

# Content

Authors.....	LXIII
List of abbreviations .....	LXV
Bibliography .....	LXXI
<b>Introduction.....</b>	<b>1</b>
1. Key Elements of the German Insolvency Framework .....	1
2. The Insolvency Code – The Core of German Insolvency and Restructuring Law .....	1
3. Historical Overview and Outlook .....	3
4. How to Use This Commentary .....	5
 French Insolvency and Restructuring Law – Part 1.....	 6
<i>Introduction.....</i>	<i>6</i>
 Italian Insolvency and Restructuring Law – Part 1.....	 8
<i>Introduction.....</i>	<i>8</i>
 Dutch Insolvency and Restructuring Law – Part 1 .....	 11
<i>Introduction.....</i>	<i>11</i>
 Polish Insolvency and Restructuring Law – Part 1 .....	 13
<i>Introduction.....</i>	<i>13</i>
1. Historical Review .....	13
2. Applicable Legal Provisions .....	14
 Insolvency and Restructuring law of England and Wales – Part 1.....	 15
<i>Introduction.....</i>	<i>15</i>
1. Relevant domestic legislation .....	15
2. Insolvency procedures .....	16
a) Insolvency procedures available to insolvent individuals .....	16
b) Corporate insolvency procedures.....	17
 US Insolvency and Restructuring Law – Part 1.....	 18
<i>Introduction.....</i>	<i>18</i>
 Japanese Insolvency and Restructuring Law – Part 1.....	 19
<i>Introduction.....</i>	<i>19</i>

## COMMENTARY TO THE INSOLVENCY CODE

### PART ONE

#### GENERAL PROVISIONS

Section 1. Objectives of Insolvency Proceedings .....	21
1. Purpose of the Provision.....	21
2. Procedural Objectives .....	21
3. Standard Proceedings .....	22
4. Insolvency Plan Procedure .....	22
5. Discharge of Residual Debt .....	22
 Section 2. Local Court as Insolvency Court.....	 23
1. Purpose of the Provision.....	23
2. Local Court as Insolvency Court .....	23
a) Substantive Jurisdiction.....	23
b) Functional Jurisdiction.....	23
3. Centralisation.....	24
4. Concentration in the Case of Group Insolvency Proceedings (Section 2 (3)) .....	24
a) Content of the Provision .....	24
b) Opinion.....	24
5. Insolvency Proceedings with an International Dimension .....	25
 Section 3. Local Jurisdiction .....	 25
1. Purpose of the Provision.....	25

2. Jurisdiction .....	25
3. Centre of an Autonomous Economic Activity .....	26
a) Acting in One's Own Name .....	26
b) Cessation of Business Operations .....	26
c) Centre of Economic Activity .....	26
4. Place of General Jurisdiction .....	27
5. Referral .....	27
6. Appeal .....	27
7. Forum Shopping .....	27
Section 3a. Place of Group Jurisdiction .....	28
1. Situation Prior to the Reform .....	28
2. Purpose of the Single Place of Group Jurisdiction under the Reformed Law .....	28
3. Application Requirements .....	29
4. Right of Application .....	29
5. Several Applications Made Simultaneously .....	30
6. Decision by the Court .....	30
Section 3b. Continuation of Place of Group Jurisdiction .....	30
Section 3c. Responsibility for Other Group Proceedings .....	31
1. Purpose of the Provision .....	31
2. Content of the Provision .....	31
Section 3d. Referral to the Place of Group Jurisdiction .....	31
1. Purpose of the Provision .....	32
2. Content of the Provision .....	32
Section 3e. Group of Companies .....	32
1. Purpose of the Provision .....	33
2. Group of Companies in Detail .....	33
a) Ability to Exercise a Controlling Influence .....	33
b) Consolidation under Common Management .....	33
c) Broad Scope is Harmless .....	33
3. Practice Note .....	34
Section 4. Applicability of the Code of Civil Procedure .....	34
1. Purpose of the Provision .....	34
2. Scope of the Reference .....	34
3. Select Problematic Issues .....	34
a) Substantive and Local Jurisdiction .....	34
b) Exclusion and Disqualification of Court Personnel .....	35
c) Capacity to be a Party in Court Proceedings ( <i>Parteifähigkeit</i> ); Capacity to have standing in Court ( <i>Prozessfähigkeit</i> ) .....	35
d) Assistance with Court Costs .....	35
e) Procedural Provisions .....	35
aa) Applicable Provisions .....	35
bb) Inspection of Files .....	36
cc) Other Applicable Provisions .....	36
Section 4a. Deferment of the Costs of Insolvency Proceedings .....	37
1. Purpose of the Provision .....	38
2. Deferment Procedure (Subsection (1)) .....	38
a) Eligibility for Deferment .....	38
b) Requirement that an Application be Lodged .....	38
c) Deferment of the Costs of the Proceedings .....	38
d) Grounds for Refusal; Breach of the Obligation to Disclose Information and to Co-operate .....	39
e) Responsibility of the Insolvency Court .....	39
f) Deferment for Each Stage of the Proceedings .....	39
3. Effects of Deferment (Subsection (3)) .....	40
4. Appeal .....	40
Section 4b. Repayment and Adjustment of Deferred Amounts .....	40
1. Purpose of the Provision .....	40
2. Repayment Procedure (Subsection (1)) .....	41
3. Varying the Deferment Decision and the Fixed Instalments (Subsection (2)) .....	41
Section 4c. Revocation of Deferment .....	41
1. Purpose of the Provision .....	41

2. Grounds for Revocation.....	42
a) Incorrect Information Provided Intentionally or Through Gross Negligence (No. 1).....	42
b) Failure to Meet the Requirements for Deferment (No. 2).....	42
c) Payment Arrears of the Debtor (No. 3).....	42
d) No Reasonable Gainful Employment (No. 4).....	42
e) Refusal/Revocation of the Discharge of Residual Debt (No. 5).....	43
3. Legal Consequences.....	43
4. Appeal.....	43
Section 4d. Appeal.....	43
1. Purpose of the Provision.....	43
2. Right of Appeal.....	43
Section 5. Procedural Principles.....	43
1. Purpose of the Provision.....	44
2. Duty to Investigate Ex Officio.....	44
3. Methods of Investigation/Evidence in Detail.....	45
a) Hearing the Debtor.....	45
b) Hearing the Creditor.....	45
c) Hearing Witnesses.....	45
d) Experts.....	45
e) Documentary Evidence.....	45
4. Waiver of Hearing.....	46
5. Production and Submission of Schedules and Lists Electronically.....	46
Section 6. Immediate Appeal.....	46
1. Admissibility Requirements.....	47
a) Decision of the Insolvency Court.....	47
b) Admissible Appeals in Statute.....	47
c) Matters not Subject to Appeal.....	49
d) Standing to Appeal.....	49
2. Appeal Procedure.....	49
a) Time Period.....	49
b) Form.....	50
c) Recipient.....	50
d) Requirement of Representation by Counsel.....	50
e) Ability to Grant Redress.....	50
f) Suspensive Effect.....	50
3. Decision by the Appeal Court.....	50
a) Remonstrations.....	51
b) Objection that There Has Been a Violation of the Right to be Given an Effective and Fair Legal Hearing.....	51
4. Other Legal Remedies.....	51
Section 7 (repealed).....	52
Section 8. Service.....	52
1. Purpose of the Provision.....	53
2. Service and Public Announcements.....	53
3. Service Ex Officio.....	53
a) Formal Service.....	53
b) Service by Post.....	53
4. Service by the Insolvency Administrator.....	54
5. Special Issues Concerning Service.....	54
a) Persons Whose Place of Residence is Unknown.....	54
b) Service Abroad.....	54
c) Service on Legal Entities.....	54
d) Service by Means of Electronic Media.....	55
Section 9. Public Announcements.....	55
1. Purpose of the Provision.....	55
2. Scope of Application.....	55
3. Content of the Announcement.....	56
4. Manner of Publication.....	56
5. Date of Effectiveness.....	56
6. Effect of the Announcement.....	57
7. Additional Publications.....	57

Section 10. Hearing of the Debtor.....	57
1. Purpose of the Provision.....	57
2. Scope of Application.....	58
3. Holding of the Hearing.....	58
4. Requirement for Omitting a Hearing.....	59
a) The Debtor Resides Abroad.....	59
b) The Debtor's Place of Residence is Unknown.....	59
c) Other Restrictions on the Right to a Fair Hearing.....	59
5. Representatives and Relatives.....	59

**PART TWO**  
**COMMENCEMENT OF INSOLVENCY PROCEEDINGS.**  
**ASSETS INVOLVED AND PARTIES TO THE PROCEEDINGS**

<b>Chapter One. Requirements for Commencement and Preliminary Insolvency Proceedings .....</b>	<b>61</b>
Section 11. Admissibility of Insolvency Proceedings.....	62
1. Purpose of the Provision.....	62
2. Distinction between capacity for insolvency and capacity to have standing in court ( <i>Prozessfähigkeit</i> ).....	62
3. Scope of Application.....	62
a) Natural Persons.....	62
b) Legal Entities and Companies without Legal Personality .....	63
aa) Legal Entities.....	63
bb) Companies without Legal Personality.....	63
cc) Differentiation Issues .....	63
c) Assets.....	63
4. Practical Information.....	63
5. Appeal .....	64
Section 12. Legal Entities under Public Law.....	64
1. Purpose of the Provision.....	64
2. Overview.....	64
Section 13. Application for Commencement of Insolvency Proceedings .....	65
1. Purpose of the Provision.....	65
2. Overview.....	65
a) Entitlement to Lodge an Application .....	65
b) Application.....	66
c) Effects of the Application .....	66
d) Responsibility for Costs.....	66
e) Withdrawal .....	67
f) Inadmissibility of an application for commencement of insolvency proceedings .....	67
3. Issues .....	67
4. Appeal .....	67
Section 13a. Application for the Establishment of a Place of Group Jurisdiction.....	67
1. Purpose of the Provision.....	68
2. Details.....	68
Section 14. Application by a Creditor.....	69
1. Purpose of the Provision.....	69
2. Overview.....	69
a) General.....	69
b) Legitimate Interest in Bringing Proceedings.....	69
c) Substantiation by Prima Facie Evidence .....	70
aa) Claim .....	70
bb) Ground for Commencement.....	70
3. Maintenance of the Application even after Satisfaction of the Claim .....	70
4. Hearing the Debtor .....	71
5. Disputed Issue of the Allocation of Costs in the Case of a Unilateral Settlement Declaration .....	71
6. Appeal .....	71
Section 15. Right of Legal Entities and Companies without Legal Personality to Apply for Commencement of Insolvency Proceedings .....	72
1. Purpose of the Provision.....	72
2. Scope of Application.....	72
a) General.....	72
b) Legal Entities.....	72

c) Companies without Legal Personality .....	73
d) Right of Application in the Case of a Company without Management .....	73
e) The Special Provision in Section 15 (2) .....	73
f) The Special Provision in Section 18 (3) on Substantiation of Imminent Illiquidity .....	73
Section 15a. Obligation of Legal Entities and Companies without Legal Personality to Apply for Commencement of Insolvency Proceedings.....	74
1. Purpose of the Provision.....	74
2. Scope of Application/Standard Obligation to Lodge an Application .....	75
a) Legal Entities.....	75
b) Organs of the Company.....	75
aa) Director of a Limited Liability Company (GmbH) .....	75
bb) De facto Directors.....	75
cc) Multiple Directors .....	75
c) Determination of Illiquidity and Overindebtedness.....	75
d) Without Undue Delay; 3-Week Time Limit .....	75
e) Requirements for the Application .....	75
3. Companies without Legal Personality without a Natural Person as General Partner (Subsection (1) Sentence 2) .....	76
4. Obligation to Apply for Insolvency Proceedings in the Case of Companies without Legal Personality (Subsection (2)).....	76
5. No Management (Subsection (3)) .....	76
a) Concept of No Management .....	76
b) Parties Obligated to Apply for Insolvency Proceedings.....	76
c) Knowledge/Start of the Obligation to Apply for Insolvency Proceedings .....	76
d) Corresponding Right to Apply in Section 15.....	76
e) End of the Obligation to Apply for Insolvency Proceedings .....	77
6. Criminal Provisions .....	77
a) Elements of the Offence.....	77
b) Negligence .....	77
c) Perpetrators.....	77
7. Special Provision for Associations and Foundations (Subsection (7)).....	77
8. Practical Information.....	78
a) Transfer Abroad of the Registered Office of the Company .....	78
b) Civil Law Sanctions.....	78
9. International Insolvency Law.....	78
Section 16. Ground for Commencement .....	78
1. Purpose of the Provision.....	78
2. Scope of Application.....	78
3. Examination.....	79
4. Relevant Time.....	79
5. Appeal .....	79
Section 17. Illiquidity .....	79
1. Purpose of the Provision.....	79
a) General Ground for Commencement of Proceedings.....	79
b) Statutory Definition .....	79
2. Individual Elements of Illiquidity .....	80
a) Landmark Decision of 24 May 2005.....	80
b) Unable to Meet .....	80
c) Due Payment Obligations.....	80
d) Available Means of Payment .....	81
e) Unwillingness to Pay .....	81
f) Elimination of Illiquidity.....	81
g) Relevant Time of the Determination .....	81
3. Determination of Illiquidity; Indications.....	82
4. Cessation of Payment (Subsection (2) Sentence 2) .....	82
5. International Elements .....	82
Section 18. Imminent Illiquidity.....	83
1. Purpose of the Provision.....	83
2. Definition.....	83
a) General .....	83
b) "Likely to be unable" .....	83
c) Length of the forecast horizon .....	83

d) Existing Liabilities.....	84
e) Future Receipts and Payments .....	84
Section 19. Overindebtedness.....	84
1. Purpose of the Provision and Historical Development .....	84
2. Scope of Application.....	85
3. Concept.....	85
a) General.....	85
b) Ascertaining Overindebtedness.....	85
c) Ascertaining Overindebtedness in the Case of a Negative Going-Concern Forecast.....	86
d) Shareholder Loans.....	86
e) Subordination of Non-Shareholders .....	86
4. Relationship of Overindebtedness to the other Grounds for Commencement of Proceedings .....	86
a) Differentiation from other Circumstances for Commencement of Proceedings.....	86
b) Illiquid but not Overindebted.....	86
5. Points of Contention .....	86
a) Goodwill .....	86
b) Capital Contribution of a Silent Partner.....	87
c) Disputed Claims; Builders' Security .....	87
d) Winding-up Costs with a Negative Going-Concern Forecast .....	87
e) Period of the Going-Concern Forecast.....	87
French Insolvency and Restructuring Law – Part 2.....	88
<i>Requirements for Commencement</i> .....	88
1. <i>Sauvegarde</i> Proceedings .....	88
2. Accelerated Safeguard Proceedings ( <i>Sauvegarde accélérée</i> and <i>Sauvegarde financière accélérée</i> ).....	89
3. Restructuring Proceedings ( <i>Redressement judiciaire</i> ).....	89
4. Liquidation Proceedings ( <i>Liquidation judiciaire</i> ) .....	90
Italian Insolvency and Restructuring Law – Part 2.....	91
<i>Requirements for Commencement</i> .....	91
1. Requirements for Commencement.....	91
2. Entitlement to Lodge an Application, Obligation to Lodge an Application.....	91
Dutch Insolvency and Restructuring Law – Part 2.....	92
<i>Requirements for Commencement</i> .....	92
1. Commencement of Insolvency Proceedings.....	92
2. Commencement of Payment Moratorium Proceedings.....	92
3. Commencement of Debt Restructuring Proceedings.....	93
Polish Insolvency and Restructuring Law – Part 2.....	94
<i>Requirements for Commencement of Bankruptcy Proceedings</i> .....	94
1. Insolvency Subjects.....	94
2. Necessity of Lodging an Application and Duty to Lodge an Application .....	94
3. Grounds for Commencement.....	95
4. Other Requirements and Impediments to Commencement .....	96
Insolvency and Restructuring law of England and Wales – Part 2.....	97
<i>The Commencement of English Insolvency Proceedings</i> .....	97
1. The English law definition of insolvency.....	97
2. Tests and conditions to be met in English insolvency proceedings.....	98
a) Administration .....	98
b) Administrative receivership.....	98
c) Company voluntary arrangement ("CVA") .....	99
d) Winding up or liquidation .....	99
aa) Compulsory liquidation .....	99
bb) Voluntary liquidation .....	99
3. Tests and conditions to be met in insolvency proceedings for individuals .....	100
a) Bankruptcy.....	100
b) Individual voluntary arrangements.....	101
c) Debt Relief Orders.....	102
US Insolvency and Restructuring law – Part 2.....	103
<i>Requirements for Commencement of Proceedings</i> .....	103
1. Petition .....	103
2. General Procedural Requirements for Commencing a Case.....	103

a) Jurisdiction .....	104
b) Venue .....	104
3. Requirements for Commencing a Case under the Chapters .....	104
a) Chapter 7 .....	104
b) Chapter 9 – Municipalities .....	105
c) Chapter 12 – Family Farmers and Family Fishermen .....	105
d) Chapter 13 .....	105
e) Chapter 15 .....	106
4. Other Proceedings .....	106
a) Receivership .....	106
b) Servicemen .....	106
c) Brokerage Firms .....	106
Japanese Insolvency and Restructuring Law – Part 2 .....	108
<i>Requirements for Commencement</i> .....	108
Section 20. Obligation of Disclosure and Co-operation during Preliminary Insolvency Proceedings.	
Reference to Discharge of Residual Debt .....	109
1. Purpose of the Provision .....	109
2. Requirements .....	109
3. Persons Subject to the Obligation of Disclosure and Co-operation .....	109
4. Content of the Obligation of Disclosure .....	110
5. Obligation of Co-operation .....	110
6. Duty to be Available .....	110
7. Enforcement of the Obligation of Disclosure .....	110
8. Consequences of Breach of the Obligations of Disclosure and Co-operation .....	110
9. Information about the Possibility of Residual Debt Discharge .....	111
Section 21. Interim Measures Order .....	111
1. Purpose of the Provision .....	112
2. General Requirements .....	112
3. Ordering of Preliminary Measures (Section 21 (2)) .....	112
a) Appointment of a Preliminary Insolvency Administrator (Section 21 (2) Sentence 1 No. 1) .....	112
aa) Purpose .....	112
bb) Requirements and Scope of Application .....	113
b) Establishment of a Preliminary Creditors' Committee (Section 21 (2) Sentence 1 No. 1a) .....	113
aa) Purpose .....	113
bb) Requirements and Scope of Application .....	113
cc) Appointment and Selection of Members .....	113
dd) Legal Consequences and Duties .....	113
c) General Prohibition of Disposal (Section 21 (2) Sentence 1 No. 2 1st Alternative) .....	113
aa) Purpose .....	113
bb) Requirements and Scope of Application .....	114
cc) Legal Consequences .....	114
d) Special Prohibitions of Disposal (Section 21 (1)) .....	114
aa) Purpose .....	114
bb) Requirements and Scope of Application .....	114
cc) Legal Consequence .....	114
e) Ordering of a General Reservation of Approval (Section 21 (2) Sentence 1 No. 2 2nd Alternative) .....	114
aa) Purpose .....	114
bb) Requirements and Scope of Application .....	114
cc) Legal Consequences .....	114
f) Prohibition of Compulsory Enforcement (Section 21 (2) Sentence 1 No. 3) .....	115
aa) Purpose .....	115
bb) Requirements and Scope of Application .....	115
cc) Legal Consequences .....	115
g) Interim Postal Redirection Order (Section 21 (2) Sentence 1 No. 4) .....	115
aa) Purpose .....	115
bb) Requirements and Scope of Application .....	115
cc) Legal Consequences .....	115
h) Prohibition of Realisation and Collection (Section 21 (2) Sentence 1 No. 5) .....	115
aa) Purpose .....	115
bb) Requirements and Scope of Application .....	116
cc) Legal Consequences .....	116
4. Coercive Measures (Section 21 (3)) .....	116
5. Appeal .....	116

Section 22. Legal Status of the Preliminary Insolvency Administrator .....	117
1. Purpose of the Provision.....	117
2. General Comments regarding Preliminary Insolvency Administration .....	117
3. Preliminary Insolvency Administrator with the Right to Manage and Dispose of Assets.....	118
4. Preliminary Insolvency Administrator with Reservation of Approval.....	119
5. Powers of the Preliminary Administrator under Section 22 (3) .....	120
Section 22a. Appointment of a Preliminary Creditors' Committee.....	120
1. Purpose of the Provision.....	120
2. Requirements .....	121
3. Selection of Members .....	121
4. Tasks of the Preliminary Creditors' Committee .....	122
Section 23. Publication of Restrictions on Disposals.....	122
1. Purpose of the Provision.....	122
2. Public Announcement .....	122
3. Notification Obligations and Register Entries .....	123
4. Insolvency Proceedings with an International Dimension .....	123
Section 24. Effects of the Restrictions on Disposals .....	123
1. Purpose of the Provision.....	124
2. Requirements.....	124
3. Legal Consequences .....	124
4. Procedural Position of the Preliminary Insolvency Administrator .....	124
Section 25. Revocation of the Protective Measures.....	125
1. Purpose of the Provision.....	125
2. Publication of the Revocation.....	125
3. Revocation of the Appointment of a Preliminary Insolvency Administrator .....	125
Section 26. Refusal of Application due to Insufficient Assets .....	125
1. Purpose of the Provision.....	126
2. Refusal due to Insufficient Assets .....	126
a) Costs of the Proceedings.....	126
b) Duty of Investigation and Decision by the Court.....	127
c) Advance Payment of Procedural Costs/Procedural Costs Payment Guarantee.....	127
aa) Application by Debtor .....	127
bb) Advance Payment by Applicant Creditor/Third Party .....	127
cc) Asset Segregated from the Insolvency Estate .....	127
dd) Procedural Costs Payment Guarantee .....	127
ee) Specific Purpose .....	128
ff) Claim for Payment of the Advance Payment .....	128
d) Fair Hearing.....	128
e) Legal Consequences of Refusal due to Insufficient Assets.....	128
aa) Refusal due to Insufficient Assets.....	128
bb) Registration of the Debtor in the List of Debtors .....	129
cc) Consequences under Regulations Governing a Profession.....	129
dd) Protective Measures.....	129
3. Payer's Claim for Reimbursement .....	129
4. Appeal .....	129
Section 26a. Remuneration of the Preliminary Insolvency Administrator .....	130
1. Purpose of the Provision.....	130
2. Determination Proceedings.....	130
3. Appeal .....	131
Section 27. Order Commencing Proceedings.....	131
1. Purpose of the Provision.....	131
2. Content .....	131
a) Appointment of an Insolvency Administrator .....	131
b) Rejection of the Person Proposed as Administrator .....	132
c) Requests to Creditors and Debtors .....	132
d) Scheduling of Dates.....	132
3. Appeal .....	132
Section 28. Requests to Creditors and Debtors.....	132
1. Purpose of the Provision.....	133
2. Filing Period .....	133



3. Request to Secured Creditors.....	133
4. Requests to Third-Party Debtors .....	133
Section 29. Scheduling of Dates.....	134
Section 30. Publication of the Order Commencing Proceedings.....	134
1. Purpose of the Provision.....	134
2. Public Announcement.....	134
a) Effect of the Announcement.....	134
b) Publication Abroad .....	135
Section 31. Commercial Register, Register of Cooperatives, Register of Partnerships and Register of Associations .....	135
Section 32. Land Register.....	135
1. Purpose of the Provision.....	136
2. Registration Obligation in the Case of Real Property and Equivalent Rights.....	136
3. Registration in the Case of Registered Rights.....	136
4. Registration Procedure .....	136
5. Effect of the Registration .....	137
6. Cancellation of the Insolvency Notice.....	137
a) Cancellation by way of Request .....	137
b) Cancellation by way of Application .....	137
c) Cancellation after Conclusion of Proceedings .....	137
Section 33. Ships and Aircraft Registers.....	137
Section 34. Appeal .....	138
1. Purpose of the Provision.....	138
2. Parties Entitled to Appeal.....	138
a) Refusal of the Application for Commencement of Proceedings .....	138
b) Commencement of Insolvency Proceedings .....	138
3. Cause of Complaint .....	139
4. Appeal Proceedings.....	139
5. Consequences of a Successful Appeal against the Judgment Commencing Proceedings.....	139
<b>Chapter Two. Insolvency Estate. Classification of Creditors.....</b>	<b>140</b>
Section 35. Definition of Insolvency Estate .....	140
1. Scope of the Insolvency Estate .....	140
2. Release .....	140
a) Proper Release.....	140
aa) Legal Basis .....	140
bb) Release Declaration .....	140
cc) Subject Matter of the Release.....	141
dd) Legal Consequence of the Release .....	141
b) False Release .....	141
c) Modified Release.....	141
3. The Assets in the Insolvency Estate in Detail.....	141
a) Real Property and Equivalent Rights.....	141
b) Movable Assets.....	142
c) Expectant Right.....	142
d) Entitlement to Fractional Shares.....	142
e) Intellectual Property Rights.....	142
f) Trust Agreements .....	142
g) Employment.....	143
aa) Earned income.....	143
bb) Future retirement pensions .....	143
cc) Employee inventions .....	143
dd) Occupational pension schemes.....	143
h) Claims for Debt Release.....	145
i) Unilateral Rights to Alter a Legal Relationship.....	145
j) Claims under Succession Law.....	145
k) Claims in Tort.....	146
l) Partnership and Shareholder Interests .....	146
m) Corporate Name .....	146
n) Claims against the Shareholders .....	146
o) Tax Refund Claims.....	146

4. New Acquisitions.....	147
a) Scope of New Acquisitions.....	147
b) Debtor's Gainful Work Activities.....	147
5. Release Granted in respect of a Self-Employed Activity by the Debtor .....	147
a) Purpose of the Provision .....	147
b) Legal Consequences of the Release.....	148
c) Publication of the Declaration.....	148
d) Order Concerning Invalidity.....	148
Section 36. Objects Exempted from Attachment .....	148
1. Excluded Assets.....	149
2. Earned Income .....	149
3. Inclusion in Insolvency Estate despite Exemption from Attachment.....	150
a) Business Records.....	150
b) Assets of an Agricultural Business .....	150
c) Pharmacy Stock.....	150
4. Non-inclusion in Insolvency Estate of Certain Household Goods .....	150
5. Admissibility .....	150
Section 37. Joint Marital Property in a Community of Property.....	151
1. Sole Management of Joint Marital Property by One Spouse (Section 37 (1)).....	151
a) Insolvency of the Sole Managing Spouse.....	151
b) Insolvency of the Non-Managing Spouse.....	151
2. Joint Management of the Joint Marital Property (Section 37 (2)).....	152
3. Continued Community of Property (Section 37 (3)).....	152
Section 38. Definition of Insolvency Creditor.....	152
1. Personal Claim against the Debtor.....	152
2. Monetary Claim.....	152
3. Reasonable Justification at the Time of Commencement of Proceedings.....	153
Section 39. Subordinated Insolvency Creditors .....	154
1. The Different Ranking Classes .....	155
a) Interest .....	155
b) Procedural Costs.....	155
c) Fines Etc .....	155
d) Gratuitous Performance.....	156
e) Shareholder Loans.....	156
2. Agreed Subordination.....	157
3. Other Subordinated Claims.....	157
a) Insolvency Proceedings relating to a Deceased's Estate .....	157
b) Mutual Insurance Association.....	157
4. Interest and Costs of Subordinated Creditors .....	157
Section 40. Maintenance Claims .....	158
1. Scope of Application.....	158
2. Maintenance Claim Directed Against the Assets of the Debtor Exempted from Attachment .....	158
3. Maintenance out of the Insolvency Estate.....	158
Section 41. Unmatured Claims.....	158
1. Purpose of the Provision.....	159
2. Scope of Application.....	159
3. Discounting.....	159
Section 42. Claims Subject to a Condition Subsequent .....	160
1. Purpose and Meaning of the Provision.....	160
2. Claims Subject to a Condition Precedent .....	160
Section 43. Liability of Several Persons.....	160
1. Scope of Application.....	160
2. Satisfaction of the Creditor after Commencement of Insolvency Proceedings.....	161
3. Satisfaction of the Creditor before Commencement of Insolvency Proceedings.....	161
Section 44. Rights of Joint Debtors and Guarantors .....	161
Section 44a. Secured Loans.....	162
1. Circumstances .....	162
2. Legal Consequence .....	162
3. Double Security .....	162

Section 45. Conversion of Claims .....	163
1. Purpose of the Provision.....	163
2. Meaning of the Provision .....	163
a) Non-Monetary Claims.....	163
b) Claims for an Indeterminate Amount.....	163
c) Claims in Foreign Currency and Units of Account .....	164
Section 46. Recurring Performance .....	164
1. Meaning of the Provision .....	164
2. Scope of Application.....	164
3. Discounting.....	165
Section 47. Segregation .....	165
1. Purpose of the Provision.....	165
2. Enforcement of Segregation .....	165
a) Right to Information.....	165
aa) Basis of Claim.....	165
bb) Scope of the Right to Information.....	166
cc) Costs for Providing the Information.....	166
b) Segregation Costs.....	166
c) Segregation Disputes.....	166
3. Overcoming Lack of Identifiability through Pooling .....	166
a) Application of the Principle of Specificity under Property Law .....	166
b) Overcoming Evidential Difficulties through Pooling.....	167
c) Pool Structures in relation to Claiming a Right to Separate Satisfaction in Practice.....	167
aa) Supplier Pool.....	167
bb) Credit Institutions and Suppliers .....	167
cc) Credit Institutions and Suppliers and Insolvency Administrator .....	167
dd) Distribution .....	167
4. Legal Positions Capable of being Subject to Segregation .....	168
a) Ownership.....	168
aa) Sole Ownership .....	168
bb) Jointly Held Property.....	168
cc) Co-ownership .....	168
dd) Custody .....	168
ee) Retention of Title (Insolvency of the Conditional Seller) .....	168
ff) Retention of Title (Insolvency of the Conditional Purchaser).....	168
b) Restricted Rights In Rem .....	169
c) Possession.....	169
d) Claims under Succession Law.....	169
e) Industrial Property Rights, Copyright and Personal Rights .....	169
f) Claims .....	170
g) Surrender Claims based upon Contract .....	170
h) Procurement Claims .....	170
i) Claims for Injunctive Relief .....	170
j) Trusts.....	170
k) Avoidance Claims.....	170
l) Occupational Pension Schemes – Right to Benefits under Life Insurance Contracts .....	170
5. Insolvency Administrator's Liability Risks .....	171
a) Duty to draw up an Inventory .....	171
b) Insolvency Administrator's Duty to Care for Assets .....	171
c) Legal Consequence of Infringement of the Right to Segregation.....	171
Section 48. Substitute Segregation.....	172
1. Requirements for Application of the Provision.....	172
a) Unauthorised Disposal of the Item Subject to the Right of Segregation.....	172
b) Party Entitled to Substitute Segregation.....	172
2. Scope of the Right to Substitute Segregation .....	172
a) Consideration not yet Performed .....	172
b) Consideration Already Performed.....	172
Section 49. Separate Satisfaction from Immovable Assets .....	173
1. Immovable Assets as Liable Assets.....	173
2. Creditors Entitled to Separate Satisfaction and Order of Satisfaction .....	174
3. Assertion of the Right to Separate Satisfaction under the Act on Forced Sale and Sequestration .....	174

Section 50. Separate Satisfaction of Pledges.....	175
1. Contractual Lien .....	175
2. Statutory Lien.....	175
a) Overview of Statutory Liens.....	176
b) Landlord's/Lessor's Lien (Section 562/Section 592 BGB).....	176
aa) Scope of the Right to Separate Satisfaction .....	176
bb) Liable Assets.....	176
c) Enforceable Lien .....	177
Section 51. Other Creditors Entitled to Separate Satisfaction .....	177
1. Ownership for Security Purposes and Assignment for Security Purposes.....	177
a) Transfer of Ownership for Security Purposes (Section 51 No. 1 1st alternative).....	177
aa) Establishment of Ownership for Security Purposes .....	177
bb) Legal Consequences on Occurrence of the Event of Default .....	178
b) Assignment for Security Purposes (Section 51 No. 1 2nd Alternative) .....	178
aa) Creation of the Assignment for Security Purposes.....	178
bb) Factoring.....	179
2. Right of Retention in respect of Useful Outlays (Section 51 No. 2).....	179
3. Commercial Right of Retention (Section 369 HGB ( <i>Handelsgesetzbuch</i> , HGB) and Section 51 No. 3) .....	179
4. Right of Separate Satisfaction of the Tax Authorities (Section 51 No. 4) .....	179
Section 52. Shortfall of Creditors Entitled to Separate Satisfaction .....	179
1. Scope of Application.....	180
2. Status as Insolvency Creditor where the Debtor has Personal Liability .....	180
3. Right to Pro Rata Satisfaction.....	180
4. Waiver of the Right to Separate Satisfaction.....	180
Section 53. Preferential Creditors.....	181
1. Purpose of the Provision.....	181
2. Satisfaction of the Preferential Creditors .....	181
3. Incorrect Legal Classification of Preferential Liabilities .....	181
Section 54. Costs of the Insolvency Proceedings.....	181
1. Court Costs .....	182
a) Court Costs of the Preliminary Insolvency Proceedings.....	182
aa) Fees.....	182
bb) Value of the Matter.....	182
cc) Expenses.....	182
dd) Several Applications.....	182
ee) Party Liable for the Court Costs of the Preliminary Insolvency Proceedings.....	182
b) Court Costs of Commenced Insolvency Proceedings.....	183
aa) Fees.....	183
bb) Expenses.....	183
cc) Party Liable for the Court Costs of Commenced Insolvency Proceedings .....	183
c) Costs not Constituting Costs of the Insolvency Proceedings.....	183
2. Remuneration and Expenses of the Preliminary Insolvency Administrator .....	184
3. Remuneration and Expenses of the Insolvency Administrator .....	184
4. Remuneration and Expenses of the (Preliminary) Supervisor.....	185
5. Remuneration and Expenses of the Special Insolvency Administrator .....	185
6. Creditors' Committee.....	185
7. Party Liable for the Remuneration .....	185
Section 55. Other Preferential Liabilities .....	186
1. Bases of Claim for Preferential Liabilities in the Insolvency Code.....	186
2. Acts of the Insolvency Administrator and Administration Measures (Section 55 (1) No. 1 1st Alternative) .....	187
3. Preferential Liabilities Arising "in any other way" (Section 55 (1) No. 1 2nd alternative).....	188
a) Omissions falling within the Statutory Definition .....	188
b) Commercial or Residential Tenancies .....	188
aa) Insolvency of the Tenant .....	188
bb) Insolvency of the Landlord.....	188
c) Claims for Damages.....	188
d) Tax Liabilities .....	188
e) Liabilities in Connection with New Asset Acquisitions within the Meaning of Section 35 (2).....	190
4. Claims Arising out of Reciprocal Contracts where Performance is Demanded (Section 55 (1) No. 2 1st alternative).....	190

5. Claims Arising out of Reciprocal Contracts where Contract Performance is Imposed (Section 55 (1) No. 2 2nd alternative).....	190
a) Tenancies and Leases.....	190
b) Service Contracts.....	190
6. Preferential Liabilities under Section 55 (1) No. 3.....	191
7. Preferential Liabilities Created by a Strong Preliminary Insolvency Administrator (Section 55 (2) Sentence 1).....	191
8. Utilisation of Performance under Contracts for Continuing Obligations by a Strong Preliminary Insolvency Administrator (Section 55 (2) Sentence 2).....	192
9. Tax Liabilities Arising during Preliminary Insolvency Proceedings (Section 55 (4)).....	192
 French Insolvency and Restructuring Law – Part 3.....	193
<i>Insolvency Estate and Classification of Creditors</i> .....	193
1. Special Claims of Creditors who do not Compete with Insolvency Creditors of the Debtor.....	193
a) Claims of creditors which can be offset against a claim of the debtor.....	193
b) Claims of sellers covered by a retention of title clause.....	193
c) Claims of secured creditors who obtain a judicial assignment of the goods.....	193
d) Claims of unpaid financial lessors.....	193
2. Classification of Creditors according to their Claims.....	194
a) Pledges' Right of Retention.....	194
b) Super-preferential Wage Claims.....	194
c) Costs of Proceedings Incurred after Commencement of Insolvency Proceedings.....	194
d) "New Money" Claims arising from Conciliation Proceedings ( <i>Conciliation</i> ).....	194
e) Claims of Creditors with Security in Rem.....	195
f) Preferential Claims Arising after Commencement of Insolvency Proceedings.....	195
g) Preferential Rights Arising before Commencement of Insolvency Proceedings.....	195
h) Non-preferential Claims arising after Commencement of Proceedings and other Claims which arose prior to Commencement of Insolvency Proceedings.....	196
3. Particularities concerning the Distribution of Amounts obtained on the Sale of Immoveable Assets.....	196
4. Retention of Title.....	196
5. Insolvency Estate Located Abroad.....	197
 Italian Insolvency and Restructuring Law – Part 3.....	198
<i>Insolvency Estate and Classification of Creditors</i> .....	198
1. Insolvency Estate.....	198
2. Settlement of the Insolvency Estate.....	198
3. Creditors.....	199
a) Preferential creditors pursuant to Article 111bis IA.....	199
b) Creditors Holding a Special Privilege.....	199
c) Creditors Holding a General Privilege.....	199
d) Non-Privileged Creditors.....	200
e) Contribution to the Costs of the Insolvency Estate.....	200
 Dutch Insolvency and Restructuring Law – Part 3.....	201
<i>Insolvency Estate and Classification of Creditors</i> .....	201
1. Insolvency Estate.....	201
2. Classification of Creditors.....	201
3. Order of Priority.....	201
 Polish Insolvency and Restructuring Law – Part 3.....	203
<i>Insolvency Estate and Classification of Creditors</i> .....	203
1. Formation of the Bankruptcy Estate.....	203
2. Definition of Creditor, Categories of Creditors.....	203
3. Secured Creditors.....	204
4. Filing of Claims and Schedule of Claims.....	204
 Insolvency and Restructuring law of England and Wales – Part 3.....	205
<i>Insolvent Estate and Classes of Creditors</i> .....	205
1. Insolvent estate.....	205
2. Asset distribution.....	205
a) Asset distribution to creditors in corporate insolvency procedure.....	205
b) Creditor classes and priority.....	206
aa) Parties with proprietary claims to assets held by an insolvent company.....	206
bb) Fixed charge holders.....	206
cc) Expenses of the insolvent estate.....	206
dd) Preferential creditors.....	207

ee) Floating charge holders .....	207
ff) Unsecured creditors .....	207
c) Asset distribution to creditors in bankruptcy.....	207
US Insolvency and Restructuring law – Part 3 .....	209
<i>Insolvency Estate and Creditors</i> .....	209
1. The Bankruptcy Estate .....	209
2. Post-Petition Earnings from Services of the Debtor .....	209
3. Ipso Facto Clauses .....	209
4. Universalism vs. Presumption Against Extraterritoriality.....	209
5. The Priority Scheme for Creditors .....	210
Japanese Insolvency and Restructuring Law – Part 3.....	212
<i>Insolvency Estate and Classification of Creditors</i> .....	212
1. Insolvency Estate .....	212
2. Rehabilitation Creditors.....	212
<b>Chapter Three. Insolvency Administrator. Creditors’ Representative Bodies.....</b>	<b>214</b>
Section 56. Appointment of the Insolvency Administrator .....	214
1. Purpose of the Provision.....	214
2. Required Profile for an Insolvency Administrator .....	214
a) Natural Person .....	214
b) Circle of Persons Willing to Undertake Insolvency Administration.....	215
c) Personal Eligibility.....	215
d) Independence.....	216
e) Proposal by the Debtor or a Creditor (Section 56 (1) No. 1) .....	216
f) General Advice to the Debtor Prior to the Application for Insolvency Proceedings (Section 56 (1) No. 2).....	216
g) Special Insolvency Administrator .....	217
Section 56a. Creditor Participation in Appointment of the Insolvency Administrator .....	217
1. Purpose of the Provision.....	218
2. Structure of the Provision.....	218
a) Right of the Creditors’ Committee to Make Representations and the Court’s “Expedited Competence” .....	218
b) Court Bound by a Required Profile .....	218
c) Court Bound by a Proposed Insolvency Administrator.....	218
3. Involvement of the Creditors.....	219
4. “Expedited Competence” of the Court in relation to a Clear Prejudicial Change in the Financial Position .....	219
5. Stipulation of the Required Profile.....	220
6. Specification of the Person to be appointed as Insolvency Administrator .....	220
7. Election of a Different Insolvency Administrator under Section 56a (3).....	221
8. Court’s Duty of Examination Prior to the Appointment.....	221
Section 56b. Appointment of Administrator in the Case of Debtors Belonging to the same Group of Companies .....	221
1. Purpose of the Provision.....	222
2. Scope of Application .....	222
3. Requisite Independence.....	223
4. Preliminary Creditors’ Committee (Subsection (2)) .....	223
Section 57. Election of a Different Insolvency Administrator.....	223
1. Purpose of the Provision.....	223
2. Deselection of the Insolvency Administrator appointed by the Court on Commencement .....	224
3. Refusal of Appointment by the Court.....	224
4. Appointment of the Elected Administrator .....	225
Section 58. Supervision by the Insolvency Court .....	225
1. Purpose of the Provision.....	225
2. Scope of Application .....	225
3. Exercise of the Right of Supervision .....	225
4. Enforcement of the Insolvency Administrator’s Duties by Imposition of a Penalty Payment .....	226
5. Appeal .....	227
Section 59. Dismissal of the Insolvency Administrator .....	227
1. Purpose of the Provision.....	227
2. Scope of Application.....	227

3. "Good Cause" .....	228
4. Appeal .....	229
Section 60. Liability of the Insolvency Administrator .....	229
1. Purpose of the Provision.....	229
2. Scope of Application.....	229
3. Breach of Duty .....	230
a) Insolvency-Specific Duties.....	230
b) Debtor.....	230
c) Insolvency Creditors .....	230
d) Other Creditors.....	230
e) Other Interested Parties .....	231
f) Not Interested Parties.....	231
4. Fault.....	231
a) Standard of Fault .....	231
b) Disorderly Circumstances.....	232
c) Legal Costs .....	232
d) Creditors' Committee/Meeting.....	232
5. Liability of the Insolvency Administrator along with Other Liable Parties.....	232
6. Liability for Third Parties .....	233
7. Assertion of the Claim .....	233
8. Scope of the Damages Claim .....	234
Section 61. Failure to Settle Preferential Liabilities .....	234
1. Purpose of the Provision.....	234
2. Scope of Application.....	234
3. Requirements .....	235
a) Preferential Liability.....	235
b) Creation of the Debt.....	235
Section 62. Limitation Period.....	235
1. Purpose of the Provision.....	236
2. Start of the Limitation Period.....	236
3. Special Circumstances in the Case of Subsequent Distributions and Supervision of Plan Implementation .....	237
Section 63. Remuneration of the Insolvency Administrator.....	237
1. Purpose of the Provision.....	237
2. Scope of Application.....	237
3. Determination of the Insolvency Administrator's Remuneration.....	238
a) Calculation Basis.....	238
b) Supplements/Deductions .....	238
4. Activities of the Insolvency Administrator subject to Special Remuneration .....	239
5. The Preliminary Insolvency Administrator's Remuneration .....	239
a) Calculation Basis.....	240
b) Determination of the Preliminary Insolvency Administrator's Remuneration.....	240
c) Supplements/Deductions .....	240
d) Minimum Remuneration .....	240
e) Preliminary Insolvency Administrator's Remuneration where Proceedings are not Commenced .....	241
6. Special Insolvency Administrator's Remuneration .....	241
7. (Preliminary) Supervisor's Remuneration.....	241
a) Supervisor's Remuneration.....	241
b) Preliminary Supervisor's Remuneration.....	241
Section 64. Insolvency Court's Power to Fix Remuneration .....	242
1. Purpose of the Provision.....	242
2. Scope of Application.....	242
3. Determination Proceedings.....	243
4. Appeal .....	243
Section 65. Power to Issue Statutory Orders .....	243
Section 66. Presentation of Accounts.....	244
1. Purpose of the Provision.....	244
2. Time and Scope of the Final Accounts .....	244
3. Form of the Final Accounts .....	245
4. The Insolvency Court's Examination Obligation.....	246
5. Procedure after the Review by the Insolvency Court.....	246
6. Additional Cases in which Final Accounts must be Presented .....	247

Section 67. Establishment of the Creditors' Committee .....	248
1. Purpose of the Provision.....	248
2. Selection of Members .....	248
3. Preliminary Creditors' Committee .....	248
4. Appeal .....	249
Section 68. Election of Different Members .....	249
1. Purpose of the Provision.....	249
2. Establishment, Election or Dismissal .....	249
3. Resolution of the Creditors' Meeting.....	249
Section 69. Duties of the Creditors' Committee .....	249
1. Purpose of the Provision.....	250
2. Division of Responsibilities .....	250
3. Rights and Duties .....	250
4. Conflict of Interests.....	250
Section 70. Dismissal.....	251
1. Purpose of the Provision.....	251
2. Grounds for Action.....	251
3. Good Cause.....	251
4. The Dismissal Order.....	252
5. Appeal .....	252
Section 71. Liability of Members of the Creditors' Committee .....	252
1. Purpose of the Provision.....	252
2. Requirements for and Consequences of Liability and Enforcement of Claims .....	252
3. Indemnity Insurance.....	253
Section 72. Resolutions of the Creditors' Committee.....	253
1. Purpose of the Provision.....	253
2. Conduct of Creditors' Committee Meetings .....	253
3. Adoption of Resolutions .....	253
4. Legal Consequences of Defective Resolutions.....	254
Section 73. Remuneration of Members of the Creditors' Committee .....	254
1. Purpose of the Provision.....	254
2. Calculation of the Remuneration.....	255
3. Reimbursement of Expenses and Refund of Value Added Tax .....	255
4. Determination Proceedings.....	255
5. Payment on Account of Remuneration and Expenses .....	255
6. Appeal .....	255
Section 74. Convening the Creditors' Meeting .....	256
1. Purpose of the Provision.....	256
2. Requirements for Convening Meetings.....	256
3. Entitlement to Participate.....	256
4. Appeal .....	257
5. Special Case of the Bondholders' Meeting.....	257
Section 75. Application to Convene a Creditors' Meeting.....	257
1. Purpose of the Provision.....	258
2. Entitlement to Apply .....	258
3. Application.....	258
4. Decision .....	258
5. Appeal .....	259
Section 76. Resolutions of the Creditors' Meeting.....	259
1. Purpose of the Provision.....	259
2. Chairing of the Meeting.....	259
3. Adoption of Resolutions .....	259
4. Voting Procedures.....	260
5. Appeal .....	260
Section 77. Determination of Voting Rights .....	260
1. Purpose of the Provision.....	261
2. Voting Right .....	261
3. Decision on Voting Rights in the Case of Disputed Claims .....	261
4. Appeal .....	262



Section 78. Cancellation of a Resolution of the Creditors' Meeting.....	262
1. Purpose of the Provision.....	262
2. Concept of Common Interest.....	262
3. Application Requirement.....	262
4. Cancellation Order.....	263
5. Appeal.....	263
Section 79. Provision of Information to the Creditors' Meeting.....	263
1. Purpose of the Provision.....	263
2. Exercise of the Right to Information.....	264
3. Administrator's Duty to Provide Information.....	264
4. Forced Provision of Information.....	264
5. Auditing of Cash.....	264
French Insolvency and Restructuring Law – Part 4.....	265
<i>Insolvency Administrators and Creditor Bodies</i> .....	265
1. General Information on the Organs of Insolvency Administration.....	265
a) Splitting of the Role of Insolvency Administrator.....	265
b) Remuneration of the Insolvency Administrator.....	265
c) Liability of the Insolvency Administrator.....	266
2. The Various and Complementary Organs of Insolvency Administration.....	266
a) The Creditors' Representative ( <i>Mandataire judiciaire</i> ) and the Liquidator ( <i>Liquidateur</i> ).....	266
b) The Administrator ( <i>Administrateur judiciaire</i> ).....	266
c) The Plan Supervisor ( <i>Commissaire à l'exécution du plan</i> ).....	267
3. Creditor Bodies.....	267
4. Other Organs.....	268
Italian Insolvency and Restructuring Law – Part 4.....	269
<i>Insolvency Administrator and Creditor Bodies</i> .....	269
1. Insolvency Court.....	269
2. Supervising Judge.....	269
3. Insolvency Administrator.....	269
a) Duties.....	269
b) Remuneration.....	270
c) Civil Liability.....	270
d) Criminal Liability.....	271
4. Creditors' Committee.....	271
Dutch Insolvency and Restructuring Law – Part 4.....	272
<i>Insolvency Administrator and Creditor Bodies</i> .....	272
1. Insolvency Administrator.....	272
2. Creditor Bodies.....	272
Polish Insolvency and Restructuring Law – Part 4.....	274
<i>Trustee and Creditor Organs</i> .....	274
1. Parties Involved in Bankruptcy Proceedings.....	274
2. Judicial Organs.....	274
3. Trustee.....	274
4. Composition Administrator.....	275
5. Remuneration.....	276
6. Creditor Organs.....	276
Insolvency and Restructuring law of England and Wales – Part 4.....	277
<i>Insolvency Practitioners and Creditor Representation</i> .....	277
1. Supervision and authorisation.....	277
2. Insolvency practitioners and their role in English insolvency proceedings.....	277
a) General details.....	277
b) Administrative receiver.....	278
c) Company voluntary arrangement.....	279
d) Liquidator.....	279
e) Compulsory Liquidation.....	280
f) Bankruptcy Order.....	280
3. Creditor participation in English insolvency proceedings.....	281

US Insolvency and Restructuring law – Part 4 .....	284
<i>Parties in the Bankruptcy Proceeding</i> .....	284
1. Bankruptcy Court .....	284
2. Debtor-in-Possession .....	284
3. Trustee in Chapter 7, 12, 13 or 11 BC .....	285
4. Creditors' Committee .....	285
5. Meeting of Creditors .....	286
6. Equity Committees .....	286
7. US Trustee .....	286
Japanese Insolvency and Restructuring Law – Part 4 .....	287
<i>Insolvency Administrator and Creditor Bodies</i> .....	287
1. Insolvency Administrator/Supervisor .....	287
a) Supervisor ( <i>kantoku iin</i> ) .....	287
b) Examiner ( <i>chōsa-iin</i> ) .....	288
c) Trustee ( <i>kanzai-nin</i> ) .....	289
d) Provisional Administrator ( <i>hoken kanri-nin</i> ) .....	289
2. Creditor Bodies .....	290
a) Creditors' Committee .....	290
b) Creditors' Meeting .....	290

### PART THREE EFFECTS OF COMMENCEMENT OF INSOLVENCY PROCEEDINGS

<b>Chapter One. General Effects</b> .....	292
Section 80. Transfer of Right of Management and Right of Disposal .....	292
1. Purpose of the Provision .....	292
2. Effects of Seizure .....	293
a) Start and Duration of the Insolvency Administrator's Powers .....	293
b) Assets Exempted from Inclusion in the Insolvency Estate .....	293
3. Legal Status of the Debtor .....	293
4. Legal Status of the Insolvency Administrator .....	294
5. Duties and Powers of the Insolvency Administrator .....	294
6. Prohibitions of Disposal (Section 80 (2)) .....	294
Section 81. Disposals by the Debtor .....	295
1. Purpose of the Provision .....	295
2. Explanations (Subsections (1) and (3)) .....	295
a) Disposals by the Debtor .....	295
b) Time of the Disposal .....	296
c) Legal Consequences .....	296
aa) Absolute Ineffectiveness .....	296
bb) Acquisition in Good Faith (Subsection (1) Sentence 2) .....	296
cc) Duty to Refund (Subsection (1) Sentence 3) .....	297
3. Explanations (Subsection (2)) .....	297
4. Burden of Proof (Subsection (3)) .....	297
Section 82. Performance in Favour of the Debtor .....	298
1. Purpose of the Provision .....	298
2. Scope of Application .....	298
3. Performance in Favour of the Debtor with/without Discharge of the Liability to Perform in Favour of the Insolvency Estate .....	298
a) Principle .....	298
b) Exception in Section 82 .....	299
4. Application Cases .....	299
a) Bank Transfers .....	299
aa) Current Account Contract .....	299
bb) Payment Services Contract .....	299
cc) Incoming Bank Transfers .....	300
b) Direct Debits .....	300
c) Honouring and Collection of Cheques .....	300
d) Bills of Exchange .....	300
Section 83. Inheritance. Continued Community of Property .....	300
1. Purpose of the Provision .....	301
2. Inheritance/Legacy (Subsection (1) Sentence 1) .....	301
a) Legal Situation .....	301

b) Acceptance .....	301
c) Renouncement.....	301
d) Claims to a Compulsory Portion.....	301
e) Insolvency Proceedings Relating to a Deceased's Estate .....	301
3. Continued Community of Property (Subsection (1) Sentence 2).....	301
4. Prior Inheritance (Subsection (2)).....	302
Section 84. Winding-up of a Company or Co-ownership .....	302
1. Purpose of the Provision.....	302
2. Scope of Application.....	303
3. Winding-up (Subsection (1) Sentence 1).....	303
4. Separate Satisfaction (Subsection (1) Sentence 2).....	303
5. Ineffectiveness of Restrictions (Subsection (2)).....	304
Preliminary Remarks in Relation to Sections 85 to 87	
Effects of the Commencement of Insolvency Proceedings on Lawsuits and Procedural Actions.....	304
1. Capacity to be a Party in Court Proceedings ( <i>Parteifähigkeit</i> ); Capacity to Have Standing in Court ( <i>Prozessfähigkeit</i> ).....	304
2. Action Brought by the Insolvency Administrator .....	304
3. Interruption of the Proceedings Pursuant to Section 240 ZPO.....	305
a) Requirements.....	305
aa) Proceedings .....	305
bb) Insolvency of a Party .....	305
cc) Insolvency Estate.....	305
dd) Court Proceedings in which the Debtor is a Claimant or a Defendant .....	305
b) Legal Consequences of Interruption .....	305
aa) Time Limits.....	305
bb) Procedural Actions .....	305
c) Duration .....	306
d) Assertion.....	306
Section 85. Resumption of Court Proceedings as Claimant .....	306
1. Purpose of the Provision.....	306
2. Lawsuits in which the Debtor is the Claimant – Disputes concerning Claims that would Increase the Distributable Estate .....	306
3. Resumption of Court Proceedings.....	307
4. Refusal to Resume Court Proceedings.....	307
5. Costs .....	307
Section 86. Resumption of Particular Court Proceedings as Defendant.....	307
1. Purpose of the Provision.....	308
2. Scope of Application.....	308
a) Lawsuits in which the Debtor is the Defendant.....	308
b) Dispute concerning Claims that would Reduce the Distributable Estate.....	308
3. Resumption of Court Proceedings.....	308
4. Procedure.....	308
5. Costs .....	309
Section 87. Claims of the Insolvency Creditors .....	309
1. Purpose of the Provision.....	309
2. Scope of Application.....	309
3. Pursuit of Insolvency Claims .....	309
Section 88. Enforcement Prior to Commencement of Insolvency Proceedings.....	310
1. Purpose of the Provision.....	310
2. Requirements .....	310
3. Legal Consequences .....	311
Section 89. Prohibition of Enforcement .....	311
1. Purpose of the Provision.....	311
2. Requirements .....	311
a) Enforcement Measures by Insolvency Creditors.....	311
b) Other Creditors (Subsection (2)) .....	312
c) Assets Exempt from Compulsory Enforcement.....	312
3. Legal Consequences .....	313
4. Legal Remedy, Jurisdiction .....	313

Section 90. Prohibition of Enforcement in Relation to Preferential Liabilities .....	313
1. Purpose of the Provision.....	313
2. Requirements.....	313
a) Imposed Preferential Liabilities.....	313
b) Preferential Liabilities Resulting from Legal Acts by the Insolvency Administrator.....	314
3. Legal Consequences .....	314
4. Liability of the Debtor .....	315
Section 91. Exclusion of Other Acquisition of Rights.....	315
1. Purpose of the Provision.....	315
2. Scope of Application.....	315
a) Acquisition of Rights .....	315
b) Date of Acquisition .....	316
c) Section 110 (1) as a <i>lex specialis</i> .....	316
3. Legal Consequences .....	316
a) Rule (Subsection (1)) .....	316
b) Exception (Subsection (2)) .....	316
aa) Section 878 BGB (Section 3 (3) of the Act Governing Rights in Registered Ships and Ships under Construction ( <i>Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken</i> , SchRG), Section 5 (3) of the Act Governing Rights in Aircraft ( <i>Gesetz über Rechte an Luftfahrzeugen</i> , LuftFzgG)) .....	316
bb) Section 892 BGB (Section 16 (3) SchRG, Section 16 (3) LuftFzgG) .....	317
cc) Section 893 BGB (Section 17 SchRG, Section 17 LuftFzgG).....	317
4. Avoidance.....	317
5. Specific Cases.....	317
a) Assignment of Future Claims.....	317
b) Conditional Disposal of a Future Asset .....	317
c) Acquisitions Involving Several Acts.....	318
d) Priority Notice.....	318
e) Movable Assets.....	318
Section 92. Collective Loss.....	318
1. Purpose of the Provision.....	318
2. Requirements: Collective Loss .....	319
a) Provisions that Establish a Claim .....	319
b) Collective Loss – Individual Loss.....	319
aa) Collective Loss.....	319
bb) Individual Loss .....	319
3. Legal Consequences .....	320
4. Claims against the Insolvency Administrator (Sentence 2).....	320
Section 93. Personal Liability of Partners.....	320
1. Purpose of the Provision.....	320
2. Scope of Application.....	320
3. Requirements.....	321
4. Legal Consequences .....	321
5. Liability Outside of the Insolvency of the General Partner .....	322
6. Liability in the Case of Double Insolvency of the Partnership and the General Partner .....	322
Section 94. Maintenance of a Set-off Position .....	322
1. Purpose of the Provision.....	323
2. Scope of Application.....	323
a) Insolvency Creditors .....	323
b) Insolvency Administrator .....	323
c) Settlement.....	323
d) International Dimension.....	323
3. General Requirements for Set-Off .....	323
4. Legal Consequences of Set-Off.....	324
Section 95. Acquisition of a Set-off Position during the Proceedings.....	324
1. Purpose of the Provision.....	324
2. Scope of Application.....	325
3. Substance of the Provision (Subsection (1)) .....	325
a) Due Date of Claims (Subsection (1) Sentence 1).....	325
b) Claim Subject to a Condition Precedent (Subsection (1) Sentences 1 and 3) .....	326
c) Equivalent Claims (Subsection (1) Sentences 1 and 3) .....	326
d) Cumulation .....	326
4. Currencies, Units of Account (Subsection (2)) .....	326

Section 96. Inadmissibility of Set-off.....	326
1. Purpose of the Provision.....	327
2. Scope of Application.....	327
a) Rule.....	327
b) Exception (Subsection (2)).....	327
c) Contracts for Continuing Obligations.....	327
3. Substance of the Provision (Subsection (1)).....	327
a) Acquisition of a Debtor Position (No. 1).....	327
b) Acquisition of Creditor Position (No. 2).....	327
c) Avoidable Acquisition of an Opportunity for Set-Off (No. 3).....	328
d) Debtor as Debtor (No. 4).....	328
4. Legal Consequence, Mechanism.....	328
5. Exceptions (Subsection (2)).....	328
Section 97. Debtor's Obligation to Disclose Information and to Co-operate.....	329
1. Purpose of the Provision.....	329
2. Scope of Application.....	329
3. The Debtor's Obligations.....	329
a) Obligation to Disclose Information (Subsection (1)).....	329
b) Obligation to Co-operate (Subsection (2)).....	330
c) Obligation to be Available and to Co-operate (Subsection (3)).....	330
d) Other Obligations.....	331
4. Appeal.....	331
Section 98. Enforcement of the Debtor's Obligations.....	331
1. Purpose of the Provision.....	331
2. Compulsory Measures.....	332
a) Affidavit (Subsection (1)).....	332
b) Attendance and Detention (Subsection (2)).....	332
3. Appeal.....	332
4. Employees of the Debtor.....	333
Section 99. Postal Redirection Order.....	333
1. Purpose of the Provision.....	333
2. Requirements for a Postal Redirection Order (Subsection (1)).....	333
a) Mail.....	333
b) Necessity.....	333
c) Fair Hearing.....	334
3. Legal Consequence (Subsection (2)).....	334
4. Appeal (Subsection (3) Sentence 1).....	334
5. Revocation of the Postal Redirection Order (Subsection (3) Sentence 2).....	334
Section 100. Maintenance out of the Insolvency Estate.....	335
1. Purpose of the Provision.....	335
2. Eligible Beneficiaries.....	335
3. Decision-Makers.....	335
4. Preferential Liability.....	335
Section 101. Members of the Representative Body. Employees.....	336
1. Purpose of the Provision.....	336
2. Persons and Bodies Subject to the Obligations.....	336
a) Organs, Partners (Subsection (1) Sentence 1).....	336
b) Persons Who have Resigned from a Position (Subsection (1) Sentence 2).....	337
c) Employees (Subsection (2)).....	337
d) Cost Burden (Subsection (3)).....	337
3. Maintenance.....	337
Section 102. Restriction of a Basic Right.....	337
<b>Chapter Two. Performance of Transactions. Co-operation of the Works Council.....</b>	<b>338</b>
Section 103. Insolvency Administrator's Right of Choice.....	338
1. Purpose of the Provision.....	338
2. Legal Effect of Section 103.....	338
3. Scope of Application.....	339
a) Reciprocal Contract.....	339
b) Outstanding Performance.....	339
c) Responsibility for Collection.....	340

4. Right of Choice of the Insolvency Administrator.....	340
a) Non-Performance.....	340
b) Performance.....	341
c) Failure to Exercise the Right of Choice.....	341
d) Circumvention.....	341
5. Claim for Non-Performance.....	341
6. Mandatory Provision.....	342
Section 104. Fixed Term Transactions, Financial Services, Contractual Netting.....	342
1. Purpose of the Provision.....	344
2. Close-Out by Operation of Law (Subsections (1) and (3)).....	344
3. Legal Consequences (Subsections (1), (2), and (5)).....	345
a) Claim for Non-Performance.....	345
b) Insolvency Claim – Preferential Claim.....	345
4. Divergent Arrangements (Subsection (4), Section 119).....	346
5. Application, Entry into Force.....	346
Section 105. Divisible Performance.....	346
1. Purpose of the Provision.....	347
2. Requirements.....	347
a) Divisibility of Performance.....	347
b) Advance Performance by the Contractual Partner.....	347
3. Legal Consequences.....	347
4. Mandatory Provision.....	347
Section 106. Priority Notice.....	348
1. Purpose of the Provision.....	348
2. Requirements.....	348
a) Existing Right That is Capable of Being Registered.....	348
b) Time of the Registration.....	348
3. Legal Consequences.....	349
4. Pre-Emptive Right in Rem.....	349
5. Reversal of Enforcement Measures (Section 88).....	349
6. Avoidance in Insolvency (Section 129 et seq.).....	349
Section 107. Retention of Title.....	349
1. Purpose of the Provision.....	350
2. Insolvency of a Seller (Subsection (1)).....	350
a) Requirements.....	350
b) Legal Consequences.....	350
c) Analogous Application.....	350
3. Insolvency of a Purchaser (Subsection (2)).....	350
a) Requirements.....	350
b) Legal Consequences.....	351
c) Analogous Application.....	351
Section 108. Continuation of Particular Contractual Obligations.....	351
1. Purpose of the Provision.....	351
2. Requirements (Subsection (1)).....	352
a) Immovable Property and Premises.....	352
b) Service Contracts.....	352
c) Financing Transactions.....	352
d) Loans in the Insolvency of a Lender (Subsection (2)).....	353
3. Legal Consequences.....	353
a) Section 108 (1) and (3).....	353
b) Section 108 (2).....	354
Section 109. Debtor as Tenant or Lessee.....	354
1. Purpose of the Provision.....	354
2. Requirements.....	354
a) Tenancies/Leases in Relation to Immovable Property/Premises (Subsection (1) Sentence 1).....	355
b) Debtor's Dwelling House (Subsection (1) Sentence 2).....	355
c) Outstanding Possession of the Property (Subsection (2)).....	355
3. Legal Consequences.....	355
a) Subsection (1) Sentences 1 and 3.....	355
b) Subsection (1) Sentences 2 and 3.....	355
c) Subsection (2).....	356

Section 110. Debtor as Landlord or Lessor.....	356
1. Purpose of the Provision.....	357
2. Requirements.....	357
a) Debtor is Landlord/Lessor.....	357
b) Prior Disposal by the Debtor of Future Claims for Rent.....	357
c) Effectiveness of Prior Disposals of Future Claims.....	357
3. Legal Effects of the Prohibition of Disposal.....	358
4. Set-Off (Subsection (3)).....	358
Section 111. Sale of Let or Leased Property.....	358
1. Purpose of the Provision.....	358
2. Requirements.....	358
3. Legal Consequences.....	359
Section 112. Prohibition of Termination.....	359
1. Purpose of the Provision.....	359
2. Requirements.....	360
3. Legal Consequences.....	360
a) Exclusion of the Right of Termination under No. 1.....	360
b) Exclusion of the Right of Termination under No. 2.....	360
Section 113. Termination of a Service Contract.....	361
1. Purpose of the Provision.....	361
2. Termination Notice Period.....	361
a) General.....	361
b) Termination Notice Period.....	362
aa) Collectively Bargained Termination Notice Periods and Limitations.....	362
bb) Maximum Notice Period.....	362
cc) Re-termination.....	362
dd) Fixed-Term Employment Relationships.....	363
ee) Self-Administration.....	363
ff) Commenced Foreign Insolvency Proceedings.....	363
3. Compensation under Section 113 Sentence 3.....	363
4. Deadline for Filing an Action.....	363
Section 114 (repealed).....	364
Section 115. Extinguishment of Mandates.....	364
1. Purpose of the Provision.....	365
2. Requirements.....	365
3. Legal Consequences.....	365
a) Rule, Subsection (1).....	365
b) Exception, Subsection (2).....	365
c) Exception, Subsection (3).....	366
4. Mandatory Provision.....	366
Section 116. Extinguishment of Business Management Contracts.....	366
1. Purpose of the Provision.....	366
2. Legal Consequences.....	367
a) Rule, Sentence 1.....	367
b) Exception, Sentence 3.....	367
3. Mandatory Provision.....	367
Section 117. Extinguishment of Powers of Attorney.....	367
1. Purpose of the Provision.....	367
2. Requirements.....	367
3. Legal Consequences.....	368
4. Liability of an Agent, Subsection (3).....	368
5. Mandatory Provision.....	368
Section 118. Dissolution of Companies.....	368
1. Purpose of the Provision.....	368
2. Requirements.....	368
a) Companies Without Legal Personality.....	368
b) Dissolution of the Company.....	369
3. Legal Consequences.....	369
a) Continuation and Preferential Liability.....	369
b) Continuation and Insolvency Claim.....	369
4. Mandatory Provision.....	369

Section 119. Invalidity of Divergent Agreements.....	369
1. Purpose of the Provision.....	370
2. Specifics.....	370
a) Agreement.....	370
b) Exclusion or Limitation of the Rights of the Insolvency Administrator .....	370
c) Rank and Calculation of Claims.....	370
d) Contractual penalty, liquidated damages.....	370
3. Points of Contention .....	370
a) Unenforceability of Contractual Termination Clauses .....	370
b) Section 8 (2) No. 1 Case 2 in Conjunction with Section 8 (2) No. 2 of the Award Rules for Building Works, Part B (VOB/B, 2009).....	371
Section 120. Termination of Works Agreements.....	371
1. Purpose of the Provision.....	371
2. Requirements and Legal Consequences.....	371
a) Scope of Application.....	371
b) Ordinary Termination (Subsection (1)).....	371
aa) Works Agreement.....	371
bb) Informal Understandings.....	371
cc) Social Compensation Plans .....	372
dd) Benefits Under a Works Agreement .....	372
ee) No Duty to Consult .....	372
ff) Notice of Termination.....	372
gg) Partial Termination of a Works Agreement .....	372
hh) Notice Period.....	372
ii) Legal Consequence .....	372
c) Extraordinary Termination (Subsection (2)).....	372
Section 121. Operational Changes and Conciliation Proceedings.....	373
1. Purpose of the Provision.....	373
2. Procedure.....	373
Section 122. Judicial Approval for Undertaking an Operational Alteration.....	373
1. Purpose of the Provision.....	374
2. Requirements and Legal Consequences.....	374
a) Planned Operational Alteration .....	374
b) Provision of Information to the Works Council.....	374
c) Three-Week Period .....	375
d) Proceedings Before the Labour Court .....	375
3. Appeal .....	375
Section 123. Scope of the Social Compensation Plan.....	375
1. Purpose of the Provision.....	376
2. Requirements and Legal Consequences.....	376
a) Social Compensation Plan Following Commencement of Insolvency Proceedings .....	376
b) Absolute Upper Limit.....	376
aa) Employees.....	376
bb) Month's Salary.....	376
cc) Size of the Social Compensation Plan .....	377
c) Relative Upper Limit .....	377
aa) No Derogating Regulation.....	377
bb) Calculation .....	377
cc) Reduction.....	377
d) Lowest Rank.....	377
e) Payments on Account .....	377
f) Compulsory Enforcement.....	377
Section 124. Social Compensation Plan Prior to Commencement of Insolvency Proceedings.....	378
1. Purpose of the Provision.....	378
2. Requirements and Legal Consequences.....	378
a) Relevant Period .....	378
b) Revocation .....	378
c) Legal Consequences .....	379
d) Rank of Social Compensation Plan Claims.....	379
Section 125. Reconciliation of Interests and Protection against Dismissal .....	379
1. Purpose of the Provision.....	380
2. Requirements.....	380



a) Operational Alteration .....	380
b) Reconciliation of Interests .....	380
c) List of Names .....	380
3. Legal Consequences .....	381
a) Legal Presumption .....	381
b) Judicial Review of the Selection on the Basis of Social Criteria .....	381
aa) Three Criteria .....	381
bb) Gross Errors in Selection on the Basis of Social Criteria .....	381
cc) Balanced Personnel Structure .....	381
dd) Burden of Proof .....	382
c) Transfer of Undertakings .....	382
Section 126. Court Order Proceedings Relating to Protection Against Dismissal .....	382
1. Purpose of the Provision .....	383
2. Requirements and Legal Consequences .....	383
a) No Reconciliation of Interests Under Section 125 (1) .....	383
b) Application with the Labour Court .....	383
c) Specificity of the Application .....	383
d) Observation of the Principles in Section 1 of the Protection Against Unfair Dismissal Act .....	384
aa) Application .....	384
bb) Burden of Proof and Argument .....	384
cc) Review .....	384
e) Proceedings Before the Labour Court .....	384
aa) Court Order Proceedings .....	384
bb) Parties .....	384
cc) Legitimate Interest .....	384
dd) Exception to the Duty to Investigate .....	384
3. Appeal .....	384
Section 127. Legal Action by an Employee .....	385
1. Purpose of the Provision .....	385
2. Requirements and Legal Consequences .....	385
a) Requirements .....	385
aa) Operational Reasons .....	385
bb) Designation of the Employees in the Application .....	385
cc) Action for Protection Against Unfair Dismissal .....	385
dd) Final Judgment .....	385
b) Legal Consequence .....	385
c) Section 127 (2) .....	386
3. Appeal .....	386
Section 128. Sale of Business Operation .....	386
1. Purpose of the Provision .....	386
2. Requirements and Legal Consequences .....	387
a) Reconciliation of Interests (Section 125) or Application for Declaratory Judgment (Section 126) .....	387
b) Transfer of Undertakings pursuant to Section 613a BGB .....	387
aa) Transfer of Undertakings .....	387
bb) Transaction .....	387
cc) Right of the Employee to Object .....	388
dd) Severance Agreements .....	388
ee) Right to Re-Employment .....	389
c) Parties to the Court Order Proceedings .....	389
d) Legal Consequences .....	389
e) Action Brought by an Employee .....	389
French Insolvency and Restructuring Law – Part 5 .....	390
<i>Performance of Legal Transactions</i> .....	390
1. Definition of Legal Transactions .....	390
2. Principle that Legal Transactions will be Performed .....	390
a) Ineffectiveness of Agreements to the Contrary .....	390
b) Decision on Performance of Legal Transactions .....	391
c) Termination of Contracts .....	391
3. Exceptions for Specific Legal Transactions .....	392
a) Tenancy Agreements .....	392
b) Other Contracts .....	392

Italian Insolvency and Restructuring Law – Part 5.....	393
<i>Performance of Contracts</i> .....	393
1. Rule: Insolvency Administrator's Right of Choice.....	393
2. Exception 1: Interim Continued Operation of Business .....	393
3. Exception 2: Special Statutory Circumstances .....	393
a) Commercial Agency Contract .....	394
b) Contract to Produce a Work (Article 81 IA) .....	394
c) Contracts for Continuing or Recurring Obligations (Article 74 IA) .....	394
d) Employment Contracts .....	394
e) Preliminary Contracts for the Purchase of Property that are Registered in the Property Register .....	394
f) Leasing (Article 72quater IA) .....	395
g) Commercial Tenancies (Article 80 IA) .....	395
h) Purchase Contract .....	395
4. Contractual Termination Clauses in the Case of Insolvency .....	396
Dutch Insolvency and Restructuring Law – Part 5.....	397
<i>Performance of Transactions and Set-off</i> .....	397
Polish Insolvency and Restructuring Law – Part 5.....	399
<i>Performance of Transactions</i> .....	399
1. Ineffective Provisions.....	399
2. Special Arrangements for Bankruptcy Proceedings.....	399
3. Special Arrangements for Composition Proceedings.....	400
Insolvency and Restructuring law of England and Wales – Part 5.....	401
<i>Termination of contracts upon the commencement of an insolvency procedure</i> .....	401
1. Overview.....	401
2. Some details .....	401
a) Administration .....	401
b) Administrative Receivership .....	402
c) Company Voluntary Arrangement .....	402
d) Liquidation.....	402
e) Bankruptcy.....	402
f) Individual Voluntary Arrangement.....	402
US Insolvency and Restructuring law – Part 5 .....	403
<i>Dealing with Executory Contracts and Unexpired Leases</i> .....	403
1. Assumption and Rejection of Executory Contracts.....	403
2. Cure of Default .....	403
3. Assignment of the Agreement.....	404
4. Ipso Facto Clauses.....	404
5. Critical Vendors.....	405
6. Section 365n BC – Intellectual Property Licenses.....	405
Japanese Insolvency and Restructuring Law – Part 5.....	406
<i>Performance of Transactions</i> .....	406
<b>Chapter Three. Avoidance in Insolvency</b> .....	407
Section 129. Principle.....	407
1. Purpose of the Provision.....	407
2. Legal Act.....	407
a) Principle.....	407
b) Specific Cases.....	407
3. Prejudice to Creditors.....	408
4. Causal Link .....	409
5. Exercise of the Right of Avoidance .....	410
6. Overview of the Individual Grounds for Avoidance.....	410
a) During the Month Prior to the Date of the Application for Commencement of Insolvency Proceedings .....	410
b) Within Three Months Prior to the Date on which the Application for Commencement of Insolvency Proceedings is Filed.....	411
c) Within One Year Prior to the Date on which the Application for Commencement of Insolvency Proceedings is Filed.....	411
d) Within Two Years Prior to the Date on which the Application for Commencement of Insolvency Proceedings is Filed.....	411

e) Within Four Years Prior to the Date on which the Application for Commencement of Insolvency Proceedings is Filed.....	411
f) Within Ten Years Prior to the Date on which the Application for Commencement of Insolvency Proceedings is Filed.....	411
7. International Avoidance in Insolvency.....	411
Section 130. Congruent Coverage.....	412
1. Purpose of the Provision.....	413
2. Objective Grounds.....	413
3. Subjective Awareness.....	414
a) Awareness of Illiquidity or of the Application for Commencement of Insolvency Proceedings.....	414
b) Awareness of Circumstances within the Meaning of Section 130 (2).....	415
c) Attribution of Awareness by Others.....	415
4. Financial Collateral pursuant to Section 130 (1) Sentence 2.....	415
a) Concept of “Financial Collateral”.....	416
b) Requirements for Avoidance.....	416
5. Burden of Proof.....	417
Section 131. Incongruent Coverage.....	417
1. Purpose of the Provision.....	417
2. Objective Ground.....	417
a) Incongruent Satisfaction.....	417
aa) No Right to Satisfaction.....	417
bb) “No Right to Claim in that Manner”.....	417
cc) “No Right to Claim at that Time”.....	418
b) Incongruent Security.....	418
aa) Security Agreement.....	418
bb) No Right to Claim in that Manner.....	418
cc) No right to claim at that time.....	419
3. Avoidance Periods and Their Different Requirements.....	419
4. Burden of Proof.....	419
Section 132. Legal Acts Directly Prejudicial to the Insolvency Creditors.....	419
1. Purpose of the Provision.....	420
2. Avoidance Requirements under Section 132 (1).....	420
3. Other Legal Acts (Section 132 (2)).....	420
4. Awareness by the Recipient of Avoidable Performance.....	420
Section 133. Intentional Prejudice.....	421
1. Purpose of the Provision.....	421
2. Avoidance Requirements in Subsection (1).....	421
a) Concept of “Legal Act”.....	421
b) Objective Prejudice to Creditors.....	422
c) Intent by the Debtor to Prejudice Creditors.....	422
d) Awareness by the Other Party.....	423
3. The Limitations in Subsections (2) and (3).....	423
a) Coverage Acts (Subsection (2)).....	423
b) Avoidance of Congruent Legal Acts Undertaken to Intentionally Prejudice Creditors (Subsection (3) Sentence 1).....	423
c) Privileging of Payment Agreements (Subsection (3) Sentence 2).....	424
4. Contracts with Closely Connected Persons.....	424
a) Requirements.....	424
b) Burden of Proof.....	424
Section 134. Gratuitous Performance.....	425
1. Purpose of the Provision.....	425
2. Concept of “Performance”.....	425
3. Concept of “Gratuitousness”.....	425
4. Specific Cases.....	426
a) Gratuitous Performance.....	426
b) Non-Gratuitous Performance.....	426
5. Time Limitation.....	426
6. Burden of Proof.....	426
7. Unavoidability of Customary Occasional Gifts of Small Value.....	426
Section 135. Shareholder Loans.....	427
1. Purpose of the Provision.....	427
2. Requirements for Avoidance (Subsections (1) and (2)).....	428

a) Avoidance under Subsection (1).....	428
b) Avoidance under Subsection (2).....	429
3. Granting of Use or Exercise (Subsection (3)).....	429
4. Exemption in Cases of Restructuring and Small Holdings (Subsection (4)).....	430
Section 136. Silent Partnership .....	430
1. Purpose of the Provision.....	430
2. Specifics.....	430
a) Silent Partnership .....	430
b) Agreement .....	430
c) Legal Act: Repayment of the Capital Contribution or Waiver of Shares of Losses.....	431
aa) Repayment of the Capital Contribution.....	431
bb) Waiver of Shares of Losses.....	431
d) One-Year Period .....	431
3. Ground for Exclusion under Subsection (2) .....	431
Section 137. Bill of Exchange and Cheque Payments .....	431
1. Purpose of the Provision.....	432
2. Specifics.....	432
a) Congruent Coverage .....	432
b) Last Party Liable for Recourse.....	432
c) Cheque Payments.....	432
Section 138. Closely Connected Persons.....	432
1. Purpose of the Provision.....	433
2. Closely Connected Persons where the Debtor is a Natural Person.....	433
a) Spouse .....	433
b) Ascendants and Descendants.....	433
c) Persons Living in the Household.....	434
d) Legal Entities and Companies without Legal Personality .....	434
e) Act on Registered Life Partnerships.....	434
3. Closely Connected Persons where the Debtor is a Legal Entity or a Company without Legal Personality .....	434
a) Companies Limited by Shares.....	434
b) Partnerships.....	434
c) Holders of the Debtor's Capital .....	434
d) General Clause .....	434
e) Personal Connection.....	435
Section 139. Calculation of Time Periods Prior to the Application for Commencement of Insolvency Proceedings.....	435
1. Purpose of the Provision.....	435
2. Filing of Only One Application .....	436
3. Several Applications for Commencement of Insolvency Proceedings .....	436
a) Relevant Application.....	436
b) Requirement that the Application is Admissible and Well-Founded.....	436
Section 140. Date of Performance of a Legal Act.....	436
1. Purpose of the Provision.....	437
2. Basic Rule in Section 140 (1) .....	437
3. Exception in Subsection (2) .....	437
a) Existence of Secured Legal Positions .....	437
b) Priority Notice.....	438
4. Conditional and Fixed Term Legal Acts.....	438
Section 141. Enforceable Title.....	438
1. Purpose of the Provision.....	438
2. Enforceable Title.....	438
3. Enforcement Acts .....	439
Section 142. Cash Transactions .....	439
1. Purpose of the Provision.....	439
2. Counter-Performance "of the Same Value" .....	439
3. Requirement of a Legal Connection between Performance and Counter-Performance.....	440
4. Requirement of a Direct Relationship .....	441
5. Avoidability Despite the Existence of a Cash Transaction .....	441
Section 143. Legal Consequences .....	441
1. Purpose of the Provision.....	442
2. General.....	442

3. Primary Claim to Restitution.....	442
4. Scope of Liability under the Law of Unjust Enrichment .....	442
5. Due Date of the Restitution Claim.....	442
6. Claims by the Recipient of Avoidable Performance.....	442
Section 144. Claims by the Recipient of Avoidable Performance .....	443
1. Purpose of the Provision.....	443
2. Avoidance of a Transaction Fulfilling an Obligation .....	443
3. Avoidance of a Transaction Imposing an Obligation .....	443
a) General.....	443
b) Presence of the Consideration in Kind .....	444
c) Surrender of the Enrichment of the Insolvency Estate.....	444
d) Assertion as Insolvency Claim .....	444
4. Avoidance of both the Transaction Fulfilling an Obligation and the Transaction Imposing an Obligation .....	444
Section 145. Avoidance against Legal Successors.....	444
1. Purpose of the Provision.....	445
2. Avoidance against Universal Successors .....	445
a) Heirs .....	445
b) Other Universal Successors .....	445
3. Avoidance against Individual Successors .....	445
a) General.....	445
b) Special Requirements Applicable to Individual Legal Successors .....	445
Section 146. Limitation of the Right of Avoidance.....	446
1. Purpose of the Provision and Scope .....	446
2. Limitation .....	446
3. Right to Refuse to Fulfil a Duty of Performance .....	447
Section 147. Legal Acts after Commencement of Proceedings .....	447
1. Purpose of the Provision.....	447
2. Legal Acts Undertaken after Commencement of Insolvency Proceedings .....	447
French Insolvency and Restructuring Law – Part 6 .....	449
<i>Avoidance in Insolvency</i> .....	449
1. Determination of the Avoidance Period .....	449
2. Cases of Absolute Nullity .....	449
3. Cases of Relative Nullity .....	450
4. Avoidance Action .....	451
5. Further Possibility: the <i>Action paulienne (actio paulina)</i> .....	451
Italian Insolvency and Restructuring Law – Part 6 .....	453
<i>Avoidance in Insolvency</i> .....	453
1. Grounds for Avoidance.....	453
a) Absolutely Incongruent Legal Acts ( <i>atti affetti da anormalità assoluta</i> ) .....	453
b) Incongruent Legal Acts ( <i>atti anormali</i> ).....	453
c) Congruent Legal Acts ( <i>atti normali</i> ).....	453
2. Prejudice to Creditors.....	454
3. Cases in which Avoidance is Excluded .....	454
4. Calculation of Avoidance Periods.....	454
5. Limitation Periods.....	454
6. Legal Consequence of Avoidance in Insolvency .....	454
7. Procedural Aspects.....	455
Dutch Insolvency and Restructuring Law – Part 6 .....	456
<i>Avoidance in Insolvency (actio pauliana)</i> .....	456
Polish Insolvency and Restructuring Law – Part 6.....	457
<i>Avoidance in Insolvency</i> .....	457
1. Invalidity and Avoidability of Legal Acts .....	457
2. Ineffectiveness by Operation of Law.....	457
3. Ineffectiveness by Declaration of the Judicial Commissioner.....	457
4. Ineffectiveness by Court Judgment.....	458
5. Assertion by Means of an Avoidance Action .....	459
6. Legal Consequences .....	459

Insolvency and Restructuring law of England and Wales – Part 6 .....	460
<i>Antecedent Transactions and Claw-Back</i> .....	460
1. Introduction .....	460
2. Individual Claw-back Provisions .....	460
a) Transactions at an Undervalue .....	460
b) Preferences .....	462
c) Floating Charges .....	462
d) Extortionate Credit Transactions.....	463
e) Excessive Pension Contributions.....	463
f) Transactions Defrauding Creditors .....	464
US Insolvency and Restructuring Law – Part 6 .....	465
<i>Avoidance Actions under US Bankruptcy Law</i> .....	465
1. Limits on Trustee's Avoiding Powers.....	465
2. Avoiding Preferential Transfers .....	465
3. Avoiding Fraudulent Conveyances.....	466
4. Recovering an Avoided Transfer from Third Parties .....	467
5. Further Avoiding Powers under the Bankruptcy Code .....	467
6. Avoiding Powers under State Law.....	467
Japanese Insolvency and Restructuring Law – Part 6.....	469
<i>Avoidance in Insolvency</i> .....	469

## PART FOUR MANAGEMENT AND REALISATION OF THE INSOLVENCY ESTATE

<b>Chapter One. Securing the Insolvency Estate</b> .....	471
Section 148. Taking Charge of the Insolvency Estate.....	471
1. Purpose of the Provision.....	471
2. Principle of Possession .....	472
3. Enforcement of Duty to Surrender Possession of Assets .....	472
4. Release of Assets .....	472
5. Management of the Estate .....	472
6. Retention Rights/Other Seizure.....	473
7. Appeal .....	473
Section 149. Valuables .....	473
1. Purpose of the Provision.....	473
2. Depositary .....	473
3. Form of Deposit.....	473
Section 150. Sealing.....	474
1. Purpose of the Provision.....	474
2. Sealing of the Insolvency Estate.....	474
3. Appeal .....	474
Section 151. List of Assets of the Insolvency Estate .....	474
1. Purpose of the Provision.....	475
2. Contents of the List.....	475
3. Valuation .....	475
Section 152. List of Creditors .....	475
1. Purpose of the Provision.....	476
2. Contents of the List.....	476
3. Organisation of the List .....	476
Section 153. Statement of Assets and Liabilities .....	476
1. Purpose of the Provision.....	476
2. Structured Overview .....	477
3. Affidavit from the Debtor.....	477
4. Appeal .....	477
Section 154. Deposit in the Court Registry.....	477
1. Purpose of the Provision.....	477
2. Inspection .....	478
3. Court Registry .....	478
4. Additional Disclosure Obligations.....	478

Section 155. Accounting under Commercial and Tax Law .....	478
1. Purpose of the Provision.....	478
2. Accounting under Commercial Law .....	479
3. Duties under Tax Law .....	479
<b>Chapter Two. Decision on Realisation .....</b>	<b>480</b>
Section 156. Report Meeting.....	480
1. Purpose of the Provision.....	480
2. Report Meeting .....	480
3. Duty to Report .....	480
4. Breach of the Duty to Report .....	481
Section 157. Decision on the Future Course of the Proceedings.....	481
1. Purpose of the Provision.....	481
2. Decision regarding Closure or Continuation (sentence 1) .....	481
3. Instructing the Insolvency Administrator to Draw Up an Insolvency Plan (sentence 2) .....	481
4. Appeal .....	481
Section 158. Measures Prior to the Decision.....	482
1. Purpose of the Provision.....	482
2. Consent of the Creditors' Committee.....	482
3. Duty of Notification.....	482
4. Prohibition by the Court of Closure or Disposal.....	483
5. Appeal .....	483
Section 159. Realisation of the Insolvency Estate.....	483
1. Purpose of the Provision.....	483
2. Duty of Realisation.....	483
3. Types of Realisation.....	484
a) Movable Assets.....	484
b) Real Property .....	484
c) Disposal of the Enterprise .....	485
d) Release of Assets.....	485
Section 160. Legal Acts of Particular Importance .....	485
1. Purpose of the Provision.....	485
2. Granting of Consent .....	485
a) Form of Consent.....	485
b) Power of Consent .....	486
c) Insolvency Administrator Bound by Consent, Liability.....	486
d) Deemed Consent where the Creditors' Meeting has No Quorum .....	486
e) Written Proceedings .....	486
3. Legal Acts of Particular Importance .....	487
4. Examples in the Provision of Acts Requiring Consent .....	487
a) Realisation of Important Assets (section 160 (2) No. 1).....	487
b) Loans (section 160 (2) No. 2) .....	487
c) Legal Actions, Schemes of Composition, Arbitration Agreements (section 160 (2) No. 3) .....	487
5. Appeal .....	488
Section 161. Temporary Prohibition of the Legal Act .....	488
1. Purpose of the Provision.....	488
2. Duty of Notification.....	488
3. Legal Consequence of Failure to Notify .....	488
4. Prohibition by the Court .....	489
Section 162. Disposal of Business Operations to Parties with a Special Interest.....	489
1. Purpose of the Provision.....	489
2. Disposal of Enterprise/Business Operation .....	490
a) Information Insiders.....	490
b) Procedural Insiders .....	490
3. Indirect Parties .....	490
4. Procedure.....	491
Section 163. Disposal of Business Operations Below Value .....	491
1. Purpose of the Provision.....	491
2. Application.....	491
a) Application by Debtor.....	491
b) Other Option for Disposal.....	491

c) Comprehensive Comparison.....	492
d) Procedure.....	492
e) Decision, Procedure .....	492
3. Appeal.....	492
Section 164. Validity of the Acts of the Insolvency Administrator .....	492
French Insolvency and Restructuring Law – Part 7 .....	493
<i>Decision on Realisation</i> .....	493
1. Decision regarding Selection of Insolvency Proceedings .....	493
2. Realisation in Accordance with an Insolvency Plan .....	493
3. Realisation in Liquidation Proceedings.....	494
a) Realisation of Individual Assets .....	494
b) Sale of the Undertaking .....	495
Italian Insolvency and Restructuring Law – Part 7 .....	496
<i>Decision on Realisation</i> .....	496
1. Content of the Realisation Plan .....	496
2. Methods of Realisation.....	496
Dutch Insolvency and Restructuring Law – Part 7 .....	498
<i>Realisation of the Insolvency Estate and Termination of Proceedings</i> .....	498
Polish Insolvency and Restructuring Law – Part 7.....	500
<i>Realisation</i> .....	500
1. List of Assets, Liquidation Plan, and Financial Report .....	500
2. Acts and Consequences of Realisation .....	500
3. Continued Operation of the Enterprise.....	501
4. Sale of the Enterprise.....	501
5. Pre-Pack Deal.....	501
Insolvency and Restructuring law of England and Wales – Part 7 .....	503
<i>Powers of Insolvency Practitioners in English Insolvency Proceedings</i> .....	503
1. Administration .....	503
2. Administrative Receivership .....	504
3. Liquidation .....	504
4. Compulsory Liquidation.....	505
5. Bankruptcy.....	505
6. Voluntary Arrangements .....	505
US Insolvency and Restructuring Law – Part 7 .....	507
<i>Realization of Assets</i> .....	507
1. Section 363 BC: Overview.....	507
a) Sale of Estate Property .....	507
b) Sales Free and Clear of Third-Party Interests.....	507
c) Credit Bidding.....	508
2. Chapter 7 BC: Liquidation & Carve-Out Agreements.....	508
a) Liquidation.....	508
b) Carve-Out Agreements.....	508
3. Chapter 11 BC.....	509
a) Sale Pursuant to a Plan.....	509
b) Sale via Liquidating Trust Created in a Plan .....	509
Japanese Insolvency and Restructuring Law – Part 7 .....	510
<i>Decision on Realisation</i> .....	510
1. Timing.....	510
2. Application for Permission for a Transfer of Business under Article 42 RA.....	510
3. Hearing of Opinions.....	510
4. Permission of the Court under Article 42 RA .....	511
5. Permission under Article 41 (1) and Article 54 (2) RA .....	512
6. Resolutions Approving a Transfer and Permission in lieu of such Resolution under Article 43 RA .....	512
a) Order Granting Permission in lieu of a Shareholders' Resolution in the Case of a Stock Corporation .....	512
c) Order Granting Permission in lieu of a Shareholders' Resolution in Case of a Transfer of Business under a Plan .....	513



<b>Chapter Three. Assets Subject to Rights to Separate Satisfaction</b>	<b>514</b>
Section 165. Realisation of Immovable Assets	514
1. Purpose of the Provision	514
2. Immovable Assets in the Insolvency Estate	514
3. Realisation by the Insolvency Administrator	514
a) Realisation Through Forced Sale or Sequestration	515
b) Proceedings under Sections 172 to 174 a ZVG	516
Section 166. Realisation of Movable Assets	516
1. Purpose of the Provision	517
2. Realisation of Moveable Assets	517
3. Realisation of Assigned Accounts Receivable	518
Section 167. Provision of Information to the Creditor	518
1. Purpose of the Provision	518
2. Duty to Provide Information	518
3. Limits of the Right to Information	519
Section 168. Notification of Intention to Sell	519
1. Purpose of the Provision	519
2. Notification Duty of the Insolvency Administrator	520
3. The Creditor's Right to Propose Another Option and Period for Doing So/Creditor's Acquisition of the Asset	520
4. Legal Consequences of a Creditor's Proposal	521
5. Practice Note	521
Section 169. Protection of the Creditor against a Delay in Realisation	522
1. Purpose of the Provision	522
2. General Requirements	522
3. Compensation for Prejudice Suffered	523
4. Appeal	523
Section 170. Distribution of Proceeds	524
Section 171. Calculation of the Contribution to Costs	524
1. Purpose of the Provision	524
2. General Requirements	524
3. Realisation by the Insolvency Administrator	525
4. Realisation by the Creditor	525
5. Costs of Assessment	525
6. Costs of Realisation	525
7. Value Added Tax (Section 171 (2) Sentence 3)	526
a) Double Transaction Doctrine	526
b) Triple Transaction Doctrine	527
Section 172. Other Use of Movable Assets	527
1. Purpose of the Provision	527
2. Use of the Collateral	527
3. Collection of Accounts Receivable	528
4. Practice Note	528
Section 173. Realisation by the Creditor	528
1. The Creditor's Right of Realisation	528
2. Procedure for Expediting Realisation	529
3. Appeal	529
French Insolvency and Restructuring Law – Part 8	530
<i>Assets Subject to Rights to Separate Satisfaction</i>	530
1. Assets Subject to Rights in Rem during the Observation Phase of Safeguard or Restructuring Proceedings	530
2. Assets Subject to Rights in Rem during Execution of a Safeguard or Restructuring Plan	531
3. Assets Subject to Rights to Separate Satisfaction in Case of Restructuring by Transfer ( <i>Plan de cession</i> )	531
4. Assets Subject to Rights to Separate Satisfaction in Liquidation Proceedings	532
Italian Insolvency and Restructuring Law – Part 8	533
<i>Assets Subject to Rights to Separate Satisfaction</i>	533
Dutch Insolvency and Restructuring Law – Part 8	534
<i>Assets Subject to Rights to Segregation/Rights of Separate Satisfaction</i>	534

Polish Insolvency and Restructuring Law – Part 8.....	536
<i>Assets with Rights to Separate Satisfaction</i> .....	536
1. Equal Satisfaction of Creditors and Exceptions to This .....	536
2. Distinction Between Rights to Separate Satisfaction and Rights to Segregation .....	536
3. History of the Right to Separate Satisfaction in Polish Insolvency Law and Current Arrangement.....	536
4. Special Case: Registered Pledge .....	537
5. Restructuring Proceedings.....	538
 Insolvency and Restructuring law of England and Wales – Part 8 .....	539
<i>Principles of Asset Realisation and Distribution</i> .....	539
1. Introduction.....	539
2. Asset Realisation in English Insolvency Procedures .....	539
 US Insolvency and Restructuring Law – Part 8 .....	541
<i>Treatment of Assets subject to Security Interests</i> .....	541
1. Rights of Secured Creditors.....	541
a) Section 363 BC: Automatic Stay .....	541
b) Chapter 7 BC: Liquidation .....	541
c) Chapter 11 BC: Debtor-in-Possession .....	541
2. Bankruptcy Priorities: Disposing of Property According to Priority .....	542
a) Formalities.....	542
b) Priority after Secured Claims.....	543
c) UCC Financing Statements Lapsing Post-Bankruptcy Petition.....	543
d) Post-Petition Enforceability of Inter-creditor Agreements .....	543
 Japanese Insolvency and Restructuring Law – Part 8.....	545
<i>Assets Subject to Rights of Separate Satisfaction</i> .....	545
1. Rights to Segregation .....	545
2. Rights to Separate Satisfaction.....	545
3. Request for Extinguishment.....	545

## PART FIVE

### SATISFACTION OF THE INSOLVENCY CREDITORS.

#### DISCONTINUATION OF PROCEEDINGS

<b>Chapter One. Acceptance of Claims</b> .....	547
Preliminary Remarks in Relation to Sections 174 to 186.....	547
Section 174. Filing of Claims.....	547
1. Purpose of the Provision.....	548
2. Requirements for and Form of the Claim Submission.....	548
a) Creditors Entitled to File Claims .....	548
b) Filing with the Administrator.....	548
c) Written Form Requirement .....	549
d) Filing Required to be in German.....	549
e) Filing by a Representative.....	549
f) Documents to be Attached.....	549
3. Content of the Claim Submission.....	550
a) Basis of Claim.....	550
b) Amount of the Claim .....	550
4. Defective and Incomplete Claim Submissions.....	550
5. Filing of Subordinated Claims.....	551
6. Effect of the Filing.....	551
 Section 175. Schedule.....	551
1. The Keeping of the Schedule .....	552
a) Inclusion in the Schedule .....	552
b) Keeping the Schedule.....	552
c) Obligation to Register.....	552
d) Filed Preferential Liabilities and Subordinated Claims.....	552
e) Corrections.....	553
2. Deposit of the Insolvency Schedule.....	553
a) Date of Deposit and Items to be Deposited.....	553
b) Deposit in the Court Registry.....	553
3. Appeal .....	553

Section 176. Format of the Verification Meeting .....	553
1. Purpose of the Provision.....	554
2. Parties Entitled to Attend .....	554
3. Scope of the Verification.....	554
4. Disputing a Filed Claim .....	554
a) Oral Challenge.....	554
b) Challenge by Administrator or Creditor.....	555
c) Challenge by the Debtor .....	555
d) Individual Discussion .....	555
Section 177. Late Claim Submission.....	555
1. Purpose of the Provision.....	556
2. Verification of Late Claim Submissions at the Verification Meeting.....	556
3. Special Verification Meeting and Written Verification Process.....	556
a) Need for the Special Verification Meeting .....	556
b) Conduct and Content of the Special Verification Meeting .....	556
c) Costs of the Special Verification Meeting.....	557
d) Written Verification Process.....	557
4. Subsequent Amendments .....	557
a) Timing of Subsequent Amendments .....	557
aa) Amendment before the Depositing of the Schedule.....	557
bb) Amendment after the Depositing of the Schedule.....	557
b) Amendment after the Verification Meeting has been Held .....	557
aa) Disputed Claims.....	557
bb) Accepted Claims .....	557
c) Change of Claim Holder.....	558
aa) Undisputed Succession.....	558
bb) Disputed Succession.....	558
5. Announcement of the Special Verification Meeting .....	558
Section 178. Requirements for and Effects of Acceptance of Claims.....	558
1. Purpose of the Provision.....	558
2. Objection against Filed Claims.....	559
a) Parties Entitled to Object.....	559
b) Provisional Challenge .....	559
c) Oral Challenge.....	559
d) Withdrawal of the Objection .....	559
3. Content of the Entry.....	560
a) Competence .....	560
b) Content where there is an Objection.....	560
c) Noting Acceptance on Bills of Exchange and Debt Instruments.....	560
d) Registration in the Case of Creditors Entitled to Separate Satisfaction and Other Special Cases.....	560
4. Function of the Schedule Entry as an Enforceable Title .....	560
5. Appeal.....	561
Section 179. Disputed Claims .....	561
Section 180. Competence for Acceptance of Claims .....	561
Section 181. Scope of the Acceptance .....	561
1. Purpose of the Provision.....	561
2. Disputed Claims (Section 179) .....	562
a) Claims for which no Enforceable Title Exists.....	562
b) Claims for which an Enforceable Title Exists.....	562
c) Extracts from the Schedule .....	563
3. Special Declaratory Proceedings for Acceptance of an Insolvency Claim (Section 180).....	563
a) Action for Declaratory Judgment in Ordinary Proceedings.....	563
b) Jurisdiction.....	563
c) Interest in Obtaining Declaratory Judgment .....	563
d) Party to the Declaratory Proceedings .....	564
e) Resumption of Interrupted Litigation.....	564
f) Principle of Unity .....	564
4. Scope of the Acceptance (Section 181).....	564
5. Practice Notes.....	564
Section 182. Amount in Dispute .....	565
1. Purpose of the Provision.....	565
2. Determination of the Amount in Dispute .....	565

3. Analogous Application .....	565
4. Action for Acceptance Conducted Against the Debtor .....	566
Section 183. Effects of the Decision .....	566
1. Purpose of the Provision .....	566
2. Extension of Res Judicata Effect to Non-Parties .....	566
3. Amendment of the Schedule .....	567
4. Reimbursement of Legal Costs .....	567
Section 184. Action against an Objection by the Debtor .....	568
1. Purpose of the Provision .....	568
2. Overcoming an Objection by the Debtor .....	568
3. Objection by the Debtor and Residual Debt Discharge .....	568
4. Amendment of the Schedule .....	569
Section 185. Special Jurisdiction .....	569
1. Purpose of the Provision .....	569
2. Special Jurisdiction .....	569
Section 186. Restoration of the Status Quo Ante .....	569
1. Purpose of the Provision .....	570
2. Requirements for Restoration .....	570
3. Procedure .....	570
French Insolvency and Restructuring Law – Part 9 .....	571
<i>Acceptance of Claims</i> .....	571
1. Form and Content of the Claim Submission .....	571
2. Period for Filing of Claims .....	571
3. Verification of Insolvency Claims .....	573
Italian Insolvency and Restructuring Law – Part 9 .....	574
<i>Commencement of Insolvency Proceedings: Legal Consequences and Acceptance of Claims</i> .....	574
1. Opening Stage of Insolvency Proceedings .....	574
2. Commencement of Insolvency Proceedings .....	574
3. Continued Operation of the Enterprise (Article 104 IA) .....	574
4. Effects of Pending Lawsuits .....	574
5. Filing of Claims and Requests for Segregation .....	575
6. Subsequent Filing of Claims .....	575
Dutch Insolvency and Restructuring Law – Part 9 .....	576
<i>Acceptance of Claims</i> .....	576
Polish Insolvency and Restructuring Law – Part 9 .....	577
<i>Acceptance of Claims</i> .....	577
1. Filing of Claims .....	577
2. Verification of Claims .....	577
3. Acceptance of Claims .....	577
4. Objections to the Claims Schedule .....	578
Insolvency and Restructuring law of England and Wales – Part 9 .....	579
<i>Proving in Insolvency Proceedings</i> .....	579
1. Introduction .....	579
2. Submitting a Claim in English Insolvency Proceedings .....	579
3. Admission or Rejection of Proofs .....	580
US Insolvency and Restructuring Law – Part 9 .....	581
<i>Filing and Allowance of Claims</i> .....	581
1. Filing of a Proof of Claim .....	581
2. Allowance of the Claim and Objections .....	581
3. Tort Claims .....	581
Japanese Insolvency and Restructuring Law – Part 9 .....	583
<i>Acceptance of Claims</i> .....	583
<b>Chapter Two. Distribution</b> .....	584
Section 187. Satisfaction of the Insolvency Creditors .....	584
1. Purpose of the Provision .....	584
2. Interim Distribution .....	584

Section 188. Distribution Schedule .....	585
1. Purpose of the Provision.....	585
2. Distribution Schedule .....	585
3. Deposit .....	585
4. Public Announcement.....	585
Section 189. Consideration of Disputed Claims.....	586
1. Purpose of the Provision.....	586
2. Time Limit .....	586
3. Consequence of Provision of Proof in a Timely Manner.....	586
4. Proof Submitted Out of Time.....	587
Section 190. Consideration of Creditors Entitled to Separate Satisfaction.....	587
1. Purpose of the Provision.....	587
2. Proof under Subsection (1) .....	587
3. Waiver of the Right to Separate Satisfaction.....	588
4. Realisation by the Creditor.....	588
5. Sole Right of Realisation on the part of the Insolvency Administrator.....	588
Section 191. Consideration of Claims Subject to a Condition Precedent.....	588
1. Purpose of the Provision.....	589
2. Claims Subject to a Condition Precedent .....	589
3. Interim Distribution.....	589
4. Final Distribution .....	589
Section 192. Subsequent Consideration.....	589
1. Purpose of the Provision.....	589
2. Subsequent Consideration .....	590
Section 193. Amendment of the Distribution Schedule.....	590
Section 194. Objections to the Distribution Schedule .....	590
1. Purpose of the Provision.....	590
2. Parties Entitled to Raise Objections and Time Limit for Raising Objections .....	591
3. Rejection of the Objection by the Court.....	591
4. Amendment of the Schedule.....	591
5. Appeal .....	591
Section 195. Determination of the Fraction .....	591
1. Purpose of the Provision.....	592
2. Determination of the Fraction.....	592
Section 196. Final Distribution .....	592
1. Purpose of the Provision.....	592
2. Realisation of the Insolvency Estate .....	592
3. Implementation of the Final Distribution .....	593
4. Approval of the Insolvency Court .....	593
5. Appeal .....	593
Section 197. Final Meeting.....	594
1. Purpose of the Provision.....	594
2. Scheduling of the Final Meeting.....	594
3. Conduct of the Final Meeting .....	594
4. Discussion of the Final Accounts .....	595
5. Objections to the Final Schedule .....	595
6. Decision on Items that Cannot be Realised .....	595
7. Time Limits and Appeal.....	595
Section 198. Deposit of Retained Amounts .....	595
1. Purpose of the Provision.....	596
2. Deposit .....	596
Section 199. Surplus on Final Distribution.....	596
1. Purpose of the Provision.....	596
2. Surplus on the Final Distribution .....	596
3. Handover of the Surplus.....	596
Section 200. Termination of the Insolvency Proceedings.....	597
1. Purpose of the Provision.....	597
2. Order for Termination .....	597
3. Publications.....	597

4. Legal Consequences of Termination of Proceedings.....	597
5. Return of Business Records.....	598
6. Appeal.....	598
Section 201. Rights of the Insolvency Creditors after Termination of the Proceedings.....	598
1. Purpose of the Provision.....	598
2. Unrestricted Right of Subsequent Claim.....	599
3. Enforcement under the Schedule.....	599
4. Change to the Content of Claims Filed for Inclusion in the Schedule.....	599
5. Issue of an Execution Copy of an Extract from the Schedule.....	599
6. Reservation of Residual Debt Discharge.....	600
Section 202. Jurisdiction in Relation to Enforcement.....	600
Section 203. Order for a Subsequent Distribution.....	600
1. Purpose of the Provision.....	601
2. Requirements for a Subsequent Distribution.....	601
3. Order for a Subsequent Distribution.....	601
4. Subsequent Distribution in the Case of Insufficient Assets.....	602
Section 204. Appeal.....	602
Section 205. Implementation of the Subsequent Distribution.....	602
Section 206. Exclusion of Preferential Creditors.....	603
<b>Chapter Three. Discontinuation of Proceedings.....</b>	<b>604</b>
Section 207. Discontinuation due to Insufficient Assets.....	604
1. Purpose of the Provision.....	604
2. Insufficient Assets.....	604
3. Conduct of the Proceedings.....	605
4. Enforcement by Creditors with Procedural Cost Claims.....	605
5. Subsequent Distribution.....	606
6. Effects of the Discontinuation of Proceedings.....	606
Section 208. Notification of Deficiency of Assets.....	606
1. Overview.....	607
2. Deficiency of Assets.....	607
3. Notification by the Administrator.....	608
4. Realisation and Management after Notification of Deficiency of Assets.....	608
5. Reversion to Standard Insolvency Proceedings.....	608
6. Appeal.....	609
Section 209. Satisfaction of the Preferential Creditors.....	609
1. Purpose of the Provision.....	609
2. Order of Ranking of the Preferential Liabilities.....	609
3. New Preferential Liabilities.....	610
4. Old Preferential Liabilities.....	612
5. Reclamation.....	612
Section 210. Prohibition of Enforcement.....	612
1. Overview.....	612
2. Creditors Affected by the Prohibition of Enforcement.....	613
3. Enforcement in respect of New Preferential Liabilities.....	613
4. Deficiency of Assets and Discharge of Residual Debt.....	613
Section 210a. Insolvency Plan on Deficiency of Assets.....	614
1. Purpose of the Provision.....	614
2. Substantive Content of an Insolvency Plan in the Case of Deficiency of Assets.....	614
3. Formation of Groups.....	615
4. Voting on the Insolvency Plan.....	615
5. Termination of the Insolvency Proceedings.....	616
Section 211. Discontinuation after Notification of Deficiency of Assets.....	616
1. General.....	616
2. Duties of the Insolvency Administrator.....	616
3. Subsequent Distribution.....	617
4. Discontinuation of the Proceedings.....	617

Section 212. Discontinuation Where the Grounds for Commencement of Proceedings Cease to Exist .....	617
Section 213. Discontinuation with the Consent of the Creditors.....	618
1. Purpose of the Provision.....	618
2. Discontinuation after Expiry of the Time Limit for Filing Claims.....	618
3. Discontinuation Prior to Expiry of the Time Limit for Filing Claims.....	619
4. Procedure.....	619
Section 214. Procedure for Discontinuation.....	619
1. Purpose of the Provision.....	619
2. Procedure.....	620
3. Appeal .....	620
Section 215. Publication and Effects of Discontinuation.....	620
Section 216. Appeal .....	621

## PART SIX INSOLVENCY PLAN

<b>Chapter One. Preparation of the Plan</b> .....	623
1. Objective of the Insolvency Plan Procedure provided by the Insolvency Code.....	623
2. Course of the Insolvency Plan Procedure.....	623
3. Possible Content and Structuring of the Insolvency Plan .....	624
Section 217. Principle.....	624
Section 218. Submission of the Insolvency Plan.....	625
1. Purpose of the Provision.....	625
2. Parties Entitled to Submit an Insolvency Plan .....	625
3. Right of the Creditors' Meeting to Initiate a Plan .....	625
4. Submission of Several Plans.....	626
Section 219. Structure of the Plan.....	626
Section 220. Declaratory Part.....	626
Section 221. Constructive Part.....	626
1. Purpose of the Provision.....	627
2. Declaratory Part.....	627
3. Constructive Part.....	627
Section 222. Formation of Groups.....	627
1. Purpose of the Provision.....	628
2. Formation of Groups pursuant to Subsection (1): Parties with Differing Legal Status .....	628
a) Subsection (1) Sentence 1 .....	628
b) Subsection (1) Sentence 2 .....	629
3. Formation of Groups pursuant to Subsection (2): Parties with Equivalent Economic Interests.....	629
Section 223. Rights of Parties Entitled to Separate Satisfaction .....	629
1. Purpose of the Provision.....	630
2. Creditors Entitled to Separate Satisfaction .....	630
3. Derogating Provisions .....	630
Section 224. Rights of Insolvency Creditors .....	630
Section 225. Rights of Subordinated Insolvency Creditors .....	631
1. Purpose of the Provision.....	631
2. Silence of the Insolvency Plan (Subsection (1)) .....	631
3. Derogating Provision (Subsection (2)) .....	631
Section 225a. Rights of Shareholders.....	632
1. Purpose of the Provision.....	632
2. No Exhaustive List of Possible Arrangements (Subsection (3)) .....	632
3. Express Arrangement (Subsection (1)).....	632
4. Conversion of Debt to Equity (Subsection (2)).....	633
a) Debt/Equity Swap.....	633
b) Need for Consent .....	633
5. Ineffectiveness of Change of Control Clauses (Subsection (4)).....	633
6. Withdrawal of Shareholders/Members; Settlement Claim (Subsection (5)).....	634

Section 226. Equal Treatment of the Parties Concerned .....	634
1. Purpose of the Provision.....	634
2. “Equal Rights” pursuant to Subsection (1).....	634
3. “Affected Parties” pursuant to Subsection (2) .....	635
Section 227. Liability of the Debtor .....	635
1. Purpose of the Provision.....	635
2. Occurrence of the Discharge provided for in Subsection (1).....	635
3. Accessory Security Interests.....	635
4. Personal Liability of the Partners (Subsection (2)).....	635
Section 228. Modification of Relationships under Property Law .....	636
1. Purpose of the Provision.....	636
2. Declarations of Intent pursuant to Sentence 1 and their Validity .....	636
Section 229. Statement of Assets and Liabilities. Earnings and Financial Plan .....	636
1. Purpose of the Provision.....	637
2. Valuations in the Statement of Assets and Liabilities pursuant to Sentence 1 .....	637
3. Comparative Calculation with Break-up Values.....	637
4. Earnings and Financial Plan as per Sentence 2.....	637
5. Unfiled Claims (Sentence 3) .....	637
Section 230. Additional Attachments.....	638
1. Purpose of the Provision.....	638
2. Continuation Declaration (Subsection (1)) .....	638
3. Non-Cash Offers (Subsection (2)).....	638
4. Declarations by Third Parties (Subsection (3)) .....	638
Section 231. Rejection of the Plan .....	638
1. Purpose of the Provision.....	639
2. Rejection of the Plan pursuant to Subsection (1) .....	639
a) Breach in relation to the Right to Submit a Plan or the Contents of the Plan (Subsection (1) No. 1) .....	639
b) No Prospect of the Plan Being Accepted (Subsection (1) No. 2).....	639
c) Unachievability of a Plan (Subsection (1) No. 3) .....	640
3. Rejection of the Plan pursuant to Subsection (2) .....	640
4. Appeal .....	640
Section 232. Comments on the Plan .....	640
Section 233. Stay of Realisation and Distribution .....	641
1. Purpose of the Provision.....	641
2. Stay of Realisation and Distribution of the Insolvency Estate .....	641
3. Refusal or Revocation of the Stay .....	641
Section 234. Deposit of the Plan .....	642
<b>Chapter Two. Acceptance and Confirmation of the Plan.....</b>	<b>643</b>
Section 235. Discussion and Voting Meeting.....	643
1. Purpose of the Provision.....	643
2. Structure of the Meeting .....	643
Section 236. Combination with the Verification Meeting.....	643
1. Purpose of the Provision.....	644
2. Chronological Priority of the Verification Meeting (Subsection (1)).....	644
Section 237. Voting Rights of the Insolvency Creditors .....	644
1. Purpose of the Provision.....	644
2. Voting Right of the Insolvency Creditors.....	644
3. Voting Right of Creditors Entitled to Separate Satisfaction as Insolvency Creditors .....	645
Section 238. Voting Rights of the Creditors Entitled to Separate Satisfaction .....	645
1. Purpose of the Provision.....	645
2. Discussion of the Rights of the Creditors Entitled to Separate Satisfaction pursuant to Subsection (1) Sentence 1.....	646
3. Allocation of Voting Rights .....	646
Section 238a. Voting Rights of Shareholders.....	646
1. Purpose of the Provision.....	646
2. Voting Right .....	646



Section 239. Voting List .....	647
Section 240. Amendment of the Plan .....	647
1. Purpose of the Provision.....	647
2. Admissibility of Amendments and Meeting Scheduling.....	647
Section 241. Separate Voting Meeting .....	648
Section 242. Written Vote.....	648
Section 243. Voting in Groups .....	648
1. Purpose of the Provision.....	648
2. Separate Voting in Groups.....	649
Section 244. Required Majorities.....	649
1. Purpose of the Provision.....	649
2. Acceptance by all Groups.....	649
3. Required Majorities in the Groups as per Subsection (1).....	649
4. Creditors with a Joint Right (Subsection (2)).....	650
5. Acceptance by the Shareholders (Subsection (3)).....	650
6. Subsequent Procedure .....	650
Section 245. Prohibition of Obstruction.....	651
1. Purpose of the Provision.....	651
2. No Less Favourable Treatment than Without a Plan (Subsection (1) No. 1).....	651
a) Necessity of a Comparative Calculation .....	651
b) Review by the Court of the “Feasibility” of the Plan.....	652
c) Less Favourable Treatment “Likely” .....	652
3. Reasonable Participation for a Group of Creditors, Subsection (1) No. 2 in conjunction with Subsection (2).....	652
4. Reasonable Participation for a Group of Shareholders, Subsection (1) No. 2 in conjunction with Subsection (3).....	653
5. Approval of the Majority of the Voting Groups (Subsection (1) No. 3).....	653
Section 246. Approval of Subordinated Insolvency Creditors.....	653
Section 246a. Approval of the Shareholders.....	653
Section 247. Approval of the Debtor.....	654
1. Purpose of the Provision.....	654
2. Ineffectiveness of the Objection (Subsection (2)) .....	654
Section 248. Court Confirmation .....	654
1. Purpose of the Provision.....	655
2. Court Confirmation of the Plan.....	655
Section 248a. Court Confirmation of Plan Correction .....	655
Section 249. Conditional Plan.....	656
1. Purpose of the Provision.....	656
2. Requirements for Confirmation of the Plan pursuant to Sentence 1.....	656
Section 250. Breach of Procedural Provisions.....	656
Section 251. Protection of Minorities.....	656
1. Purpose of the Provision.....	657
2. Prohibition of Less Favourable Treatment (Subsection (1) No. 2).....	657
3. Contingency Clauses (Subsection (3)).....	657
Section 252. Publication of the Decision.....	658
Section 253. Appeal.....	658
1. Purpose of the Provision.....	659
2. Requirements.....	659
<b>Chapter Three. Effects of the Confirmed Plan. Monitoring Implementation of the Plan .....</b>	<b>660</b>
Section 254. General Effects of the Plan.....	660
1. Purpose of the Provision.....	660
2. Effects .....	660
Section 254a. Rights in Objects. Other Effects of the Plan .....	661

Section 254b. Effect for all Parties Concerned .....	661
Section 255. Revival Clause .....	662
1. Purpose of the Provision.....	662
2. Scope of Application.....	662
3. Default.....	662
4. New Insolvency Proceedings pursuant to Subsection (2) .....	663
Section 256. Disputed Claims. Shortfall Claims .....	663
Section 257. Enforcement based on the Plan .....	664
Section 258. Termination of the Insolvency Proceedings.....	664
Section 259. Effects of Termination.....	665
1. Purpose of the Provision.....	665
2. Lawsuits .....	665
Section 259a. Protection from Enforcement.....	666
Section 259b. Special Limitation Period .....	666
1. Purpose of the Provision.....	666
Section 260. Monitoring of Plan Implementation.....	666
1. Purpose of the Provision.....	667
2. Monitoring .....	667
3. Takeover Companies .....	667
Section 261. Duties and Powers of the Insolvency Administrator.....	667
Section 262. Insolvency Administrator's Duty of Notification .....	668
Section 263. Transactions Requiring Approval.....	668
1. Purpose of the Provision.....	668
2. Legal Transactions Affected.....	668
Section 264. Credit Limit .....	669
1. Purpose of the Provision.....	669
2. Cumulative Requirements .....	669
3. Effects .....	670
Section 265. Subordination of New Creditors.....	670
Section 266. Consideration of Subordinated Ranking.....	670
1. Effect in Subsequent Proceedings .....	670
2. Creditor Structure in the Second Insolvency .....	671
Section 267. Notification of Monitoring.....	671
Section 268. Termination of Monitoring.....	671
Section 269. Costs of Monitoring.....	671
French Insolvency and Restructuring Law – Part 10.....	673
<i>Insolvency Plan</i> .....	673
1. The Safeguard Plan ( <i>Plan de sauvegarde</i> ) and the Restructuring Plan ( <i>Plan de redressement</i> ).....	673
2. The Restructuring Plan versus the Safeguard Plan.....	674
3. Adoption of the Plan for Continued Operation of Business (in the Form of a Safeguard or Restructuring Plan).....	675
4. Specific Features in Connection with Adoption of the Plan for Continued Operation of Business in Proceedings Involving Creditors' Committees .....	675
Italian Insolvency and Restructuring Law – Part 10.....	677
<i>Alternatives to Insolvency Proceedings: Proceedings for Overcoming Financial Distress</i> .....	677
1. Certified Restructuring Plan (Article 67 (3) (d) of the Insolvency Act, IA).....	677
2. Debt Restructuring Agreement (Article 182bis IA) .....	678
a) Subject of the Debt Restructuring Agreement.....	678
b) Pre-Agreement ( <i>il preaccordo</i> ).....	679
c) Payment of Old Liabilities and Use of Financing.....	679
d) Subsequent Insolvency Proceedings.....	680
3. Composition Proceedings (Article 160 et seq. IA) .....	680
a) Application for Composition Proceedings .....	680
b) Subject of the Composition Plan .....	680

c) Blank Composition Proceedings .....	681
d) Competing Composition Proposal and Competing Offer .....	681
e) Supervisor, Ongoing Contracts, and Old Liabilities .....	681
f) Subsequent Insolvency Proceedings .....	682
Dutch Insolvency and Restructuring Law – Part 10 .....	683
<i>Insolvency Plan</i> .....	683
Polish Insolvency and Restructuring Law – Part 10 .....	684
<i>Insolvency Plan</i> .....	684
1. Types of Proceedings .....	684
2. Power of Proposal .....	684
3. Discontinuation of Liquidation of the Bankruptcy Estate and Obstacles to Discontinuation .....	684
4. Creditors' Meeting, Voting, and Termination of Composition Proceedings .....	685
Insolvency and Restructuring law of England and Wales – Part 10 .....	687
<i>Insolvency Plans</i> .....	687
1. General Remarks .....	687
2. “Insolvency plan” Procedures under English Insolvency Legislation .....	687
a) Company Voluntary Arrangement (CVA) .....	687
b) Individual Voluntary Arrangement (IVA) .....	688
c) “Insolvency Plan” Procedures under Companies Legislation .....	689
US Insolvency and Restructuring Law – Part 10 .....	691
<i>The Plan</i> .....	691
1. The Chapter 11 BC Reorganization Plan .....	691
a) Preparation of the Plan .....	691
b) Content of the Plan .....	692
c) Disclosure Statement .....	692
d) Voting on the Plan .....	692
e) Confirmation of the Plan .....	693
f) Post-Confirmation .....	693
2. The Chapter 11 BC Liquidation Plan .....	694
Japanese Insolvency and Restructuring Law – Part 10 .....	695
<i>Rehabilitation Plan</i> .....	695
1. Rehabilitation Plan Procedure .....	695
a) Structure and Content .....	695
b) Procedure .....	695
2. Capital Reduction with Subsequent Capital Increase .....	696
3. Entry into Force of the Rehabilitation Plan .....	697
a) Restriction of Shareholder Rights .....	698
b) Capital Reduction .....	698
c) Amendment to the Articles of Association .....	698
d) Capital Increase .....	698
e) Capital Reorganisation .....	699
f) Balance between Creditors and Shareholders .....	699

## PART SEVEN COORDINATION OF THE PROCEEDINGS OF DEBTORS BELONGING TO THE SAME CORPORATE GROUP

<b>Chapter One. General Provisions</b> .....	701
Section 269a. Cooperation between Insolvency Administrators .....	701
1. Purpose of the Provision .....	701
2. Substance .....	701
3. The Duties to Cooperate in Detail .....	702
a) General .....	702
b) Duty to Provide Information .....	702
c) Additional Duties to Cooperate .....	702
4. Limits of the Cooperation .....	703
a) Must Information be Provided without Being Requested? .....	703
b) No Detriment to the Interests of the Parties to the Proceedings .....	703
c) The Term “Common Interest” .....	703
5. Enforcement of the Duty to Cooperate .....	704
6. Self-Administration .....	704

Section 269b. Cooperation between Courts .....	704
1. Purpose of the Provision.....	704
2. Scope of Application.....	705
a) Persons Covered by the Provision Contained in Section 269b.....	705
b) Standard Cases pursuant to Section 269b Sentence 2.....	705
c) Form of the Cooperation.....	705
3. Implementation of the Duty to Cooperate/Liability.....	706
4. Own Initiative.....	706
5. Limitless Cooperation?.....	706
6. Procedural Acts Outside of the Standard Cases.....	706
Section 269c. Cooperation between Creditors' Committees .....	706
1. Purpose of the Provision.....	707
2. Establishment of a Group Creditors' Committee .....	707
a) Application.....	707
b) Hearing .....	708
c) Discretion .....	708
d) Composition of the Group Creditors' Committee.....	708
aa) Size of the Group Creditors' Committee .....	708
bb) Creditors' Committees of Secondary Importance.....	709
cc) Members of the Group Creditors' Committee .....	709
dd) Employee Representative as Mandatory Member.....	709
e) Group Creditors' Committee and Creditors' Meetings .....	709
3. Appeal .....	710
4. Tasks, Rights and Duties of the Group Creditors' Committee.....	710
a) Appointment of the Proceedings Coordinator .....	710
b) Approval of the Coordination Plan .....	711
c) Duties to Cooperate .....	711
d) Relationship between the Group Creditors' Committee and Creditors' Committees.....	711
e) No Decision-Making Power on the part of the Group Creditors' Committee concerning the use of the Coordination Plan as a Basis in the Individual Proceedings .....	711
5. Organisation of the Group Creditors' Committee.....	711
a) Invitation to Meetings .....	711
b) Adoption of Resolutions .....	712
c) Duty of Confidentiality .....	712
d) Conflict of Interests.....	712
6. Resignation/Removal from the Group Creditors' Committee .....	712
<b>Chapter Two. Coordination Proceedings.....</b>	<b>714</b>
Section 269d. Coordination Court .....	714
1. Purpose of the Provision.....	714
2. Coordination Proceedings – Structure and European Insolvency Regulation .....	714
3. Request for Institution of Coordination Proceedings.....	715
4. Merits of the Application: Discretionary Decision on the Institution of Proceedings.....	715
5. Practice Notes.....	716
Section 269e. Proceedings Coordinator .....	716
1. Purpose of the Provision.....	717
2. The Person Appointed as Coordinator .....	717
3. Group Creditors' Committee and Other Matters .....	718
Section 269f. Duties and Legal Status of the Coordinator .....	718
1. Purpose of the Provision.....	719
2. Duties of the Proceedings Coordinator.....	719
3. Insolvency Administrators' Duty to Cooperate.....	720
4. Other Applicable Provisions: Sections 56 to 60 and 62 to 65.....	721
Section 269g. Remuneration of the Proceedings Coordinator .....	722
1. Purpose of the Provision.....	722
2. Claim for Remuneration, Expenses, Standard Rate.....	722
3. Additions and Deductions, Expenses, Procedure.....	723
4. Cost Allocation (Subsection (2)), Debtor, Liability .....	723
Section 269h. Coordination Plan.....	724
1. Purpose of the Provision.....	724
2. The Coordination Plan Tool.....	724
3. Content of the Coordination Plan.....	726

4. Proposed Structure of a Coordination Plan .....	727
5. Process for and Adoption of the Insolvency Plan .....	728
a) Entitlement to Present a Plan.....	728
b) Pending Nature of the Coordination Proceedings.....	728
c) Approval of the Group Creditors' Committee .....	728
d) Checking and Confirmation by the Coordination Court .....	728
6. Legal Remedy against Confirmation of the Coordination Plan .....	729
Section 269i. Derogations from the Coordination Plan.....	729
1. Purpose of the Provision.....	729
2. Explanation of the Coordination Plan at the Creditors' Meeting.....	730
3. Decision of the Creditors' Meeting on the Coordination Plan.....	731
French Insolvency and Restructuring Law – Part 11 .....	732
<i>Group Insolvency Law</i> .....	732
1. Concentration of Jurisdiction .....	732
a) General Concentration of Jurisdiction.....	732
b) Concentration of Jurisdiction at Specialised Commercial Courts.....	733
aa) Subject Matter Jurisdiction.....	733
bb) Territorial Jurisdiction.....	733
2. Special Rules for Appointment of the Organs of the Proceedings, Particularly in Relation to Group Insolvency Situations .....	733
Italian Insolvency and Restructuring Law – Part 11 .....	735
<i>Group Insolvency Law</i> .....	735
Dutch Insolvency and Restructuring Law – Part 11 .....	736
<i>Group Insolvency Law</i> .....	736
Polish Insolvency and Restructuring Law – Part 11 .....	737
<i>Group Insolvency Law</i> .....	737
1. Fundamentals of the Law of Corporate Groups in Poland .....	737
2. Special Arrangements in Group Insolvency Law in Poland.....	738
3. Special Arrangements in Group Insolvency Law at EU Level.....	738
Insolvency and Restructuring law of England and Wales – Part 11 .....	740
<i>Insolvency over the Assets of Groups of Companies</i> .....	740
US Insolvency and Restructuring Law – Part 11 .....	741
<i>Group Insolvency Law</i> .....	741
1. Joint Administration.....	741
2. Substantive Consolidation – Theory.....	741
3. Substantive Consolidation – Practice.....	742
4. Other Provisions Addressing Company Groups.....	742
Japanese Insolvency and Restructuring Law – Part 11 .....	744
<i>Group Insolvency Law</i> .....	744

## PART EIGHT SELF-ADMINISTRATION

Section 270. Requirements.....	745
1. Basic Principles and Regulatory Purpose of Self-Administration Proceedings.....	746
2. Requirements for Issue of Order .....	746
3. Basic Structure of Self-Administration Proceedings.....	746
4. Refusal of Application for Self-Administration .....	746
5. Validity of the General Provisions/Consumer Insolvency Proceedings.....	746
Section 270a. Preliminary Insolvency Proceedings .....	747
1. Self-Administration and Preliminary Insolvency Proceedings .....	747
2. Requirements for the Appointment of a Preliminary Supervisor .....	747
3. Legal Status of the Preliminary Supervisor.....	748
Section 270b. Preparation for Restructuring .....	748
1. Purpose of the New Rule.....	748
2. Requirements for the Protective Shield .....	749
a) Grounds for Insolvency.....	749
b) Obligatory Applications by the Debtor .....	749

c) Statement.....	749
d) Other Requirements.....	749
3. Selection of the Preliminary Supervisor .....	749
a) Other Legal Consequences .....	750
b) Revocation of the Protective Shield.....	750
c) Transition to Commencement of Proceedings.....	751
Section 270c. Appointment of the Supervisor.....	751
1. Purpose of the Provision.....	751
2. Detailed Analysis .....	751
Section 270d. Self-Administration in the Case of Group-Affiliated Debtors.....	751
1. Purpose of the Provision.....	751
2. Rights and Duties of the Debtor.....	752
3. The Role of the Supervisor.....	752
Section 271. Subsequent Order.....	753
1. Purpose of the Provision.....	753
2. Detailed Analysis .....	753
a) Creditors' Meeting.....	753
b) Protection of the Individual Creditor.....	753
c) Insolvency Administrator as Supervisor .....	753
Section 272. Revocation of the Order .....	753
1. Request by the Creditors' Meeting (Subsection (1) No. 1) .....	754
2. Request by a Creditor .....	754
a) Threat of Significant Detriment.....	754
b) Requirements for the Order No Longer Met.....	754
c) Formal Requirements .....	754
3. Request by the Debtor (Subsection (1) No. 3).....	754
4. Legal Consequences .....	754
5. Appeal .....	755
Section 273. Publication .....	755
Section 274. Legal Status of the Supervisor .....	755
1. Purpose of the Provision.....	755
2. Legal Status and Appointment of the Supervisor .....	755
3. Liability of the Supervisor.....	756
4. Remuneration of the Supervisor .....	756
5. Duty of Notification.....	756
Section 275. Involvement of the Supervisor .....	756
1. Purpose of the Provision.....	756
2. Liabilities and Course of Business .....	756
3. Requirement for Approval .....	757
4. Supervisor's Right of Objection.....	757
5. Right of the Supervisor to Manage the Cash Account .....	757
Section 276. Involvement of the Creditors' Committee.....	757
1. Purpose of the Provision.....	758
2. Detailed Analysis .....	758
a) Concept of a Legal Act.....	758
b) Important Legal Acts.....	758
c) Obtaining Consent.....	758
Section 276a. Involvement of Supervisory Bodies.....	758
1. Purpose of the Provision.....	758
2. Detailed Analysis .....	758
Section 277. Ordering the Requirement of Approval.....	759
1. Purpose of the Provision.....	759
2. Detailed Analysis .....	759
a) Application by the Creditors' Meeting.....	759
b) Concept of "Transaction" .....	759
c) Urgent Cases.....	760
Section 278. Funds for the Debtor's Living Expenses .....	760
1. Purpose of the Provision.....	760
2. Detailed Analysis .....	760

Section 279. Reciprocal Contracts.....	760
1. Purpose of the Provision.....	760
2. Detailed Analysis .....	761
a) Expected (as Opposed to Mandatory) Agreement .....	761
b) Rights Subject to Approval.....	761
Section 280. Liability. Avoidance in Insolvency .....	761
1. Purpose of the Provision.....	761
2. Detailed Analysis .....	761
Section 281. Provision of Information to the Creditors .....	761
1. Purpose of the Provision.....	762
2. Detailed Analysis .....	762
Section 282. Realisation of Collateral .....	762
1. Purpose of the Provision.....	762
2. Detailed Analysis .....	763
Section 283. Satisfaction of Insolvency Creditors.....	763
1. Purpose of the Provision.....	763
2. Detailed Analysis .....	763
Section 284. Insolvency Plan .....	764
1. Purpose of the Provision.....	764
2. Detailed Analysis .....	764
a) Right of Submission .....	764
b) Monitoring Implementation of the Plan.....	764
Section 285. Deficiency of Assets .....	764
French Insolvency and Restructuring Law – Part 12.....	765
<i>Self-Administration</i> .....	765
1. Self-Administration in Continuation Proceedings.....	765
a) Self-Administration during Safeguard Proceedings ( <i>Procédure de sauvegarde</i> ).....	765
b) Self-Administration during Restructuring Proceedings ( <i>Procédure de redressement</i> ).....	766
2. No Self-Administration in Liquidation Proceedings.....	766
3. Consequences of Acts undertaken by the Debtor Ultra Vires.....	767
Italian Insolvency and Restructuring Law – Part 12.....	768
<i>Self-Administration</i> .....	768
Dutch Insolvency and Restructuring Law – Part 12 .....	769
<i>Self-Administration</i> .....	769
Polish Insolvency and Restructuring Law – Part 12 .....	770
<i>Self-Administration</i> .....	770
1. Reform of Polish Insolvency Law.....	770
2. Principle of Self-Administration in Restructuring Proceedings .....	770
3. Exception in Remedial Proceedings.....	770
Insolvency and Restructuring law of England and Wales – Part 12 .....	772
<i>Debtor-in-Possession Proceedings</i> .....	772
US-Insolvency and Restructuring Law – Part 12.....	774
<i>Debtor-in-Possession</i> .....	774
1. Debtor-in-Possession is the Rule in Chapter 11 BC .....	774
2. The Rights of the Debtor-in-Possession.....	774
3. Practical Considerations.....	775
Japanese Insolvency and Restructuring Law – Part 12.....	776
<i>Self-Administration</i> .....	776

## PART NINE DISCHARGE OF RESIDUAL DEBT

Section 286. Principle.....	779
Section 287. Debtor's Application.....	780
Section 287a. Decision of the Insolvency Court .....	780

Section 287b. Debtor's obligation to secure income.....	781
Section 288. Appointment of the Trustee .....	781
Section 289. Discontinuation of the Insolvency Proceedings .....	781
Section 290. Refusal of Discharge of Residual Debt .....	782
1. Purpose of the Provision.....	783
2. In Detail .....	783
Section 291. (repealed) .....	783
Section 292. Legal Status of the Trustee .....	784
Section 293. Remuneration of the Trustee.....	784
Section 294. Equal Treatment of Creditors.....	784
Section 295. Debtor's Obligations .....	785
1. Purpose of the Provision.....	785
2. In Detail .....	785
Section 296. Breach of Obligations.....	786
Section 297. Insolvency Offences .....	787
Section 297a. Grounds for Refusal Emerging Subsequently .....	787
Section 298. Cover for the Trustee's Minimum Remuneration .....	788
Section 299. Premature Termination .....	788
Section 300. Decision on Discharge of Residual Debt .....	788
Section 300a. New Asset Acquisitions in Ongoing Insolvency Proceedings.....	789
Section 301. Effect of Discharge of Residual Debt.....	790
Section 302. Excluded Claims .....	790
Section 303. Revocation of Discharge of Residual Debt.....	791
Section 303a. Registration in the List of Debtors .....	792

## PART TEN CONSUMER INSOLVENCY PROCEEDINGS

Section 304. Principle.....	793
Section 305. Debtor's Application for Commencement of Insolvency Proceedings .....	794
Section 305a. Failure of Out-of-Court Debt Settlement .....	795
Section 306. Suspension of Proceedings .....	795
Section 307. Service on the Creditors.....	796
Section 308. Acceptance of the Debt Settlement Plan.....	796
Section 309. Substitution of Approval.....	797
Section 310. Costs .....	798
Section 311. Resumption of Proceedings Relating to the Application for Commencement of Insolvency Proceedings.....	798
Sections 312–314 (repealed) .....	798
French Insolvency and Restructuring Law – Part 13.....	799
<i>Consumer Insolvency Proceedings and Discharge of Residual Debt</i> .....	799
1. Discharge of Residual Debt.....	799
2. Consumer Insolvency Proceedings.....	799
a) Proceedings before the Commission for Overindebtedness ( <i>commission de surendettement</i> ) .....	800
aa) Debt settlement proceedings ( <i>traitement du surendettement</i> ) .....	800
bb) Discharge of residual debt proceedings ( <i>rétablissement personnel</i> ) .....	800
b) Special Local Law in the <i>Départements</i> of Alsace and Moselle .....	801



Italian Insolvency and Restructuring Law – Part 13 .....	802
<i>Consumer and Civil Insolvency</i> .....	802
1. Overview .....	802
2. Debt Restructuring Agreement .....	803
3. Restructuring Plan .....	803
4. Asset Liquidation .....	804
5. Distress Resolution Authority .....	805
Dutch Insolvency and Restructuring Law – Part 13 .....	806
<i>Consumer Insolvency Proceedings</i> .....	806
Polish Insolvency and Restructuring Law – Part 13 .....	808
<i>Consumer Bankruptcy Proceedings</i> .....	808
1. Scope of Consumer Bankruptcy Proceedings .....	808
2. Requirements for Commencement of Consumer Bankruptcy Proceedings .....	808
3. Realisation of Assets .....	809
4. Payment Plan and Discharge of Residual Debt .....	809
Insolvency and Restructuring law of England and Wales – Part 13 .....	810
<i>Insolvency Proceedings for Consumers</i> .....	810
US Insolvency and Restructuring Law – Part 13 .....	811
<i>Consumer Bankruptcy</i> .....	811
1. Means Test .....	811
2. Chapter 7 BC .....	811
3. Chapter 13 BC .....	812
Japanese Insolvency and Restructuring Law – Part 13 .....	813
<i>Consumer Insolvency Proceedings</i> .....	813

## PART ELEVEN

### SPECIAL TYPES OF INSOLVENCY PROCEEDINGS

<b>Chapter One. Insolvency Proceedings Relating to a Deceased's Estate</b> .....	815
1. Liabilities of the Estate .....	815
2. Liability of Heirs .....	815
a) Provisional Heir .....	815
b) Limitation of Liability .....	816
c) Liability of Heirs in a Community of Heirs .....	816
Section 315. Local Jurisdiction .....	816
1. Purpose of the Provision .....	817
2. Debtor .....	817
3. Insolvency Estate .....	817
4. Procedural Matters .....	817
Section 316. Admissibility of Commencement .....	818
1. Purpose of the Provision .....	818
2. Subsection (1) Alternative 1 .....	818
3. Subsection (1) Alternative 2 .....	818
4. Subsections (1) and (2) .....	819
Section 317. Parties Entitled to Apply for Commencement .....	819
1. Purpose of the Provision .....	819
2. Detailed Analysis .....	819
a) Duty to Apply .....	819
b) Heir's Right of Application .....	819
c) Right of Application of the Administrator, Curator and Executor of the Estate .....	820
d) Creditors' Right of Application .....	820
e) Insolvent Heir .....	820
Section 318. Right of Application in Case of Joint Marital Property .....	820
Section 319. Time Limit for Application .....	821
Section 320. Grounds for Commencement .....	821
1. Purpose of the Provision .....	821
2. Detailed Analysis .....	821

Section 321. Compulsory Enforcement after Death of Deceased .....	822
1. Purpose of the Provision.....	822
2. Detailed Analysis .....	822
Section 322. Avoidable Legal Acts by the Heir.....	822
Section 323. Heir's Expenses .....	823
Section 324. Preferential Liabilities .....	823
1. Purpose of the Provision.....	824
2. Detailed Analysis .....	824
Section 325. Liabilities of the Estate .....	824
Section 326. Claims of the Heirs .....	825
1. Purpose of the Provision.....	825
2. Detailed Analysis .....	825
a) Subsection (1).....	825
b) Subsection (2).....	825
c) Subsection (3).....	826
Section 327. Subordinated Liabilities.....	826
1. Purpose of the Provision.....	826
2. Detailed Analysis .....	826
a) Subsection (1).....	826
b) Subsection (2).....	827
c) Subsection (3).....	827
Section 328. Returned Assets .....	827
1. Purpose of the Provision.....	827
2. Detailed Analysis .....	828
Section 329. Subsequent Succession .....	828
Section 330. Purchase of an Inheritance.....	828
1. Purpose of the Provision.....	829
2. Detailed Analysis .....	829
Section 331. Simultaneous Insolvency of the Heir.....	829
1. Purpose of the Provision.....	830
2. Subsection (1) .....	830
3. Subsection (2) .....	830
<b>Chapter Two. Insolvency Proceedings Relating to the Joint Marital Property of a Continued Community of Property.....</b>	<b>832</b>
Section 332. Reference to Insolvency Proceedings Relating to a Deceased's Estate.....	832
1. Purpose of the Provision.....	832
2. Detailed Analysis .....	832
a) Liability Position in Substantive Law.....	832
b) Insolvency Creditors .....	832
c) Right of Application .....	833
d) Insolvency Estate .....	833
e) Grounds for Commencement.....	833
<b>Chapter Three. Insolvency Proceedings Relating to the Jointly Managed Joint Marital Property of a Community of Property .....</b>	<b>834</b>
Section 333. Right of Application. Grounds for Commencement.....	834
1. Purpose of the Provision.....	834
2. Detailed Analysis .....	834
Section 334. Personal Liability of the Spouses .....	835
French Insolvency and Restructuring Law – Part 14.....	836
<i>Insolvency of a Deceased's Estate .....</i>	<i>836</i>
1. No Separate Proceedings for Insolvency of a Deceased's Estate under French Insolvency Law .....	836
a) Commencement of Insolvency Proceedings concerning a Deceased's Assets.....	836
b) Acceptance of Inheritance subject to Preparation of an Inventory.....	837
2. Special Provisions under Local Law: the Situation in the three <i>Départements</i> in Alsace and Moselle .....	837

Italian Insolvency and Restructuring Law – Part 14 .....	839
<i>Insolvency Proceedings Relating to a Deceased's Estate</i> .....	839
Dutch Insolvency and Restructuring Law – Part 14 .....	840
<i>Insolvency of a Deceased's Estate</i> .....	840
Polish Insolvency and Restructuring Law – Part 14 .....	841
<i>Deceased's Estate</i> .....	841
1. Main Features of Bankruptcy Proceedings in Respect of a Deceased's Estate in Polish Law .....	841
2. Requirements for Commencement of Bankruptcy Proceedings in Respect of a Deceased's Estate.....	841
3. Legal Effects .....	842
4. Enforcement Order .....	842
5. Death of the Insolvency Debtor following Commencement of Bankruptcy Proceedings.....	842
Insolvency and Restructuring law of England and Wales – Part 14 .....	843
<i>The Administration of Insolvent Estates of Deceased Persons</i> .....	843
1. Introduction .....	843
2. Regulatory Framework .....	843
3. Process and Administration of the Estate.....	843
US Insolvency and Restructuring Law – Part 14 .....	846
<i>Insolvency of a Deceased's Estate</i> .....	846
Japanese Insolvency and Restructuring Law – Part 14.....	847
<i>Insolvency of a Deceased's Estate</i> .....	847

## PART TWELVE INTERNATIONAL INSOLVENCY LAW

<b>Chapter One. General Provisions</b> .....	849
1. Principles of International Insolvency Law .....	849
a) Universality and Territoriality.....	849
b) Governing Law.....	849
2. Entry into Force and Applicability of Section 335 et seq.....	850
3. European Insolvency Regulation.....	850
4. Relationship between German and European Law.....	850
a) Legal Sources .....	850
b) Situations Outside the EIR.....	850
c) Situations within the EIR.....	850
5. Other Legal Codes.....	851
a) Treaties with Switzerland.....	851
b) UNCITRAL Model Law.....	851
c) Credit Institutions, Investment Firms and Insurance Undertakings.....	852
Section 335. Principle.....	852
1. Purpose of the Provision.....	852
2. Definition of Insolvency Proceedings .....	852
3. Effects of Insolvency Proceedings; <i>lex fori concursus</i> .....	853
4. Ordre Public Objection to Section 335.....	854
5. International Group Insolvency Law .....	854
Section 336. Contracts Relating to Immovable Property.....	854
1. Purpose of the Provision.....	854
2. Contracts Relating to Rights in Rem in Immovable Property .....	855
3. Contracts Relating to Rights to Make Use of Immovable Property .....	855
4. Ships and Aircraft.....	855
5. Temporal Application.....	855
6. Difference from EU Law .....	855
7. Practice Notes.....	856
a) Notes for Legal Advice Practice .....	856
b) Real Property in Germany.....	856
c) Preliminary Insolvency Proceedings .....	856
Section 337. Employment Relationships.....	856
1. Purpose of the Provision.....	856
2. Concept of Employment Relationship.....	857
3. Difference from EU Law .....	857

4. Place of Jurisdiction .....	857
5. Practice Notes.....	857
Section 338. Set-off.....	858
1. Purpose of the Provision.....	858
2. Grounds for Set-off Position.....	858
3. Admissibility of a Set-off in Insolvency .....	858
a) Principle of <i>lex fori concursus</i> .....	858
b) Exception of Section 338 on Grounds of Protection of the Law.....	859
c) Time Limitations .....	859
4. Difference from EU Law.....	859
5. Practice Notes.....	859
Section 339. Avoidance in Insolvency.....	859
1. Purpose of the Provision.....	859
2. Avoidance under the <i>lex fori concursus</i> .....	860
a) Definition of Law on Avoidance.....	860
aa) Avoidance in Insolvency by the Insolvency Administrator.....	860
bb) Reversal of Enforcement pursuant to Section 88 .....	860
cc) Avoidable Set-off pursuant to Section 96 (1) No. 3.....	861
b) Examination pursuant to the <i>lex fori concursus</i> .....	861
3. Validity of Another Legal System.....	861
4. "Not Open to Challenge in any Way" .....	861
a) No Restriction on Avoidance in Insolvency Law.....	861
b) Accumulation for Calculating Time Limits.....	861
c) No Accumulation of Procedural Requirements .....	861
d) No Accumulation for the Limitation Period.....	861
e) No Accumulation of Legal Consequences.....	862
5. Burden of Proof and Argument.....	862
6. Relation to Other Reference Rules .....	862
7. Vis Attractiva Concursus.....	862
8. Difference from the EIR.....	863
9. Practice Notes.....	863
a) Review of Foreign Legal Systems.....	863
b) Structuring Possibilities.....	863
c) Problems in Legal Practice .....	863
Section 340. Organised Markets. Repurchase Agreements .....	864
1. Purpose of the Provision.....	864
2. Organised Markets (Subsection (1)) .....	864
3. Repurchase Agreements, Contracts for Novation, Netting Agreements (Subsection (2)) .....	864
4. Systems pursuant to Section 1 (16) of the Banking Act.....	865
5. Particular Aspects of EU Law.....	865
Section 341. Exercise of Creditors' Rights.....	865
1. Purpose of the Provision.....	866
2. Filing of Claims by Creditors (Subsection (1)).....	866
3. Filing of Claims by the Insolvency Administrator (Subsection (2)).....	866
a) Filing by the Insolvency Administrator .....	866
aa) Creditor Interest.....	866
bb) Form of Filing.....	866
cc) Withdrawal of filing.....	867
b) No Filings by the Insolvency Administrator.....	867
4. Authorisation of Insolvency Administrator (Subsection (3)).....	867
a) Legal Fiction .....	867
b) Requirements.....	867
c) Scope of Authorisation.....	867
5. Difference from EU Law.....	867
6. Practice Notes.....	868
Section 342. Return. Imputation .....	868
1. Purpose of the Provision.....	868
2. Satisfaction through Compulsory Enforcement or Payment by the Debtor (Subsection (1)).....	868
a) Principle.....	868
b) Requirements.....	869
c) Legal Consequences .....	869

3. Satisfaction through Insolvency Proceedings (Subsection (2))	869
a) Recognition of Satisfaction	869
b) Imputation in Other Insolvency Proceedings	869
4. Right to Information (Subsection (3))	870
5. Difference from EU Law	870
6. Practice Notes	870
<b>Chapter Two. Foreign Insolvency Proceedings</b>	871
Section 343. Recognition	871
1. Purpose of the Provision	871
2. Principle of Recognition of Commencement (Subsection (1) Sentence 1)	871
a) Requirements	871
aa) Insolvency Proceedings	871
bb) Effectiveness of Commencement	872
b) Legal Consequences	872
3. Exceptions (Subsection (1) Sentence 2)	872
a) Insolvency Court has no Jurisdiction (No. 1)	872
b) Violation of the <i>ordre public</i> (No. 2)	873
4. Recognition of Protective Measures and Other Decisions (Subsection (2))	873
a) Protective Measures	873
b) Other Decisions	873
Section 344. Protective Measures	874
1. Purpose of the Provision	874
2. Preliminary Administration Abroad	874
3. Application by Administrator	875
4. Securing Assets Covered by Domestic Secondary Insolvency Proceedings	875
5. Competent Insolvency Court	875
6. Measures under Section 21	876
7. Immediate Appeal	876
8. Practice Notes	876
Section 345. Publication	876
1. Purpose of the Provision	877
2. Requirements	877
a) Recognition of Commencement of Proceedings	877
b) Application by Foreign Administrator for Publication or Publication ex officio	877
c) Protective Measures	877
3. Legal Consequences	878
4. Jurisdiction	878
5. Costs	878
6. Immediate Appeal	878
7. Practice Notes	878
Section 346. Land Register	879
1. Purpose of the Provision	879
2. Requirements	879
a) Recognition of Commencement of Proceedings	879
b) Restriction on Power of Disposal	880
c) Application by the Foreign Administrator	880
3. Legal Consequences	880
a) Request to Land Registry	880
b) Ships and Aircraft	880
c) Cancellation of Entry	880
4. Jurisdiction	881
5. Immediate Appeal	881
Section 347. Proof of Appointment of Administrator. Notification of the Court	881
1. Purpose of the Provision	881
2. Proof of Appointment (Subsection (1))	881
3. Informing the Insolvency Court (Subsection (2))	882
Section 348. Competent Insolvency Court. Co-operation between Insolvency Courts	882
1. Purpose of the Provision	882
2. Jurisdiction for Decisions pursuant to Sections 344 to 346	883
3. Concentration of Jurisdiction	883

4. Cooperation between Insolvency Courts .....	883
5. Practice Notes.....	884
Section 349. Disposals of Immovable Assets .....	884
1. Purpose of the Provision.....	884
2. Disposals of Immovable Property.....	885
a) Requirements.....	885
b) Legal Consequences .....	885
3. Priority Notice.....	885
Section 350. Performance in Favour of the Debtor .....	885
1. Purpose of the Provision.....	886
2. Requirements.....	886
3. Legal Consequences .....	886
4. Reversal of Burden of Proof.....	886
5. Practice Notes.....	887
Section 351. Rights in Rem.....	887
1. Purpose of the Provision.....	887
2. Rights in Rem of Third Parties (Subsection (1)) .....	887
a) General Scheme.....	887
b) Affected Rights in Rem of Third Parties.....	888
aa) Entitlement to Segregation or Separate Satisfaction of a Third Party.....	888
bb) In Assets of the Insolvency Estate .....	888
cc) Situated on Domestic Territory at the Time of Commencement .....	888
c) Legal Consequence.....	888
d) Consequences and Strategic Options.....	888
3. Debtor's Rights (Subsection (2)).....	889
a) Debtor's Rights in Immovable Assets.....	889
b) Situated on Domestic Territory.....	889
c) Applicability of German law.....	889
d) Validity of Section 336 Sentence 2 .....	889
4. Practice Notes.....	890
Section 352. Interruption and Resumption of Legal Disputes in Court .....	890
1. Purpose of the Provision.....	890
2. Interruption of Legal Disputes in Court.....	891
a) By Commencement of Insolvency (Subsection (1)).....	891
b) By Transfer of the Power of Management and Disposal (Subsection (2)).....	891
c) Legal Consequences .....	891
d) End of Interruption.....	891
3. Resumption of Legal Disputes in Court.....	891
Section 353. Enforceability of Foreign Decisions .....	892
1. Purpose of the Provision.....	892
2. Decision in Foreign Insolvency Proceedings.....	892
3. Domestic Enforcement.....	892
<b>Chapter Three. Territorial Insolvency Proceedings Relating to Domestic Assets.....</b>	<b>893</b>
Section 354. Requirements for Territorial Insolvency Proceedings .....	893
1. Purpose of the Provision.....	893
2. Requirements.....	893
a) Main Insolvency Proceedings Not Possible on Domestic Territory.....	893
b) Establishment or Assets on Domestic Territory .....	893
c) Right of Application .....	894
3. Legal Consequences .....	894
a) Admissibility of Territorial Insolvency Proceedings .....	894
aa) Domestic Assets Attached to the Insolvency Estate.....	894
bb) No Restriction on Claims of Insolvency Creditors and New Liabilities of the Estate.....	894
cc) Review of Grounds for Insolvency .....	894
dd) Coverage of Procedural Costs of Insolvency.....	894
b) Limitation of Main Insolvency Proceedings.....	894
4. Jurisdiction .....	894
5. Practice Notes.....	895
Section 355. Discharge of Residual Debt. Insolvency Plan .....	895
1. Purpose of the Provision.....	895
2. Discharge of Residual Debt .....	895

3. Insolvency Plan.....	895
4. Practice Notes.....	895
Section 356. Secondary Insolvency Proceedings.....	896
1. Purpose of the Provision.....	896
2. Admissibility of Secondary Insolvency Proceedings .....	896
3. Foreign Administrator's Right of Application.....	896
4. No Examination of Grounds for Commencement.....	896
5. Practice Notes.....	897
Section 357. Co-operation between Insolvency Administrators.....	897
1. Purpose of the Provision.....	897
2. Notification .....	898
3. Right to Submit Proposals for Realisation and Management .....	898
4. Right to Attend Creditors' Meetings.....	898
5. Right to Initiate Insolvency Plan .....	898
Section 358. Surplus on Final Distribution.....	898
1. Purpose of the Provision.....	898
2. Surplus on Final Distribution .....	899
French Insolvency and Restructuring Law – Part 15.....	900
<i>International Insolvency Law</i> .....	900
1. Jurisdiction of the French Courts .....	900
2. Effects of Commencement of French Insolvency Proceedings.....	901
3. Recognition of Foreign Insolvency Proceedings.....	901
a) Effects of Foreign Insolvency Proceedings without Exequatur.....	901
b) Exequatur Proceedings.....	902
c) Effects of Foreign Insolvency Proceedings following Exequatur.....	902
Italian Insolvency and Restructuring Law – Part 15.....	905
<i>International Insolvency Law</i> .....	905
Dutch Insolvency and Restructuring Law – Part 15.....	906
<i>International Insolvency Law</i> .....	906
Polish Insolvency and Restructuring Law – Part 15.....	908
<i>International Insolvency Law</i> .....	908
1. Applicable Provisions .....	908
2. Necessity of Recognition Proceedings.....	908
3. Effects of Recognition.....	909
4. Powers and Duties of the Foreign Trustee.....	909
5. Modification and Revocation of Recognition .....	910
6. Special Provisions in the Case of Secondary Insolvency Proceedings.....	910
Insolvency and Restructuring law of England and Wales – Part 15.....	917
<i>International Insolvency Law</i> .....	917
1. Introduction.....	917
2. Regulatory Framework .....	917
3. Main Features.....	918
US Insolvency and Restructuring Law – Part 15.....	922
<i>International Insolvency Law</i> .....	922
1. Chapter 15 BC.....	922
2. Relief Available to the Foreign Proceeding, Sections 1519 to 1521 BC.....	922
3. Qimonda.....	923
4. Applicable Bankruptcy Law – For Example: Avoidance Actions.....	923
5. Filing for Chapter 15 BC and Costs.....	924
Japanese Insolvency and Restructuring Law – Part 15.....	933
<i>International Insolvency Law</i> .....	933
1. Petition for Recognition and Assistance .....	933
2. Recognition Order .....	933
3. Measures accompanying the Recognition and Assistance Proceedings.....	934
4. Recognition Trustee .....	934
5. Provisional Administration Order.....	935
6. Rescission of Recognition.....	935
7. Conflict with Domestic/Japanese Insolvency Proceedings.....	935

**PART THIRTEEN  
ENTRY INTO FORCE**

Section 359. Reference to the Introductory Act.....	967
<b>Appendix I. The Civil, Tax and Criminal Liability of the Management of a Company in Financial Crisis</b>	<b>969</b>
<b>Appendix II. Glossary</b> .....	<b>991</b>
<b>Appendix III. UNCITRAL Model Law</b> .....	<b>1021</b>
<b>Appendix IV. Insolvency Courts in Germany</b> .....	<b>1097</b>
<b>Index</b> .....	<b>1105</b>