

Ο περί της Ευρωπαϊκής Σύμβασης επί Ορισμένων Διεθνών Πτυχών της Πτώχευσης (Κυρωτικός) Νόμος του 1993 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος.

Αριθμός 36(ΙΙΙ) του 1993

**ΝΟΜΟΣ ΚΥΡΩΤΙΚΟΣ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΣΥΜΒΑΣΗΣ
ΕΠΙ ΟΡΙΣΜΕΝΩΝ ΔΙΕΘΝΩΝ ΠΤΥΧΩΝ ΤΗΣ ΠΤΩΧΕΥΣΗΣ**

Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:

1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Ευρωπαϊκής Σύμβασης επί Ορισμένων Διεθνών Πτυχών της Πτώχευσης (Κυρωτικός) Νόμος του 1993.

Συνοπτικός
τίτλος.

2. Στον παρόντα Νόμο—

Ερμηνεία.

«Σύμβαση» σημαίνει την Ευρωπαϊκή Σύμβαση επί Ορισμένων Διεθνών Πτυχών της Πτώχευσης, η οποία ανοίχθηκε για υπογραφή στις 5 Ιουνίου 1990 στην Κωνσταντινούπολη.

3. Με τον παρόντα Νόμο κυρώνεται η Σύμβαση της οποίας το αυθεντικό κείμενο στην αγγλική εκτίθεται στο Μέρος Ι του Πίνακα και σε ελληνική μετάφραση στο Μέρος ΙΙ αυτού:

Κύρωση
της Σύμβασης.
Πίνακας
Μέρος Ι
Μέρος ΙΙ.

Νοείται ότι σε περίπτωση αντίφασης μεταξύ του κειμένου του Μέρους Ι και εκείνου του Μέρους ΙΙ του Πίνακα θα υπερισχύει το κείμενο που εκτίθεται στο Μέρος Ι αυτού.

ΠΙΝΑΚΑΣ

(Άρθρο 3)

ΜΕΡΟΣ Ι

EUROPEAN CONVENTION
ON CERTAIN INTERNATIONAL ASPECTS OF BANKRUPTCY

PREAMBLE

The member States of the Council of Europe, signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that bankruptcy proceedings and similar proceedings more and more frequently concern persons who exercise activities outside the national territory;

Considering that it is necessary to guarantee a minimum of legal co-operation by dealing with certain international aspects of bankruptcy such as the power of administrators and liquidators in bankruptcy to act outside the national territory, the possibility of resorting to the opening of secondary bankruptcies in the territory of other Parties and the possibility for creditors to lodge their claims in the bankruptcies opened abroad,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope of the Convention

1. This Convention shall apply to collective insolvency proceedings which entail a disinvestment of the debtor and the appointment of a liquidator and which may entail the liquidation of the assets.

Such proceedings, hereafter referred to as "bankruptcy", are listed in Appendix A which is an integral part of this Convention.

Appendix A shall contain proceedings of the member States of the Council of Europe as well as of any State acceding to the Convention under the terms of Article 35.

This Convention shall not apply to proceedings relating to insurance companies or credit institutions.

2. When a bankruptcy is opened in a Party, this Convention shall govern:

a. the exercise in other Parties of certain powers of the liquidator concerning the administration of the debtor's assets;

b. the opening of secondary bankruptcies in other Parties;

c. the information to be given to creditors residing in other Parties and the lodgement of their claims.

3. For the purposes of this Convention:

a. "liquidator" means any person or body whose function is to administer or liquidate the assets of the bankrupt or to supervise the activities of the debtor.

These persons and bodies are listed in Appendix B, which is an integral part of this Convention;

b. "disinvestment of the debtor" means the placing of power to manage, control and dispose of the assets in the hands of a liquidator.

Article 2

Proof of the appointment of the liquidator

The appointment of the liquidator shall be evidenced by a certified copy of the original decision appointing him or by an official certificate of appointment issued by the court or any other competent authority which has opened the bankruptcy. A translation in the official language or one of the official languages of the Party where the liquidator exercises his powers may be required. No legalisation or other similar formality shall be required.

Article 3

Opening of a bankruptcy

The decision to open the bankruptcy must:

- a. emanate from a court or other authority having competence under Article 4;
- b. be effective in the territory of the Party where the bankruptcy is opened; and
- c. not be manifestly contrary to the public policy of the Party in which the liquidator intends to exercise his powers under the terms of Chapter II or in which the opening of a secondary bankruptcy is requested under the terms of Chapter III.

Article 4

Indirect international competence

1. The courts or other authorities of the Party in which the debtor has the centre of his main interests shall be considered as being competent for opening the bankruptcy. For companies and legal persons, unless the contrary is proved, the place of the registered office shall be presumed to be the centre of their main interests.
2. The courts or other authorities of the Party in whose territory the debtor has an establishment shall also be considered as being competent:
 - a. if the centre of the debtor's main interests is not located in the territory of any Party; or
 - b. if the bankruptcy cannot be opened by a court or other authority of the Party competent under paragraph 1 because of the provisions of its national law and of the capacity of the debtor. In this event, that Party shall not be obliged to apply this Convention.

However, when the bankruptcy of a debtor is opened under paragraph *a* or *b* by courts or other authorities in various Parties in which he has an establishment, the court or authority which first gave judgment shall alone be considered competent.

Article 5

Partial payment of the creditors

Without prejudice to claims guaranteed by securities or rights over land or other property, a creditor who has received part payment in respect of his claim in a bankruptcy opened in one Party may not participate in a dividend for the same claim in a bankruptcy opened with regard to the same debtor in another Party, so long as the dividend received by the other creditors in the bankruptcy opened in that other Party is less than the dividend he has already received.

CHAPTER II

EXERCISE OF CERTAIN POWERS OF THE LIQUIDATOR

Article 6

Scope of Chapter II

In addition to the proceedings provided for in Article 1, paragraph 1, this chapter shall also apply to proceedings ordered by a court or an authority upon a request for the opening of a collective procedure under Article 1, paragraph 1, and which aim at the provisional protection of the assets of the debtor.

Article 7

Capacity of the liquidator

The liquidator may exercise his powers under the conditions set out in this chapter on presentation of the document mentioned in Article 2 and under the conditions mentioned in Article 3.

Article 8

Measures of protection and preservation of the assets

From the date of his appointment, the liquidator may take or cause to be taken, in accordance with the law of the Party in which he intends to act, any necessary steps to protect or preserve the value of the assets of the debtor, including the seeking of assistance from competent authorities in that Party without, however, removing those assets from the territory of the Party where they are situated.

Article 9

Advertisement of the liquidator's powers

A summary of the decision appointing the liquidator as provided by Article 2 must, after any necessary authorisation given by the competent authority of the Party where the liquidator intends to act, be advertised pursuant to the method of publication determined by that Party.

Article 10

Acts of administration, management and disposal of the debtor's assets

1. Within the powers conferred on him under the law of the Party in which the bankruptcy is opened and under the conditions set out in the following articles of this chapter, the liquidator may take or cause to be taken any acts to administer, manage or dispose of the debtor's assets including removing them from the territory of the Party where they are situated.
2. The implementation of these measures shall be subject to the law of the Party in whose territory the assets are situated.

Article 11

Conditions of exercise of the liquidator's powers

1. The liquidator's powers as set out in Article 10, paragraph 1, shall be suspended during a two-month period commencing the day after the publication of the notice referred to in Article 9. If, during this period or at any later stage, any request for bankruptcy or for proceedings to prevent bankruptcy has been made against the debtor in the Party where the assets are located, the powers of the liquidator shall be suspended until any such requests are rejected.

The liquidator shall be empowered to lodge an application for bankruptcy if the conditions for opening a bankruptcy under the national law of the Party where he intends to act are met.

2. During the period mentioned in paragraph 1, only creditors who, in the Party where the liquidator intends to exercise his powers, enjoy a right to preferential payment or would have enjoyed such a right if the bankruptcy had been opened in that Party, creditors who have a public law claim or creditors who have a claim arising from the operation of an establishment of the debtor or from employment in that Party, may commence or pursue individual legal action against the assets of the debtor.

3. On the expiration of the period mentioned in paragraph 1, the creditors may no longer commence individual legal action and only the liquidator shall have the power to take or cause to be taken the acts mentioned in Article 10, paragraph 1.

Article 12

Objections to the liquidator's powers

1. Where an objection is made to the exercise of his powers, it shall be for the liquidator to request the court of the Party in whose territory the act is to be performed to declare that he is entitled to exercise those powers under the Convention.

2. If the extent of his powers is contested, it is for the liquidator to establish the same.

Article 13

Effects of discharge of payment and delivery of assets

1. Payment or delivery of assets to the liquidator made in good faith shall constitute a valid discharge. They shall be presumed to be made in good faith if made after the advertisement mentioned in Article 9 or after presentation of the certificate mentioned in Article 2.

2. Without prejudice to Article 11, paragraph 2, payment or delivery of assets to the debtor shall not constitute a valid discharge if they have been made after the advertisement provided under Article 9, unless the person who made them establishes that he did not have knowledge of this advertisement.

Article 14

Limitations to the exercise of the liquidator's powers

1. The opening or recognition of bankruptcy proceedings or of proceedings which prevent bankruptcy in the Party in which the liquidator intends to exercise his powers provided for in this chapter shall prevent the exercise of his powers in that Party.

2. The liquidator cannot perform in another Party an act which is:

a. contrary to any security held by any person other than the debtor over land or other property established or recognised by the law of that Party; or

b. manifestly contrary to the public policy of that Party.

Article 15

Extension of the liquidator's powers

Any Party may permit the foreign liquidator to exercise on its territory wider powers than those laid down in this chapter.