FYI

Litigation & Dispute Resolution NEWS

Execution of US Pre-Trial Discovery Orders in Switzerland

and other interesting news in Litigation & Dispute Resolution

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Diary

Upcoming GGI Litigation & Dispute Resolution (LDR) Practice Group meetings:

- **Marrakesh, Morocco**
  08 November 2019
  GGI LDR PG Meeting
  at the GGI World Conference
- **Bali, Indonesia**
  06 December 2019
  GGI LDR PG Meeting
  at the GGI Asia-Pacific
  Regional Conference
- **Rome, Italy**
  06-07 March 2020
  Combined Meeting of the GGI
  Practice Groups Litigation &
  Dispute Resolution and
  Debt Collection, Restructuring
  & Insolvency
- **Limassol, Cyprus**
  24 April 2020 (TBC)
  GGI LDR PG Meeting
  at the GGI European
  Regional Conference
- **Nassau, The Bahamas**
  05 June 2020 (TBC)
  GGI LDR PG Meeting
  at the GGI North American
  Regional Conference
- **Madrid, Spain**
  26 June 2020 (TBC)
  GGI LDR PG Meeting
  at the GGI Latin American
  & Iberian Regional Conference
- **Montreal (QC), Canada**
  23 October 2020 (TBC)
  GGI LDR PG Meeting
  at the GGI World Conference

Editorial

Dear Reader,

I hope you had a great summer and time to relax and to recharge your batteries for a successful final sprint towards the end of 2019. The upcoming GGI World Conference in Marrakesh will be an ideal venue to spark new ideas for your professional work and vitalise your personal GGI network. I am proud and grateful that once again so many of our Practice Group (PG) members have contributed to this Issue No. 11 of our newsletter despite their busy work schedules, particularly after the summer break.

This issue covers multiple highly interesting topics. On the one hand we have a group of finance-related topics: Raffaela Lödl-Klein and Eva Pany from Austria provide an overview on litigation funding in Austria; Jordi Pallarès from Spain deals with making or accepting presents in the context of business relationships and what companies that do business in Spain should know about it; Yasmine Misuraca from the US describes US anti-corruption laws and their international reach, and Wolfgang Fürnschuss gives an overview on Liechtenstein foundations – a glimpse at asset protection versus creditor protection.

On the other hand, this issue also addresses topics relating to litigation in an international context: Dr Christian Dittert from Germany writes about the enforcement of preliminary injunctions in another EU member state. Natalia Pynnikova from Russia deals with the execution of court decisions and contractual clauses on applicable law and venue; Aram Grigoryan, also from Russia, presents urgent issues of disputes about recognition and enforcement of foreign judgments in Russia; Matteo Zanotelli from Italy sets out the effects of the opening of an insolvency proceeding on civil/commercial disputes pursuant to EU Regulation 848/2015; Mirco Ceregato from Switzerland gives an overview on the execution of US pre-trial discovery orders in Switzerland; Andrew Lacey and Guy Lewis from Australia describe how the Australian courts expand the scope of defamation law in the social media context; and finally Oltion Kaçani from Albania deals with the concept of the right to a fair trial.

I thank all members of our Practice Group for their great response to our call for articles for this newsletter and wish you a stimulating read of this publication!

Our next Practice Group meeting will be held during the GGI World Conference in Marrakesh on 08 November. For further LDR PG meeting dates, please refer to the diary on the left side. I look forward to meeting you in Morocco.

Dr Karl Friedrich Dumoulin
Global Vice Chairperson of the
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Execution of US Pre-Trial Discovery Orders in Switzerland

By Mirco Ceregato

The taking of a deposition in Switzerland is subject to Art. 271 of the Swiss Criminal Code. Therefore, in cases where jurisdictional discovery is granted by a US court against a defendant who resides in Switzerland, all involved parties and counsels are at risk of becoming liable to prosecution in Switzerland if the envisaged legal path is not duly followed.

In order to prevent the risk of being prosecuted, the means envisaged in the Hague Evidence Convention ("Convention") must be used. The US was a signing party and Switzerland joined the Convention in 1994. The Convention comprises two separate and independent systems for the taking of evidence abroad: Chapter I of the Convention sets out provisions for the taking of evidence by means of Letters of Request; Chapter II provides for the taking of evidence by Consuls and Commissioners.

According to Chapter I, the judicial authority which ordered the evidence-taking sends a Letter of Request to the central authority at the requested state. The central authority of the requested state checks on formalities of the request and, if formalities are complied with, it forwards the Letter of Request to the competent judicial authority for execution. As Switzerland is a federalist country with twenty-six cantons, Switzerland has not one central authority, but twenty-six. However, it is possible to file the Letter of Request with the Swiss Federal Department of Justice which forwards it to the competent central authority. The chart below illustrates this.

According to Art. 23 of the Convention, a contracting state may, at the time of signature, ratification, or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common-law countries. Switzerland has made use of this reservation. However, such reservation is not intended to prohibit common-law style pre-trial discovery. This would be contrary to the purpose of the treaty. According to the Swiss Federal Supreme Court, the effect of Switzerland's Art. 23 declaration is that Switzerland will accept Letters of Request for the production of documents issued during the pre-trial discovery period where the relevance and precision of the request matches the criteria inspired by Swiss procedural law. The practical problems when executing US pre-trial discovery orders in Switzerland, according to Chapter I of the Convention, are:

- Where documents are requested, the documents must be specifically identified and the relevance of the requested document for the dispute must be clear from the Letter of Request.
- Where witness examination is requested, the individual interrogatories must be drafted with clarity and the relevance of the questions for the dispute must be substantiated.
- The form used to take oral testimony for the purpose of pre-trial discovery (deposition) is unknown in Switzerland. Cross-examination must be requested in the Request Letter by way of a special method (Art. 9(2) of the Convention). A Swiss judge must survey the questioning and must intervene when necessary.
- English is not an official language in Switzerland.
- Switzerland has no sharp measures of compulsion against a party which does not comply with an order for document production or an order for testimony in a civil procedure.

Chapter II of the Convention envisages the use of US Consuls and

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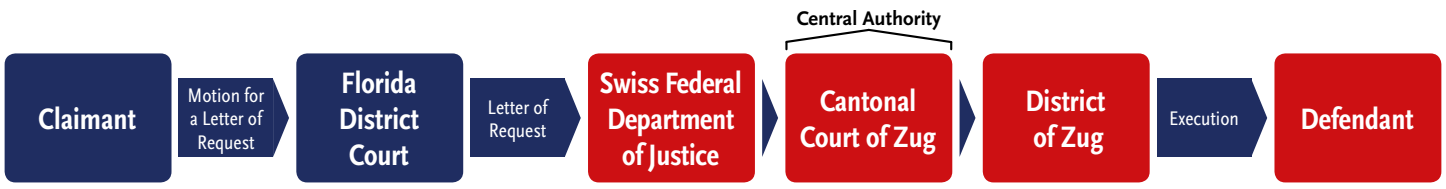
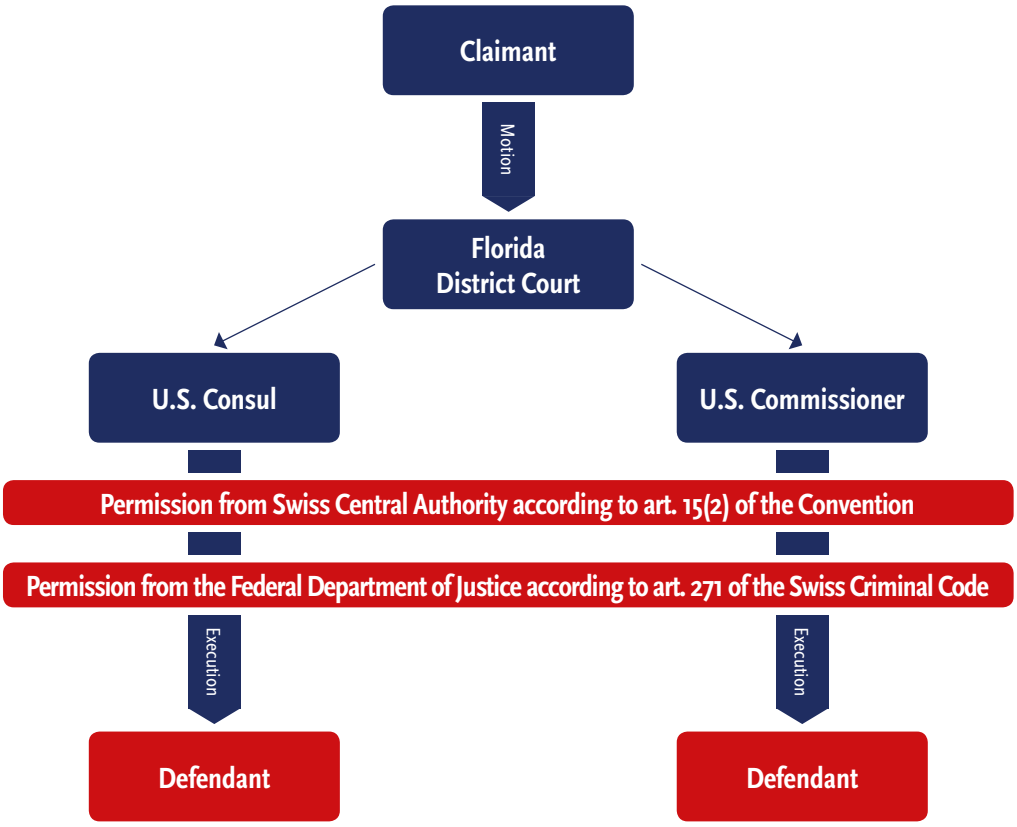


Commissioners to execute a US pre-trial discovery order abroad instead of using the foreign court. To do so, the claimant must file a respective motion with the competent court in the US. However, in order to legally execute such a US court order for pre-trial discovery, two Swiss permissions are necessary. Firstly, the central authority must issue a permission according to Art. 15, para 2 of the Convention. And, secondly, the Swiss Federal Department of Justice must issue a permission according to Art. 271 of the Swiss Criminal Code. The chart on the right illustrates the procedure.



In contrast to the proceeding envisaged by Chapter I of the Convention, the evidence is to be taken not only according to the procedures provided for by the law of the requesting court (i.e. according to US law) but also by US persons familiar with common-law style, pre-trial discovery orders.

Although Chapter II of the Convention provides for a good solution for overcoming the practical problems outlined when using Chapter I, the defendant remains free to not cooperate at all or to interrupt the taking of evidence at any time (Art. 21, let. c of the Convention). This makes the use of the procedures envisaged in the Convention unattractive for US claimants. Therefore, US counsels often try to execute the evidence-taking against a Swiss resident on US soil or in countries which have no blocking statutes (Switzerland has one with Art. 271 of its Criminal Code). In Société Nationale Industrielle Aérospatiale, et al. vs US District Court for the Southern District of Iowa, 482 US 522, 107 S.Ct. 2542, 96 L.Ed.2d 461 (1987), the US Supreme Court held that the discovery procedures provided by the Convention do not necessarily control discovery with respect to foreign litigants before an American court. When determining whether to require use of the optional Convention procedures, or to permit discovery pursuant to the US Federal Rules, the Supreme Court instructed courts to consider the particular facts of each case, the sovereign interests at issue, and the likelihood that resort to Hague Convention procedures would prove effective. According to this precedent, there may be an avenue to circumvent the use of the Convention when executing a pre-trial discovery order in Switzerland. However, this must be assessed on a case by case basis.

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Liechtenstein Foundations: A Glimpse at Asset Protection vs Creditor Protection

By Wolfgang Fürnschuss

Liechtenstein introduced its foundation law in 1926, when the country's extensive Persons and Companies Act came into effect. This important piece of legislation set the scene for the country progressing from a mainly agricultural state to a wealthy economy offering a wide array of financial services.

An adequate level of asset protection is crucial in attracting and keeping capital. Asset protection comprises legal techniques aiming at lawfully shielding a person's assets from claims of his (potential) creditors without committing a criminal offense, acting fraudulently, or evading taxes.

By its nature, asset protection conflicts with creditor protection. Both ends are similarly legitimate, with no intermediate position being right or wrong. Liechtenstein has carefully gauged these two poles and set up a balanced and sophisticated system. Liechtenstein foundations are a prime example.

A foundation is a legal entity with a legal personality distinct from the legal personality of its founder or beneficiaries. Foundations typically serve the same purpose as express trusts in common-law jurisdictions.

The founder of a Liechtenstein foundation may retain the rights to amend the foundation documents and/or revoke the foundation. These rights give him considerable control over the entity and its assets even after its formation. However, sweeping control comes with disadvantages.

In return for the founder's flexibility in retaining control over "his" foundation, Liechtenstein law permits attaching the founder's rights to amend the foundation documents and/or revoke the foundation. Thus, creditors may obtain court authorization to exercise these rights on behalf of the debtor/founder and, for example, revoke the foundation with the assets reverting to the debtor/founder.

Drafting foundation documents is critical. Liechtenstein law offers a variety of tools to ensure that the foundation develops according to the founder's wishes and intentions. Legal advisors must discern these aims and make sure to align the needs for asset protection with inevitable aspects of creditor protection. When drawn up with knowledge and sound judgment, a Liechtenstein foundation can provide peace of mind in an ever-changing world.

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Litigation Funding in Austria: An Overview

By Raffaela Lödl-Klein and Eva Pany

Third-party litigation funding had a late start in Austria, but it has become an accepted practice. It enables a party to litigate or arbitrate without having to pay for it (e.g. in case the client does not have the funds to pursue a case). Instead of the client, a third-party capital provider can take over some or all the costs/expenses and risks of the proceedings.

The process itself is led by the litigation party and their legal representative. In case of success or comparison, the litigation financier receives a contractually agreed sum from the income earned. If not, the funder bears the costs it has agreed to fund. In principle, all processes are eligible for financing (e.g., commercial and corporate law claims, claims for damages, etc.).

In 2013, the Austrian Supreme Court approved litigation funding by a third party (OGH, 6 Ob 224/12b). Since this decision, third-party litigation funding has become a rising trend in Austria, and is also endorsed by Austrian courts. Nevertheless, the Austrian market still holds a much greater potential.

The Austrian legal system foresees no specific rules for third-party litigation funding or restrictions on funding fees. But there are important aspects to keep in mind:

- In general, it is not allowed for agreements/contracts under Austrian law to constitute profiteering (e.g. exploitation of a person in need; Article 1 of the Act against Profiteering). Such an agreement is void.
- Austrian lawyers are not allowed to be paid on the basis of contingency fees only; the Austrian Lawyer's Ordinance (§ 16 RAO) and the

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Raffaela Lödl-Klein

Eva Pany

Austrian Civil Code (§ 879 ABGB), foresee strict regulations in case lawyers are involved. Violation of the "quota-litis ban" leads to fines and other punishments.

- During the whole process of litigation funding, Austrian lawyers must always keep their independence (provided by the RAO).

Summing up, litigation financing is on the verge of quota-litis ban, but with appropriate contracting, the overall approach is acceptable.

Making or Accepting Presents in the Context of Business Relationships

Boundaries of the Criminal Offence

By Jordi Pallarès

Making or accepting presents in the context of commercial relationships has traditionally been a culturally accepted practice in Spain. Inviting potential clients to dine out, or inviting them to watch a football match, or sending them a bottle of wine at Christmas, are practices in which companies have invested part of their budgets.

However, pursuant to a 2010 amendment of the Criminal Code, these practices have become, under certain circumstances, a criminal offence.

Specifically, making or accepting a present or benefit, of any kind, as a compensation to unduly benefit a third party in relation to a commercial transaction, is prohibited.

The present or benefit must be of sufficient value as to be able to influence the commercial decisions of the person that receives it. Therefore, no criminal offence is committed if

a) the present is not made in the context of a commercial relationship;

b) it has not a relevant value (e.g. a pen or a sticker with the name of the company);or

c) it is socially considered a courtesy practice (e.g. inviting a client to lunch, or sending the client a bottle of wine for Christmas).

We would recommend companies doing business in Spain to stick to the following guidelines to be always on the safe side:

...next page

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Jordi Pallarès

VILAR RIBA

a) Never make/accept monetary presents (do not confuse this with commercial discounts or sales discounts [rappels] which are legitimate and legal).

b) Never request/offer a commercial compensation for the presents made/received.

c) Establish an internal policy concerning the making/acceptance of presents and make it available to all potentially affected employees. The policy should establish whether they can offer/accept presents and, if relevant, the procedure to do so, as well as the kind of presents and up to what value can be made/accepted.

US Anti-Corruption Laws and Their International Reach

By Yasmine Misuraca

As long as greed exists, so will corruption. To combat corruption, the US enacted the Foreign Corrupt Practices Act (FCPA).

Its provisions prohibit offering, authorising, or making payments of money or anything of value to influence the decision making of foreign government officials to obtain or retain business.

They also require the maintenance of accurate books and records and an adequate system of internal controls that would aid in the detection and prevention of FCPA violations.

The FCPA applies to issuers: companies that have securities registered with, or are required to file reports with, the US SEC; and domestic concerns: US residents, citizens, and companies whose principal places of business are in the US or that are organised under US laws. It is the FCPA's international coverage that is not widely known.

The FCPA also applies to foreign issuers; US subsidiaries of foreign companies; foreign subsidiaries of US companies; foreign citizens who work for US companies; foreign persons or entities that directly or through an agent engage in acts furthering corrupt payments in US territory; and foreign persons or entities acting as agents for issuers or domestic concerns.

It also applies to prohibited acts by issuers or domestic concerns while abroad and carried out, for example, by emails, phone texts, or wire transfers.

Since the FCPA's jurisdiction only applies to foreign public corruption, the US Department of Justice (DOJ) uses the Travel Act (TA), a federal criminal law, to complement the FCPA and extend its international reach to commercial bribery, which is bribery

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not involving foreign government officials. The TA prohibits the use of interstate or foreign commerce to distribute unlawful proceeds.

To further the anti-corruption reach of the US, a new bill was recently introduced to the US Congress that would allow federal prosecution of bribe recipients: the foreign government officials.

Enforcement of Preliminary Injunctions in Another EU Member State

By Dr Christian Dittert

In urgent matters, civil procedural law allows for preliminary injunctions. It is a peculiarity of German law that a preliminary injunction must be formally served on the opposing party. Such formal service of documents at the instigation of a party can be mainly affected either by instruction of a court-appointed enforcement officer to serve the documents or by formal service from one attorney on another attorney (the latter only if both parties are represented by attorneys). It is important that, according to Sec. 929 Para. 2 ZPO, such formal service must be duly performed within a month after the preliminary court decision has been issued. Without service in time, the opposing party is entitled to bring a motion to set aside the preliminary injunction.

On 04 October 2018, the European Court of Justice (ECJ) gave a judgment in re *C379/17 – Società Immobiliare Al Bosco Srl.* The ECJ decided that EU law did not preclude the application of the aforementioned time limit pursuant to Sec. 929 Para. 2 ZPO on a preliminary injunction issued by an Italian court and enforced in Germany.

It is obvious that it presents an enormous challenge to any claimant to meet, in only one month, all the formal requirements to formally serve a foreign court decision on the opposing party in another member state. In the ECJ case, the claimant had failed to duly serve the preliminary injunction to the defendant within that time frame.

The simple conclusion is: "Equal enforcement law for everybody in the enforcement state."

The ECJ judgment was based on Art. 38 of Council Regulation (EC) No 44/2001. The question is whether the decision can be applied to the new law under Council Regulation (EU) No. 1215/2012 *mutatis mutandis.* At this point, nothing indicates otherwise. Under the assumption of the applicability, the next question is from what date the time limit of one month must be calculated, as there is no declaration of enforceability of foreign judgments under the new law anymore. It would stand to reason that the decisive date is the date of receipt of all necessary enforcement documents by the claimant, according to Art. 42 Council Regulation (EU) No. 1215/2012 (provided that all necessary applications for the required documents have been made to the competent authorities without undue delay).

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Foreign Urgent Issues of Disputes about Recognition and Enforcementments in Russia

Foreign Judgments in Russia

By Aram Grigoryan

One of the most global events in the field of international justice was the adoption by the Hague Conference on Private International Law of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019. It is assumed that the Convention will increase certainty and predictability and promote the better management of transaction and litigation risks. In this regard, issues of recognition and enforcement ("R&E") of foreign judgments ("FJ") at the national level are of interest to foreign investors and business. Nowadays, an FJ generally can be recognised and enforced in Russia if a bilateral or multilateral international agreement exists. Russia is a party of numerous (more than 30) treaties that govern the R&E issues entered by Russia and the USSR.

It is more difficult to recognise and enforce an FJ if it was rendered in a country which does not have a relevant treaty with Russia: in these cases, Russian courts may review a case on the principles of reciprocity and international comity (see leading case *Re MCBL (UK) vs STC "Microsurgery of eye named S. Fyodorov" (Russia)*). After that case, Russian courts have turned to wide application of this approach concerning English, Dutch, Finnish, and Japanese judgments. Whether the reciprocity rule must be applied or not, generally, it is done on a case-by-case basis. The main evidence for this question is the legal opinions of foreign law professors.

Under Russian procedural law, only final judgment on merits can be recognised and enforced. It means that orders for interim injunctions cannot be R&E'd. Therefore, a party which seeks to obtain injunctions in Russia must ask for these directly from a Russian court. Also, it is not clear whether decisions that approve settlement agreements are subject to R&E.

The general grounds for a refusal of R&E in Russia are violation of exclusive jurisdiction of Russian courts, improper notification, and, the most controversial, a violation of public policy. It is common for lower courts to refuse R&E and then higher courts to overrule the decision and direct the case for re-examination (see the most recent case: *"YKK Shipping Ltd."(Cyprus) vs "Caspian-SK" LLC (2019)*).

Despite the above risks, in general, Russian courts in most R&E disputes make positive decisions (about 65% of the applications were satisfied based on the results of 2018). That is why we can conclude that Russia is an R&E-friendly country.

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Aram Grigoryan specialises in contractual dispute resolution in international trade. He obtained an LLM in dispute resolution from Lomonosov Moscow State University.

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Australian Courts Expand Scope of Defamation Law in Social Media Context

By Andrew Lacey and Guy Lewis

In two recent decisions, superior courts in Australia have pushed the boundaries of what constitutes participation in the publication of materials on social media for the purposes of defamation law.

In the case of *Voller vs Nationwide News Pty Ltd* [2019] NSWSC 766, the Supreme Court of New South Wales was tasked with determining, as a preliminary question in the proceedings, whether each of the three defendant media companies was liable for defamatory material in third-party comments posted under links to articles on their Facebook pages. The Court held that they were. In reaching this conclusion, the Court primarily pointed to the fact that each media organisation had the ability to ensure that every post by a commentator was hidden, until monitored and approved by an administrator. Each organisation also had the ability to monitor and delete third-party comments on their Facebook pages after they had been posted.

In the case of *Bailey vs Bottrill (No 2)* [2019] ACTSC

...next page

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McCabe Curwood is a multi-disciplinary law firm. With a focus on technical excellence, McCabe Curwood provides astute and commercial legal solutions for its clients. By emphasising technical excellence and commitment to quality, McCabe Curwood offers commercially relevant legal solutions tailored to the current and future business objectives of its clients. McCabe Curwood distinguishes itself from other legal service providers by offering legal services that focus on the client's needs.

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167, the Supreme Court of the Australian Capital Territory found that an individual had actively participated in the publication of defamatory material by sharing a link to a defamatory YouTube video on her personal Facebook page. As with the decision in *Voller,* the Court pointed to the control that the defendant had over the content on her Facebook page in coming to this conclusion.

These decisions have set a potentially dangerous precedent for the application of Australian defamation law. In short, the effect of the decisions is that by providing the forum for the publication of defamatory material, the owner of a public Facebook page will be a first or primary publisher and not an "innocent disseminator". Not surprisingly, concerns have been raised in the mainstream media that these precedents may have a chilling effect on freedom of speech in the modern social media landscape.

Right to a Fair Trial

By Oltion Kaçani

Recent developments and ongoing changes in civil and commercial relations should necessarily be reflected in legislation, in particular in the procedural legislation.

Judicial procedures for adjudicating cases of every nature are important, as they must guarantee to all citizens effective access, fair trial and, within a reasonable time, independent and impartial tribunal and other guarantees stipulated by Article 6 of the European Convention on Human Rights.

In light of the above, on 03 March 2017, the Albanian Parliament adopted Law 38/2017 "On some amendments and additions to the Civil Procedure Code in the Republic of Albania", which entered into force on 06 November 2017.

Judicial employees have expanded their powers over the actions and measures to be taken with regard to the notification of the parties aiming to conduct the judicial process within the established deadlines.

Further, adjustments to notification procedures are also performed. What is new is the provision of electronic notifications in cases where the parties have previously declared them in public registers.

Moreover, for the first time, the concept of the authorised person entitled to receive the notification in cases where the parties are unable to receive such notification, is included.

Another novelty consists of providing an expedited procedure for small-value lawsuits amounting up to approximately EUR 1,250, aiming to simplify the proceedings and reviewing such claims within a short period of time. The decisions of the Court of Appeal on such claims are not appealable.

Significant improvement has been made in the preliminary actions of the single judge and the development of the first hearing, which aims to increase the efficiency of the justice system.

Furthermore, the Supreme Court has changed its mission as it will not remain as a third instance court, but rather a law court, which will unify the judicial practice.

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Gjika & Associates, established in 2013, has over ten employees. The firm specialises in the fields of energy, oil and gas, and real estate sectors, as well as M&A related to power projects.

Oltion Kaçani joined Gjika & Associates Attorneys at Law as a senior associate in January 2018. He graduated Faculty of Law at Tirana University, and holds a MS in civil and commercial law. He has been a member of the Albanian National Bar Association since November 2012. He has experience in consulting and due diligence, and has been regularly involved in drafting contracts and advising clients in relation to corporate and business law, real estate, public procurement and concession law, energy and natural resources, etc.

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Civil/Commercial Disputes Pursuant to EU Reg. 848/2015

The Effects of the Opening of an Insolvency Proceeding

By Matteo Zanotelli

It is well known that the insolvency declaration of one party affects deeply the course of a civil/commercial proceeding.

Each state provides specific rules on the matter, but, as far as the European Union is concerned, EU Regulation n. 848/2015 on cross-border insolvency governs the effects of the opening of an insolvency proceeding across the EU member states.

The above-mentioned Regulation specifies, among other things, which member state's law shall apply on specific issues; in particular, according to Art. 7, lett. f), EU Reg. 848/2015, the law of the member state where the insolvency proceeding has been opened, (i.e. the so-called *lex concursus*) governs "[...] the effects of the

...next page

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SLT Strategy Legal Tax is a Verona-based firm that provides both legal and accounting services to a national and international clientele. The firm can count on the experience of over 40 professionals whose experience covers many areas of expertise, ranging from commercial, insolvency, and banking law to criminal, family, and labour law.

Matteo Zanotelli is a lawyer and member of the Professional Lawyers' Association of Verona as well as a senior partner at SLT Strategy Legal Tax. His professional activity encompasses assistance to companies and other economic operators, mostly handling insolvency procedures, international trade law, and banking-law matters. He is a published author and speaker at events of a scientific and academic nature.

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insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits".

It is clear that the mentioned provision encompasses two different hypotheses.

Specifically, with the expression "proceedings brought by individual creditors", the EU Regulation means those proceedings that have the scope of seizing the debtor's assets; while, with the expression "pending lawsuits", the EU regulation refers to those proceedings that deal with the merit of the dispute. In other words, the aim of the provisions is to ensure that the liquidation of the debtor's assets is governed by the *lex concursus* (which usually prevents individual enforcement actions against the debtor), in order to ensure the so-called *par condicium creditorum*.

The contrary solution is instead provided for the proceeding concerning the merit of a dispute: the "pending lawsuits" mentioned in the last part of art. 7, lett. f), are governed by Art. 18 EU Reg. 848/2015, which provides that the effects on the dispute of one party's insolvency "[...] shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat".

Execution of Foreign Court Decisions in Russia

By Natalia Pynnikova

Procedures for recognition of foreign court decisions and the possibility of such recognition and execution depend entirely on who made the decision: an arbitration court or a state court.

Recognition of Foreign Arbitral Awards

The UN Convention "On the Recognition and Enforcement of Foreign Arbitral Awards" (New York, 1958), ratified by 159 countries, is a legal act governing such procedures. It applies solely to the recognition of foreign commercial arbitrators' decisions, i.e. such decisions are recognised by application to the arbitration court for recognition of such decisions and for writ of execution.

Unfortunately, legal practice of recognition of foreign arbitral awards suggests that, so far, courts do not always correctly address the scope of the Convention. Yet, statistics show that, for instance, 95% of applications for recognition of foreign decisions were satisfied in 2016, and 95% in 2017. Infringement of public policy and improper notification of the parties were the main reasons for refusal.

Recognition of Foreign State Court Decisions

Foreign state court decisions are recognised and enforced by courts of the Russian Federation only when

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19 years' general legal experience. She specialises in litigation, as well as in pre-trial settlement of cases, and also has extensive experience in bankruptcy affairs and subsidiary liability. She has experience in litigation not only with Russian, but also German, material law.

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recognition and enforcement of such decisions is stipulated in the international treaty of the Russian Federation. Exequatur requirements of the Arbitration Procedural Court of the Russian Federation apply to all foreign court decisions.

The issue of recognition of court decisions in Russia is optimally resolved with CIS states. Meanwhile, bilateral agreements with other countries are not uncommon.

Recently, there was a notable increase in the enforcement of foreign decisions in the legal practice with reference to principles of reciprocity and international comity, even without bilateral agreements, and sometimes with reference to the New York Convention where its application is impossible. However, the percentage of recognition of decisions without bilateral agreements tends to be nil.

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- GGI LDR PG Meeting at the
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  Bali, Indonesia | 06 December 2019
- Combined Meeting of the GGI Practice Groups
  Litigation & Dispute Resolution and
  Debt Collection, Restructuring
  Rome, Italy | 06-07 March 2020
- GGI LDR PG Meeting at the
  GGI European Regional Conference
  Limassol, Cyprus | 24 April 2020
- GGI LDR PG Meeting at the
  GGI North American Regional Conference
  Nassau, The Bahamas | 05 June 2020 (TBC)
- GGI LDR PG Meeting at the
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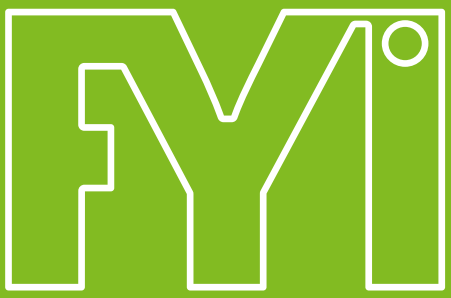
  Madrid, Spain | 26 June 2020 (TBC)
- GGI LDR PG Meeting at the
  GGI World Conference
  Montreal (QC), Canada | 23 October 2020 (TBC)



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