



European Convention on Certain International Aspects of Bankruptcy

Istanbul, 5.VI.1990

Preamble

The member States of the Council of Europe, signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that bankruptcy proceedings and similar proceedings more and more frequently concern persons who exercise activities outside the national territory;

Considering that it is necessary to guarantee a minimum of legal co-operation by dealing with certain international aspects of bankruptcy such as the power of administrators and liquidators in bankruptcy to act outside the national territory, the possibility of resorting to the opening of secondary bankruptcies in the territory of other Parties and the possibility for creditors to lodge their claims in the bankruptcies opened abroad,

Have agreed as follows:

Chapter I – General provisions

Article 1 – Scope of the Convention

- 1 This Convention shall apply to collective insolvency proceedings which entail a disinvestment of the debtor and the appointment of a liquidator and which may entail the liquidation of the assets.

Such proceedings, hereafter referred to as "bankruptcy", are listed in Appendix A which is an integral part of this Convention.

Appendix A shall contain proceedings of the member States of the Council of Europe as well as of any State acceding to the Convention under the terms of Article 35.

This Convention shall not apply to proceedings relating to insurance companies or credit institutions.

- 2 When a bankruptcy is opened in a Party, this Convention shall govern:
 - a the exercise in other Parties of certain powers of the liquidator concerning the administration of the debtor's assets;
 - b the opening of secondary bankruptcies in other Parties;

- c the information to be given to creditors residing in other Parties and the lodgement of their claims.

3 For the purposes of this Convention:

- a "liquidator" means any person or body whose function is to administer or liquidate the assets of the bankrupt or to supervise the activities of the debtor.

These persons and bodies are listed in Appendix B, which is an integral part of this Convention;

- b "disinvestment of the debtor" means the placing of power to manage, control and dispose of the assets in the hands of a liquidator.

Article 2 – Proof of the appointment of the liquidator

The appointment of the liquidator shall be evidenced by a certified copy of the original decision appointing him or by an official certificate of appointment issued by the court or any other competent authority which has opened the bankruptcy. A translation in the official language or one of the official languages of the Party where the liquidator exercises his powers may be required. No legalisation or other similar formality shall be required.

Article 3 – Opening of a bankruptcy

The decision to open the bankruptcy must:

- a emanate from a court or other authority having competence under Article 4;
- b be effective in the territory of the Party where the bankruptcy is opened; and
- c not be manifestly contrary to the public policy of the Party in which the liquidator intends to exercise his powers under the terms of Chapter II or in which the opening of a secondary bankruptcy is requested under the terms of Chapter III.

Article 4 – Indirect international competence

- 1 The courts or other authorities of the Party in which the debtor has the centre of his main interests shall be considered as being competent for opening the bankruptcy. For companies and legal persons, unless the contrary is proved, the place of the registered office shall be presumed to be the centre of their main interests.
- 2 The courts or other authorities of the Party in whose territory the debtor has an establishment shall also be considered as being competent:
 - a if the centre of the debtor's main interests is not located in the territory of any Party; or
 - b if the bankruptcy cannot be opened by a court or other authority of the Party competent under paragraph 1 because of the provisions of its national law and of the capacity of the debtor. In this event, that Party shall not be obliged to apply this Convention.

However, when the bankruptcy of a debtor is opened under paragraph a or b by courts or other authorities in various Parties in which he has an establishment, the court or authority which first gave judgment shall alone be considered competent.

Article 5 – Partial payment of the creditors

Without prejudice to claims guaranteed by securities or rights over land or other property, a creditor who has received part payment in respect of his claim in a bankruptcy opened in one Party may not participate in a dividend for the same claim in a bankruptcy opened with regard to the same debtor in another Party, so long as the dividend received by the other creditors in the bankruptcy opened in that other Party is less than the dividend he has already received.

Chapter II – Exercise of certain powers of the liquidator

Article 6 – Scope of Chapter II

In addition to the proceedings provided for in Article 1, paragraph 1, this chapter shall also apply to proceedings ordered by a court or an authority upon a request for the opening of a collective procedure under Article 1, paragraph 1, and which aim at the provisional protection of the assets of the debtor.

Article 7 – Capacity of the liquidator

The liquidator may exercise his powers under the conditions set out in this chapter on presentation of the document mentioned in Article 2 and under the conditions mentioned in Article 3.

Article 8 – Measures of protection and preservation of the assets

From the date of his appointment, the liquidator may take or cause to be taken, in accordance with the law of the Party in which he intends to act, any necessary steps to protect or preserve the value of the assets of the debtor, including the seeking of assistance from competent authorities in that Party without, however, removing those assets from the territory of the Party where they are situated.

Article 9 – Advertisement of the liquidator's powers

A summary of the decision appointing the liquidator as provided by Article 2 must, after any necessary authorisation given by the competent authority of the Party where the liquidator intends to act, be advertised pursuant to the method of publication determined by that Party.

Article 10 – Acts of administration, management and disposal of the debtor's assets

- 1 Within the powers conferred on him under the law of the Party in which the bankruptcy is opened and under the conditions set out in the following articles of this chapter, the liquidator may take or cause to be taken any acts to administer, manage or dispose of the debtor's assets including removing them from the territory of the Party where they are situated.
- 2 The implementation of these measures shall be subject to the law of the Party in whose territory the assets are situated.

Article 11 – Conditions of exercise of the liquidator's powers

- 1 The liquidator's powers as set out in Article 10, paragraph 1, shall be suspended during a two-month period commencing the day after the publication of the notice referred to in Article 9. If, during this period or at any later stage, any request for bankruptcy or for proceedings to prevent bankruptcy has been made against the debtor in the Party where the assets are located, the powers of the liquidator shall be suspended until any such requests are rejected.

The liquidator shall be empowered to lodge an application for bankruptcy if the conditions for opening a bankruptcy under the national law of the Party where he intends to act are met.

- 2 During the period mentioned in paragraph 1, only creditors who, in the Party where the liquidator intends to exercise his powers, enjoy a right to preferential payment or would have enjoyed such a right if the bankruptcy had been opened in that Party, creditors who have a public law claim or creditors who have a claim arising from the operation of an establishment of the debtor or from employment in that Party, may commence or pursue individual legal action against the assets of the debtor.
- 3 On the expiration of the period mentioned in paragraph 1, the creditors may no longer commence individual legal action and only the liquidator shall have the power to take or cause to be taken the acts mentioned in Article 10, paragraph 1.

Article 12 – Objections to the liquidator's powers

- 1 Where an objection is made to the exercise of his powers, it shall be for the liquidator to request the court of the Party in whose territory the act is to be performed to declare that he is entitled to exercise those powers under the Convention.
- 2 If the extent of his powers is contested, it is for the liquidator to establish the same.

Article 13 – Effects of discharge of payment and delivery of assets

- 1 Payment or delivery of assets to the liquidator made in good faith shall constitute a valid discharge. They shall be presumed to be made in good faith if made after the advertisement mentioned in Article 9 or after presentation of the certificate mentioned in Article 2.
- 2 Without prejudice to Article 11, paragraph 2, payment or delivery of assets to the debtor shall not constitute a valid discharge if they have been made after the advertisement provided under Article 9, unless the person who made them establishes that he did not have knowledge of this advertisement.

Article 14 – Limitations to the exercise of the liquidator's powers

- 1 The opening or recognition of bankruptcy proceedings or of proceedings which prevent bankruptcy in the Party in which the liquidator intends to exercise his powers provided for in this chapter shall prevent the exercise of his powers in that Party.
- 2 The liquidator cannot perform in another Party an act which is:
 - a contrary to any security held by any person other than the debtor over land or other property established or recognised by the law of that Party; or
 - b manifestly contrary to the public policy of that Party.

Article 15 – Extension of the liquidator's powers

Any Party may permit the foreign liquidator to exercise on its territory wider powers than those laid down in this chapter.

Chapter III – Secondary bankruptcies

Article 16 – Secondary bankruptcy

Any debtor declared bankrupt by a court or any other competent authority under Article 4, paragraph 1 (main bankruptcy), may, by virtue of this fact alone, be declared bankrupt in any other Party (secondary bankruptcy), whether or not he is insolvent in that Party, provided that the decision declaring him bankrupt was made in accordance with Article 3, paragraphs b and c, and that no bankruptcy or proceedings to prevent bankruptcy have already been opened in that Party.

Article 17 – International competence

Without prejudice to the other grounds of competence provided for by national law, the courts or authorities of any Party in which an establishment of the debtor is situated shall be competent to open a secondary bankruptcy. The courts or authorities of any Party in which assets of the debtor are situated shall be equally competent.

Article 18 – Opening of the secondary bankruptcy

Upon production of the decision opening the main bankruptcy, the following shall be entitled to request the opening of the secondary bankruptcy:

- a the liquidator in the main bankruptcy; or
- b any other person or body granted the right to request the opening of a bankruptcy by the law of the Party where the opening of the secondary bankruptcy is requested.

Article 19 – Applicable law

Except as otherwise provided in this Convention, the secondary bankruptcy shall be governed by the bankruptcy law of the Party where that bankruptcy is opened.

Article 20 – Lodgement of claims

- 1 Any claim may be lodged in a secondary bankruptcy.
- 2 All claims lodged in the secondary bankruptcy shall, by means of copies, be notified to the liquidator or the competent authority of the main bankruptcy. Claims so notified shall be regarded as validly lodged in the main bankruptcy.

Article 21 – Payment of claims

Claims enjoying a right to preferential payment or a security over land or other property, public law claims and claims arising from the operation of an establishment of the debtor or from employment in the Party where the secondary bankruptcy is opened shall be verified and, when admitted, shall be paid from the proceeds of the liquidation of the assets of the secondary bankruptcy.

Article 22 – Transfer of the remaining assets

Following the payment of claims in conformity with Article 21, the remaining assets shall form part of the assets in the main bankruptcy. Any administrative act necessary to this effect shall be performed forthwith by the liquidator of the secondary bankruptcy.

Article 23 – Claims arising after the opening of the main bankruptcy

- 1 Without prejudice to remedies provided to creditors by the law of the main bankruptcy, claims arising before the opening of the secondary bankruptcy cannot be rejected in the main bankruptcy on the sole ground that they arose after the opening of the latter bankruptcy.
- 2 Without prejudice to the provisions of Article 21, the claims mentioned in paragraph 1 may participate in a dividend only on assets remaining in the secondary bankruptcy transferred under the conditions laid out in Article 22.

Article 24 – Equality of creditors

Creditors in the main bankruptcy who are entitled to receive a dividend from assets coming from the secondary bankruptcy shall be treated equally, regardless of any privileges or other exceptions to the principle of equality between creditors provided by the law of the main bankruptcy.

Article 25 – Duty to communicate information

The liquidators in the main and secondary bankruptcies shall promptly communicate to each other any information which might be relevant to the other proceedings, in particular all measures aimed at terminating the procedure.

Article 26 – End of the secondary bankruptcy

Proceedings in a secondary bankruptcy cannot be terminated before an opinion has been obtained from the liquidator of the main bankruptcy, provided that such opinion is furnished within a reasonable period of time.

Article 27 – Composition in the secondary bankruptcy

A composition in the secondary bankruptcy, where such is provided for in the law applicable to that bankruptcy, cannot take place without the prior consent of the liquidator of the main bankruptcy. Such consent cannot be withheld if it is proved that the financial interests of the creditors of the main bankruptcy are not affected by that composition.

Article 28 – Plurality of bankruptcies

- 1 Any bankruptcy opened after the opening of a bankruptcy by a court or other authority which is competent in accordance with Article 4, paragraph 1, shall be a secondary bankruptcy.
- 2 The liquidator of a bankruptcy opened by a court or other authority which is competent in accordance with Article 4, paragraph 1, may request that the assets remaining from a bankruptcy opened previously in another Party be transferred to him after the end of that bankruptcy.

He may also request to be notified of any information provided for in Article 25.

Chapter IV – Information of the creditors and lodgement of their claims

Article 29 – Scope of Chapter IV

In addition to the proceedings provided for in Article 1, paragraph 1, this chapter shall also apply to proceedings which do not entail the disinvestment of the debtor or which cannot entail the liquidation of assets, as well as to secondary bankruptcy proceedings.

Article 30 – Duty to inform the creditors

- 1 As soon as proceedings mentioned in Appendix A or secondary bankruptcy proceedings are opened in a Party, the competent authority of that Party or the liquidator appointed in it shall inform, promptly and individually, the known creditors residing in the other Parties.
- 2 This information shall be given by a notice containing the appropriate details, in particular as to time-limits and measures to be taken. Such a notice shall also indicate whether creditors whose claims are preferential or secured need lodge their claims.

Article 31 – Lodgement of claims

Any creditor residing in a Party other than that in which the proceedings have been opened may lodge his claim in writing to the competent authority or liquidator mentioned in Article 30. The creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose, its amount, as well as whether or not it is preferential and, if applicable, the assets affected by the preference.

Article 32 – Languages

- 1 Subject to the provisions of Article 39, the notice mentioned in Article 30 may be drawn up in the official language of the authority which has opened the procedure. If this language is neither one of the official languages of the Council of Europe nor that of the creditor nor that of the Party where he resides, a translation into one of these languages shall be attached to the notice.
- 2 Subject to the provisions of Article 39, the written claim mentioned in Article 31 may be drawn up in the language of the creditor. If this language is not that of the authority which has opened the procedure, a translation in that language or one of the official languages of the Council of Europe shall be attached to it.

Chapter V – Final provisions

Article 33 – Signature, ratification, acceptance or approval

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 34 – Entry into force

- 1 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 33.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 35 – Accession

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 When a non-member State of the Council requests to be invited to accede to this Convention, it shall submit to the Secretary General of the Council of Europe the list of proceedings to be included in Appendix A and the persons or bodies to be included in Appendix B.
- 3 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General.

Article 36 – Appendices

- 1 Any Contracting State may when depositing its instrument of ratification, acceptance, approval or accession or at any time thereafter, address to the Secretary General of the Council of Europe a declaration containing any change it wishes to make to Appendix A or Appendix B.
- 2 The Secretary General shall communicate such declaration to the signatory States, the Contracting States and the other Parties. The change shall be considered to be adopted if no objection is made by any State, thus notified, before the expiry of a period of three months from the date of notification. The change shall enter into force on the first day of the following month.

Article 37 – Territorial application

- 1 Any State may, at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of this declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in this declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of this notification by the Secretary General.

Article 38 – International conventions and arrangements

- 1 This Convention shall not prejudice the application of international conventions to which a Party is, or becomes, a Party.
- 2 In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall therefore not apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

Article 39 – Declarations on the use of languages

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that the notice and written claim mentioned, respectively, in Articles 30 and 31 shall, by way of exception to the provisions of Article 32, be drawn up exclusively in its official language or one of its official languages.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that the written lodgement of claims mentioned in Article 31 may be drawn up in any language other than those mentioned in Article 32, paragraph 2.

Article 40 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will not apply either Chapter II or Chapter III of the Convention.
- 2 A Party which has declared that it will not apply Chapter III shall nevertheless be bound, except where it has made an express declaration to the contrary, to apply Articles 20, paragraph 2, 23 and 24. Where a Party has made a declaration of non-application of these articles, the Party on whose territory a secondary bankruptcy is opened shall not be bound to apply Article 21 in its relations with the Party which made the said declaration.
- 3 No other reservation may be made in respect of the provisions of this Convention.

Article 41 – Declaration on the information mentioned in Article 9

Any State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, designate the authority and the method of publication mentioned in Article 9 by a declaration addressed to the Secretary General of the Council of Europe.

Article 42 – Implementation of the Convention

- 1 Following the entry into force of this Convention, a group of experts representing the Parties and the non-contracting member States of the Council of Europe shall meet at the request of at least two Parties or on the initiative of the Secretary General of the Council of Europe.
- 2 The terms of reference of this group will be to assess the implementation of the Convention and to make any relevant suggestions.

Article 43 – Denunciation

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 44 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded or has been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 34, 35 and 36;
- d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Istanbul, this 5th day of June 1990, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.