

## MONTEVIDEO TREATY ON COMMERCIAL INTERNATIONAL LAW 1889

### TITLE X - On Bankruptcies\*

**Art. 35:** The Court with bankruptcy jurisdiction over the debtor -whether a person or a corporation - is the Court of his commercial domicile. Jurisdiction of this court will remain notwithstanding the debtor having traded in an occasional way in another State or States, or keeping branches or agents in one or several States.

**Art. 36:** If the bankrupt has two or more economically autonomous businesses in different territories, the Court of each domicile will have bankruptcy jurisdiction in each case.

**Art. 37:** When a bankruptcy order has been made in one State, provisional remedies, provided for the protection of property of the bankrupt, will be available to be enforced over property located in the other States, notwithstanding the rights conferred on local creditors by the following provisions.

**Art. 38:** After complying with the preventive remedy as indicated in the letter rogatory, the court of the State whose co-operation has been requested shall order notices to be advertised during sixty days in all the places where property of the bankrupt is located. These advertisements will give notice of the opening of bankruptcy and of the preventive remedies that have been ordered.

**Art. 39:** Local creditors are enabled to file a petition for a separate involuntary bankruptcy within the time limit fixed in art. 38, starting after the last advertisement of the notice of bankruptcy has appeared. This being the case, completely separate bankruptcy proceedings will be carried on, and the applicable law will be that of the State where each bankruptcy has been opened.

**Art. 40:** In this Treaty a local creditor with rights in a local State bankruptcy proceeding, shall include any individual or company whose rights are enforceable in that state.

**Art. 41:** When there is a case for plurality of bankruptcies, in accordance with the provisions of this title, unclaimed funds after the payment of dividend will remain to the order of the court of the other bankruptcy. There will be judicial co-operation to this end.

**Art. 42:** When there is a case for only one bankruptcy, that owing to the operation of art. 40, or because local creditors have not made use of the rights provided for in art. 45, all of the bankrupt's creditors will file their claims and prove their rights in accordance with the law and before the court of the state that has opened the bankruptcy proceeding.

**Art. 43:** Even in the case of only one bankruptcy, mortgagees and secured creditors, that have acquired their rights at a time previous to the opening of bankruptcy, shall be able to make use of their rights of attachment, seizure and execution before the court of the State where property secured or mortgaged is located.

**Art. 44:** A local priority creditor in the State where a bankruptcy has been opened will remain a priority creditor even while the property over which his rights can be enforced has been carried over to another State where a separate bankruptcy of the same debtor has been opened. This provision will have effect only in cases when the carrying over has taken place during the suspect period.

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\* Ratified by Argentina, Bolivia, Colombia, Paraguay, Peru and Uruguay

**Art. 45:** Authority of administrators in bankruptcy and their agents will be recognized in all the States, provided it is recognized in the State of the Court of the opening of bankruptcy. They shall have powers to perform the duties and to make available all rights as conferred by the laws of the State where the bankruptcy was opened by this Treaty.

**Art. 46:** When there is a case for plurality of bankruptcies, the court of the domicile of the bankrupt will be empowered to make all the disqualification orders concerning the bankrupt.

**Art. 47:** Discharge (rehabilitation) of the debtor will have effect only after it has been granted by all the courts of the States where bankruptcies have been opened.

**Art. 48:** The obtained rules concerning bankruptcy will be applicable to insolvent corporations, no matter what procedure for their liquidation is established by the laws of the contracting States.

## MONTEVIDEO TREATY ON COMMERCIAL AND INTERNATIONAL LAW 1940

### TITLE VIII - On Bankruptcies \*

**Art. 40:** For the purpose of this Treaty, the Court with bankruptcy jurisdiction over the debtor - whether a person or a corporation - is the Court of his commercial domicile (*siège* of administration). Jurisdiction of this court shall remain notwithstanding the debtor having traded in an occasional way in another State or States, or keeping branches or agents in one or several States.

**Art. 41:** But if the bankrupt has two or more economically autonomous businesses in different territories, the Court of each domicile shall have bankruptcy jurisdiction on each case.

**Art. 42:** Advertisement of the opening of bankruptcy proceedings and of all inherent details concerning to it - that should be published according to the law of the State where the bankruptcy order has been made - shall be given by advertisement in all of the States where the bankrupt had kept agencies, branches or establishments. Advertisements shall be made in compliance with the formalities provided for by the local law.

**Art. 43:** When a bankruptcy order has been made in one State, preventive remedies, provided for the protection of property of the bankrupt, will be available to be enforced over property located in the other States in accordance to local law.

**Art. 44:** After complying with the preventive remedy as indicated in the letter rogatory, the court of the State whose co-operation has been requested shall order notices to be advertised during thirty days in all the places where property of the bankrupt is located. These advertisements will give notice of the opening of bankruptcy and of the preventive remedies that have been ordered.

**Art. 45:** Local creditors are enabled to file a petition for a separate involuntary bankruptcy within sixty days after the last advertisement of the notice of bankruptcy as provided in art. 44 has appeared. This being the case, completely separate bankruptcy proceedings will be carried on, and the applicable law will be that of the State where each bankruptcy has been opened. Accordingly, separate and different laws will be applicable to arrangements, compositions under control of the court in each case. Preventive measures will be enforced as provided by art. 43.

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\* Ratified by Argentina, Paraguay and Uruguay

The Administrators of foreign bankruptcies may file an opposition to the local creditor's petition.

Unclaimed funds after payment of dividend shall be acted upon as provided in art. 47.

**Art. 46:** In this Treaty a local creditor with rights in a local State bankruptcy proceeding, shall include any individual or corporation whose rights are enforceable in that State.

**Art. 47:** When there is a case for plurality of bankruptcies, in accordance with the provisions of this title, unclaimed funds after the payment of dividend will remain to the order of the court of the other bankruptcy. There will be judicial co-operation to this end.

**Art. 48:** When there is a case for only one bankruptcy, that owing to the operation of art. 40, or because local creditors have not made use of the rights provided for in art. 45, all of the bankrupt's creditors will file their claims and prove their rights in accordance with the law and before the court of the State that has opened the bankruptcy proceeding.

This being the case, local creditors will have priority over the rest, over the estate located in that State.

**Art. 49:** Authority of administrators of the only bankruptcy and their agents will be recognized in all contracting States. They shall have powers to take all conservative measures, to perform the duties and to make available all rights as conferred by the laws of the State where the bankruptcy was opened. But the execution of property of the bankrupt located without the jurisdiction of the court that opened the bankruptcy will be subject to the *lex situs*.

**Art. 50:** Even in the case of only one bankruptcy, mortgagees and secured creditors that have acquired their rights at a time previous to the final suspect period, shall be able to make use of their rights of attachment, seizure and execution before the court of the State where property secured or mortgaged is located.

**Art. 51:** When there is a case for plurality of bankruptcies, property of the debtor located in the territory of another (third) State where a local bankruptcy has not been opened will become part of the estate of the bankrupt under control of the court that has acted first.

**Art. 52:** When there is a case for plurality of bankruptcies, the court of the domicile of the bankrupt will be empowered to make all the disqualification orders concerning the bankrupt.

**Art. 53:** The obtained rules concerning bankruptcy will be applicable when appropriate, to judicial liquidations, compositions under the control of the court, suspensions of payments, or other similar remedies provided for by the law of the contracting States.