EXTED CONTENTS

List of editors and contributors xviii

1 A thematic and comparative critique

Jason Chuah
BACKGROUND TO THE RESEARCH PROJECT 1.01
PROJECT METHODOLOGY 1.08
Prefatory observations 1.10
LIMITS ON ASSUMPTION OR DISCLAIMING OF EXECUTORY OBLIGATIONS 1.19
Judicial supervision in the reorganization efforts 1.23
Ipso facto stipulations 1.32
Assignment of executory contracts 1.44
Value extraction 1.59
CONCLUSION 1.61

PART I CIVIL LAW SYSTEMS

2 National report for Albania

Gelanda Shkurtaj
A INTRODUCTION 2.01
B AVAILABLE PROCEDURES 2.05
(1) Eligibility requirements 2.09
(2) Insolvency requirement 2.16
(3) Locus standi 2.19
(4) Informal turnarounds 2.26
C TREATMENT OF THE EXECUTORY CONTRACTS 2.30
(1) Administrator's rights 2.37
D PAST REFORMS AND CURRENT DEBATE 2.45
(1) The introduction of the Insolvency Agency 2.45
(2) The role of the Agency 2.50
(3) The legal stalemate between Article 605 of Civil Code and Article 144 of the 2016 Act 2.53
(4) Introduction of the Prosecutor 2.59
(5) The role of the Insolvency Administrator 2.60
(6) Amendments to the Civil Procedure Code 2.62
(7) Proceedings started in other jurisdictions 2.63
(8) Concluding remarks on executory contracts and reforms 2.66
E CONCLUDING REMARKS 2.70
(1) Reform of the Albanian Insolvency Law: a comparative study 2.74

3 National report for Argentina

Héctor José Miguens
A INTRODUCTION 3.01
B INSOLVENCY PROCEDURES 3.09
(1) The Acuerdo Preventivo Extrajudicial (APE) or pre-packaged reorganization 3.09
(2) The Concurso Preventivo (CP) or reorganization proceeding 3.12
(3) The 'quiebra' or liquidation 3.15
C TREATMENT OF EXECUTORY CONTRACTS 3.20
(1) In APEs and CPs 3.20
EXTENDED CONTENTS

(2) In ‘quiebra’ procedures 3.25
(3) General scheme for all contracts 3.26
(4) Rules for reciprocal pending obligations 3.32
(5) Contractual clauses 3.36
(6) Preliminary contracts 3.39
(7) Contracts with personal performance by the bankrupt, contracts of continuous execution and normative contracts 3.44
(8) Commission or consignment contracts 3.47
(9) Company contracts – law of recess 3.48
(10) Non-integrated contributions to the corporation 3.49
(11) Accidental corporation (‘Sociedad accidental’ or ‘negocio en participación’) 3.50
(12) Debentures and securities 3.54
(13) Fixed-term contracts 3.55
(14) Insurance contracts 3.58
(15) Protest of a security or negotiable instrument 3.59
(16) Real estate leases 3.61
(17) Life annuity agreements 3.66
(18) Contracts for the purpose of conservation and administration of property of the bankrupt debtor 3.69
(19) Contracts on dispossessed property (bankruptcy assets) 3.70
(20) Lease agreements in cases of continuation of the business 3.74
(21) Mortgages and pledges on the continuation of the business operation 3.76
(22) Employment contracts 3.77
D REFORMS 3.83
E CONCLUDING REMARKS 3.85

4 National report for Austria
Felix Kernbichler
A INTRODUCTION 4.01
B INSOLVENCY PROCEDURES 4.03
(1) Formal proceedings 4.03
(2) Out-of-court workouts 4.09
C TREATMENT OF EXECUTORY CONTRACTS 4.12
(1) Power to continue and reject contracts 4.13
(2) Automatic stay 4.15
(3) Prohibition of ipso facto clauses 4.29
(4) Timely decision 4.34
(5) Practical consequences 4.39
(6) Proposal for a Directive on preventative restructuring 4.41
D REFORMS 4.45
E CONCLUDING REMARKS 4.47

5 National report for Brazil
Francisco Satiro and Eduardo G. Wanderley
A INTRODUCTION 5.01
B AVAILABLE PROCEDURES 5.06
(1) Judicial Reorganization 5.07
(2) Extrajudicial Reorganization 5.30
(3) Bankruptcy Liquidation 5.33
C TREATMENT OF EXECUTORY CONTRACTS 5.54
(1) Treatment of executory contracts under LRF 5.55
(2) Treatment of executory contracts in Bankruptcy Liquidation 5.59
(3) Treatment of executory contracts in Judicial Reorganization and Extrajudicial Reorganization 5.80
D REFORMS 5.94
E CONCLUDING REMARKS 5.95
6 National report for Bulgaria
   Georgi Valentinov Georgiev
   A INTRODUCTION 6.01
   B AVAILABLE PROCEDURES 6.02
       (1) Insolvency proceedings 6.05
       (2) The stabilization procedure 6.36
       (3) Out-of-court proceedings 6.48
   C TREATMENT OF EXECUTORY CONTRACTS 6.52
       (1) Insolvency proceedings 6.52
       (2) The stabilization procedure 6.69
   D REFORMS 6.90
   E CONCLUDING REMARKS 6.92

7 National report for Chile
   Camila Hoyuela Zattera, Maximiliano Escobar Saavedra and Mauricio Inostroza Sáez
   A INTRODUCTION 7.01
   B FRAMEWORK OF AVAILABLE INSOLVENCY PROCEEDINGS 7.05
       (1) Commencement of liquidation and reorganization proceedings 7.08
       (2) Judicial and out-court proceedings 7.12
       (3) Effects arising from reorganization and liquidation proceedings 7.16
   C TREATMENT OF EXECUTORY CONTRACTS UNDER CHILEAN INSOLVENCY LAW 7.19
       (1) Reorganization proceedings 7.20
       (2) Liquidation proceedings 7.24
       (3) Contractual agreements negotiated by parties in solvent times and executory contracts 7.29
   D REFORMS AND CONCLUDING REMARKS 7.31

8 National report for China
   Yingxiang Long and Rebecca Parry
   A INTRODUCTION 8.01
       (1) Rights under contract law where performance threatened by insolvency 8.04
       (2) Executory contracts in insolvency 8.07
   B LEGAL FRAMEWORK 8.16
       (1) Obstacles and new movements 8.16
       (2) The development of insolvency law 8.27
       (3) Existing procedures 8.33
   C TREATMENT OF EXECUTORY CONTRACTS 8.37
       (1) The options for administrators 8.37
       (2) The concept of executory contracts under PRC insolvency law 8.40
       (3) The effect of continuation and termination 8.46
       (4) Ipso facto clauses 8.51
   D CONCLUDING REMARKS 8.60

9 National report for Croatia
   Jasnica Garašić and Siniša Petrović
   A INTRODUCTION AND INSOLVENCY PROCEDURES 9.01
       (1) Pre-bankruptcy proceedings 9.02
       (2) Bankruptcy proceedings 9.03
   B TREATMENT OF EXECUTORY CONTRACTS 9.14
       (1) Pre-bankruptcy proceedings 9.14
       (2) Bankruptcy proceedings 9.16
       (3) Extraordinary management procedure 9.73
   C PRE-INSOLVENCY AGREED CONTRACTUAL REMEDIES 9.76
       (1) Pre-bankruptcy proceedings 9.76
       (2) Bankruptcy proceedings 9.77
       (3) Extraordinary management procedure 9.88
   D REFORMS 9.89
   E CONCLUDING REMARKS 9.96
EXTENDED CONTENTS

10 National report for Denmark
Line Herman Langkjaer

A INTRODUCTION TO THE AVAILABLE INSOLVENCY PROCEDURES
   (1) Actors in the proceedings
   (2) Requirements
   (3) Out-of-court restructuring

B TREATMENT OF EXECUTORY CONTRACTS
   (1) Regulation of executory contracts in DBA
   (2) Assumption of executory contracts
   (3) The effects of the assumption of a contract
   (4) Protection of the counterparty in the DBA
   (5) The effects of non-assumption (rejection of the contract)
   (6) Long-term contracts and indefinite contracts
   (7) Mandatory rules
   (8) Executory contracts in restructuring proceedings
   (9) Continuation of the executory contracts
   (10) The effects of continuation
   (11) Assignment of contracts

C LEGISLATIVE REFORMS SINCE 2000
   (1) Introducing the restructuring procedure in 2011
   (2) Changes in the treatment of executory contracts in 2011
   (3) Future reforms of the insolvency framework

D CONCLUDING REMARKS

11 National report for Finland
Jarmo Tuomisto

A INTRODUCTION AND AVAILABLE PROCEDURES
   (1) Insolvency proceedings available to companies in financial or economic distress
   (2) The requirements for triggering an insolvency proceeding
   (3) Other general questions concerning Finnish insolvency proceedings

B TREATMENT OF EXECUTORY CONTRACTS
   (1) Treatment of executory contracts in bankruptcy
   (2) Treatment of executory contracts in restructuring proceedings
   (3) Contractual remedies agreed by the parties in solvent times

C REFORMS

D CONCLUDING REMARKS

12 National report for France
Emilie Ghio

A INTRODUCTION: AVAILABLE INSOLVENCY PROCEDURES IN FRANCE
   (1) Liquidation and rehabilitation proceedings
   (2) Pre-insolvency proceedings
   (3) Out-of-court proceedings
   (4) General comments and other remarkable features of the French regime

B TREATMENT OF EXECUTORY CONTRACTS IN FRANCE
   (1) General remarks about executory contracts
   (2) Executory contracts in French insolvency proceedings
   (3) Statutory treatment of contractual remedies

C REFORMS
   (1) Major reforms of French insolvency law to date
   (2) Influences behind the reforms
   (3) Impact of such reforms on executory contracts provisions
   (4) General trends in French reforms
   (5) The European context underpinning French reforms

D CONCLUDING REMARKS
13 National report for Germany

Vanessa Buttafuoco

A INTRODUCTION 13.01
B AVAILABLE PROCEDURES 13.04
(1) The main procedure – *Regelinsolvenzverfahren* 13.06
(2) The insolvency plan – *Insolvenzplanverfahren* 13.32
(3) The self-administration procedure – *Eigenverwaltung* 13.34
C EXECUTORY CONTRACTS AND CONTRACTUAL REMEDIES 13.36
(1) The insolvency administrator’s right of choice and executing contracts 13.38
(2) Contractual remedies – insolvency-related clauses 13.46
D REFORMS 13.58
E CONCLUDING REMARKS 13.72

14 National report for Greece

Loukas Panetsos

A INTRODUCTION TO GREEK INSOLVENCY LAW 14.01
(a) Application 14.03
(b) The actors of insolvency 14.05
B THE INSOLVENCY PROCEDURES 14.06
(a) The rehabilitation procedure 14.07
(b) The main insolvency procedure and the restructuring plan 14.10
(c) Synopsis 14.12
C THE TREATMENT OF EXECUTORY CONTRACTS 14.13
(a) Instant executory contracts 14.16
(b) Permanent executory contracts 14.18
(c) The general principle regarding *ipso facto* clauses 14.19
(d) The executory contracts of personal character 14.21
(e) Employment contracts 14.24
(f) Other provisions 14.26
(g) Synopsis 14.27
D MAJOR REFORMS IN THE GREEK INSOLVENCY LAW 14.28
(a) A timeline of the recent reforms 14.30
(b) The drivers for reform 14.34
(c) The reform in the treatment of executory contracts and *ipso facto* clauses 14.37
(d) Quantitative and qualitative studies regarding the Greek insolvency law system 14.39
(e) Conclusion 14.43
E CONCLUDING REMARKS 14.44

15 National report for Italy

Rolandino Guidotti

A INTRODUCTION AND AVAILABLE PROCEDURES 15.01
(1) Introduction 15.01
(2) The Bankruptcy procedure in Italy 15.20
B TREATMENT OF EXECUTORY CONTRACTS 15.29
(1) General treatment of executory contracts in the Bankruptcy procedure 15.29
(2) The most significant specific contracts 15.44
(3) The arrangement with creditors based on liquidation 15.90
(4) The arrangement with creditors on a going concern basis 15.95
(5) The executory contracts in the arrangements with creditors 15.100
(6) The executory contracts in the arrangements with creditors on a going concern basis 15.110
C REFORMS 15.113
(1) The global ‘Rordorf Reform’ 15.113
(2) The general principles 15.120
(3) The crisis of groups of companies 15.122
(4) The judicial winding-up procedure 15.129
(5) The reform of the arrangements with creditors 15.137
D CONCLUDING REMARKS 15.139
EXTENDED CONTENTS

16 National report for Japan
   Jin Chun and Stacey Steele
   A INTRODUCTION 16.01
   B INSOLVENCY PROCEDURES 16.04
   C TREATMENT OF EXECUTORY CONTRACTS 16.11
      (1) General rule in relation to the treatment of executory contracts 16.11
      (2) Special rules for certain types of contracts 16.21
      (3) Treatment of *ipso facto* clauses 16.36
   D REFORMS 16.43
      (1) Reforms in respect of executory contracts 16.44
      (2) Reforms in respect of *ipso facto* clauses 16.47
      (3) Principal supporters of the reforms 16.48
   E CONCLUDING REMARKS 16.50

17 National report for Lithuania
   Frank Heemann and Karolina Gasparké
   A INTRODUCTION 17.01
   B INSOLVENCY PROCEDURES 17.02
      (1) Insolvency procedures under the EBL 17.02
      (2) Insolvency procedures under the ERL 17.17
   C TREATMENT OF EXECUTORY CONTRACTS 17.24
      (1) Insolvency proceedings under the EBL: impact on executory contracts 17.25
      (2) Insolvency proceedings under the ERL: impact on executory contracts 17.45
   D REFORMS 17.55
      (1) General 17.55
      (2) Reforms in the context of executory contracts from 2000 17.59
   E CONCLUDING REMARKS 17.63

18 National report for Panama
   José Maria Lezcano Navarro
   A INTRODUCTION 18.01
      (1) Rationale of the law and subsequent innovation 18.10
      (2) Reorganization 18.15
      (3) Insolvency courts 18.21
      (4) Cross-border insolvency 18.26
   B AVAILABLE INSOLVENCY PROCEDURES 18.32
      (1) Objective 18.33
      (2) Circumstances that trigger the process 18.34
      (3) Effect over the business in distress 18.35
   C TREATMENT OF EXECUTORY CONTRACTS 18.37
      (1) Executory contracts and reorganization 18.40
      (2) Proteccion Financiera Concursal 18.43
      (3) Specific contracts 18.45
      (4) Executory contracts and cross-border insolvency 18.54
   D REFORMS AND CONCLUDING REMARKS 18.55

19 National report for the Russian Federation
   Dmitry Konstantinov
   A INTRODUCTION 19.01
   B INSOLVENCY PROCEDURES 19.02
      (1) Observation control 19.08
      (2) Economic recovery 19.14
      (3) External control (external administraton) 19.16
      (4) Comprehensive agreement 19.18
      (5) Liquidation 19.19
   C TREATMENT OF EXECUTORY CONTRACTS 19.22
      (1) Rejection of executory contracts by the insolvency practitioner 19.28
      (2) Performance of the executory contracts 19.37
EXTENDED CONTENTS

D REFORMS 19.46
E CONCLUDING REMARKS 19.55

20 National report for Slovenia
Katja Zdolšek
A INTRODUCTION 20.01
B CORPORATE BANKRUPTCY PROCEEDINGS 20.09
(1) Compulsory settlement proceedings 20.12
(2) Preventive restructuring proceedings 20.17
(3) Out-of-court restructuring 20.20
C TREATMENT OF EXECUTORY CONTRACTS 20.22
(1) The general regime for treatment of claims arising from contracts 20.22
(2) Treatment of executory contracts by the Insolvency Act 20.24
(3) Enforceability of contractual clauses agreed in solvent times 20.40
D MAJOR REFORMS 20.42
E CONCLUDING REMARKS 20.49

21 National report for Spain
José Carles and Carlos Cuesta
A INTRODUCTION 21.01
(1) Available insolvency procedures in Spain 21.01
(2) Requirements for insolvency procedures in Spain and rules for petition 21.03
(3) Out-of-court workouts and hybrid pre-insolvency proceedings in Spain 21.09
(4) General rule for contracts in which only one party has not fully performed its obligations 21.13
B BANKRUPTCY PROCEDURES 21.16
(1) Treatment of executory contracts 21.16
(2) Termination clauses and contractual remedies agreed by the parties in solvent times 21.35
(3) Special rules depending on the specific nature of some contracts 21.42
C MAJOR REFORMS IN SPAIN SINCE 2000 21.45
(1) The Spanish Insolvency Act from 2003 21.45
(2) Further major reforms and the introduction of hybrid pre-insolvency proceedings in Spain 21.47
(3) Reforms regarding executory contracts 21.57
D CONCLUDING REMARKS 21.66

22 National report for Switzerland
Patrick Keinert
A INTRODUCTION AND AVAILABLE CORPORATE INSOLVENCY PROCEDURES 22.01
(1) Preface and sedes materiae 22.01
(II) Liquidation procedure (Konkursverfahren) 22.02
(III) Composition agreement procedure (Nachlassverfahren) 22.06
(IV) Stay of insolvency proceedings (Konkursaufschub) 22.19
(V) Evaluation 22.21
B TREATMENT OF EXECUTORY CONTRACTS 22.24
(1) Historical background of the administrator's right to determine execution of the contract 22.24
(II) Effects of insolvency proceedings on executory contracts 22.26
(III) The exercise of the administrator's right in the liquidation procedure 22.30
(IV) Executory contracts in the composition procedure 22.41
(V) Treatment of contractual remedies agreed by the parties in times of solvency 22.43
C REFORMS 22.48
(1) SchKG reform 1994 22.48
(II) SchKG reform 2014 22.51
(III) Current reform on the Law of Obligations (Law on Stock Companies) 22.55
D CONCLUDING REMARKS 22.56
EXTENDED CONTENTS

23 National report for The Netherlands
Marco Verdonk and Rolef de Weijs

A INSOLVENCY PROCEDURES UNDER DUTCH LAW 23.01
(1) Liquidation procedure (faillissement) 23.02
(2) Suspension of payment procedure (surseance) 23.04

B TREATMENT OF EXECUTORY CONTRACTS 23.06
(1) Treatment of executory contracts in insolvency 23.06
(2) Some specified contracts: lease, labour, contracts for energy, future contracts and agency 23.15
(3) Insolvency clauses: divestment clauses and multiplier 23.25

C LEGISLATIVE REFORMS 23.33

D CONCLUDING REMARKS 23.39

24 National report for the Republic of Turkey
Çağlar Kaçar

A INTRODUCTION 24.01

B CORPORATE INSOLVENCY PROCEDURES 24.02
(1) Ordinary composition 24.02
(2) Post-insolvency composition 24.08
(3) Postponement of insolvency/bankruptcy 24.10
(4) Restructuring of capital companies and cooperatives through mutual consent 24.19
(5) Liquidation through composition with creditors 24.26
(6) Insolvency liquidation 24.29

C TREATMENT OF EXECUTORY CONTRACTS 24.35
(1) Effect of reorganisation applications 24.35
(2) Effect of the opening of a liquidation procedure 24.39
(3) Other agreements and general approach 24.40
(4) Effects of ipso facto clauses 24.48

D REFORMS 24.51

E CONCLUDING REMARKS 24.60

PART II COMMON LAW SYSTEMS

25 National report for Australia
Elizabeth Stretten

A INTRODUCTION 25.01
(1) Liquidation 25.09
(2) Receivership 25.12
(3) Corporate rescue 25.13

B TREATMENT OF EXECUTORY CONTRACTS 25.17
(1) Liquidation 25.17
(2) Receivership 25.23
(3) Corporate rescue 25.29

C REFORMS 25.34

D CONCLUDING REMARKS 25.46

26 National report for Bangladesh
Morshed Mannan, Muhammad Mahbubur Rahman and Borhan Uddin Khan

A INTRODUCTION 26.01
(1) Commercial and creditor-debtor relations in Bengal in the colonial period 26.04
(2) Early insolvency litigation 26.09

B CURRENT FRAMEWORK AND AVAILABLE INSOLVENCY PROCEDURES 26.16

C TREATMENT OF EXECUTORY CONTRACTS 26.24
(1) Executory contracts are deemed to be assumed 26.25
(2) Executory contracts may be rejected by disclaimer 26.32
(3) Role of the creditors 26.35
(4) Special contracts and contractual provisions 26.37

D REFORMS 26.41

E CONCLUDING REMARKS 26.43
### EXTENDED CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>D REFORMS</td>
<td>35.24</td>
</tr>
<tr>
<td>1. The new insolvency legislation</td>
<td>35.29</td>
</tr>
<tr>
<td>2. Insolvency set-off and close-out netting</td>
<td>35.36</td>
</tr>
<tr>
<td>3. <em>Ipso facto</em> clauses</td>
<td>35.39</td>
</tr>
<tr>
<td>E CONCLUDING REMARKS</td>
<td>35.44</td>
</tr>
</tbody>
</table>

**Index**

687