

PRELIMINARY DRAFT OF A  
CONVENTION ON BANKRUPTCY,  
WINDING-UP, ARRANGEMENTS, COMPOSITIONS  
AND SIMILAR PROCEEDINGS

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not an authentic text.

4 June 1973

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

DESIROUS of implementing 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 jurisdiction of their courts with regard to bankruptcy, winding-up, arrangements, compositions and similar proceedings and to facilitate the recognition and enforcement of judgments given in such matters;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

His Majesty the King of the Belgians:

The President of the Federal Republic of Germany:

The President of the French Republic:

The President of the Italian Republic:

His Royal Highness the Grand Duke of Luxembourg:

Her Majesty the Queen of the Netherlands:

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

HAVE AGREED AS FOLLOWS:

**TITLE I****SCOPE OF THE CONVENTION AND  
GENERAL PROVISIONS****Article 1 - Scope of the Convention**

1 This Convention shall apply, irrespective of the nationality of the persons concerned, to the forms of proceeding (hereinafter called "bankruptcy"), specified in Article I(a) of the Protocol to this Convention, and to the arrangements, compositions and other forms of proceeding listed in Article I(b) of the Protocol.

2 In so far as is not otherwise provided, the provisions relating to bankruptcy shall apply by analogy to the arrangements, compositions and other forms of proceeding listed in Article I(b) of the Protocol.

3 This Convention shall not apply to bankruptcy or to the arrangements, compositions and other forms of proceeding listed in Article I(b) of the Protocol, if such proceedings are instituted in respect

- insurance undertakings of all kinds, irrespective of their legal form, with the exception of those which engage only in re-insurance;

- the undertakings designated by each Contracting State and listed in Article II of the Protocol, to the extent determined by that Article.

**Article 2 - Unity of the bankruptcy**

The proceedings specified in this Convention, when instituted in one of the Contracting States, shall have full legal effect in the other Contracting States and shall be a bar to the institution of any other such proceedings in those States.

## TITLE II

## JURISDICTION

## SECTION I: GENERAL PROVISIONS

Article 3 - Jurisdiction based on the principal place of  
business

1 Where the principal place of business of the debtor is situated in one of the Contracting States, the courts of that State shall have exclusive jurisdiction to declare the debtor bankrupt.

2 The principal place of business means the place where the main interests of the debtor are usually administered. In the case of firms, companies or other legal persons that place shall, for the purposes of this Convention, be presumed to be their seat as prescribed in their statutes until the contrary is proved.

Article 4 - Jurisdiction based on the existence of a  
business establishment

Where the principal place of business is not situated in a Contracting State, the courts of any Contracting State in which the debtor has a business establishment shall have jurisdiction to declare the debtor bankrupt.

Article 5 - Jurisdiction based on national law

Where neither the principal place of business nor any business establishment is situated in a Contracting State, the courts of any Contracting State whose law permits them to declare the debtor bankrupt shall have jurisdiction to do so.

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Article 6 - Transfer of the principal place of business  
to another Contracting State

1 Where the debtor has, within the six months before the court becomes seised of the matter, transferred his principal place of business to another Contracting State, both the courts of the latter State and those of the State where the principal place of business was previously situated shall have jurisdiction to declare the debtor bankrupt.

2 The courts of a Contracting State in which there has been instituted, in accordance with this Convention, one of the forms of proceeding referred to in Article I(b) of the Protocol to this Convention, shall retain jurisdiction to substitute for the form of proceeding instituted any other form of proceeding referred to in the Convention, even where the conditions of jurisdiction laid down in Articles 3 to 5 are no longer satisfied. However, so long as such substitution has not taken place, any court which has acquired jurisdiction under Articles 3 to 5 may, where an arrangement or composition is already being implemented, entertain bankruptcy or other proceedings instituted in respect of debts incurred after the approval of the arrangement or composition. When such bankruptcy or other proceedings have been instituted the courts which previously had jurisdiction shall cease to have jurisdiction to effect such substitution as is referred to above.

Article 7 - Transfer of the principal place of business to a  
non-Contracting State

Where the debtor has transferred his principal place of business to a non-Contracting State, the courts of the Contracting State in which the principal place of business was previously situated shall retain jurisdiction if they become seised of the matter within six months of the transfer.

Article 8 - Transfer of a business establishment

Where the jurisdiction of the courts of one of the Contracting States is based on the existence of a business establishment, the provisions of Articles 6 and 7 shall apply to the transfer of that business establishment.

## SECTION II - SPECIAL PROVISIONS

Article 9 - Non-merchants and small traders

1 Where the courts of a Contracting State, which have jurisdiction under the provisions of the preceding Section, are unable to declare a debtor bankrupt by reason of their national law because the debtor is not a merchant, or is a small trader (piccolo imprenditore) within the meaning of Italian law, the bankruptcy may be declared by the courts of one of the other Contracting States if the debtor has a business establishment in that State, or if in the absence of an establishment the law of that State authorises such proceedings.

2 Judgments given under the rules of jurisdiction laid down in paragraph 1 shall not take effect in the Contracting State in which the debtor's principal place of business is situated.

Article 10 - Members of firms, companies or other legal persons with unlimited joint and several liability

The courts of a Contracting State in which a firm, company or other legal person, comprising one or more members with unlimited joint and several liability for the debts of that firm, company or other legal person, has been declared bankrupt shall, where the law of that State permits such members to be declared bankrupt, have jurisdiction so to do, irrespective of where the principal place of business of the individual members is situated.

Article 11 - Persons directing or managing a firm, company or other legal person

The courts of the Contracting State in which a firm, company or other legal person has been declared bankrupt shall have jurisdiction, in accordance with Article 1 of Annex I, to declare the persons referred to therein bankrupt.

Article 12 - Persons responsible for the management  
of a firm, company or other legal person

1 The courts of the Contracting State in which a firm, company or other legal person has been declared bankrupt shall have jurisdiction to entertain actions founded on the liability incurred by the persons specified in Article 2 of Annex I by reason of their management.

2 Those courts shall have jurisdiction to declare such persons bankrupt under the conditions defined in Article 2 of Annex I.

Article 13 - Jurisdiction in special cases

1 Where the law of the State in which the firm, company or other legal person has been declared bankrupt does not permit the declaration of the bankruptcy of the members with unlimited joint and several liability referred to in Article 10, or of the persons who have been directing or managing it referred to in Article 11, such members or persons may be declared bankrupt by the courts of the other Contracting States in accordance with the rules of jurisdiction laid down in Articles 3 to 8.

2 When one of the persons referred to in Articles 10, 11 and 12 is already a bankrupt in one of the Contracting States, that bankruptcy shall be a bar to the institution of fresh bankruptcy proceedings under those Articles.

Article 14 - Proof of the debts of a bankrupt firm, company  
or other legal person in the bankruptcy of a  
person who has been directing or managing it

In the cases referred to in Articles 11, 12 and 13, the liquidator of the firm, company or other legal person shall prove in the name and for the account of the bankruptcy creditors of that firm, company or other legal person as a creditor in the bankruptcy of the persons referred to in those Articles.

## SECTION III - CONFLICTS OF JURISDICTION

Article 15 - Claims of jurisdiction

1 Where the courts of different Contracting States are seised of bankruptcy proceedings in respect of the same debtor, and the jurisdiction of one court prevails under this Convention, the other courts shall, if necessary of their own motion, either decline jurisdiction or stay the proceedings until the judgment of the court whose jurisdiction prevails has become res judicata.

2 Where the courts of different Contracting States which have concurrent jurisdiction under this Convention are seised of bankruptcy proceedings in respect of the same debtor, and the courts of one State have already declared the debtor bankrupt, all other courts shall stay the proceedings until the judgment declaring the debtor bankrupt has become res judicata.

Article 16 - Disclaimers of jurisdiction

1 Where circumstances are such as to cause to prevail the jurisdiction of the courts of a Contracting State other than the State whose court is seised of the matter, the latter court shall, if necessary of its own motion, either stay the proceedings and grant time to enable the applicant to bring proceedings in the former courts, or decline jurisdiction.

2 Where, by a judgment having become res judicata, the court of a Contracting State has declined jurisdiction pursuant to paragraph 1, the courts of the other Contracting States may not decline jurisdiction on the ground that in the first-mentioned State there exists a basis of jurisdiction which the courts of that State have refused to acknowledge.



**SECTION IV - ACTIONS ARISING FROM THE BANKRUPTCY****Article 17**

The courts of the State in which the bankruptcy proceedings have been instituted shall have exclusive jurisdiction to entertain proceedings arising from:

- (1) claims as to the invalidity as against the bankruptcy creditors of certain transactions carried out by the debtor during the period of relation-back, even where such transactions relate to immovable property;
- (2) claims for payment or for recovery of property founded upon the invalidity of the transactions mentioned in paragraph 1;
- (3) applications to set aside transactions effected by the debtor in fraud of his creditors, even where such applications have a basis other than the laws of bankruptcy;
- (4) disputes relating to the sale by the liquidator of the movable property of the bankrupt, where non-compliance with the rules determining the powers of the liquidator is alleged;
- (5) claims for the recovery of movable property from the estate of the bankrupt, subject to Article 21(4);
- (6) claims against the spouse of the bankrupt in application of a specific provision of bankruptcy law;
- (7) complaints regarding professional misconduct on the part of the liquidator, and disputes relating to the submitting of his accounts;
- (8) disputes relating to the admission of debts, with the exception of fiscal debts or debts recoverable in like manner, social security debts and debts arising under contracts of employment. In the case of these exceptions, the courts or authorities normally having jurisdiction shall determine the existence and the amount of the debt and the extent of such preferential rights as it may enjoy.

- (9) disputes in which it is sought to terminate current contracts by virtue of a provision of bankruptcy law, with the exception of contracts of employment and leases of immovable property.

### TITLE III

#### APPLICABLE LAW

##### Article 18 - Conditions governing the institution of bankruptcy proceedings

The conditions governing the institution of bankruptcy proceedings shall be determined by the law of the Contracting State in which the court having jurisdiction in accordance with this Convention is situated.

##### Article 19 - Procedure in and effects of the bankruptcy

1 The law of the State in which the bankruptcy proceedings have been instituted shall determine the procedure to be followed.

2 Subject to any contrary provisions of Title IV, the law of the State in which the bankruptcy proceedings have been instituted shall determine the effects of the bankruptcy and also the conditions under which the bankruptcy is valid as against a third party.

### TITLE IV

#### GENERAL EFFECTS OF THE BANKRUPTCY

##### SECTION I - EFFECTS OF THE BANKRUPTCY INDEPENDENTLY OF ADVERTISEMENT

##### Article 20 - Divesting the debtor of his property

Independently of the provisions for advertisement contained in Article 25, the bankruptcy shall take effect against the debtor in each Contracting State, and in particular with respect to divesting him of his property.

Article 21 - Staying of proceedings by individual creditors

1 In the Contracting States other than that in which the bankruptcy proceedings have been instituted, the judgment declaring the debtor bankrupt shall, independently of the provisions for advertisement contained in Article 25, be a bar to any proceedings on the part of individual creditors whose debts incurred before the bankruptcy was declared are not secured by a charge on movable or immovable property.

2 In respect of claims for the payment of money, that judgment shall likewise operate to stay proceedings already instituted at the time when the debtor was declared bankrupt; in such cases the creditor must prove his debt in the bankruptcy proceedings. However, if liability is disputed, the issue shall nevertheless be determined by the court originally seised of the claim, if in the course of those proceedings that court has already ruled upon any contentious issue other than one of jurisdiction.

3 The provisions of paragraphs 1 and 2 shall not affect such rights of recovery as exist in favour of the authorities and agencies responsible for the collection of fiscal debts and debts recoverable in like manner.

4 The judgment declaring the debtor bankrupt shall not in the other Contracting States be a bar to the bringing of actions for the recovery of property. Actions for recovery of movable property may be brought or pursued only in the courts having jurisdiction in accordance with Article 17(5), unless the court originally seised has already ruled upon any contentious issue other than one of jurisdiction.

5 Proceedings to enforce other claims may be brought afresh against the liquidator in the manner prescribed by the law governing those proceedings.

Article 22 - Stay of execution

In the individual Contracting States the bankruptcy shall, independently of the provisions for advertisement contained in Article 25, operate to stay proceedings for enforcement already instituted against the debtor in accordance with the law of the Contracting State in which those proceedings have been instituted, as if the bankruptcy had been declared in that State.

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Article 23 - Interruption of periods of limitation

Notwithstanding Articles 20 to 22, transactions effected by third parties after the declaration of the bankruptcy and before it has taken effect against them in accordance with Article 26 shall interrupt any periods of limitation enuring in favour of the bankruptcy creditors and shall prevent the latter from relying on any loss of rights resulting from any failure to perform transactions which are to be effected within a fixed time.

Article 24 - Exercise of certain legal remedies

1 If the law of the State in which the bankruptcy proceedings have been instituted permits applications to set aside the judgment declaring the bankruptcy to be made (opposition) or to be made by a third party (tierce opposition) then, where the applicant has neither his principal place of business, his (domicile) nor his residence in the State in which the bankruptcy has been declared but one or more of these is situated in another Contracting State, such applications may be made within a period of thirty-one days following the day which under that law initiated the period.

2 The law of the State in which the bankruptcy proceedings have been instituted shall determine the conditions for the extension of that period, where it expires on a Saturday or Sunday, or on a day which according to that law is a public holiday.

SECTION II - ADVERTISEMENT

Article 25 - Provisions for advertisement

1 It shall be the duty of the liquidator to advertise the bankruptcy by the insertion in the Official Journal of the European Communities of an extract of the judgment declaring it. The liquidator must cause this insertion to be made in cases where a business establishment of the bankrupt or the principal place of business of one of the persons referred to in Articles 10 to 12 is situated in a Contracting State other than that in which the bankruptcy has been declared, and also in all cases where the court which has declared the bankruptcy has so ordered. He may in any event effect such advertisement if he thinks fit.

2 In the Contracting States other than that in which the bankruptcy proceedings have been instituted, the liquidator shall ensure that the bankruptcy judgment is entered upon the trade registers in which the bankrupt is registered.

3 In the Contracting States other than that in which the bankruptcy proceedings have been instituted, the liquidator may cause the bankruptcy judgment to be gazetted in the Official Gazettes listed in Article VI of the Protocol to this Convention and may if need be effect such further advertisement of the judgment as he thinks fit.

4 The provisions for advertisement laid down in paragraphs 1 to 3 shall, so far as may be necessary, apply to the other judgments listed in Article IV of the Protocol to this Convention. The particulars to be advertised in respect of each category of judgment are listed in Articles III and V of that Protocol. It shall be the duty of the liquidator to effect such advertisement.

5 The law of the State in which the bankruptcy proceedings have been instituted may provide for some other person or authority to carry out the provisions for advertisement prescribed above.

Article 26 - Effects of the bankruptcy as against third parties

1 In the Contracting States other than that in which the bankruptcy was declared, the bankruptcy shall take effect in full as against third parties from the eighth day following its advertisement in the Official Journal of the European Communities. Transactions effected after the expiry of that period shall be invalid as against the bankruptcy creditors.

2 Transactions effected before this advertisement or within seven days thereafter shall also be invalid as against the bankruptcy creditors if it is proved that the third party knew or ought reasonably to have known of the bankruptcy at the time when the transaction was effected.

3 The rules relating to the periods of relation-back shall apply to transactions effected after the debtor has been declared bankrupt and before the bankruptcy has taken effect as against third parties as provided for in paragraph 1.

Article 27 - Effects with regard to rights of property  
subject to registration

The effects of the bankruptcy with regard to rights of property subject to registration in a public register shall, in so far as concerns the requisite registrations and the legal consequences thereof, be determined by the law of the Contracting State in which the register is kept.

SECTION III - FUNCTIONS OF AUTHORITIES ADMINISTERING THE  
BANKRUPTCY

Article 28 - The powers of the liquidator

1 In the Contracting States, the liquidator shall exercise the powers which are vested in him by the law of the State in which the bankruptcy proceedings have been instituted, or which have been conferred on him by the competent authority of that State.

2 The capacity of the liquidator to act as such shall be established by a certificate drawn up in accordance with the specimen form annexed to the Protocol to this Convention.

3 Where the law of the State in which the bankruptcy proceedings have been instituted permits the appointment of more than one liquidator, one or more of the liquidators may be chosen from among persons capable of exercising the functions of liquidator in the other Contracting States. Where the law of the State in which the bankruptcy proceedings have been instituted permits the delegation of certain powers of the liquidator to other persons, such persons may be chosen from among those capable of exercising the functions of liquidator in the other Contracting States.

Article 29 - Redirection of mail

1 Where the bankrupt is (domiciled) or resident, or has a business establishment or postal address, in a Contracting State other than that in which the bankruptcy has been

declared, then, if an order to this effect is made by the bankruptcy judge, or, if there is no bankruptcy judge, by the court which has declared the bankruptcy, postal packets addressed to the bankrupt at his (domicile), residence, business establishment or postal address shall be redirected to the liquidator by the postal authorities of that State.

2 Article VIII of the Protocol to this Convention specifies the manner in which the postal authorities are to be informed of the bankruptcy and of the duration of the duty placed upon them by the application of paragraph 1.

3 Postal packets which must be sent on to the bankrupt shall indicate the name and capacity of the liquidator, followed by his signature.

Article 30 - The lodging and disputing of proofs of debt

1 Creditors who reside in a Contracting State other than that in which the bankruptcy proceedings have been instituted may prove their debts by sending an ordinary letter to the authorities of the State in which the bankruptcy proceedings have been instituted; these authorities are specified in Article IX of the Protocol to this Convention, and they shall provide for the translation of the letter if need be. Such proof of debt shall state the amount, and whether or not it has rights of preference. Such proof of debt shall also be accompanied by a copy of any available supporting documents; the authorities referred to above may require production of the document evidencing the title or a certified true copy thereof.

2 Creditors who reside in a Contracting State other than that in which the bankruptcy proceedings have been instituted may dispute debts in like manner. Where, in accordance with the law of the State in which the bankruptcy proceedings have been instituted, such disputes are to be raised at or communicated to the meeting of creditors, letters raising such disputes shall be read at the meeting.

Article 31 - Continuance of business

The authority competent under the law of the State where the debtor has been declared bankrupt shall alone have the power to authorise the debtor to continue to carry on his business in the other Contracting States.

Article 32 - Realisation of the assets

1 The liquidator shall without further formality take such measures designed to protect the interests of the parties and effect such disposals as are within the scope of the powers conferred upon him, either by the law of the State in which the bankruptcy proceedings have been instituted, or by an authority granted by the competent authorities administering the bankruptcy.

2 Where the law of the State in which the bankruptcy proceedings have been instituted, or the court which has declared the bankruptcy, requires a particular mode of realisation, such as public auction, the law of the place where the property is situated shall determine the manner of its realisation.

3 Where a dispute is raised by the debtor, by a creditor or by a third party, any one of them may apply to the local court having jurisdiction in accordance with the procedure for urgent matters. That court may order, either that the objection be dismissed, or that there be a stay of execution with sufficient time granted to enable an application to be made to the court having substantive jurisdiction in accordance with the law of the State in which the bankruptcy proceedings have been instituted.

SECTION IV - EFFECTS OF THE BANKRUPTCY ON THE ESTATE  
OF THE DEBTOR

Article 33 - Universality of the bankruptcy

1 Subject to Article 9(2) and Article 60, a bankruptcy declared in accordance with this Convention shall take effect with respect to the whole of the debtor's property situated in the Contracting States.

2 The bankruptcy shall not however take effect with respect to property devolving on the debtor subsequent to the declaration of the bankruptcy, where the law of the State in which the bankruptcy proceedings have been instituted excludes such property.

3 Paragraph 1 shall not apply to property which is excluded from the assets in the bankruptcy by virtue of the law of the Contracting State in which it is situated.



Article 34 - Rights of spouses

1 Where in a bankruptcy the law presumes that the property of the spouse has been acquired with the moneys of the bankrupt, such presumption may be rebutted in accordance with Article 3 of Annex I.

2 The law of the State in which the bankruptcy proceedings have been instituted shall determine to what extent benefits under marriage property agreements and disposals of property to a spouse without consideration are valid as against the bankruptcy creditors.

SECTION V - EFFECTS OF THE BANKRUPTCY ON TRANSACTIONS  
EFFECTED AND ON CURRENT CONTRACTS

Article 35 - Periods of relation-back, actions to set  
aside frauds on creditors and set-off

1 The invalidity as against the bankruptcy creditors of transactions effected by the debtor before the institution of the bankruptcy proceedings, and the admissibility of set-off in bankruptcy, shall be governed by Articles 4 and 5 of Annex I.

2 The law applicable to the proceedings referred to in Article 4(F) of Annex I shall be that of the State in which the bankruptcy proceedings have been instituted.

Article 36 - Contracts of employment

1 The effects of the bankruptcy on a contract of employment shall be governed by the law applicable to that contract, where that law is the law of a Contracting State.

2 In other cases the law of the State in which the bankruptcy proceedings have been instituted shall apply.

Article 37 - Leasing contracts

1 The effects of the bankruptcy on leases of immovable property shall be governed by the law of the place where that property is situated.

2 The effects of the bankruptcy on contracts for the leasing of movable property which is required to be registered in any form shall be governed by the law of the Contracting State in which that property is registered. The same shall apply to contracts for the granting of franchises or licences in respect of rights in industrial property.

3 The effects of the bankruptcy on contracts for the leasing of property other than that referred to in the preceding paragraphs shall be governed by the law of the State in which the bankruptcy proceedings have been instituted.

4 The law of the place where the property is situated shall determine whether that property is movable or immovable.

#### Article 38 - Contracts of sale

1 The effects of the bankruptcy of the vendor or of the purchaser upon a contract of sale shall be governed by the law of the Contracting State in which the principal place of business of the bankrupt is situated, if the contract was concluded with that principal place of business, and by the law of the Contracting State in which a business establishment of the bankrupt is situated, if the contract was concluded with that business establishment. In all other cases, the effects of the bankruptcy shall be governed by the law of the State in which the bankruptcy proceedings have been instituted.

2 Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of this Convention, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

#### Article 39 - Contracts of sale under which the passing of title is deferred

1 In the contracts referred to in Article 38, the effects of clauses deferring the passing of title shall upon the bankruptcy of the purchaser be governed by the law of the State in which the bankruptcy proceedings have been instituted. That same law shall provide that clauses deferring the passing of title to the thing sold and guaranteeing payment of the purchase price are valid as against the creditors of the purchaser, on condition

that such clauses are evidenced in a written memorandum made before delivery. Such memorandum shall not be subject to any formal requirement. That law shall also permit the liquidator to prove by any available means any fraud or inaccuracy in the memorandum or in its date.

2 The effects of clauses deferring the passing of title to the thing sold and guaranteeing payment of the purchase price shall upon the bankruptcy of the vendor be governed by Article 6 of Annex I.

#### SECTION VI - PREFERENTIAL AND SECURED CREDITORS

##### Sub-Section 1: General rights of preference

##### Article 40 - General rights of preference in civil and commercial matters

In civil and commercial matters, creditors may assert against assets situated in each of the Contracting States such general rights of preference as the law of that State attaches to the debts which they are entitled to recover.

##### Article 41 - Principles governing distribution

1 For the purposes of the distribution of the proceeds of the realisation of the assets of the bankrupt, the subject-matter, scope and priority of general rights of preference shall be determined by the law of the Contracting State in which the assets were situated on the day when the bankruptcy proceedings were instituted. Assets recovered in a non-Contracting State or the proceeds of their realisation shall be aggregated with the assets of the bankrupt situated in the State in which the bankruptcy proceedings have been instituted.

2 Where a general right of preference secures the same debt in several Contracting States, even with a different degree of priority, that right shall be effective against the assets situated in each of those States in proportion to the aggregate amount of the sums available for the satisfaction of that debt in each of those States.

3 Where a general right of preference secures the same debt in several Contracting States in different amounts, that right shall be effective against the assets situated in each of those States in proportion to the aggregate amount of the sums available for the satisfaction of that debt in each of those States, to the extent of the sums secured in each State. If the preferential debt is not thereby wholly discharged, and if there remains in one or more of the States a surplus available in respect of the sums there secured, the short-fall shall be distributed in proportion to those surpluses. So long as the preferential debt has not been discharged and there exist surpluses applicable to secure that debt, further distributions shall be made upon the same principles.

4 Debts secured in several Contracting States by general rights of preference of different degrees of priority shall be satisfied in the order prescribed in each of those States.

Article 42 - Fiscal debts, social security debts, debts other than civil or commercial debts

1 In matters other than civil or commercial matters, and in particular in fiscal matters, the public authorities, government departments and other public agencies of a Contracting State shall in every other Contracting State be entitled to prove as unsecured creditors to the extent that they have not obtained full satisfaction in their own State.

2 Without prejudice to the acts of the European Communities, the same shall apply for the benefit of the organs of a Contracting State administering social security matters.

Sub-Section 2

Article 43 - Secured rights and special rights of preference, possessory liens

1 For the purposes of the distribution of the proceeds of the realisation of the assets of the bankrupt, the subject-matter, scope and priority of secured rights and special rights of preference shall be determined by the law of the Contracting State in which the property charged with such a secured right or special right of preference was situated at the date when the debtor was declared bankrupt.

2 Mortgages, pledges, special rights of preference and generally all other rights secured upon ships, boats, aircraft or motor-driven land vehicles shall be governed by the law of the flag or of the State in which the property in question is registered in any form.

3 Possessory liens shall be governed by the law of the place where the property is situated.

Sub-Section 3

Article 44 - Priority as between general rights of preference, and secured rights and special rights of preference

Priority as between general rights of preference on the one hand and secured rights and special rights of preference on the other shall be determined by the law of the Contracting State in which the property is situated.

Sub-Section 4 - Provisions common to all preferential and secured rights

Article 45 - Determination of the place where certain movable property is situated

For the purposes of Articles 41 to 44, the movable property referred to in Article 37(2) shall be deemed to be situated in the State in which it is registered in any form.

Article 46 - Date for determining the place where property is situated in a bankruptcy following upon another proceeding

Where a bankruptcy or one of the forms of proceeding listed in Article I(b) of the Protocol to this Convention has been declared following upon one of the other forms of proceeding listed in Article I(b) of that Protocol, the date for determining where the property referred to in Articles 41 and 43 is situated shall be the date when the most recent proceedings were instituted.

SECTION VII - EFFECTS OF THE BANKRUPTCY ON THE PERSONAL  
CAPACITY OF THE DEBTOR

Article 47 - Disqualifications, forfeitures and restrictions  
of rights

The law of each Contracting State shall determine whether and to what extent judgments instituting bankruptcy proceedings in the other Contracting States are to give rise to such disqualifications, forfeitures and restrictions of rights as result from bankruptcies declared in that State.

SECTION VIII - SPECIAL PROVISIONS APPLYING TO CERTAIN  
PROCEEDINGS OTHER THAN BANKRUPTCY

Article 48 - Invalidity, as against preferential or secured  
creditors, of extensions of time for payment and  
releases of debts

Extensions of time for payment or releases of debts granted to the debtor in one of the forms of proceeding listed in Article I(b) of the Protocol to this Convention shall in Contracting States other than that in which the proceeding has been instituted be invalid as against creditors whose debts are secured by a right of preference or a charge over property.

TITLE V

RECOGNITION AND ENFORCEMENT

Article 49 - Judgments

For the purposes of this Convention, "judgment" means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, decision, order or writ of execution, and also includes the determination of costs by an officer of the court.

**SECTION I - RECOGNITION****Article 50 - Recognition as of right**

1 Subject to the provisions of Article 9(2), to the provisions of this Section and to those of Article II(2) of the Protocol to this Convention, judgments given in a Contracting State shall be recognised in the other Contracting States without any formality being required. These provisions shall not apply to judgments concerning the liberty of the individual.

2 Arrangements or compositions ratified by a court, compromises ratified by a court and settlements made in court in the course of proceedings, which are enforceable in the State in which they were ratified or made, shall be recognised in accordance with the provisions of paragraph 1. The same shall apply to executory instruments issued to creditors in accordance with the law of the State in which the proceedings have been instituted.

**Article 51 - Recognition in cases of conflict between non-coordinate jurisdictions**

Where a debtor has been declared bankrupt by the courts of different Contracting States, and where the jurisdiction of one of those courts prevails under this Convention, the judgment given by the court whose jurisdiction prevails shall alone take effect, even in the States where the other judgments have been given.

**Article 52 - Recognition in cases of conflict between coordinate jurisdictions**

1 Where a debtor has been declared bankrupt by the courts of different Contracting States, being courts of coordinate jurisdiction under this Convention, the judgment of the court which first gave judgment shall alone take effect, even in the States where the other judgments have been given.

2 Where, in the case provided for in paragraph 1, more than one judgment has been given on the same day, the alphabetical order of the place-names of the courts shall determine which takes precedence. The relevant place-name for this purpose shall be that given to the place where the court sits in the State in which it is situated.

Article 53 - Validity of acts of the liquidator

Acts performed by the liquidator in enforcing a judgment which has been rendered ineffective by the operation of Articles 51 or 52 shall not on that account only cease to be valid.

SECTION II - ENFORCEMENT OF BANKRUPTCY JUDGMENTS

Article 54 - Enforcement as of right

1 Judgments relating to the institution and prosecution of bankruptcy proceedings, which are recognised by virtue of the provisions of the preceding Section, shall take effect as of right and shall be enforced in the other Contracting State as if they had been given in those States.

2 The same shall apply to the arrangements, compositions, compromises and settlements referred to in Article 50(2).

SECTION III - PROCEEDINGS TO IMPEACH THE BANKRUPTCY

Article 55 - Actions to impeach the bankruptcy

In any Contracting State other than that in which the bankruptcy proceedings have been instituted, an action to impeach the judgment declaring the debtor bankrupt may be brought in any of the cases specified in Article 56.

Article 56 - Cases in which actions to impeach the bankruptcy may be brought

An action to impeach the bankruptcy may be brought only in the following cases:

1 if, as a result of circumstances for which he cannot be held responsible, the debtor was able neither to receive adequate notice of the proceedings, nor to prepare his defence, nor to avail himself of any right to appeal against the judgment declaring him bankrupt;



2 if the judgment declaring the debtor bankrupt is contrary to the public policy of the State in which the action to impeach the bankruptcy is brought; provided always that such an action may not be brought on the basis that the judgment was contrary to public policy on any of the following grounds:

- (a) that the form of proceeding involved is unknown to the law of that State, if such proceeding is listed in Article I of the Protocol to this Convention;
- (b) that the court which declared the debtor bankrupt had no jurisdiction;
- (c) that the judgment could not have been given in the State where the action to impeach the bankruptcy is brought, by reason of its own law governing the conditions for instituting bankruptcy proceedings;
- (d) that the judgment has been given against a natural person or an association of persons, whether or not having legal personality, who or which could not have been declared bankrupt in the State where the action to impeach the bankruptcy has been brought, so long as such person or association of persons has not or no longer had his or its principal place of business in that State;
- (e) that the judgment has been given on the court's own motion or ex parte.

Article 57 - Courts with jurisdiction to entertain actions to impeach the bankruptcy

The action to impeach the bankruptcy shall be brought in each Contracting State before the court designated in Article X of the Protocol to this Convention.

Article 58 - Parties to such actions and time limits

1 The action to impeach the bankruptcy shall be brought against the liquidator. It may be brought at the instance of the public prosecutor, the debtor or any other interested party, with the exception of the person who instituted the bankruptcy proceedings.

2 The action may be brought only within a period of three months from the date of the advertisement of the bankruptcy judgment in the Official Journal of the European Communities or, in the absence of such advertisement, from the date when the person bringing the action had knowledge of the judgment. Such an action may on no account be brought after the closure of the bankruptcy.

Article 59 - Effects of an action to impeach the bankruptcy and rights of appeal

1 The bringing of an action to impeach the bankruptcy shall not operate to stay enforcement of the judgment declaring the debtor bankrupt.

2 The court seised of such an action may nevertheless decide to stay enforcement in whole or in part until it has decided whether the bankruptcy may be impeached. Courts with jurisdiction to decide matters of urgency shall also have power to stay enforcement in whole or in part if they lay down a time limit within which an application is to be made to the court having substantive jurisdiction to entertain an action for the impeachment of the bankruptcy. Judgments ordering such a stay may also order measures designed to protect the interests of the parties.

3 A judgment in an action to impeach the bankruptcy shall take effect against all persons in the State in which it is given, and shall be advertised in that State, in the same manner as a bankruptcy judgment. The same rights of appeal shall be available against it.

4 A judgment which has been successfully impeached shall cease to be recognised or to have effect in the State where the action to impeach the bankruptcy has been brought. The same shall apply accordingly to judgments given in any of the proceedings set out in Article 17, as well as to any other other judgments given in the course of the bankruptcy proceedings. Acts performed prior thereto by the liquidator shall not however on that account only cease to be valid.

Article 60 - Impeachment leading to a bankruptcy having effect in one State only

Where the judgment declaring the debtor bankrupt in one Contracting State has been successfully impeached in an action brought in another Contracting State, a bankruptcy may be declared in that State. A bankruptcy so declared shall have no effect in the other Contracting States.

**SECTION IV - ENFORCEMENT OF BANKRUPTCY JUDGMENTS****Article 61 - Orders for enforcement**

1 Bankruptcy judgments given in one Contracting State, and in particular those given in the proceedings set out in Article 17, may be enforced by execution in another Contracting State when the order for enforcement has been issued thereupon an application to the court or authority designated in Article XI of the Protocol to this Convention.

2 This shall also apply to executory instruments issued to creditors in accordance with the law of the State in which the bankruptcy proceedings have been instituted.

3 Paragraph 1 shall not apply to judgments concerning the liberty of the individual.

**Article 62 - Issue of orders for enforcement**

1 The sole requirements for the issue of an order for enforcement shall be the production of:

- (a) a copy of the judgment or of the executory instrument which satisfies the conditions necessary to establish its authenticity, accompanied by a translation thereof, certified by a person authorised to do so, in the language of the court or authority to which application for the order for enforcement is made;
- (b) documents which establish that the judgment is enforceable according to the law of the State in which it was given.

2 The competent court or authority shall do no more than satisfy itself that the formal requirements of the documents referred to in paragraph 1 have been complied with. The issue of the order for enforcement shall not be subject to the levy of any tax, duty or fee.

3 No appeal shall lie from the issue of an order for enforcement, except as provided in Article 63.

4 The judgment, together with the order for its enforcement, shall before enforcement be served upon the party against whom the enforcement is sought. The judgment must be accompanied by its translation.

### Article 63 - Appeals against enforcement

1 The party against whom the enforcement is sought may, in the cases listed in Article 56 and to the extent that these may be applicable, appeal against the judgment or executory instrument in respect of which an order for enforcement has been issued.

2 The time for appealing shall be 14 days from the date of personal service, or, where personal service has not been effected, 28 days from the date of the first measure of enforcement. If that party is (domiciled) in a State other than that in which the order for enforcement has been issued, the time shall be 28 days either from the date of service, or, where personal service has not been effected, from the date of the first measure of enforcement. No extension of time may be granted on account of distance.

3 The appeal shall be lodged against the party seeking enforcement.

### Article 64 - Jurisdiction in appeals against enforcement

1 An appeal under Article 63 shall in each Contracting State be lodged with the court designated in Article XII of the Protocol to this Convention.

2 The jurisdiction of local courts shall be determined by the place of (domicile) of the party against whom the enforcement is sought. If he is not (domiciled) in the State in which the enforcement is sought, the court for the place where the order for enforcement has been issued shall have jurisdiction.

### Article 65 - Effects of appeals against enforcement

If the appeal is allowed, the judgment shall cease to be recognised or to have effect in the State where the appeal was lodged.

### Article 66 - Further appeal

The judgment given on the appeal under Article 63 may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a Rechtsbeschwerde.

Article 67 - Protective measures

1 During the time for appealing in accordance with Article 63, and until any such appeal has been determined, no measures of execution may be taken against the property of the party against whom the enforcement is sought other than measures designed to protect the interests of the applicant for enforcement.

2 The issue of the order for enforcement shall carry with it the power to proceed to any such measures.

SECTION V - GENERAL PROVISIONS

Article 68 - Dispensing with security

No security or deposit, however described, may be demanded from a party bringing an action under Article 55 or lodging an appeal under Article 63, either on the ground that he is a foreign national, or on the ground that he is not (domiciled) or resident in the country.

Article 69 - Dispensing with legalisation

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 62(1), nor in respect of those produced for the purposes of an action under Article 55 or an appeal under Article 63.

TITLE VI

TRANSITIONAL PROVISIONS

Article 70 - Commencement

The provisions of this Convention shall apply only to proceedings instituted after its entry into force.

## TITLE VII

## RELATIONSHIP TO OTHER CONVENTIONS

Article 71 - Substitution for existing Conventions between the Contracting States

This Convention shall, in respect of the matters to which it applies, supersede as between the States which are party to it the following Conventions concluded between two or more of those States:

- (i) The Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Probative Instruments, signed in Paris on 8 July 1899;
- (ii) The Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Probative Instruments, signed in Brussels on 28 March 1925;
- (iii) The Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed in Rome on 3 June 1930;
- (iv) The Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed in The Hague on 30 August 1962;

and, in so far as it is in force

- (v) The Treaty between Belgium, the Netherlands and Luxembourg on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Probative Instruments, signed in Brussels on 24 November 1961.

Article 72 - Continuance in force of existing Conventions  
between the Contracting States

The Treaty and Conventions referred to in Article 71 shall continue to have effect in respect of matters to which this Convention applies, so far as concerns proceedings instituted before its entry into force.

Article 73 - Conventions concluded with non-Member States

This Convention shall not apply in a Contracting State to the extent that it is irreconcilable with the obligations resulting from another convention concluded by that State with a non-Member State before the entry into force of this Convention.

TITLE VIII

FINAL PROVISIONS

Article 74 - Territorial scope

1 This Convention shall apply to the European territories of the Contracting States, to the French overseas departments and to the French overseas territories.

2 The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to Surinam and the Netherlands Antilles. In the absence of such declaration with respect to the Netherlands Antilles, proceedings taking place in the European territory of that Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Article 75 - Ratification and entry into force

1 This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

2 This Convention shall enter into force on the first day of the sixth month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 76 - Incorporation of the uniform law into national law

1 Each Contracting State shall, not later than the date on which this Convention enters into force, incorporate into its own law relating to the forms of bankruptcy proceeding listed in Article I(a) of the Protocol to this Convention provisions in conformity with the uniform law laid down in Annex I, and also if need be provisions in conformity with Article 39(1).

2 Those Contracting States whose laws do not include the presumption referred to in Article 34(1) shall not be required to incorporate into their laws the provisions of Article 3 of Annex I.

3 Paragraph 1 shall also apply to the forms of proceeding listed in Article XIII of the Protocol, as stated in that Article.

4 The provisions of the uniform laws prescribed by Article 39(1) and by Articles 3 to 6 of Annex I shall apply to the forms of proceeding listed in Article I(b) of the Protocol to the extent that those provisions are capable of applying thereto.

5 At the time of signing or ratifying this Convention, the Contracting States named in Annex II may, by a declaration addressed to the Secretary-General of the Council of the European Communities, make the reservations therein provided for. Such reservations may be withdrawn at any time.



Article 77 - Accession to the Convention

1 The Contracting States recognise that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last subparagraph of Article 220 of the Treaty establishing the European Economic Community.

2 The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member State of the other part.

Article 78 - Notification by the Council of the European Communities

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of the entry into force of this Convention;
- (c) any declaration received pursuant to Article 74(2);
- (d) any declaration received pursuant to Article 76(5), or pursuant to Article VII(2) of the Protocol to this Convention;
- (e) any communication made pursuant to Article XIV or XV of the Protocol to this Convention.

Article 79 - Protocol to the Convention

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 80 - Duration of the Convention

This Convention is concluded for an unlimited period.

Article 81 - Revision of the Convention

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 82 - Deposit of the Convention

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Brussels this

## ANNEX I

THE UNIFORM LAWArticle 1: Extension of the bankruptcy of firms, companies or other legal persons to the persons directing or managing them

- 1 Any person who has, whether de jure or de facto, and whether openly or secretly, directed or managed a firm, company or other legal person which has been declared bankrupt, and who has:
- (a) carried on business on his own under the cover of the business of that firm, company or other legal person; or
  - (b) wrongfully dealt with the property of that firm, company or other legal person as if it were his own; or
  - (c) wrongfully carried on an insolvent business for his personal benefit;

may be declared bankrupt, if the acts described in (a), (b) and (c) above have led or contributed to the suspension of payments of the firm, company or other legal person.

- 2 Where it is necessary to determine a date for the suspension of payments, that date shall be the same as for the bankruptcy of the firm, company or other legal person.
- 3 In making a declaration of bankruptcy under this Article, the court shall determine whether the person who has directed or managed the firm, company or other legal person shall be made to bear all its debts or only a part of them; in the latter case, the court shall determine, in the same or in a subsequent judgment, for what part or for what amount of such debts that person shall be held accountable.

Article 2: Bankruptcy of persons responsible for the management of firms, companies or other legal persons

Any person who has, whether de jure or de facto, and whether openly or secretly, managed a firm, company or other legal person which has been declared bankrupt, may himself be declared bankrupt, where by reason of his management he has been ordered

either to compensate the firm, company or other legal person or to bear the whole or part of its liabilities, and he has failed to discharge that debt.

Article 3: Proof of the spouse's claim to recover property

All modes of proof shall be admissible to rebut a presumption that the property of the spouse was acquired with the moneys of the bankrupt.

Article 4: Periods of relation-back and actions to set aside frauds on creditors

A The following transactions shall, if effected by the debtor less than one year before the declaration of the bankruptcy, be invalid as against the bankruptcy creditors:

1 all transfers of movable or immovable property made without consideration, and all disposals of property without consideration, whatever their nature. For the purposes of this provision the conferment of a dowry shall be deemed to be such a disposal.

However, customary presents and gifts made in fulfilment of a moral obligation shall not, so long as they are not unusual having regard to the circumstances, be liable to be declared invalid as against the bankruptcy creditors by virtue of the foregoing provision;

2 all transactions effected for valuable consideration, not being transactions contingent on an uncertain event, whereunder the obligations of the bankrupt substantially exceed in value those of the other contracting party.

B The following transactions shall also be invalid as against the bankruptcy creditors:

1(a) all payments of whatever kind made by the debtor in discharge of debts which had not fallen due at the date of the declaration of the bankruptcy, if made after the date of the suspension of payments and less than six months before the declaration of the bankruptcy;

- (b) all payments made after the date of the suspension of payments and less than one year before the declaration of the bankruptcy in discharge of debts expressed in terms of money which had fallen due, if made otherwise than in cash or by negotiable instrument, bank or postal transfer, or some other usual means of payment; and
- (c) the performance, after the date of the suspension of payments and less than one year before the declaration of the bankruptcy, of any contractual obligation, where the manner of such performance is unusual in relation to the obligation;
- 2 all charges created by contract, by court order or by law after the date of the suspension of payments and less than one year before the declaration of the bankruptcy to secure debts existing prior to the creation of the charge, but not including the statutory charges imposed in favour of wards upon the property of their guardians or the statutory charges securing sums due to public authorities and institutions, including the authorities administering social security.
- C(1) All other payments made by the debtor in respect of debts due at the date of the declaration of the bankruptcy, and all other transactions effected for valuable consideration by the debtor after the date of the suspension of payments and less than one year before the declaration of the bankruptcy, may be declared invalid as against the bankruptcy creditors, if they have occasioned detriment to those creditors, and if the persons who receive the payments from the debtor or were parties to the transactions with him knew of the suspension of payments.
- (2) In the event of bills of exchange having been paid or cheques having been met after the date of the suspension of payments and less than one year before the declaration of the bankruptcy, proceedings to recover the sums thereby passing may be brought only against the drawer of the bill of exchange or the payee of the cheque, or, where a bill is drawn by order for the account of a third person, against that person. In the case of a promissory note, or bill payable to order, proceedings may be brought only against the first indorser. In either case, it must be proved that the person from whom recovery is sought knew of the suspension of payments at the time when the bill or note was issued.

- D The registration of any charge created by the debtor by contract, if effected after the date of the suspension of payments and less than one year before the declaration of the bankruptcy, may be declared invalid as against the bankruptcy creditors if more than 15 days elapsed between the date of the transaction creating the charge and the date of its submission for registration.
- E When the bankruptcy has come about following upon proceedings other than bankruptcy proceedings, the periods of time specified above shall be calculated from the date when those other proceedings were instituted.
- F During the course of the bankruptcy, the liquidator shall alone have the right to act under the provisions of this Article, or to commence proceedings to set aside transactions effected by the debtor in fraud of his creditors.

Article 5: Set-off

1 The bankruptcy shall be no bar to set-off, provided that the creditor's claim, and the debt to be set off, existed in the same estate at the date when the bankruptcy was declared. The same shall apply to claims for damages for breach of an obligation arising under a contract entered into before the declaration of the bankruptcy, even if such breach did not occur or was not established until after the declaration of the bankruptcy, or if the damages in respect of such breach were not claimed until after the declaration of the bankruptcy.

2 Set-off shall be admissible even where, at the time of the declaration of the bankruptcy, the debts to be set off, or one of them, were payable at a future date, or were not expressed in money, or were expressed in currency other than the legal tender of the State in which the bankruptcy proceedings were instituted. Such debts shall be valued as at the date of the declaration of the bankruptcy, and in accordance with any other provisions of the law of the State where the bankruptcy proceedings were instituted.

3 Set-off shall not be admissible where, at the time of the declaration of the bankruptcy, the debts, or one of them, were, in accordance with the contract between the parties, contingent only.

4 Set-off shall not be admissible in favour of the assignee of the benefit of, or liability for, a debt, where the assignment was made after the date of the suspension of payments and after the assignee had knowledge thereof. This rule applies also to the transfer of negotiable instruments payable to bearer or to order.

Article 6: Contracts of sale under which the passing of title is deferred

Where there has been a sale on terms that the passing of title be deferred, the bankruptcy of the vendor occurring after the thing sold has been delivered shall not be a ground for setting aside the contract, and shall not prevent the purchaser from acquiring title to the thing sold.

## ANNEX II

At the time of signing or ratifying this Convention:

- (a) The Federal Republic of Germany may declare that it reserves the right not to introduce into its own law Article 1 of Annex I, while nevertheless recognising the bankruptcy of a person who has directed or managed a firm, company or other legal person when such bankruptcy has been declared under that Article in another Contracting State, even if the principal place of business of that person is situated in its own territory;
- (b) The Italian Republic may declare that it reserves the right not to introduce the provisions of Article 1(3) of Annex I into its own law, in so far as they authorise the imposing of liability for a part only of the debts of a firm, company or other legal person upon a person who has directed or managed such an undertaking and to whom these provisions apply;
- (c) The Federal Republic of Germany, the French Republic, the Italian Republic and the Kingdom of the Netherlands may declare that they reserve the right, notwithstanding the provisions of Article 4 of Annex I, to prescribe, for the purposes of their own laws relating to bankruptcies declared in their respective territories, periods of time which shall not on the one hand be shorter than six months, nor on the other hand be longer than two years in the case of transactions effected without consideration or one year in the case of transactions effected for valuable consideration;
- (d) The Kingdom of the Netherlands may declare that it reserves the right to introduce into its own law provisions whereby creditors shall be entitled to avail themselves of the provisions of Article 4(F) of Annex I, at the time of the disputing of the proofs of debt;
- (e) The Italian Republic may declare that it reserves the right to retain in its own law the provision whereby disposals of property without consideration are valid as against the bankruptcy creditors if made in the public interest;
- (f) The Federal Republic of Germany may declare that it reserves the right, when incorporating into its own law the provisions of Article 4 of Annex I, to retain the provisions of paragraph 222 of the Konkursordnung and paragraph 342 of the Handelsgesetzbuch.



- (g) The Italian Republic and the Kingdom of the Netherlands may declare that they reserve the right, when introducing into their respective laws the provisions of Annex I, not to refer to the date of the suspension of payments;
- (h) The Federal Republic of Germany may declare that it reserves the right to retain in its own law, in respect of bankruptcies declared in its own territory and to such extent as it shall decide, the right of set-off in the case of the contingent debts referred to in Article 5(3) of Annex I;
- (i) The Federal Republic of Germany may declare that it reserves the right not to introduce into its own law the right of the public prosecutor to bring an action to impeach the bankruptcy in pursuance of Article 58(1).

PROTOCOL

THE HIGH CONTRACTING PARTIES have agreed upon the following provisions, which shall be annexed to the Convention:

Article I

In accordance with Article 1(1) of the Convention, the Convention shall apply:

(a) to the following forms of bankruptcy proceeding:

in Belgium: to "faillite" - "faillissement";

in the Federal Republic of Germany: to "Konkurs";

in France: to "liquidation des biens";

in Italy: to "fallimento";

in Luxembourg: to "faillite";

in the Netherlands: to "faillissement";

(b) to the other forms of proceeding listed below:

in Belgium:

- to "concordat judiciaire" - "gerechtelijk akkoord"

- to "sursis de paiement" - "uitstel van betaling";

in the Federal Republic of Germany:

- to "gerichtliches Vergleichsverfahren";

in France:

- to "règlement judiciaire"

- to "procédure de suspension provisoire des poursuites et d'apurement collectif du passif de certaines entreprises";

in Italy:

- to "concordato preventivo"
- to "amministrazione controllata"
- to "liquidazione coatta amministrativa" in its judicial stage;

in Luxembourg:

- to "concordat préventif de la faillite"
- to "sursis de paiement"
- to "régime spécial de liquidation applicable aux notaires";

in the Netherlands:

- to "surséance van betalen"
- to "regeling, vervat in de Wet op de vergadering van houders van schuldbrieven aan toonder".

Article II

1 The Convention shall not apply to bankruptcies, arrangements, compositions or other forms of proceeding listed in Article I(b), which are instituted:

in the Federal Republic of Germany, in respect of:

- private undertakings whose object is to build up a body of assets from the contributions of savers for the purpose of making loans to individual savers, either for the provision or improvement of dwellings or building plots or for the discharge of obligations entered into for that purpose ("private Bausparkassen");
- undertakings which carry on the business of reinsurance on a mutualised basis;

in France, in respect of:

- undertakings which seek the deposit of savings for the purpose of accumulating capital, and enter into specific contractual obligations in consideration for single or periodical payments made directly or indirectly ("entreprises de capitalisation");
- undertakings which have as their object the acquisition of immovable property in exchange for the payment of annuities;
- undertakings which seek the deposit of savings for the purpose of accumulating the sums paid in by their members, either for placing in interest-bearing accounts or in order to increase the accumulated capital by participation in the profits of other companies or firms which they manage or administer directly or indirectly ("entreprises d'épargne");
- undertakings which, irrespective of their name or legal form, make loans whereby the provision of the funds lent is conditional both on the making of one or more prior payments of whatever nature by the person seeking the loan, and also on the imposition on that person of a waiting period ("entreprises de crédit différé");

in Italy, in respect of undertakings which, in the legal form of cooperative societies or mutual benefit associations, accumulate capital;

in the Netherlands, in respect of undertakings which seek the deposit of savings for the purpose of making loans to the savers for the acquisition or construction of dwellings ("Bouwkassen").

2 A bankruptcy, arrangement, composition or other form of proceeding referred to in Article I may, however, be instituted in respect of these undertakings in a Contracting State other than that under whose name it appears in paragraph 1, where the undertaking

has a business establishment in that other Contracting State, or where the law of that State permits the institution of the proceedings. Such proceedings shall not have effect in the States under whose name the undertakings are listed and where they carry on their business.

### Article III

The extract of a judgment declaring a bankruptcy, or of a judgment in one of the forms of proceeding listed in Article I(b), which is to be advertised in the Official Journal of the European Communities in accordance with Article 25(1) and (4) of the Convention, shall contain the following particulars:

- (a) the surname, forenames and business address of the bankrupt or, if he has no business address, the address of his (domicile); in the case of an association, with or without legal personality, its name and seat; in the case of the bankruptcy of a deceased person or of a deceased's estate, the surname, forenames and business address of the deceased or, if he had no business address, the address of his last (domicile);
- (b) the order made on the judgment, its date and the court which gave it;
- (c) the date of the suspension of payments, if the judgment refers to it;
- (d) the name of the bankruptcy judge, if any;
- (e) the name and address of the person or persons acting as liquidator, curator, or administrator, and of the persons referred to in Article 28(3) of the Convention;
- (f) any other particulars considered to be useful.

Article IV

In addition to the judgments advertised in accordance with Article 25(1) of the Convention, there shall also be advertised in the Official Journal of the European Communities, in accordance with Article 25(4) of the Convention, the following judgments, acts and notices which:

in Belgium

- 1 in cases of "faillite":
  - fix, subsequent to the declaration of the bankruptcy, the date of the suspension of payments;
  - close the proceedings;
- 2 in cases of "concordat judiciaire":
  - propose the composition;
  - convene the meeting of creditors, or notify the creditors of the proposals for the composition;
  - record approval of the composition;
- 3 in cases of "sursis de paiement":
  - convene the creditors;
  - grant an interim or permanent stay of proceedings, or extend a stay;

in the Federal Republic of Germany

- 1 in cases of "Konkursverfahren":
  - convene a meeting of creditors and announce the subject-matter of the resolution to be put to the meeting, unless it is a resumption of a previous adjourned meeting, and the new date has already been announced at the previous meeting;
  - appoint a meeting to verify the creditors' proofs of debt, unless it is a resumption of a previous adjourned meeting for the verification of proofs of debt, and the new date has already been announced at the previous meeting;

- announce the appointment of a new liquidator, giving his name and address;
- appoint a hearing for a composition;
- discontinue or close the proceedings, after such judgment has become res judicata, or which re-open the proceedings;

2 in cases of "gerichtliches Vergleichsverfahren":

- announce the receipt of an application for a composition, giving the name and address of the interim administrator;
- disallow the institution of composition proceedings and decline to make a declaration of bankruptcy, after such judgment has become res judicata;
- impose on or remove from the debtor a general restraint as regards the disposition of his property;
- refuse the approval of a composition and decline to make a declaration of bankruptcy, after such judgment has become res judicata;
- close the proceedings;
- discontinue the "gerichtliches Vergleichsverfahren" and decline to make a declaration of bankruptcy, after such judgment has become res judicata;

in France

1 in cases of "liquidation des biens" or "règlement judiciaire":

- close the proceedings;
- set aside a judgment declaring a "liquidation des biens" or a "règlement judiciaire", or a judgment closing the proceedings;

2 in cases of "règlement judiciaire":

- declare a "règlement judiciaire";
- approve, annul or **set aside** a composition;
- convert a "règlement judiciaire" into a "liquidation des biens";

3 in cases of "suspension provisoire des poursuites et d'apurement collectif du passif de certaines entreprises":

- grant or put an end to an interim stay of proceedings;
- sanction a scheme for the collective discharge of the liabilities of the bankrupt, or set it aside;

in Italy

1 in cases of "fallimento":

- set aside a judgment declaring a bankruptcy;
- close, or order the re-opening of, the bankruptcy proceedings;
- propose a composition, where individual notification is particularly difficult by reason of the number of persons to be notified;
- approve the composition or record its complete implementation, and order the discharge of the securities given and the entry of satisfaction of the mortgages registered as security;

2 in cases of "concordato preventivo":

- declare the opening of the proceedings;
- record approval of the "concordato preventivo";

3 in cases of "amministrazione controllata":

- declare the opening of the proceedings;
- determine the powers of the court's receiver and entrust to him, in whole or in part, the management of the undertaking and the administration of the property of the debtor;
- close the proceedings;

4 in cases of "liquidazione coatta amministrativa":

- declare the opening of the proceedings;
- approve the final balance sheet of the liquidation, the accounts of the administrator and the scheme for the distribution among the creditors, and order the lodging of the scheme;



in Luxembourg1 in cases of "faillite":

- fix, subsequent to the declaration of the bankruptcy, the date of the suspension of payments;
- close the proceedings;

2 in cases of "concordat préventif de la faillite":

- propose the composition;
- convene the meeting of creditors, or notify the creditors of the proposals for the composition;
- record approval of the composition;

3 in cases of "sursis de paiement":

- convene the creditors;
- grant an interim or permanent stay of proceedings, or extend a stay;

in the Netherlands1 in cases of "faillissement":

- declare the annulment, the lifting or the closure of the bankruptcy;
- declare the annulment of an approved composition and at the same time institute fresh bankruptcy proceedings;
- fix the time limit for the proof of debts and the date of the meeting for the verification of proofs;

2 in cases of "surséance van betalen":

- provisionally grant the "surséance van betalen" and fix the date for the hearing at which the application will be examined;
- certify that a draft agreement has been filed with the court registry, and fix the date for the examination of that agreement;
- finally confirm or set aside the "surséance van betalen";

#### Article V

The extracts of the judgments, acts and notices listed in Article IV which are to be advertised in the Official Journal of the European Communities in accordance with Article 25(4) of the Convention shall contain the particulars referred to in Article III(a), (b), (e), and (f).

#### Article VI

1 The gazetting provided for by Article 25(3) of the Convention shall appear:

- in Belgium, in the "Moniteur belge" - "Belgisch Staatsblad";
- in the Federal Republic of Germany, in the "Bundesanzeiger";
- in France, in the "Bulletin Officiel des Annonces Commerciales";
- in Italy, in the "Foglio degli Annunci legali della Provincia";
- in Luxembourg, in the "Mémorial administratif"; and
- in the Netherlands, in the "Nederlandse Staatscourant".

2 The particulars or extracts to be gazetted shall be furnished by the liquidator in the official language or one of the official languages of the government concerned.

#### Article VII

1 Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

2 Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such instruments may also be sent by the proper public officers of the State in which the instrument has been drawn up directly to the proper public officers of the State in which the addressee is to be found. In this case, the officer of the State of origin shall send a copy of the instrument to the officer of the State applied to who is competent to forward it to the addressee. The instrument shall be forwarded in the manner specified by the law of the State applied to. Delivery shall be recorded by a certificate sent directly to the officer of the State of origin.

#### Article VIII

1 The liquidator shall inform the postal authorities of the Contracting States other than that in which the bankruptcy has been declared of the duty placed upon them by Article 29 of the Convention, by sending them a certified copy of the judgment ordering the redirection of mail. This shall be accompanied, either by an extract, certified by an officer of the court, of the judgment appointing the liquidator or liquidators, or by the issue of the Official Journal of the European Communities, or of the Official Gazette of the State whose postal authorities are concerned, containing the advertisement of the bankruptcy. The copy and the extract referred to above shall be accompanied by a certified translation in the official language or one of the official languages of the postal authority concerned.

2 The duty under Article 29 of the Convention shall terminate with the sending to the postal authorities, in the same manner as in the preceding paragraph, of the extract of the judgment declaring the closure of the bankruptcy proceedings or bringing to an end the redirection of mail to the liquidator.

Article IX

In accordance with Article 30 of the Convention, proofs and disputes of debts shall be submitted:

in Belgium: to the "juge-commissaire";

in the Federal Republic of Germany:

- in cases of "Konkursverfahren", to the "Konkursgericht";
- in cases of "gerichtliches Vergleichsverfahren", to the "Vergleichsgericht";

in France: to the "syndic";

in Italy: to the "giudice delegato";

in Luxembourg: to the "greffier du tribunal de commerce";

in the Netherlands:

- in cases of "faillissement", to the "curator";
- in cases of "surséance van betaling", to the "bewindvoerder"

Article X

Actions to impeach the bankruptcy shall be brought in accordance with Article 57 of the Convention:

in Belgium:

before the "Président du Tribunal de Commerce" in Brussels, who shall give judgment according to the procedure for matters of urgency;

in the Federal Republic of Germany:

before the "Amtsgericht" of Wiesbaden, which shall give judgment according to the "Beschlussverfahren";

in France:

before the "Président du Tribunal de grand instance" in Paris, who shall give judgment according to the procedure for matters of urgency;

in Italy:

before the "Corte d'appello" in Rome;

in Luxembourg:

before the "Président du Tribunal d'arrondissement" in Luxembourg, who shall give judgment according to the procedure for matters of urgency;

in the Netherlands:

before the "arrondissementsrechtbank" in The Hague.

Article XI

For the purposes of Article 61 of the Convention, an order for enforcement shall be issued:

in Belgium: by the "Président du Tribunal de Commerce". Local jurisdiction shall be determined by the (domicile) of the judgment debtor. If he is not (domiciled) in Belgium, local jurisdiction shall be determined by the place of enforcement.

in the Federal Republic of Germany: by the President of a Chamber of the "Landgericht". Local jurisdiction shall be determined by the (domicile) of the judgment debtor. If he is not (domiciled) in the Federal Republic of Germany, local jurisdiction shall be determined by the place of enforcement.

in France: by the "Secrétaire-greffier en chef du Tribunal du grande instance" in Paris.

in Italy: by the "cancelliere del tribunale". Local jurisdiction shall be determined by the (domicile) of the judgment debtor. If he is not (domiciled) in Italy, local jurisdiction shall be determined by the place of enforcement.

in Luxembourg: by the "Président du Tribunal d'arrondissement". Local jurisdiction shall be determined by the (domicile) of the judgment debtor. If he is not (domiciled) in Luxembourg, local jurisdiction shall be determined by the place of enforcement.

in the Netherlands: by the President of the  
"arrondissementsrechtbank" chosen by the applicant.

#### Article XII

An appeal against enforcement under Article 63 of the Convention shall be lodged:

- in Belgium: with the "Président du Tribunal de commerce";
- in the Federal Republic of Germany: with the "Oberlandesgericht";
- in France: with the "Président du Tribunal de grand instance", who shall give judgment according to the procedure for matters of urgency;
- in Italy: with the "tribunale";
- in Luxembourg: with the "Président du Tribunal d'arrondissement", who shall give judgment according to the procedure for matters of urgency;
- in the Netherlands: with the President of the "arrondissementsrechtbank", who shall give judgment according to the procedure for matters of urgency.

#### Article XIII

Article 76(3) of the Convention shall apply:

- in France, to "règlement judiciaire";
- in Italy, as regards Articles 1 and 2 of Annex I, to "liquidazione coatta amministrativa" in its judicial stage.

#### Article XIV

Each Contracting State shall communicate to the Secretary-General of the Council of the European Communities the text of amendments introduced into its own law on bankruptcy, winding-up, arrangements, compositions and similar forms of proceeding, and also, to the extent that it deems necessary, any proposed reforms in these fields which are likely to have a bearing on the application of the Convention.

Article XV

Each Contracting State may, by a declaration addressed to the Secretary-General of the Council of the European Communities, amend those particulars relating to that State which are contained in the preceding Articles, indicating the date on which such amendment is to come into force.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

DONE at Brussels this

## ANNEX TO THE PROTOCOL

ANNEXE AU PROTOCOLE - ANLAGE ZUM PROTOKOLL

ALLEGATO AL PROTOCOLLO - BIJLAGE TOT HET PROTOCOL

Form of certificate provided for in Article 28 of the Convention  
 Modèle d'attestation prévu à l'article 28 de la Convention  
 Muster der Bescheinigung nach Artikel 28 des Übereinkommens  
 Modello di certificato previsto all'articolo 28 della Convenzione  
 Model van verklaring zoals voorzien in artikel 28 van het verdrag

	Passport or Identity Card No .....
	Passeport ou carte d'identité no .....
	Reisepass oder Personalausweis Nr .....
	Passaporto o Carta d'identità no .....
	Paspoort of identiteitsbewijs nr .....
Certificate	
Attestation	Bescheinigung
Certificato	Verklaring
provided for in Article 28 of the Convention	
prévüe à l'article 28 de la Convention	
nach Artikel 28 des Übereinkommens	
previsto all'articolo 28 della Convenzione	
voorzien in artikel 28 van het verdrag	
of/du/vom/del/van .....	
on bankruptcy, winding-up, arrangements, compositions and similar proceedings	
relative à la faillite, aux concordats et aux procédures analogues	
über den Konkurs, Vergleiche und ähnliche Verfahren	
relativo al fallimento, ai concordati ed ai procedimenti affini	
betreffende faillissement, akkoord en soortgelijke procedures	



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I, the undersigned, Registrar of (1) .....  
 Le soussigné, Greffier de (1) .....  
 Der Unterzeichnete, Urkundsbeamter des (1) .....  
 Il sottoscritto, Cancelliere di (1) .....  
 De ondergetekende, griffier van (1) .....  
  
 in/à/in/a/te (2) .....  
  
 certify that the above court, by a judgment given on (3) .....  
 atteste que par décision de la juridiction précitée en date du (3) .....  
 bescheinigt: durch Entscheidung des vorbezeichneten Gerichts vom (3) .....  
 attesta che con decisione dell'autorità giudiziaria summenzionata in data (3) ...  
 verklaart dat bij beslissing van de bovengenoemde rechter van (3) .....  
  
 declared (4)  
 a été prononcé (4) .....  
 ist eröffnet worden (4) .....  
 è stato dichiarato (4) .....  
 is uitgesproken (4) .....  
  
 of (5) .....  
 de (5) .....  
 über das Vermögen des/der (5) .....  
 di (5) .....  
 van (5) .....  
  
 of/à/in/a/te (6) .....  
  
 and appointed (7) .....  
 a été désigné (7) .....  
 Ernannt wurde (7) .....  
 è stato designato (7) .....  
 en is benoemd (7) .....  
  
 address (8) .....  
 adresse (8) .....  
 Anschrift (8) .....  
 indirizzo (8) .....  
 adres (8) .....  
  
 as/en qualité de/zum/in qualita di/als (9) .....  
  
 Date/date/Datum/data/datum .....

Registrar of/  
 le Greffier de/der Urkundsbeamte  
 il cancelliere di/de griffier van

seal/  
 sceau/Stempel  
 timbro/zegel

signature  
 signature/Unterschrift  
 firma/handtekening

- (1) Name of the court which gave judgment.  
 Dénomination de la juridiction qui a rendu la décision.  
 Bezeichnung des Gerichts, das die Entscheidung verkündet hat.  
 Denominazione dell'autorità giudiziaria che ha pronunciato la decisione.  
 Naam van het rechtscollege dat de beslissing heeft genomen.
- (2) Place and State where the court sits.  
 Localité et Etat où se trouve la juridiction.  
 Ort und Staat, wo sich das Gericht befindet.  
 Località e Stato in cui ha sede l'autorità giudiziaria.  
 De plaats en het land waar het rechtscollege is gevestigd.
- (3) Date of the judgment.  
 Date de la décision.  
 Datum der Entscheidung.  
 Data della decisione.  
 Datum van de beslissing.
- (4) Nature of the judgment.  
 Nature de la décision.  
 Art der Entscheidung.  
 Natura della decisione.  
 Aard van de beslissing.
- (5) Name of the bankrupt or of the debtor.  
 Nom du failli ou du débiteur.  
 Name des Gemeinschuldners oder des Schuldners.  
 Nome del fallito o del debitore.  
 Naam van de gefailleerde of de schuldenaar.
- (6) Address of the bankrupt or of the debtor.  
 Adresse du failli ou du débiteur.  
 Anschrift des Gemeinschuldners oder des Schuldners.  
 Indirizzo del fallito o del debitore.  
 Adres van de gefailleerde of de schuldenaar.
- (7) Name and forenames of the person appointed.  
 Nom et prénoms de la personne désignée.  
 Name und Vornamen der bestellten Person.  
 Nome e cognome della persona designata.  
 Naam en voornamen van de benoemde persoon.
- (8) Address of the person appointed.  
 Adresse de la personne désignée.  
 Anschrift der bestellten Person.  
 Indirizzo della persona designata.  
 Adres van de benoemde persoon.
- (9) Capacity in which that person was appointed.  
 Nature des fonctions de la personne désignée.  
 Art des Amtes der bestellten Person.  
 Natura delle funzioni della persona designata.  
 Aard van de functies van de benoemde persoon.

JOINT DECLARATION

THE GOVERNMENTS of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

ON SIGNING the Convention on Bankruptcy, Winding-Up, Arrangements, Compositions and Similar Proceedings;

DESIROUS of ensuring that the Convention is applied as effectively as possible;

ANXIOUS to prevent differences of interpretation of the Convention from impairing its unifying effect;

RECOGNISING that claims and disclaimers of jurisdiction may arise in the application of the Convention;

DECLARE THEMSELVES READY:

- (1) to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
- (2) to arrange meetings at regular intervals between their representatives;
- (3) to take all appropriate measures to remove discrepancies existing between this Convention and the conventions into which they have previously entered with non-Member States;

- (4) to negotiate a Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings concerning the undertakings excluded by Article 1 from the scope of this Convention;

DECLARE that, after this Convention has come into force, their intention is that conventions on bankruptcy shall be concluded with non-Member States only by common accord.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Joint Declaration.

DONE at Brussels this