The Hague Choice of Court Convention to enter into force on 1 October 2015

On 11 June 2015, the European Union deposited its instrument of approval of the Hague Convention of 30 June 2005 on Choice of Court Agreements.

Two declarations are appended to the instrument of approval: a declaration under Article 30 (i.e. a declaration regarding the competences exercised by a Regional Economic Integration Organisation, to be made when such an Organisation accedes to the Convention without its Member States), and a declaration regarding the succession of the European Union to the European Community.

The move of the European Union paves the way to the entry into force of the Convention. Pursuant to Article 31(1), the Convention shall in fact "enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession". The first of these instruments was the instrument of ratification deposited by Mexico in 2007.

The Convention will thus enter into force for Mexico and the European Union on 1 October 2015.

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**.