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EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Thirteenth Meeting, held at Gavrelle House on 26 September '74

Present	:	K R Cork (Chairman) A E Anton P H Armour M V S Hunter C J Jenkins (for P G H Avis) C L Dodd T H Traylor (Secretary) Miss G H Goodwin (Assistant Secretary)
In attendance	:	D Graham J M Hunter (Bankruptcy Registrar, N. Ireland) G A Weiss

REPORT OF THE TWELFTH MEETING

1. Mr Muir Hunter said that he wanted to reserve his acceptance of Article 76(1) until he had given the matter further consideration. There were no other matters arising and the Report was accepted.

SECRETARY'S REPORT

2. The Secretary said that memoranda of preliminary views had been received from the Law Reform Committee and the Law Society, and copies had been sent to members of the Committee. To date, only nine consultees had submitted comments on the draft Convention in reply to the Committee's invitation issued about a year ago. An up to date list of consultees was issued to members who were asked to let the Secretary have details of any proposed additions. This list would be used for distribution of the Consultative Document. Mr Registrar Hunter undertook to provide a list of appropriate bodies in Northern Ireland.

CONSULTATIVE DOCUMENT

3. Mr Anton suggested that the document should be referred to as a Consultative Paper and not a Consultative Document; this was agreed. Mr Anton then gave a brief progress report and each section of the C.P. was discussed, as follows :

(1) Introduction This had been written since the last meeting and was based on a preliminary draft received from the Chairman and consultation with Mr Muir Hunter and Mr Graham. Paragraph 1.13 had now been added listing abbreviations for the more important statutes and the Secretary was asked to check the details in this paragraph. It was agreed that, where applicable, an abbreviation should indicate the country concerned, e.g. '1857 Act (Ireland)'. The Committee agreed that the layout of this

section was acceptable and Mr Anton asked that comments on this subject matter should be sent to him, copy to the Secretary as soon as possible.

(2) Scope of the Convention The scheme of this section was approved and Mr Anton asked for any suggestions regarding its content to be submitted as soon as possible.

(3) Jurisdiction Mr Anton recalled that the draft dated 1 August 1974 had been issued to members before the last meeting but to date, he had only received detailed comments from Mr Registrar Hunter and the Secretary. The section had been re-drafted but it was not intended to issue the re-draft at this stage. Members were asked to send in comments based on the original draft and the re-draft could then be amended as necessary.

(4) Choice of Law Provisions Mr Anton recalled that this section had been issued to members at the last meeting; detailed comments had been submitted by the Secretary, and Mr Registrar Hunter who contested his interpretation of Article 24. He had re-drafted paragraph 4.4 so as to give both views of this article. Mr Muir Hunter had undertaken to return his copy of this section marked with his comments and Mr Anton hoped other members would send in any comments as quickly as possible.

(5) Preferential and Secured Creditors This section had been prepared by the Secretary and was now with Mr Muir Hunter for consideration. It would then be returned to Mr Anton to ensure that it was in line with the general format of other sections before being issued to members for comment.

(6) Recognition and Enforcement of Judgments This paper, which had been prepared by Mr Anton in consultation with Mr Muir Hunter and Mr Hunter, had been issued to members and their detailed comments were awaited.

(7) The Uniform Law A re-draft of a paper prepared by the Secretary had been sent to Mr Muir Hunter and to the Scottish Law Commission's bankruptcy expert. Their comments and proposed alterations were being incorporated in a new draft to be issued to members shortly.

(8) Summary Mr Anton said that there were other problems arising from the draft Convention in addition to those discussed in the other sections of the C.P. and he wondered if they should be the basis of an additional section, or perhaps form part of the Summary. In particular he drew attention to the Joint Declaration, the duration of the Convention and to the position of the European Court. Following discussion it was decided that any reference to such matters should only be by brief comments. Some members were of the opinion that such matters should only be referred to in the Final Report.

4. Mr Muir Hunter pointed out that questions raised in the Consultative Paper were highlighted by a vertical line in the left hand margin; the Committee considered this was satisfactory.

5. Mr Muir Hunter thought it might be useful to include more examples illustrating the possible effect of problems raised in the C.P., such as the footnote on the second page of paragraph 6.4. Mr Anton said that preparation of such examples might take too much time but if individual members would identify places where illustrations would be helpful an effort would be made to include them. (Proposals to Mr Anton, copy to Secretary).

6. Mr Muir Hunter said that the question of Paulian Actions raised considerable difficulties (Uniform Law, Article 4) and he proposed to discuss the matter further with Mr Anton. He also suggested that consideration be given to the inclusion of (i) a section on the Protocol covering such details as the redirection of mail, and (ii) a detailed explanation and proposed definition of "Cessation of Payments", either as a separate section or to be included in the Section on Uniform Law. Mr Muir Hunter added that he hoped to prepare a paper on Cessation of Payments and the Chairman said the matter could be decided after its preparation.

7. The Chairman enquired as to printing arrangements. The Secretary thought that it would be necessary for the document to be typed in his Secretariat and reproduced by the Department's Reproduction Services. He had discussed the matter with the Reproduction Services and they would require a week to produce, say, 150 copies. The "Red Book" was an example of their work. The Secretary added that the time factor would appear to be against a printed document, having regard to the backlog of work in hand by HMSO. Various points were raised such as the actual time factor for printing, the possibility of having additional copies available for sale and the total number of copies likely to be required by consultees. The Secretary undertook to bear these points in mind and to make enquiries. He suggested that it might be possible to get the Department to issue a press release when the C.P. was available.

ANNEX II - RESERVATIONS

8. The Committee decided to look at the possible effects of reservations already proposed by other States and also to consider probable U.K. reservations; the latter would follow from the Committee's final views on the articles forming the Uniform Law. It was generally agreed that numerous reservations might undermine the Convention but at the same time, making a reservation could result in an article being amended to a more suitable form. The Chairman suggested that, having decided on our own reservations, we should suggest that a committee from Member-States considered all the reservations submitted, and negotiated amendments to the Uniform Law in order to reduce reservations to a minimum.

9. Mr Muir Hunter suggested that the Department enquire of Brussels :

(i) the present position as regards reservations - had any been added or withdrawn?

(ii) the equivalent internal law of a State making a reservation - e.g. what did Germany have in place of U.L.1?

Brenchley.

10. Referring to U.L.1 Mr Muir Hunter suggested that our own existing law on the subject was adequate and that we should reserve the right not to introduce it. At the same time he pointed to the difficulties of operating the Convention if one had to take into consideration numerous reservations: for example four of the original six States had reservations about U.L.4. Mr Anton agreed that U.L.1 was unacceptable in its present form for numerous reasons, but he thought it possible that an amended version might be acceptable both to Germany and the U.K. In the meantime he felt we should recognise that Germany might have good reason for reservation (a) and we should consider it acceptable, at least until we knew the equivalent German law. In this connection Mr Muir Hunter thought it would be useful to have the services of a research assistant enquiring into the equivalent laws of the other States.

11. Referring to Annex II(b), Mr Muir Hunter said that Italian law imposed the whole liability on the delinquent director; hence this reservation. However, Mr Anton pointed out that U.L.1(3) did not preclude the court from imposing the whole liability and he suggested that the Committee should say it found difficulty in appreciating the reason for reservation (b). This was agreed.

12. Mr Anton suggested that the reservations in Clause (c) relating to U.L.4, were unacceptable because they would make that part of the Convention unworkable and because they offended against its principles; this matter was raised in the C.P. for comment. Mr Muir Hunter recalled that during the Committee's discussion of U.L.4 a measure of bargaining was provisionally agreed as between the present Scots Law and English Law, but if everyone was opting out then we could also. The Committee were in agreement that the rules set out in U.L.4 must be standard for all Member States.

13. Referring to Annex II(d), Mr Anton said that although U.L.4(F) was in line with U.K. insolvency law, it would cut down,to some extent, creditors' rights under S.332 CA1948. The matter was referred to for comment in the C.P. He thought we had no reason to prevent reservation (d), provided it related only to cases where the Netherlands was the State of the bankruptcy. This was agreed.

14. The Committee thought that reservation (e) might enable, say, a debtor in this Country to put money in Italy out of the reach of creditors; if this was so, it was unacceptable.

15. Mr Anton explained that the first part of Germany's reservation at (f) was to enable it not to treat as an alienation prejudicial to creditors, the payment by an heir of a child's legal rights, before the opening of the bankruptcy of a deceased person's estate; the Committee thought this was acceptable. The Secretary said that the second part of the reservation related to the repayment of contributions to hidden partners of a Stille Gesellschaft. The Chairman suggested a note should be made that this did not seem right as such payments would not be agreed to in this Country.

16. Mr Muir Hunter said that if Italy and the Netherlands were not going to refer to the date of the cessation of payments (reservation (g)) it might be useful to discover their alternative systems. The Chairman said that certain parts of the Convention must be standard and surely the date of the commencement of the bankruptcy must be one of them, otherwise the whole thing would be unacceptable. If Italy or the Netherlands had a better system then perhaps we should all adopt it but there should be a standard date, which was defined and which applied in all States. It was noted that Mr Muir Hunter would prepare a definition of the date of the cessation of payments to fit into U.K. laws.

17. Mr Anton suggested that reservation (h) might need further consideration as it would mean that the effect on creditors could vary, dependent on which was the State of the bankruptcy. The Committee saw no reason for opposing reservation (i).

PROTOCOL ARTICLE I

18. Mr Muir Hunter drew attention to Memo 1 of his Opinion dated 17th January 1973, in which he listed appropriate categories of proceedings for inclusion in Article 1(a) and (b) relating to England and Wales. Mr Anton suggested that the relationship of the Bankruptcy and Judgments Conventions should be discussed, perhaps with the Lord Chancellor's Office, to determine which proceedings should be covered by each of the Conventions. Scottish proceedings to be included in Article 1(a) would be the sequestration of living debtors under S.11 of the BA1913, and possibly the sequestration of the estates of deceased debtors, also under S.11. Also, the appointment of a judicial factor on a deceased insolvent's estate under S.163, and summary sequestrations under SS.174 and 176 of the BA1913. Mr Registrar Hunter said that the proceedings applicable to Northern Ireland were similar to those for England and Wales, but under the appropriate Irish Acts.

19. The Chairman recalled the necessity to have voluntary liquidations included in 1(a) and suggested this could be achieved by including voluntary winding-up subject to the supervision of the court (SS.311-315, CA 1948). On finding that a voluntary liquidation was international a liquidator could apply for a supervisory order under S.311. Mr Muir Hunter supported this proposal and in saying that it could also apply in Scotland, Mr Anton said it might be suitable with some minor modifications. The Committee

Note recent case on supervision in Times.

were in agreement that this proposal be put forward as a means of including the voluntary liquidation of insolvent companies which involved other States.

20. The Committee agreed that the administration of deceased insolvents' estates should be included. As regards Deeds of Arrangement, Mr Anton said that they did not come within the terms of the Convention; however a judgment following upon a contractual Deed of Arrangement could be enforced under the Judgments Convention.

21. The Chairman then referred to receiverships under floating charges and said there was a feeling that they should be made more formal, to avoid abuse, and it would be useful if they could be included. Mr Muir Hunter said that the receiver would have to be a receiver of court and although this could be done under an action brought by the debenture-holder, it was a rarity, moreover it was a judgment which would be covered by the Judgments Convention. An additional difficulty was that a receivership could only marginally be described as an insolvent administration.

22. The Chairman proposed that consideration be given to the inclusion of a receivership where there was also a compulsory winding-up or voluntary winding-up under supervision; i.e. that in these circumstances he would be recognised and allowed to continue with his administration.

23. Mr Anton said that a receivership judgment operating under the Judgments Convention would be enforceable insofar as the receiver had contractual rights to deal with property; but a foreign creditor would have no one with whom to deal and further, it was understood that on the Continent a receivership was virtually regarded as a fraudulent preference. He suggested therefore that it might be prudent to expose our receivership law as little as possible and rely on the backing of court orders under the Judgments Convention.

24. Mr Graham said that under the Chairman's scheme there would still be a period of time when the receiver was powerless - the period between his own appointment and that of the liquidator - and he thought foreign creditors would be averse to the receiver taking assets without responsibility for all creditors. There was general agreement that a receiver should not be allowed to deal with the claims of unsecured creditors. The Secretary suggested that difficulties might arise under the Chairman's scheme where there was a foreign liquidator. Mr Jenkins said it was not unusual for a bank to accept a floating charge over a foreign company's assets in this Country and Mr Muir Hunter said that in such circumstances a receiver could be appointed. It was agreed to refer back receiverships for further discussion later; for the present it did not seem that they could be included in the Convention.

25. Mr Anton said he had been considering criminal bankruptcies and was now of the opinion that it would be unwise to include them. If they were included it might debar a criminal bankruptcy being made where the individual's C/A was in another State or where his establishment was in another State with none in the U.K.

PROTOCOL, ARTICLE II

26. Mr Muir Hunter said it was necessary to decide if there were any undertakings in the U.K. which should be excluded from the Convention because of their inherent characteristics. The Secretary pointed out that the wording of Article II did not imply that such undertakings could not be made bankrupt, only that such a bankruptcy would not be dealt with under this Convention; for example the bankruptcy of insurance companies, which were excluded was being made the subject of a separate Directive.

27. The Chairman thought there might be certain undertakings which, in the public interest, should not be wound-up. Mr Graham suggested that such a decision could be prejudicial to other creditors, including foreign trade creditors. After further discussion it was agreed to consider the article again during the second reading after the receipt of the views of consultees and in particular, with reference to Article 9 of the Convention.

PROTOCOL, ARTICLE III

28. Mr Registrar Hunter suggested that the particulars to be advertised should include whether the proceedings were universal or under Articles 9 or 56; this was agreed. Mr Muir Hunter noted that the translation had reverted from bankruptcy judge to "juge - commissaire" which was a Franco-Belgian concept with no direct equivalent in this Country.

PROTOCOL, ARTICLE IV

29. It was decided to leave the consideration of matters to be listed under this article until proceedings to be included in Article 1(a) and (b) had been agreed. The Chairman suggested that meantime, we should list the matters which are normally advertised in England.

PROTOCOL, ARTICLE V AND VI

30. The Committee saw no major objections to these articles.

PROTOCOL, ARTICLE VII

31. Mr Muir Hunter recalled that, regarding VII(2), there was a problem about communicating between public officers in two States, other than through the Governments. Mr Dodd noted that this was in respect of the service of judicial documents and Mr Anton suggested guidance should be sought from the Foreign Office. However, on realising that the article was the same as Article 4 in the Protocol to the Judgments Convention, it was decided to refer the matter back until Mr Anton had checked up on the action proposed in the Report of the Committee on the E.J.C.

PROTOCOL, ARTICLES VIII TO XV

32. The Committees saw no objections to these articles but made the following observations :

(a) Article IX Creditors' claims should be submitted to the trustee in bankruptcy in respect of S.11 or S.174 cases, in Scotland, and to the judicial factor in S.163 cases. In England, to the Official Receiver and Provisional Liquidator, the liquidator or the trustee, as appropriate. In Northern Ireland to the Official Assignee.

(b) The appropriate courts under Articles X and XI would be the High Courts in England and Northern Ireland and the Court of Session in Scotland.

(c) There was some doubt as to whether the same courts would apply under Article XII and Mr Muir Hunter and Mr Anton were asked to consider the matter further and to raise the subject at the next meeting.

DATE OF NEXT MEETING

33. The date of the next meeting was fixed for Thursday, 24 October 1974 and the following meeting was provisionally arranged for 18 November 1974.

AGENDA FOR THE NEXT MEETING

34. It was agreed that the main item would be the C. P. and any remaining time would be devoted to any matters outstanding raised by members, who were asked to notify the Secretary of any matters which they wished to raise.

T H TRAYLOR
Secretary

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EEC BANKRUPTCY CONVENTION

INTER-DEPARTMENTAL WORKING PARTY

Report of the Fourteenth Meeting held at Gavrelle House on 21 February 1975

Present:

C A Taylor (Chairman)
E G Harper (D of T)
J B Clemetson (D of T)
W Armstrong (D of T)
J S Doig (Scottish Courts Administration)
J M Hunter (Bankruptcy Registrar, N Ireland)
R B Rowe (Lord Chancellor's Office)
E Scott Robertson (Solicitor, Scottish Office)
D R Titchener (DHSS)
T H Traylor (Secretary)
Miss G H Goodwin (Assistant Secretary)

MATTERS ARISING FROM THE THIRTEENTH MEETING

1. The Chairman said that it was unlikely that the Insolvency Bill would be heard this session due to pressure on parliamentary draftsmen generally. However, Ministers were committed to the Bill which should deal with the following matters:-

(a) giving the Secretary of State for Trade power to restore the value of monetary limits;

(b) a provision enabling the bankruptcy courts to carry out an automatic review of bankruptcies after five years, with a view to discharge;

(c) the strengthening of the Administration Order procedure under the County Courts Act, 1959;

(d) simplification of the requirements for the submission and proof of claims by creditors in bankruptcies and companies liquidations;

(e) an extension of the grounds for seeking an order disqualifying a director of failed companies from so acting again.

J. 130.

2. The Secretary drew attention to the decision of the Brussels Panel to delete Articles 61-67 of the Bankruptcy Convention on the grounds that those Articles were already in the Judgments Convention. He recalled that the UK delegation, in common with the other new Member States, had reserved its position when the point was discussed in Brussels in May 1974 and he suggested that at some stage the Working Party would need to consider whether it advised support of the deletion. He suggested that there may well be grounds for retaining Articles 61-67, eg:-

(a) was it feasible that certain judgments arising in Bankruptcy proceedings, which might in fact relate to provisions proper to the law of bankruptcy, should be governed by the Judgments Convention, when that Convention specifically states that it does not relate to Bankruptcy proceedings? Would this not cause confusion?

(b) will not the deletion of Article 61 with its specific reference to Article 17 proceedings make it more difficult to understand the exact ambit of Article 54, enforcement as of right? If Article 54 is the only Article left in the Bankruptcy Convention dealing with "enforcement", might it not be taken to imply that all judgments in the Bankruptcy Convention may be enforced as of right?

(c) is it not worthwhile that a Convention should stand on its own feet? This would enable such a Convention to be agreed to, perhaps, by associate Members or even non-Member States, to our mutual advantage.

(d) there are a number of other Articles which are exact duplicates of Articles in the Judgments Convention, but they are being retained, so why select Articles 61-67 for deletion?

3. Mr Armstrong said that the main reason for deleting these Articles was that the Bankruptcy Convention would deal with judgments and their enforcement which related to the opening and unfolding of Bankruptcy proceedings but any action which the liquidator took in his normal capacity as a litigant would be enforced through the Judgments Convention However, he agreed that there were grounds for suggesting that the Bankruptcy Convention should stand on its own feet and that there may well be reasons for retaining Articles 61-67. In answer to an enquiry from the Chairman, Mr Rowe said he was not sure how far negotiations on the Judgments Convention had gone, but at the present time adaptations which would suit the UK were being negotiated. Mr Registrar Hunter asked if copies of the Judgments Convention could be made available. The Chairman agreed that the matter would need to be discussed by the Working Party, but at a later date.

ARTICLE 68

4. The Chairman said that under this Article, a person bringing an action to challenge a Bankruptcy Order or appealing against judgment in an ancillary proceeding would not be required to give security simply because he was a foreign national or resident abroad. The Article followed Article 45 of the Judgments Convention. Mr Scott-Robertson thought that "residents" was too narrow if "party" included firms, trustees, natural persons, etc. Mr Armstrong said this was a translation difficulty regarding the word domicile and the Secretary recalled that it had been decided to interpret domicile as habitual residence.

ARTICLE 69

5. The Chairman said he thought the intention of this Article was to prevent any artificial hinderance to some one trying to challenge the bankruptcy and he reminded the Committee that the grounds for challenging were quite limited. Mr Doig recalled that the Advisory Committee thought there could well be frivolous appeals and the Chairman agreed that this was probably correct. He added that the Article followed Article 49 of the Judgments Convention and that there was no such concept in the UK.

ARTICLE 70

6. The Chairman said that this Article simply meant that the Convention was not to be retrospective and the Committee had no comments.

ARTICLE 71

7. The Chairman said that this Article listed the conventions and treaties already in force between Contracting States which would be superceded by the Bankruptcy Convention to the extent that they applied to bankruptcy matters. Mr Registrar Hunter said he understood that there were no such conventions to which the UK was a party. The Secretary said that Mr Muir Hunter, in his Opinion dated 17 January 1973, had advised that there appeared to be no treaties between the UK and other EEC States regulating Bankruptcy and ancillary matters. In dealing with a similar matter in the Judgments Convention, the Kilbrandon Committee had listed five conventions on the reciprocal enforcement of judgments in civil and commercial matters which involved the UK. Those conventions had similar titles to the ones listed in Article 71, but the Secretary said he understood that they all specifically excluded bankruptcy matters. Mr Rowe said he understood this to be correct but that he would check.

ARTICLE 72

8. The Committee accepted this Article.

ARTICLE 73

9. The Chairman said that this Article could affect us; for example the Bankruptcy Act, 1914 was one of the Imperial Statutes and was still being used. It was currently being used by Rhodesia and both Ireland and Australia had used Imperial Statutes from time to time. Mr Rowe agreed with the Chairman that the Imperial Statutes were still effective, but thought it arguable with the independence of Commonwealth countries, the extent to which they had gone in their own legislation. He wondered whether some definite arrangements should be made with Commonwealth countries, etc before the Convention came into force. Mr Registrar Hunter said it was important that this matter should be sorted out before the Convention came into force.

ARTICLE 74

10. Mr Rowe said it was unusual to apply a convention to other territories; the usual form was for a State to apply subsequently for permission to extend the convention. He thought it would be difficult to decide whether the systems in other territories were of the same standard; the inclusions would have to be looked at now as there would be no chance to do so after the convention was in force. The Secretary said that this Article reproduced Article 60 of the Judgments Convention. The Advisory Committee considered that no territory should be included without the consent of all Contracting States and further, that it might be preferable to list the territories concerned in the Protocol leaving only the principle to be stated in Article 74. The Committee wondered if all the inclusions listed in Article 74 were practicable and the Chairman said it might be advisable if he wrote to the Foreign Office regarding both Articles 73 and 74.

ARTICLE 75

11. The Chairman said that this Article provided for ratification and bringing into force of the Convention. The Convention would not come into force until all Member States had ratified it and therefore, anyone Member State could hold it up. The Committee found this Article acceptable.

ARTICLE 76

12. The Chairman said that this Article dealt with the incorporation of Uniform Law into national legislation. Referring to 76(2), Mr Registrar Hunter thought it was necessary to clarify whether or not the UK had any presumption within the meaning of this clause. Referring to 76(4), the Chairman said that suspect periods were generally longer in the UK than anywhere else and he thought we might wish to keep them that way as long as we possibly could, as we had found the benefit of length of time. He thought that we might wish to make any necessary changes over a longer period of time than was at present envisaged in the Convention. Referring to 76(5), the Chairman said he would be looking to the two Committees to give their advice as to any necessary reservations.

ARTICLES 77 - 82

13. The Chairman said that these Articles were reproductions of Articles 63 -67 of the Judgments Convention.

Preferential Creditors

14. Mr Armstrong said that the Chairman of the Brussels Panel was hoping to get the problem of Preferences settled at the March meeting because Mr Gadebois, a member of the French delegation, was retiring in June. It was generally recognised that the existing provisions of the draft Convention were unworkable and although there were advantages in a system based on that proposed by the Advisory Committee, Mr Armstrong said he was afraid that it, too, might be impractical. He had set out reasons in his paper of 10 July 1974.

15. The Chairman said that one way of easing the problem would be for Member States to harmonise the ranking of preferences. Mr Titchene suggested that the Department of Employment should be approached for their views. The Chairman asked members of the Committee to give the subject further thought and to let him have any possible solutions. The next meeting in Brussels was 10-14 March 1975.

NEXT MEETING

15. The next meeting was fixed for Friday, 21 March 1975 at 10.00 The Agenda would cover the problems on Jurisdiction raised in the Consultative Paper.

T H Traylor
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Fourteenth Meeting, held at Gavrelle House on 24th October 1974

Present	:	K R Cork (Chairman) A E Anton P G H Avis C L Dodd M V S Hunter T H Traylor (Secretary) Miss G H Goodwin (Assistant Secretary)
In attendance	:	D Graham J M Hunter (Bankruptcy Registrar, N. Ireland) C J Jenkins G A Weiss

TIMETABLE

1. The Chairman reported on his recent meeting with the Inspector General concerning the Brussels timetable. It seemed that the attitude in Brussels had hardened and the date by which it was proposed to have the Bankruptcy Convention ready for the Council of Ministers had been brought forward some three months or so. To effect this, it was planned to complete the second and final reading by July 1975 and M. Noel, the Chairman of the Brussels Panel, had announced that a guillotine would operate at all future meetings. The Chairman recalled that we had only recently completed a first and preliminary reading of the draft Convention. We hoped to issue a Consultative Paper within a few weeks, because of the numerous problems raised on which we considered it essential to obtain views from interested parties. The new Brussels timetable could mean that both our views and those of our consultees would be too late to have any effect upon the Brussels' discussions.

2. There followed a general discussion during which the Inspector General and members of his staff were invited to attend to explain the present position. The I.G. said that the Minister had been asked to endeavour to get an extension of time but the I.G. was not hopeful that this would be achieved. The Chairman said that the Consultative Paper highlighted the numerous problems for the U.K. arising out of the draft Convention and it should assist the Minister in pressing for extra time.

3. The Committee resolved to continue with its work as already planned and to issue the Consultative Paper as soon as possible. It was unlikely that a Report reflecting the Committee's final views and those of its consultees would be ready before October 1975. The Committee further resolved that the Secretary of State for Trade should be asked to see a delegation from the Committee to explain why adequate consultation with the business community was essential before final decisions were taken in Brussels. The Chairman was asked to write to the Secretary of State accordingly.

WORKING PAPERS TO BE MADE AVAILABLE TO THE DEPARTMENT

4. It was resolved that the Loose Leaf File of working papers and draft sections of the Consultative Paper should be made available to the I.G. and members of his staff. A note should be added to the Loose Leaf File to the effect that it did not necessarily reflect the current views of the Advisory Committee. (Note by Secretary: this has been done).

REPORT OF THE THIRTEENTH MEETING

5. Mr Muir Hunter drew attention to a typing error in paragraph 6 which should read "considerable difficulties". At Mr Muir Hunter's suggestion it was agreed that sufficient copies of the C.P. should be sent to the Commission in Brussels for issue to delegates forming the Bankruptcy Convention Panel.

6. Referring to paragraph 10, Mr Muir Hunter said that following the recent meeting of the British - German Jurists' Association, he could understand why Germany wanted a reservation concerning after-acquired property. Regarding a difference between Scots Law and English Law referred to in paragraph 12, he wondered if we would be able to make a reservation on behalf of one Country within the U.K. The Chairman thought this might be difficult.

7. There were no other matters raised and the Report of the Thirteenth Meeting was accepted.

SECRETARY'S REPORT

8. The Secretary said that Articles 61 to 82 for insertion in the LLF were now issued. He had also prepared a list of outstanding points from the reports of earlier meetings though many of these points had been overtaken by the preparation of the C.P. The section of the C.P. dealing with Uniform Law had been posted to members on 7 October and there were now issued two papers by Mr Muir Hunter on Cessation of Payments.

CONSULTATIVE PAPER

9. (1) Introduction Mr Anton said some small amendments had been made at the suggestion of the Secretary, but the final draft was essentially the same as that already issued to members. Mr Avis raised the question of oral interviews; it was decided to make no reference to them in the C.P. because they would be arranged only if absolutely necessary. The contents of the introductory section were approved.

(2) Scope Mr Avis had prepared a redraft of the opening sentences to paragraph 2.4 which was issued to members; it was agreed that this was an improvement and that the draft section should be amended accordingly. Mr Muir Hunter suggested that an indication of the Committee's proposals should be included in paragraph 2.6 before the final sentence. He would discuss the actual wording with Mr Anton. It was decided that, subject to these amendments, the section was acceptable.

(3) Jurisdiction Mr Anton said the section had been re-drafted to take account of comments received from members. Copies of the re-draft were issued to members who were asked to make any further comments within a week. Subject to there being no major problems the re-draft would be taken as accepted.

(4) Choice of Law Provisions Mr Anton said that this section had been re-drafted as a result of his discussions with Mr Muir Hunter. The Secretary undertook to distribute the re-draft as soon as possible and it was agreed to accept the re-draft if no major objections were raised within a week.

(5) Preferential and Secured Creditors The Chairman suggested that the wording of paragraph (2) on page 94 of the Secretary's draft should be clarified and Mr Muir Hunter undertook to deal with this in the re-draft which he hoped to complete within a few days. It would then be issued to members.

(6) Recognition and Enforcement of Judgments Mr Anton read out a proposed alteration to paragraph 6.4 in place of the sentence commencing "while the rules for ascertaining which judgment prevails ..." It was agreed that the section be accepted subject to any comments sent in within one week.

(7) Uniform Law Mr Anton said that a number of amendments had been made as a result of detailed comments by the Secretary; two matters were outstanding - Floating Charges and Cessation of Payments. He had drafted an additional paragraph 7.37 dealing with Floating Charges and the Secretary undertook to send copies to members who were asked to submit any comments quickly. Mr Avis said that Mr Jenkins and he had prepared a small draft about Article 4C(2) of the U.L. and s46 of the BA 1914 for inclusion in the C.P. and copies were issued to members. Referring to Cessation of Payments, Mr Anton said he had drafted a new paragraph 7.16(a) following discussions with Mr Muir Hunter; his view was that the C.P. should give a broad view of the problem but not details. Mr Muir Hunter's view was that the Sale of Goods Act definition was too vague and not good enough for the Uniform Law. He thought Mr Anton's proposed draft should be more specific. It was decided that Mr Anton and Mr Muir Hunter should consider the matter further and endeavour to agree a proposed draft for issue to members.

10. The Committee decided not to include a summary in the C.P. As regards production, the Secretary said that from discussions with the Department's Publicity and Publications Branch, it was evident that the quickest production would be achieved by his own Secretary doing the actual typing. This would take rather less than a week and the reproduction would take about ten days. The Secretary said that he had received a number of enquires from bodies wishing to be given an opportunity of expressing views about the Bankruptcy Convention and

they had been added to the list of consultees. The Committee which was considering a draft Convention on Contractual and Non-Contractual Obligations had recently issued a Consultative Document and he understood from its Secretary that some 900 copies had been taken up. Bearing in mind that some of our consultees required numerous copies to issue to sub-units, members of working parties, etc., and also bearing in mind that we hoped for a speedy response, our requirement was probably of the same order and he had provisionally arranged for 900 copies to be produced. Typing would start as soon as possible.

DATE OF NEXT MEETING

11. The date of the next meeting was fixed for Monday, 18 November 1974 and the following meeting was provisionally arranged for 20th December 1974.

AGENDA FOR THE NEXT MEETING

12. It was agreed that the main item would be the Consultative Paper. Mr Anton referred to a point made by Mr Registrar Hunter concerning the inter-relationship of the Convention with inter-UK bankruptcy procedures and suggested this should be a topic for discussion at the next time.

T H TRAYLOR
Secretary

/45

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Fourteenth Meeting on Thursday, 24 October '74 @ 10.00 at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Thirteenth Meeting and any matters arising.

2. Secretary's Report.

3. Consultative Paper - Progress report and discussion.

4. General discussion on any matters raised by members.

T H TRAYLOR
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Eighth Meeting on Monday, 29th April, 1974 at Gavrelle House, 2-14 Bunhill Row, London, EC1

1. Consider the Report of the Seventh Meeting and any matters arising
2. Secretary's Report
3. Uniform Law, Article 4: Suspect periods and actions to set aside frauds on creditors
4. Article 40: General rights of preference in civil and commercial matters
5. Article 41: Principles governing distribution
6. Article 42: Fiscal debts, social security debts, debts other than civil or commercial debts
7. Article 43: Secured rights and special rights of preference, possessory liens
8. Article 44: Priority as between general rights of preference, and secured rights and special rights of preference
9. Article 45: Determination of the place where certain movable property is situated
10. Article 46: Date for determining the place where property is situated in a bankruptcy following upon another proceeding
11. Confirm the date of the next meeting (21st May, 1974) and arrange a provisional date for the June meeting
12. Agenda for the next meeting

T. H. Traylor

T H Traylor
Secretary

6(1-2)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Fifteenth Meeting, held at Gavrelle House on 18 November 1974

Present:	K R Cork (Chairman) P H Armour A E Anton P G H Avis C L Dodd M V S Hunter T H Traylor (Secretary)
In attendance:	D Graham J M Hunter (Bankruptcy Registrar, N Ireland) C J Jenkins G A Weiss

REPORT OF THE FOURTEENTH MEETING AND MATTERS ARISING

1. The Chairman said that the Secretary of State for Trade had agreed to meet representatives of the Committee on Thursday, 21 November 1974. It was confirmed that the Committee's representatives would be the Chairman, Mr Muir Hunter and the Secretary. (Note by Secretary: the Chairman has since circularised a letter informing members of the decisions taken at the meeting with the Secretary of State for Trade).

2. The Secretary recalled that the Dutch delegation had been asked by the Brussels Panel to prepare a definition of Cessation of Payments which would be acceptable to all Member States. He understood from Mr Armstrong that to date they had been unsuccessful.

3. The Chairman said he understood that the Brussels sub-Committee, set up under Mr Belinfante to consider Preferentials, had come to the conclusion that the system adopted in the draft Convention was not practical. He thought it would be found that there were less problems attached to the method proposed by this Committee.

4. No other matters were raised and the Report of the Fourteenth Meeting was accepted.

CONSULTATIVE PAPER

5. The rest of the meeting was taken up by discussions on the Consultative Paper and in particular, detailed consideration of Section 5, "Preferential and Secured Debts", which had been re-drafted by Mr Muir Hunter and Section 8 "Concluding Observations".

The Consultative Paper was subsequently issued on 16 December, (copies being sent to Members on 10 December 1974).

6. It was agreed:-

(a) that the date by which comments should be received from consultees be 31 March 1975;

(b) copies should be made available to all members of the Brussels Bankruptcy Panel. (This has been done);

(c) copies should be sent to the Secretary of State for Trade and Staff. (This has been done.)

INTER-UK BANKRUPTCY PROCEDURES

7. Mr Registrar Hunter drew attention that the reference in the Convention to the law of the State of Bankruptcy presumably referred to the United Kingdom as a whole; in many cases it would be necessary to decide which inter-State law within the United Kingdom was applicable. It was decided to leave this matter for discussion at a later date.

DATE OF NEXT MEETING

8. The next meeting was arranged for 19 December 1974, starting at 1100 subject to confirmation. (The meeting was subsequently cancelled).

T H Traylor
Secretary

9(3) Report 15th Mtg

EEC BANKRUPTCY CONVENTION

INTER-DEPARTMENTAL WORKING PARTY

Report of the Fifteenth Meeting held at Gavrelle House on 21 March 1975

Present:

C A Taylor (Chairman)
J B Clemetson (D of T)
W Armstrong (D of T)
D Graham (D of T)
J S Doig (Scottish Courts Administration)
J M Hunter (Bankruptcy Registrar, N Ireland)
R B Rowe (Lord Chancellor's Office)
D R Titchener (DHSS)
T H Traylor (Secretary)

MATTERS ARISING FROM THE FOURTEENTH MEETING

1. Mr Doig noted that Mr Scott Robertson had asked for the reference to his remarks given in paragraph 4 to be amended to read, "firms, trustees, corporate bodies, etc." Mr Doig also observed that of the matters listed in paragraph 1, only items (a), (b) and (e) applied to Scotland.

2. Referring to paragraph 7, Mr Rowe said that of the 5 conventions concerning the enforcement of judgments between the UK and individual Member States, the two with Belgium and Italy did not contain clauses specifically excluding bankruptcy matters. However, he felt sure that in practice, they would have no effect on bankruptcy matters but he agreed with the Chairman that this would have to be clarified. Mr Rowe undertook to make further enquiries.

3. The Chairman said that the main items discussed at the recent meeting of the Brussels Panel were the effect of the draft Bankruptcy Convention on Maritime and Aviation laws, and Preferences. It seemed that some problems concerning maritime liens could be solved by further discussion, but those relating to the varying rights of retention under Aviation laws would require an additional article in the Convention. With regard to Preferences, the Chairman said that the Panel was most anxious to receive a paper at an early date explaining the proposals of the UK Advisory Committee, as referred to in the Consultative Paper.

CENTRE OF ADMINISTRATION

4. The remarks made in the Consultative Paper were discussed. There was general agreement about the need for certainty of location as far as possible. Mr Armstrong said that one advantage of the C/A was that an individual or business concern could only have one; this was not so in the case of some suggested alternatives, such as "principal place of business."

5. Referring to the Advisory Committee's provisional recommendation that the definition of the C/A should be amplified, the Chairman recalled that a list of definitions would be added - probably in the Protocol - and he understood C/A would be included.

6. Mr Registrar Hunter said he was very concerned by the remarks in paragraph 3.14 of the Consultative Paper. If those remarks were intended to relate to the general jurisdictional provisions, such as Article 3, they did not accord with his own understanding of the operation of that article. Mr Armstrong suggested that the remarks in paragraph 3.14 did not relate to Article 3, but to the rules for conflicts of jurisdiction set out in Articles 15 and 16.

7. Mr Registrar Hunter suggested that where a person was carrying on a business in a Member State other than that of his residence, his private creditors and his business creditors might disagree over the location of his C/A. Mr Armstrong agreed, but said that, as now, this would be a matter for the courts to decide.

8. The Committee discussed the amount and sort of proof required to rebut a presumption in Article 3(2). The Chairman remarked that a rebuttal would have to be proved to the satisfaction of the court, and observed that Continental courts were used to considering jurisdiction before proceeding with a case. The suggestion that rebuttal would not be open to a debtor was not favoured by the Committee; this would be reducing the debtor's rights and could deny him justice. Mr Clemetson pointed out that we had a fair number of instances of what could only be described as abuses of the processes of the law by creditors, etc.; to deny a debtor company with a justifiable defence the right to object to a winding up order being made in the wrong place would be a denial of justice.

ARTICLE 4

9. Discussion in this article centred on the inclusion of the word "agency" in the definition given in the Noel-Lemontey Report at page 33. All were agreed that "establishment" could not include "agency" as understood in the UK. Mr Armstrong thought that the Continental meaning was different and, although it was unfortunate that the word occurred in the English translation, in his view, the remainder of the sentence made it clear that an agency, as we understood the term, was not intended to be included in "establishment". The Chairman suggested that the sentence at the bottom of page 33 in the Noel-Lemontey Report could be improved by extending it to read, "and has, therefore, no debts of its own as distinct from those of its principal." Mr Titchener suggested that an example of an "establishment" would be a distribution centre.

ARTICLE 5

10. The Committee could see no practical difficulties in the provisions of this article.

ARTICLES 6, 7 and 8

11. The Chairman said he fully agreed with the Advisory Committee's comment, that the drafting of Article 6(2) was atrocious. The Committee agreed, but considered that the principles were correct. Referring to Article 7, Mr Clemetson observed that this would reduce the jurisdiction at present enjoyed in this country. The Secretary said that the Law Society of Scotland proposed the period be extended to 12 months in this article and the Chairman said he was inclined to agree.

ARTICLE 9

12. Mr Armstrong noted that the German delegation had proposed the elimination of any distinction between traders and non-traders but the proposal was rejected by 4 of the original Member States. However, the Chairman of the Brussels Panel had suggested that the proposal might be advocated in the Panel's final report.

13. The Secretary said that the view of the Advisory Committee was that this article could be extended to cover any lacunae in jurisdiction. The Committee thought this was acceptable and the Chairman suggested it could be done by omitting the words "because the debtor is not a trader" to "Italian law".

ARTICLES 10 and 11

13. The Chairman recalled that the principal objection to Article 10 was that in our view, such action should only be possible after the court had found that a person was liable, and unable or unwilling to discharge the firm's debts. He understood that such an amendment might be generally acceptable to the Brussels Panel, but the word "unwilling" presented difficulties to some Member States.

14. Mr Armstrong drew attention to the strong criticism raised against these articles on the grounds that any action against an individual should be taken in his own courts. He suggested that it was a belief sincerely held and with strong supporting arguments; therefore, it should be given full consideration as it could be that these articles were unjust. The Chairman said that he had originally been persuaded by the French arguments that time was of the essence in these matters; he recalled that the French delegation had made a firm stand over these articles to the point of indicating that without them, there could be no Convention. Mr Doig suggested that we were also entitled to take a firm stand over them, and the Chairman agreed. Mr Doig pointed out that the applicable law would still be available in the Uniform Law: one would simply be administering it in the forum of the defendant. The Secretary suggested that if, for example, Article 11 was amended so that proceedings against directors and managers had to be taken in their own courts, it could be that Member States such as Germany could be persuaded to remove their reservations to the Uniform Law. The Chairman agreed that full consideration would have to be given to all sides of the argument.

DATE OF NEXT MEETING

15. The next meeting was fixed for Friday, 2 May, 1975 at 10.30. It was agreed that until such time as the Report of the Advisory Committee was available, the Working Party would meet from time to time, in order to keep abreast of the progress being made by the other Member States in Brussels.

T H Traylor
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Sixteenth Meeting, held at Gavrelle House on 12 February 1975

Present:	K R Cork (Chairman) A E Anton P G H Avis C L Dodd M V S Hunter T H Traylor (Secretary)
In attendance:	D Graham C J Jenkins G A Weiss

REPORT OF THE FIFTEENTH MEETING AND MATTERS ARISING

1. No matters arising from the last meeting were raised and the Report was accepted.

2. Mr Anton drew attention to a reference to a draft Directive on Moveables in the Report of the last meeting of the Inter-Departmental Working Party; he had seen the draft Directive and it appeared to raise important matters in relation to the Bankruptcy Convention. He suggested that a request be made for the draft Directive to be circulated to Members.

3. The Secretary said that Mr Muir Hunter had raised the same matter with him, in particular to enquire which Government departments were dealing with it. The proposal was for a Directive on Securities over Moveable Property and he understood it had been put forward by certain of the contintental bankers. Mr J B Clemetson had represented the Department at a preliminary meeting in Luxembourg last November which was also attended by representatives of the Department of Prices and Consumer Protection, the Scottish Office (Legal Department) and the D.T.I. (Legal Department). The Secretary said he understood that very little advance was made at the November meeting and at this stage, even the possibility of such a Directive was only provisional. A further meeting had been arranged for April which would be attended by Mr Clemetson. The Department appreciated that any such Directive would embrace the U.K. system of floating charges.

See Addendum.

SECRETARY's REPORT

4. The Secretary reported that about 700 copies of the Consultative Paper had been issued to date; applications for copies were still being received, particularly from members of the accountancy and legal professions. Recipients included twelve other Government departments, members of the EEC Commission and of the Bankruptcy Working Group in Brussels, appropriate Government representatives in Australia, Canada, Ireland, Jersey, C.I. and the USA and a number of members of the law faculties in the universities. Mr Muir Hunter undertook to let the Secretary have details of any other members of the law faculties to whom copies should be sent. The Chairman asked for it to be noted that two copies had been sent to Sir George Baker, President of the Family Division, High Court of Justice.

5. The Secretary reported that to date responses to the Consultative Paper comprised 4 replies indicating that no comments would be submitted, and one reply raising a single point relating to Paulian actions.

6. The Secretary said a symposium on EEC Conventions had been held in Brussels in December last at which lectures about the Bankruptcy Convention had been delivered by M. Noel and M. Lemontey; he had sent copies of lectures to Mr Muir Hunter and Mr Anton. Mr Muir Hunter said the only real point of interest occurred in the paper delivered by M. Lemontey, who had indicated that, because of the addition of 3 new Member States to the EEC, the draft Bankruptcy Convention could only be regarded as a working paper.

PROVISIONAL PROGRAMME

7. The Secretary drew attention to the "Provisional Programme" and said it had been drawn up as a basis for discussion and to highlight the amount of work to be covered during the next few months. Based on a target date of 6 October 1975 for submission of the Committee's report, it followed the divisions of the Consultative Paper; he had found it necessary to allow for meetings at 3 weekly intervals if there was to be any possibility of keeping to the target date.

8. During the ensuing discussion it became clear that there were two broad divisions of work - that of monitoring and analysing the comments and information received from consultees, and that of drafting sections of the Report for consideration by the Committee.

9. Mr Anton said that the collation of comments from consultees and of any other relevant information was a matter for the secretariat as was the physical production of the Report. The Secretary agreed, adding that he would hope to provide for each meeting the relevant comments in a readily digestible form. Mr Muir Hunter thought it likely that additional staff would be required, and the Secretary said this would depend on the number and complexity of replies received from consultees; it was something he would watch closely.

10. The Chairman suggested that a working party should produce in readiness for each meeting of the full Committee a draft of the relevant section due to be discussed incorporating the views of consultees and listing the adverse views. Mr Graham offered to act as a liaison between the secretariat and the working party (also referred to as a drafting committee) and this was readily accepted. Mr Anton said the Chairman's suggestion was the only effective way in the time available. In answer to an enquiry from Mr Avis, Mr Anton said the format of the Consultative Paper followed that used by the Committee considering the Judgments Convention, and it had been prepared with the Final Report in mind. However considerable alteration would be entailed in preparing the Final Report. He added that he was worried about the timescale as it was essential that there be adequate time at the end to consider the Report as a whole, to revise it as necessary and to agree it. He thought the full Committee would require at least two meetings for this and therefore, that the programme should be compressed so that all detailed work and discussion was completed by about 11 July. This might mean the Committee having to consider meeting for two days at a time or perhaps over week-ends. The Chairman said this would have to be reviewed if it became apparent that the Committee's progress was falling behind the proposed programme.

11. It was agreed that the dates of the next four meetings should be as follows: 11 March, 9 April, 29 April and 21 May. It was further agreed that the main item on the agenda for the next meeting should be Jurisdiction. (Note by Secretary: a redrafted Provisional Programme is attached; dates of the later meetings are subject to discussion and agreement).

T H Traylor

T H Traylor
Secretary

PROVISIONAL PROGRAMME

Tuesday 11 March:	Jurisdiction
Monday 31 March:	Deadline for comments from Consultees
Wednesday 9 April:	Jurisdiction (Completion) Scope
Tuesday 29 April:	Scope (Completion) Choice of Law
Wednesday 21 May:	Choice of Law
Tuesday 10 June:	Preferential and Secured Debts
Tuesday 1 July:	Recognition and Enforcement of Judgments
Tuesday 22 July:	Uniform Law
Tuesday 12 August:	General Remarks - Consideration of Introduction and Conclusion to the Report
Friday 22 August:	Final Meeting to approve Draft Report
September:	Typing, Proof reading, Photoprinting, Binding et
Monday 6 October:	SUBMIT REPORT TO SOST

NOTE Only the principal subjects for discussion at each meeting are listed. It is envisaged that the Committee would also consider late comments from consultees and drafts of sections of the Final Report. Preparation of the Report should be a continuing process, so that by the end of July it should be largely in draft and agreed.

6(1-2)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

ADDENDUM TO THE REPORT OF THE SIXTEENTH MEETING

1. Subsequently, the Secretary sought guidance on certain proposals raised at the Meeting regarding the drafting of the Final Report and was instructed that drafting of the Report was a function of the Secretariat. In ensuing discussions between the Inspector General, Chairman and Secretary assurances were given that the complement of the Secretariat would be increased if this proved necessary. It was made clear that the Secretary could carry out the work and that additional external help should not prove necessary.

2. Approval has been given for copies of the preliminary draft Directive on Securities over Moveable Property to be issued to the Advisory Committee. This will be done as soon as possible.

T H Traylor
Secretary

27.2.75

8(27)

EEC BANKRUPTCY CONVENTION

INTER-DEPARTMENTAL WORKING PARTY

Report of the Sixteenth Meeting held at Gavrelle House on 2 May 1975

Present:

C A Taylor (Chairman)
E G Harper (D of T)
J B Clemetson (D of T)
W Armstrong (D of T)
D Graham (Solicitor, DTI)
J S Doig (Scottish Courts Administration)
E Scott Robertson (Solicitor, Scottish Office)
J M Hunter (Bankruptcy Registrar, N Ireland)
R B Rowe (Lord Chancellor's Office)
E A Rapsey (Inland Revenue)
D R Titchener (DHSS)
P G Wilmott (Customs & Excise)
T A Ryan (Customs & Excise)
T H Traylor (Secretary)

MATTERS ARISING FROM THE FIFTEENTH MEETING

1. Referring to paragraph 2, Mr Rowe said that his further enquiries had been overtaken to some extent by the Chairman's letter to the Foreign & Commonwealth Office. The Chairman agreed but added that their reply had not been as helpful as he had hoped. Mr Armstrong said that in the letter to the Foreign and Commonwealth Office we had asked for information about the five Conventions which already existed between the UK and individual states in the EEC and also asked if there were any other Conventions of which we should take note. We also enquired about the Imperial Provisions of the Bankruptcy Acts and whether they should be regarded as matters falling within the Bankruptcy Convention. Finally, as regards the scope of the Convention, we asked for advice on the position of the Channel Islands, Isle of Man, Gibraltar, colonial possessions on the one hand and Commonwealth states on the other, differentiating between older Commonwealth states and the newer ones. In their reply, the Foreign and Commonwealth Office said that the UK had concluded Reciprocal Enforcement of Judgments Conventions with the five EEC states listed in our letter; those with France, the Federal Republic of Germany and the Netherlands specifically excluded Bankruptcy but no such exclusions were included in those with Belgium and Italy. As regards non-member states, the UK had concluded conventions with Austria, Israel and Norway and no bankruptcy exclusion clauses were included in those three conventions. As regards territorial scope, the Home Office would liaise with Island authorities re any extension to the Channel Islands and the Isle of Man; enforcement of UK judgments in Commonwealth countries is governed by the Administratio of Justice Act 1920 and the Foreign Judgments Reciprocal Enforcement Act 1933; all other matters would be for the Lord Chancellor's Office to answer and a copy of our letter had been passed to the Lord Chancellor. Mr Rowe said that a reply would be received from the Lord Chancellor in due course.

INSURANCE COMPANIES

2. The Chairman said that in his view a separate set of rules to cover winding-up machinery, the appointment of liquidator, etc was not necessary, but some insurance matters, such as those concerning actuarial valuation of claims did require special rules. There was a school of thought on the continent, led by Italy, which wanted the winding-up of insurance undertakings to be achieved administratively and not through the court processes but this had not been agreed to. The Chairman said that the Department's representative on the Brussels Working Party dealing with the Insurance Directive was Mr Clemetson.

3. Mr Clemetson said that the Insurance Directive would deal with both solvent and insolvent Insurance undertakings. A solvent undertaking would be treated as a closed fund and run down and would not actually come into winding-up. As regards insolvent undertakings, it was probable that the Working Party would accept that the Bankruptcy Convention applied, subject to special provisions for insurance undertakings. The Secretary said that Article 1 of the Draft Insurance Directive restricted its application to the Direct Insurance undertakings covered by (a) the First Indemnity Co-ordination Directive and (b) the First Life Co-ordination Directive, ie direct indemnity and life insurance undertakings only. Therefore, the exclusion clause as at present drafted in Article 1(3) of the Bankruptcy Convention meant that some, albeit small insurance undertakings, would be outside both the Convention and the Directive. The Advisory Committee therefore were likely to propose that Article 1(3) of the Bankruptcy Convention should be amended so that only those undertakings coming within the Insurance Directive were excluded. It was also possible that the scope of the draft Insurance Directive might be extended at a future date. If this happened, the above recommendation would still hold good and be useful to cover some borderline insurance undertakings.

4. The Chairman asked Mr Clemetson if he would give some information concerning the desire of life insurance companies to have separate funds and localisation of assets. Mr Clemetson replied that localisation of assets was something that the whole EEC insurance field was trying to do away with. If localisation was necessary then it would be on a community basis and not on a specific country. The philosophy was towards establishing a solvency margin for which the Head Office country would be responsible rather than having localised assets, but there would doubtless be a long transition period before this came about. There was a definite attitude that life funds should be preserved for life people only and this was in line with the thinking in this country. The Germans have very strong provisions to protect life funds and in Italy, the policies are transferred to a State Corporation if the insurance undertaking founders. Most countries looked upon winding-up as being unfair to life policy holders; in the UK, insurance companies were would up under the 1948 Companies Act, subject to the provisions of Insurance Companies Acts. Present thoughts were that preferential creditors should be excluded from having any claim against funds set aside for life policy holders, but as yet this was not an accepted policy.

BANKS

5. The Committee were in agreement that there should be no special exclusion from the Bankruptcy Convention for banks.

ARRANGEMENTS, COMPOSITIONS AND OTHER PROCEEDINGS

6. Mr Armstrong said that the Commission had proposed a list of the UK Insolvency Procedures which were thought to come within the scope of the Bankruptcy Convention; these had been accepted by the other 8 delegations but the UK delegation had reserved the right to have the matter re-considered if necessary after the advice of the Advisory Committee had been received. He then read out the list as follows:

I (a) BANKRUPTCY (ENGLAND AND WALES)

(b) BANKRUPTCY (NORTHERN IRELAND)

(c) SEQUESTRATION (SCOTLAND)

(d) ADMINISTRATION OF ESTATES OF PERSONS DYING INSOLVENT (ENGLAND AND WALES)

(e) ADMINISTRATION OF ESTATES OF DECEASED INSOLVENTS (NORTHERN IRELAND)

(f) COMPULSORY WINDING-UP OF COMPANIES

(g) WINDING-UP OF COMPANIES UNDER THE SUPERVISION OF THE COURT

II (a) COMPOSITIONS AND SCHEMES OF ARRANGEMENT (ENGLAND AND WALES)

Statutory?

(b) COMPOSITION (NORTHERN IRELAND)

(c) ARRANGEMENTS UNDER THE CONTROL OF THE COURT (NORTHERN IRELAND)

(d) COMPOSITION (SCOTLAND)

? (e) DEEDS OF ARRANGEMENT (NORTHERN IRELAND)

(f) ADMINISTRATION ORDER UNDER THE COUNTY COURTS ACT 1959

(g) ARRANGEMENTS, RECONSTRUCTIONS AND COMPOSITIONS OF COMPANIES, WHETHER OR NOT DURING THE COURSE OF LIQUIDATION WHERE SANCTION OF THE COURT IS REQUIRED AND CREDITORS' RIGHTS ARE AFFECTED

X (h) CREDITORS' VOLUNTARY WINDING-UP OF COMPANIES

7. Mr Armstrong said that his only reservation about the list was that in his view creditors voluntary winding-up should come in Article 1(a) of the Protocol. He continued that he had received a letter from Mr Anton of the Scottish Law Commission, to the effect that a County Court Administration Order should not come under the Convention as its purpose was to avoid bankruptcy and give the debtor a chance to put his financial house in order; that such orders were mainly designed for consumer debtors who had virtually no assets but small incomes which could be husbanded for the plaintiffs. Mr Anton therefore thought it might be undesirable as a matter of policy to include administration orders under a Bankruptcy Convention which was designed to deal with insolvency with international repercussions. The Chairman pointed out that it was intended to strengthen the administration order system under the new Insolvency Bill; also, an administration order could be converted into a bankruptcy order if desirable. Mr Armstrong said that in his opinion, the Convention generally dealt with 2 things: (a) bankruptcy, so that the debtor was dispossessed of his assets throughout the community and (b) the distribution of those assets to creditors. An administration order was a different matter because it did not dispossess the debtor of his assets and it was not a bankruptcy. The debtor was granted a moratorium and allowed to pay his debts by instalments as ordered by the court. Strictly speaking therefore, it did not properly come within the Convention, but he could see no serious harm in including it. Mr Rowe agreed that an A.O. was not in the same category as bankruptcy. In his view it was designed to assist an incompetent person sort out his affairs and almost invariably, debts were paid in full. Further, an A.O. was a voluntary action by a debtor and could not be applied for by a creditor. He agreed with Mr Anton; the A.O. was designed as a cheap and simple system and he felt there could be complications if it was included in the Bankruptcy Convention. Mr Registrar Hunter said that the A.O. only referred to a judgment creditor; therefore other creditors could be left out. He enquired whether an A.O. acted as a bar to further bankruptcy proceedings. After further discussion, it was decided that as an A.O. was regarded as an act of bankruptcy, it would not act as a bar to bankruptcy proceedings commenced by creditors who were not a party to the A.O. Mr Doig was of the opinion that an A.O. should not be included in the Bankruptcy Convention.

8. Mr Registrar Hunter enquired the reason for including Deeds of Arrangement (Northern Ireland) and not those in the rest of the UK. Mr Armstrong replied that he understood that it was necessary in Northern Ireland for the debtor to obtain the sanction of the court for this deed. Mr Registrar Hunter noted that arrangements under the control of the Court in Northern Ireland were already listed under a different heading and in his view, Deeds of Arrangement as such should be excluded. Mr Armstrong agreed.

9. The Chairman said that the Brussels Panel had decided that creditors voluntary liquidations should be included, because the liquidator derived his power from the resolution of the creditors and acted on behalf of creditors generally. Using the same principle, they had decided to exclude a receiver for a debenture holder, because he did not act on behalf of creditors generally.

7. Mr Armstrong said that his only reservation about the list was that in his view creditors voluntary winding-up should come in Article 1(a) of the Protocol. He continued that he had received a letter from Mr Anton of the Scottish Law Commission, to the effect that a County Court Administration Order should not come under the Convention as its purpose was to avoid bankruptcy and give the debtor a chance to put his financial house in order; that such orders were mainly designed for consumer debtors who had virtually no assets but small incomes which could be husbanded for the plaintiffs. Mr Anton therefore thought it might be undesirable as a matter of policy to include administration orders under a Bankruptcy Convention which was designed to deal with insolvency with international repercussions. The Chairman pointed out that it was intended to strengthen the administration order system under the new Insolvency Bill; also, an administration order could be converted into a bankruptcy order if desirable. Mr Armstrong said that in his opinion, the Convention generally dealt with 2 things: (a) bankruptcy, so that the debtor was dispossessed of his assets throughout the community and (b) the distribution of those assets to creditors. An administration order was a different matter because it did not dispossess the debtor of his assets and it was not a bankruptcy. Strictly speaking therefore, it did not properly come within the Convention, but he could see no serious harm in including it. Mr Rowe agreed and pointed out that an administration order was purely voluntary on the part of the debtor and was not something for which a creditor could apply. Mr Registrar Hunter said that the A.O. only referred to a judgment creditor; therefore other creditors could be left out. He enquired whether an A.O. acted as a bar to further bankruptcy proceedings. After further discussion, it was decided that as an A.O. was regarded as an act of bankruptcy, it would not act as a bar to bankruptcy proceedings commenced by creditors who were not a party to the A.O. Mr Doig was of the opinion that an A.O. should not be included in the Bankruptcy Convention.

8. Mr Registrar Hunter enquired the reason for including Deeds of Arrangement (Northern Ireland) and not those in the rest of the UK. Mr Armstrong replied that he understood that it was necessary in Northern Ireland for the debtor to obtain the sanction of the court for this deed. Mr Registrar Hunter noted that arrangements under the control of the Court in Northern Ireland were already listed under a different heading and in his view, Deeds of Arrangment as such should be excluded. Mr Armstrong agreed.

9. The Chairman said that the Brussels Panel had decided that creditors voluntary liquidations should be included, because the liquidator derived his power from the resolution of the creditors and acted on behalf of creditors generally. Using the same principle, they had decided to exclude a receiver for a debenture holder, because he did not act on behalf of creditors generally.

10. Mr Registrar Hunter suggested that in order to avoid ambiguity, the references to the estates of deceased insolvents should refer to "the administration in bankruptcy" of such estates. This was agreed.

11. The Secretary said that a number of comments being received by the Advisory Committee were to the effect that non-judicial arrangements, such as were common in the UK, should be included in the Convention. The two reasons being put forward were (a) recognition of a trustee's right to recover assets in other EEC states and (b) his protection in the event of a subsequent bankruptcy. The Secretary added that, so far as he could ascertain, there were few, if any non-judicial arrangements on the continent which were comparable to those in the UK. Therefore, it would seem that most of the analogous proceedings normally in use on the continent were included in the Convention whereas many of our own were excluded. The Chairman said that there were non-judicial proceedings on the continent, which were capable of being converted into judicial proceedings; we achieved the same thing by making the proceedings acts of bankruptcy. Mr Clemetson asked if the UK had approved the analogous proceedings already included in the Convention by the original Member States. The Chairman replied that we had not committed ourselves on this point.

ARTICLES 10, 11 and 12

12. The Chairman said that there had been a number of amendments to these Articles following discussions in Brussels but the amended texts had not yet been circulated. It was agreed that discussion of these Articles should be left until the new amendments had been received.

DATE OF NEXT MEETING

13. The next meeting was fixed for Friday, June 20th at 10.00.

T. H. Traylor

T H Traylor
Secretary

Agenda 16th Feb 75

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Sixteenth Meeting on Wednesday, 12 February 1975 @ 11.30 at Gavreile House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Fifteenth Meeting and any matters arising.

2. Secretary's Report.

3. General discussion on programme for considering comments received from consultees, reaching final views and preparing Report.

4. Arrange dates for next two meetings.

5. Agenda for next meeting.

T H Traylor
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Seventeenth Meeting on Tuesday, 11 March 1975 @ 10.00 at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Sixteenth Meeting and matters arising.

2. Secretary's Report

3. Jurisdiction

   (a) Concept of Centre of Administration

   (b) Registered Office as the C/A

   (c) Concept of an Establishment

   (d) Article 5 - exorbitant jurisdiction

   (e) Articles 6, 7, 8 - transfer rules

   (f) Non-traders and small traders

   (g) Jurisdiction to declare associated persons bankrupt

   (h) Conflicts of jurisdiction

   (i) Jurisdiction in actions arising from the bankruptcy

   (j) Any other jurisdictional problems

4. Agenda for the next meeting on 9 April 1975.

T H Traylor
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

ADDENDUM TO THE REPORT OF THE SIXTEENTH MEETING

1. Subsequently, the Secretary sought guidance on certain proposals raised at the Meeting regarding the drafting of the Final Report and was instructed that drafting of the Report was a function of the Secretariat. In ensuing discussions between the Inspector General, Chairman and Secretary assurances were given that the complement of the Secretariat would be increased if this proved necessary. It was made clear that the Secretary could carry out the work and that additional external help should not prove necessary.

2. Approval has been given for copies of the preliminary draft Directive on Securities over Moveable Property to be issued to the Advisory Committee. This will be done as soon as possible.

T H Traylor
Secretary

27.2.75

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

MEMORANDUM NO 1 - JURISDICTION 27 February 1975

(a) Centre of Administration - Article 3

Recommendations:

(i) Although the use of the centre of administration as a basic ground of jurisdiction presents difficulties, similar objections apply to possible alternatives (C.P.3.9)

(ii) The definition in Article 3(2) is too vague and should be amplified.

(iii) A provision should be added to Article 3 to the effect that for the administration of a deceased insolvent's estate, 'debtor' will mean the de cujus.

Comments

1. The Committee noted that at the stage of recognition, the problem of uncertainty of definition does not arise, because the grounds on which the original court assumed jurisdiction may not be challenged.

2. The Institute of Directors, Scottish Clearing Bankers and Faculty of Advocates all think the term vague but only the Faculty of Advocates offers an alternative - current Scots Law.

3. No other comments received.

4. A detailed examination of the matter is in the Report pages 26-32

5. Recommendation (iii) is a German proposal, raised because the present rules would present problems if there were several heirs in different States. The Brussels Panel is inclined to accept the proposal.

(b) Registered Office as the C/A - Article 3(2)

Recommendations

(i) The rule that a registered office is the centre of administration should be absolute (C.P.3.10)

(ii) As at present drafted, Article 3(2) is confusing in referring to firms having registered offices.

Comments

1. In the Proposed Statute for the European Company the rule is absolute.

2. The Faculty of Advocates points out that as at present drafted a debtor can dispute jurisdiction in the State of the registered office and so delay proceedings; this would be prejudicial to creditors.

3. The Report at page 30 indicates that proof to the contrary will be brought by the company when the registered office is not the seat of its main interests. Is this likely to raise many problems bearing in mind the issue is between States? Are many British registered companies likely to have their main interests centred abroad, and is it not right that those who do should be wound-up abroad?

4. Recommendation (ii) arises from the comments of a Scottish Chamber of Commerce, that Article 3(2) could imply that all firms, companies and legal persons must have registered offices. This can be obviated by a drafting amendment. Firms having to register under the Registration of Business Names Act, 1916, have to register a principal place of business; therefore should the presumption in Article 3(2) be expanded to include a registered principal place of business? (See C.P.3.10 line 3).

(c) Concept of an Establishment - Article 4

Recommendation:

A Clause should be added to Article 4 defining 'Establishment' for the purposes of that article (C.P.3.11)

Comments

1. This would be in line with Article 3 which defines C/A. A definition is given in the Report at page 33, but the Report also points out that the word has a different meaning in the context of Article 38.

2. The Institute of Directors says the term has no real meaning in English law.

(d) Exorbitant Jurisdiction - Article 5

Recommendation:

The direct rules of jurisdiction based on the C/A make the small risk of exorbitant jurisdiction being applied under Article 5 acceptable.

Comments

The Netherlands delegation want the risk of exorbitant jurisdiction removed from Article 5, and cite for example the bankruptcy of the same debtor simultaneously in the US (principal place of business) and in France, where the existence of a bank account would suffice to justify such jurisdiction; the French bankruptcy would be recognised throughout the Community. Non-Community countries could think this was going too far. The French delegation took the view that the plan followed in the Bankruptcy Convention was the same as that in Articles 3 and 4 of the Judgments Convention; Article 73 takes care of any obligations to a third country.

(e) Transfer Rules - Articles 6, 7 and 8 (C.P.3.6)

Recommendations:

(i) The underlying principles of these articles are acceptable but Article 6(2) is obscure due to faulty drafting.

(ii) The six months period should run from a clearly identifiable date; this would be the presentation of the petition in this Country.

Comments

1. The above recommendations were the Committee's preliminary views.

2. The Faculty of Advocates noted that these provisions involve considerable breaches of the unity of jurisdiction sought by the Convention, but offered no alternative solution.

3. The Report sets out reasons for these rules at pages 35-38, including the discovery of fraud, preventing a debtor from choosing the most amenable law for his bankruptcy, preventing a non-trader from evading bankruptcy by transfer to an appropriate State.

(f) Non-traders and small traders - Article 9

Recommendations:

(i) There is a strong case for the elimination of any distinction between traders and non-traders

(ii) If the harmonisation as in (i) above is not possible for the present, the rule in Article 9(2) that the resulting bankruptcy will not be recognised in the State of the C/A should be deleted (C.P.3-12)

Comments

1. Recommendation (i) is a German proposal. The Brussels Panel found such harmonisation impossible at present but it may be advocated in their final report.

2. Non-recognition of an Article 9 bankruptcy in the State of the C/A would in all probability deny creditors in the bankruptcy access to the main assets, unless they took individual action against such assets. Presumably such action would be taken if the assets were substantial, especially by local creditors, so why put them to such trouble? Moreover, such action would result in unfairness as between creditors and could be detrimental to creditors in States other than the State of the C/A.

3. Some examples of the application of these rules are given on page 40 of the Report and are well worth reading: it could be argued that the varying effects are illogical.

4. The Faculty of Advocates: Article 9 reveals that the Convention makes no real progress towards a unified and uniform system of bankruptcy. Each State retains the right to define what persons may be rendered bankrupt and to what extent bankruptcies initiated elsewhere are to be recognised.

(g) Jurisdiction to declare associated persons bankrupt - Articles 10, 11 and 12. (C.P.3.15-3.17)

NOTE At this stage only jurisdiction is being considered and not the Uniform Law

Recommendations:

(i) Article 10 would be acceptable if the following clause is added: "Notwithstanding the foregoing, such bankruptcy may be declared only where the Court has found that the member is liable but unable or unwilling to discharge the debts of the firm, company or other legal person."

(ii) The jurisdiction under Article 11 is acceptable provided it is made clear in the Article that there must be a summoning and a hearing and that the onus of proof is on the prosecution.

(iii) The jurisdiction under Article 12 is acceptable as it implies that a judgment about the liability has already been given.

Comments

1. Mr Anton considered it wrong for a person to be adjudicated bankrupt in a foreign State and saw no reason why the liquidator of the bankrupt concern should not pursue the person in that person's own State, as he would any other debtor, and as would any other creditor.

2. The British Insurers Association and the Institute of Directors find the articles acceptable.

3. The General Council of the Bar points to a possible undesirable consequence of Article 10: the bankruptcy of major limited companies who take part in a joint venture abroad, which is wound-up. Its provisional view on Article 11 was to the effect that the French law in Uniform Law 1 was quite unacceptable and no English court should be required to recognise such a bankruptcy which has occurred abroad.

4. The Scottish Clearing Banks supports recommendations (i) and (ii).

5. The British Chamber of Commerce and the British Insurers Association consider it necessary to define 'management'.

6. The British Bankers Association supports recommendation (i), agrees in principle with (ii) and (iii), but thinks (ii) and (iii) should go in the draft Fifth Directive on Company Law.

7. The Faculty of Advocates discusses the articles at some length (members have copies) and finds them unacceptable in their present form; it also doubts whether any sufficient reason exists for such amendments to our partnership and company law.

(h) Conflicts of Jurisdiction- Articles 15 and 16

Recommendations:

(i) Article 15 is acceptable provided a clause is inserted, that it is the duty of parties to bring all relevant facts to the notice of the Court. (C.P.3.14)

(ii) The principles of Article 16 are acceptable, but 16(2) should be redrafted: "Where a court of a Contracting State has declared that it has no jurisdiction under Articles 3 and 4, that judgment shall be treated as conclusive by the courts of other Contracting States."

Comments

There are no comments to hand, other than that of the Faculty of Advocates who voiced our own concern about a court having to decide things "of its own motion."

(j) Jurisdiction in actions arising from the bankruptcy - Article 17

(i) Recommendation:

The exclusive jurisdiction given to the courts of the State of the Bankruptcy by clauses 17(1) and (2) is acceptable. (C.P.3.20).

Comments

1. This relates to acts done by the debtor during the period of relation-back, including those relating to immoveable property. By Article 35 the voidability of such acts is governed by the Uniform Law.

2. This is only a rule of jurisdiction; the applicable law will be determined by the law of the State of the Bankruptcy, including its rules of conflict. (Report page 56)

3. As regards immoveables, the question is not to ascertain whether the act is valid according to the lex situs, but whether the act may or may not be invoked against the general body of creditors according to the provisions of the law relating to the 'suspect period'. (Uniform Law) (Report page 57).

4. The Faculty of Advocates doe not consider that Article 17 is warranted in the absence of a comprehenisve system of common rules of bankruptcy law; that the Uniform Law on voidability of transactions only covers a limited field. The Faculty suggests that before accepting 17(1), both 'certain acts' and the 'suspect period' should be defined.

(ii) Recommendation:

Jurisdiction given by Article 17(3) to deal with actions to revoke acts executed by the debtor in Fraud of his creditors is acceptable (C.P.3.22)

Comments

1. The Committee provisionally accepted this clause but were concerned about the applicable law. Would it help if Article 19(2) specified the law of the State of the Bankruptcy including its rules of conflict, as does the Report?

2. The Faculty of Advocates think clause (3) is unclearly defined.

(iii) Recommendation:

The jurisdiction given by 17(5) regarding claims against the liquidator for the recovery of moveable property from the bankrupt's estate is acceptable (C.P.3.24)

Comments

This was provisionally accepted by the Committee, no comments have been received from consultees.

(iv) Recommendation:

The jurisdiction given by 17(6) regarding claims against the spouse of the bankrupt under bankruptcy law is acceptable, provided there is a reference to the rules of conflict in Article 19(2). (C.P.3.26)

Comments

1. The Report at page 59 says that this only relates to claims under bankruptcy law and does not relate to other suits which the liquidator may bring against the bankrupt's spouse.

2. Mr Anton thought a rider should be added to 17(6) that it was without prejudice to the application of normal rules of Private International Law.

(v) Recommendation:

Article 17(7) should be amended to read "complaints regarding professional conduct". (C.P.3.26)

(vi) Recommendation:

Disputes concerning the existence of ranking of preferences and secured rights should bebrought before the courts of the State in which the assets charged are situated. (Article 17(8)) (C.P.3.27)

Comments

1. This is contrary to thepresent draft of Article 17(8). Proposed by Belgium it was supported by Germany and Ireland and it would seem to satisfy concern voiced by the Committee about this clause.

2. The Committee's provisional view was that if the clause remained in force, it should be made clear that it covers actions relating to the existence, rank and extent of preferences and secured rights other than with regard to the excepted matters. (Report pages 60 and 61).

(vii) Recommendation:

The courts or authorities normally having jurisdiction to deal with the exceptions in Article 17(8) should be specified, praticularly as regards debts arising out of contracts of employment (C.P.3.28)

Comment:

The Committee noted that this had no real meaning in the UK at present and that someone would need to be given power to deal with the exceptions quoted in 17(8).

(viii) Recommendation:

Jurisdiction in relation to the matters listed in C.P.3.30 should continue to be governed by the Judgments Convention. (Report page 61).

6(1.1)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Seventeenth Meeting on Tuesday, 11 March 1975 @ 10.00 at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Sixteenth Meeting and matters arising.

6(1.2)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Seventeenth Meeting on Tuesday, 11 March 1975 @ 10.00 at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Sixteenth Meeting and matters arising.
2. Secretary's Report
3. Jurisdiction
   - (a) Concept of Centre of Administration
   - (b) Registered Office as the C/A
   - (c) Concept of an Establishment
   - (d) Article 5 - exorbitant jurisdiction
   - (e) Articles 6, 7, 8 - transfer rules
   - (f) Non-traders and small traders
   - (g) Jurisdiction to declare associated persons bankrupt
   - (h) Conflicts of jurisdiction
   - (i) Jurisdiction in actions arising from the bankruptcy
   - (j) Any other jurisdictional problems
4. Agenda for the next meeting on 9 April 1975.

T H Traylor
Secretary

Report 17th Mtg.

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Seventeenth Meeting, held at Gavrelle House on 11 March 1975

Present: M V S Hunter (Chairman)
A E Anton
P H Armour
P G H Avis
G A Weiss (for K R Cork)
T H Traylor (Secretary)
Miss G H Goodwin (Assistant Secretary)

In attendance: D Graham

REPORT OF THE SIXTEENTH MEETING AND MATTERS ARISING

1. The Chairman referred to the Addendum to the Report and noted that copies of the draft Directive on Recognition of Securities on moveables had been distributed.

SECRETARY's REPORT

2. The Secretary said that comments on the Consultative Paper had been received from:

The Institute of Directors
The Legislative Draftsmen, Northern Ireland
Dundee & Tayside Chamber of Commerce and Industry
The Law Society of Scotland.

A number of requests for additional time had been received; where possible a compromise was being agreed whereby the consultee's report was submitted in two parts.

3. The Secretary said that the Law Society of Scotland had submitted an interim report dealing only with the principles of the draft Convention; a detailed report on Articles 1-27 would follow shortly and a further report on the rest of the draft Convention by the end of April. The interim report indicated that the Law Society of Scotland recommended the abandonment of the present draft Convention and put forward alternative proposals. The Secretary suggested that it would be necessary at some stage for the Committee to consider the basic principles of the Convention and comments of a general nature received from consultees.

4. The Chairman recalled that oral hearings had been discarded due to pressure of time, but he wondered if an exception should be made in the case of important Bodies such as the Faculty of Advocates or The Law Society of Scotland who disagreed strongly with the principles of the Convention. Mr Anton thought this would be valuable and suggested that a week-end meeting should be arranged towards the end of May. Some of the other Members present were generally in favour of giving oral interviews provided time permitted. The Chairman said that there were two aspects: firstly, to ascertain the exact views being put forward in opposition; secondly, to ensure that important Bodies holding strong views were not in a position to complain that they had not been adequately consulted. If it was considered necessary to have interviews, the Secretary would be required to assist in so far as he could, by indicating which Bodies should be given personal hearings and when time could be made available for doing so. The Chairman did not think that it would be possible to fit such hearings into a working week. The Secretary suggested that if such interviews were necessary, perhaps the Committee could be divided geographically into two sub-committees for the purpose, but Mr Anton thought that a consultee would object to be interviewed by a rump of the Committee. The Secretary thought that consultees would also object to being invited to interviews on Saturdays or Sundays. The matter was unresolved and left for further discussion.

5. The Chairman said he noticed from the minutes of the last meeting of the Inter-Departmental Working Party that Articles 61 - 67 might be removed from the Draft Convention. The Inspector General had informed him that there was not a revised draft of the Convention, but he wondered what the position was and whether the Committee had to consider the Convention without Articles 61 - 67. The Secretary said that the original Member States had agreed to a proposal deleting Articles 61 - 67, because their subject matter was already covered by the Judgments Convention, but the delegates of the three new Member States had reserved their position on this point. He suggested that in accordance with its terms of reference, the Committee should consider the draft Convention in its present terms. However, since the Committee had been informed of the proposed deletion he thought it could, with advantage, offer advice on the matter.

CONCEPT OF CENTRE OF ADMINISTRATION

6. Mr Anton quoted the views of the Faculty of Advocates on the subject and said that he wanted to amplify those views because it was necessary for him to challenge a concept he felt unable to accept. He said that Articles 3 - 8 were not intended to prescribe precise rules which would be adopted internally by Member States but dealt with the jurisdiction of the Member States themselves. The Noel-Lemontey Report showed that it was a matter of international or general jurisdiction and not a matter of territorial or special jurisdiction. The rules were more important negatively than positively. Any court seized with bankruptcy proceedings must investigate where the debtor's C/A was situated or if

he had an establishment in another Member State. If the C/A was in another country then the Court, of its own motion, had to declare that it did not have jurisdiction - this was a novel concept for the Courts in the UK and would present difficulties. There would have to be Rules of Court providing the necessary affidavit evidence and Mr Anton wondered how a creditor could possibly provide such affidavit evidence if he was not aware of the situation of the debtor's C/A. He considered that Article 3 was impractical as a negative criterion. He thought the appropriate criterion should be the principal place of business and that there should be a rule similar to the one in the B.A. 1914, which allowed a Court to decline jurisdiction where the majority in number and value of the creditors was situated in another State. The fact that a debtor had his C/A in another State would preclude UK courts from declaring him bankrupt even where the bulk of his business was carried on in the UK; he thought this should be avoided and therefore he challenged the basic ground of jurisdiction in the Convention.

7. The Committee discussed the concept of a C/A at length and in great depth. Having pointed out that the name was immaterial provided it was adequately and clearly defined, the Chairman suggested that Article 3(2) should be amplified so as to give as detailed a definition as possible. Further, he suggested that the debtor should not have the right to challenge any presumption in Article 3(2). The right to challenge should be reserved for third parties, such as creditors wishing to show that most of the debtor's business was conducted in a State other than that of his registered office or registered place of business.

8. Mr Avis noted from the report of the Committee's second meeting, that following discussion, the Committee had agreed that the C/A was preferable to principal place of business and that the Committee's concern was only about any possible uncertainty over the location of the C/A. Provided the meaning of C/A was clearly defined, as a practical banker, he was well satisfied with the expression. He could not agree to any suggestion that the C/A necessarily related to the place where the debt was incurred. He agreed that the definition in Article 3(2) should be amplified. The Chairman summarised the Committee's view that the definition in Article 3(2) must be extended and tightened up so as to give clear guidance as to the location of a C/A, particularly as regards a non-trader. Also, that any presumptions given in Article 3(2) should not be open to rebuttal by the debtor. Mr Anton said that excluding a debtor from rebuttal went some way towards assisting him, but he would have to reserve his position in the light of the Committee's decision. He also pointed out that at some stage the Committee would have to consider the extent to which the report was to be used to construe the Convention.

9. The Committee saw no objection to the German proposal that a provision be added to Article 3 dealing with the C/A in relation to the administration of a deceased insolvent's estate, but they were of the opinion that the English text should refer to "the deceased" and not "de cujus".

REGISTERED OFFICE AS THE C/A

10. The Committee noted that in the proposed Statute for the European company it was an absolute rule that the Registered Office was the company's C/A, but they did not consider that it should be an absolute rule in the Bankruptcy Convention. If a company saw fit to be registered in a State other than that in which its main business interests were conducted then it should be open to the creditors to rebut the presumption that the registered office was the company's centre of administration.

CONCEPT OF AN ESTABLISHMENT

11. Mr Avis noted that the Committee's preliminary view was that it seemed necessary to use a word which would cover the activities of a non-trader. Also, that the Chairman had asked for it to be recorded that the Committee was taking "establishment" to mean, business premises in the case of a business, or residence in the case of a non-trader. Mr Anton thought that the reason why the word had not been defined was because it was a well known criterion for jurisdiction on the continent and he agreed that the word should be defined so as to cut out any possibility of it being considered to embrace an agency. The Committee agreed that "establishment" should be defined in the Convention. In noting that the Noel-Lemontey Report suggested that "establishment" had a different meaning in the context of Article 38, the Committee thought that there was little, if anydifference so far as the English text was concerned.

EXORBITANT JURISDICTION

12. Mr Anton said he supported the view of the Netherlands' delegation that the risk of exorbitant jurisdiction should be removed from Article 5. He thought that on the whole, that Article in its present form would be disadvantageous to the UK as foreign companies would hesitate to establish themselves here if they thought that a sequestration in France which was founded upon exorbitant rules of jurisdiction would result in sequestration in the UK. He understood that there were exorbitant grounds of jurisdiction in the Bankruptcy Laws of most Member States. As regards the Judgments Convention, the matter had been regarded as serious, and the UK had persuaded other Member States to include Article 59 in the Convention, which provides that the Judgments Convention will not prevent

a Contracting State from assuming an obligation towards a third State not to recognise judgments given in other Contracting States against domicilories of the third State, where the judgment was founded upon exorbitant grounds of jurisdiction. The exorbitant grounds were specified in another Article in the Convention. The Americans took a very serious view of the matter and considered that the Judgments Convention discriminated against them; therefore, a treaty was being concluded between the USA and the UK which would enable us to use Article 59 and refuse to enforce common law exorbitant judgments against the assets of US domicilories which were within the UK. He thought it unlikely that a Bankruptcy Convention could be concluded between the USA and the UK within the near future let alone between the UK and other third party States; therefore Article 5 of the Bankruptcy Convention was unacceptable due to its enforcing exorbitant jurisdiction.

14. The Chairman noted from the loose leaf file that Mr Anton had undertaken to draft an amendment to Article 5 to take care of any unfairness and he also asked if it was Mr Anton's view that the Article created new law. Mr Anton replied that he thought it did, but in any case, if the Article forced us to recognise exorbitant jurisdiction, then it was wrong; he had not prepared an amendment because he realised that the only acceptable amendment would be along the lines of Article 59 of the Judgments Convention, but he thought it unrealistic to suppose that we could cure the defect merely by adding such an Article. Mr Armour said that he accepted the theoretical arguments put forward by Mr Anton but in practice, he thought that it would be of very little influence, and he went along with the Article in its present form. Mr Avis was also of the opinion that in the absence of an acceptable amendment, the Article should remain as it was. There followed a general discussion on the problems of exorbitant jurisdiction. Mr Armour expressed his concern at the time spent on intricate points of law, and he pointed out that it had been stressed on many occasions, that if we were to get the major changes which were considered essential by insovency practitioners in the UK, then we should concentrate on those points. Mr Anton replied that it was essential to consider the basic issues and the inter-relationship between articles. The Committee were in agreement that there was a gap in jurisdiction which required something similar to Article 5 and it was decided to leave further discussion of the Article until the next meeting.

TRANSFER RULES - ARTICLES 6, 7 & 8

15. The Committee agreed with the recommendation that the underlying principles of these Articles were acceptable but that Article 6(2) could, with advantage, be more clearly drafted. They also thought that in Article 6(1) it would be preferable to say:

> "either the courts of the latter State or those of the State where the centre of administration ....."

The Committee confirmed its preliminary view that the 6 month period should run from a clearly identifiable date which in this country would be the date of the presentation of the petition. It was considered that the period should be kept to a minimum and that it should not be greater than 6 months. The Committee decided to recommend that 'saisine' should be translated in the opening sentence of Article 6(1) as: "the institution of bankruptcy proceedings."

NON-TRADERS AND SMALL TRADERS

16. The Committee decided that it would not be possible to get all Member States to agree to eliminate the distinction between traders and non-traders, or to delete the rule in Article 9(2).

(NOTE BY SECRETARY - The Law Society of Scotland recommend that the general ranking of creditors should be conditional upon a bankruptcy or liquidation being legally competent in the State concerned. For example if an Italian small trader was made bankrupt in England, then Italian creditors could not participate.)

17. Mr Anton recalled that the Committee's preliminary view was that the scope of Article 9 should be extended to include other cases where there were gaps in jurisdiction. He proposed this could be achieved by omitting part of Clause (1) so that it read:

> "Where the courts of a Contracting State which have jurisdiction under Article 3 are unable to declare a debtor bankrupt by reason of their substantive law, the bankruptcy may be declared by the courts of one of the other Contracting States in the terms of Articles 4 or 5 if the debtor has an establishment in that State, or, in the absence of an establishment, if the law of that State so permits".

The Committee agreed with this proposal.

ARTICLE 10

18. The Chairman drew attention to the proposed amendment to this Article, as drafted by the UK delegation and recalled that the Committee's preliminary view was that the Article was probably acceptable if this amendment was included and provided the individual had a hearing. Mr Anton wished it to be placed on record that he could not agree to the provisions of Article 10 because they were not used to operating exorbitant rules in Scotland and in his view, members having unlimited joint and several liability should be dealt with in their own forum. Where there was an inability or refusal to pay on the part of such a person, the liquidator of the bankrupt firm should obtain a judgment in the usual manner and take it to the forum of the individual through the operation of the European Judgments Convention. This would not only be fair to the individual, his spouse, etc., but also to his personal creditors. As at present drafted, and by virtue of Article 17, a variety of matters including claims in respect of gratuitous alienations and fraudulent preference claims in

respect of actio pauliana will be adjudicated upon by the courts other than those of the State of his C/A. The wrong applicable law might be applied because under the Convention almost invariably it was the law of the State of the bankruptcy. Admittedly, this included that State's conflict rules, but Mr Anton said that he did not have much confidence in this; at the moment the Law Commissions were considering a draft Convention on contractual and noncontractual obligations which was an attempt to assimilate the private international law on that subject; some judges regarded the draft as an explosive document. He had strong reservations about the wrong applicable law being applied which might well lead to bizarre results.

19. Mr Armour said that he still agreed with the Committee's preliminary views. The Committee, Mr Anton dissenting, agreed with the recommendation, provided there was a hearing and adequate notice.

ARTICLE 11

20. The Committee, Mr Anton dissenting, provisionally agreed with the recommendation. It was felt that the protective clause relating to adequate notice should be inserted in Uniform Law Article 1 and not in Article 11.

ARTICLE 12

21. Mr Anton asked for his dissent to this Article to be recorded; remaining members of the Committee confirmed the Committee's preliminary view that the jurisdiction in this Article was acceptable.

COMMENTS FROM CONSULTEES

22. Mr Anton observed that it was the usual practice for copies of observations received from consultees to be issued to all members. The Secretary said this would present no difficulties and he undertook to draw members' attention to points of note in the reports in some way.

DATE OF NEXT MEETING

22. The date of the next meeting was confirmed as Wednesday, 9 April, when it was hoped to complete the discussion on jurisdiction and deal with the scope of the Convention.

T H Traylor
Secretary

Agenda 18th Mtg

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Eighteenth Meeting on Wednesday, 9 April 1975 at 10.00 at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Matters arising from the Report of the Seventeenth Meeting
   (a) Interviews with consultees
   (b) Article 5
2. Secretary's Report
3. Jurisdiction
   (a) Conflicts of Jurisdiction
   (b) Jurisdiction in actions arising from the bankruptcy
   (c) Any other jurisdictional problems
4. Scope
   (a) Deceased insolvents' estates
   (b) Extra-judicial and contractual arrangements
   (c) Receiverships (floating charges)
   (d) Voluntary Winding-up
   (e) Criminal bankruptcy orders
   (f) Persons and entities
   (g) Insurance companies
   (h) Other excluded undertakings
   (j) Territorial scope

T H Traylor
Secretary

Report: 18th Meeting

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Eighteenth Meeting, held at Gavrelle House on 9 April 1975

Present:	K R Cork (Chairman) A E Anton P H Armour P G H Avis C L Dodd D Graham (For MVS Hunter) T H Traylor (Secretary) Miss G H Goodwin (Assistant Secretary)
In attendance:	J M Hunter (Bankruptcy Registrar, N. Ireland) C J Jenkins

REPORT OF THE SEVENTEENTH MEETING AND MATTERS ARISING

1. Referring to paragraph 18, Mr Graham recalled that Mr Muir Hunter had pointed out an inconsistency regarding Articles 10 and 11, in that the former specifically stated, "irrespective of where their own centre of administration is situated." The report of the meeting was then accepted.

2. It was agreed that when the re-appraisal of the subject matter was completed the Committee would consider the basic principles of the draft Convention and in particular, comments received from consultees who were against acceptance of the Convention in its present terms. The Secretary undertook to prepare a memorandum setting out the relevant arguments put forward by dissenting consultees. It was decided that the Committee's Report should contain a concluding section dealing with the viability of the Convention. This section would include some of the views expressed by consultees who were against acceptance of the Convention, together with the Committee's comments thereon.

3. It was decided not to seek out oral evidence from consultees.

4. Referring to the risk of exorbitant jurisdiction arising under Article 5, the Chairman said that recognition of a bankruptcy arising in another Member State as a result of such jurisdiction was a political matter. Therefore it should be sufficient for the Committee to point out the difficulty in its Report. Mr Anton said he would prefer the deletion of Article 5; alternatively, it should be amended so that a bankruptcy founded on an exorbitant jurisdiction would only be effective in the State in which it was opened. Other members considered Article 5 was acceptable. It was decided to indicate in the Report that the Committee, by a majority, agreed to Article 5, and to refer to the political implications which might be involved.

5. The Secretary referred to the Committee's previous recommendation that the presumption in Article 3 concerning the registered office should not be open to rebuttal by the debtor. He suggested that such a recommendation might be an unacceptable reduction of a debtor's rights. Mr Anton produced forceful arguments in support of the view that the rule that a registered office was the C/A should be absolute. However, on the point at issue, the Committee saw no reason to change its previous recommendation.

ARTICLE 13

6. The Secretary recalled that in Scotland where a partnership had a separate legal existence, bankruptcy of a firm did not necessarily imply bankruptcy of individual partners. He wondered if in such circumstances a creditor in another Member State could use Article 13 to bankrupt such partners. Mr Armour and Mr Anton both agreed that the risk of this happening was acceptable.

ARTICLE 15

7. The Committee confirmed its preliminary view that Article 15 was acceptable provided a clause was inserted to indicate that it was the duty of parties to bring all relevant facts to the notice of the courts. Mr Anton referred to the difficulties which might confront our courts, which were accustomed to the adversary procedure. He suggested that the Committee should analyse these difficulties in its Report referring in particular to the views expressed by the College of Justice in Scotland.

ARTICLE 16

8. In accepting the principles of Article 16, it was agreed to recommend that 16(2) be amended to read:

> "Where a court of a Contracting State has declared that it has no jurisdiction under Articles 3 and 4, that judgment shall be treated as conclusive evidence of the fact by the courts of other Contracting States."

ARTICLE 17(1) AND (2)

9. Mr Graham referred to the suggestion put forward by the College of Justice in Scotland concerning immoveable property, that some provision might be made enabling the court of the bankruptcy to obtain the opinion of the court of the situs. Mr Graham also noted that Article 17 was not concerned with the validity of an act of itself according to the law of the situs; it was only concerned with whether or not the act could be invoked against the general body of creditors having regard to the suspect period and the Uniform Law. Mr Anton said that if Mr Graham's interpretation was correct it would be satisfactory, but two points still concerned him: firstly, the French meaning of "acts" was wide and included, for example, actual conveyances; secondly, 17(2) referred to the recovery of property.

10. The Chairman suggested that we might agree to leave 17(1) and (2) as they were provided there was adequate protection of bona fide third parties. Mr Anton agreed but added that he still wished to record a qualified dissent regarding immoveable property, which he would review when the Committee were considering the Uniform Law.

ARTICLE 17(3)

11. It was agreed that this clause should conform to decisions taken on clauses (1) and (2). Mr Anton said that we should make it clear in the Report that this clause related to Paulian actions (see C.P. paragraph 3.22). The Chairman asked that it be noted that we wished to ensure that in general, the applicable law for immoveable property was the lex situs; this also affected 17(6).

ARTICLES 17(5) to (9)

12. The recommendations were accepted subject to the references made to immoveables in paragraphs 9 to 11 above. The Chairman suggested that 17(8) should be clarified to show that the extent of preferential rights in regard to excepted cases was only against "assets in own State".

DECEASED INSOLVENTS'ESTATES

13. The Committee agreed that the Convention should extend to the administration in bankruptcy of the estates of persons dying insolvent. Mr Graham thought important changes might have to be made to the English bankruptcy rules, in particular to s.130 of the B.A.1914. Mr Anton said that the UK would almost certainly ratify the international convention on the administration of the estates of deceased persons in which, with certain exceptions, the criterion of jurisdiction was the habitual residence of the deceased. However, he agreed there should be no problem because that convention did not relate to insolvent estates. Mr Registrar Hunter said it was essential to include the words "Administration in bankruptcy" because there was an alternative method of dealing with such estates.

DEEDS OF ARRANGEMENT

14. The Chairman recalled that the Committee's preliminary view was that Deeds of Arrangement and similar non-judicial compositions would not be included in the Convention. The Secretary said this was supported by several consultees, but others held the opposite view, notably the Law Society of Scotland, the Insolvency Practitioners Association who could see advantages in their inclusion and the College of Justice in Scotland who agreed that the Convention in its present form could not readily be extended to include extra judicial proceedings, but who thought exclusion could cause disruption.

15. Mr Anton said that such matters came under the Judgments Convention and he suggested that the Committee should bear in mind that many consultees were unaware of the contents of other conventions and directives.

16. The Secretary reported that Mr Muir Hunter agreed with the exclusion of such proceedings but that protection for a trustee should be provided in U.L.4. This was supported by Mr Graham but the Chairman suggested that it was more important to ensure that an Arrangement could not be upset by a subsequent foreign bankruptcy unless it could havebeen upset in its own country. At Mr Anton's suggestion Mr Graham agreed that Mr Muir Hunter and he would prepare a paper for submission to the Committee on how a trustee might be protected.

RECEIVERSHIPS

17. The Secretary said that the Committee's preliminary view was that receiverships would have to be excluded unless a very good reason could be shown for their inclusion; several consultees supported the Chairman in wanting them in, though some agreed this was not possible without changing the Convention considerably. Following considerable discussion it was agreed to recommend that although receiverships were outside the ambit of the Convention in its present terms, attempts should be made to secure adequate protection for receivers by a suitable reference in the Protocol to the Convention.

CREDITORS' VOLUNTARY LIQUIDATIONS

18. The Committee agreed to recommend that creditors' voluntary liquidations should be included in the Convention. The Chairman said he understood that the requirement for a proceeding to have to start with a court order might not be necessary after all.

CRIMINAL BANKRUPTCY ORDERS

19. The Committee agreed that a bankruptcy which had been made upon a petition citing a criminal bankruptcy order came within the Convention. Mr Anton noted that, following ratification of the Convention it would not be possible to bankrupt a person whose C/A was in another Member State. However an order for civil damages or restitution made in the course of criminal proceedings is a judgment which falls within the Judgments Convention. Mr Graham said he was concerned by the fact that there was no appeal against a C.B.O.

PERSONS AND ENTITIES

20. Mr Anton referred to Mr Muir Hunter's remarks quoted in paragraph 2.6 of the C.P., and handed out two papers which indicated the difficulties which arose in trying to associate the legal persons of one State withthose of another. It was agreed to suggest that lists of the persons covered in each State should be included in the Protocol.

INSURANCE COMPANIES

21. The Secretary explained that the wording of the recommendation took into account the fact that some classes of insurance undertakings fell oustide the scope of both the Bankruptcy Convention and the draft Insurance Directive. The recommendation was accepted.

OTHER EXCLUDED UNDERTAKINGS

22. It was agreed to amend the first recommendation to read:

> "The Advisory Committee does not consider it appropriate to object to the exclusions listed by other Member States in Article II of the Protocol."

23. Regarding the second recommendation, the Chairman suggested that we wanted all ordinary trading organisations to be included, but that we did not have the necessary information on which to recommend omissions. Mr Anton said that the Convention was not appropriate to deal with organisations exercising public functions such as local authorities.

TERRITORIAL SCOPE

24. The Secretary reported that Mr Muir Hunter suggested that the question of the Channel Islands and the Isle of Man was one on which the Foreign Office should advise. Following discussion it was agreed to recommend that power should be sought for the inclusion of these territories. As regards overseas territories the Committee came to the conclusion that an overseas territory should only be included by the approval of all Member States and further, that such territories should be listed in the Protocol rather than in Article 74. It was agreed to recommend that the Convention should initially apply only to the European territories of Member States and its extension to their overseas territories should be a matter for subsequent negotiation.

NEXT MEETINGS

25. The dates of the next two meetings were confirmed as being 29 April and 19 May. The agenda would be "Choice of Law" followed by "Recognition and Enforcement of Judgments."

T H Traylor
Secretary