

CHAPTER V

THE CONVENTION ON ADMINISTRATION

Introduction

The Convention concerning the International Administration of the Estates of Deceased Persons was finalised at the Twelfth Session of the Hague Conference on Private International Law and signed on 21st October, 1972. It is not yet in force. It has been signed by seven states, including the United Kingdom, but has been ratified only by

Czechoslovakia
Portugal

It requires three ratifications to come into operation (Article 44).

Aim of the Convention

The aim is stated by the Convention to be "to facilitate the international administration of the estates of deceased persons". This is to be achieved by permitting one person to exercise the powers of administration over estates situated in several jurisdictions and by requiring all Contracting States to recognise that person's authority to administer. This authority would be conferred by an international certificate in standard form obtained in one Contracting State, which would be valid in all other Contracting States as proof of the administrator's authority.

The Convention does not set out to deal with conflict of laws rules relating to devolution of estates or questions of succession rights, still less with formalities of dispositions. It is designed to bridge an essential difference between the common law approach and that of civil law systems towards administration of estates. The former requires, with few exceptions, that there be some public grant of authority to a personal representative to administer and distribute the deceased's estate. Without such authority, the property of the

deceased cannot be dealt with. Under civil law systems, however, the general rule is that the deceased's estate automatically and directly vests in his heirs or universal legatee. It is only in the exceptional case that personal representatives are appointed and even then their functions are rather to supervise than to administer. It follows, therefore, that whilst an heir from a common law jurisdiction may be able to enter directly into his inheritance in respect of assets situated in a civil law system, an heir from a civil system will be able to inherit assets situated in a common law system only if a grant of administration has been formally issued there. The Convention's scheme, therefore, is likely to be of major benefit in the latter circumstances, since the certificate would obviate the need to seek a grant of administration. In the former case, where the heir is already permitted to deal with the estate, a certificate, as any other form of authorisation, is not strictly necessary. On the other hand, the personal representative with a grant from a common law jurisdiction, who is not the heir, may experience difficulty in having his powers recognised abroad. The Convention would meet this situation too.

Application of the Convention

The Convention scheme would be operative only between Contracting States, for the obligation upon the latter is to give recognition only to certificates drawn up in Contracting States (Article 1). The usefulness of the scheme, therefore, depends upon the extent to which states are prepared to accede to it. The Convention permits a Contracting State, which is not a unitary state, to extend its provisions to designated units only. In such a case, references in the Convention (and in this account) to the law of a state will be construed as reference to the law of the relevant designated unit (Articles 35 and 36).

Although the Convention may run alongside another multilateral treaty on the matter, it is intended to supersede bilateral

treaties on this matter between Contracting Parties, unless the latter are expressly preserved (Article 39). This provision may have significance for those Commonwealth states entering into bilateral Agreements for cooperation in judicial and legal matters with neighbouring civil law states.

The scheme contemplates the issue of certificates in respect of estates even where the deceased died before the Convention came into force in relation to the Contracting States concerned (Article 40).

Of principal importance, the Convention applies in the first place only in respect of estates of movable property (Article 1). This, however, is qualified by Article 30, which provides that the holder of a certificate is to be shown therein to have powers to deal with immovable property too if under the applicable law (normally that of the deceased's habitual residence) such powers are accorded (Article 30). But it is for Contracting States to determine the extent to which such powers will be recognised. Where recognition will be granted, details are to be notified to the Depositary (Article 38).

This may be of little value in respect of common law jurisdictions. For normally, a grant of administration in those systems gives no authority to immovables abroad: under usual conflict rules, the lex situs prevails. Accordingly, given the existence of such rules (which the Convention does not seek to alter), a certificate issued to a holder whose powers are determined by reference to a common law jurisdiction will not refer to immovables, whilst a certificate issued by reference to a civil law jurisdiction even though referring to immovables is unlikely to be accorded recognition in a common law system so as to enable the holder to administer immovables within the common law country. In the latter case, the Convention will not alter the requirement for the grant of administration under the normal procedures.

Issue of the International Certificate

The International Certificate, which is to be in the form set out in the Annex to the Convention, designates the person entitled to administer the estate of the deceased and his powers (Article 1). In reality it allows the issuing authority to select one of three alternative forms. The first sets out the holder's powers in a general form, i.e. indicating that he has full powers. Alternatively, he may be vested with full powers subject to specified exceptions. Or again he may be vested with only such powers as are specifically indicated in a detailed list scheduled to the certificate. It may be in the official language of the issuing State or in French or English (Article 33), but the holder may be required to furnish a translation.

The Certificate must be issued by the competent authority in the State where the deceased had his habitual residence at the time of his death (Articles 2 and 32). It is for each Contracting State to establish or determine its own competent authorities, which may be a public or official agency, whether judicial or administrative or, if any State so decides, members of a professional body (e.g. the legal profession or notaries) whose action is confirmed by a designated official agency (Article 6). Presumably in common law systems, the authority would normally be the probate court, with possible delegation to registrars thereof.

The connecting factor of the deceased's habitual residence, commonly employed in Hague Conventions, is used in preference to "domicile", although here as elsewhere the term is not defined. It is intended to avoid the legal artificialities of "domicile" by requiring greater emphasis to be placed upon questions of fact.

The certificate must designate the appropriate person to be holder and the extent of his powers in the form set out in the Annex. These matters are normally, to be settled by reference to the internal law of the issuing state, i.e. by the law of the place of the deceased's habitual residence (Article 3).

This formula precludes any question of renvoi arising, since the reference is to the state's internal and not conflict rules. There are, however, three exceptions to this basic rule:

(i) if the state of his habitual residence and that of his nationality have both made a declaration (under Article 31) that the internal law of the deceased's national state be applied, that law must apply;

(ii) if the state of habitual residence has not made such a declaration but the state of his nationality has, the internal law of the latter must apply, provided that the deceased lived in the former state for less than five years prior to his death (Article 3);

(iii) where a Contracting State by making the appropriate declaration permits the deceased to choose the internal law of his habitual residence or of his national state, his choice must be applied (Article 4).

The advantage of this general approach is that the issuing State will usually apply its own law to these matters. It may be expected that a declaration applying the law of the national state would rarely be made by common law jurisdiction since the law of the nationality is not normally a choice of law employed by them. Accordingly, it would be rare for a common law jurisdiction to engage upon questions of foreign law to determine who is to be the holder and the extent of his powers. These cases would normally only arise in the circumstances set out in (ii) above. Article 5 provides a procedure under which assistance from the national state concerning the compatibility of the certificate with its laws may be sought and, if not given within a prescribed time limit, permitting the issuing state's understanding of that national law to be followed.

On the other hand, common law jurisdictions will rarely be faced with certificates which under Article 3 determine the administrator and his powers by reference to their law as the national law in the absence of declarations by them under Article 31. This may arise, however,

if a national of that common law jurisdiction exercises a choice in favour of the national law which has been permitted by the issuing state under Article 4.

Special rules are necessary in the case of non-unitary states applying different systems of law. Habitual residence in the unit is normally required for the purposes of the issue of certificates. Where, however, the connecting factor of nationality is relied upon the question of which unit of the national state is referred to is to be determined by the law of that state, or, if there are no rules on that point, by ascertaining the unit with which the deceased had the closest ties (Article 36).

Whilst the Convention does not seek to set out a detailed procedure for the drawing up and issue of certificates, it does require that the certificate must be issued without delay, after sufficient publicity has been given to inform those interested, in particular any surviving spouse, and after any necessary investigations (Article 7). Further it requires in general terms that the issuing authority must inform any interested person or authority, on request, about the certificate and any annulment, modification or suspension. The latter changes must also be notified to persons notified in writing of the issue of the certificate (Article 8). The scheme, therefore, contemplates the keeping of registers in which such information is systematically recorded. It will be for each state to provide the administrative arrangements and procedures appropriate to its circumstances.

Recognition of the International Certificate

Whilst the Convention requires the recognition of certificates when produced in another Contracting State as proof of the authority and powers of the holder, without any legalisation or formality having been complied with, receiving States may, in specified circumstances notified to the Depositary under Article 37(3), make recognition conditional upon the advance publicity or compliance with a prescribed procedure in the receiving state (Articles 1 and 10). These provisions, therefore, envisage states electing either to grant automatic recognition or, in the interests of local creditors and beneficiaries,

to regulate the granting of recognition. In the latter case, however, regulation is permitted only in the circumstances prescribed by the Convention.

The requirements which the Contracting State may lay down may call for compliance with simple measures of publicity or with an expeditious procedure of opposition and appeal in that state. These appear to be analagous to the advertisement and caveat procedures used, for example, in the Colonial Probates scheme, although the form that they take would be for each Contracting State to determine through its internal law.

The grounds upon which the opposition to recognition would be permitted under the Convention scheme are set out in Article 13 to 17. This is an exclusive statement. It is for each Contracting State to prescribe which of these grounds may be relied upon and that refusal or recognition may be total or restricted to some only of the powers indicated in the certificate (Articles 18 and 19).

The grounds upon which it is permissible for recognition to be refused are -

- (i) the certificate is not authentic or not in accordance with the standard form;
- (ii) the certificate does not appear from its contents to have been drawn up by an authority which is a competent authority in the state of the habitual residence of the deceased ;
- (iii) the deceased, in the view of the receiving state, had his habitual residence in that state;
- (iv) in the view of the receiving state, the internal law of that state should have been applied under Articles 3 and 4 as the deceased had the nationality of that state and the contents of the certificate are contrary to that law;

(v) the certificate is incompatible with a judicial decision in relation to the estate on the merits which has been rendered or recognised in the receiving state;

(vi) there is incompatibility between two international certificates relating to the same estate;

(vii) recognition would be manifest incompatible with the public policy of the receiving state.

During the time period for the publicity or opposition procedures, the powers to distribute the estate or dispose of property are suspended. On the other hand, the requirement to comply with such procedures may prejudice the efforts of an administrator to discharge his functions by preventing any activity by him until the procedures are completed. Accordingly, the holder, on the presentation of a certificate, must be permitted, subject to any local law and required supervision, to take "protective or urgent measures" in the interim (e.g. sale of perishables or drawing-up of an inventory or carrying on a business) (Article 11). Such measures would be valid even though the time limits had expired or recognition was refused, although an interested party would be permitted to take proceedings to set them aside (Article 12).

Recognition may not be refused merely because national authority has already been granted to administer the estate. Article 20 requires priority to be given to the international certificate with the national administration merely being permitted to operate in circumstances to which the certificate does not refer or alternatively by acting jointly with the certificate holder. This provision is without prejudice to the power to refuse recognition if one of the prescribed grounds is also fulfilled.

Use of the International Certificate

Whilst the receiving state which recognises a certificate may not interfere with the designation of the holder or his certified powers, it may impose certain additional requirements governing the exercise of those powers. Thus, local law may demand that -

(i) the administration be subject to the same supervision (as for example, the giving of security for due administration) and control (as, for example, in paying estate tax) as is imposed on local administrations;

(ii) taking possession of local assets for distribution be subject to the payment of debts (Article 21).

Subject to these factors, the internal law of the habitual residence (or exceptionally of the nationality) will govern the administration of the estate. For common law jurisdictions, this would represent a major departure from the long standing rule that administration of assets in the forum is governed by the lex fori.

The Convention also puts beyond doubt the legal position of third parties affected by transactions carried out in reliance upon a certificate. Thus debtors of the deceased in the recognising state who settle their debts in good faith with the holder of the certificate must be discharged from future liabilities (Article 22) and persons in such a state to whom the holder has transferred property are protected when relying in good faith upon this certificate (Article 23).

Disputes Relating to the Certificate

The Convention sets out to provide for the consequences of the institution of proceedings when disputes concerning the merits of the designation or powers of a certificate holder arise. It does not, however, attempt to lay down any common rules which will determine which courts are to have jurisdiction to settle such questions. Such matters will be determined in accordance with existing conflict of laws rules.

The Convention contemplates the possibility that a certificate can be annulled or modified in consequence of the outcome of such litigation.

Where the result of litigation is that the issuing state annuls the certificate such annulment must be given effect in other states when

requested by an interested person or when informed by the competent authority. Where modification of a certificate is made in that state, however, the original certificate must be annulled and replaced by one which takes account of the modification (Article 26). The Convention is silent concerning the effects of litigation in other states.

Whilst such litigation is proceeding, however, rules in relation to the suspension of the certificate may be invoked. These provide that -

(a) a receiving state may suspend totally or partially the provisional effects of a certificate (see p. 62) which is in the course of its recognition procedure, if a challenge is made to merits of the certificate, until the matter is resolved by the appropriate court or, at least, until a set time-limit for such proceedings to be instituted has elapsed (Article 24);

(b) any state may, totally or partially, suspend a certificate until litigation commenced in the issuing state concerning its merits has been brought to an end;

(c) a receiving state may similarly suspend a certificate until such litigation commenced there or in another state has been brought to an end (Article 25);

(d) suspension by the issuing state must be given effect by all other states at the request of an interested person or if informed by the competent authority (Article 26).

Cases will arise, however, when action has been taken on the strength of a certificate which is subsequently annulled, modified or suspended or where recognition of a certificate is withdrawn or reversed. The Convention sets out to protect the interests of those affected, by denying retroactive effect to such events. Thus action taken by a certificate holder in any Contracting State prior to the relevant decision concerning the certificate is not invalidated (Articles 27 and 29). More controversially, however, dealings in good faith by a third party with the certificate holder after such a decision are similarly protected

(Articles 28 and 29), as far as that third person is concerned. This is a major concession to the principle of the international effectiveness of the certificate.

**CONVENTION CONCERNING THE
INTERNATIONAL ADMINISTRATION
OF THE ESTATES OF DECEASED PERSONS**

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.

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.

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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

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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.

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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 situate 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

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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 situate 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

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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;

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- (3) any reference made in the application of subparagraph 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.

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

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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 State 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 day of, 19 . . ., 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.

ANNEX TO THE CONVENTION

International Certificate

(Hague Convention of . . . concerning the International Administration of the Estates of Deceased Persons)

A *Issuing Authority*

1 Country:

2 – The (name and address of the authority) certifies that:

or

– (name, address and capacity of the person) designated according to Article 6, paragraph 2 and whose certificate is confirmed in accordance with I b below, certifies that:

B *Information concerning the deceased*

3 following the death on . . . at . . . of . . .¹ (marital status, sex of deceased, date and place of birth)

4 whose last known address was . . .

5 of . . . nationality²

6 whose last habitual residence was in (State, town, street)

7 whose will has/has not been produced to the authority

8 and whose marriage contract dated . . . has/has not been presented

C *Holder of the certificate*

9 name . . . address . . . (of the person or body)

10 is/are entitled under . . . law to effect all acts in respect of all corporeal or incorporeal movables in the estate and to act in the interest or on behalf of such movable estate³,

or

is/are entitled under . . . law to effect all acts in respect of all corporeal or incorporeal movables in the estate, and to act in the interest or on behalf of such movable estate³,

with the exception of: . . .

a) in respect of all assets: . . .

b) in respect of any particular asset or category of assets: . . .

or

is/are entitled under . . . law to effect the acts indicated in the annexed schedule³.

D *Powers, if any, over immovables⁴:*

E *Power to appoint an agent:*

Yes/No

F *Other remarks:*

G *Date, if any, of expiry of the powers:*

H *Date, if any, of the entry into force of the certificate:*

I *Date of the certificate and signatures:*

Drawn up on the . . . at . . .

Signature/seal of the issuing authority:

or

a) Signature/seal of the person drawing up the certificate,
and

b) Signature/seal of the confirming authority.

¹ For married persons, indicate, according to custom, maiden name or name of spouse.

² If the issuing authority knows that the deceased had more than one nationality, it may indicate them.

³ The issuing authority may indicate the capacity in which the holder of this certificate may act (e.g. executor, administrator, heir).

⁴ See Article 30 of the Convention.

Schedule

Acts which may be carried out in respect of the corporeal or incorporeal movables in the estate, and in the interest or on behalf of such estate	Put 'No' against acts which the bearer may not carry out	Severally	Jointly
To obtain all information concerning the assets and debts of the estate To take cognisance of all wills and other documents relating to the estate To take any protective measures To take any urgent measures To collect the assets To collect the debts and give a valid receipt To perform and rescind contracts To open, operate and close a bank account To deposit To let or hire To lend To borrow To charge To sell To carry on a business To exercise the rights of a shareholder To make a gift To bring an action To defend an action To effect a compromise To make a settlement To settle debts To distribute legacies To divide the estate To distribute the residue <i>Any other acts¹:</i>			
Particular assets or categories of assets in respect of which acts cannot be carried out —			
a) Particular assets or categories of assets: b) Acts which may not be carried out:			

¹ See in particular Article 30 of the Convention.