

N° 2131.

BELGIQUE ET PAYS-BAS

Convention sur la compétence judiciaire territoriale, sur la faillite, ainsi que sur l'autorité et l'exécution des décisions judiciaires, des sentences arbitrales et des actes authentiques, avec protocole additionnel. Signés à Bruxelles, le 28 mars 1925.

BELGIUM AND THE NETHERLANDS

Convention concerning Territorial Jurisdiction, Bankruptcy and the Authority and Execution of Judgments, Arbitral Awards, and Notarial Acts, with Additional Protocol. Signed at Brussels, March 28, 1925.

PROTOCOLE ADDITIONNEL

Au cas où la Belgique institue la faillite du non-commerçant, le titre III du présent traité s'appliquera à la faillite des non-commerçants des deux pays.

Fait en double à Bruxelles, le vingt-huit mars mil neuf cent vingt-cinq.

GODDYN.
Paul LECLERCQ.
KINON.
Maurice COSTERMANS.

ADDITIONEEL PROTOCOL.

In geval België het faillissement van niet-kooplieden instelt, zal titel III van dit verdrag toepasselijk zijn op het faillissement van niet-kooplieden der beide landen.

Gedaan in dubbel te Brussel, den achten-twintigsten Maart 1900 vijfentwintig.

LODER.
J. Ph. SUYLING.
J. KOSTERS.

¹ TRADUCTION. — TRANSLATION.

No. 2131. — CONVENTION BETWEEN BELGIUM AND THE NETHERLANDS CONCERNING TERRITORIAL JURISDICTION, BANKRUPTCY, AND THE AUTHORITY AND EXECUTION OF JUDGMENTS, ARBITRAL AWARDS AND NOTARIAL ACTS. SIGNED AT BRUSSELS, MARCH 28, 1925.

HIS MAJESTY THE KING OF THE BELGIANS and HER MAJESTY THE QUEEN OF THE NETHERLANDS, recognising the desirability of laying down by common agreement certain uniform rules concerning territorial jurisdiction, bankruptcy, and the recognition and enforcement of judgments, arbitral awards and public instruments, have decided to conclude a Convention for this purpose and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF THE BELGIANS :

M. A. GODDYN, President of Chamber at the Court of Cassation ;
M. Paul LECLERCQ, Senior Solicitor-General at the Court of Cassation ;
M. V. KINON, Director-General at the Ministry of Justice and
M. M. COSTERMANS, Director-General at the Ministry of Foreign Affairs.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

HER MAJESTY THE QUEEN OF THE NETHERLANDS :

M. B. C. J. LODER, Judge at the Permanent Court of International Justice ;
M. J. Ph. SUYLING, Professor at the University of Utrecht, and
M. J. KOSTERS, Councillor at the High Court of Justice of the Netherlands ;

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

SECTION I.

TERRITORIAL JURISDICTION.

Article 1.

1. In civil and commercial matters, Belgian nationals in the Netherlands and Netherlands nationals in Belgium shall be subject to the same rules of jurisdiction as the respective nationals of those countries.

2. Article 127 of the Netherlands Civil Procedure Code shall not apply to Belgian defendants, and Article 53 of the Belgian Law of March 25, 1876, shall not apply to Netherlands defendants.

Article 2.

Subject to the right of each State to decide on the question of capacity to appear before its Courts, juristic persons constituted in accordance with the laws of one of the two States, and having their seat therein, as well as corporations, associations or communities which, under the laws of one of the two States, may appear before the Courts, shall, for the purpose of the application of the rules of territorial jurisdiction, be held to be nationals of the said State and to be domiciled therein.

Article 3.

1. Subject to the exceptions and modifications which are or may hereafter be prescribed by the legislation of either State or by international conventions, a defendant shall be summoned before the court of his place of domicile in the Netherlands or Belgium or, in the absence of such domicile, before the court of his place of residence in the Netherlands or Belgium.

2. In the Netherlands, the defendant may be summoned before the plaintiff's court if no other court is competent under the laws of the two countries, under the present Convention or under any international agreement entered into by the Netherlands. In Belgium the defendant may be summoned before the plaintiff's court if no other court is competent under the laws of the two countries, under the present Convention or under any international agreement entered into by Belgium.

Article 4.

Actions in regard to movable property (personal), whether civil or commercial, may be brought by a plaintiff in the court of the place where the liability was incurred, or has been or is to be enforced.

Article 5.

1. When a domicile conferring jurisdiction has been elected in either country for the enforcement of an instrument, the courts of the place of domicile elected shall alone take cognisance of the

disputes relating to the instrument, subject always to the exceptions and modifications which are or may hereafter be prescribed by the laws of either of the two countries or by international conventions.

2. When domicile is elected only on behalf of one of the contracting parties, that party shall have the right to bring the matter before any other competent court.

3. Any manufacturer or merchant and any civil or commercial company of either country that establishes in the other a branch, agency or similar establishment shall be considered as having elected domicile for the purpose of the legal settlement of all disputes relating to the branch, agency or establishment, at the place where the branch, agency or establishment has its seat.

Article 6.

1. Actions brought in the courts of one of the Contracting States which are already pending in the courts of the other States or are connected with actions which have been brought in these courts, shall, on the request of one of the parties, be referred to the latter courts. Only those cases shall be considered as connected which have the same origin or bear on the same matter.

2. The court before which the original suit is pending shall take cognisance of applications for the summoning of guarantors, claims to intervene, incidental claims and counter-claims, unless it is without jurisdiction by reason of the subject of the dispute.

Article 7.

Where a person against whom an attachment order has been issued has neither domicile nor residence in either country, the court of the place of attachment shall take cognisance of the existence of the claim, unless such court is without jurisdiction by reason of the subject and unless the matter is pending before another court. It shall also have jurisdiction in applications as to the validity of attachment orders or for their withdrawal.

Article 8.

The temporary or precautionary measures provided for under Netherlands or Belgian law may, in urgent cases, be required of the authorities of the country concerned, whatever court may have jurisdiction on the subject of the case.

Article 9.

1. Articles 1 to 8 shall apply in all cases where a national of one of the Contracting States acts in or is summoned before a Court of the other State, subject always, if the defendant is not a Belgian or Netherlands national, to any exceptions resulting from international agreements.

2. These Articles shall apply where there are several plaintiffs or defendants, even if one only of the plaintiffs or defendants is a national of the other State.

3. Claims to intervene or incidental claims shall not, as regards jurisdiction, exercise any influence on the decision of the main claim.

Article 10.

In all cases in which the foregoing Articles do not lay down rules of joint jurisdiction or allow of a departure from the national law, questions of jurisdiction shall be governed in each State by the laws of that State.

SECTION II.

AUTHORITY AND ENFORCEMENT
OF JUDGMENTS, ARBITRAL AWARDS AND PUBLIC INSTRUMENTS.*Article 11.*

1. The authority of the judgments given in civil and commercial matters in either State shall be recognised in the other at the request of any interested party, provided the following conditions are fulfilled :

- (1) That the judgment contains nothing contrary to the public policy or to the principles of the public law of the country in which it is sought to be relied upon ;
- (2) That it can be executed in the country in which it was given even though it may still be open to appeal therein ;
- (3) That the copy of the judgment which is produced fulfils the conditions required for its authenticity under the laws of the country in which the judgment was given ;
- (4) That the parties were legally represented or a declaration was made that they did not appear after having been legally summoned ;
- (5) That the rules as to territorial jurisdiction laid down in this Convention have not been disregarded.

2. The rules concerning jurisdiction, evidence and procedure do not relate to public policy or the principles of public law referred to in No. 1 of the preceding paragraph.

3. The court shall of its own proper motion consider whether the judgment fulfils in regard to all the parties, after they have been legally summoned, the conditions laid down in the first paragraph, and mention the fact in its decision. The latter shall have effect in this respect as regards all parties and throughout the country.

Article 12.

1. Judgments given in either State may be executed in the other as regards both movable and immovable property after being declared executory therein.

2. The order for the execution of a foreign judgment is granted by the civil court of the district (*arrondissement*) in which it is to be enforced. The order has legal force in regard to all parties and throughout the country.

3. The enquiries of the Court shall only extend to the points enumerated in Article 11 and shall conform to paragraph 3 thereof.

Article 13.

In granting the order for execution the court shall, if necessary, prescribe the steps to be taken with a view to the judgment of the foreign court receiving the same publicity as it would have received had it been given in the area in which it is rendered executory.

Article 14.

1. Any interested party may apply for an order for the execution of a foreign judgment.
2. The procedure regarding applications for such orders shall be governed by the law of the country in which execution is desired.

3. The decision of the court on an application for an order cannot be opposed. It may always be appealed against within fourteen days after pronouncement if it was given after the parties had been heard, or within fourteen days after the date of legal notification if it was given by default.

4. The court may require a translation of the judgment in the language of the place where the court sits ; in that case, the translation must be certified correct by a sworn translator of the country in which the court is situated.

5. A duly legalised authentic copy must in all cases be produced.

6. The court may decree that the order for the execution of a foreign judgment should have full effect, notwithstanding appeal, with or without surety.

Article 15.

1. Arbitral awards given in either State shall be recognised in the other and may be made executory therein if they satisfy the conditions laid down in Nos. (1), (2), (3) and (4) of Article 11.

2. The order for the execution of a foreign arbitral award shall be granted by the President of the civil court of the district (*arrondissement*) in which execution is required.

Article 16.

1. Public instruments which are executory in one of the two countries may be declared to be executory in the other by the President of the civil court of the district (*arrondissement*) in which execution is applied for.

2. This official shall satisfy himself that the instrument fulfils the conditions necessary for its authenticity in the country in which it has been received and that the provisions of which the execution is desired contain nothing contrary to the public policy or the principles of the public law of the country in which the order for execution is desired.

Article 17.

1. Land mortgage agreements concluded in one country shall not be registered nor shall they be effective in the other unless the instruments which contain the particulars thereof have been made executory by the President of the civil court of the district in which the property is situated.

2. This official must satisfy himself that the instruments and the powers of attorney appertaining thereto satisfy all the conditions necessary for their authenticity in the country in which they have been received.

3. The foregoing provisions are also applicable to instruments of cancellation or reduction by consent drawn up in one of the two countries.

Article 18.

1. The decision of the President in the cases covered by Articles 15, 16 and 17 shall have effect throughout the whole country.

2. The decision cannot be opposed. It may be appealed against within fourteen days after pronouncement if it was given after the parties were heard, or within fourteen days after the date of legal notification if given by default.

3. The forms of petition and procedure of appeal shall be regulated by the laws of the State in which execution is required.

Article 19.

The provisions of the present Section shall apply to persons of any nationality except in so far as international conventions provide otherwise.

SECTION III.

BANKRUPTCY.

Article 20.

1. The court of a trader's place of domicile shall alone be competent to adjudge him a bankrupt. Trading companies with their registered office in one of the two countries shall be subject to the jurisdiction of the court of the place where such registered office is situated.

2. Subject to exceptions arising out of international agreements, traders without domicile in Belgium or the Netherlands may nevertheless be adjudged bankrupts in one of the two countries if they possess a business establishment therein. In this case the court of the place where the establishment is situated shall have jurisdiction.

3. When proceedings in bankruptcy are brought in the courts of both Contracting States, the court in which the action is first brought shall, if it declares itself competent, hear the case.

Article 21.

1. The effects of an adjudication order in either country by a Court competent under Article 20 shall extend to the other country.

2. The assignee or trustee may accordingly take all precautionary or administrative measures, carry out all legal proceedings as representative of the bankrupt or of the estate, and sell the bankrupt's movable property. He may not, however, proceed to the sale of immovable property or to measures of compulsory execution unless the judgment pronouncing bankruptcy has been made executory in accordance with the rules laid down in Section II.

3. An order of Court confirming composition given in one of the two States shall be recognised in the other and shall be executory therein in accordance with the provisions of Section II.

Article 22.

1. Publication of bankruptcy shall be governed by the laws of the State in which the bankruptcy order has been given.

2. If the bankrupt has an establishment in one of the Contracting States, the formalities relating to publication prescribed in that State also must be observed therein.

Article 23.

1. Preferential rights over the movable property of a bankrupt shall be governed by the laws of the State in which he has been adjudged a bankrupt.

2. Immovable property of a bankrupt which in one of the contracting countries is encumbered with a preferential claim or mortgage shall remain, in spite of the bankruptcy, subject to the laws of the country in which it is situated.

3. Mortgages on ocean-going vessels or vessels employed in inland navigation and preferential rights regularly established shall be governed by the laws of the Contracting State to which the vessel belongs.

Article 24.

The effects of orders for postponement of settlement or composition to prevent bankruptcy issued by the courts of the debtor's place of domicile or of his business establishment in one of the two States shall, to the extent and under the conditions specified above, hold good in the territory of the other State.

Article 25.

Each State shall have the power to issue special regulations as to jurisdiction in regard to traders who have neither a domicile nor a business establishment in either State. In such cases Article 21 *et seq.* shall not apply.

SECTION IV.

FINAL PROVISIONS.

Article 26.

The Contracting States agree to communicate to one another immediately any modifications that may be made in the laws and rules regarding territorial jurisdiction.

Article 27.

1. The present Convention shall apply only to the European territories of the two States and to judgments given after its coming into force.
2. Both States shall continue to be bound by the Treaty relating to Civil Procedure concluded on July 17, 1905, at The Hague.

Article 28.

1. The present Convention shall be ratified and shall enter into force at the same time in both countries on the date fixed by the Contracting States.
2. The exchange of ratifications shall take place as soon as possible at The Hague.
3. The Convention shall remain in force for five years as from the date indicated in paragraph 1.
4. It shall be renewed by tacit agreement for periods of five years unless it is denounced. It may be denounced at any time and denunciation shall take effect on the expiry of a period of six months from the date of notice.

In faith whereof the respective Plenipotentiaries have signed the present Convention in the French and Dutch languages and have thereto affixed their seals.

Done in duplicate at Brussels on March the twenty-eighth, one thousand nine hundred and twenty-five.

GODDYN.

Paul LECLERCQ.

KINON.

Maurice COSTERMANS.

LODER.

SUYLING.

KOSTERS.

ADDITIONAL PROTOCOL.

In the event of Belgium introducing bankruptcy for persons who are not traders, Section III of the present Treaty shall apply to the bankruptcy of such persons in both countries.

Done in duplicate at Brussels on March the twenty-eighth, one thousand nine hundred and twenty-five.

GODDYN.

Paul LECLERCQ.

KINON.

Maurice COSTERMANS.

LODER.

SUYLING.

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