

N° 3513.

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**FRANCE ET ITALIE**

Convention sur l'exécution des jugements en matière civile et commerciale. Signée à Rome, le 3 juin 1930.

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**FRANCE AND ITALY**

Convention on the Enforcement of Judgments in Civil and Commercial Matters. Signed at Rome, June 3rd, 1930.

<sup>1</sup> TRADUCTION. — TRANSLATION.No. 3513. — CONVENTION<sup>2</sup> BETWEEN FRANCE AND ITALY REGARDING THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT ROME, JUNE 3RD, 1930.

*French official text communicated by the Italian Minister for Foreign Affairs and by the Minister for Foreign Affairs of the French Republic. The registration of this Convention took place September 28th, 1934.*

HIS MAJESTY THE KING OF ITALY and THE PRESIDENT OF THE FRENCH REPUBLIC, being desirous of defining and extending the scope of the agreements between the respective countries regarding the enforcement of judgments, have resolved to conclude a Convention and to that end have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

His Excellency M. Giuseppe DE MICHELIS, Ambassador of His Majesty the King of Italy, Senator of the Realm ;

THE PRESIDENT OF THE FRENCH REPUBLIC :

His Excellency M. Maurice Paul Jean DELARUE CARON DE BEAUMARCHAIS, Ambassador of the French Republic accredited to His Majesty the King of Italy, Commander of the National Order of the Legion of Honour ;

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

## SECTION I.

REGARDING DECISIONS HAVING THE FORCE OF " RES JUDICATA " AND COMPULSORY EXECUTION.

*Article I.*

Decisions of the Courts of either of the High Contracting Parties in civil and commercial matters shall, without further formality, have the force of *res judicata* within the territory of the other Party, provided always that they fulfil the following conditions :

(1) That the decision shall be that of a Court having jurisdiction in accordance with the rules of Section II of the present Convention, in so far as they may be applicable, or otherwise in accordance with the rules governing such matters under the law of the country in which the decision is sought to be relied upon ;

(2) That the decision shall contain nothing contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon ;

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

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

<sup>2</sup> The exchange of ratifications took place at Rome, October 27th, 1933. Came into force November 27th, 1933.

(3) That the decision shall have acquired the force of *res judicata* and be enforceable according to the law of the country in which it has been rendered ;

(4) That the Parties shall have been legally summoned to appear, represented or adjudged to be in default and, in the event of a decision by default, that the summons shall have reached the defaulting party in good time ;

(5) That the decision shall not be contrary to any other decision already rendered with regard to the same object by a Court of the country in which it is sought to be relied upon, or that the same suit shall not have been brought by the same parties before a Court of the said country before the rendering of the decision sought to be relied upon.

#### Article 2.

Decisions rendered by Courts of either of the High Contracting Parties in civil and commercial matters shall not give rise to compulsory execution by the authorities of the other Party or entail any public formality on the part of such authorities, such as entry or transfer in the public registers, until they have been declared enforceable in the said country.

Decisions of the Courts of either of the States, on being rendered enforceable in the territory of the other State, shall there give rise to judicial mortgage under the same conditions as decisions rendered by the Courts of the country.

#### Article 3.

Enforcement orders shall be granted on application by any interested party by the competent authority according to the law of the country in which application for the said order is made.

The said authority shall confine itself to verifying whether the conditions laid down in Article 1 have been fulfilled : it shall proceed to make such enquiries of its own motion and shall record its findings in its judgment. The latter shall be binding upon all the parties to the proceedings in respect of the enforcement order and throughout the territory of the country.

Partial enforcement orders may be granted in respect of one or other merely of the heads of the foreign decision.

When granting an enforcement order the Court shall, when necessary, order that appropriate measures be taken in order that the foreign decision may receive the same publicity as if it had been rendered within the jurisdiction in which it has been made enforceable.

Proceedings in respect of applications for enforcement orders shall be governed by the law of the country in which enforcement is applied for.

#### Article 4.

The party seeking to rely upon a judicial decision or making application for the enforcement thereof shall be required to produce :

(1) A copy of the decision fulfilling the conditions necessary to establish its authenticity ;

(2) The original of the writ notifying the decision, or any other document taking the place of such notification ;

(3) Documents to prove that the decision has acquired the force of *res judicata* and has become enforceable ;

(4) An authenticated copy of the summons to the party who failed to appear at the proceedings, and of such documents as may be necessary to establish that the summons reached the said party in good time ;

(5) A translation of the above-mentioned documents certified accurate in accordance with the rules recognised by the laws of the country in which the decision is sought to be relied upon, or by the treaties, save where the competent judicial authority waives this formality.

*Article 5.*

Arbitral awards validly rendered in either of the two States shall be recognised in the other and may be there declared enforceable, provided that they fulfil the conditions laid down in Article 1 in so far as they may be applicable.

Enforcement orders shall be granted by the competent authority under the law of the country in which application is made.

*Article 6.*

Notarial acts enforceable in either of the two countries may be declared enforceable in the other by the competent authority under the law of the country in which enforcement is applied for.

The said authority shall merely ascertain whether such acts fulfil the conditions necessary to establish their authenticity in the country in which they have been received and whether the decisions the enforcement of which is sought contain nothing contrary to the public policy or principles of the law of the country in which the enforcement order is applied for.

*Article 7.*

Conventional mortgages on land contracted in either of the two States shall not be registered nor take effect in the other unless the instruments providing therefor shall have been rendered enforceable by the competent authority according to the law of the country in which registration is applied for. The said authority shall merely verify whether the instruments and the necessary powers of attorney in respect thereof fulfil all the conditions required to establish their validity in the country in which they have been received.

The foregoing provisions shall also apply to instruments recording assent to redemption or reduction drawn up in either of the two countries.

*Article 8.*

The provisions of the present Section shall apply irrespective of the nationality of the parties.

*Article 9.*

Decisions rendered by the Courts of either of the two States in favour of a party which has been granted free legal assistance shall be declared enforceable, free of charge, in the territory of the other State and without its being necessary for the party applying for enforcement to obtain a further grant of free legal assistance for the purpose.

## SECTION II.

## REGARDING JURISDICTION AND BANKRUPTCY.

*Article 10.*

The rules regarding jurisdiction set out in the present Section shall only apply to Article 1, sub-paragraph 1.

*Article 11.*

As regards actions *in personam* or actions relating to movable property between French and Italian nationals, jurisdiction shall rest with the Courts of that contracting country in which the defendant has his domicile, or, failing domicile in either of the two countries, in the country in which he habitually resides.

Should there be several defendants in the suits dealt with in the foregoing paragraph, the plaintiff may, according as he prefers, bring his action in the Courts of the country of domicile or, failing domicile in either of the two countries, in the Courts of the country of habitual residence of any one of the said defendants.

*Article 12.*

When, in suits between French and Italian nationals, a domicile has for the purpose of determining jurisdiction been chosen in that country — of the two countries — in which a contract has been concluded or is to be carried out, the Courts of the country of the domicile of choice shall have jurisdiction in suits relating to the said contract. The choice of domicile must have been expressly agreed to by the parties in the case of each individual contract. If the domicile has been chosen on behalf of one only of the parties, that party shall retain his right to institute proceedings before any competent judge.

*Article 13.*

Any French or Italian national possessing either a commercial, industrial or other establishment or a branch in either of the two countries shall be deemed, for the purpose of determining jurisdiction in any suit concerning the contracts directly concluded by the said establishment or branch, to have elected domicile in the country in which the said establishment or branch is situate.

*Article 14.*

For the purpose of an action relating to a contract amenable to the commercial law of the country in which the said action is brought, the French or Italian plaintiff may institute proceedings in the Courts of that country — of the two countries — in which the contract has been concluded or of that in which it is to be carried out.

*Article 15.*

An action for damages in respect of prejudice caused by a delict or quasi-delict may be brought before the Courts of that contracting country in which the said act was committed.

*Article 16.*

In the case of immovable property, the Courts of that contracting country in which it is situate shall have jurisdiction in all suits relating to the possession or ownership of the said property, and also in suits regarding rights *in rem* in respect thereof.

The said Courts shall also have jurisdiction in suits relating to contracts in respect of immovable property to be carried out in the place where the said property is situate.

*Article 17.*

In suits between French and Italian nationals, jurisdiction shall be exercised by the Courts of that contracting country in which the deceased had his domicile, irrespective of whether the succession consists of movable or immovable property :

(1) Pending the division of the estate, in actions for delivery of possession, actions regarding the division of the estate and in all other actions between co-heirs and actions against testamentary executors ;

(2) Until the expiry of a period of two years as from the date of the decease in actions for the nullity or rescission of the division, in actions relating to the warranty of shares and in actions by legatees and creditors against the heirs.

*Article 18.*

The Courts of the country in which an application is made in accordance with the rules laid down in the present Section may exercise jurisdiction over claims for compensation, incidental or subsidiary claims and counter-claims.

*Article 19.*

The Courts of either of the contracting States shall, on application by either of the parties, decline jurisdiction in suits brought before them when such suits are already pending in the Courts of the other country or are connected with other suits already pending between the same parties in such Courts, provided always that the latter have jurisdiction according to the rules set out in the present Section.

Only such suits as arise out of the same cause or relate to the same object shall be deemed to be connected.

*Article 20.*

The Courts of that State of the two States in which a trader has his domicile shall be competent to adjudge him a bankrupt.

The Courts of that State of the two States in which the registered seat of a commercial company is situate shall be competent to adjudge it bankrupt.

*Article 21.*

The effects of an adjudication order issued in either of the two countries by the Court competent under the rules set out in the foregoing Article shall extend to the territory of the other. The assignee or trustee may therefore take all conservatory or administrative measures and act in all respects as the representative of the bankrupt or of the estate ; nevertheless, the said assignee or trustee may only proceed to measures of execution if the judgment in pursuance of which he is acting has been the subject of an enforcement order in accordance with the rules set out in Articles 3 *et seq.* of Section I. A decision recording the arrangement come to between the bankrupt and his creditors rendered in either of the two countries shall have the force of *res judicata* and shall be rendered enforceable in accordance with the same rules.

*Article 22.*

When an adjudication order in either of the two countries includes a branch or establishment in the other, the formalities relating to publication required by the law of the latter country shall be complied with at the instance of the assignee or trustee in the place where the said branch or establishment is situate.

*Article 23.*

The effects of orders for postponement of settlement, composition to prevent bankruptcy, compromise settlements accepted for any reason whatsoever or judicial liquidation carried out in either of the two States at the instance of the Courts of the State in which the trader has his domicile shall extend to the territory of the other State to the extent and under the conditions specified in the present Section relating to bankruptcy.

*Article 24.*

The assets of the estate in bankruptcy shall be distributed between the creditors according to the law of the country in which the adjudication order has been issued without discrimination between Italian and French nationals on grounds of nationality.

The sale of movable or immovable property shall be carried out in accordance with the law of the country where such property is situate.

Prior and preferential rights over movable or immovable property shall be governed by the law of the State in the territory in which such property is situate. Nevertheless, nothing in the present clause shall be deemed to apply to ships.

The appointment and the powers of the liquidator of the bankrupt estate, the forms of procedure to be followed, the recognition of creditors and the framing of the settlement shall be governed by the law of the country in which the adjudication order has been issued.

That law shall likewise govern the invalidation of the debtor's acts as the result of the adjudication order together with the non-liability of the estate for such acts.

*Article 25.*

The Courts of the country where the adjudication order has been issued shall be competent to deal with questions relating thereto.

Suits in regard to prior and preferential rights together with those relating to ownership, enjoyment and the user of immovable property and any other right over immovable property shall be dealt with by the Courts of the country in which such property is situate.

*Article 26.*

The effects of an adjudication order issued in one of the two countries shall not extend to the territory of the other Party if the debtor has previously been the subject of an adjudication order in a third State, the effects of the said order extending to the territory of the said other Party by virtue of the provisions of a treaty concluded between that Party and the aforesaid third State and if the assignee or trustee of the said bankrupt estate shall already have sought to exercise the rights recognised by the treaty.

*Article 27.*

Nothing in the present Convention shall be deemed to prevent each of the contracting States from applying measures in accordance with its own law in order to ensuring the continuance of a public service the operation of which is in the hands of a bankrupt undertaking. Similarly, the present Treaty shall be without prejudice to any exceptional legislative provisions adopted for reasons of public policy which may become necessary in respect of the liquidation of a specific enterprise.

*Article 28.*

For the purpose of the present Section, the word "domicile" shall mean :

(1) In the case of adult persons not under a disability, "emancipated" minors and adults who are only bound to obtain juridical assistance for the accomplishment of certain acts, the place in which their principal centre of interests is situate ;

(2) In the case of minors, the place of domicile of their representative at law ;

(3) In the case of adult persons declared to be incapable of managing their own affairs and "non-emancipated" orphan minors, the place in which the administrator of the property or their guardian has his own domicile ;

(4) In the case of married women, the place of domicile of the husband or, if that is unknown or if the woman is judicially separated or is authorised to have separate domicile, the place in which her principal centre of interests is situate ;

(5) In the case of companies, the place in which their registered seat is situate.

## SECTION III

## MISCELLANEOUS PROVISIONS.

*Article 29.*

In proceedings instituted in civil and commercial matters in the French Courts by an Italian national and in the Italian Courts by a French national, the Courts shall not be entitled to decline jurisdiction on the grounds that the parties are of foreign nationality.

*Article 30.*

The rules according to which the law of either of the two States determines the jurisdiction of its Courts solely by the nationality of the plaintiff, irrespective of all other considerations, in connection with suits relating to obligations arising out of a contract or quasi-contract or a delict or quasi-delict, shall not be applicable to nationals of the other State in the following cases :

(1) When the defendant has his domicile or residence in the country of which he is a national ;

(2) When the obligation arose or is to be carried out in the country of which the defendant is a national.

The foregoing provision shall be applied of their own motion by the Courts of each of the two countries.

*Article 31.*

No deposit or security of any description whatsoever may be required of the nationals of either of the two States who are defendants or interveners in actions before the Courts of the other State, either on account of their foreign nationality or of the fact that they are not domiciled or resident in the country.

*Article 32.*

Provisional or conservatory measures prescribed by the law of either of the two countries may, in urgent cases, be ordered by the authorities of that country irrespective of the Court competent to deal with the case on its merits.

*Article 33.*

All the provisions of the present Convention shall apply to commercial companies constituted in accordance with the law of either of the two countries and having their registered seat in such country and also to those mentioned in the Protocol annexed to the Establishment Convention of June 3rd, 1930, *ad* Article 6.

*Article 34.*

Should a Frenchman domiciled in France be a party to proceedings instituted in the Italian Courts or be required to accomplish a formality in Italy, and should an Italian domiciled in Italy be a party to proceedings instituted in the French Courts or be required to accomplish a formality in France, the periods allowed by the laws of procedure shall be increased by one month, unless the said laws themselves make provision for a longer period.

*Article 35.*

A change of nationality while proceedings are still pending shall not affect the jurisdiction of the authority before which such proceedings have been legally instituted.

*Article 36.*

The stipulations of the present Convention shall be without prejudice to the provisions of the other agreements relating to jurisdiction and the enforcement of judgments in regard to special matters.

## SECTION IV.

## APPLICATION, INTERPRETATION AND DURATION OF THE CONVENTION.

*Article 37.*

Any disputes arising between the High Contracting Parties as regards the interpretation or application of the present Convention may be submitted to arbitration at the request of either of the said Parties.

In such cases each of the Contracting Parties shall appoint an arbitrator and the two arbitrators thus designated shall appoint a senior arbitrator who shall act as president. The two Parties shall draw up an arbitration agreement specifying the questions of principle which the arbitrators are to be called upon to settle regarding the interpretation or application of the Convention.

The arbitrators shall meet in the territory of the contracting State by which the arbitration has been requested.

The arbitral award shall be final and compulsory.

It shall be without prejudice to rights acquired under judicial decisions which have acquired the force of *res judicata*.

*Article 38.*

The present Convention shall be applicable in the home territories of the two Parties and in the territory of Algeria.

The High Contracting Parties reserve their right to apply the present Convention by mutual agreement, signified through an exchange of notes, to the colonies, protectorates and other territories under their sovereignty or authority.

The present Convention abrogates and takes the place of Article 22 of the Treaty of March 24th, 1760, between France and Sardinia and the Declaration exchanged on September 11th, 1860, between France and Sardinia.

*Article 39.*

The present Convention shall be ratified and the ratifications shall be exchanged in Rome at the earliest possible date.

It shall enter into force one month after the exchange of ratifications.

It shall remain in force for three years and thereafter indefinitely until such time as one of the High Contracting Parties shall give six months' notice of its intention to discontinue its application.

In faith whereof the Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done in Rome, in duplicate, this third day of June, one thousand nine hundred and thirty.

(L. S.) GIUS. DE MICHELIS.

(L. S.) BEAUMARCHAIS.