

No. 14534

**BELGIUM
and
AUSTRIA**

Convention concerning bankruptcy, composition and extension of payment (with additional protocol of 13 June 1973). Signed at Brussels on 16 July 1969

Authentic texts: French, Dutch and German.

Registered by Belgium on 6 January 1976.

**BELGIQUE
et
AUTRICHE**

Convention sur la faillite, le concordat et le sursis de paiement (avec protocole additionnel du 13 juin 1973). Signée à Bruxelles le 16 juillet 1969

Textes authentiques : français, néerlandais et allemand.

Enregistrée par la Belgique le 6 janvier 1976.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE
REPUBLIC OF AUSTRIA CONCERNING BANKRUPTCY, COM-
POSITION AND EXTENSION OF PAYMENT

His Majesty the King of the Belgians and the Federal President of the Republic of Austria,

Desiring to regulate relations between Belgium and Austria in respect of bankruptcy, composition and extension of payment,

Have decided to conclude a Convention for this purpose and have appointed as their Plenipotentiaries:

His Majesty the King of the Belgians: His Excellency Mr. P. Harmel, Minister for Foreign Affairs,

The Federal President of the Republic of Austria: His Excellency Mr. K. Farbowsky, Ambassador Extraordinary and Plenipotentiary of Austria in Brussels,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Article 1. (1) This Convention shall apply to bankruptcies of and compositions by traders or trading companies and to extensions of payment granted to traders or trading companies. Whether a person or company is deemed to be a trader or trading company shall be determined in accordance with the law of the Contracting State in whose territory the bankruptcy, composition or extension of payment has effect pursuant to this Convention.

(2) For the purposes of this Convention, co-operative societies shall be deemed to be trading companies.

Article 2. (1) The courts of the Contracting State in whose territory the place of management of the trader or the head office of the trading company is situated shall have exclusive jurisdiction to declare bankruptcy.

(2) If the courts of the Contracting States do not have jurisdiction by virtue of paragraph 1, their jurisdiction shall nevertheless be recognized if the debtor is declared bankrupt in that one of the two States in which he has an establishment. However, the jurisdiction of the court of that one of the two States in which the debtor has an establishment shall not be recognized by the other State if the latter is party to an international convention providing for the jurisdiction of the courts of a third State.

(3) Where, pursuant to paragraph 1 or paragraph 2, bankruptcy proceedings are instituted in courts of each of the Contracting States in respect of the same trader or the same trading company, the court to which the later petition is addressed shall not proceed with the case unless the court first petitioned has declared its own lack of jurisdiction.

¹ Came into force on 11 August 1975, i.e., the sixtieth day following the exchange of instruments of ratification, which took place at Vienna on 12 June 1975, in accordance with article 13 (2).

Article 3. The jurisdiction of the courts of the Contracting State in which bankruptcy has been declared shall be recognized where those courts have rendered decisions on actions which, according to the laws of one of the two States, arise directly out of the bankruptcy.

Article 4. (1) The effects of bankruptcy declared in one Contracting State by the court having jurisdiction in accordance with article 2 shall extend to the territory of the other State.

(2) Bankruptcy declared in one Contracting State shall entail for the bankrupt, in the other Contracting State, the occupational disqualifications to which he is liable, in his capacity as a trader, under the law of the latter State.

(3) In so far as the law of the Contracting State in which bankruptcy has been declared permits him to do so, the trustee shall be empowered to act in the other State as representative of the bankrupt or of the estate, and in particular:

1. to take any measures for the preservation or administration of the estate;
2. to bring any legal action;
3. to sell movable property of the bankrupt;
4. to effect the sale of immovable property, making application for that purpose, in Belgium, to the Commercial Court at Brussels, and, in Austria, to the Commercial Court at Vienna; the said courts shall order such measures as are necessary for the sale of the property, as if bankruptcy had been declared in the territory of their State.

Article 5. The court which has declared bankruptcy may appoint an additional trustee empowered to act in the territory of the other Contracting State in accordance with article 4, paragraph 3.

Article 6. (1) The court which has declared bankruptcy may, by letters rogatory, request the court of the other State specified in paragraph 4 to effect the publication of the adjudication of bankruptcy and any other decision relating to the bankruptcy if there is reason to presume the presence of creditors or the existence of assets of the debtor in the latter State.

(2) The requested court shall cause a translation to be made of the decisions transmitted to it and shall effect the publication thereof in the form prescribed by the laws of its State. In addition, the requested court shall, in accordance with the laws of its State, cause the decisions to be entered in the public registers and take such measures as are necessary to ensure that items addressed to the bankrupt are delivered to the trustee.

(3) The State of the requested court shall be entitled to claim reimbursement of the costs of publication and registration from the State of the requesting court.

(4) The court to which letters rogatory shall be addressed is, in Belgium, the Commercial Court at Brussels and, in Austria, the Commercial Court at Vienna. The said court shall transmit the letters rogatory to another court of the same State if it cannot itself order the requisite measures.

Article 7. (1) A declaration of bankruptcy, and discharge of the bankrupt or termination of the bankruptcy in any other way, shall have effect in the other Contracting State on the date specified by the law of the State in which bankruptcy was declared.

(2) Where bankruptcy has been declared in one Contracting State, payments made to the bankrupt in the other State shall, notwithstanding the provisions of paragraph 1, be valid and release the debtor in relation to the estate if they are made prior to publication as prescribed by the law of the latter State, unless the debtor knew or should have known that he had been declared bankrupt. Payments made in that State subsequent to publication as prescribed shall release the debtor only if they accrue to the estate or if the debtor, despite publication of the declaration of bankruptcy, could not have known that he had been declared bankrupt.

Article 8. (1) Debt-claims secured by a lien on movable property, and the order of priority of such liens, shall be determined according to the law of the country in which bankruptcy has been declared.

(2) Mortgages and liens on immovable property shall be governed by the law of the Contracting State in which such property is situated.

(3) Mortgages and liens on ships, boats and aircraft shall be governed by the law of the Contracting State in which they are registered.

(4) Persons employed in an establishment of the debtor situated in the Contracting State other than the one in which bankruptcy has been declared may avail themselves of the law of either of the two States with a view to asserting the totality of their preferential claims in respect of wages due against assets existing in the territory of that State.

(5) Where bankruptcy is declared in one Contracting State, debt-claims of public corporations of the other State shall be entitled to share in the distribution of the assets of the estate. Any preferences enjoyed by such debt-claims shall be recognized only in respect of assets existing in the territory of the State other than the one in which bankruptcy has been declared; they shall be governed in that territory by the law of that State.

Article 9. (1) Decisions in matters of bankruptcy, including decisions relating to composition after bankruptcy, judicial composition or extension of payment, rendered in one Contracting State by the court having jurisdiction within the meaning of article 2 shall be recognized in the other State unless they are contrary to the public policy of the latter State or the rights of the defence have not been respected. The same shall apply to decisions on actions arising directly out of the bankruptcy which have been rendered by a court having jurisdiction within the meaning of article 3. Decisions referred to in this paragraph shall have effect in the other State on the date specified by the law of the State in which they were rendered.

(2) In the event of composition, the competent authority of one Contracting State may, in accordance with its laws, take all such measures as are necessary for the supervision of the management or liquidation, in the other State, of the assets of the debtor; for that purpose, it may, in particular, appoint a person empowered to act in the territory of the other State.

(3) Any publication and entry in the public registers which decisions referred to in paragraph 1 may occasion in the Contracting State other than the one in which they were rendered shall be governed by the provisions of article 6.

Article 10. The provisions of this Convention relating to decisions rendered by the Austrian court which has declared bankruptcy or has confirmed a composition shall apply to the extracts from lists of debt-claims issued as enforceable instruments by the court.

Article 11. (1) Where a decision rendered by an Austrian court in respect of matters covered by this Convention is enforceable in Austria and is to be the subject of acts of enforcement in Belgium, it shall be rendered enforceable in Belgium by means of an enforcement order by the court of first instance if recognition of such decisions is provided for in this Convention. The enforcement order may be contested by recourse to any remedies, other than *opposition*, provided for in such matters under Belgian law.

(2) Where a decision rendered by a Belgian court in respect of matters covered by this Convention is enforceable in Belgium, it shall also be enforceable in Austria if recognition of such decisions is provided for in this Convention; the decision concerning enforcement may be contested by recourse to any remedies provided for in such matters under Austrian law.

(3) The request for an enforcement order in Belgium or for enforcement of the decision in Austria shall be submitted, and a ruling made on it, in such form and in accordance with such rules as are laid down by the laws of the State in which enforcement is requested.

(4) The requesting Party shall produce:

1. a transcript of the decision;
2. in the case of a decision by default, a certified copy of the summons or any other document evidencing that the respondent was legally summoned.

(5) The documents to be produced shall be exempt from legalization or any similar formality; they shall be accompanied by a translation in one of the official languages of the requested State, certified by a sworn translator of one of the two States.

Article 12. This Convention shall apply only to bankruptcies declared after the date of its entry into force and to compositions and extensions of payment requested after that date.

Article 13. (1) This Convention shall be ratified. The exchange of instruments of ratification shall take place as soon as possible at Vienna.

(2) This Convention shall enter into force on the sixtieth day following the exchange of instruments of ratification.

Article 14. Either Contracting State may denounce this Convention by giving notice in writing to the other State. Such denunciation shall take effect one year after the date on which notice is given.

Article 15. Any dispute concerning the interpretation or implementation of this Convention which may arise between the Contracting States shall be settled through the diplomatic channel.

IN WITNESS WHEREOF the Plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

DONE at Brussels, on 16 July 1969, in triplicate in the French, Dutch and German languages, the three texts being equally authentic.

For the Kingdom of Belgium:
P. HARMEL

For the Republic of Austria:
K. FARBOWSKY

ADDITIONAL PROTOCOL TO THE CONVENTION OF 16 JULY 1969 BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF AUSTRIA CONCERNING BANKRUPTCY, COMPOSITION AND EXTENSION OF PAYMENT

The Contracting Parties to the Convention between the Kingdom of Belgium and the Republic of Austria concerning bankruptcy, composition and extension of payment, signed at Brussels on 16 July 1969 (hereinafter referred to as "the Convention"), have agreed as follows:

Article I. The provisions of the Convention shall not apply to bankruptcies of or compositions by insurance companies or to extensions of payment granted to such companies.

Article II. This Protocol shall form an integral part of the Convention.

IN WITNESS WHEREOF the Plenipotentiaries, being duly authorized thereto, have signed this Protocol and have thereto affixed their seals.

DONE at Brussels, on 13 June 1973, in two original copies in the French, Dutch and German languages, the three texts being equally authentic.

For the Kingdom of Belgium:

[Signed]

R. VAN ELSLANDE

For the Republic of Austria:

[Signed]

K. FARBOWSKY