Abstract

Private International Law and the Issues of Securities Law

Tomáš Borčin

Acts No. 139/2011 Coll. and No. 172/2012 Coll. have introduced a set of brand new choice-of-law rules in respect to securities into the Czech legal system. The same set of rules has rather simultaneously been adopted by the new Act No. 91/2012 Coll., on Private International Law, coming into force on 1st of January 2014. However, despite the fact that these amendments had brought the much needed conflict of laws rules for cross border transactions involving securities, the actual subject of how the securities are treated in private international law remains mostly unexplored by Czech jurisprudence as of this date. Therefore, the core ambition of this thesis is to provide a complex legal analysis of the aforementioned rules by the means of examination of their theoretical basis as well as of practical implications of their application.

The thesis consists of seven chapters of various extent and scope. The ratio behind the first chapter is to address the question of what securities are, and how are they treated pursuant to Czech legislation. The emphasis is given on the definition of securities and their respective classification, however, the chapter does not omit the upcoming changes in respect to the recodification of private law in Czech Republic, namely the new Civil Code.

The second chapter of the thesis provides an overview of certain aspects of the indirect holding system of securities, the one that currently dominates the capital markets around the globe and from which flows the term "securities held with an intermediary". Moreover, this chapter illustrates the effects of non-uniformity of rules on indirect holdings throughout the different countries and stresses the importance of unification efforts in this particular legal area in order to ensure legal certainty in cross border transactions involving indirectly held securities.

The third chapter considers the core principles of private international law and its methods of regulation of legal relations involving a foreign element. Along with chapter four on the evolution of sources of choice-of-law rules in respect of securities within the Czech law, these two chapters represent a vital introduction into issues arising from the presence of a foreign element in securities.

The aim of the fifth chapter is to re-characterize the legal distinction between domestic and foreign securities, since it is practically impossible to adhere a rule that classifies every single security issued outside of Czech Republic as foreign and vice versa. Subsequently, this chapter attempts to analyze the actual rules on identification of what we refer to as the legal statute of securities, i.e. law of the state that governs the issuance of securities and defines what sort of rights are being vested herein. Therefore all the five connecting factors included in the Section 11a of Act No. 67/1963 Coll., on Private International Law, are being discussed at length regarding their interpretation and sound application in order to provide the utmost certainty in the process of identification of the "nationality" of a security.

In the sixth chapter the focus is being shifted on the choice-of-law rules for proprietary aspects of cross border transactions involving securities. As such, this part of the thesis eventually seeks to address one of the most crucial issues in contemporary private international law – the identification of the law governing the proprietary rights in indirectly held securities. The chapter describes the reasoning behind the abandonment of the traditional *lex rei sitae* rule due to its unsound utilization in the context of indirect holding systems and explains the emergence of a new method commonly referred to as PRIMA and its practical impact. The analysis herein is not restricted to national legislation, but rather extends to relevant choice-of-law rules on EU level. Furthermore, a comparative assessment is undertaken in respect to the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary as it had been drafted by the Hague Conference on Private International Law.

Finally, the seventh and last chapter closes up the thesis' subject with a brief description of the conflict-of-laws rules on the law governing contractual aspects of securities's transactions.