Francija

1 Sources of the rules in force

1.1 National rules

Private international law has not been codified and is not the subject of specific legislation. Most of the principles and conflict-of-law rules have been derived from case law, with the exception of a few to be found in various Codes, and predominantly the Civil Code (*Code civil*), depending on the subject-matter concerned.

The content of the various Codes can be consulted on line:

https://www.legifrance.gouv.fr

1.2 Multilateral international conventions

France is bound by 24 of the conventions adopted under the aegis of the Hague Conference on Private International Law. The list of conventions concerned can be viewed on the Conference website.

https://www.hcch.net/fr/states/hcch-members/details1/?sid=39

France is also party to other multilateral conventions, in particular those containing substantive rules, such as the 1980 Vienna Convention on contracts for the international sale of goods.

All the conventions to which France is party are referenced in the database of treaties and agreements hosted by the Ministry of Europe and Foreign Affairs:

https://basedoc.diplomatie.gouv.fr/exl-php/cadcgp.php

1.3 Principal bilateral conventions

France has concluded a large number of bilateral conventions, some of which contain conflict-of-law rules. These conventions can also be found in the aforementioned database.

2 Implementation of conflict of law rules

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

The procedural status of conflict-of-law rules differs according to whether or not the law at issue is freely available to the parties, irrespective of the source of the conflict-of-law rule concerned (national law, European regulation, international convention).

Where the case refers to subject-matter in which the laws are fully available to the parties, essentially with respect to assets (contracts, civil liability, rights *in rem*, etc.), the judge is not obliged to apply conflict-of-law rules of his own motion if none of the parties rely on the application of a foreign law. He merely has the option to do so, unless the parties reach a procedural agreement in favour of French law. Consequently, it is for the parties to request the application of the conflict-of-law rules.

On the other hand, where the case refers to subject-matter in which the laws are not freely available to the parties, essentially where assets are not concerned (personal status), the judge is obliged to apply the conflict-of-law rules of his own motion.

2.2 Renvoi

The principle of renvoi has long been accepted in case law, whether it is a matter of first-degree renvoi (referral back to French law which consequently applies) or second-degree renvoi (referral back to the law of another State which accepts jurisdiction).

Provided that it is not precluded by applicable European regulation or international convention, renvoi has therefore been implemented regularly in case law in matters of personal status, formal validity of legal acts and especially marriage and wills. With respect to successions, case law is now tending to restrict the application of renvoi solely to cases where it allows unity of succession to be ensured through the application of a single law to the movable and immovable estate.

On the other hand, case law has always precluded the application of renvoi in matters where the parties have freedom of choice of the applicable law, such as in matrimonial property regimes and contracts.

2.3 Change of connecting factor

Change of connecting factor refers to the conflict of laws in time due to the displacement of the connecting factor in space. The problem is therefore to know under what conditions the new law may apply instead of the law arising from the former situation.

It is possible that the conflict-of-law rules themselves determine the conditions of application in time of the connecting factor they provide for. For example, the conflict-of-law rule laid down by Article 311-14 of the Civil Code on establishment of the parent-child relationship itself determines the conditions for application in time of its connecting factor, since it provides that the personal law of the mother must be assessed on the day of the child's birth.

Except for this example, the solutions are provided by case law, which tends to rely on the principles of French transitional law: firstly, the immediate application of the new law to the future consequences of situations already constituted and, secondly, the non-retroactivity of the new law to assess the constitution or termination of a legal relationship.

For instance, with regard to marriage, the new law applies immediately to the consequences of marriage and its dissolution. On the other hand, the conditions concerning the formation of marriage continue to be governed by the law applicable on the day on which it was concluded.

Rights *in rem* in movable property are immediately governed by the law of the new location of the property concerned. This solution also extends to all consensual security interests constituted abroad. Consequently, these security interests will be deprived of any effect in France on subsequent transfer of the property there, since they do not correspond to the models under French law. For instance, it was not possible to invoke in France a reservation clause constituted in Germany in favour of a German creditor for an asset located in Germany, but subsequently transferred to France, on the grounds that it constituted a *commissoria lex*, which at the time was prohibited by French law.

2.4 Exceptions to the normal application of conflict rules

- Immediate application of a French or foreign overriding mandatory provision

The substantive provisions of French law or foreign law can be applied immediately by the French judge, without application of conflict-of-law rules, where such provisions can be deemed to constitute overriding mandatory provisions. French law does not provide any definition of the concept of overriding mandatory provision. The judge therefore designates such provisions on a case-by-case basis.

- Exception of international public policy

The substantive provisions of foreign law normally applicable under the conflict-of-law rules can also be excluded, in whole or in part, under the exception of international public policy in favour of those of French law. In the absence of a precise definition, it results from case law that the exception of international public policy covers firstly the essential or fundamental principles of French law, such as dignity, human freedom (including matrimonial freedom) and the physical integrity of persons. It also covers a more fluctuating concept in time and space, i.e. the French mandatory legislative policies, the contours of which depend on the judge's concrete assessment.

- Exception of evasion of the law

Foreign law may also be excluded where its application results from evasion of the law, i.e. due to deliberate actions with the effect of artificially conferring jurisdiction upon it, instead of the law which would normally have applied. These actions may consist, for example, of deliberate manipulation of the connecting factor as the connecting legal category.

- Impossibility to determine the content of the foreign law applicable

Furthermore, French law also applies in the alternative if it proves impossible to determine the content of the foreign law normally applicable.

2.5 Proof of foreign law

After some hesitation, the case law is now well-established: it is for the French judge who recognises that foreign law is applicable, whether of his own motion or at the request of one of the parties invoking it, to research its content, with the assistance of the parties and personally, if appropriate. This solution is applicable in general, whether or not the law is freely available to the parties.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Subject to multilateral or bilateral conventions applicable to the contract concerned, the former conflict-of-law rules laid down on the subject by case law are implemented only where the contract is not covered by the scope of Regulation (EC) No 593/2008 'Rome I' or that of the Rome Convention of 1980 on the law applicable to contractual obligations, which was superseded by this Regulation.

The French conflict-of-law rule laid down long ago by case law, is that of the law of autonomy. The contract is therefore governed by the law chosen by the parties and, if no such choice is made, by the law of the State with which, objectively, in the light of the circumstances of the case, it is most closely connected.

The form of the legal acts is governed by the law of the country where they were concluded, unless, where it is possible for them to do so, the parties have expressly agreed to subject the form of this act to the law they have designated as applicable to the substance.

3.2 Non-contractual obligations

For the operative events occurring before the entry into force of the Rome II Regulation, the applicable law is the law of the place where the harmful event occurred, understood as either the place of the event giving rise to the damage or the place where the damage occurred.

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

Pursuant to the third paragraph of Article 3 of the Civil Code, the status and capacity of natural persons are governed by the law of the State of their nationality (personal law or national law).

However, the scope of personal law is reduced mainly to questions relating to the capacity of natural persons to exercise their rights (inability to conclude legal acts).

In principle, the constituent judgments or judgments relating to the status and capacity of persons produce their consequences in France independently of any declaration of exequatur, except in cases where they must give rise to material enforcement acts relating to property or coercion relating to persons.

The domicile does not fall within the scope of personal law, in so far as it does not come under any specific category of connecting factor. It therefore comes under the law applicable to each of the institutions in which it is taken into account.

Likewise, if the name is not governed by any specific conflict-of-law rule, the parent(s) wishing to declare or modify the surname of their child can adduce the personal law applicable for this purpose.

Finally, the procedures applicable to the change of first name are governed by the personal law of the person concerned, in accordance with the third paragraph of Article 3 of the Civil Code, as interpreted by case law.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Under Article 311-14 of the Civil Code, the establishment of the parent-child relationship is governed by the mother's personal law on the day of the child's birth or by the child's personal law if the mother is unknown.

However, Article 311-15 of the Civil Code provides that, should the child and the child's father and mother or any one of them have their usual common or separate residence in France, the possession of status has all the consequences arising from it according to French law, even when the other elements of the parent-child relationship might have depended upon a foreign law.

Finally, under Article 311-17 of the Civil Code, voluntary acknowledgement of paternity or maternity is valid if it was undertaken in accordance with either the personal law of the father or mother or the child's personal law.

According to the settled case law of the Court of Cassation (*Cour de cassation*), Article 311-17 applies to both a nullity action and an action contesting acknowledgement of paternity or maternity, which must be possible with regard to both the law of the party making the acknowledgement and the child's law.

3.4.2 Adoption

Under 370-3 of the Civil Code, the conditions of adoption are governed by the national law of the adoptive parent or, in the case of adoption by both spouses, by the law which governs the effects of their union. However, an adoption may not be declared when it is prohibited by the national laws of both spouses.

Adoption of a foreign minor may not be declared when the minor's personal law prohibits such an institution, unless the minor was born and is usually resident in France.

Whatever the applicable law may be, adoption requires the consent of the legal representative of the child. The consent must be free, obtained without any compensation, subsequent to the birth of the child and informed as to the consequences of adoption, especially when it is given for the purpose of a full adoption, as to the full and irrevocable character of breaking off the pre-existing parent-child relationship.

Under Article 370-4 of the Civil Code, the effects of an adoption declared in France are those of French law.

Article 370-5 provides that an adoption lawfully declared in a foreign country produces in France the effects of a full adoption if it breaks off completely and irrevocably the pre-existing parent-child relationship. If it does not, it produces the effects of a simple adoption. It may be converted into a full adoption where the required consents were given expressly and in full knowledge of the facts.

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

3.5.1 Marriage

The conflict-of-law rules are provided for in Articles 202-1 and 202-2 of the Civil Code (codification and adaptation of case law).

According to Article 202-1, first paragraph, the qualities and conditions necessary to be able to contract marriage are governed, for each spouse, by his or her personal law. However, whichever personal law is applicable, marriage requires the consent of both spouses, under the conditions provided for by French law in Articles 120 and 180 of the Civil Code.
Furthermore, the second paragraph provides that two persons of the same sex may contract marriage when, for at least one of them, either his or her personal law, or the law of the State of his or her domicile or residence, permits it. The Court of Cassation had the opportunity to confirm, in a judgment of 28 January 2015, that this second paragraph of Article 202-1 of the Civil Code should be interpreted as reserving the application, in the alternative, of French law under the international public policy exception. Therefore the foreign law normally applicable as the personal law of one of the spouses, where it prohibits marriage between persons of the same sex, must be partially excluded in that it is contrary to the specific French legislative policy (see above with respect to the international public policy exception).
The application of these provisions has however proved to be a delicate matter in cases where France is linked to a foreign State by bilateral convention (case of Algeria, Cambodia, Kosovo, Laos, Macedonia, Morocco, Montenegro, Poland, Serbia, Slovenia and Tunisia), the provisions of which, governing marriage, refer only to the personal law of the spouses to assess the substantive conditions required to contract a marriage, which prohibits marriage between persons of the same sex. The legal situation of these persons has been clarified, however, by the judgment of the Court of Cassation of 28 January 2015 (appeal No 13-50.059) which excluded the Moroccan law designated as applicable by the Franco-Moroccan Convention by application of Article 4 of that Convention, which specifies that the law of one of the two States designated by the Convention may be excluded by the courts of the other State if it is manifestly incompatible with public policy, which is the case when, for at least one of the spouses, either the personal law, or the law of the State within the territory of which his or her domicile or residence is located, permits marriage between persons of the same sex.
Under Article 202-1 of the Civil Code, the form of the marriage is governed by the law of the State within which it is celebrated.
Finally, with regard to the purely personal effects of the marriage, the law normally applicable, according to case law, is that of the common nationality of the spouses, and failing a common habitual residence of the spouses or failing a common nationality, the law of the forum of France. The property consequences are governed by the law applicable to the matrimonial property regime or to succession.

3.5.2 Unmarried/Cohabiting couples and partnerships

There are no specific conflict-of-law rules for common law union or cohabitation in so far as, under French law, the relations between cohabiting couples do not come under a special legal category, but under a *de facto* situation. They are therefore governed by ordinary contract law. Consequently, the applicable law, depending on the case and the legal nature of the relationship between the cohabiting couple, will be that applicable to extra-contractual liability, property or succession.
On the other hand, registered partnerships are the subject of a specific conflict-of-law rule provided for by Article 515-5-1 of the Civil Code, which states that the conditions for the formation and effects of a registered partnership and the causes and effects of its dissolution are subject to the substantive provisions of the State of the authority which has registered the partnership.
Regulation (EU) 2016/1104 of 24 June 2016 applicable to the property consequences of registered partnerships lays down the conflict-of-law rule of firstly the law chosen by the partners (from among the law of their nationality, the law of their habitual residence and the law of the State which registered the partnership) and, in the absence of such a choice, the law of the State in which the registered partnership was created. This Regulation will enter into force from 29 January 2019.

3.5.3 Divorce and judicial separation

The conflict-of-law rules are those provided for in Regulation (EU) No 1259/2010 ‘Rome III’ implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.
For proceedings instituted before 21 June 2012, the date of entry into force of this Regulation, the conflict-of-law rule was that provided for in Article 309 of the Civil Code, according to which divorce was governed by French law where both spouses had French nationality on the day on which proceedings were instituted, or where the spouses had their joint or separate residence in France, or where no foreign law claimed jurisdiction while the French courts had jurisdiction over the divorce.

Parental responsibility

The conflict-of-law rules are laid down in Articles 15 *et seq*. of the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.
Outside of any proceedings, and of any intervention of a judicial or administrative authority, the attribution or extinction of parental responsibility by operation of law and the exercise of parental responsibility are governed by the law of the State of the child's habitual residence.
Where a French authority is seised, it applies French law in principle. However, it may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3.5.4 Maintenance obligations

Under Article 15 of Regulation (EC) No 4/2009 on maintenance, the law applicable to maintenance obligations is determined in accordance with the Hague Protocol of 23 November 2007 *on the international recovery of child support and other forms of family maintenance*. The principle is that of the application of the law of the State of the habitual residence of the maintenance creditor, but the parties may choose, by mutual agreement, to designate, for proceedings already under way, the law of the forum or one of the following laws:
a) the law of any State of which either party is a national at the time of the designation;
b) the law of the State of the habitual residence of either party at the time of designation;
c) the law designated by the parties as applicable, or the law in fact applied, to their property regime;
d) the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.

3.6 Matrimonial property regimes

The conflict-of-law rules of the Hague Convention of 14 March 1978 on the law applicable to matrimonial property regimes apply to spouses married from 1 September 1992, in combination with the special adaptation provisions contained in Articles 1397-2 to 1397-5 of the Civil Code.
Since the Convention makes no provision for it, the field of applicable law continues to be determined in the light of the principles laid down by French case law on the subject. Thus, the law applicable under the Convention will govern the composition of the property of the spouses, the rights, obligations and powers between them during the marriage and the dissolution of the regime and its liquidation after the marriage.
The French conflict-of-law rules apply to the spouses who married before 1 September 1992. They provide that the matrimonial property regime, whether or not a formal contract has been concluded, is governed by the law designated by the spouses at the time of the celebration of the marriage, either explicitly or implicitly, but with certainty.
The spouses who marry or who designate the law applicable to their matrimonial property regime after 29 January 2019 will fall within the scope of application of

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In the absence of an explicit or implicit choice, it is necessary to seek to discover what the will of the parties was, on the basis of simple presumption, such as, for example, the law of the State of the couple's first common domicile.

3.7 Wills and successions

The provisions of Regulation (EU) No 650/2012 of 4 July 2012 apply to successions opened from 17 August 2015. Article 21 of the Regulation designates the law of the State in which the deceased had his habitual residence at the time of death as the law applicable to the succession as a whole.

Successions opened before 17 August 2015 continue to be governed by the French conflict-of-law rules. These rules establish a dual system, dividing the international succession of the same person between a movable estate and one or more, if need be, immovable estates.

The succession to movable property, which covers both tangible and intangible assets, is governed by the law of the last domicile of the deceased.

Succession to immovable property is governed by the law of the State where the property is situated, although the French courts can apply French law to it through the implementation of renvoi where this allows unity of succession to be ensured through the application of a single law to the movable and immovable estate (see above).

The law applicable to intestate successions, determined in accordance with the aforementioned conflict-of-law rules, also governs the substantive conditions and effects of testate or contractual successions. However, the conditions as to the form of wills are governed by the Hague Convention of 5 October 1961, the provisions of which have applied since 19 November 1967.

Furthermore, France is party to the Washington Convention of 26 September 1973, which has been in force since 1 December 1994, under which any will drawn up according to the forms it provides for must be recognised as valid as to form in all contracting States.

3.8 Real property

Under Article 3, second paragraph, of the Civil Code, property and all the rights *in rem* related to it are governed by the law of the State where they are situated.

3.9 Insolvency

Outside the scope of Regulations (EC) No 1346/2000 and (EU) 2015/848, case law has always allowed the possibility of opening collective proceedings against a debtor in France if the debtor has its registered office or one of its establishments there. The same applies in relation to French creditors, on the basis of the 'jurisdictional privilege' under Article 14 of the Civil Code.

The law applicable to proceedings initiated in France is necessarily French law, which will govern the conditions for initiating the proceedings, the conduct of proceedings and their effects, especially the enforceability of collateral. All creditors, including those resident outside France, may lodge their claims. The French proceedings opened in this way are designed, in principle, to cover all the debtor's property, including that located abroad, on condition, of course, that the French judgments are recognised abroad.

Finally, collective proceedings opened abroad will have effect in France, provided that no proceedings have already been opened there and subject to exequatur of the decisions taken abroad.

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