The European Insolvency Regulation An Update Papers From The Insol Europe Academic Forum Annual Conference Stockholm Sweden 30 September 1 October 2009

"The new European Insolvency Regulation (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings) has come into effect on 26 June 2017 for insolvency proceedings that are opened on or after that date. The Recast Regulation reforms the EC Regulation (1346/2000) on insolvency proceedings. The main changes of the Regulation are: The extension of its application to preventive insolvency proceedings; The creation of publicly accessible online insolvency registers; The possibility of avoiding the opening of multiple proceedings and preventing 'forum shopping'; The introduction of new procedures with the aim of facilitating cross-border coordination and cooperation between multiple insolvency proceedings in different Member States relating to members of the same group of companies. In this book a team of experienced insolvency law experts, among them judges, insolvency practitioners and academics, analyse the European Insolvency Regulation article by article. The authors focus on the new provisions and mechanisms as well as on the existing, and to a great extent still relevant, case law by the European Court of Justice and courts of the Member States."--Bloomsbury Publishing.

"Regulation No 1346/2000 of 29 May 2000 External Evaluation of Regulation (EIR) is the cornerstone of European insolvency law. The Regulation, which is directly applicable in all Member States, is the legal basis for cross-border insolvencies within the European Union. Paving the way for a new European insolvency law, the Heidelberg-Luxembourg-Vienna Report carries out a comprehensive legal and empirical evaluation of European insolvency law practice in the Member States. Based on thorough analyses the general reporters evaluate the Regulation and provide recommendations for its current revision." - - Extracted from website.

Updated to reflect recent case law and modifications to the EU Insolvency Regulation, this book is a primer that covers jurisdictional issues, "winding-up" procedures such as the appointment of a liquidator, recognition of judgments, creditors' rights and other provisions. Written by Prof. Bob Wessels of University of Leiden Law School in the Netherlands, this book is an invaluable resource for professionals who find themselves increasingly involved in cross-border insolvency cases.

This book provides the most detailed article-by-article commentary on the revised EC Regulation on Insolvency Proceedings (EIR), written by a group of experts drawn from several jurisdictions. The commentary is prefaced by an introductory chapter which provides an overview on scope and the key features of the EIR. This new commentary has been published in time to cover the long-awaited and much-debated revised Regulation which was finalized in 2015. The timing of publication will enable practitioners and scholars to equip themselves with a thorough understanding of the EIR ahead of full implementation in 2017. The article-by-article analysis has a multi-jurisdictional focus which reports and evaluates significant developments in the application of the Regulation across member states. This is a key new work for all those who advise on or research European insolvency law.

Freedom of establishment is one of the four fundamental freedoms of the European Union. The principle is that natural persons who are European Union Citizens, and legal entities formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the EU, may take up economic activity in any Member State in a stable and continuous form regardless of nationality or mode of incorporation. This book examines the way in which EU law has influenced how national courts in Europe assert jurisdiction in cross-border corporate disputes and insolvencies, and the mechanism which allows them to decide which national law should apply to the substance of the dispute. The book also considers the potential for EU Member States to compete for devising national corporate and insolvency legislation that will attract incorporations or insolvencies. Central to the book is the concept of national choice of law. In considering the impact of freedom of establishment on private international law for corporations, the book uniquely analyses both corporate and insolvency law together, presenting the topic in the broadest possible sense. Importantly, the doctrine of abuse in corporate and insolvency law is covered, raising the question of 'forum shopping' and regulatory competition which underpins the intersection between freedom of establishment and private international law. Through examination of the most recent and leading judgments of the European Court of Justice in Centros and Cadbury Schweppes, the book derives certain conclusions as to the operation of the doctrine of abuse and the limits thereof in the context of freedom of establishment. Being the first in the field to examine the leading ECJ cases of Inspire Art, Sevic and Cartesio regarding the real seat doctrine, the book makes the judgment that there is no incompatibility as such between the doctrine and the freedom of establishment. Ultimately, the book analyses to what extent diversity in the corporate and insolvency laws of the Member States should be preserved, so as to encourage competition between jurisdictions in Europe.

This book is a comprehensive commentary on the EIR in light of recent decisions of the ECJ and decisions of the judicatures of the various Member States of the EU. It contains a commentary on Article 102, Sections 1 to 11 of the German EGInsO (The Act Introducing the Insolvency Act), as well as country reports on the international insolvency laws of France, Great Britain, and Hungary. This book also deals with the UNCITRAL Model Law on Cross-Border Insolvency together with detailed references to the international insolvency laws of the U.S.A., and it also includes a discussion of protocols. The appendix to the commentary on Article 3 of the EIR contains an extensive Table of Cases, which sets out over 100 cases from the various Member States, including decisions and literature references. While thus being tailored to the needs of the European insolvency practitioner, this commentary also serves as a knowledge-base from which further exploration of the material can begin. The contributing authors are all well-respected

academics and practitioners in Germany, England, France, Hungary, and the U.S.A.

The thesis of this book is that cross-border insolvency rules of all kinds aim to pursue and enforce basic standards. Furthermore, several principles can be identified, distinguished and sorted into three groups: conflict of laws principles, procedural principles and substantive principles. Using the principle-oriented approach, the book will have a significant impact for both deciding cases and shaping cross-border insolvency law. It offers both legislators and courts new substantive and methodological support in making decisions, for example where the treatment of secured creditors, support for foreign insolvency practitioners or even harmonisation of cross-border insolvency laws is at stake --Back cover.

One of the most contentious issues in cross-border insolvency is the 'forum shopping' phenomenon. The European Insolvency Regulation has set as one of its core objectives to avoid forum shopping. Nevertheless, the phenomenon continues to flourish due to the ability of a debtor to transfer its 'Centre of Main Interests'. This strategy has been creatively used by companies and over-indebted individuals in order to avail themselves of more advantageous insolvency regimes. Such practice, however, is viewed with suspicion by media and legal practitioners. This study questions the adverse reaction towards forum shopping. It argues that forum shopping is not always undesirable, but can also have beneficial effects when is undertaken with the consent of the stakeholders involved. It concludes that as long as disparities between insolvency laws exist the phenomenon is destined to endure.

The European Directive (Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2020 on preventive restructuring frameworks, on discharge of debts and disqualification, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt) has to be transposed into national legislation by 26 June 2021. The main features of the Directive are: - the obligatory making available of early warning systems; - the obligatory creation of an insolvency avoidance mechanism; - the determination of certain insolvency related officers' duties; - the uniformisation of discharge rules among member states; and - measures to increase the national insolvency laws' efficiency In this book a team of European-wide recognised, experienced insolvency law experts, some of whom had been involved in the drafting process of the Directive, analyse the Directive. The authors focus not only on the officials tasked in the national surroundings with drafting the national statutes but also on the wider implications which, one way or the other, will be national law. The commentary, thus, serves also the purposes of practitioners and judges in the field of restructuring.

This second edition of the leading commentary on the European Insolvency Regulation reflects the impact of Brexit and the European Restructuring Directive. It continues to be a vital reference work for all those researching and advising European insolvency law.

The European Insolvency RegulationLaw and PracticeKluwer Law International B.V.

Security rights are of fundamental importance to the granting of credit. They are generally considered to increase the availability and lower the cost of credit, but there appear to be divergent views across Europe and elsewhere on the extent to which it should be possible to create security rights over assets. Moreover, laws in many countries, such as avoidance laws, strike at advantage-gaining by creditors in the period immediately before formal insolvency proceedings are instituted. It is seen as potentially unfair to other creditors who may be forced into taking enforcement proceedings against the debtor, which may precipitate the premature liquidation of the debtor with an overall loss of economic value. This book assesses the conception of security rights according to the different European legal traditions. It also evaluates the appropriateness of the protection given to security rights in light of: developments in those European legal traditions; the objective of the Insolvency Regulation to facilitate the more effective administration of cross-border insolvency cases; the need for security in the context of the financial crisis; the basic principles of ensuring fairness between creditors; forestalling premature liquidation; and reinforcing the collective nature of the insolvency process. [Subject: Finance Law, European Law]

This practical book provides complete analysis of the revised EU Regulation on Insolvency Proceedings (EIR), the main Regulation on cross-border insolvencies in the EU. This is an essential work for anyone who requires knowledge of insolvency law in the UK or in any of the other 26 EU countries to which the Regulation is directly applicable. Timed to take into account the final amended version of the EIR, this third edition of the leading work contains detailed analysis and opinion on the effect of the changes to Regulation in practice. It also considers the numerous ECJ and relevant national cases which have been decided since the last edition. As in previous editions the work is organized thematically with chapters considering jurisdiction, choice of law rules, enforcement, security, and financial services. Chapter 8 provides an article-by-article commentary of the Regulation itself. This is the leading work on the subject in English and has been cited by numerous courts in the EU, including the Advocate General of the European Court of Justice in the Eurofood case and by the appellate courts of Austria in Re: Stojevic. It is a must-have reference work for lawyers advising on insolvencies with an international element and provides valuable resource in the run up to implementation of the amended Regulation in 2017.

After many years of negotiations among Member States, a uniform set of private international law rules has been established to determine the conduct of cross-border insolvency proceedings within the European Community. This is the European Insolvency Regulation of May 2000. Although each state still retains its own insolvency law, the regulation greatly reduces the risk of opportunistic behaviour by providing certainty as to which European courts have jurisdiction to open insolvency proceedings and which state?s laws apply, in addition to ensuring the cross-border effectiveness within the EU of the decisions handed down by those courts. This in-depth commentary offers practitioners in international business transactions and litigation a definitive guide to the workings of the Insolvency Regulation. The authors?one of whom co-wrote the official explanatory report on the 1995 Convention on Insolvency Proceedings, a report that still plays a fundamental hermeneutic role?leave no stone unturned in their probing analysis, which explains in detail such elements as the following: relationship with other community legal instruments and international conventions; territorial scope; substantive scope; third-party rights in rem and reservation of title; set-off; contracts relating to immovable property; employment contracts and relationships; payment systems and financial markets; community patents and trademarks; publication and registration; lodgement of claims; and special considerations affecting credit institutions and insurance undertakings. Company lawyers

handling insolvency cases and issues will find nothing comparable to this expert work. Its direct practical usefulness is immediately apparent. In addition, however, it stands out as a preeminent work on a critical and hard-won legal instrument (and by extension on the entire field of European insolvency law) and as such is an essential resource for jurists and legal academics.

This book provides the most detailed article-by-article commentary on the EC Regulation on Insolvency Proceedings, written by a group of experts drawn from several jurisdictions.

Recent case-law and legislation in European company and insolvency law have significantly furthered the integration of European business regulation. In particular, the case-law of the European Court of Justice and the introduction of the EU Insolvency Regulation have provided the stimulus for current reforms in various jurisdictions in the fields of insolvency and financial law. The UK, for instance, has adopted the Enterprise Act in 2002, designed, inter alia, to enhance enterprise and to strengthen the UK's approach to bankruptcy and corporate rescue. In a similar vein, a recent reform in France has modernised French insolvency law and even introduced a tool similar to the successful English 'company voluntary arrangement' (CVA). This book provides a collection of studies by some of the leading English and French experts today, analysing current perspectives of insolvency and financial law in Europe, both on the national as well as on the European level.

Maritime Cross-Border Insolvency is a comprehensive comparative examination of both insolvency regimes (UNCITRAL and EU) in shipping with reference to the main jurisdictions having adopted the UNCITRAL regime, i.e. USA, UK, Greece.

This book comprises contributions relating to the Insolvency Regulation Recast,which recently entered into force. The authors analyse the changes introduced andgive their views on the improvements that are thereby achieved. In other words, theyassess to what extent the amendments have mitigated the disadvantages of the previousInsolvency Regulation. Three of the chapters concentrate on the issues pertaining to jurisdiction, such asthe problem of forum shopping by re-locating the debtor’s centre of main interests.Furthermore, the extent to which the parties have the freedom to contract withinthe framework of the Insolvency Regulation Recast is discussed. Also, the relevanceand consequences of recent developments in corporate law for the current crossborderinsolvency framework, as well as the jurisdictional issues concerning approvalrequirements are amongst the matters addressed. Aside from the jurisdictional matters,the question of the law applicable to so-called ‘avoidance actions’ is analysed and crossbordercooperation between national authorities in the field of insolvency is touchedupon. To conclude, this book covers a range of specific and intriguing topics broughtup by the Insolvency Regulations Recast. This third volume in the Short Studies in Private International Law Series is primarilyaimed at legal academics dealing with cross-border insolvency, but it will also proveuseful to insolvency judges and practitioners, as well as those specialised in financialand fiscal law. Finally, advanced students as well as those with a general interest ininsolvency law will also find it of added value./div Vesna Lazi? is Senior Researcher at the T.M.C. Asser Institute and Associate Professorof Private Law at Utrecht University in The Netherlands. Steven Stuij is an expert inprivate international law and PhD Candidate at the Erasmus School of Law, Rotterdam./div

This book covers the pressing issues of cross-border cases involving admiralty and bankruptcy law. For example, what should happen when a shipowner files an insolvency proceeding in one country, while at the same time facing an in rem action against its vessel in another country? Should the in rem action arising in one country be stayed or dismissed because of the existence of insolvency proceedings in another country? The book discusses the relevant issues regarding the treatment of maritime creditors throughout insolvency proceedings, the determination of the 'centre of main interest' of an offshore shipping company, and the scope of a debtor's assets. The author uses a comparative law analysis, selecting four leading shipping countries – Australia, the UK, the US, and Singapore – and examines their approaches to the above three problems when applying the UNCITRAL Model Law regime. The book also proposes a solution to help eliminate the ambiguity arising from maritime cross-border insolvency cases under the UNCITRAL Model Law regime, with a view to enhancing the development of the shipping industry.

The planned European legal form Societas Privata Europaea (SPE) is a limited liability company of a closed group of shareholders, and thus is comparable to the German GmbH. At the European-level, the SPE serves as a supplement to the European Limited Liability Company (SE), which proved to be too difficult for small and medium-sized companies for various reasons. The SPE will be introduced on the basis of a European regulation, the content of which has been largely agreed to by the member states.

This book presents problems that often arise in the context of international/cross-border insolvencies; analyzes and compares national legislations and jurisprudence; elucidates the solutions offered by international/regional instruments; and explores the differences in the implementation of these instruments by various countries and the consequences of these differences. It examines in detail a number of famous and less famous cases tried by national courts, in which it became readily apparent that insolvency law remains one of the bastions of national law. In addition, the book discusses the notion of transplanting foreign [international] insolvency rules and especially the influence that US insolvency law has exerted on other countries’ insolvency [and international insolvency] law. Far from adopting an unrealistically optimistic stance, it soberly examines the complications of cross-border insolvencies, while also presenting potential solutions.

Critically analysing the substantive law of insolvency in the EU countries as a whole, this book carries out horizontal cross-cutting analysis of the data gathered from a study of national insolvency laws. It selects particular areas for detailed discussion and considers the pros and cons of particular legislative solutions.

Die Neufassung der Europäischen Insolvenzverordnung stand vor der Aufgabe, den tiefgreifenden Veränderungen Rechnung zu tragen, die die Insolvenzrechte der EU-

Mitgliedstaaten in den letzten Jahren durchlaufen haben. Die vorliegende Studie greift drei zentrale Themenkomplexe der Reform auf: (1) Die Erweiterung der Verordnung auf Verfahren im Vorfeld der Insolvenz (sog. pre-insolvency proceedings). Umgesetzt wird damit das rechtspolitische Anliegen, eine grenzüberschreitende Restrukturierung von Schuldnerunternehmen zu erleichtern. (2) Die Einführung neuartiger Koordinierungsinstrumente. Sie sollen unerwünschte Parallelverfahren verhindern, jedenfalls aber die Kooperation zwischen den Verfahrensbeteiligten fördern. (3) Und schließlich die Schaffung eines Regelwerks zur koordinierten Abwicklung von Konzerninsolvenzen. Die Studie wendet sich zum einen an die Rechtspraxis. Zum anderen will sie den wissenschaftlichen Dialog anregen. Eine systematische Darstellung der rechtlichen Änderungen sowie Empfehlungen zur Bewältigung zentraler Problemfelder sollen Insolvenzrichtern wie Verwaltern bei der Anwendung und Auslegung der neuen Verordnung verlässlich zur Seite stehen.

This book provides a distilled and accessible analysis of the European cross-border insolvency law. With reference to the amended Insolvency Regulation (EIR) and related sources it examines the issues involved in intra-member state cross-border insolvency. The book analyses in depth the main areas of change brought about by the EIR such as the restatement of the meaning of 'centre of main interest' (COMI) and the rules on international jurisdiction, the new specific measures for multi-national enterprises, and the move towards co-operation between insolvency practitioners and courts. The EIR represents a very significant development in European insolvency law which will have an impact on all insolvencies with an international element involving a European state. All practitioners advising on the area need a clear grasp of the implications of the changes and this book aims to deliver just that.

This book presents a comprehensive analysis of the regulation of cross-border insolvencies in Europe. Council Regulation 1346/2000 on Insolvency Proceedings forms the natural focal point of such a study. However, while this book explores in detail the background, legal basis as well as the substance of the Regulation, it also contains an examination of the Regulation from two wider perspectives: that of international cross-border insolvency regulation and Community law. The approach adopted by the Regulation to the problems raised by cross-border insolvency forms part of a paradigmatic shift at the global level. The 'struggle over jurisdiction' - the natural state of affairs under the old principles of 'universality & territoriality' - is increasingly being replaced by co-operation between the jurisdictions involved. The Regulation must be understood against the backdrop of these new cooperative approaches, including the UNCITRAL Model Law and ancillary proceedings. Doing so, this book argues that the co-operative framework of the Regulation is limited and may ultimately not suffice to realise the efficient and effective cross-border proceedings it is aiming for. Although the Regulation is an exponent of this global shift towards cooperation, the legal context in which it operates is nevertheless very different. Community law, as an autonomous legal order, has limited the private international law autonomy of Member States and generated a comitas Europaea. This book argues that Community law and its comitas must be taken seriously. They are an important source of principles to guide courts in the interpretation and application of the Regulation and may reinforce and expand the co-operative mechanisms of the Regulation. Jona Israel obtained his LL.M. at the University of East Anglia, Norwich in 1994 and graduated at the University of Maastricht in 1995. From 1995 to 1998 he was researcher at the European University Institute in Florence, Italy. Since 1998 he has been lecturer at the University of Maastricht, teaching private international law, insolvency law and commercial law.

In the European Union, the effectiveness of judicial protection granted to a business or consumer in crisis depends on the extent and manner in which court rulings in bankruptcy and restructuring cases are recognised in all Member States. This article-by-article commentary on Regulation (EU) 2015/848 provides expert guidance through the entire course of insolvency proceedings, clearly showing how to solve specific problems that arise in insolvency cases with a cross-border element, including aspects such as jurisdiction, applicable law, recognition and enforceability of judgments and coordination of group of companies' insolvencies. For any party instituting an insolvency proceeding in an EU Member State, the commentary provides such detailed guidance as the following: identifying the appropriate internationally competent court for filing; terms pursuant to which a judgment can be recognised; duties of an insolvency practitioner (IP); IP's authority in the territory of another state; IP's obligations towards creditors in another state; rights of foreign creditors; admissibility of conducting secondary insolvency proceedings; conducting simultaneous insolvency proceedings against the same debtor; permissible forms of contact and cooperation between judges and parties to the proceedings; and conducting proceedings involving a group of companies. An important feature of the commentary highlights the standpoints of lawyers from Central and Eastern Europe, where the commercial judiciary operates in a distinctly different way from that in countries with a well-established market economy system. Interpretation of provisions of the Regulation by lawyers from this part of Europe enhances the scope of legal argument both in the economic sphere and in the sphere of justice. With its detailed and in-depth description of international jurisdiction, recognition, and universal and territorial effects of insolvency proceedings, this practical book will be welcomed by counsel to business persons conducting international activity, trustees in bankruptcy, tax advisers, court enforcement officers, academics dealing with insolvency law, banks dealing with the collection of receivables, and debt collection companies. In addition, as a contribution to the debate on the optimal model for the international consequences of insolvency proceedings, its discussion of issues related to national jurisdiction, bankruptcy and restructuring of groups of companies, and international judicial cooperation will be particularly valuable for researchers.

The constant increase in international economic relationships has led to a continuous rise in international insolvency proceedings in which the effects of the insolvency extend to various countries as a result of the companies, assets or creditors outside the State in which the insolvency order is issued. Furthermore, these proceedings are becoming increasingly complex in themselves. Within the European Union, the need for a cross-border solution led to the ?Council Regulation on Insolvency Proceedings?, which follows the recommendations of the ?United Nations Commission on International Trade Law?, with the aim of providing creditors not resident in the state opening the insolvency proceedings with the possibility of requesting the admission of claims, and conferring on the insolvency bodies the powers necessary to act in respect of assets located in the territory of other States. Although the Council Regulation constitutes an important step forward regarding the conduct of international insolvency proceedings, it has not unified insolvency law. It is still possible, even within the European Union, for

several insolvency proceedings to be opened simultaneously -even though one of them will be the main insolvency proceedings- and for the same insolvency proceedings to be subject to different laws. This work starts with an analysis of the European Community regulations and then provides an overview of the legislation of each State, summarising current proceedings, some recently changed, and analysing the solution offered under each legislation for matters on which the Council Regulation on Insolvency Proceedings stipulates that the law of the country in which the insolvency order is issued shall not necessarily be applicable. This work includes contributions from professionals specialised in insolvency law with proven and accredited practical and teaching experience in the best European law firms, who not only analyse the legal system applicable in their respective country, but who also suggest solutions for the numerous problems with which they are faced in daily practice. This feature makes this book especially valuable for scholars, practicing lawyers and for other professionals involved in insolvency proceedings. Given the scale of the task, only an international publisher such as Thomson Reuters could have successfully coordinated and edited the book.

This comprehensive book provides a clear analysis of the European Restructuring Directive, which aims to improve national frameworks governing business restructuring and insolvency as well as to provide debt relief for individuals. Gerard McCormack explores the key aspects of the Directive including the moratorium on litigation and enforcement claims against the financially-troubled business, the provision for new financing, the division of creditors into classes, the introduction of a restructuring plan and the rules for approval of the plan by a court or administrative authority.

Since the adoption of the EU Regulation on Insolvency Proceedings in 2000 and its recast in 2015, it has become clear that lawyers engaged in consumer insolvency proceedings are increasingly expected to have a basic understanding of foreign insolvency proceedings, as well as knowledge of the foreign country's court and legal system, legislation and judicial practice. Written by 50 highly qualified insolvency experts from 30 European countries, A Guide to Consumer Insolvency Proceedings in Europe provides the necessary information in the largest, most up-to-date and comprehensive book on this topic. Assisting the readers in their navigation through the differences, similarities, and peculiarities of insolvency proceedings in all Member States of the European Union, Switzerland and Russia, this book is a unique guide to insolvency proceedings across Europe. With contributions by both academics and practitioners, it provides truly multinational coverage of the economic, legal, social, political, and demographic issues in consumer insolvency. Illustrating the numerous practices across Europe, this book allows the reader to evaluate each aspect both on its own merits, as well as in comparison to the approaches applied in other European jurisdictions. This book will be an invaluable tool for insolvency practitioners, judges, lawyers, creditors and debtors throughout Europe, especially those participating in cross-border proceedings.

Critically analysing the substantive law of insolvency in the EU countries as a whole, this book carries out horizontal cross-cutting analysis of the data gathered from a study of national insolvency laws. It selects particular areas for detailed discussion and considers the pros and cons of particular legislative solutions.Using the US and Norway as comparator countries, the expert authors identify areas where disparities in national laws produce problems that have impacts outside national boundaries. They analyse these against key policy goals including: improving economic performance throughout the EU; promoting a more competitive business environment; efficient asset allocation; and building more stable and sustainable human capital in terms of support for entrepreneurs and responses to consumer over-indebtedness. The book also considers possible reform and harmonization measures situated against the wider contextual background of the Capital Markets Union and the Europe 2020 agenda of promoting jobs and growth. Discerning and practical, European Insolvency Law will appeal to academics in both insolvency and finance as well as insolvency practitioners and lawyers. Its reform suggestions will be of interest to EU Member States' government departments, while also providing a useful reference for consumer associations and debt charities.