook on EU Private International Law

A new Research Handbook on EU Private International Law, within the Edward Elgar Research Handbooks in European Law series has just been published. It is edited by *Peter Stone*, Professor and *Youseph Farah*, Lecturer, School of Law, University of Essex, UK.

It contains the following contributions:

1. Internet Transactions and Activities
Peter Stone
2. A Step in the Right Direction! Critical Assessment of Forum Selection Agreements under the Revised Brussels I: A Comparative Analysis with US Law
Y*ouseph Farah and Anil Yilmaz-Vastardis*
3. Fairy is Back – Have you got your Wand Ready?
Hong-Lin Yu

4. Frustrated of the Interface between Court Litigation and Arbitration? Don’t Blame it on Brussels I! Finding Reason in the Decision of West Tankers, and the Recast Brussels I

Youseph Farah and Sara Hourani

5. Does Size Matter? A Comparative Study of Jurisdictional Rules Applicable to Domestic and Community Intellectual Property Rights
Edouard Treppoz

6. Article 4 of the Rome I Regulation on the Applicable Law in the Absence of Choice – Methodological Analysis, Considerations
Gülin Güneysu-Güngör

7. International Sales of Goods and Rome I Regulation"
Indira Carr

8. The Rome I Regulation and the Relevance of Non-State Law"
Olugbenga Bamodu

9. The Interaction between Rome I and Mandatory EU Private Rules – EPIL and EPL: Communicating Vessels?
Xandra E. Kramer

10. Choice of Law for Tort Claims"
Peter Stone

11. Defamation and Privacy and the Rome II Regulation
David Kenny and Liz Heffernan

12. Corporate Domicile and Residence
Marios Koutsias

More information is available on the publisher's website.

Upcoming international conference at the Academy of

European Law: “How to handle international commercial cases – Hands-on experience and current trends”

The Academy of European Law (ERA) will host an international conference on recent experience and current trends in international commercial litigation, with a special focus on European private international law. The event will take place in Trier (Germany), on 8-9 October 2015. This conference will bring together top experts in international commercial litigation who will report on their experiences in this field including litigation strategy and tactics.

Key topics will be:

- Recent case law in the area of European civil procedure, private and business law, including Alternative Dispute Resolution (ADR) and arbitration,
- Best practice in applying commercial litigation and conflict of laws rules,
- Forthcoming changes after the entry into force of the new Hague Choice of Court Convention in June 2015, the recast of the Insolvency Regulation in summer 2015, the revision of the Small Claims Procedure 2015, and the Regulation establishing a European Account Preservation Order,
- A round table discussion about “Coherence, consolidation and codification: the road ahead for European private international law”.

The conference language will be English. The event is organized by Dr Angelika Fuchs, ERA, in cooperation with Professor Jan von Hein, University of Freiburg (Germany). The confirmed speakers are

- **Professor Camelia Toader**, Judge at the European Court of Justice of the EU (CJEU), Luxembourg
- **Professor Gilles Cuniberti**, University of Luxembourg
- **Raquel Ferreira Correia**, Counsellor, Lisbon

- **Sarah Garvey**, Counsel and Head of KnowHow in the Litigation Department, Allen & Overy LLP, London
- **Jens Haubold**, Partner, Thümmel, Schütze & Partner, Stuttgart
- **Professor Jan von Hein**, Director of the Institute for Foreign and International Private Law, Dept. III, University of Freiburg
- **Brian Hutchinson**, Arbitrator, Mediator, Barrister, GBH Dispute Resolution Consultancy; Senior Lecturer, University College Dublin
- **Marie Louise Kinsler**, Barrister, 2 Temple Gardens, London
- **Professor Xandra Kramer**, Erasmus University Rotterdam; Deputy Judge of the District Court of Rotterdam
- **Alexander Layton QC**, Barrister, Arbitrator, 20 Essex Street, London.

The full conference programme is available here. For further information and registration (including early bird rebates), please click here.

Recognition of Foreign Bankruptcy and the Requirement of Reciprocity (Swiss Federal Court)

The Swiss Federal Court recently issued a noteworthy judgment (scheduled for publication in the official reports) concerning the requirement of reciprocity with respect to the recognition of foreign bankruptcy decrees. The judgment (in German) is available here.

Marjolaine Jakob, the author of the following summary and comment, is a researcher at the University of Zurich, Faculty of Law.

Introduction

Under Swiss international bankruptcy law, the access of a bankruptcy

administrator to a bankruptcy debtor's assets located in Switzerland requires a successful recognition of the foreign bankruptcy order by the competent Swiss court. The recognition of a foreign bankruptcy order and the effects of such recognition (including the opening of mandatory secondary insolvency proceedings over the assets located in Switzerland) are regulated by art. 166 et seq. SPILA (Swiss Private International Law Act). According to art. 166 para. 1 lit. c SPILA a foreign bankruptcy order shall be recognized provided that, amongst other prerequisites, reciprocity is granted by the state in which the order was rendered. In the decision of the Swiss Federal Supreme Court discussed hereinafter, it was disputed whether Dutch law grants reciprocity.

Summary of the facts of the case

The parent company C Ltd., Rotterdam (the Netherlands), filed a claim in the debt-restructuring moratorium over the company B Ltd., Zug (Switzerland). The respective claim was for the most part provisionally admitted by the trustees and for the remaining part contested.

By judgment of August 6, 2012 the district court of Rotterdam opened bankruptcy proceedings over C Ltd. and appointed A as bankruptcy administrator.

By judgment of February 18, 2013 the cantonal court of Zug approved a composition agreement entered into between B Ltd. and the creditors.

On September 13, 2013, the foreign bankruptcy administrator (A) filed a request for recognition of the Dutch bankruptcy order of August 6, 2012 with the cantonal court of Zug.

By judgment of October 8, 2013 the cantonal court of Zug rejected the request for recognition of the Dutch bankruptcy order by reasoning that the prerequisite of reciprocity (art. 166 para. 1 lit. c SPILA) is not granted by Dutch law. After rejection of the appeal by the High Court of the Canton Zug, A filed an appeal in civil matters to the Swiss Federal Supreme Court and requested annulment of the judgment of the High Court of the Canton of Zug, recognition of the Dutch insolvency order of August 6, 2012 and in consequence of the latter, the opening of secondary bankruptcy proceedings over C Ltd.'s assets located in Switzerland.

Considerations

The Swiss Federal Supreme Court refers to earlier case law, according to which the prerequisite of reciprocity is to be interpreted in a broad sense. Reciprocity is granted if the law of the state concerned recognizes the effects of Swiss bankruptcy proceedings on similar (but not necessarily on identical) grounds. In other words, it suffices if the foreign law recognizes a Swiss bankruptcy order under conditions not considerably stricter than those established by Swiss law regarding the recognition of a foreign bankruptcy order.

The decision furthermore refers to the European trend of abolishing the prerequisite of reciprocity, which is also reflected in Swiss legislation. Since September 1, 2011 the Swiss Financial Market Supervisory Authority (FINMA) *may* recognize under certain conditions foreign bankruptcy orders and insolvency measures pronounced against banks abroad without a mandatory opening of secondary bankruptcy proceedings in Switzerland (cf. art. 37g para. 2 Swiss Banking Act) and without the state in which the bankruptcy order was rendered granting reciprocity (cf. art. 10 para. 2 Regulation on Banking Insolvencies by the Swiss Financial Market Supervisory Authority). As a consequence thereof, the Swiss Federal Supreme Court acknowledges that the bar should not be set too high regarding the prerequisite of reciprocity where it still exists.

In the Netherlands, the opening of foreign bankruptcy proceedings cannot be formally recognized and no formal and comprehensive effects of seizure occur. Thus, according to Dutch law a foreign bankruptcy administrator has to "compete" with other creditors, since their rights over seized assets are to be respected. However, the foreign bankruptcy administrator has rights of action and enforcement rights on Dutch territory. Furthermore, he is able to directly access the bankruptcy debtor's assets located in the Netherlands. Consequently, the Dutch international bankruptcy law appears to be equal in qualitative terms, although technically differing fundamentally from Swiss international bankruptcy law. According to the decision of the Swiss Federal Supreme Court, with regard to the prerequisite of reciprocity, it is not decisive that the formal recognition of a foreign bankruptcy order and an overall liquidation of local assets are alien to Dutch international bankruptcy law. Instead, the quality of mutual assistance is decisive. Moreover, the Swiss Federal Supreme Court acknowledges that a foreign bankruptcy administrator is not in a worse position but presumably in numerous cases even in a better position in the Netherlands compared to the position of a foreign bankruptcy administrator in Switzerland.

In consequence thereof, the Swiss Federal Supreme Court concludes that Dutch law grants reciprocity according to art. 166 para. 1 lit. c SPILA and provided that the remaining prerequisites are fulfilled, the Dutch bankruptcy order shall be recognized.

Comment

It has to be welcomed that the Swiss Federal Supreme Court has adopted a liberal interpretation based on a contemporary understanding of tendencies in international insolvency law and especially in Swiss international banking insolvency law. The former case law of the Swiss Federal Supreme Court was shaped by a highly restrictive interpretation of art. 166 et seq. SPILA insisting on a protective interpretation of Swiss international insolvency law. The present decision delivers the impression that the Swiss Federal Supreme Court finally considers international trends and – even more important – trends in Swiss law. However, it is incomprehensible and intolerable that Swiss international banking insolvency law contains a far more liberal regulation than Swiss international insolvency law; the latter being applicable much more frequently. This unsatisfactory legal situation is the result of the uncoordinated process of revising and adopting Swiss legislation. Hopefully, the Swiss Federal Supreme Court will continue to follow international trends and adopt a more generous approach also on other issues of Swiss international insolvency law, for example with regard to the power of the bankruptcy administrator in Switzerland.

De Miguel on Derecho Privado de Internet (5th edn)

The fifth edition of *Derecho privado de internet* (Thomson Reuters Civitas, 1150 pages), by Professor Pedro De Miguel Asensio (Universidad Complutense de Madrid) has just been published. This well-known treatise cover a wide range of areas of Internet regulation and the ordering of Internet activities with a particular focus on Private Law and Conflict of Laws aspects.

As noted by Prof. Gerald Spindler in his review of the previous edition of this book in the *Journal of Intellectual Property, Information Technology and Electronic Commerce Law (JIPITEC)*, 2012, pp. 88-90: *"De Miguel's book is indeed an encyclopedia of Internet law, with special regard to its implementation in Spain. The effort to undertake such a comparative legal work is huge, and it is the only way to cope with the global phenomenon of the Internet. The book is highly recommendable for everyone engaged in electronic commerce and Internet law as a rich source of information that spans all kinds of legal areas, thus making it indispensable for European lawyers in these fields".*

Further information on the new edition is available on the **publisher's website**.

The new European Insolvency Regulation

Antonio Leandro, the author of this post, teaches International Law at the University of Bari.

On 20 May 2015 the European Parliament approved the new European Insolvency Regulation (EIR) in the text adopted by the Council at first reading on 12 March (publication on the Official Journal is expected to follow soon). This marks the end of a revision process which started with the Commission proposal of 12 December 2012 (COM/2012/744 final).

The primary aim of the revision was to improve the operation of the EIR with a view to ensuring a smooth functioning of the internal market and its resilience in economic crises, having regard to national insolvency laws and to the case law of the ECJ on the "old" Insolvency Regulation, *i.e.* Regulation No 1346/2000 (the relevant ECJ judgments include: *Susanne Staubitz-Schreiber* [2006]; *Eurofood IFSC* [2006]; *Deko Marty Belgium* [2009]; *SCT Industri* [2009]; *German Graphics* [2009]; *MG Probud* [2010]; *Interedil* [2011]; *Zaza Retail* [2011]; *Rastelli Davide* [2011]; *F-Tex SIA* [2012]; *ERSTE Bank Hungary* [2012]; *Ulf Kazimierz Radziejewski* [2012]; *Bank Handlowy* [2012]; *Grontimmo* [2013]; *Meliha Veli*

Mustafa [2013]; *Ralph Schmid* [2014]; *Burgo Group* [2014]; *Nickel & Goeldner Spedition* [2014]; *H* [2014]).

In short, the revised text: (*a*) extends the EIR's scope to proceedings aimed at giving the debtor a "second chance"; (*b*) strengthens the current jurisdictional framework in terms of certainty and clarity; (*c*) improves the coordination among insolvency proceedings opened in respect of the same debtor and strikes a better balance between efficient insolvency administration and protection of local creditors; (*d*) reinforces the publicity of the proceedings by compelling Member States to provide for insolvency registers and by providing for the interconnection of national registers; (*e*) deals with the management of multiple insolvency proceedings relating to groups of companies.

The new EIR will enter into force following its publication in the Official Journal, but the bulk of its provisions will only apply in 2017.

A broader scope

Opening the EIR to collective rescue and restructuring proceedings, to proceedings which leave the debtor fully or partially in control of its assets and affairs and to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons as well as to interim proceedings, means that the appointment of a "liquidator" and the debtor's divestment are no more grounds of the EIR's applicability.

The difference between "all-creditors-including" and "not-all-creditors-including" proceedings has been implicitly upheld. However, Recital 14 clarifies that proceedings not including all the creditors should be proceedings aimed at rescuing the debtor, while those leading to a definitive cessation of the debtor's activities or to the liquidation of the debtor's assets should include all the creditors.

Annex A lists the proceedings at stake: national insolvency procedures not listed fall out of the scope of the Regulation. In doing so, Annex A provides – as the ECJ held in *Ulf Kazimierz Radziejewski* (§§ 23-24) and *Meliha Veli Mustafa* (§ 36) – a clear-cut confine of the EIR's scope.

Moreover, the extension to proceedings whose purpose is not liquidation has led

to replacing the term “liquidator” with “insolvency practitioner”, so as to include a broader range of tasks in connection with the administration of the debtor’s affairs. Annex B lists the relevant insolvency practitioners based on national laws.

Hereinafter, we will refer to the insolvency practitioner appointed in the main proceedings as the “main insolvency practitioner” and to the one appointed in secondary proceedings as the “secondary insolvency practitioner”.

The innovations regarding jurisdiction

Some Recitals inspired by *Eurofood* and *Interedil* have been inserted in the new EIR to clarify the concept of “centre of main interests” (COMI).

It is now stated that the COMI of individuals is to be found – presumptively – in their “principal place of business”, if they are independent businessmen or professional providers, or in their habitual residence, in all other cases (Article 3(1)).

In order to avoid fraudulent or abusive forum shopping practices, these presumptions will only apply if the registered office/principal place of business/habitual residence have not been transferred to another Member State within a given period prior to the request for the opening of the insolvency proceedings.

The court requested to open the proceedings will rule on jurisdiction of its own motion, and specify in the judgment on which ground it retained jurisdiction (Article 4).

Vis attractiva over “ancillary” proceedings is now codified in Article 6. Moreover, should the “ancillary” action be related with another action based on civil and commercial law, then the insolvency practitioner is entitled to bring both claims in the court of the defendant’s domicile or, in the case of several defendants, in the court of the Member State where any of them is domiciled, provided that such court has jurisdiction under the Brussels I Regulation (recast).

Coordination of proceedings

The new EIR improves the coordination among insolvency proceedings opened

against the same debtor, and attempts to strike a better balance between efficient insolvency administration and protection of local creditors.

In particular, it makes the opening of secondary proceedings conditional upon both the interests of local creditors and the objectives of the main proceedings, and accordingly, strengthens the main insolvency practitioner's role in this regard.

The court of the establishment will be enabled, on request of the main insolvency practitioner, to refuse or to postpone the opening of secondary proceedings whenever this is not necessary to protect the interest of local creditors.

When ruling on a request for opening brought by local creditors, the court of the establishment should give the main insolvency practitioner the opportunity to be heard before deciding (Article 38). The main insolvency practitioner will have the opportunity to apply for refusal or postponement of the opening of secondary proceedings, while the court of the establishment will be in a position to be aware of any rescue or reorganization options explored by the main insolvency practitioner, so as to properly assess the consequences of the opening.

Based on these and other elements, the court may refuse the opening or opt for proceedings not involving the winding-up of the debtor. This differs from the current regime, which allows for the alternative proceedings option only for territorial proceedings, *i.e.* prior to the opening of main proceedings.

In line with this new broadened role in evaluating the impact of secondary proceedings upon the centralized rescue or the estate administration, the main insolvency practitioner will be entitled to challenge the decision whereby secondary proceedings are opened.

As regards the protection of local creditors, in order to avoid the opening of secondary proceedings, the main insolvency practitioner may undertake within the main proceedings, in respect of assets located in the Member State of the establishment, 'that he will comply with the distribution and priority rights under national law that [they] would have if secondary proceedings were opened' (Article 36(1)). This undertaking should remove the local creditors' concern over seeing themselves deprived of interests and preferential rights based on the local *lex concursus* by the opening of the sole main proceedings and by the applicability of the COMI's *lex concursus*. At the same time, it will avoid the

opening of secondary proceedings that may adversely affect the outcome of the main insolvency proceedings, in particular where the latter are aimed at rescue and restructuring.

In this respect, the new EIR draws inspiration from the "synthetic secondary proceedings".

If secondary proceedings are opened or the request of opening is still pending, the new EIR extends the duty to cooperate both to the courts involved and between courts and insolvency practitioners (Articles 41-43).

Courts and insolvency practitioners are also required to take account of principles and guidelines adopted by European and international organizations active in the area of insolvency law, including the UNCITRAL guidelines (Recital 48). For instance, the courts may coordinate with each other to appoint the insolvency practitioners, while courts and insolvency practitioners may enter into protocols and agreements to facilitate cross-border cooperation and to coordinate the administration and supervision of the debtor's assets and affairs.

Publishing insolvency information

Member States are required to establish publicly accessible electronic registers that contain information on cross-border cases (Article 24). All national registers will be interconnected with each other through the European e-Justice portal (Article 25).

This mandatory regime is meant to safeguard the foreign creditors' right to lodge claims and prevent the opening of parallel proceedings. As for the foreign creditors – *i.e.* those having their habitual residence, domicile or registered office in a Member State other than the State of the proceedings, including the tax authorities and social security authorities of Member States: Article 2(12) –, their right to lodge claims will be facilitated by using a standard form to be established in an implementing act of the Commission.

Certain protective rules concerning the personal data have been inserted on account of the fact that, as noted above, the new Regulation will also apply to proceedings opened against persons who do not carry out an independent business or professional activity: see Articles 78-83. Having these cases in mind,

Recital 80 strikes a balance with the creditors' right to lodge the claims by calling Member States to ensure both that the relevant information is given to creditors by individual notice and that claims of creditors who have not received the information are not affected by the proceedings.

Groups of companies

The revision also addresses the management of multiple insolvency proceedings relating to groups of companies, introducing a specific Chapter (V). This strives to ensure the efficiency of the insolvency administration, whilst respecting each group member's separate legal personality.

In this regard, the new EIR draws inspiration from the UNCITRAL Model Law and related Legislative and Practice Guides.

Firstly, should more proceedings be opened in different Member States, the new EIR requires all the actors involved (insolvency practitioners and courts) to comply with the duties of cooperation and communication applicable when main and secondary insolvency proceedings are opened against the same debtor (Chapter V, Section 1).

An important innovation is that an insolvency practitioner is now allowed to request the opening of a "group coordination proceeding", which should further facilitate, in particular, the restructuring of groups (Chapter V, Section 2). The participation of the other insolvency practitioners (hence, the other proceedings) rests on a voluntary basis.

A "coordinator" will be appointed to propose and implement the coordination plan (Articles 71-72).

All the advantages of the "coordination proceedings" should be worth the costs. In other words, the costs of the coordination should be sustainable and adequate having regard to the purpose of each proceedings involved.

The introduction of groups-of-companies oriented rules will not prevent a court from opening insolvency proceedings for several companies in a single State if the court finds a common COMI therein (Recital 53).

What about the applicable law?

The revision only marginally addresses the issue of applicable law.

However, Article 11(2) and Article 13(2) of the new texts are noteworthy in this respect, in that they manage, as regards contracts relating to immovable property and contracts of employment, the effects of the insolvency stemming from the (local) *lex contractus* when the insolvency being handled abroad in the main proceedings.

Article 18 extends to pending arbitration proceedings the existing rule whereby the effects of insolvency proceedings on a pending lawsuit concerning assets or rights included in the debtor's insolvency estate must be governed by the law of the Member State where the lawsuit is pending (the law of the seat of the arbitration will apply).

Finally, all the rules whose functioning depends on the concept of "Member State in which assets are situated" will benefit from the broader and more detailed definition provided by Article 2(9), which refers, among other "assets", to registered shares in companies, financial instruments, cash held in credit institutions accounts and copyrights.