

113(2.6) C239
(ILRC)

The Association of Authorised Public Accountants
Limited (by Guarantee)

Registered in U.K. No. 1379840

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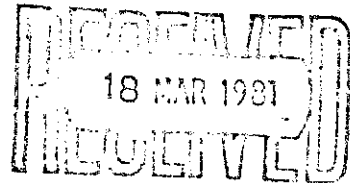
Secretary: S. A. COXHEAD

Your reference:

Please reply to: SAC/GS

17th March, 1981.

The Secretary,
Insolvency Law Review Committee,
c/o Guildhall House,
81-87 Gresham Street,
London EC2V 7DS.



Sir,

re Interim Report on Bankruptcy etc.
Sir Kenneth Cork.

I have read, with interest, the above Interim Report. Referring to paragraph 33 regarding the suitability of persons to be appointed Liquidators and Receivers, Trustees in Bankruptcy, I would ask you to confirm that the Committee intends to recommend that members of this Association are to be regarded as qualified for such appointments.

Without exception, all members of A.A.P.A. are statutory recognised accountants under the Companies Act 1948, Section 161 (a) or (b), many of whom are presently acting as Liquidators and Trustees. All members are, from time to time, accepting such appointments as part of their livelihood and on behalf of their practices.

Members of A.A.P.A. are subject to a Committee of Discipline, on which are serving representative members of the English Institute and the Certified Association. Members are also issued with a Practising Certificate when they have complied to the standards of professional competence and modern technical standards equivalent to the Institute of Chartered Accountants and the Certified Association.

Cont

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- 2 -

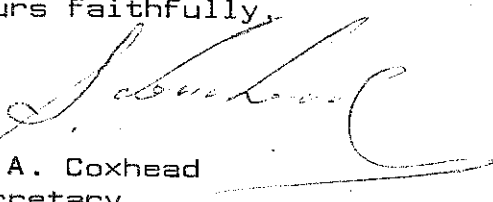
17th March, 1981.

The full Technical Service of the Certified Association, as provided to the members of the Certified Association, is provided to all A.A.P.A. members and it is now fully demonstrated that A.A.P.A. members, in addition to being authorised under the Companies Act 1948 as statutory auditors, are subject to the same criteria of professional ethics and technical standards as are members of the Institute and the Certified Association.

I enclose herewith a copy of the Memorandum and Articles of Association of A.A.P.A. for your convenience, from which it will be seen that only statutory accountants may be members.

As it is abundantly clear that A.A.P.A. members are fully equated to all other recognised statutory accountants, both in theory and practical application, I respectfully request your confirmation that all members of A.A.P.A. will be recommended by your Committee to be suitably qualified for appointments as Liquidators, Receivers and Trustees in Bankruptcy in your final report for the Insolvency Law Review. As this letter is only drawing your attention to an obviously qualified body, elaborate detail has not been entered into, but should you require any further information or explanations, please do not hesitate to contact the writer, who will be happy to give you every assistance possible.

Yours faithfully,


S. A. Coxhead
Secretary

Enc.



Department of Trade ~~and Industry~~
Insolvency Service
2-14 Bunhill Row London EC1Y 3LL

Telephone 01-606 4071 ext 124

Mr Muir Hunter, Q.C.,
3 Paper Buildings
Inner Temple
London
EC4Y 7EU

Your reference

Our reference

Date 6 August 1974

Dear Muir

EEC Bankruptcy Convention Advisory Committee

Enclosed herewith is the agenda for the next meeting and a copy of a draft section of the Consultative Document covering Jurisdiction, prepared by Sandy Anton, and amended in the light of some minor observations by me. It would be most helpful to receive suggestions etc., from other members and you will note that Item 4 has been put in the agenda for this purpose.

Several other sections of the C.D. are in various stages of preparation and will be distributed to members shortly. Consultees will probably take 3 months to consider and reply to the C.D., so the document ought to be sent out by, say, late October or early November. This being so, the Committee will need to decide how the remaining sections of the C.D. are to be vetted and agreed prior to printing as time will hardly permit leaving them for discussion at the monthly meetings. Perhaps this also can be discussed under Item 4.

Yours ever

Travers,

(



Department of Trade and Industry
 Insolvency Service
 2-14 Bunhill Row London EC1Y 8LL

Telephone 01-606 4071 ext 124

A E Anton Esq., C.B.E.
 SCOTTISH LAW COMMISSION
 Old College
 South Bridge
 Edinburgh
 EH8 9BD

Your reference L3/268
 Our reference
 Date 30 August 1974

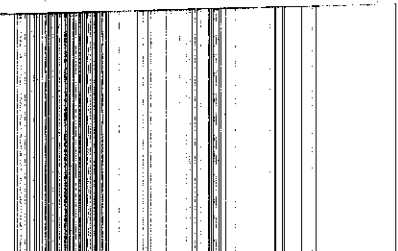
Dear Sandy,

CONSULTATIVE DOCUMENT

This is in reply to your letter of 23 August and to return the preliminary draft of the section on Recognition. I have made pencilled notes on the draft of what are mostly typing errors. Further comments are as follows:-

- 7.6 5.1 : in three places "need not" should perhaps be "will not". Also, I wonder if some explanation should be given as to the sort of "certain undertakings" of which a foreign declaration of bankruptcy will not be recognised. Protocol II(1) would seem to indicate that they are mostly insurance cum savings cum mutual benefit schemes, wherein I would have thought an external bankruptcy highly unlikely anyway.
 - 5.4 : I would be inclined to qualify the "may not be practicable" with something like "unless certain conditions are fulfilled, including the provision of a translation of the Order." *Laguer*
 - 5.9 : You will see that I have filled in "Attorney General" in the appropriate blank space. In fact he did intervene in the Poulson case as I recall, so perhaps it is not so much of a novelty. Finally, I have filled in the blank in 5.17 in that Northern Ireland has its own Court of Appeal. ✓
- 6.18
 her matter, I omitted to give you a claims form last Wednesday so couple.

Aye.





10(2.8)

OLD COLLEGE, SOUTH BRIDGE

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Telephone: 031-667 3437

Our ref: L3/268

2 September 1974

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
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Dear Muir,

I do hope that you enjoyed your stay in the USA and Canada.

This letter is to bring you up to date on progress with the drafting of the Consultative Paper on the Bankruptcy Convention and to request your help and advice.

We last talked about it, I rather think on 26 July or thereabouts. I made a note of the conversation and I apparently explained to you that I had prepared draft sections on the Scope of the Convention, Jurisdiction in Bankruptcy, and Jurisdiction in Ancillary Proceedings under Article 17(1). I arranged to send you the draft section on Jurisdiction (which you subsequently received). I also explained that I was in the course of producing a chapter on Choice of Law and we discussed the scheme of this chapter. I asked you whether you had, as yet, completed any of those parts of the Consultation Paper which you had agreed to prepare. You explained that you had been very busy with court work but hoped to get on with the historical introduction during your stay in the USA. After further discussion we agreed that you should take basic responsibility for the Uniform Law, Articles 1-4 and Fraudulent Preferences. You also indicated that you had no objection to the section on Jurisdiction being presented to the meeting of the Bankruptcy Committee fixed for 28 August.

Having received comments upon it from Trevor Traylor, the draft section on Jurisdiction was circulated by him to the Committee prior to its meeting on 28 August. At Trevor's suggestion, the section on Choice of Law was circulated at that meeting to members of the Committee. You should have a copy and I would greatly appreciate your candid reactions and detailed suggestions for its improvement.

After/

ad.

X
After our telephone conversation, Trevor and I became rather concerned about the time scale of the exercise, since the checking, approval by the Committee, and "toilette" of a Consultative Paper usually take longer than one anticipates. I suggested to Trevor, therefore, that it might assist you if he were to prepare initial drafts of the sections of the Paper dealing with the Uniform Law and Fraudulent Preferences. I received these respectively around 23rd and 30th August, and enclose copies herewith. I have studied only the former in any detail: it is an extremely helpful paper but it doesn't cover all the ground and requires alignment with the rest of the Paper. Would you like me to submit to you a draft of how I think it might run? And how should we deal with the section on Preferences?

I rather think that you were to write not only the "Introduction" but a section on the "Scope of the Convention". If you have completed a draft of either I would be very glad to see it. With regard to the former, Kenneth Cork, at the meeting on 28 August, made various suggestions as to contents and presentation. I liked those suggestions in principle but I fear that they may be quite difficult to implement in practice. He agreed, however, to send me a sketch of what he had in mind and I shall discuss this with you when it arrives.

With regard to the section on "Scope", I found it necessary - when drafting the section on "Choice of Law" - to clarify my own ideas on the subject and wrote a species of note for my own personal use. I showed it to Trevor Traylor who made a few comments, but I don't think that - in that form - the note would be much use to you as the basis of a draft Section. I have since, however, had other ideas and, if you haven't yet completed your draft, do you wish me to complete a new version of this Section for revision and approval before circulation to members of the Committee?

I should much appreciate a fairly rapid reply - even by 'phone - to the various points I raise in this letter. Work on the Consultative Paper has taken up far too much time which I can ill-spare and I would like all lines to be clear so that I may complete my share of the work as soon as possible.

I am copying this letter to Kenneth Cork to keep him in the picture.

but under review

then

Gandy

A. E. ANTON

Anton 6/8

Choice of law - comments

Recognition & enforcement - to AG

*Introduction - include basic principles
list of principles*

A. send draft ^{of notes} K.C. sending sketch.

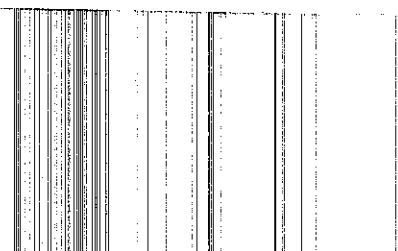
revision of Trevor's draft on preferences (me)

*Conclusions for the minutes
choices.*

Uniform Law - consequences.

filled gaps

Actio Pauliana with





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Telephone: 031-667 3437

Our ref: L3/268

4 September 1974

David Graham Esq
3 Paper Buildings
Inner Temple
LONDON EC4Y 7EU

Ben Davies

I refer to our telephone conversation today in which you kindly agreed to look at the section of the paper dealing with the Recognition and Enforcement of Judgments and Their Challenge. I would be very grateful to have your early comments.

I enclose for your information a copy of the letter which Trevor Traylor sent to me with his comments on this section of the paper. As I explained, I am not sure that his comment on paragraph 5.1 (now 6.1) is correct, nor am I inclined to accept his second suggestion, but I would be glad to have your advice.

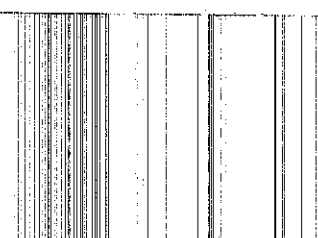
Yours ever

Andy

A E ANTON

Dave

*My comments appear
Ruini*





OLD COLLEGE, SOUTH BRIDGE

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Telephone: 031-667 3437

Our ref: L3/268

5 September 1974

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
LONDON EC4Y 7EU

Dear Muir,

I had hoped to hear from you with regard to my letter of 2 September but David Graham explained to me that you were extremely busy following your return from the USA.

As I explained in that letter I wrote a species of note for my own personal use on the Scope of the Convention but that, since writing it, further points occurred to me. I have incorporated these into a very rough draft which I would like you to look at to see whether it can become the basis of a section of the paper for submission to the Committee. The typing situation, both here and in Trevor Traylor's office, is such that I would very much appreciate having quite soon either your comments on the present draft or a suggested alternative to it. I would very much like to see this section of the paper being submitted to the Committee before its next meeting.

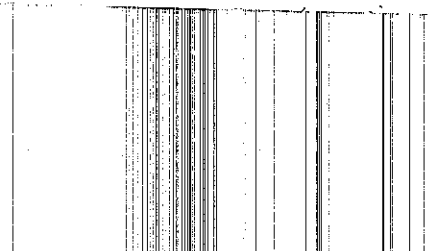
If, as I can well understand, your commitments at present preclude you from doing this, might I ask you to pass it to David Graham for his perusal.

You will see that in paragraph 2.6 I have directly quoted from your article in 21 I. & C.I.Q. I hope that you don't mind.

Yours ever

Sandy

A E ANTON



11(3-2)



OLD COLLEGE, SOUTH BRIDGE
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EH8 9BD

Telephone: 031- 667 3437

Our ref: L3/268

6 September 1974

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
LONDON EC4Y 7EU

Dear Muir,

I refer to our telephone conversation today. I confirm that I can join you on Friday, 13 September. Thank you for your invitation to spend the night of Thursday, the 12th with you. I propose to take a plane from Edinburgh arriving Heathrow at 16.55pm on Thursday, the 12th.

I enclose, as arranged, my preliminary sketch of the Introduction to the Consultative Paper. I have not had time even to read it over myself, but we can discuss it together at the meeting on 13 September. I have tried to compress the statement of principles as far as I can, but the greater the compression, the greater is the risk of inaccuracy.

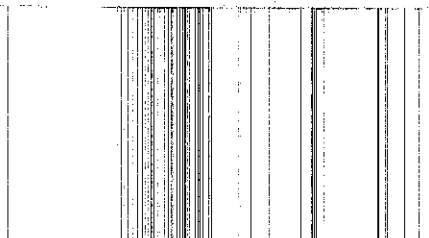
I also enclose a revised version of Trevor Traylor's paper on the Uniform Law. It deals with certain matters which he has omitted to deal with, such as the extension of the bankruptcy of firms etc to individuals and the problems raised by the actio Pauliana. I should very much appreciate your comments on this section of the paper.

I look forward to seeing you soon.

With kind regards,

Antony
Anton

A E ANTON





8(25)
OLD COLLEGE, SOUTH BRIDGE
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Telephone: 031-667 3437

10 September 1974

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
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EC47 7EU

Dear Sir,

Thank you for your letter of 8 September which, as I explained to you on the phone today, only reached me this morning. I am very grateful for the general observations which you make with regard to the Consultative Paper. We can discuss these at our meeting. I enclose as requested copies of the sections of the Consultative Paper dealing with Introductory Matters, the Scope of Convention, the Recognition of Enforcement of Judgments and the Uniform Law. I also enclose a copy of the Scottish Law Commission's Report on the Companies (Floating Charges) (Scotland) Act 1961. I look forward to meeting you on Thursday evening.

Yours sincerely

James



Department of Trade ~~and Industry~~
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2-14 Bunhill Row London EC1Y 8LL

Telephone 01-606 4071 ext 124

Mr Muir Hunter, Q. C.
49 Hurlingham Court
Ranelagh Gardens
London
SW6 3UP

Your reference

Our reference

Date

10 October 1974

Dear Muir

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Thank you for your letter dated 8 October; copies of Frau Bremshorst's paper have been distributed to other members. Her paragraph 3, in particular, is significant in its reference to new members being invited to "expose" their position point for point during the second reading.

You will recall that during our discussions on Preferences, the I.G. referred to a regulation about migrant workers as being a possible reason for the Brussels Panel's views. I enclose a copy of the regulation, which is referred to on page 126 of the N-L Report. My own view is that it does not appear to have any direct bearing on the method for dealing with Preferentials adopted in the draft Convention.

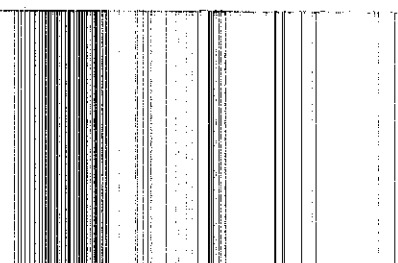
Hope your cold has not developed into anything more serious and that you are feeling better.

Yours Aye

T Traylor

T H TRAYLOR
Secretary

Encs :





OLD COLLEGE, SOUTH BRIDGE

EDINBURGH

EH8 9BD

Telephone: 031- 667 3437

Our ref: L3/268

22 October 1974

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
LONDON EC4Y 7EU

Dear Sir,

Trevor Traylor has sent me his comments on the section of the Paper dealing with the Uniform Law. Nearly all of them are of a minor character and can be accepted. Like you, however, I occasionally "see red" in matters of translation. In para. 7.20 of the Consultative Paper I pointed out that Article 4(A)1 strikes at transactions other than those depending upon the outcome of an uncertain event, where the obligations undertaken by the bankrupt substantially exceed in value those of the other contracting party. I keyed a footnote to the words "of an uncertain event" to explain that this expression was used as one closer to the meaning of the French text than the current English text. Trevor has made the following comment:

"It may be closer to the French text, but is it closer to reality? I would have thought that "contingency" and "risk" would be the obvious allowable exceptions."

I have replied to Trevor on this point as follows:

"I regret that I do not understand your comments. The translation is plainly wrong and grossly misleading. My first and less important point is that 'Tous actes' refers not to 'acts' in the physical sense but to formal legal acts or transactions. It would, therefore, be better translated by 'all transactions for valuable consideration'. My second point is that the words 'not involving contingency or risk' not only do not carry the sense of the French text, but carry a sense which must be wrong. Most transactions for valuable consideration involve one of the parties in 'contingency or risk' but the draftsmen of the Convention did not intend to exclude such acts from Article 4(A)2. They merely intended to exclude aleatory/

aleatory contracts. You will find aleatory contracts discussed on page 151 of the second edition of Amos and Walton's 'Introduction to French Law' in the following terms:

'Onerous contracts are subdivided into commutative and aleatory contracts. A contract is said to be commutative when the extent of the prestations which are owed by each of the parties is immediately apparent; a contract is said to be aleatory when the prestations due by one of the parties depend upon an uncertain event which renders it impossible to evaluate their eventual extent.

'The main interest of this distinction is that an aleatory contract cannot be set aside for lesion. Commutative contracts may sometimes be rescinded for lesion, but this is never possible in the case of aleatory contracts, where the chance of loss is always in the contemplation of parties.'

You will remember that we discussed a Convention definition of "Cessation of Payments". I enclose a copy of the definition which I would propose for insertion after para. 7.16 of the Paper on the Uniform Law. I would appreciate your comments.

I am suggesting to Trevor that we should include a paragraph on Floating Charges. I enclose a first attempt on which I should appreciate your observations.

With kindest regards

Yours ever
Sandy

A E ANTON



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Your reference

Our reference

Date

29 October 1974

Dear Muir

EEC BANKRUPTCY CONVENTION

Thank you for your letter of 28 October enclosing a revised draft of the "Cessation des paiements" formula. Copies have been distributed to other members, should they wish to comment and I have asked Sandy to let me have a proposed re-draft of the relevant bit of the Consultative Paper for similar distribution.

On another point, I see from my notes of last Thursday's meeting that you suggested an additional sentence be included in paragraph 2.6 before the final sentence. It was something to do with the Committee's proposals but I did not get the detail. Would you kindly let me have it - unless you have already passed it to Sandy.

*Yours ever
Trevor.*

T H TRAYLOR

✓ 7/11

Copy

Dg.
for retention

7th November, 1974.

A.M. Anton Esq., M.P.,
Scottish Law Commission,
Old College,
Southbridge,
Edinburgh EH8 7YJ.

Dear Lady

Cessation of Payments

Many thanks for your letter of 31st October with your detailed comments on my second attempt to draft a formula for the cessation of payments. I fear that we are somewhat at cross purposes in this matter in that we have really been approaching it from two separate directions, both of which may, I hope, be valid and valuable in their separate ways.

We are agreed that the Convention in its present form, while containing a Uniform Law which is founded in almost every paragraph upon the "cessation of payments" (as it is now translated) does not itself contain or even contemplate any definition of cessation of payments to which the Uniform Law could relate. It was for this reason that at an early stage in my advice to the Government I pointed out that if the words were left unqualified and merely inserted into the relevant insolvency statutes, they would have no meaning in English law or would be likely to be treated as co-terminous with "suspension of payments" which is a well-established term of art at least in English Mercantile and Insolvency law.

The situation was made more complicated by the fact that the term as an insolvency term of art does not exist at all (to judge from Annex II (g)) in Italy or the Netherlands, and the meaning in German Insolvency Law of the term used in the German version of the Convention, namely, "Zahlungs-einstellung", which has been described to me as "the prospective permanent inability

Cont...../

Dg
You will see I have expanded and
revised this
N.
Please return Peter Ann's letter
M

to pay debts as they fall due, as distinct from a state where your debts exceed your liabilities", is plainly not co-terminous with the meaning attached to the French term in Franco-Belgian Insolvency Courts. I am also given to understand that the meaning and operation of the term in those courts is a matter of great vagueness and much controversy among their practitioners.

We are therefore confronted, as I have always been in my separate capacity, with the need to devise some intelligible and workable formula which is necessary to give effect to the crucial terms of the draft law if it is not to be wholly nugatory. Since, however, the period of relation back to the cessation of payments must of necessity ever-remain or be displaced by statutory amendment or repeal the existing periods of relation-back that the United States insolvency codes possess, or must be introduced for the first time (as in the case of company winding-up) it is from the point of view at least of an English lawyer essential that this term should be capable of some precise definition and explanation, and indeed, of justification to the mercantile community for whose benefit or to whose prejudice it will operate. The use of the "cessation of payments" formula to invalidate the transactions between the bankrupt and a third party ~~is~~ in my opinion of essentially greater or less influence and potential prejudice, and indeed, unfairness, than its use for the purposes of adjudging a debtor bankrupt.†

Although as I have said above the draft law as it stands at present gives no clue to the meaning or mode of establishing a meaning for cessation of payments we know from Frau Bronhorst's letter that we have recently discussed that the panel are aware of the problem and that the Dutch delegate has been commissioned to produce a possible all I.S.C. definition. Unless and until we are permitted to know their lines of thought (which, of course, at the moment are being entirely denied to us, for reasons which I frankly cannot understand), we can only proceed upon our own lines.

† See Peter Ann's letter of 21 Oct 74.

cont...../

I have some reason to believe, however, that it may be exceptionally difficult to find a formula acceptable even to the six let alone the nine other states. It is, of course, obvious that the reservation in Annex II (a) must involve Italy and the Netherlands producing some equivalent to the cessation of payment, since otherwise they could not introduce into their legislation the provisions of the Uniform Law at all. By the same token the reservation in Annex II (a) by Germany, France, Italy and the Netherlands that they should introduce their own periods of ~~limitation~~ *relation back* not to be less than six months nor longer than two years must itself involve distorting the whole concept of cessation of payments, because if we are to have the concept of a "periode suspecte" a term which back for two years, then one would think it would have to relate back to a cessation of payments as long as that. My own draft, and now my revised draft, was intended to produce a similar capsule of law, carried up with the existing English insolvency codes (I have never wanted to draft anything either for England or Northern Ireland), and with the necessities of a more flexible "terminus a quo" in keeping with the philosophy behind the cessation of payments concept so as to give our consultants a chance to bring their consideration of the Uniform Law upon and on which their opinions could be obtained. It is only for this purpose that I refer to "the principal acts", but although they would not be used in an all-out definition, I do not see why the translation of such definition into U.K. statutory language should not use those acts as guide lines, or instructions. I am sure that you and your colleagues could produce, if it were relevant, a similar list of acts or events to mine.

As far as concerns notice of judgments, we do not have notice of judgment as a preliminary to execution, but a judgment sought to be enforced in bankruptcy is the subject of a bankruptcy notice. In the case of your own draft, could one support your

Cont...../

paragraph 1(c), namely, cessation of payments being established by failure to pay a debt constituted by court order", without proof that the court order had come to the notice of the debtor? Compare the notice contemplated by article 62(4) of the Convention. As regards negotiable instruments I agree that the specific defaults which might be relied upon must either be fully categorised or left in your own general terms, "the dishonouring of a bill of exchange".

I would therefore press you to agree to the formulation at least for the purposes of argument, and possibly, demonstration in the Consultative Paper of a cessation of payments formula in the United Kingdom manner which we can be getting on with, while waiting to hear what, if anything, Brussels is going to tell us that they wish to introduce; in the latter event, I think you would agree that they must indicate what amendments to the draft Convention will be required in order to insert in the United Kingdom the obligation to insert their formula or an English equivalent for their formula into our statute book.

I have shown this letter to David Walker and I am sending a copy to Henry Taylor. David also wishes to thank you for your letter to him of 4th November, the contents of which he much appreciates.

Yours sincerely,

His letter.



10(2.7)

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Mr Muir Hunter, Q.C.
3 Paper Buildings
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EC4Y 7EU

Your reference

Our reference

Date

14 November 1974

Dear Muir,

EEC BANKRUPTCY CONVENTION

Thank you for your letter of 7 November enclosing copies of your letter to Sandy and Peter Avis's letter. I apologise for delay in replying but have been in Wales for over a week dealing with a family bereavement.

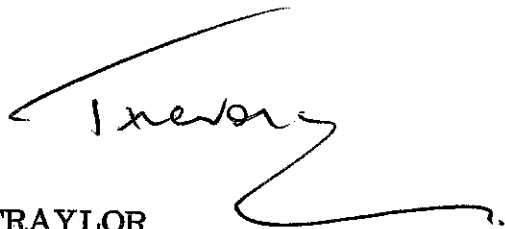
Bill Armstrong is attending a meeting chaired by M. Belinfonte in Brussels today and I have asked him to press Belinfonte for a copy of the proposed universal definition of Cessation of Payments, which his delegation undertook to prepare.

A visit to Sandy in Edinburgh on Tuesday/Wednesday of this week enabled us to consider the various comments and suggestions made by Committee members about the Consultative Paper and, apart from checking cross references, sections already drafted are ready for typing. Also, we drafted a final, concluding section, to round off the C.P. which we hope the Committee will approve next Monday.

As regards cessation of payments : in the end we came to the conclusion that, purely for the purposes of the Consultative Paper it would do, probably, no harm to leave paragraph 7.16 as a broad basis on which to receive comments from consultees. It may be that one of them will come up with a brilliant idea and thus save us all much time and trouble. I am sure we all agree with you that neither Annex I nor Article 76 imposes any obligation to introduce a C. of P. concept; I think perhaps there should be an obligation.

No news as yet about meeting the Minister : I believe Kenneth Cork is awaiting a reply to his request.

Yours ever



T H TRAYLOR

T.T. to see and return

2 copies
please

CONFIDENTIAL

10th December, 1974.

F.A.R. Brown Esq.,
Deputy Secretary,
Department of Trade, Victoria St.
London, W1.

Dear Mr. Brown,

Draft S.B.C. Bankruptcy Convention

I refer to the meeting of 21st November between my Chairman, Kenneth Cork, and myself with the Secretary of State for Trade and the Parliamentary Under-Secretary and yourself, for which we were most grateful.

You will be aware that the Consultative Paper was completed as promised, and is now being printed.

I have given some thought and made certain provisional arrangements directed to procuring the maximum "exposure" of the Consultative Paper, and to advancing certain other objectives outlined by the Ministers and yourself.

I enclose a note of these, relating to the Domestic front, marked "D", and a further note, marked "E" relating to the European aspect.

I shall be grateful for any appropriate guidance in pursuing the lines of action referred to in those notes.

Yours sincerely,

Muir Hunter.

Encs.

NOTE A. UNITED KINGDOM

1. A conference will be held by the B.I.I.C.L. (Director, Dr. Kenneth Simmonds) in London in early Spring to discuss the draft Convention and the Consultative Paper. A detailed review-article will also appear in their Journal.

2. An Article will shortly appear in the I.B.A.'s journal "The International Business Lawyer" and in "European Community" (the E.E.C.'s monthly magazine); in the case of the latter, it may be possible to have it reproduced, or summarised, in each of the other language editions of the magazine.

3. A short article on the Draft Convention, signed by David Graham, will appear in the forthcoming "Daily Telegraph" supplement on Bankruptcy.

4. "The Times" would print a specialist article on the draft Convention, if asked.

5. A number of the Heads of the Law Faculties have asked me for copies of the Consultative Paper for their commercial or international law courses.

NOTE B. THE EUROPEAN ASPECT.

1. France. On 22-24th November, a Franco-British colloquium was held in London between the British Institute for International and Comparative Law (B.I.I.C.L.) and the French equivalent "Société pour la Législation Comparée", devoted to the impact of E.E.C. Law on French and British concepts of private international law. The French were represented by an impressive delegation as shown on the attached list. Three U.K. Law Commissioners were present.

2. One of the subjects was the Draft E.E.C. Bankruptcy Convention, on which I was invited to speak on the British side; Maitre Loussouarn (a leading Professor of Paris), and Maitre Brunois (former "Batonnier" of the Paris Bar) spoke on the French side. The French speakers expressed considerable concern about the draft, which had plainly not yet received any detailed discussion either by the French legal professions or (so far as I could ascertain), ~~from~~^{by} French commercial or financial organisations. In particular, it was felt to be essential that it should be considered by French legal practitioners before adoption.

3. There is nothing comparable either with the Cork Committee or with our Consultative Paper.

4. Certain aspects of the draft Convention are considered to be a regrettable surrender to German pressure (reciprocal sentiments to the same effect are felt by German practitioners).

5. My own address was non-controversial, but subsequently M. le Procureur-General Touffait expressed the hope that I might meet M. Noel and Lemontey (the authors of the Report and of the draft) for a useful discussion. When I indicated that for

protocol reasons this was not possible, he suggested that he could, and would like to, arrange this on an informal social basis, as he knew both men well. Would the Department wish me to follow up this invitation?

2. Germany. There has been as yet no equivalent to the Cork Committee, nor any real consultation. Dr. Joachim Kilger, of Hamburg, my German colleague on the International Bar Association, has produced a report dated 15th July 1974 on the draft Convention which has been officially adopted by the German Bar Association, and he has supplied me with a copy, which ~~the~~ Secretary is arranging to have translated into English. The German lawyers complain that they have been wholly excluded by their Ministry of Justice from any consultation, and the Report concludes with the following (my translation) :

" In consequence of the expansion of the E.E.C. to include the three new Member States, Denmark, England and Ireland, it will be necessary to enter into fresh negotiations for a Convention for the unification of bankruptcy, composition and analogous procedures. It is most strongly to be recommended as a means of limiting so far as possible the reservations made on behalf of the national laws of the Contracting States.

The question must be asked, whether it is rational to base the working out of the Convention only upon a report prepared solely by superior judges and civil servants, neither of which categories has any real experience of the practical conduct and development of bankruptcy procedure."

3. General. Dr. Kilger (see above) as Chairman of the Creditors' Rights and Insolvency Committee of the International

Bar Association (Business Law Section), to which I belong, is convening a conference at Brussels, to be held (it is hoped) at the end of January next, of all the Committee's members in the E.E.C. States, to consider the Convention in detail (it has already been examined at previous conferences at London and Vancouver). He contemplates that the delegates should seek a meeting with the Brussels Working Party.

4. "La cessation des paiements". In the Consultative Paper we have sought (in Section 7) to define this key term, used in the draft but not therein defined; indeed, it is wholly undefined internationally. It is hoped that this Conference may help to obtain acceptance of our own proposed definition.

Confidential

Antibes, France.

4 Jan 75

Dear Sandy,

May I begin by wishing you and Doris the very best for the New Year, - straining my usually optimistic spirit for this purpose! I was very sorry that they cancelled our last meeting, and prevented us having a celebratory lunch together!

My reply to your letter of 4th December is much overdue, but I had a perfectly frantic finale to the term, with vast insolvency problems piling up, including one, involving the Bank of America, and an American customer with operations in every European country, all with interlocking accounts and cross-guarantees, which seemed a classic case to illustrate the problems of our Convention. The B. of A., took me to Amsterdam to argue with the customers' lawyers, and I was able to dazzle the assembled company with my knowledge of the comparative awfulness of the various States' rights; we had in particular a most animated debate on the "reserve de propriete", and I wished afterwards that I had had the benefit of studying your recent discovery of the draft 776 directive enclosed with your letter.

I entirely agree with you as to the importance of this document, and as to the difficulty of comprehending why our respective masters did not know of it, or if they did, did not tell us. I judge, from the last two sets of minutes of the Inter-Departmental Committee, that they just had not been told! I must confess that I find the their lucubrations limited, and frequently alarming. You will have noticed the intention to make redundancy payments preferential, thereby invalidating some of our own observations in the C.P. Also the prospect of a new Insolvency Bill, of which (save in so far as there were relevant bits in Heath's Companies' Bill) I had heard nothing.

My pleasure at the appearance and the reviews of the C.P. was slightly marred by Hermann's curious remark, in the P.T., that I "made no secret of my opposition to the Convention". Reading this while conducting a difficult case, I was so cross that I made them apologise. He apparently founded his thrust upon some of the earlier remarks I had made at the British German Jurists colloquium at Cambridge!

Returning to the/directive you sa

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3 Copies
Department of Trade and Industry
Sanctuary Buildings
Great Smith Street
London SW1P 3DB

Telephone Direct Line 01-215 5818
Switchboard 01-215 7877

15 January 1975

Dear Mr Muir Hunter,

I am sorry not to have replied before to your letter of 10 December, about the draft Bankruptcy Convention; as you know, I referred the points you raised to Ministers, and I am now writing to confirm the answer which you had on the telephone from the Secretary of State's office.

As far as your note on the UK position is concerned, we do as you know see a need - which I think you also see - to draw as much expert attention as possible to the work of the Cork Committee, while naturally avoiding any appearance of compromising that Committee's impartiality and freedom of judgment or of committing HMG to any particular view - and indeed, any appearance of deliberately welcoming any reason for delay. Our major point is that there is an excellent reason for examining the draft Convention with expert care; and I think that the various courses of action which you describe would serve to emphasise that point. Provided that Mr Cork himself sees no objection, we would be entirely content for those things to be done; you might perhaps like to consider whether copies of the Consultative Paper should go to Law Faculties in the name of the Committee, but we are content to leave that to your own judgment.

Turning to the European possibilities, much the same considerations necessarily inform our views. There is, as you have yourself discerned, potential embarrassment in your meeting Mm Noel and Lemontey, in that you could be thought to be speaking on behalf of the Cork Committee or even of HMG, and that risk might exist despite any disclaimer on your part. I think that we must leave it to you to judge how far this risk should weigh, given the importance of not compromising the position of HMG and the Committee; if you feel on balance that an informal talk might be helpful and illuminating, and again if Mr Cork himself sees no objection, we would be content to rely on your discretion. The proposed Conference in Brussels might similarly be a helpful and illuminating occasion, and we would take very much the same view;

Muir Hunter Esq QC
3 Paper Buildings
Inner Temple
EC4Y 7EU



however, I think that you will probably agree that it would be preferable for you not to take part in any meeting with the Brussels Working Party, since that might involve you in a difficult conflict of roles.

Thank you for consulting us; I hope that you find this response helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P A R Brown'. The signature is written in a cursive style with a large initial 'P'.

P A R Brown



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3 copies pd

Department of Trade and Industry
Sanctuary Buildings
Great Smith Street
London SW1P 3DB

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Muir Hunter Esq QC
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Inner Temple
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P A R Brown



Department of Trade and Industry

Insolvency Service
2-14 Bunhill Row London EC1Y 8LL

Telephone 01-606 4071 ext 124

60.7

Mr Muir Hunter QC
3 Paper Buildings
Inner Temple
London EC4Y 7EU

Your reference

Our reference C/212

Date 15 January 1975

Dear Muir.

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Many thanks for your letter of 10 January; this is primarily to tell you that our next meeting has been arranged for Wednesday 12 February starting at 11.30 am instead of 10.00 am in order to help Hamish and Sandy with travel arrangements.

Copies of Dr Kilger's report have been sent to our committee members and I have also passed to Kenneth Cork a copy of your letter to Philip Brown. The report is certainly highly critical and it is interesting to read other people's comments about the draft Convention. I noticed the reference to two other German reports but I wonder if they would be of much help bearing in mind (a) their age and (b) our terms of reference.

Hope you have had a pleasant sojourn in France.

Yours Ayr

[Signature]

[Signature]

8(14)

SAUVEUR VAÏSSE
AGRÉGE DES FACULTÉS DE DROIT
AVOCAT A LA COUR
51, AVENUE MONTAIGNE
75008 PARIS
225.16.59 & 225.48.28

PARIS, le 16 janvier, 1975.

MUIR HUNTER, ESQ.,
3 Paper Buildings,
Inner Temple,
LONDON, EC4Y 7EU.

ANGLETERRE
=====

SV/mas

Mon Cher Collègue,

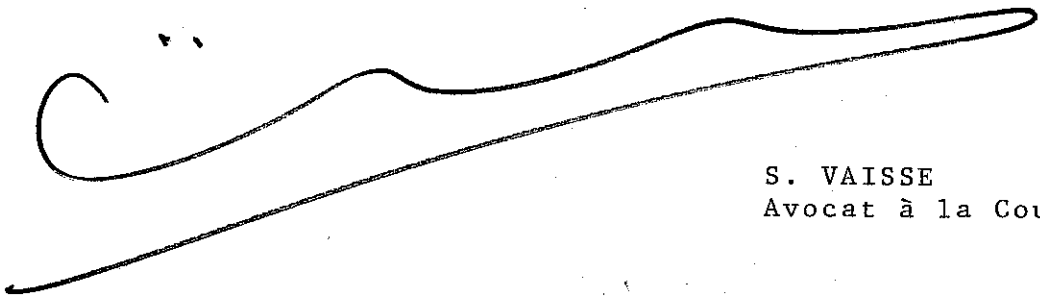
J'ai bien reçu vos deux courriers et je vous remercie très vivement de la documentation que vous m'adressez, ainsi que de vos voeux.

A mon tour je vous souhaite, et à tous les vôtres, une très heureuse année.

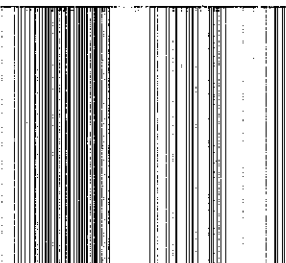
Je vous adresse sous ce pli la photocopie des deux articles les plus récents et les plus complets sur "la cessation des paiements", mais je tiens à souligner que cette notion reste considérée comme peu précise; hier encore, lors de la rentrée solennelle du Tribunal de Commerce de Paris, le Président a insisté dans son discours sur la nécessité de mieux fixer cette notion, ce qui sera sans doute fait dans le cadre de la réforme en préparation.

Nous pourrons d'ailleurs en discuter bientôt puisque je viendrai volontiers à la réunion de Bruxelles du 31 janvier, mais je vous serais à cet égard obligé de m'adresser toutes informations utiles sur cette conférence.

Je vous en remercie par avance et je vous prie de croire, Cher Collègue, à l'expression de mes sentiments les meilleurs.



S. VAISSE
Avocat à la Cour



21 February, 1975.

Mr. J. Edgar Hoover,
Under Secretary,
Department of Justice,
Sanctuary Building,
Crest Building,
London, W.1.

Dear Mr. Hoover,

I am sorry that I have not been able to meet
apologetic and the delay in responding to your letter
above.

I am sure that you will understand my position, and shall,
of course, accept responsibility.

I am sure that you will understand my position in relation to
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Yours faithfully,
[Signature]

STOP

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3rd February, 1975.

F. A. F. Brown, Esq.,
Under Secretary,
Department of Trade,
Sanctuary Buildings,
Great Smith Street,
London, W.1. 3AB.

Dear Mr. Brown,

The Draft E.C.C. Sanitary Convention

Thank you for your letter of 15th January. I must apologise for the delay in acknowledgment, due to my absence abroad.

I am grateful for the Department's guidance, and shall, of course, consult Kenneth Cook, my Chairman.

In the meantime, I have taken no step in relation to the French invitation, and have postponed the proposed E.C.C. Conference at Brussels (Memorandum "S" to my letter of 10th December).

The British Institute of International and Comparative Law are now organising the one-day conference on the Convention referred to in para. 1 of Memorandum "S" to my letter, which will probably be held on 14th March. I will see to it that officers of the Department are appropriately invited.

The German San Report (Memorandum "L, sanitary") has not been translated by the Department. Another German report (from the E.C.C. aspect) I am translating myself. Both would seem relevant to the Government's Brussels negotiations.

The law faculties have, I believe, already been supplied with copies of the Consultative Paper by our secretary.

I was glad to hear that the Consultative Paper had been well received in Brussels.

May I take this opportunity of drawing your attention to a parallel E.C.C. legislative activity covering some of the same ground as the Sanitary Convention, namely the preparation of an

Cont...../

Z.E.C. Directive on Non-Possessory Liens. This appears to impinge directly on the work of the Cork Committee, and as it seems to center, like the validity of floating charges, might prove a valuable "lead-in" for the United Kingdom, whose bankers and financiers attach the greatest importance to the recognition of our floating charges by other Member States.

I am not clear at present under which Department the preparation of this Directive falls, but it would seem to need to be co-ordinated both with the Bankruptcy Convention and the Judgments Convention.

Yours sincerely,

John Gorter.

3rd February, 1975.

F.A.R. Brown Esq.,
Under Secretary,
Department of Trade,
Sanctuary Buildings,
Great Smith Street,
London, SW1P 3DB.

Dear Mr. Brown,

The Draft E.E.C. Bankruptcy Convention

Thank you for your letter of 15th January. I must apologise for the delay in acknowledgment, due to my absence abroad.

I am grateful for the Department's guidance, and shall, of course, consult Kenneth Cork, my Chairman.

In the meantime, I have taken no step in relation to the French invitation, and have postponed the proposed I.B.A. Conference at Brussels (Memorandum "B" to my letter of 10th December).

The British Institute of International and Comparative Law are now organising the one-day conference on the Convention referred to in para. 1 of Memorandum "A" to my letter, which will probably be held on 14th March. I will see to it that officers of the Department are appropriately invited.

The German Bar Report (Memorandum B, Germany) has now been translated by the Department. Another German report (from the I.B.A. aspect) I am translating myself. Both would seem relevant to the Government's Brussels negotiations.

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Yours sincerely,

Duir Hunter.

6(15)

Maitrê
Claude Serge Aronstein
Avocat à la Cour d'Appel

Rue Berkendael 199
1060 Bruxelles / BELGIEN

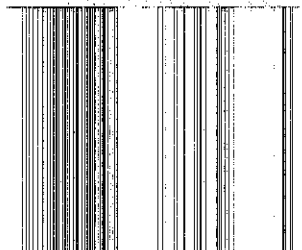
18. Februar 1975

Sehr geehrter Herr Aronstein,

ich danke Ihnen für Ihr freundliches Schreiben vom 13. Februar 1975 und weiß besonders Ihre Bemühungen, die beabsichtigte Konferenz des Committee on Creditors' Rights and Insolvency angenehm zu gestalten, zu schätzen.

Aus dem beigefügten Schreiben an alle Mitglieder aus den EWG-Staaten ersehen Sie, daß wir noch einmal genötigt waren, die Konferenz zu vertagen, um ihre bessere Vorbereitung zu sichern.

Diese Konferenz, die sich ausschließlich mit der Frage des Entwurfs der Europäischen Konkursrechtskonvention befasst, wird eine reine Arbeitskonferenz sein ohne größere gesellschaftliche Veranstaltung und an ihr werden - nach meiner Schätzung - bis zu 10 Mitglieder unseres Committee teilnehmen. Weder Herren des Vorstandes der IBA noch Mitglieder des Council of the Section on Business Law werden erscheinen.



Sobald ich von den europäischen Mitgliedern unseres Committee die Nachricht erhalten habe, wer voraussichtlich erscheinen wird, darf ich mir gestatten, Ihnen die Teilnehmerzahl mitzuteilen. Ich wäre Ihnen besonders zu Dank verpflichtet, wenn Sie mich dann beraten könnten, wo wir einen passenden Konferenzraum finden. Vielleicht wäre es zweckmäßig, daß die Teilnehmer möglichst in einem Hotel wohnen, wenn dort auch ein Konferenzraum zur Verfügung steht.

Selbstverständlich werden es die Teilnehmer zu schätzen wissen, wenn wir an einem der Abende gemeinsam dinieren würden und wenn wir dabei zwanglos mit belgischen Kollegen zusammen kommen würden.

Mit freundlichen Grüßen
bin ich Ihr

25th February, 1975.

Professor Kurt Nadelmann,
Law School,
Harvard University,
Cambridge,
Massachusetts,
U.S.A. 02138.

Arrival

Dear Nadelmann,

Thank you for your letter of 15th January, which arrived while I was abroad, hence my delay in replying.

You already know my views on the problems presented by the Draft E.E.C. Bankruptcy Convention. We are, however, to some extent faced with a draft which can only be amended or improved and cannot be rejected in toto. I and my colleagues on the Cork Committee advising the Government thereon have many criticisms and reservations, which we shall do our best to give effect to.

We have already produced a Consultative Paper, (written entirely by Sandy Anton and me, assisted by David Graham), a copy of which I enclose, for the purpose of consulting with the business and financial worlds, references to which you may have seen in the press. We are now awaiting our committees' views to incorporate them in our Final Report.

I have recently received through the Department of Trade a transcript of addresses delivered by MM. Noel and Lemontey to a Brussels colloquium last December on the Draft Convention, which appear to indicate a considerable lack of confidence on their part as to some of its provisions, and a clear admission that the entry of the three new Member States has reduced their draft to no more than a working paper!

We are having a colloquium of the B.I.I.C.L. on 14th March, on the Convention, at which I shall be the principal speaker. Are you likely to be in or around London at that date?

Best wishes.

Yours sincerely,

Muir Hunter.

PD
Should particularly value
your views on an interna-
tional definition of
"Convention des paiements"

MH