

CONTENTS

Preface / V

List of Abbreviations / XXIII

Bibliography / XXIX

List of Relevant websites / CXLV

Table of Cases / CXLVII

Tables of Legislation / CLXXXIII

I - International Insolvency Law / 1

§ 1 Introductory remarks / 1

§ 2 Doctrinal perspectives / 7

§ 3 Historical notes / 28

§ 4 Forms of recognition / 31

§ 5 Unilateral regulation / 33

5.1 Section 304 US Bankruptcy Code (repealed) / 35

5.2 Section 426 Insolvency Act 1986 / 43

5.3 Other countries / 46

§ 6 Bilateral regulation / 47

§ 7 Regional regulation / 50

7.1 Latin America / 51

7.2 Nordic Bankruptcy Convention / 55

7.3 North American Free Trade Agreement (NAFTA) / 57

7.4 Organization of the Harmonization of Business Law in Africa (OHADA) / 60

7.5 Southern African Development Community (SADC) / 64

7.6 European Insolvency Regulation / 65

7.7 South-East Asia / 65

§ 8 'Best practices' as soft law / 66

§ 9 Cross-border Insolvency Concordat and Protocols / 87

II - International Insolvency Law in the Netherlands / 99

§ 1 Introductory remarks / 99

§ 2 Provisions of international law: Articles 203–205 Fw / 101

§ 3 Other legal provisions / 105

§ 4 Jurisdiction of the Dutch courts / 109

§ 5 International legal consequences of a Dutch judgment concerning insolvency / 111

§ 6 Foreign creditors in Dutch insolvency proceedings / 117

- § 7 Powers of a Dutch liquidator abroad / 119
- § 8 Legal consequences of foreign insolvency proceedings in the Netherlands / 120
- § 9 Powers of a foreign liquidator in the Netherlands / 129
- § 10 Conclusion / 136

III - UNCITRAL Model Law on Cross-Border Insolvency, Legislative Guide on Insolvency Law and Practice Guide / 143

- § 1 Introductory remarks / 143
- § 2 History of the Model Law / 150
- § 3 Enactment of the Model Law / 152
- § 4 Scope and practical context of the Model Law / 164
- § 5 General provisions / 172
- § 6 Access of foreign representatives and creditors to courts in the enacting State / 196
- § 7 Recognition of a foreign proceeding and relief / 209
- § 8 Cooperation with foreign courts and foreign representatives / 259
- § 9 Concurrent proceedings / 272
- § 10 UNCITRAL Model Law and its enactment / 281
- § 11 The structure of the Model Law / 296
- § 12 UNCITRAL Legislative Guide on Insolvency Law / 305
 - 12.1 Recommendations on commencement criteria and jurisdiction / 310
 - 12.2 Recommendations on applicable law / 314
 - 12.3 Other recommendations / 324
 - 12.4 Treatment of enterprise groups in insolvency / 328
- § 13 UNCITRAL Practice Guide / 338

IV – 0 - EU Insolvency Regulation / 341

- § 1 Introductory remarks / 341
- § 2 Genesis / 349
- § 3 Scheme / 354
- § 4 Territorial reach / 356
- § 5 Substantive scope / 358
- § 6 Fundamental elements / 361
- § 7 Interpretation / 377
- § 8 Adoption / 385

IV – 1 - General provisions / 389

- § 1 Scope and definitions / 389
- § 2 International jurisdiction / 448
 - 2.1 Centre of main interests / 451
 - 2.2 Principle of mutual trust / 459
 - 2.3 Natural persons / 467
 - 2.4 The presumption of Article 3(1) / 480
 - 2.5 Registered office outside the EU / 494

- 2.6 Reference date / 497
- 2.7 Treatment of multinational groups of companies / 508
- 2.8 Preservation measures / 538
- 2.9 International jurisdiction for other decisions / 539
- 2.10 Territorial proceedings / 543
- § 3 Applicable law / 553
- § 4 Exceptions to the applicability of the *lex concursus* / 568
- § 5 Rights in rem of third parties / 577
- § 6 Set-off / 595
- § 7. Reservation of title / 602
- § 8 Current reciprocal contracts / 607
- § 9 Contracts relating to immoveable property / 614
- § 10 Payment systems and financial markets / 618
- § 11 Contracts of employment / 620
- § 12 Rights subject to registration / 629
- § 13 Protection of a third-party acquirer / 632
- § 14 Pending lawsuits / 634
- § 15 Community patents and trade marks / 646
- § 16 Detrimental acts / 647

IV – 2 - Recognition of insolvency proceedings / 657

- § 1 Principle of automatic recognition of judgments / 657
- § 2 Consequences of the recognition of main insolvency proceedings / 672
- § 3 Consequences of recognition of territorial proceedings / 675
- § 4 Powers of the liquidator / 677
- § 5 Obligation by a creditor to return / 686
- § 6 ‘Hotchpot’-rule / 688
- § 7 Opening insolvency proceedings: publication, registration and costs / 691
- § 8 Honouring an obligation to a debtor / 698
- § 9 Recognition and enforceability of other judgments / 699
- § 10 Recognition and enforcement of judgments deriving from insolvency proceedings / 704
- § 11 Recognition and enforcement of preservation measures / 713
- § 12 Public policy / 717

IV – 3 - Secondary insolvency proceedings / 729

- § 1 Opening of secondary proceedings / 729
- § 2 Right to request opening of secondary proceedings / 740
- § 3 Duty to cooperate and to communicate between liquidators / 746
- § 4 Exercising of creditors' rights / 777
- § 5 Stay of process of liquidation / 784
- § 6 Measures ending secondary insolvency proceedings / 791
- § 7 Procedural entanglements / 798
- § 8. Powers of a temporary administrator / 802

IV – 4 - Provision of information to creditors and lodgement of their claims / 807

- § 1. Right to lodge claims / 807
- § 2. Duty to inform creditors / 815
- § 3. Content of the lodgement of a claim / 818

IV – 5 - Transitional and final provisions / 821

- § 1. Transitional law / 821
- § 2. Amendment of the Annexes and evaluation of the Insolvency Regulation / 825
- § 3. Relationship to existing conventions and treaties between Member States / 832
- § 4. Relationship to conventions with third States / 835
- § 5. Relationship to Netherlands Antilles and Aruba / 836

IV – 6 - The Insolvency Regulation as a model / 839**V - To Conclude / 855****Appendix I - Montevideo treaty on international commercial law / 864****Appendix II - Montevideo treaty on international commercial terrestrial law / 866****Appendix III - Montevideo treaty of international procedural law / 869****Appendix IV - Havana Convention on private international law / 871****Appendix V - Nordic bankruptcy convention / 873****Appendix VI - The American Law Institute / 882****Appendix VII - OHADA / 889****Appendix VIII - Cross-border insolvency concordat / 892****Appendix IX - Statement of principles for a global approach to multi-creditor workouts / 906****Appendix X - Uncitral legislative guide on insolvency law / 908****Appendix XI - Uncitral model law on cross-border insolvency / 911****Appendix XII - Chapter 15 to title 11, United States Code / 921**

Appendix XIII - Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings / 933

Appendix XIV - The Cross-border Insolvency 2006 / 966

Index / 973