Books

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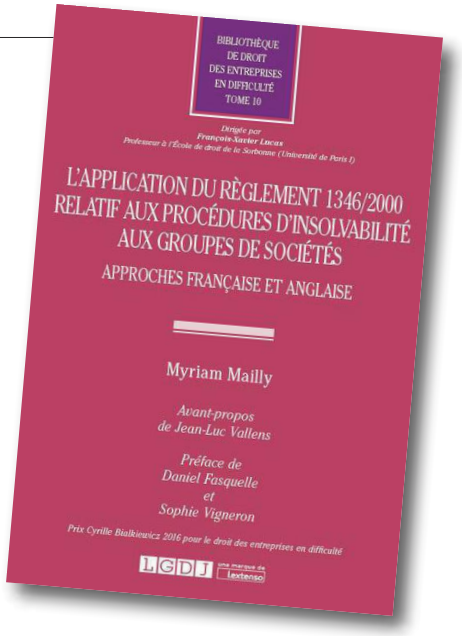
L'Application du Règlement 1346/2000 relatif aux Procédures d'Insolvabilité aux Groupes des Sociétés (The application of the European Insolvency Regulation to corporate groups: an Anglo-French perspective)

Myriam Mailly (2018, LGDJ, Paris), xv and 591pp, €62, ISBN 978-2-275-05768-2



This recently published French language work addresses the application of the EIR to the position of groups of companies, a very common structure for creating business networks and conducting cross-border trade. The research, which arose from the author's doctoral studies at the Universities of Kent and Lille, contains a comparative flavour, in that it examines the position from the standpoint of two very different legal systems: the English and the French. Charting the history of the initiative that produced the EIR, the book mentions some of the problems that have arisen from its single-minded focus on the activities of sole companies, which have only partly been resolved by the introduction of the Recast EIR. In examining the workings of the EIR, the work looks at domestic approaches to the problems of transnational coordination of insolvencies and how they have influenced the responses of the courts to the first cases they were confronted with invoking the application of the EIR.

For the author, the lacunae in the EIR, especially with respect to group structures, prompted the courts to craft solutions, first seen in the Daisytek case, that were gradually transposed to more and more complex situations. The response at European level has been more muted, though occasionally, cases such as Interedil and Illochroma, have created glosses in particular fact situations. Through these and other case studies, the book examines how the courts have pressed into service methods for rescuing groups lying both within and outside the scope of the EIR, in an effort to palliate some of its inconveniences. The work also contains a forward-looking element, addressing the Draft Directive of November 2016 and its likely contribution to the framework for cross-border reorganisations.

Overall, this is a work of methodical and detailed scholarship, which also received the Cyrille Bialkiewicz Prize in 2016 for publications in the field of insolvency. Though primarily addressed to Francophone readers, the book merits being brought before a wider audience for its strong comparative law features and treatment of universal problems.

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Technical Research Coordinator

Sovereign Defaults before Domestic Courts

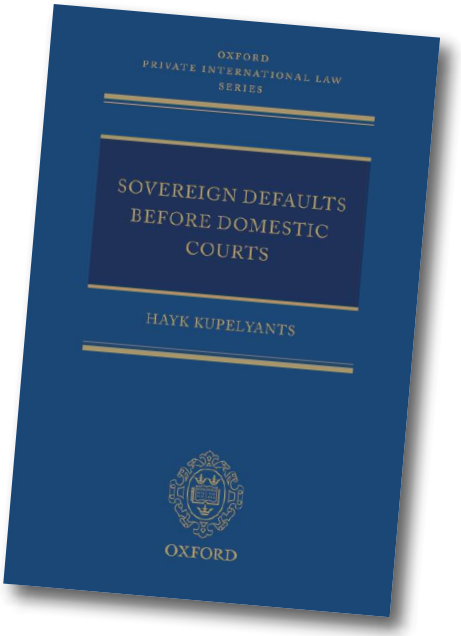
Hayk Kupelyants (2018, OUP, Oxford), 320pp, £75, ISBN 978-0-19-880723-0

The world of sovereign debt and sovereign defaults is often obscure. In the absence of a sovereign debt restructuring regime, sovereign debtors and (holdout) creditors play a cat-and-mouse game. The sovereign debtor may resort to extra-legal or legally questionable strategies, cease its payments, coerce the creditors with exit consent strategies or the threat not to repay its holdout creditors, or may try to retrospectively revise the terms of the agreement to his/her own advantage by a change in the national law. Creditors trade their claims to specialised debt investors who sue the debtor and try to enforce their claims or to pressurise the debtor, e.g., by blocking his/her access to the capital debt markets. In this recently published text, Dr. Hayk Kupelyants analyses how such disputes which arise in the context of sovereign defaults are likely to be decided in domestic courts.

Kupelyants' work starts with a theoretical legal and practical discussion of the (commercial) character of sovereign debt and debt restructurings and continues with a description and analysis of the most important bond terms typically included in sovereign bond contracts, before he turns to the question of litigation and enforcement. He deals with questions concerning jurisdiction, a possible stay to avoid pre-emptive legal action (during the restructuring negotiations), interim measures against the sovereign debtor, and the law governing the sovereign debt contracts. He also covers the disconcerting case of unilateral modifications of sovereign domestic-law bonds. Possible defences of the sovereign debtor against repayment and the challenges to sovereign debt restructurings, especially to strategic/coercive restructuring techniques, are also investigated. The book concludes with an analysis of enforcement techniques against the sovereign debtor.

While creditors might very well get a court to confirm that they hold a lawful claim to be repaid (in full) and while creditors will most likely see the principle of *pacta sunt servanda* upheld, especially in English and New York courts, the real challenge will be to find attachable assets of the sovereign debtors abroad, or to force the debtor by different possible enforcement strategies into a settlement.

With an extensive and thorough analysis of case law from primarily the US and the UK, Hayk Kupelyants' work provides the reader with a handy guide of how



sovereign defaults will be or are likely to be dealt with in domestic courts.

David Ehmke
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Book preview: Le droit de l'insolvabilité internationale (International Insolvency Law)

Reinhard Dammann and Marc Sénéchal, June 2018, 974pp, ISBN 978-2-306-00090-8, €125

This text, published in June 2018, is written by two practitioners of high standing, who between them have acted in the major cross-border insolvencies in France in the past decade. As such, they are well placed to answer the essential questions posed by the text: how does the Recast European Insolvency Regulation function? What is the latest trend at the European Court of Justice in the interpretation of its provisions? What role is left for private international law rules in relation to international insolvencies involving third countries? And, what will happen after Brexit, as far as France is concerned? All of these questions receive answers distilled through analysis of the texts and the case law, guided by the authors' own practical experience.

A full review will be forthcoming in these pages in the next issue of Eurofenix.