

21. CONVENTION CONCERNING THE INTERNATIONAL ADMINISTRATION OF THE ESTATES OF DECEASED PERSONS¹

(Concluded 2 October 1973)

The States signatory to this Convention,
Desiring to facilitate the international administration of the estates of deceased persons,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I – THE INTERNATIONAL CERTIFICATE

Article 1

The Contracting States shall establish an international certificate designating the person or persons entitled to administer the movable estate of a deceased person and indicating his or their powers. This certificate, drawn up in the Contracting State designated in Article 2 in accordance with the model annexed to this Convention, shall be recognised in the Contracting States. A Contracting State may subject this recognition to the procedure or to the publicity provided for in Article 10.

CHAPTER II – THE DRAWING UP OF THE CERTIFICATE

Article 2

The certificate shall be drawn up by the competent authority in the State of the habitual residence of the deceased.

Article 3

For the purpose of designating the holder of the certificate and indicating his powers, the competent authority shall apply its internal law except in the following cases, in which it shall apply the internal law of the State of which the deceased was a national –

- (1) if both the State of his habitual residence and the State of his nationality have made the declaration provided for in Article 31;
- (2) if the State of which he was a national, but not the State of his habitual residence has made the declaration provided for in Article 31, and if the deceased had lived in the State of the issuing authority for less than 5 years immediately prior to his death.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions”. For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Douzième session (1972)*, Tomes I et II, *Matières diverses / Administration des successions* (ISBN 90 12 00222 2, 150 / 311 pp.).

Article 4

A Contracting State may declare that in designating the holder of the certificate and in indicating his powers it will, notwithstanding Article 3, apply its internal law or that of the State of which the deceased was a national in accordance with the choice made by him.

Article 5

Before issuing the certificate, the competent authority, when applying the internal law of the State of which the deceased was a national, may enquire of an authority of that State, which has been designated for that purpose, whether the contents of the certificate accord with that law and, in its discretion, fix a time-limit for the submission of a reply. If no reply is received within this period it shall draw up the certificate in accordance with its own understanding of the applicable law.

Article 6

Each Contracting State shall designate the competent judicial or administrative authority to draw up the certificate.

A Contracting State may declare that a certificate drawn up within its territory shall be deemed to be "drawn up by the competent authority" if it is drawn up by a member of a professional body which has been designated by that State, and if it is confirmed by the competent authority.

Article 7

The issuing authority shall, after measures of publicity have been taken to inform those interested, in particular the surviving spouse, and after investigations, if any are necessary, have been made, issue the certificate without delay.

Article 8

The competent authority shall, on request, inform any interested person or authority that a certificate has been issued and of its contents, and of any annulment or modification of the certificate or of any suspension of its effects.

The annulment or modification of the certificate or the suspension of its effects by the issuing authority shall be brought to the attention of any person or authority that has been notified in writing that the certificate had been issued.

CHAPTER III – RECOGNITION OF THE CERTIFICATE – PROTECTIVE OR URGENT MEASURES

Article 9

Subject to the provisions of Article 10, in order to attest the designation and powers of the person or persons entitled to administer the estate, the production only of the certificate may be required in the Contracting States other than that in which it was issued.

No legalisation or like formality may be required.

Article 10

A Contracting State may make the recognition of the certificate depend either upon a decision of an authority following an expeditious procedure, or upon simple publicity.

This procedure may comprise "opposition" and appeal, insofar as either is founded on Articles 13, 14, 15, 16 and 17.

Article 11

If the procedure or the publicity envisaged in Article 10 is required, the holder of the certificate may, on mere production, take or seek any protective or urgent measures within the limits of the certificate, as from the date of its entry into force and throughout the duration of the procedure of recognition, if any, until a decision to the contrary is made.

A requested State may require that interim recognition is to be subject to the provisions of its internal law for such recognition, provided that the recognition is the subject of an expeditious procedure.

However, the holder may not take or seek the measures mentioned in paragraph 1 after the sixtieth day following the date of entry into force of the certificate, if by then he has not initiated the procedure for recognition or taken the necessary measures of publicity.

Article 12

The validity of any protective or urgent measures taken under Article 11 shall not be affected by the expiry of the period of time specified in that Article, or by a decision refusing recognition.

However, any interested person may request the setting aside or confirmation of these measures in accordance with the law of the requested State.

Article 13

Recognition may be refused in the following cases –

- (1) if the certificate is not authentic, or not in accordance with the model annexed to this Convention;
- (2) if it does not appear from the contents of the certificate that it was drawn up by an authority having jurisdiction within the meaning of this Convention.

Article 14

Recognition of the certificate may also be refused if, in the view of the requested State –

- (1) the deceased had his habitual residence in that State; or
- (2) the deceased had the nationality of that State, and for that reason, according to Articles 3 and 4, the internal law of the requested State should have been applied with respect to the designation of the holder of the certificate and to the indication of his powers. However, in this case recognition shall not be refused unless the contents of the certificate are contrary to the internal law of the requested State.

Article 15

Recognition may also be refused if the certificate is incompatible with a decision on the merits, rendered or recognised in the requested State.

Article 16

Where a certificate mentioned in Article 1 is presented for recognition, and another certificate mentioned in the same Article which is incompatible with it has previously been recognised in the requested State, the requested authority may either withdraw the recognition of the first certificate and recognise the second, or refuse to recognise the second.

Article 17

Finally, recognition of the certificate may be refused if such recognition is manifestly incompatible with the public policy ("*ordre public*") of the requested State.

Article 18

Refusal of recognition may be restricted to certain of the powers indicated in the certificate.

Article 19

Recognition may not be refused partially or totally on any grounds other than those set out in Articles 13, 14, 15, 16 and 17. The same shall also apply to the withdrawal or reversal of the recognition.

Article 20

The existence of a prior local administration in the requested State shall not relieve the authority of that State of the obligation to recognise the certificate in accordance with this Convention. In such a case the powers indicated in the certificate shall be vested in the holder alone. The requested State may maintain the local administration in respect of powers which are not indicated in the certificate.

CHAPTER IV – USE OF THE CERTIFICATE AND ITS EFFECTS

Article 21

The requested State may subject the holder of the certificate in the exercise of his powers to the same local supervision and control applicable to estate representatives in that State. In addition, the requested State may subject the taking of possession of the assets situated in its territory to the payment of debts. The application of this Article shall not affect the designation and the extent of the powers of the holder of the certificate.

Article 22

Any person who pays, or delivers property to, the holder of the certificate drawn up, and, where necessary, recognised, in accordance with this Convention shall be discharged, unless it is proved that the person acted in bad faith.

Article 23

Any person who has acquired assets of the estate from the holder of a certificate drawn up, and, where necessary, recognised, in accordance with this Convention shall, unless it is proved that he acted in bad faith, be deemed to have acquired them from a person having power to dispose of them.

CHAPTER V – ANNULMENT – MODIFICATION – SUSPENSION OF THE CERTIFICATE

Article 24

If, in the course of a procedure of recognition, the designation or powers of the holder of a certificate are challenged on the merits, the authorities of the requested State may suspend the provisional effects of the certificate, stay judgment and, if the case so requires, settle a period of time within which an action on the merits must be instituted in the court having jurisdiction.

Article 25

If the designation or powers of the holder of a certificate are put in issue in a dispute on the merits before the courts of the State in which the certificate was issued, the authorities of any other Contracting State may suspend the effects of the certificate until the end of the litigation. If a dispute on the merits is brought before the courts of the requested State or of another Contracting State, the authorities of the requested State may likewise suspend the effects of the certificate until the end of the litigation.

Article 26

If the certificate is annulled or if its effects are suspended in the State in which it was drawn up, the authorities of every Contracting State shall give effect within its territory to such annulment or suspension, at the request of any interested person or if they are informed of such annulment or suspension in accordance with Article 8.

If any provisions of the certificate are modified in the State of the issuing authority, that authority shall annul the existing certificate and issue a new certificate as modified.

Article 27

Annulment or modification of the certificate or suspension of its effects according to Articles 24, 25 and 26 shall not affect acts carried out by its holder within the territory of a Contracting State prior to the decision of the authority of that State giving effect to the annulment, modification or suspension.

Article 28

The validity of dealings by a person with the holder of the certificate shall not be challenged merely because the certificate has been annulled or modified, or its effects have been suspended, unless it is proved that the person acted in bad faith.

Article 29

The consequences of the withdrawal or reversal of recognition shall be the same as those set out in Articles 27 and 28.

CHAPTER VI – IMMOVABLES

Article 30

If the law in accordance with which the certificate was drawn up gives the holder powers over immovables situated abroad, the issuing authority shall indicate in the certificate the existence of these powers.

Other Contracting States may recognise these powers in whole or in part.

Those Contracting States which have made use of the option provided for in the foregoing paragraph shall indicate to what extent they will recognise such powers.

CHAPTER VII – GENERAL CLAUSES

Article 31

For the purposes of, and subject to, the conditions set out in Article 3, a Contracting State may declare that if the deceased was a national of that State its internal law shall be applied in order to designate the holder of the certificate and to indicate his powers.

Article 32

For the purposes of this Convention, "habitual residence" and "nationality" mean respectively the habitual residence and nationality of the deceased at the time of his death.

Article 33

The standard terms in the model certificate annexed to this Convention may be expressed in the official language, or in one of the official languages of the State of the issuing authority, and shall in all cases be expressed either in French or in English.

The corresponding blanks shall be completed either in the official language or in one of the official languages of the State of the issuing authority or in French or in English.

The holder of the certificate seeking recognition shall furnish translations of the information supplied in the certificate, unless the requested authority dispenses with this requirement.

Article 34

In relation to a Contracting State having, in matters of estate administration, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State, as applicable to the particular category of persons.

Article 35

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters of estate administration, it may declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall state expressly the territorial units to which the Convention applies.

Other Contracting States may decline to recognise a certificate if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the certificate was issued.

Article 36

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply, in relation to estate administration –

- (1) any reference to the authority or law or procedure of the State which issues the certificate shall be construed as referring to the authority or law or procedure of the territorial unit in which the deceased had his habitual residence;
- (2) any reference to the authority or law or procedure of the requested State shall be construed as referring to the authority or law or procedure of the territorial unit in which the certificate is sought to be used;
- (3) any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State which issues the certificate or of the requested State shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;
- (4) any reference to the national law of the deceased shall be construed as referring to the law determined by the rules in force in the State of which the deceased was a national, or, if there is no such rule, to the law of the territorial unit with which the deceased was most closely connected.

Article 37

Each Contracting State shall, at the time of the deposit of its instrument of ratification, acceptance, approval or accession notify the Ministry of Foreign Affairs of the Netherlands of the following –

- (1) the designation of the authorities, pursuant to Article 5 and the first paragraph of Article 6;
- (2) the way in which the information provided for under Article 8 may be obtained;
- (3) whether or not it has chosen to subject the recognition to a procedure or to publicity, and, if a procedure exists, the designation of the authority before which the proceedings are to be brought.

Each Contracting State mentioned in Article 35 shall, at the same time, notify the Ministry of Foreign Affairs of the Netherlands of the information provided for in paragraph 2 of that Article.

Subsequently, each Contracting State shall likewise notify the Ministry of any modification of the designations and information mentioned above.

Article 38

A Contracting State desiring to exercise one or more of the options envisaged in Article 4, the second paragraph of Article 6, the second and third paragraphs of Article 30 and Article 31, shall notify this to the Ministry of Foreign Affairs of the Netherlands, either at the time of the deposit of its instrument of ratification, acceptance, approval or accession or subsequently.

The designation envisaged by the second paragraph of Article 6, or the indication envisaged by the third paragraph of Article 30, shall be made in the notification.

A Contracting State shall likewise notify any modification to a declaration, designation or indication mentioned above.

Article 39

The provisions of this Convention shall prevail over the terms of any bilateral Convention to which Contracting States are or may in the future become Parties and which contains provisions relating to the same subject-matter, unless it is otherwise agreed between the Parties to such Convention.

This Convention shall not affect the operation of other multilateral Conventions to which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the same subject-matter.

Article 40

This Convention shall apply even if the deceased died before its entry into force.

CHAPTER VIII – FINAL CLAUSES

Article 41

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 42

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with Article 44.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 46.

The objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 43

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to

in Article 46, sub-paragraph 4, and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made. Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 44

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in the second paragraph of Article 41. Thereafter the Convention shall enter into force

- for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 42;
- for a territory to which the Convention has been extended in conformity with Article 43, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 45

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 44, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 46

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 42 of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 41;
- (2) the date on which this Convention enters into force in accordance with Article 44;
- (3) the accessions referred to in Article 42 and the dates on which they take effect;
- (4) the extensions referred to in Article 43 and the dates on which they take effect;
- (5) the objections raised to accessions and extensions referred to in Articles 42 and 43;
- (6) the designations, indications and declarations referred to in Articles 37 and 38;
- (7) the denunciations referred to in Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 2nd day of October, 1973, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session.