

## **"The International Exchange of Experience on Insolvency Law (IEEI)"**

(Who has it not already experienced and suffered from it: International Conferences are often ponderous and little productive. Long-winded reports as well as the frontal situation between speakers and auditory demand a high concentration of the listener. Subsequently, no or to little time remains for questions or discussions. In contrast to the reports the conference breaks and the further informal meetings at the side of the conference are really interesting. Here, accompanied by a hectic business card exchange, personal contacts can be made, discussions can be held and national law systems can be compared. Unfortunately those opportunities are too short and the contacts only cursory. In order to make the advantages of informal personal discussions on a specialized level durably usable and to strengthen it at the same time with the help of the Internet and IT-technology, the Ministry of Justice of the German State of North Rhine-Westphalia in the year 2000 founded the "International Exchange of Experience on Insolvency Law" (IEEI).)

### **I. Initiation and Function of the IEEI**

Co-operation and exchange of experience on the international level are equally necessary in the area of insolvency law as worth while:

Like the commercial law in general, the insolvency law in particular is an area with pronounced international references and international provenance. The new German Insolvency Act for example absorbed substantial thoughts of foreign insolvency law systems. In the context of the insolvency law reform experiences and regulations from the U.S.A., Austria, England, France and numerous further states were evaluated. They affected the German law considerably. Also the national law is increasingly overlaid directly by international, above all European law. An outstanding example is the European Insolvency Regulation.

Not only in Germany, but world-wide intensified efforts are observed concerning the reform of the national and the international insolvency law. The insolvency law is to that extent a sensitive seismograph for changes of world and national economics. In

particular the increasing globalization of the world economy and the introduction of the free-market economy in the Eastern European states require new insolvency concepts and answers. They are the engines of the reform-wave, which is to be noticed at present. Since the confidence of potential investors and banks depends considerably on an effective and functioning system of the realization of claims and liability in the financial crisis of debtors, in the "emerging markets" almost a race has begun for the "best" insolvency system. In Eastern Europe there is hardly a country, in which not recently or at present drastic reforms of the insolvency law are planned and/or already implemented. The same applies to many Western European states - like Italy. International organizations accompany these developments and give assistance. UNCITRAL has made a model law for transnational insolvencies, which has been adopted already in several states. The World Bank developed "Principles and Guidelines for Effective Insolvency and Creditor Rights Systems". And INSOL INTERNATIONAL has published a "Statement of Principles".

Due to the world-wide reform-movement in the last years in the area of insolvency law an enormous need of exchange of experiences and information developed. Innumerable large conferences with different personnel and national composition were organized. They suffer quite often from the phenomenon of a data flood, which hardly can be reflected and filtered regarding its relevance for the own insolvency law. (As stated in the introducing words,) opportunities for a really fruitful exchange of thoughts and information often result from the talks at the side of the conferences. It were these experiences, which gave birth to the idea of a new communication forum. In the year 2000 the Ministry of Justice of North Rhine-Westphalia created an informal, but durable information- and discussion-network, the "International Exchange of Experience on Insolvency Law (IEEI)". The participants of the IEEI communicate by E-Mail. Since most of them know each other personally, a high guarantee exists for direct and reliable responses to inquiries and to offers of discussions.

The personal and professional contact is the core, which holds the network together. It is deepened by annual online-colloquia. During these talks several members of the IEEI participate personally, in order to discuss intensively problems of the national and international insolvency law among themselves and online with the other colleagues.

## II. Development of the IEEI

The number of the countries participating in the IEEI constantly grew in the past six years. At present 32 insolvency experts from 20 countries work in the network. They are judges of all instances, attorneys, officials of ministries and representatives of international institutions like the World Bank and INSOL INTERNATIONAL.

We have held seven online-colloquia so far. The first three colloquia were organized by North Rhine-Westphalia in its Academy of Justice. The following colloquia were held at Vienna, Helsinki, Ljubljana and - Rome!

During the first colloquium in January 2001 the participants reported on their national insolvency law systems in short and problem-oriented speeches. The online-participants sent appropriate contributions and named websites, which contain more information on the respective national insolvency laws. Immediately after these initial reports the meeting developed a not foreseen, but most welcome momentum, which since then shapes the character of the online - colloquia:

By the initial speeches problem-zones were opened, which were recognized by the other participants as relevant for their own national laws. Here for the first time in the IEEI the fascinating nature of comparative law appeared, which is characterized by the fact that despite different law systems the practical questions are identical or at least similar. After the first reports the participants of the first colloquium - under postponement of the original agenda - fell into intensive discussions over those just "discovered" common legal problems. First solutions were developed and introduced in the evening by E-Mails to the online-participants. Their statements, reports and resuming questions were present on the next morning and formed the basis for the continuation of the discussion and the transition to the next topic.

The order "short introductory reports - problem oriented discussion among the personally present members - involvement of the online-participants - continuation of the discussion" forms the rhythm of the online - colloquia of the IEEI since the first meeting. The subjects of the colloquia were - among others - questions of reorganization, insolvency labour and employment law, the rights of secured creditors, the discharge of debts, the publication of insolvency decisions, remuneration and costs and the law of avoidance as well as the Finnish Ombudsman. Besides that the opportunity always

existed for the discussion of current international and national law developments and problems.

### **III. Utilization of the results**

The IEEI and its online-colloquia provides valuable views of the international insolvency law and of national insolvency law systems of other states as well as their solutions. The idea of a direct, brisk and above all trusting exchange of information is realised not only by the colloquia, but particularly by the E-Mail-contacts between the members of the IEEI. The aim of the IEEI would be missed nevertheless, if its contents were not transferred into results which can be used concretely by the participating countries. Therefore the topics of the discussions are always selected carefully by the participants under the criteria of practical relevance for their own work. This positively affects their usability.

From the German point of view the most prominent example is the discussion about the legal regulation and the court practice of the selection of the insolvency administrator. This issue has been discussed in Germany for a long time. Several working groups were concerned intensively with this problem. The meaning of this difficult topic and the vehemence of the discussion did not only require its careful treatment, but - on the search for suitable solutions - also the view over the national borders. The network of the IEEI could be profitably used. Within short time extensive information was gathered and evaluated from several European and non-European countries. Not only the whole variety of the selection systems, but above all also the problems connected with them showed up. This basis put the working groups into the position to weigh and to represent comprehensively the pro and cons of the different alternatives. The recommendations of the working groups were implemented in the current draft of the Federal Ministry of Justice for the change of the Insolvency Act. Similar effects of the IEEI's work are reported from other countries. Thus the results of the Viennese colloquium had influence on the Finnish "Government Suggestion for a New Bankruptcy Law". From the South African "Law Commission" a lot of information on the insolvency laws of the other IEEI - countries has been requested to be used for the insolvency reforms of that country.

There are further examples of the practical use of the IEEI-work, which cannot be mentioned here for time reasons. However one key function of the IEEI regarding international institutions and meetings shall not remain unmentioned. The members of the IEEI are in touch with numerous other organizations, which carry out insolvency law projects on the international level. Thus several members of the IEEI have attended the "Global Judges Forums" of the World Bank and the Judicial Colloquia of UNCITRAL and INSOL INTERNATIONAL. They gave extensive reports on the situation in their countries, participated in panel discussions and informed about the IEEI. In so doing they opened a channel of information between these international organizations and meetings on the one hand and the IEEI on the other hand for the profit of both sides.

#### **IV. Offer**

It is in the nature of the IEEI, that the number of its members is limited to a few persons per country. Meetings within a small framework on the basis of personal contacts produce a maximum of effectiveness, trustful co-operation and brisk, mutual information. But the thereby caused limited number of participants per country does not oppose an opening of the IEEI for the specialized public in terms of content. The members of the IEEI would like to work as multipliers for their countries. Questions and suggestions, which concern the national or international insolvency law of a participating country, can be addressed therefore by E-Mail to your national members of the IEEI. They will try to care for a brisk answer or a contact to other participants of the IEEI.