

No. 19576

**FRANCE
and
AUSTRIA**

**Convention concerning judicial jurisdiction, recognition
and execution of decisions in matters of bankruptcy.
Signed at Vienna on 27 February 1979**

Authentic texts: French and German.

Registered by France on 20 February 1981.

**FRANCE
et
AUTRICHE**

**Convention sur la compétence judiciaire, la reconnaissance
et l'exécution des décisions en matière de faillite. Signée
à Vienne le 27 février 1979**

Textes authentiques : français et allemand.

Enregistrée par la France le 20 février 1981.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE
REPUBLIC OF AUSTRIA CONCERNING JUDICIAL JURISDICTION,
RECOGNITION AND EXECUTION OF DECISIONS IN
MATTERS OF BANKRUPTCY

The President of the French Republic and the Federal President of the Republic of Austria,

Desiring to regulate relations between France and Austria in matters of bankruptcy and similar proceedings,

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

The President of the French Republic:

Mr. Alain Peyrefitte, Keeper of the Seals, Minister of Justice

The Federal President of the Austrian Republic:

Mr. Christian Broda, Federal Minister of Justice

who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. This Convention shall apply to the following proceedings:

—Judicial composition (*règlement judiciaire*), liquidation of assets (*liquidation des biens*), procedure for the provisional stay of proceedings and for total discharge of liabilities of certain enterprises (*procédure de suspension provisoire des poursuites et d'apurement collectif du passif de certaines entreprises*), in French law.

—Composition (*Ausgleich*), bankruptcy (*Konkurs*) and supervised management (*Geschäftsaufsicht*) in Austrian law.

For the purposes of this Convention, these proceedings shall hereinafter be referred to as “bankruptcy”.

Article 2. The proceedings referred to in this Convention and which have been instituted in one of the High Contracting Parties shall also have effect in the territory of the other.

Article 3. 1. The courts of the State in whose territory the principal place of business or head office of the debtor is situated shall have exclusive jurisdiction to declare bankruptcy.

However, where the head office and principal place of business of the debtor are in different places, and the head office is situated in the territory of one of the two States, while the principal place of business is situated in the territory of the other State, the courts of the latter State shall have exclusive jurisdiction.

¹ Came into force on 23 June 1980, i.e., the sixtieth day after the exchange of the instruments of ratification, which took place at Paris on 23 April 1980, in accordance with article 23 (2).

2. If the courts of the two States do not have jurisdiction by virtue of the preceding paragraph, 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 the courts of one of the two States, which would have jurisdiction pursuant to paragraphs 1 and 2, cannot declare bankruptcy under their internal law, the courts of the other State shall be competent to declare bankruptcy. Such a decision declaring bankruptcy shall then have effect only in the territory of that other State.

Article 4. The courts of the State which have declared the bankruptcy of a body corporate or of a company shall have exclusive jurisdiction also to declare the bankruptcy of the partners or all managers of that body corporate or company provided that the law of that State permits the institution of such proceedings against them. This provision shall apply wherever the principal place of business of the partner or manager may be situated, provided that the proceedings are instituted within one year from the declaration of bankruptcy of the body corporate or company.

Article 5. If a category of the bankruptcy proceedings mentioned in article 1 has been instituted in one of the two States, the courts of the other State cannot institute a category of such proceedings against the same debtor unless the court in which proceedings were first instituted has declared that it lacks jurisdiction or if it has closed the proceedings.

Article 6. 1. The courts of the State in which the bankruptcy has been declared shall have jurisdiction to deal with actions which, under the legislation of such State, derive directly from the bankruptcy, excepting actions concerning:

- (a) Work contracts where the work is actually executed or ought to be executed in the territory of the other State;
- (b) The rental of premises situated in the territory of the other State.

2. Where a court of one of the two States, which has jurisdiction pursuant to the preceding paragraph, is dealing with one of the actions referred to in that paragraph, any court of the other State which may subsequently be dealing with a dispute between the same parties and concerning the same matter shall not proceed with the case unless the first court has declared its own lack of jurisdiction.

Article 7. 1. Bankruptcy decisions rendered in one of the States by a tribunal having jurisdiction within the meaning of article 3 (paragraphs 1 and 2) and of article 4 of this Convention shall be recognized automatically in the other State unless they are contrary to the public policy of that State or the rights of the defence have not been respected.

2. The same shall apply to decisions on actions which derive directly from bankruptcy and which have been rendered by a court having jurisdiction within the meaning of article 6.

Article 8. 1. The powers which the law of the State in whose territory the bankruptcy has been declared confers on the liquidation or trustee shall extend to the territory of the other State.

2. To the full extent of those powers, and without the need for any enforcement order, the persons mentioned in the preceding paragraph may take whatever measures are appropriate for the preservation or administration of the debtor's assets, institute any actions concerning the debtor's estate on behalf of the debtor or of the body of creditors and proceed to sell the debtor's movable property.

3. The sale of the immovable property shall be subject to the terms of article 10.

4. The court which has declared bankruptcy may appoint one or more additional liquidators or trustees to exercise, in the territory of the other State, the powers referred to in this article.

Article 9. 1. The court which has declared bankruptcy may, by letters rogatory, request the court having jurisdiction in the other State 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 requesting court shall cause a translation to be made of the decisions which it transmits to the requested court. The requested court shall have the decisions published and entered in the public registers in accordance with its legislation; the requested authority shall be entitled to claim reimbursement of the costs of publication and registration from the requesting court.

Article 10. 1. Where a decision from the courts of one of the two States is recognized in the other State in accordance with this Convention and must give rise in the territory of that State to enforcement action, it must obtain the enforcement order (*exequatur*) in France or the authorization to execute (*Exekutionsbewilligung*) in Austria.

2. The procedure for obtaining the *exequatur* in France or the *Exekutionsbewilligung* in Austria and the means of enforcement shall be governed by the law of that one of the two States in which the action is to be taken.

Article 11. 1. The party which wishes to have a decision executed in the other State shall produce a transcript of the decision.

In the case of a decision by default, it shall also produce a certified copy of the summons or any other document evidencing that the respondent was legally summoned.

2. When the enforcement of a decision is requested, the decision must be provided with or accompanied by confirmation of its enforceability.

3. Certified translations by a sworn translator of one of the two States must be attached to the documents referred to in this article.

4. The document to be produced shall be exempt from legalization or any other similar formality.

Article 12. 1. The bankruptcy proceedings and particularly the declaration of bankruptcy, the closure or any other manner of termination of the State of bankruptcy shall have effect in the other State on the day established by the law of the State in which the bankruptcy has been declared.

2. Creditors shall be released in respect of the estate provided that they have effected their payments before the publications referred to in article 9, unless the debtor was aware, or should have been aware, of the declaration of bankruptcy. In all cases, debtors shall be released if their payments accrue to the estate.

Article 13. 1. With regard to creditors residing in the State other than the one in which the bankruptcy has been declared, the deadlines for filing debt-claims shall be governed by the law of the State in which the bankruptcy has been declared, but they shall have effect from the day following publication of the bankruptcy declaration in the other State made in accordance with article 9. Where a fixed date is established for filing debt-claim, the deadline shall be extended, for creditors residing in the State other than the one in which bankruptcy has been declared, by a period equivalent to the period which elapsed between publication in the State in which bankruptcy was declared and the publication made in the other State in accordance with article 9.

2. The same rule shall apply to recourse to remedies against actions and decisions brought to the attention of third parties in accordance with the procedure set forth in article 9 of this Convention.

Article 14. 1. The effects of bankruptcy on current work contracts shall be governed by the law of the State in which the work is actually executed or ought to be executed.

2. The effects of bankruptcy on the leases or rentals of immovable property shall be governed by the law of the State in which such property is situated.

Article 15. 1. General liens on movable property, and the order of priority of such liens, shall be determined according to the law of the State in which bankruptcy has been declared. Special liens, particularly title retention clauses, in respect of movable property, and the order of priority of such liens, shall be determined according to the law of the State in whose territory such property was situated at the time the bankruptcy was declared.

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

3. This article shall not apply to mortgages and liens established in respect of ships, boats and aircraft.

Article 16. Wage earners may invoke, in respect of assets situated in the territory of each of the two States, the general liens prescribed by the law of that State for their debt-claims.

Article 17. Fiscal and social security debt-claims arising from each of the two States shall be deemed to be liens on the estate. Liens deriving from such debt-claims cannot be exercised except in respect of assets situated in the territory of the State from which those debt-claims arise; they shall be governed by the law of that State.

Article 18. Enforceable instruments issued by the courts to creditors after the closure of bankruptcy proceedings shall be recognized and executed as bankruptcy decisions.

Article 19. The law of each of the two States shall determine whether and to what extent a bankruptcy declared in the other State shall entail in its own territory disqualifications, forfeitures or restrictions.

Article 20. This Convention shall apply only to bankruptcies declared after the date of its entry into force.

Article 21. None of the provisions of this Convention shall effect the provisions of multilateral conventions concluded or which may be concluded by one of the two States.

Article 22. Any dispute concerning the interpretation or implementation of this Convention which may arise between the Contracting Parties shall be settled through the diplomatic channel.

Article 23. 1. This Convention shall be ratified. The instruments of ratification shall be exchanged at Paris.

2. The Convention shall enter into force on the sixtieth day following the date on which the instruments of ratification have been exchanged.

3. This Convention is concluded for an unlimited period. Each of the Contracting Parties may denounce it at any time by written notification sent through the diplomatic channel. Denunciation shall take effect six months after the date on which notice is given.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Convention.

DONE at Vienna, on 27 February 1979, in duplicate, in the French and German languages, both texts being equally authentic.

For the President
of the French Republic:

[ALAIN PEYREFITTE]

For the Federal President
of the Republic of Austria:

[CHRISTIAN BRODA]