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Which country's law applies?

Estonia

1 Sources of the rules in force

1.1 National rules

Issues of applicable law are mainly regulated by the [Private International Law Act](#) [*rahvusvahelise eraõiguse seadus*] (hereinafter 'the PILA').

Before the PILA entered into force on 1 July 2002, matters regarding the applicable law were regulated by the General Part of the Civil Code Act [*tsiviilseadustik*].

Furthermore, the priority of the rules deriving from applicable EU law over national law must be taken into account along with the principle deriving from Article 123 of the Constitution of the Republic of Estonia, according to which, when laws or other legislation of Estonia conflict with an international treaty ratified by the Estonian Parliament, the provisions of the international treaty apply. Estonia has also signed four agreements on legal assistance with Russia, Ukraine, Poland, Latvia and Lithuania that also regulate issues of applicable law.

1.2 Multilateral international conventions

Hague Convention on the conflicts of laws relating to the form of testamentary dispositions, signed in The Hague on 4 October 1961 – further information:

<https://www.riigiteataja.ee/akt/78853>.

Convention on the law applicable to contractual obligations, signed in Rome on 19 June 1980 – further information: <https://www.riigiteataja.ee/akt/1026913>.

Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, signed in The Hague on 19 October 1996 – further information: <https://www.riigiteataja.ee/akt/214112011002>.

Protocol on the law applicable to maintenance obligations, signed in The Hague on 23 November 2007 – further information:

https://eur-lex.europa.eu/resource.html?uri=cellar:f30b46bd-fcdd-4b33-8b08-5b06e4a09b88.0022.02/DOC_2&format=PDF.

1.3 Principal bilateral conventions

Agreement between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania on legal assistance and legal relationships, signed in Tallinn on 11 November 1992 – further information: [Estonian State Gazette](#) [*Riigi Teataja*].

Agreement between the Republic of Estonia and the Russian Federation on legal assistance and legal relationships in civil, family and criminal matters, signed in Moscow on 26 January 1993 – further information: [Estonian State Gazette](#).

Agreement between the Republic of Estonia and Ukraine on legal assistance and legal relationships in civil and criminal matters, signed in Kyiv on 15 February 1995 – further information: [Estonian State Gazette](#).

Agreement between the Republic of Estonia and the Republic of Poland on legal assistance and legal relationships in civil, labour and criminal matters, signed in Tallinn on 27 November 1998 – further information: [Estonian State Gazette](#).

European Union Regulations

Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40-49);

Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6-16);

Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1-79);

Regulation (EU) No 650/2012 of the European Parliament and of the Council 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, 27.7.2012, p. 107-134);

Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ L 343, 29.12.2010, p. 10-16);

Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction;

Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (OJ L 141, 5.6.2015, p. 19-72).

2 Implementation of conflict of law rules

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

If a law, international agreement or transaction requires that foreign law be applied, the courts will do so regardless of whether such application is requested. That is to say, the courts' obligation to apply foreign law does not depend on whether a party has requested it (Section 2(1) of the PILA).

In some civil court cases where the parties were entitled to agree on the choice of applicable law, Estonian courts have applied Estonian law instead of foreign law as the parties have implicitly waived their right to choose foreign law.

2.2 Renvoi

Where the PILA requires foreign law to be applied (transmission), the rules of private international law of the relevant country apply. Where such rules require Estonian law to be applied (remission), the rules of Estonian substantive law apply (Section 6(1) of the PILA).

Therefore, where foreign law refers back to Estonian law, the rules of Estonian substantive law are to be applied.

2.3 Change of connecting factor

The creation or exhaustion of a right in rem is to be determined in accordance with the law of the country where the property was situated at the time of creation or exhaustion of the right in rem (Section 18(1) of the PILA). Therefore, if the location of property changes after creation and exhaustion of a right in rem, the law applicable to it also changes. The law of the country of domicile of a natural person applies to their passive and active legal capacity (Section 12(1) of the PILA). Therefore, if a person's country of domicile changes, the law applicable to their passive and active legal capacity also changes. However, the Act also provides that a change of domicile does not restrict already acquired active legal capacity (Section 12(3) of the PILA).

2.4 Exceptions to the normal application of conflict rules

Foreign law is not applied if this results in obvious conflict with the essential principles of Estonian law (public order). In such cases, Estonian law is to be applied (Section 7 of the PILA).

Whether or not the foreign law provides for a legal rule that does not exist in Estonian law is not decisive in such cases; instead, under the public order clause, Estonian law is to be applied in place of foreign law where application of the latter would result in a clear conflict with the essential principles of Estonian law.

The legislation applicable to contractual obligations also provides that the provisions of the relevant Chapter in the PILA do not prejudice the application of such provisions of Estonian law that are applicable, regardless of the law governing contracts (Section 31 of the PILA). Section 32(3) of the Act further points out that the fact that parties have chosen foreign law to govern a contract, regardless of whether or not they also have chosen foreign jurisdiction, does not, where all the elements relevant to the contract at the time of the choice are only connected with one country, prejudice the application of such rules of the law of that country, and that these cannot be derogated from by contract (mandatory rules).

2.5 Proof of foreign law

Although it is provided as a general principle that the courts must apply foreign law in situations where this is required by a law, international agreement or transaction regardless of whether such an application is requested (Section 2(1) of the PILA), the authorities and courts may request the assistance of the parties or government authorities in determining the foreign law to be applied.

While the parties may submit documents to the courts in order to determine the content of foreign law, the courts are not required to adhere to such documents (Section 4(2) of the PILA). The courts also have the right to request assistance from the Ministry of Justice or the Ministry of Foreign Affairs of the Republic of Estonia and to engage experts (Section 4(3) of the PILA).

The parties in a civil procedure are only required to prove law in force outside of the Republic of Estonia, international law or customary law in so far as the court is not acquainted with such law in compliance with Section 234 of the Code of Civil Procedure (hereinafter 'the CCP'). The court may also use other sources of information and perform other acts to determine the content of law, as described in the previous paragraph in reference to Section 4 of the PILA. The courts' right to request information to determine the content of the law to be applied is based upon the adversarial principle of civil procedure. This principle is mainly expressed by Sections 5(1) and (2) of the Code of Civil Procedure, which provide that proceedings in an action are conducted on the basis of the facts and petitions submitted by the parties based on the claim, and that the parties have equal rights and opportunities to substantiate their claims and refute or contest the submissions of the opposing party. In doing this, a party may choose the facts that it submits in order to substantiate its claim as well as the evidence to prove such facts.

The law also allows for exceptions whereby Estonian law is applicable when the content of foreign law cannot be determined within a reasonable period of time despite all efforts (Section 4(4) of the PILA).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Similarly to other matters of private international law, the law governing contracts is regulated by the PILA in Estonia, unless otherwise prescribed by international legislation. The law governing a contract may also be determined on the basis of an agreement between the parties or, where the PILA does not entitle the parties to choose the applicable law, on the basis of the applicable law determined using the established criteria. As, in accordance with Section 3 (2) of the Bankruptcy Act, the provisions of the Code of Civil Procedure apply to bankruptcy proceedings unless otherwise provided by the Bankruptcy Act and, pursuant to Section 8(1) of the Code of Civil Procedure, case proceedings in court are conducted on the basis of Estonian civil procedure law, the law applicable to the bankruptcy proceedings conducted in Estonia is Estonian law or the law applicable on the basis of an agreement between the parties or, in the absence of such an agreement, the applicable law determined on the basis of the criteria provided for in the PILA.

The PILA lays down that contracts must be governed by the law of the country agreed upon by the parties. The parties may choose the law governing the whole contract or a part thereof if the contract is divisible in such a manner (Sections 32(1) and (2) of the Act). However, the choice of the governing law by agreement is not absolute. Section 32(3) of the Act states that the fact that the parties have chosen foreign law to govern a contract, regardless of whether or not they have also chosen foreign jurisdiction, does not, where all the elements relevant to the contract at the time of the choice are only connected with one country, prejudice the application of such rules of the law of the country which cannot be derogated from by contract (mandatory rules).

Where the parties have not chosen the law governing a contract, the contract is governed by the law of the country with which the contract is most closely connected. If the contract is divisible and a part of the contract is independently more closely connected with another country, such part may be governed by the law of that other country (Section 33(1) of the PILA).

A contract is presumed to be most closely connected with the country where the party that is to perform the obligation characteristic of the contract has, at the time of conclusion of the contract, its domicile or, in the case of the management body of that party, its seat. If the contract is concluded in the course of the trade or profession of the party that is to perform the obligation characteristic of the contract, the contract is presumed to be most closely connected with the country where the principal place of business of that party is situated. If the contract requires the obligation characteristic of the contract to be performed in a place of business other than the principal place of business, the contract is presumed to be most closely connected with the country where such other place of business is situated (Section 33(2) of the PILA).

For immovable property and contracts of carriage, derogations from the general rule on the place of performance of a contract are provided for. If the object of a contract is a right in immovable property or a right to use immovable property, the contract is presumed to be most closely connected with the country where the immovable property is situated (Section 33(4) of the PILA). For a contract of carriage, the contract is presumed to be most closely connected with the country where the principal place of business of the carrier is situated at the time the contract is concluded, if the place of departure or destination or, in the case of a contract for carriage of goods, the principal place of business of the consignor or the place of loading or discharge is also situated in the same country (Section 33(5) of the PILA).

Special rules also apply to consumer contracts (Section 34 of the PILA), employment contracts (Section 35 of the PILA) and insurance contracts (Sections 40-47 of the PILA). The purpose of these special rules is to ensure protection of the consumer, employee and policyholder as a weaker party to the contract.

In the case of consumer contracts, it is also possible to determine the law governing the contract by agreement, but such agreement may not result in depriving the consumer of the protection afforded to them by the mandatory rules of their country of domicile if: 1) in the country of domicile of the consumer, entry into the contract was preceded by a specific offer addressed to the consumer or by advertising, and the consumer has performed in that country all the acts necessary for entry into the contract; 2) the consumer's contractual party or a representative thereof has received the consumer's order in the country of domicile of the consumer; 3) the contract is for the sale of goods and the consumer has travelled from their country of domicile to another country and has made their order there, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to enter into the contract.

In the absence of an agreement on governing law, consumer contracts are governed by the law of the country of domicile of the consumer.

In the case of an employment contract, the choice of law may not result in depriving the employee of the protection afforded to them by the mandatory rules of the law of the country which would be applicable in the absence of a choice of law. In the absence of a choice of law, an employment contract is governed

by the law of the country in which: 1) the employee habitually carries out their work in performance of the contract, even if they are temporarily employed in another country; 2) the place of business through which the employee was recruited is situated, if the employee does not habitually carry out their work in any one country.

Insurance contracts are subject to somewhat more specific rules. Sections 42-44 prescribe the terms and conditions on which agreements on governing law may be based. If the parties to an insurance contract have not agreed on the law governing said contract and the domicile or managing body of the policyholder and the insured risk are situated in the territory of the same country, the law of that country applies (Section 45(1) of the PILA). If these requirements are not met, the law of the country with which the contract is most closely connected applies. It is presumed that the contract is most closely connected with the country in which the insured risk is situated (Section 45(2) of the PILA).

3.2 Non-contractual obligations

Estonian law provides for different grounds for choice of law depending on the nature of the non-contractual obligation in question.

Claims against unjust enrichment that arise from the performance of an obligation are governed by the country's law that governs the actual or presumed legal relationship on the basis of which the obligation was performed; claims against unjust enrichment that arise from the violation of a right of another person are governed by the law of the country in which the violation occurred. In other cases, claims arising from unjust enrichment are governed by the law of the country in which unjust enrichment occurred (Section 48¹ (1)-(3) of the PILA).

Claims arising from *negotiorum gestio* are governed by the law of the country where the *negotiorum gestor* performed the act, and claims arising from the performance of the obligations of another person are governed by the law governing such obligations (Sections 49(1)-(2) of the PILA).

As a general rule, claims arising from the unlawful causing of damage are governed by the law of the country where the act or event that serves as a basis for causing the damage was performed or occurred. If the consequences do not become evident in the country where the act or event on which the claim is based was performed or occurred, the law of the country where the consequences of the act or event arose are to be applied at the request of the injured party (Sections 50(1)-(2) of the PILA). However, a restriction applies to the compensation payable for the unlawful causing of damage. If a claim arising from unlawful causing of damage is governed by foreign law, such compensation ordered in Estonia must not be significantly greater than the compensation prescribed for similar damage by Estonian law (Section 52 of the PILA).

The act also allows the parties to agree to apply Estonian law after the occurrence of an event or performance of an act from which a non-contractual obligation arises. The choice of law does not affect the rights of third parties (Section 54 of the PILA).

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

No distinct rules on applicable law apply to personal names under Estonian law.

Estonian law applies to determining the domicile of a natural person (Section 10 of the PILA). The citizenship of a natural person is determined pursuant to the law of the country whose citizenship is to be decided; if a natural person has several citizenships, the citizenship of the country with which the person is most closely connected applies; and for a stateless person, a person whose citizenship cannot be determined or a refugee, the domicile of the person is applied instead of their citizenship (Sections 11(1)-(3) of the PILA).

The law of the country of domicile of a natural person applies to their passive and active legal capacity, but a change of domicile does not restrict the active legal capacity already acquired (Sections 12(1)-(2) of the PILA).

A special rule specifies when a person may claim incapacity; however, transactions arising from family law or the law of succession and transactions concerning immovables situated in another country are exempt from the rule (Section 12(4) of the PILA). The general rule, however, provides that if a person enters into a transaction while lacking active legal capacity or while their active legal capacity is restricted under the law of their country of domicile, that person is not allowed to claim incapacity if they do have active legal capacity under the law of the country in which they entered into the transaction. The general rule does not apply if the other party was or should have been aware of the person's absence of active legal capacity (Section 12(3) of the PILA).

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Family law relationships between a parent and a child are governed by the law of the country of domicile of the child (Section 65 of the PILA). The reciprocal rights and duties of parents and children derive from the children's parentage, which is determined in accordance with the procedure laid down by law; parentage is not subject to distinct rules on applicable law.

Parentage is to be determined or contested under the law of the child's country of domicile at the time of birth; in special cases, however, parentage may also be determined or contested under the law of a parent's country of domicile or the child's country of domicile at the time of the contestation (Section 62 of the PILA).

3.4.2 Adoption

Adoption is governed by the law of the country of domicile of the adoptive parent. Adoption by spouses is governed by the law governing the general legal consequences of the marriage at the time of adoption (Section 63(1) of the PILA). This means that adoption by spouses is mainly governed by the law of the shared country of domicile of the spouses (Section 57(1) of the PILA), but the Act also lists a cascade of alternative grounds for the choice of law for cases where the spouses do not share a country of domicile (Sections 57(2)-(4) of the PILA).

If adopting a child under the law of the child's country of domicile requires the consent of the child or another person in a family law relationship with the child, the law of that country applies to the consent (Section 63(2) of the PILA).

If an adoption is governed by foreign law or if a child is adopted on the basis of a foreign court judgment, the Act separately specifies that such an adoption has the same effect in Estonia as it does pursuant to the law under which the child was adopted (Section 64 of the PILA). It should also be emphasised that when adopting a child whose domicile is in Estonia, all other conditions for adoption arising from Estonian law must also be met, as required by the law of the child's or spouses' country of domicile (Section 63(3) of the PILA).

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

3.5.1 Marriage

The general legal consequences of a marriage are mainly to be determined by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), but the Act also lists a sequence of alternative grounds for the choice of applicable law for cases where the spouses do not share a country of domicile: the same citizenship, last shared country of domicile if one of the spouses still resides in the same country or, failing the above, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).

Estonian law applies to the procedure for marriage in Estonia. A marriage that took place in a foreign country is deemed valid in Estonia if it was concluded pursuant to the appropriate procedure laid down by the law of the country in which the marriage took place and met the material prerequisites for a marriage specified by the laws of the countries of domicile of both spouses (Sections 55(1)-(2) of the PILA).

As a general rule, the prerequisites for and hindrances to marriage and the consequences arising therefrom are governed by the law of the country of domicile of the prospective spouse (Section 56(1) of the PILA). A previous marriage of a prospective spouse is not a hindrance to concluding a new marriage if the previous marriage has been terminated by a decision made or recognised in Estonia, even if that decision does not comply with the law of the country of domicile of the prospective spouse (Section 56(3) of the PILA).

A special rule applies to Estonian citizens in respect of the law applicable to the prerequisites for marriage; this states that if an Estonian citizen does not meet a prerequisite for marriage under the law of their country of domicile, Estonian law applies if the person meets the prerequisites for marriage under Estonian law (Section 56(2) of the PILA).

3.5.2 Unmarried/Cohabiting couples and partnerships

Estonian law provides no applicable law rules for cohabitation or partnership. The rules laid down for the most similar legal relationships in the PILA should be applied in determining the applicable law. Depending on the nature of the cohabitation or partnership, the rules applicable to contractual obligations or family law relationships may be appropriate.

3.5.3 Divorce and judicial separation

Divorces are granted according to the law governing the general legal consequences of the marriage that is applicable at the time of commencement of the divorce proceeding (Sections 60(1) and 57 of the PILA). This means that divorces are primarily governed by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), but the Act also lists a sequence of alternative grounds for the choice of applicable law for cases where the spouses do not share a country of domicile: the same citizenship, last shared country of domicile if one of the spouses still resides in the same country or, failing the above, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).

As an exception, Estonian law may be applied instead of foreign law if a divorce is not permissible under the law governing the general legal consequences of the marriage (Section 57 of the PILA) or is permissible only under extremely strict conditions. This exception applies provided that one of the spouses resides in Estonia or has Estonian citizenship or resided in Estonia or had Estonian citizenship at the time of celebration of the marriage (Sections 60(1)-(2) of the PILA).

3.5.4 Maintenance obligations

There are no national rules of private international law applicable to maintenance obligations arising from family relationships and references to relevant international legislation are provided.

3.6 Matrimonial property regimes

Spouses are allowed to choose the law applicable to their proprietary rights in respect of marital property. Therefore, if the spouses have chosen the applicable law, the law of their choice will be applied. However, spouses are not allowed to choose the law of any country they wish. They may choose between the law of the country of domicile of one of the spouses and that of the country of citizenship of one of the spouses. If a spouse has several citizenships, the law of any of the countries of citizenship may be chosen (Section 58(1) of the PILA).

In Estonia, the choice of applicable law is subject to mandatory formal requirements. The choice of law applicable to the proprietary rights of spouses must be notarised. If the applicable law is not chosen in Estonia, the choice of law is formally valid if the formal requirements for marital property contracts prescribed by the law chosen are complied with (Section 58(2) of the PILA).

If the spouses have not chosen the applicable law, the proprietary rights of the spouses are governed by the law applicable to the general legal consequences of the marriage at the time they concluded their marriage (Sections 58(3) and 57 of the PILA). The general legal consequences of marriage are primarily governed by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), in the absence of which the law of the spouses' shared country of citizenship, the law of their last shared country of domicile if one of the spouses still resides in the same country or, in the absence of all three, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).

3.7 Wills and successions

Succession is governed by the law of the last country of domicile of the testator. A person may stipulate in their will or a succession contract that the law of the country of their citizenship applies to their estate. Such a stipulation is invalid if the person is no longer a citizen of the corresponding country at the moment of their death.

The law governing succession determines, in particular, the following: 1) the types and effect of testamentary dispositions; 2) the capacity to inherit and disinherit from succession; 3) the extent of succession; 4) the successors and the relationships between them; and 5) the liability for the debts of the testator.

The Hague Convention of 1961 on the conflicts of laws relating to the form of testamentary dispositions applies to the form of wills and succession contracts. A person may make, amend or revoke their will if they have the relevant capacity under the law of the country of their domicile at the time of making, amending or revoking the will. If, according to the law of that country, the person does not have the legal capacity to make a will, they may make, amend or revoke their will if they are entitled thereto according to the law of the country of which the person was a citizen at the time of making, amending or revoking the will. A change of domicile or citizenship does not restrict any already acquired legal capacity to make a will. The foregoing applies to the capacity of a person to enter into, amend or terminate a succession contract, respectively.

Succession contracts are governed by the law of the country of domicile of the testator at the time of entry into the contract or by the law of the country of citizenship if so determined by that person. The governing law determines the admissibility, validity, content and binding force of a succession contract, and the consequences of the contract under the law of succession.

At the time reciprocal will is made, it must comply with the laws of the countries of domicile of both testators or with the law of the country of domicile of one of the spouses, jointly chosen by the testators.

3.8 Real property

The creation or exhaustion of a right in rem is determined on the basis of the law of the country in which the property was situated at the time of creation or exhaustion of the right. A limitation is prescribed – a right in rem must not be exercised in conflict with the essential principles of the *lex situs* of the property (Section 12(2) of the PILA).

3.9 Insolvency

As, in accordance with Section 3(2) of the Bankruptcy Act, the provisions of the Code of Civil Procedure apply to bankruptcy proceedings unless otherwise provided by the Bankruptcy Act and, pursuant to Section 8(1) of the Code of Civil Procedure, case proceedings in court are conducted on the basis of Estonian civil procedure law, the law applicable to bankruptcy proceedings conducted in Estonia is Estonian law.

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