Which country's law applies?

Hungría

1 Sources of the rules in force

1.1 National rules

The applicable law is governed by Act XXVIII of 2017 on international private law (‘Act XXVIII of 2017’). However, this applies only if no European Union regulation or international treaty contains provisions concerning the applicable law.

1.2 Multilateral international conventions

Information on this may be found primarily on the webpage of the Hague Conference on Private International Law.

1.3 Principal bilateral conventions

- Treaty between Hungary and Czechoslovakia on legal assistance
- Treaty between Hungary and Yugoslavia on legal assistance
- Treaty between Hungary and Romania on legal assistance

2 Implementation of conflict of law rules

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

Yes.

2.2 Renvoi

If a foreign law applies, the substantive rules of the specified foreign law directly governing the issue at hand are applicable. If the applicable foreign law is determined by nationality and the foreign law refers to Hungarian law, Hungarian substantive law applies, whereas if the foreign law refers to the law of a third country, the substantive law of that third country applies.

2.3 Change of connecting factor

Any change in the factors determining the applicable law affects legal relationships validly formed according to the law applicable prior to the change only if Act XXVIII of 2017 explicitly provides for this.

2.4 Exceptions to the normal application of conflict rules

The application of a foreign law deemed applicable under Act XXVIII of 2017 is contrary Hungarian public policy and therefore must not be applied if, in the case at issue, it would result in the obvious and serious breach of the fundamental values and constitutional principles of the Hungarian legal system. If the breach of public policy cannot be otherwise averted, the provisions of Hungarian law apply instead of the disregarded foreign law provision.

Irrespective of the law governing the matter, the provisions of Hungarian law whose overriding nature is clearly established from their content and purpose (mandatory rules) must be applied. Mandatory rules under the laws of other states may be considered only if there is a close link and they are decisive for the purposes of the assessment of the facts.

2.5 Proof of foreign law

The court establishes the contents of the foreign law of its own motion and using any means necessary. It may address a request to foreign authorities on the basis of an international agreement, and consider the submissions of the parties or expert opinions. It may also consult the minister of justice for this purpose. If the contents of the foreign law cannot be established within a reasonable time, Hungarian law applies. If the facts of the matter cannot be judged based on Hungarian law, the foreign law closest to the applicable law applies.

The minister of justice issues certificates on Hungarian law and case law for use abroad.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The provisions of Act XXVIII of 2017 apply to legal relationships not subject to Regulation (EC) 593/2008 (Rome I Regulation).

The law applicable to the contract is the law chosen by the parties for the entire contract or just a part of it. If the choice of law is not explicit, it must be clearly established from the provisions of the contract or the circumstances of the case. The choice of applicable law must be made before the expiry of the deadline set by the court at the first hearing.

The parties may agree to choose another law to apply to the contract instead of the one previously applied. This fact does not affect the validity of the contract under the law governing formal validity.

If the contract is linked to the law of one state only, the choice of law cannot prejudice the application of provisions of the law of that country which cannot be derogated from by agreement.

In the absence of a choice of law, the applicable law is that of the country to which the essential elements of the given contractual relationship are most closely connected.

The existence and validity of a contract, or of any term of a contract, is determined by the law which would govern it under Act XXVIII of 2017 if the contract or term were valid.

A contract the subject matter of which is a right in rem in immovable property or a tenancy of immovable property is subject to the requirements of form of the law of the country where the property is situated, if those requirements apply irrespective of the country where the contract is concluded and irrespective of the law governing the contract, and those requirements cannot be derogated from by agreement.

The rules on contracts apply *mutatis mutandis* to unilateral statements.

3.2 Non-contractual obligations

The provisions of Act XXVIII of 2017 apply to legal relationships not subject to Regulation (EC) 864/2007 (Rome II Regulation). A person claiming compensation may choose a law according to Article 7 of the Rome II Regulation until the expiry of the deadline set by the court at the first hearing.

For non-contractual legal obligations, the applicable law is that of the state in the territory of which the effect of the legal fact creating the obligation materialised. If the habitual residence or registered office of the creditor and debtor under the legal relationship is located in the same country at the time

when the effect of the legal fact creating the obligation materialised, the law of that country applies. If the non-contractual relationship is closely connected to another legal relationship that had already been concluded between the parties, the law governing the previous legal relationship applies also to the non-contractual relationship.
After the creation of the non-contractual obligation, the parties may choose the law that governs it. If the choice of law is not explicit, it must be clearly established from the circumstances of the case. The applicable law can be chosen until the expiry of the deadline set by the court at the first hearing. If the legal relationship is linked to the law of one state only, the choice of law cannot prejudice the application of provisions of the law of that country which cannot be derogated from by agreement.

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

The legal capacity and personality rights of persons must be determined on the basis the personal law applicable to them. The personal law applicable to a person is the law of the state of which he or she is a national. If a person has more than one nationality and one of these is Hungarian, the applicable personal law is Hungarian law, unless the person has a closer link to the other nationality. If a person has more than one nationality and none of these is Hungarian, the personal law applicable is the law of the state to which they have the strongest ties considering the basic facts of the case. If a person has more than one nationality and none of these is Hungarian, and they have equal ties with the states of nationality, or if a person's nationality cannot be established, or if a person is stateless, the personal law applicable is the law of the state where they are habitually resident. If the personal law of a person cannot be established, Hungarian law applies. Hungarian law is applicable to the legal capacity and personality rights of persons with asylum status or admitted in Hungary.
The law applicable to a person's name is their personal law, or Hungarian law at their request. If a person has more than one nationality, they can choose a law based on any of their nationalities to apply in relation to their surname. In respect of their marital name, at the joint request of the parties the law of the nationality of either spouse or Hungarian law can be chosen. In the absence of such request, the governing law is that applicable to the personal relationship of the spouses. The rules on surnames in case of divorce or nullity of marriage are governed by the law of the state under which the married name was registered. The birth and married name of a Hungarian national, if validly registered under the law of another country, must be recognised in Hungary if the Hungarian national concerned or their spouse is also a national of the other country, or if the usual residence of the concerned Hungarian national is in that country. Names contrary to Hungarian public policy cannot be officially recognised.
A person lacking capacity or with limited capacity under the personal law applicable to them must be deemed to have capacity with regard to the numerous everyday contracts of minor significance, entered into and performed in Hungary, if they would have capacity under Hungarian law. A person lacking capacity or with limited capacity under the personal law applicable to them, but who would have capacity under Hungarian law must be deemed to have capacity with regard to their other economic transactions as well, if the legal consequences of those transactions are to take effect in Hungary.
In matters of representation for a person with limited capacity to conduct their own affairs, or *ad hoc* guardianship, the applicable law is that of the state of the court that appoints the representative or guardian.
The law applicable to declaring a person dead or missing or recording their death is the personal law applicable to the missing person. If the personal law of a missing person is not Hungarian law, Hungarian law applies if there is a Hungarian legal interest at stake.
A person's habitual residence is the place where their life is actually centred, as established from all the circumstances of the given legal relationship. When identifying where a person's life is actually centred, the facts indicative of the concerned person's intentions are also taken into account. Domicile means the place where the person resides permanently or with the intent to remain indefinitely.
The personal law applicable to a legal person or an entity with no legal personality is the law of the state in which the legal person is registered. If the legal person is registered in more than one state or is not required to be registered under the law of the state of registered office specified in its instrument of incorporation, the applicable personal law is the law of the state in which the registered office is located. If the legal person does not have a registered office specified in its instrument of incorporation or has several registered offices and is not registered under the law of any state, the applicable personal law is the law of the state where its principal place of administration is located. The legal status of a legal person or entity without legal personality must be determined under the personal law applicable to it.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The law applicable in matters of establishing paternity or maternity or rebutting the presumption of paternity is the personal law applicable to the child at the time of birth. Acknowledgement of paternity of the child must be determined according to the personal law applicable to the child at the time of the acknowledgement, while acknowledgement of a child conceived, but not yet born must be determined according to the personal law applicable to the mother at the time of the acknowledgement. An acknowledgement cannot be deemed formally invalid if it is formally valid under either Hungarian law or the law in effect at the time and place of the acknowledgement. If the status of the father is vacant under the applicable law, the law of the other state with close link to the case is applicable if that means a more favourable treatment for the child.

3.4.2 Adoption

The adoption is valid only if the conditions are met under both the personal law applicable to the adoptive parent and that of the person to be adopted at the time of the adoption. The personal law applicable to the adoptive parent at the time of adoption or disruption of adoption applies to the legal effects of the adoption, the disruption of the adoption and the legal effects of disruption.
If the adoptive parents are married to each other, the law applicable to the legal effects of the adoption, the disruption of the adoption and the legal effects of disruption is:
(a) the law of the state of common nationality of the spouses at the time of adoption or disruption of adoption; or in the absence of such
(b) the law of the state where the common residence of the spouses was at the time of the adoption or its disruption; or in the absence of such
(c) the law of the state of the court handling the case.

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

3.5.1 Marriage

The marriage will be valid only if the substantive conditions are met at the time of the marriage in accordance with the personal laws applicable to each spouse. The law governing the formalities concerning the validity of the marriage is the law in effect at the time and place of the marriage. The rules applicable to the solemnisation of the marriage and the validity of the marriage apply *mutatis mutandis* to determine whether or not the marriage exists. The marriage cannot be contracted in Hungary if there is an insurmountable impediment to the marriage under Hungarian law.

3.5.2 Unmarried/Cohabiting couples and partnerships

The provisions concerning marriage apply to the establishment and validity of a registered partnership and its legal effects (not including surnames), with the following exceptions.
It is not an impediment to the establishment and validity of a registered partnership if the personal law applicable to a future partner in a registered partnership does not recognise same-sex registered partnerships, provided that:

(a) the non-Hungarian future partner in a registered partnership certifies that there would be no impediment to marriage under the personal law applicable to him or her, and
(b) at least one of the future registered partners is a Hungarian national or has a habitual residence in Hungary. In this case the law applicable to the legal effects of the registered partnership is the law of Hungary.
The law applicable to the dissolution of a registered partnership is the law of the state:
(a) where the habitual residence of the registered partners is at the time when the action or application initiating the procedure for dissolution of the registered partnership is submitted; or in the absence of such
(b) where the last habitual residence of the partners in the registered partnership was, if this habitual residence ended not longer than one year before the action or application is submitted, provided that one of the partners in the registered partnership still resides in that state at the time the action or application is submitted; or in the absence of such
(c) where both partners in the registered partnership were nationals at the time the action or application was submitted.
If it is not possible to determine the applicable law on the basis of the above, the law of the state of the court handling the case applies.
The law of the state of the common nationality of the cohabiting partners applies to the establishment, dissolution and legal effects of non-marital cohabitation. If the nationality of the cohabiting partners is different, the law of the state where the habitual residence of the cohabiting partners is applies, or in the absence of a habitual residence the last common habitual residence. If it is not possible to determine the common habitual residence of the cohabiting partners, the law of the state of the court handling the case applies. The cohabiting partners have a choice of law for their property relationship.

3.5.3 Divorce and judicial separation

Here the applicable legislation is Regulation (EU) 1259/2010 (Rome III). The spouses may choose a law according to Articles 5 to 7 of the Regulation until the expiry of the deadline set by the court at the first hearing.

3.5.4 Maintenance obligations

Here the applicable legislation is the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

3.6 Matrimonial property regimes

For matrimonial property relationships, the applicable law is that of the state of nationality of both spouses at the time of the judgement. If the nationality of the spouses is different at the time of the judgement, the law of the state where the common habitual residence of the spouses is applies, or in the absence of a common habitual residence, the last common habitual residence. If the spouses did not have a common habitual residence, the law of the state of the court handling the case applies.
The spouses have a choice of law to govern their matrimonial assets, provided it is one of the below:
(a) the law of the state of nationality of one of the spouses at the time of concluding the agreement,
(b) the law of the state where one of the spouses had a habitual residence at the time of concluding the agreement, or
(c) the law of the state of the court handling the case.
The choice of law is also available to future spouses. The applicable law can be chosen until the expiry of the deadline set by the court at the first hearing.
Unless the spouses agree otherwise, the choice of law applicable to their matrimonial assets has legal effect only for the future.
The matrimonial assets agreement is also formally valid if it complies with the law of the place of the contract formation.

3.7 Wills and successions

Regulation (EU) 650/2012 applies to persons dying on or after 17 August 2015.

3.8 Real property

The law of the place where the property is located applies to ownership and other rights in rem, including liens and possession.

3.9 Insolvency

Articles 7–17 of Regulation (EU) 2015/848 determine the applicable law.

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