Den originale sprogudgave af denne side PL er blevet ændret for nylig. Den sprogudgave, du kigger på nu, er i øjeblikket ved at blive oversat af vores oversættere.

polsk

Swipe to change

Which country's law applies?

Polen

Der findes ingen officiel oversættelse af den sprogudgave, du ser.
Her kan du få adgang til en maskinoversat udgave af indholdet. Vær opmærksom på, at oversættelsen kun tjener til at give læseren en kontekst.
Indehaveren af siden påtager sig intet som helst ansvar for kvaliteten af den maskinoversatte tekst.

-----engelsk

NOTICE: The answers given below DO NOT APPLY to situations governed by EU law

1 Sources of the rules in force

1.1 National rules

Private International Law Act of 4 February 2011 (consolidated text: Journal of Laws 2015, item 1792), ('the PILA').

1.2 Multilateral international conventions

The Hague Convention of 17 July 1905 relating to deprivation of civil rights and similar measures of protection
The Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions
The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
The Hague Convention of 4 May 1971 on the law applicable to traffic accidents
The Hague Convention of 2 October 1973 on the law applicable to maintenance obligations
Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980
The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children

1.3 Principal bilateral conventions

Poland has signed a number of bilateral agreements on legal transactions, which also set out conflict of law rules. These include agreements with both EU Member States and with third countries. Since instruments which bind EU Member States and include conflict of law rules concerning various subject areas take **precedence** over bilateral agreements signed between Member States, in principle, only third country agreements are currently of practical importance. These include agreements with Belarus (26 October 1994), Russia (16 September 1996), Ukraine (24 May 1993), the Democratic People's Republic of Korea (28 September 1986), Cuba (18 November 1982), Vietnam (22 March 1993) and, by succession (on the basis of the agreement with Yugoslavia dated 6 February 1960), with Bosnia and Herzegovina, Montenegro and Serbia.

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Yes, the court applies conflict of law rules *ex officio.* It also applies foreign law *ex officio* where a conflict of law rule identifies that law as applicable to a specific issue.

2.2 Renvoi

Under Article 5 of the PILA, only reverse renvoi is permitted in Polish law.

Paragraph 1 does not apply if the applicable law was determined:

1) by choice of law;
2) with regard to the form of the legal transaction;
3) with regard to contractual obligations, non-contractual obligations or unilateral legal transactions for which this Act stipulates the applicable law.

2.3 Change of connecting factor

2.4 Exceptions to the normal application of conflict rules

Derogations from application of the law stipulated in the conflict of law rules pertaining to the legal relationship have been set out in Articles 3 and 10 of the PILA.

Article 3(1). *Where the Act requires the application of lex patriae and it is impossible to determine the nationality of the person concerned, they have no nationality or the content of the lex patriae cannot be established, the law of the person's domicile shall apply and, where they have no domicile, the law of the country of their habitual residence shall apply.*

Article 10(1). *Where it is impossible to establish the circumstances which determine the applicability of law, the law with which the legal relationship is most closely connected shall apply. In addition, Polish law shall apply where it is impossible to determine the content of the applicable foreign law within a reasonable amount of time.*

Moreover, Article 67 of the PILA stipulates that where no applicable law has been identified in the PILA, in specific regulations, in international agreements ratified and enforceable in Poland or in EU law, the law governing the legal relationship **should be the law of the country with which that legal relationship is most closely connected**.

2.5 Proof of foreign law

The court identifies and applies foreign law *ex officio* – Article 51a(1) of the Ordinary Courts Organisation Act of 27 July 2001 (consolidated text: Journal of Laws 2019, item 52, as amended).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Relevant conflict of law rules enshrined in the PILA:

Article 28(1): *The law applicable to contractual obligations shall be determined by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177 of 4 July 2008, p. 6).The provisions of the Regulation shall apply where appropriate to contractual obligations excluded from its scope by Article 1(2)(j) of the Regulation referred to in paragraph 1.*

Under Article 29(1) *of the PILA, where Polish law provides for an insurance obligation, the insurance contract shall be governed by Polish law.*

2. Where the law of a European Economic Area Member State which provides for an insurance obligation requires the law of that Member State to be applied to the insurance contract, that law shall apply.

Article 30(1) *With the exception of the cases specified in the Regulation referred to in Article 28, the choice of law of a country other than a European Economic Area Member State with regard to a contract which is closely connected with the territory of at least one Member State may not deprive consumers of the protection awarded to them under the Polish law transposing the following directives:*

1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95 of 21 April 1993, p. 29; OJ EU special edition in Polish, Chapter 15, Volume 2, p. 288);

2) (repealed);

3) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171 of 7 July 1999, p. 12; OJ EU special edition in Polish, Chapter 15, Volume 4, p. 223);

4) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271 of 9 October 2002, p. 16; OJ EU special edition in Polish, Chapter 6, Volume 4, p. 321);

5) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133 of 22 May 2008, p. 66, as amended).

2. Where the law applicable to a contract caught by Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33 of 3 February 2009, p. 10) is the law of a country other than a Member State of the European Economic Area, consumers must not be deprived of the protection they enjoy under the Polish law which transposes that Directive:

1) if any of the real estate is located in one of the Member States, or

2) as regards an agreement which is not directly related to real estate, if an economic operator conducts its business or professional activity in one of the Member States or transfers that activity to one of the Member States in any way and the contract comes under that activity.

Article 31. *An obligation resulting from a security other than a bill of exchange or cheque shall be governed by the law of the country in which that security was executed or issued.*

Article 32(1) *An obligation resulting from a unilateral legal transaction shall be governed by the law chosen by the party performing the transaction. Where both parties to such an obligation are identified, the law shall be chosen, amended or repealed on the basis of an agreement between the parties.*

2. In cases where no express choice of law is made, an obligation resulting from a unilateral legal transaction shall be governed by the law of the country in which the person performing the transaction has their habitual residence or registered office. If the facts of the case suggest that the obligation is more closely related to the law of a different country, the law of that country shall apply.

…

Under ***Article 36****, the effects of an assignment of receivables with respect to third parties shall be determined by the law of the country with jurisdiction over the assigned receivables.*

Article 37. *The law applicable to debt assumption shall be the law of the country with jurisdiction over the assumed debt.*

Article 38. *The effect of a change in the value of a currency on the amount of a liability shall be assessed according to the law applicable to the liability.*

3.2 Non-contractual obligations

The relevant conflict of law rules are enshrined in the PILA:

Article 33. *The law applicable to obligations resulting from events other than legal transactions shall be determined by Regulation No 864/2007/EC of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199 of 31 July 2007, p. 40).*

Article 34. *The Hague Convention of 4 May 1971 on the law applicable to traffic accidents (Journal of Laws 2003/63, item 585) shall determine the law applicable to non-contractual third-party liability resulting from traffic accidents.*

Article 35. *Third-party liability for the actions and omissions of bodies exercising public authority in a given country shall be governed by the law of that country.*

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

Conflict of law rules which apply to the status of a natural person:

A natural person's ***legal capacity and their capacity to perform legal transactions*** *shall be governed by their lex patriae (Article 11(1)).*

2. Where a natural person is performing a legal transaction within the framework of their business, it shall be sufficient that they have capacity to perform that transaction under the law of the country in which the business is based.

3. Paragraph 1 does not preclude application of the law governing the legal transaction if it lays down specific requirements as regards capacity to perform that legal transaction.

Under Article 12, where an agreement has been signed by parties located in the same country, a natural person who has capacity to sign the agreement under the law of that country may invoke incapacity pursuant to the law referred to in Article 11(1) only where the other party was aware of that incapacity when they signed the agreement or where the other party was negligently unaware of that incapacity at that point in time.

2. A natural person who performs a unilateral legal transaction and who has capacity to do so under the law of the country in which the transaction is performed may invoke incapacity pursuant to the law referred to in Article 11(1) only where this will not adversely affect any persons who, acting with due diligence, relied on the assumption that the person performing that legal transaction had the requisite capacity to do so.

3. If a natural person is acting through a representative, the applicability of paragraphs 1 and 2 shall be determined by the relevant circumstances concerning the representative.

4. Paragraphs 1 and 2 shall not apply to legal transactions in the area of family and guardianship law or inheritance law, or to any regulations concerning real estate located in a country other than the country in which the legal transaction was performed.

Under Article 13(1), legal incapacitation *shall be governed by the lex patriae of the incapacitated natural person. Where a Polish court rules on the incapacitation of a foreign national, Polish law shall apply.*

Article 14(1) *requires the application of lex patriae to* ***the presumption or declaration of death*** *of a natural person. Where a Polish court rules on the presumption or declaration of death of a foreign national, Polish law shall apply.*

Under Article 16(1), the personal rights *of a natural person shall be governed by their lex patriae.*
A natural person whose personal rights are threatened or have been violated may demand protection under the law of the country in whose territory the event causing such threat or violation occurred, or under the law of the country in whose territory the effects of the violation occurred.
If the personal rights of a natural person have been violated in the mass media, the right to reply, to a correction or to a similar protective measure shall be governed by the law of the country in which the publisher or broadcaster has its registered office or place of habitual residence.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Conflict of law rules applicable to relationships between parents and children (PILA):

A child's parentage may be established or disputed *under the lex patriae of the child at the time of birth (Article 55(1) of the PILA).If the lex patriae of the child at the time of birth does not permit the establishment of paternity by court order, establishment of paternity by court order shall be governed by the lex patriae of the child at the time when the child's parentage was established. Acknowledgement of a child's parentage shall be governed by the lex patriae of the child at the time of acknowledgement. Where that law does not provide for the acknowledgement of a child, the lex patriae of the child at the time of birth shall apply, provided that it permits such acknowledgement. Acknowledgement of a conceived or unborn child shall be governed by the lex patriae of the mother at the time of acknowledgment.*
Under Article 56(1) of the PILA, the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (OJ L 151 of 11 June 2008, p. 39; Journal of Laws 2010/172, item 1158) ***determines the law applicable to parental responsibility and custody rights****.*
Where the place of the child's habitual residence changes to a country which is not party to the convention referred to in paragraph 1, the law of that country shall thenceforth determine the terms of application of the measures imposed in the country of the child's former habitual residence.
The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children determines the law applicable to the ***guardianship*** *of children (Article 59 of the PILA).*
Where the place of the child's habitual residence changes to a country which is not party to the convention referred to in paragraph 1, the law of that country shall thenceforth determine the terms of application of the measures imposed in the country of the child's former habitual residence.

3.4.2 Adoption

Under Article 57 of the PILA, adoption shall be governed by the lex patriae of the adopting parent.
Joint adoption by spouses shall be governed by their common lex patriae. Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.
As stated in Article 58 of the PILA*, adoption shall be impossible without application of the lex patriae of the prospective adoptee concerning their consent, the consent of their legal representative and the consent of a competent authority, as well as any restrictions on adoption following a change of domicile to a different country.*

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

The capacity to enter into marriage *shall be determined with respect to each of the parties by their lex patriae at the time of marriage (Article 48 of the PILA.)*
In accordance with the provisions of Article 49(1), the form in which the marriage is celebrated *shall be governed by the law of the country in which it is celebrated. If the marriage is celebrated outside Poland, it shall be sufficient to comply with the requirements of the lex patriae of both spouses or the law of the domicile or habitual residence of both spouses at the time when the marriage is celebrated.*
Under Article 50 of the PILA, the law referred to in Articles 48 and 49 shall apply mutatis mutandis to the effects of inability to celebrate the marriage and failure to comply with the requirements concerning the form in which the marriage is celebrated.
The spouses' personal relations and marital property regime shall be governed by their common lex patriae (Article 51(1)).Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.

3.5.2 Unmarried/Cohabiting couples and partnerships

None

3.5.3 Divorce and judicial separation

Under Article 54 of the PILA, dissolution of marriage shall be governed by the common lex patriae of the spouses at the time when they apply for the marriage to be dissolved. Where the spouses do not have a common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled at the time when they apply for the marriage to be dissolved and, where they do not have a common domicile when they apply for the marriage to be dissolved, the applicable law shall be the law of the country in which the spouses had their last common habitual residence, provided that it continues to be the habitual residence of one of the spouses. Polish law shall apply where there are no circumstances enabling the applicable law to be determined.
The above provisions shall apply mutatis mutandis to marital separation.

3.5.4 Maintenance obligations

Under Article 63, the law applicable to maintenance shall be determined by Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7 of 10 January 2009, p. 1).

3.6 Matrimonial property regimes

The spouses' personal relations and marital property regime shall be governed by their common lex patriae (Article 51(1)).Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.
Under Article 52(1) of the PILA, spouses may choose the lex patriae of one of the spouses, or the law of the country in which one of them has a domicile or habitual residence as the law applicable to their marital property regime. The choice of law may also be made before the marriage is celebrated.
Matrimonial property contracts shall be governed by the law chosen by the parties as per paragraph 1. In cases where no express choice of law is made, the matrimonial property contract shall be governed by the law applicable to the spouses' personal relations and marital property regime at the time when the contract was signed. When choosing the law governing the marital property regime or marital contract, it shall be sufficient to retain the form required for marital property contracts under the chosen law or under the law of the country in which the law was chosen.

3.7 Wills and successions

The law applicable to inheritance is set out in Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201 of 27 July 2012, p. 107, as amended).

3.8 Real property

Under Article 41(1) of the PILA, ownership and other property rights shall be governed by the law of the country in which their object is located. The acquisition and loss of ownership and the acquisition, loss or change of the content or priority of other property rights shall be governed by the law of the country in which their object was located when the event which gave rise to the legal effects referred to above occurred.

3.9 Insolvency

The conflict of law rules which determine the law applicable to bankruptcy proceedings are set out in the Bankruptcy Act of 28 February 2003 (consolidated text: Journal of Laws 2019, item 498):

Under Article 460 of the Bankruptcy Act, Polish law shall apply to bankruptcy proceedings instituted in Poland, unless the provisions of this chapter stipulate otherwise.

According to Article 461 of the Bankruptcy Act, the labour of workers employed in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area shall be regulated by the law governing their employment contract.

The law which determines whether a particular object constitutes real estate shall be the law applicable in the place where that object is located.

Agreements on the use or purchase of real estate located in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area shall be governed by the law of the country in which the real estate is located.

Rights relating to real estate located in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area, or to registered sea-going vessels or aircraft, shall be governed by the law of the country which keeps the relevant register.

A declaration of bankruptcy shall not infringe the rights of creditors or any third parties encumbering assets or other property of the bankrupt party located in a different Member State of the European Union or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement of the European Economic Area, not excluding any organised parts of the property and, in particular, the right to dispose of the property to cover any liabilities or the right to cover liabilities from benefits yielded by the property, pledge and mortgage rights, the right to demand the release of the property by the persons responsible for it against the will of the authorised party or the right to use the property as its trustee (Article 462 of the Bankruptcy Act). This shall apply to personal rights and claims entered in land and mortgage registers and in other public registers whose exercise or pursuit results in the creation of the above-mentioned rights.

Under Article 463(1) of the Bankruptcy Act, reservation of the right of ownership to the seller in a sales agreement shall not expire as a result of a declaration of bankruptcy of a domestic bank which is the purchaser of the object of the agreement if, when bankruptcy was declared, the object of the agreement was located in a different Member State of the European Union or a Member State of the European Free Trade Agreement (EFTA) which is party to the Agreement on the European Economic Area.

A declaration of bankruptcy of a domestic bank which is disposing of an asset may not provide a basis for withdrawing from the sales agreement if the object of the sale was transferred before bankruptcy was declared and the object of the sale was located abroad when bankruptcy was declared.

***Under Article 464,** the exercise of the rights which, in order to be created, exist or be disposed of, must be entered in a register, disclosed in an account or deposited in a central deposit, shall be governed by the law of the country in which such registers, accounts or deposits are kept.*

Without prejudice to Article 464, the right of repurchase shall be governed by the law applicable to contractual obligations which governs the agreement giving rise to the right.

Without prejudice to Article 464, the law applicable to contractual obligations which governs transactions concluded in the regulated market shall apply to agreements signed within the framework of transactions performed in the regulated market within the meaning of the Trade in Financial Instruments Act of 29 July 2005.

The offsetting provided for in Article 467 of the Bankruptcy Act shall be governed by the law on contractual obligations which applies to the offsetting agreement.

***Moreover, pursuant to Article 4671**of the Bankruptcy Act, the declaration of bankruptcy shall not infringe the creditor's right to offset their debt against the debt of the bankrupt party where this is allowed under the law applicable to the bankrupt party's debt.*

The enforceability and validity of a legal transaction performed following a declaration of bankruptcy and consisting of the disposal of real estate, a sea-going vessel or aircraft which must be entered in a register, or of the disposal of rights which, in order to be created, exist or be disposed of, must be entered into a register, disclosed in an account or deposited in a central deposit, shall be governed by the law of the country in which the property is located or in which such registers, accounts or deposits are kept.

***Under Article 469 of the Bankruptcy Act**, provisions on the unenforceability and invalidity of a legal transaction performed to the detriment of creditors shall not apply where the law applicable to the transaction does not permit legal transactions performed to the detriment of creditors to be deemed unenforceable.*

Under Article 470 of the Bankruptcy Act, the effects of a declaration of bankruptcy on legal proceedings pending before a court of law of a European Union Member State or a Member State of the European Free Trade Agreement (EFTA) which is party to the Agreement on the European Economic Area shall be assessed under the law of the country in which the proceedings are pending.

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