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CROSS-BORDER INSOLVENCY PROCEEDINGS
AND SECURITY RIGHTS

Michael Veder

CROSS-BORDER INSOLVENCY PROCEEDINGS AND SECURITY RIGHTS

A comparison of Dutch and German law,
the EC Insolvency Regulation and the
UNCITRAL Model Law on Cross-Border Insolvency

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PAUL MICHAEL VEDER

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Under the supervision of:
Professor Sebastian Kortmann
Professor Antoon Struycken

Committee:
Professor Axel Flessner, Humboldt-Universität, Berlin
Professor Jako van Hees
Professor Rick Verhagen

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A COMPARISON OF DUTCH AND GERMAN
LAW, THE EC INSOLVENCY REGULATION
AND THE UNCITRAL MODEL LAW ON
CROSS-BORDER INSOLVENCY

SERIES LAW OF BUSINESS AND FINANCE

Editors

Sebastian Kortmann
Dennis Faber

Volume 8

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**EEN WETENSCHAPPELIJKE PROEVE OP HET GEBIED
VAN DE RECHTSGELEERDHEID**

TER VERKRIJGING VAN DE GRAAD VAN DOCTOR
AAN DE RADBOUD UNIVERSITEIT NIJMEGEN
OP GEZAG VAN DE RECTOR MAGNIFICUS, PROF. C.W.P.M. BLOM,
VOLGENS BESLUIT VAN HET COLLEGE VAN DECANEN
IN HET OPENBAAR TE VERDEDIGEN OP
WOENSDAG 22 DECEMBER 2004
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PREFACE BY THE SERIES' EDITORS

The Business and Law Research Centre, established in 1994, is a leading research institute in the field of commercial and private law, recognised by the Royal Dutch Academy of Sciences. Participants in the Business and Law Research Centre are the Faculty of Law of the Radboud University Nijmegen¹ and a number of renowned law firms and companies.

The Netherlands have a largely underdeveloped system of international insolvency law. The introduction of the Insolvency Regulation provides a good opportunity to rethink the core principles that govern the Dutch approach to cross-border insolvencies.

Following a comparison of the position of secured creditors in Dutch and German insolvency law, Michael Veder examines how the Insolvency Regulation, the UNCITRAL Model Law on Cross-Border Insolvency and Dutch and German customary private international law deal with cross-border aspects of insolvency proceedings. He convincingly reveals the shortcomings of the present approach of Dutch law to cross-border insolvency issues. At the same time he presents proposals for future legislation that are of great interest and may lead to a more effective and efficient operation of cross-border insolvency proceedings. With respect to the recognition in the Netherlands of insolvency proceedings opened outside of the EU, he suggests to follow the system of the UNCITRAL Model Law on Cross-Border Insolvency, i.e. to require a decision of the Dutch court to that effect. With respect to the effects of such recognition, however, he argues that the system and conflict rules of the Insolvency Regulation should be followed.

Furthermore, the author deals with the conflict rules of Dutch and German private international law regarding the transfer and encumbrance of assets situated in other States. Starting from the validity of the security right invoked by the secured creditor, the question arises whether and, if so, to what extent the opening of an insolvency proceeding influences the position of the secured creditor. In this respect Michael Veder, among other things, discusses the operation of Article 5 of the Insolvency Regu-

1 Formerly "University of Nijmegen".

lation. With regard to Dutch customary private international law, he argues that a rule similar to Article 5 of the Insolvency Regulation should be adopted in future Dutch legislation.

In this doctoral thesis Michael Veder deals with a number of fascinating and often complex legal questions. His answers to these questions and his proposals for future legislation have great practical and academic relevance. We feel privileged to have this dissertation published in our Series and wish that it will find its way to legal practitioners and scholars throughout Europe.

October 2004

Professor Sebastian Kortmann
Chairman of the Board of the
Business and Law Research Centre

Dennis Faber
Director of the Business
and Law Research Centre

ABBREVIATIONS

AA	Ars Aequi
A.C.	Appeal Cases
AG	Amtsgericht
All ER	All England Reports
BCC	British Company Law Cases
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
BR-Drucksache	Bundesratsdrucksache
BT-Drucksache	Bundestagsdrucksache
BW	Burgerlijk Wetboek
DZWIR	Deutsche Zeitschrift für Wirtschafts- und Insolvenzrecht
ECJ	European Court of Justice
ECR	European Court Reports
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuch
EGInsO	Einführungsgesetz zur Insolvenzordnung
EWiR	Entscheidungen zum Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
Fw	Faillissementswet
HR	Hoge Raad der Nederlanden
IIR	International Insolvency Review
InsO	Insolvenzordnung
IPRax	Praxis des internationalen Privat- und Verfahrensrechts
IPRG	Bundesgesetz über das Internationale Privatrecht
IPRspr	Die deutsche Rechtsprechung auf dem Gebiete des internationalen Privatrechts
IR	EC Insolvency Regulation
JOR	Jurisprudentie Onderneming & Recht
JZ	Juristenzeitung
KO	Konkursordnung
KTS	Konkurs- Treuhand- und Schiedsgerichtswesen, Zeitschrift für Insolvenzrecht
LG	Landgericht
LMCLQ	Lloyd's Maritime and Commercial Law Quarterly
NbBW	Nieuwsbrief BW
NILR	Netherlands International Law Review
NIPR	Nederlands internationaal privaatrecht
NJ	Nederlandse Jurisprudentie
NJB	Nederlands Juristenblad

NJW	Neue Juristische Wochenschrift
NTBR	Nederlands Tijdschrift voor Burgerlijk Recht
NZI	Neue Zeitschrift für das Recht der Insolvenz und Sanierung
OJ	Official Journal
OLG	Oberlandesgericht
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
Rb.	Arrondissementsrechtbank
RegEInsO	Regierungsentwurf der Insolvenzordnung
RG	Reichsgericht
RGZ	Amtliche Sammlungen der Entscheidungen des RG in Zivilsachen
Rv	Wetboek van Burgerlijke Rechtsvordering
Stb.	Staatsblad
TBH	Tijdschrift voor Belgisch Handelsrecht
TJICL	Tulane Journal of International and Comparative Law
Trb.	Tractatenblad
TvI	Tijdschrift voor Insolventierecht
TVVS	Tijdschrift voor Vennootschappen, Verenigingen en Stichtingen. Maandblad voor Ondernemingsrecht en Rechtspersonen
UNCITRAL	United Nations Commission on International Trade Law
VerglO	Vergleichsordnung
W	Weekblad van het Recht
WM	Wertpapier-Mitteilungen
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie
ZIP	Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis
ZPO	Zivilprozessordnung

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