

DALHUISEN ON INTERNATIONAL INSOLVENCY AND BANKRUPTCY

Volume 2

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TABLE OF CONTENTS

VOLUME 1

	PAGE
Dedication	iii
Preface	v

PART I

History of Creditors' Remedies and Bankruptcy Legislation and Development of the Modern Laws

CHAPTER 1

Roman Law of Creditors' Remedies

§ 1.01	Introduction	1-1
§ 1.02	Liquidation	1-4
§ 1.03	Assignment for the Benefit of Creditors	1-13
§ 1.04	Compositions	1-14
§ 1.05	Conclusion	1-17

CHAPTER 2

The Development of Creditors' Remedies and Bankruptcy in Western Europe in the Middle Ages, Renaissance, and Thereafter, up to the Codification (about 1800)

§ 2.01	Introduction	1-20
§ 2.02	Straight Bankruptcy	1-24
§ 2.03	Compositions	1-45
§ 2.04	Conclusion	1-51

CHAPTER 3

The Development of Bankruptcy in Western Europe and the United States in the Nineteenth and Twentieth Centuries

§ 3.01	Introduction	1-54
§ 3.02	France	1-58
§ 3.03	The Netherlands	1-68

	PAGE
§ 3.04 Belgium and Luxembourg	1-73
§ 3.05 Italy	1-77
§ 3.06 Spain	1-81
§ 3.07 Germany	1-82
§ 3.08 England	1-86
§ 3.09 The United States	1-92.2
§ 3.10 Conclusion	1-110

PART II

Comparative Review of the Modern Laws of Bankruptcy, Compositions, and Reorganizations in Western Europe and the United States

CHAPTER 1

Straight Bankruptcy

§ 1.01 Introduction	2-2
§ 1.02 The Opening Requirements of Straight Bankruptcy	2-16
§ 1.03 The Initial Effects of Straight Bankruptcy and the Organization of Procedure	2-36
§ 1.04 The Definition of the Estate	2-59
§ 1.05 Determination of the Rights of Creditors	2-97
§ 1.06 Collection, Execution Sale, and Distribution. Securities and Preferences	2-105
§ 1.07 The End of the Proceedings and the After-Effects of Bank- ruptcy	2-114
§ 1.08 Conclusion	2-120

CHAPTER 2

Extensions, Compositions, and Reorganizations In and Outside Bankruptcy

§ 2.01 Introduction	2-134
§ 2.02 The Opening Requirements	2-150.1
§ 2.03 The Initial Effects and Organization of the Different Proce- dures	2-164
§ 2.04 Influence of Creditors	2-173

TABLE OF CONTENTS

v

	PAGE
§ 2.05 The Definition of the Estate and the Rights of Creditors Thereeto.....	2-187
§ 2.06 Essence of the Proposal, Judicial Sanction and Its Effects...	2-193
§ 2.07 Conclusion.....	2-221

Chapter 3

Directors and Managers' Liability in Corporate Insolvency and the Lifting of the Corporate Veil

§ 3.01 Introduction.....	2-233
§ 3.02 France	2-237
§ 3.03 Belgium	2-283
§ 3.04 West Germany	2-300
§ 3.05 The Netherlands	2-329
§ 3.06 Italy (Reserved).....	2-346
§ 3.07 United Kingdom.....	2-347
§ 3.08 United States.....	2-364
§ 3.09 Conclusion.....	2-365

PART III

Recognition and Execution of Foreign Judgments, Bankruptcies, and Related Procedures

CHAPTER 1

Recognition and Execution of Foreign Judgments In General

§ 1.01 Introduction.....	3-3
§ 1.02 Principal Considerations Regarding Recognition and Execu- tion of Foreign Judgments.....	3-9
§ 1.03 Development of the Law Concerning Recognition and Execu- tion of Foreign Judgments on the European Continent ...	3-12
§ 1.04 Development of the Law Concerning Recognition and Execu- tion of Foreign Judgments in England.....	3-34
§ 1.05 Development of the Law Concerning Recognition and Execu- tion of Foreign Judgments in the United States	3-51
§ 1.06 Jurisdiction and Jurisdictionally Improper Fora as Bar to Rec- ognition	3-66

(Rel.4-10/83 Pub.367)

TABLE OF CONTENTS

	PAGE
§ 1.07 Choice of Law Questions on Matters of Recognition and Execution of Foreign Judgments; Public Policy	3-106
§ 1.08 Conclusion	3-111

CHAPTER 2

Recognition and Execution of Foreign Bankruptcies and Related Proceedings and Their Extraterritorial Effects in General

§ 2.01 Introduction	3-100
§ 2.02 Outline of Laws Concerning the Extraterritorial Effects of Bankruptcy in Belgium, Luxembourg, France, Italy, West Germany, the Netherlands, England, and the United States	3-130
§ 2.03 Policy Considerations and Theories in Matters of Recognition and Execution of Foreign Bankruptcies	3-171
§ 2.04 Bankruptcy Jurisdiction and Jurisdictionally Improper <i>Fora</i> as Bar to Recognition	3-197
§ 2.05 Conflicts of Law in Matters of Bankruptcy. The Effects of Recognition	3-266
§ 2.06 Conclusion	3-445

[The next page is xv]

VOLUME 2

APPENDICES

FULL FAITH AND CREDIT CONVENTIONS

A. Multilateral Conventions

	PAGE
Appendix A-1A	
EEC Convention of September 27, 1968, in force among the original six members of the EEC (English text)	A-1A-1
Appendix A-1B	
EEC Convention of September 27, 1968, in force among the original six members of the EEC (French text)	A-1B-1
Appendix A-2A	
EEC Protocol of June 3, 1971, in force among the original six members of the EEC (English text)	A-2A-1
Appendix A-2B	
EEC Protocol of June 3, 1971, in force among the original six members of the EEC (French text)	A-2B-1
Appendix A-3A	
EEC Convention of October 9, 1978, allowing for the accession of three new Member States (English Text)	A-3A-1
Appendix A-3B	
EEC Convention of October 9, 1978, allowing for the accession of three new Member States (French text)	A-3B-1

B. Bilateral Conventions

Appendix B-1A	
United Kingdom Foreign Judgments (Reciprocal Enforcement) Act, 1933	B-1A-1
Appendix B-2A	
Convention of January 18, 1934, Between the United Kingdom and France for the Reciprocal Enforcement of Foreign Judgments; United Kingdom Reciprocal Enforcement of Foreign Judgments (France) Order in Council (1938) (English text)	B-2A-1

	PAGE
Appendix B-2B	
Convention of January 18, 1934, Between the United Kingdom and France for the Reciprocal Enforcement of Foreign Judgments (French text).....	B-2B-1
Appendix B-3A	
Convention of May 2, 1934, Between the United Kingdom and Belgium for the Reciprocal Enforcement of Foreign Judgments; United Kingdom Reciprocal Enforcement of Foreign Judgments (Belgium) Order in Council (1936) (English text).....	B-3A-1
Appendix B-3B	
Convention of May 2, 1934, Between the United Kingdom and Belgium for the Reciprocal Enforcement of Foreign Judgments (French text)	B-3B-1
Appendix B-4A	
Convention of July 14, 1960, Between the United Kingdom and the Federal Republic of Germany for the Reciprocal Enforcement of Foreign Judgments; United Kingdom Reciprocal Enforcement of Foreign Judgments (Germany) Order in Council (1961) (English text).....	B-4A-1
Appendix B-4B	
Convention of July 14, 1960, Between the United Kingdom and the Federal Republic of Germany for the Reciprocal Enforcement of Foreign Judgments (German text).....	B-4B-1
Appendix B-5A	
Convention of November 17, 1967, Between the United Kingdom and the Netherlands for the Reciprocal Enforcement of Foreign Judgments; United Kingdom Reciprocal Enforcement of Foreign Judgments (the Netherlands) Order in Council 1969; (Amendment) 1977 (English text)	B-5A-1
Appendix B-6A	
Convention of February 7, 1964, Between the United Kingdom and Italy for the Reciprocal Enforcement of Foreign Judgments; United Kingdom Reciprocal Enforcement of Foreign Judgments (Italy) Order in Council, 1969 (English text).....	B-6A-1
Appendix B-7A	
Convention of July 8, 1899, Between Belgium and France for the Enforcement of Judgments (English text)	B-7A-1

TABLE OF CONTENTS

xvii

	PAGE
Appendix B-7B	
Convention of July 8, 1899, Between Belgium and France for the Enforcement of Judgments (French text)	B-7B-1
Appendix B-8A	
Convention of June 3, 1930, Between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters (English text)	B-8A-1
Appendix B-8B	
Convention of June 3, 1930, Between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters (French text)	B-8B-1
Appendix B-9A	
Convention of March 28, 1925, Between Belgium and the Netherlands (English text)	B-9A-1
Appendix B-9B	
Convention of March 28, 1925, Between Belgium and the Netherlands (French text)	B-9B-1
Appendix B-10A	
Convention of June 30, 1958, Between the Kingdom of Belgium and the Federal Republic of Germany for the Recognition and Reciprocal Enforcement of Foreign Judgments (English text)	B-10A-1
Appendix B-10B	
Convention of June 30, 1958, Between the Kingdom of Belgium and the Federal Republic of Germany for the Recognition and Reciprocal Enforcement of Foreign Judgments (French text)	B-10B-1
Appendix B-11A	
Convention of April 6, 1962, Between Belgium and Italy for the Recognition and Enforcement of Judgments (English text)	B-11A-1
Appendix B-11B	
Convention of April 6, 1962, Between Belgium and Italy for the Recognition and Enforcement of Judgments (French text)	B-11B-1
Appendix B-12A	
Convention of March 9, 1936, Between Italy and Germany for the Recognition and Execution of Foreign Judgments (English text) . . .	B-12A-1
Appendix B-12B	
Convention of March 9, 1936, Between Italy and Germany for the Recognition and Execution of Foreign Judgments (German text) . .	B-12B-1

	PAGE
Appendix B-13A	
Convention of April 17, 1959, Between the Netherlands and Italy for the Recognition and Enforcement of Foreign Judgments (English text)	B-13A-1
Appendix B-13B	
Convention of April 17, 1959, Between the Netherlands and Italy for the Recognition and Enforcement of Foreign Judgments (French text)	B-13B-1
Appendix B-14A	
Convention of August 30, 1962, Between Germany and the Netherlands (English text)	B-14A-1
Appendix B-14B	
Convention of August 30, 1962, Between Germany and the Netherlands (German text)	B-14B-1

BANKRUPTCY CONVENTIONS

C. Multilateral Conventions

Appendix C-1A	
Preliminary Draft of a Convention on Bankruptcy, Winding-Up, Ar- rangements, Compositions, and Similar Proceedings (1970) (English text)	C-1A-1
Appendix C-1B	
Preliminary Draft of a Convention on Bankruptcy, Winding-Up, Ar- rangements, Compositions, and Similar Proceedings (1970) (French text)	C-1B-1
Appendix C-1A1	
Working Document Containing Convention on Bankruptcy, Winding- Up, Arrangements, Compositions, and Similar Proceedings (Current Position: June 13, 1979) (English text)	C-1A1-1
Appendix C-1A2	
Draft of A Convention On Bankruptcy, Winding-Up, Arrangements, Compositions and Similar Proceedings	C-1A2-1

D. Bilateral Conventions

Appendix D-1A	
Convention of July 8, 1899, Between France and Belgium, Bankruptcy Provisions (English text)	D-1A-1

TABLE OF CONTENTS

xix

PAGE

Appendix D-2A	
Convention of March 28, 1925, Between Belgium and the Netherlands, Bankruptcy Provisions (English text)	D-2A-1
Appendix D-3A	
Convention of August 30, 1962, Between the Netherlands and West Germany (English text)	D-3A-1
Appendix D-4A	
Convention of June 3, 1930 between France and Italy, Bankruptcy Provisions	D-4A-1
Appendix D-5A	
Convention of July 16, 1969, Between the Kingdom of Belgium and the Republic of Austria on Bankruptcy, Arrangement and Extension of Payment; Protocol of June 13, 1973 (English text)	D-5A-1
Appendix D-5B	
Convention of July 16, 1969, Between the Kingdom of Belgium and the Republic of Austria on Bankruptcy, Arrangement and Extension of Payment, Protocol of June 13, 1973 (French text)	D-5B-1
Appendix D-6A	
October 29, 1979 Draft of United States of America-Canada Bankruptcy Treaty (1979)	D-6A-1

E. United States Bankruptcy Code of 1978

Appendix E-1	
United States Bankruptcy Code of 1978	E-1-1
Appendix E-2	
Amendment to the Bankruptcy Act Relating to the Discharge of Student Loan Debts Guaranteed by the United States	E-2-1
Bibliography	B-1
Index	I-1

PART A

**Full Faith and Credit
Conventions
Multilateral Conventions**

APPENDIX A-1A

EEC Convention of September 27, 1968 in force among the original six members of the EEC

CONVENTION

on jurisdiction and the enforcement of judgments in civil and commercial matters (*)

PREAMBLE

**THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE
EUROPEAN ECONOMIC COMMUNITY,**

**Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they
undertook to secure the simplification of formalities governing the reciprocal recognition and
enforcement of judgments of courts or tribunals;**

Anxious to strengthen in the Community the legal protection of persons therein established;

**Considering that it is necessary for this purpose to determine the international jurisdiction of
their courts, to facilitate recognition and to introduce an expeditious procedure for securing the
enforcement of judgments, authentic instruments and court settlements;**

**Have decided to conclude this Convention and to this end have designated as their
Plenipotentiaries:**

HIS MAJESTY THE KING OF THE BELGIANS:

**Mr Pierre HARMEL,
Minister for Foreign Affairs;**

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

**Mr Willy BRANDT,
Vice-Chancellor,
Minister for Foreign Affairs;**

THE PRESIDENT OF THE FRENCH REPUBLIC:

**Mr Michel DEBRÉ,
Minister for Foreign Affairs;**

THE PRESIDENT OF THE ITALIAN REPUBLIC:

**Mr Giuseppe MEDICI,
Minister for Foreign Affairs;**

(*) Text as amended by the Convention of Accession.

Source: *Official Journal of the European Communities*, Oct. 30, 1978.

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Pierre GREGOIRE,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr J.M.A.H. LUNS,
Minister for Foreign Affairs;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I

SCOPE

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters ⁽¹⁾.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

TITLE II

JURISDICTION

Section 1

General provisions

Article 2

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

⁽¹⁾ Second sentence added by Article 3 of the Convention of Accession.

Article 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

- in Belgium: Article 15 of the civil code (Code civil — Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire — Gerechtelijk Wetboek),
- in Denmark: Article 248 (2) of the law on civil procedure (Lov om retsens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om retsens pleje),
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),
- in France: Articles 14 and 15 of the civil code (Code civil),
- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (*Codice di procedura civile*),
- in Luxembourg: Articles 14 and 15 of the civil code (*Code civil*),
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (*Wetboek van Burgerlijke Rechtsvordering*),
- in the United Kingdom: the rules which enable jurisdiction to be founded on:
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
 - (b) the presence within the United Kingdom of property belonging to the defendant; or
 - (c) the seizure by the plaintiff of property situated in the United Kingdom ⁽¹⁾.

Article 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

Section 2

Special jurisdiction

Article 5

A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is

⁽¹⁾ Second paragraph as modified by Article 4 of the Convention of Accession.

domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties ⁽²⁾;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled ⁽³⁾;
7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

- (a) has been arrested to secure such payment, or
- (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage ⁽⁴⁾;

Article 6

A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;

⁽²⁾ No 2 as amended by Article 5 (3) of the Convention of Accession.

⁽³⁾ No 6 added by Article 5 (4) of the Convention of Accession.

⁽⁴⁾ No 7 added by Article 5 (4) of the Convention of Accession.

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

Article 6a ⁽¹⁾

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

Jurisdiction in matters relating to insurance

Article 7

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5).

Article 8 ⁽²⁾

An insurer domiciled in a Contracting State may be used:

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policy-holder is domiciled, or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes

arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12 ⁽²⁾

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or

⁽¹⁾ Article added by Article 6 of the Convention of Accession.

⁽²⁾ Text as amended by Article 7 of the Convention of Accession.

⁽²⁾ Text as amended by Article 8 of the Convention of Accession.