

1 Which are the rights in rem that could arise from a succession under the law of this Member State?

PRELIMINARY NOTE

First of all it should be noted that rights in rem can be rights of use (*direitos reais de gozo*) or rights of security (*direitos reais de garantia*).

Secondly, besides rights in rem over material objects, part of the doctrine defends the existence of rights in rem over immaterial objects.

Finally, in Portugal the law enshrines the principle of *numerus clausus*, or the exhaustive nature of rights in rem (Article 1306 of the Civil Code (*Código Civil*)).

RIGHTS THAT MAY BE SUBJECT TO SUCCESSION

The body of rights that do not expire on the death of their holder but continue beyond it may be subject to succession.

Article 2025 of the Portuguese Civil Code (*Código Civil*) states the following as regards what can be subject to succession:

'1 - Legal relationships that are extinguished by the death of their respective owner, by reason of their nature or by force of law, are not subject to succession.

2 - Waivable rights may also be extinguished upon the death of the holder if the holder so provided.'

By way of example, usufruct and the right in rem of use and habitation are rights in rem that are extinguished by the death of their holder, by force of law

(Articles 1476(1)(a) and 1485 of the Civil Code (*Código Civil*)).

The current version of the Civil Code can be consulted in Portuguese at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&so_miolo=&

With the exception of usufruct, of the right in rem of use and habitation, of rights in rem that fall under any of the situations provided for in Article 2025 of the Civil Code, or other cases specifically provided for in other legal provisions, as a rule the remaining rights in rem may be subject to succession.

There are limitations on certain rights, such as rights in rem concerning declared weapons, which can only be subject to succession under certain conditions referred to in Article 37 of the legal framework on weapons and ammunition (*Regime Jurídico das armas e munições*), which reads as follows:

'1 - The acquisition by succession to the estate of a deceased person of any declared weapon is permitted by authorisation of the national director of the *polícia de segurança pública* – PSP (police force).

2. For the purposes of the preceding paragraph, the existence of weapons must be declared to the PSP within 90 days of the death of the previous owner, or on discovery of the weapons by whoever has them in their possession.

3 - The national director of the PSP may authorise the weapon to be registered in the name of the estate administrator until the partition of property of the deceased person, in which case it is mandatory to deposit the weapon in the custody of the PSP.

4 - In the event that the administrator of an estate or other heir meets the legal conditions for possession of the weapon, registration can be requested in their name, if it remains in their custody.

5 - On the application of the estate administrator, the weapon may be transferred to a party who meets the criteria for possessing it, the acquiring party being chosen by the interested party; or the weapon may be sold at auction by the PSP, with the value of the conveyance, net of charges, paid to the estate.

6 - After partition is complete, the weapon will be given to the beneficiary heir, provided they meet the legal conditions for possessing it.

7 - After 10 years without any claim on the property, it will be declared forfeited to the State.'

The legal framework on weapons and ammunition approved by Law No 5/2006 of 23 February 2006 can be consulted in Portuguese at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=692&tabela=leis&so_miolo=

RIGHTS IN REM OF USE

The law provides for the following rights in rem of use (Articles 1302 to 1575 of the Civil Code and legal framework on timesharing (*Regime Jurídico da Habitação Periódica*) referred to below):

Right of ownership (*direito de propriedade*)

Joint ownership (*compropriedade*)

Apartment ownership (*propriedade horizontal*)

Usufruct (*usufruto*)

Right in rem of use and habitation (*direito real de uso e habitação*)

Timesharing rights in rem (*direito real de habitação periódica*)

Right of superficies (*direito de superfície*)

Easements (*servidões prediais*).

The legal framework on timesharing was approved by the Decree-Law No 275/93 of 5 August 1993, which can be consulted in Portuguese at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=648&tabela=leis

RIGHTS IN REM RELATING TO GUARANTEES

The Civil Code provides for the following rights in rem relating to guarantees:

Rent assignment (*Consignação de rendimentos*) – Article 656

Pledge (*Penhor*) – Article 666

Mortgage (*Hipoteca*) – Article 686

Real estate privilege (*Privilégios imobiliários*) – Articles 743 and 744

Lien (*Direito de retenção*) – Articles 754 and 755.

RIGHTS IN REM OVER MATERIAL OBJECTS

Article 1302 of the Civil Code provides that only movable or immovable material objects (including water) can be subject to the right of ownership governed by that code.

RIGHTS IN REM OVER IMMATERIAL OBJECTS

Article 1303 of the Civil Code refers to intellectual property, which is in turn governed by the Industrial Property Code (*Código da Propriedade Industrial*). Part of the doctrine establishes that intellectual property is a concept that incorporates copyright and related rights, and industrial property. Portuguese law maintains the two denominations: intellectual property (in the Civil Code) and industrial property (in the Industrial Property Code).

According to Article 1 of the Industrial Property Code, the fisheries, agriculture, forestry, livestock and the extractive industries, industry and trade in the strict sense, as well as all natural or manufactured products and services, fall within the scope of industrial property.

The doctrine is not unanimous as to whether national law accepts the right of ownership and other rights in rem over immaterial objects, e.g. ownership of a commercial establishment or intellectual property. This matter is subject to interpretation by the courts.

The Industrial Property Code governs rights to patents, utility models, semiconductor products, designs, trade marks, rewards, logos, designations of origin and geographical indications, as well as their modification and transfer.

Rights arising from patents and utility models, as well as records of topographies of semiconductor products, designs and trade marks, and other distinctive trade signs may be given as pledges – Article 6 of the Industrial Property Code.

The updated version of the Industrial Property Code can be consulted in Portuguese at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?tabela=leis&artigo_id=438A0002&nid=438&nversao=&tabela=leis&so_miolo=

With respect to commercial companies, succession to rights over participating interests or shareholdings due to the death of one of the partners and the requirements thereof are regulated in the Companies Code (*Código das Sociedades Comerciais*), namely:

Article 184, with respect to succession due to the death of a member of an ordinary partnership,

Article 198, 225 and 252, with respect to succession due to the death of a member of a private limited company,

Articles 469 and 475, with respect to succession due to the death of a partner of a limited partnership.

The updated version of the Commercial Companies Code can be consulted in Portuguese at

[http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=524&tabela=leis&so_miolo=&](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=524&tabela=leis&so_miolo=)

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Yes, as a rule these rights are recorded in a register, as explained below.

LAND REGISTRY OFFICES

At Land Registry Offices (*Conservatórias do Registo Predial*), acts relating to the legal status of buildings are recorded, including the following rights in rem (Articles 1 and 2 of the Land Registry Code (*Código de Registo Predial*)):

Legal acts determining the establishment, recognition, acquisition or modification of rights of ownership, usufruct, use and habitation, surface or easement;

Legal acts determining the establishment or modification of horizontal property and timesharing rights;

Land ownership changes resulting from the dividing up of land, the conversion of the joint ownership structure and division, as well as the respective amendments;

Offer of conveyance or encumbrance, preferential covenants and preferential provision of a will, if they have been given real effect, as well as the assignment of the contractual position arising from these facts;

Assignment of property to creditors;

Mortgage, its assignment or modification, assignment of the degree of priority of the respective registration and the rent assignment;

Transfer of receivables secured by mortgage or rent assignment, when transfer of guarantee is important;

Lease for more than six years and its transfers or subleases, except for tenant farming;

Pledge of credit secured by mortgage or rent assignment, and any other acts or arrangements affecting the same receivables;

Any other restrictions on the right of ownership, subject to registration under law;

Legal acts that bring about the extinction of rights, encumbrances or registered charges.

It is mandatory to record the facts cited above, with the exception of those listed in Article 8A of the Land Registry Code.

Pursuant to Article 687 of the Civil Code, the mortgage must be registered, or will not otherwise be recognised in relation to the parties.

The conditions for the registration of land are specified in the following legal provisions of the Land Registry Code:

Those subject to the obligation to register, the deadlines and eligibility of rights over real estate are set out in Articles 8-B, 8-C, 8-D and 9;

Pre-registration, continuation of registration – in particular the principle of succession in title and exemption from pre-registration in the purchase ledger based on partition/succession – are set out in Articles 34 to 35;

Eligibility to apply for registration and the possibility of representation are provided for in Articles 36 to 39;

The form and means of submitting an application for registration – in particular the right to register electronically – are laid down in Articles 41 to 42-A;

The documents to be submitted are those provided for in Articles 43 to 46.

The land registry code can be consulted in Portuguese at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=488&tabela=leis

More detailed information on land, commercial and automobile register applications, such as how to send the application, the requirements and services, is available online at <http://www.irn.mj.pt/sections/empresas>.

COMMERCIAL REGISTRY OFFICES

At Commercial Registry Offices, acts intended to publicise the legal status of individual traders, commercial companies, civil law associations in commercial form and individual establishments with limited liability are recorded. The registration of certain acts concerning the legal status of cooperatives, public undertakings, complementary groups of undertakings and European economic interest groupings is also recorded at Commercial Registry Offices.

The acts set out in Article 15 of the Commercial Registry Code (*Código de Registo Comercial*) must be recorded in the register at Commercial Registry Offices, namely:

'Article 15 (Acts subject to mandatory registration)

1 - The registration of the acts referred to in paragraphs (a) to (c) and (e) to (z) of Article 3(1) and (2), Article 4, Article 5(a), (e) and (f), Articles 6, 7 and 8 and Article 10(c) and (d), is mandatory.

2 - Except as provided for in the following paragraphs, registration of the acts referred to in the preceding paragraph must be requested within two months of the date of issue.

3 - The acts referred to in Article 5(a), (e) and (f) must be requested within two months of the date of publication of the decree determining them.

4 - The application for registration of company accounts and the accounts of individual establishments with limited liability must be made by the 15th day of the seventh month following the end of the financial year.

5 - The actions, decisions, procedures and precautionary measures provided for in Article 9 are also subject to mandatory registration.

6 - The registration of the interim order is not mandatory if the application to register the requested precautionary measure has already been made, and the registration thereof is not mandatory if the application for registration of the main action has already been made.

7 - The registration of the actions and the interim orders for suspension of company resolutions must be requested within two months of the date of their proposal.

8 - The registration of final decisions pronounced in the actions and orders referred to in the preceding paragraph must be requested within two months of the final and unappealable decision.'

The conditions for registration in the commercial register are specified in Articles 28 to 53 of the Commercial Registry Code.

Pursuant to Article 32(1) and (2) of the Commercial Registry Code:

Only acts established in documents that legally substantiate them can be registered;

Documents written in a foreign language can only be accepted when translated, unless they refer to facts that are subject to registration by transcription, are written in English, French or Spanish, and the competent official is fluent in that language.

As regards fiscal obligations, under Article 51(1) of the Commercial Registry Code, no act subject to charges of a fiscal nature may be definitively registered without the tax duties being paid or secured.

The Commercial Registry Code can be consulted in Portuguese at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=506&tabela=leis

REGISTRATION OF SECURITIES

The following, among others qualified as such by law, are eligible as securities:

Stocks and shares;

Bonds;

Equity;

Units in collective investment undertakings;

The liable rights of the securities referred to in the previous paragraphs, provided the liability covers the entire issue or series, or is provided for at the time of issue;

Autonomous warrants;

Other documents representing homogeneous legal situations, provided they are able to be transferred on the market.

Securities are in registered form (Article 52 of the Portuguese Securities Code (*Código de Valores Mobiliário*)).

The acquisition of securities, as well as the establishment, modification or extinction of usufruct, pledge or other legal situations that encumber securities are registered (as a rule with the issuing entity or with a management entity) and may be subject to succession.

The registration of securities, the registration entities, registration requirements, the effects of registration on the establishment, transfer and exercise of rights and succession to such rights, vary according to the categories of property referred to above.

This matter is governed by the Portuguese Securities Code, approved by DecreeLaw No 486/99 of 13.11.1999, the updated version of which is available in Portuguese at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=450&so_miolo=&tabela=leis&nversao=

REGISTRIES OF MOTOR VEHICLES

Facts relating to the legal status of motor vehicles and their trailers are recorded at Registries of Motor Vehicles (*Conservatórias do Registo Automóvel*).

For the purpose of registration, vehicles are considered to be motor vehicles and their trailers which, under the Highway Code (*Código da Estrada*), are subject to registration.

Article 117 of the Highway Code states which vehicles and trailers are subject to compulsory registration. The Highway Code approved by Decree-Law No 114/94 of 3.5.1994, in its updated version, can be consulted in Portuguese at:

http://www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=349&nversao=&tabela=leis&so_miolo=

Article 5 of the Motor Vehicle Registration Code (*Código de Registo Automóvel*) provides for the following with respect to mandatory motor vehicle registration:

'Article 5

1 - The following are subject to registration:

a) Right of ownership and of usufruct;

b) Retention of title stipulated in contracts for the sale of motor vehicles;

c) The mortgage, modification and assignment thereof, as well as assignment of the degree of priority of the respective registration;

d) The financial lease and the transfer of rights arising therefrom;

e) Rental for a term exceeding one year, when the respective contract results in the existence of an expectation of transfer of ownership;

f) Allocation of the vehicle for rental without a driver;

g) The transfer of registered rights or credits and the pledge, provisional attachment and seizure of such credits;

h) The seizure, provisional attachment, inventory or confiscation, confiscation in criminal proceedings or any other judicial or administrative measures or acts that affect the free disposal of vehicles;

i) The burdens of inalienability or unavailability provided for in tax legislation;

j) The expiry or modification of rights or charges previously registered, a change in the composition of the name or denomination and the change of habitual residence or head office of the owners, usufructuaries and lessees of the vehicles;

l) Any other legal acts subject to registration by law.

2 - The acts referred to in points a), b), d), e), f) and i) and registration of the change of name or denomination and habitual residence or head office of the owners, usufructuaries and lessees of the vehicles.

3 - Registration of ownership, in the event of hereditary succession, is waived when the vehicle is intended to be transferred by the heir(s).'

Motor vehicles cannot be pledged – Article 8 of the Automobile Registration Code.

The conditions for motor vehicle registration are set out in Article 11 of the Motor Vehicle Registration Code:

'Article 11

1 - No act that is annotated on the registration certificate or that concerns the removal or amendments of facts recorded therein may be carried out without the certificate previously issued being presented.

2 - The provisions of the preceding paragraph do not apply:

a) In the event of loss or destruction of the registration certificate;

b) In cases of applications for registration of vehicles made on the Internet.

3 - Where registration is requested by an interested party that does not hold the registration certificate, the registrar must notify the holder of that certificate,

pursuant to paragraph 2 of the preceding article, without prejudice to registration.

4 - If the notification is not made, or the certificate is not sent to the registrar within the established period, the registrar shall request the seizure of this document from any administrative or police authority.'

Motor Vehicle Registration is governed by Decree-Law No 54/75 of 12 December 1975, which can be consulted at

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=598&tabela=leis

NATIONAL REGISTER OF AIRCRAFT

Aircraft or autonomous equipment (engine, rotor, propeller, etc.) must be registered on the National Register of Aircraft.

The application for registration is made using the form accompanied by the following documentation:

Bill of Sale or other document proving sale;

Certificate of scrapping on the aircraft register of the country of previous registration, or certificate of non-registration;

Certificate of customs clearance in the case of an aircraft imported from a non-EU country;

Two photographs of the aircraft, one front and one profile, with the nationality and registration marks painted, in 9x12 format, borderless and printed in neutral colours.

Documents issued in foreign countries must contain the signatures of persons duly notarised and legalised, with the Apostille affixed, in accordance with the provisions of Articles 3 and 4 of the Hague Convention of 5 October 1961 abolishing the requirement of legalisation for foreign public documents, ratified by Decree-Law No 48450 dated 24 June 1968, or duly notarised and legalised by a Portuguese diplomatic or consular agent in that country.

Documents issued in Portugal by a legal entity must bear the signatures of the legal representatives recognised by law with the words 'duly authorised in due exercise of their powers.'

Further information can be found on the website of the National Civil Aviation Authority (*Autoridade Nacional de Aviação Civil*)

<http://www.anac.pt/vPT/Generico/Aeronaves/RegistoAeronauticoNacional/RegistodeAeronaves/Paginas/RegistodeAeronaves.aspx>

REGISTER OF VESSELS

The registration of vessels is governed by the General Regulation on Port Authorities (*Regulamento Geral das Capitanias*) –

Decree-Law No 265/72 of 31 July 1972 – in its most up-to-date version, which can be consulted at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1721&tabela=leis&ficha=1&pagina=1&so_miolo=&

In addition, Decree-Law No 96/89 of 28 March 1989 establishing the International Vessel Registry of Madeira and Ministerial Implementing Order No 715/89 of 23 August 1989, which governs certain aspects thereof, are applicable.

Under this legal framework:

National vessels, with the exception of those belonging to the Navy, must have registered ownership in order to carry out the activity under which they are classified;

Merchant vessels are also subject to commercial registration pursuant to the relevant law;

National vessels are registered with maritime offices, except for recreational craft, which are registered with the organisations indicated in the prevailing legislation;

In the case of new acquisitions or new constructions, the maritime office indicated in the respective authorisation is competent;

In the case of acquisitions or replacement constructions, the maritime office in which the replaced units were registered is competent for registration;

A vessel constructed or acquired at a port in any part of the national territory may be sold or registered in another port of the same or other part of the territory, provided it has the corresponding authorisation;

Light vessels on board, even if they are lifeboats, small auxiliary fishing vessels and small unmotorized beach craft without sails, such as dinghies, skiffs, inflatable boats and pedalos, for use up to 300 m at low tide, are exempt from registration but subject to the jurisdiction of the maritime authority, which is responsible for issuing licences for their operation.

The requirements for vessel registration are set out in Article 77 of the General Regulation on Port Authorities.

In particular, regarding the registration of vessels in the event of succession by death:

In the event of succession, amendments to registration are based on attestation of the deed of partition, or the partition table and the respective ratification ruling, accompanied by a document issued by the competent finance office confirming that the respective inheritance tax (Article 82(2) of the General Regulation on Port Authorities) has been paid, secured or is not due;

Foreign vessels acquired by succession or in action brought before Portuguese courts shall be registered at the maritime office determined by higher authority (Article 75(3) of the General Regulation on Port Authorities).

Registration of weapons

Weapons and ammunition are subject to mandatory declaration and registration by the PSP (Public Security Police).

The legal framework for weapons and ammunition already mentioned above applies, and the declaration and registration requirements are set out therein.

Succession by death is subject to the requirements set forth in Article 37 of the legal framework on arms and ammunition referred to above.

Registration of intellectual property takes place at the National Industrial Property Institute (*Instituto Nacional da Propriedade Industrial*).

The grant of patents, utility models, semiconductor products, and design or model, trade mark, reward or logo registrations, designation of origin and geographical indication registrations is made by the National Industrial Property Institute, to which the respective applications must be submitted.

The requirements and effects of the application for granting or registration are set forth in the Industrial Property Code for each of the above categories, without prejudice to the legislation of the European Union and applicable international conventions.

For practical information on how to submit and prepare a grant or registration application, the website of the National Industrial Property Institute can be consulted <http://www.marcaspatentes.pt/index.php?section=69>

3 Which effects are linked to the registration of the rights in rem?

As a rule, the registration of rights in rem over immovable property is not constitutive of an entitlement in law. However, for other categories of property this rule may include exceptions provided for in special legal provisions.

EFFECTS OF LAND REGISTRATION

The effects associated with the registration of rights in rem over real estate are those provided for in Articles 4 to 7 of the Land Registry Code, as follows:

'Article 4 (Effect between the parties)

1 - Acts subject to registration may be relied on as between the parties themselves or their heirs, even if they have not been registered.

2 - The above provision shall not apply to acts constituting a mortgage, the effect of which between the parties themselves depends on the registration being effected.'

'Article 5 (Enforceability on third parties)

1 - Acts subject to registration shall only produce effects against third parties after the date of their registration.

2- The provisions of the preceding paragraph shall not apply in the following cases:

- a) The acquisition, based on usucaption, of the rights referred to in Article 2(1)(a);
- b) Apparent easements;
- c) Acts relating to indeterminate goods, where these have not been duly stated and specified.

3 - Lack of registration cannot be enforced against the interested party by those who are obliged to promote such registration, nor by their heirs.

4 - For the purposes of registration, third parties are those who have acquired mutually incompatible rights from a common author.

5 - An unregistered lease of a duration of more than six years shall not be enforceable against third parties.'

'Article 6 (Priority of registration)

1 - The first-registered right shall prevail over subsequently registered rights in respect of the same goods, in order of the date of the registrations and, on the same date, in the temporal order of the corresponding submissions.

2 – (Revoked)

3 - Registration that becomes definitive retains the priority it had when provisional.

4 - In the event of refusal, registration made following an appeal deemed well-founded retains the priority corresponding to the submission of the refused document.'

'Article 7 (Presumptions arising from registration)

Definitive registration constitutes a presumption that the right exists and pertains to the registered holder, in the precise terms in which the registration defines it.'

EFFECTS OF COMMERCIAL REGISTRATION

The effects of commercial registration derive essentially from the provisions of Articles 11 to 14 of the Commercial Registry Code, as follows:

'Article 11 (Presumptions arising from registration)

Registration by definitive transcription constitutes a presumption that the legal situation exists, in the precise terms in which it is defined.'

'Article 12 (Priority of registration)

The first-registered act shall prevail over subsequent acts, in respect of the same shares or company holdings, in the order of the respective application.'

'Article 13 (Effect between the parties)

1 - Acts subject to registration may be relied on as between the parties themselves or their heirs, even if they have not been registered.

2 – Exceptions to the preceding paragraph are the companies' instruments of incorporation and amendments thereto, to which the provisions of the Companies Code (Código das Sociedades Comerciais) and legislation on European public limited companies apply.'

'Article 14 (Enforceability against third parties)

1 - Acts subject to registration shall only produce effects against third parties after the date of their registration.

2 - Acts subject to registration and mandatory publication in accordance with Article 70(2) shall only produce effects against third parties after the date of publication.

3 - Lack of registration cannot be enforced against the interested parties by their legal representatives on whom it is incumbent to promote such registration, nor by the heirs thereof.

4 - The provisions of this article are without prejudice to the provisions of the Companies Code and the legislation applicable to European public limited companies.'

EFFECTS OF THE REGISTRATION OF SECURITIES

The effects of registration of securities can be consulted in the aforesaid Securities Code (Código dos Valores Imobiliários) and vary according to the category of securities concerned. The registration may be constitutive of a right with respect to certain categories of securities (Article 73 of the aforementioned Securities Code).

EFFECTS OF REGISTRATION OF THE REMAINING CATEGORIES OF GOODS REFERRED TO ABOVE

The effects of the registration of weapons, aircraft, vessels, motor vehicles, intellectual or industrial property can be consulted in the special legislation already mentioned, for each of those categories of goods.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

The legal provisions that can be applied to the adaptation of rights in rem in cases of succession are, in principle, Articles 15 of the Civil Code (e.g. when the adaptation is made by the court in a judicial process) and 43-A of the Land Registry Code (e.g. when the adaptation is made by the registrar in the deed of registration).

Article 15 of the Civil Code (Eligibility):

'The competence assigned to a law covers only those rules which, by virtue of their content and function in that law, form part of the system of the doctrine referred to in the rule of conflict.'

Article 43-A of the Land Registry Code (evidence of foreign law)

'Where the viability of the application for registration must be assessed on the basis of foreign law, the interested party must prove its content by means of an appropriate document.'

Besides these legal provisions, there are rules of interpretation developed by doctrine. According to these doctrinal rules, the broad concept of adaptation encompasses at least two different situations.

Adaptation in the strict sense, which can occur when there is a technical problem resulting from the application of two different laws on succession. For example, in the case of an adopted child whose adoptive and biological parents die, if the law of country X is applied to successions arising from the death of the adoptive parents, and the law of country Y arising from the death of the biological parents, this may lead to a result that is not intended by either of the legal systems concerned (e.g. the adopted child is, ultimately, heir of neither the adoptive parents nor the biological parents). The court must resolve this problem through adaptation.

Another situation, not adaptation in the strict sense of the word but rather substitution/transposition, occurs when a doctrine enshrined in another law is replaced by a doctrine known in the domestic legislation.

The concept of substitution/transposition provides a more fitting framework for cases of adaptation of rights in rem as referred to in Article 31 of Regulation No 650/2012. For example, the case of substituting the doctrine of 'leasehold' (enshrined in the law of another State but non-existent in Portuguese legislation) with the right in rem of surface (enshrined in Portuguese legislation).

Both the Court, in judicial action, and the registrar, at the time of registration, may carry out such substitution/transposition. The decision of the registrar may be appealed before the court (Articles 140 to 146 of the Land Registry Code).

NOTE

The information contained in this factsheet is not exhaustive nor binding on the contact point, the courts or other entities and authorities. Although it is updated regularly, it may not contain all revisions made to the law, and is therefore no substitute for consulting the legal texts in force at any time.

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