

## Domov>Sprožitev sodnega postopka>Kje in kako>Uporaba nacionalne zakonodaje Which country's law applies?

Slovaška

### 1 Sources of the rules in force

#### 1.1 National rules

The basic national source of Slovak private international law is Act No 97/1963 on International Private and Procedural Law ('Private International Law Act'), which through the conflict of law rules in Sections 3 – 31 defines the applicable law in specific legal areas (capacity for rights and legal actions, validity of legal actions, substantive law, law of contract, employment law, laws on inheritance, family law). The Private International Law Act applies only where not otherwise stipulated by a directly applicable European Union law or an international treaty binding on the Slovak Republic or – to be more precise – by an act of law implementing such a treaty. This means that where the Private International Law Act is referred to below, it must be borne in mind that it applies only in the absence of international or Union legislation.

Slovak law contains independent conflict of law rules in legislation other than just the Private International Law Act, for example:

- Act No 513/1991 ('Commercial Code'). Apart from the conflict of law rule in Section 22 of that Act, under Title III it contains special provisions for obligations in international trade to be applied in addition to other provisions in contract cases with a foreign element

- Act No 311/2001 ('Labour Code'), Section 241a (7) (law applicable to determining whether an employer is a managing employer if the latter is subject to a law other than that of a Member State)

- Act No 8/2008 on Insurance, Section 89 (law applicable for insurance contracts)

- Act No 191/1950 on Bills of Exchange and Cheques ('Bills of Exchange and Cheques Act') specific provisions on international law on bills of exchange (Section 91 *et seq.*) and cheques (Section 69 *et seq.*).

#### 1.2 Multilateral international conventions

(a) UNO Conventions: Convention on the Recovery Abroad of Maintenance, 20.6.1956 Vienna Convention on Consular Relations, 24.4.1963

(b) Council of Europe Conventions: European Convention on Information on Foreign Law, 7.6.1968; Additional Protocol to the European Convention on Information on Foreign Law, 15.3.1978; European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, 20.5.1980

(c) Conventions of the Hague Conference on Private International Law: Convention on Civil Procedure, 1.3.1954; Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 18.3.1970; Convention on the Recognition of Divorces and Legal Separations, 1.6.1970; Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 2.10.1973; Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 15.11.1965; Convention on the Civil Aspects of International Child Abduction, 25.10.1980; Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 29.5.1993; Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 5.10.1961; Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 19.10.1996; Convention on International Access to Justice, 25.10.1980

(d) Treaties unifying conflict of law rules: Convention on the Law Applicable to Traffic Accidents, 4.5.1971; Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 19.10.1996

(e) Treaties unifying substantive law direct rules: United Nations Convention on Contracts for the International Sale of Goods, 11.4.1980; Convention on the Limitation Period in the International Sale of Goods, New York, 14 June 1974, amended by a Protocol of 11 April 1980

(f) Arbitration treaties: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10.6.1958; European Convention on International Commercial Arbitration, 21.4.1961

(g) International transport treaties: Convention on the Contract for the International Carriage of Goods by Road, 19.5.1965; Convention concerning International Carriage by Rail, 9.5.1980, as amended by the Protocol of 20.12.1990

(h) Other legally significant private international law conventions: Changes to the Statute of the Hague Conference on Private International Law of 15 July 1955, 30.6.2005; UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24.6.1995; Civil Law Convention on Corruption, 4.11.1999; Agreement on the Transfer of Corpses, 26.10.1973

(i) Conventions binding on the Slovak Republic on cooperation in legal matters: Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 18.2.1965; Statute of the Hague Conference on Private International Law (valid from 15 July 1955, amended on 1 January 2007), 31.10.1951; Convention on the Execution of Foreign Arbitral Awards, 26.9.1927; Protocol on Arbitration Clauses, 24.9.1923; Convention on the Settlement by Arbitration of Civil Law Disputes Resulting from Relations of Economic and Scientific-Technical Cooperation, 26.5.1972; Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 15.4.1958; Convention on the Legal Status, Privileges, and Immunities of Intergovernmental Economic Organisations Acting in Certain Areas of Cooperation, 5.12.1980

(j) Treaties on copyright and industrial law (by way of example): Paris Convention for the Protection of Industrial Property, 20.3.1883; The Berne Convention for the Protection of Literary and Artistic Works, 9.9.1886

Other conventions binding on the Slovak Republic can be found on the website of the Slovak Ministry of Foreign Affairs and European Affairs [www.mzv.sk](http://www.mzv.sk).

#### 1.3 Principal bilateral conventions

1. Treaty between the Czechoslovak Socialist Republic and the Hungarian People's Republic on Legal Aid and Settlement of Legal Relations in Civil, Family and Criminal Matters, 28.3.1989

2. Treaty between the Czechoslovak Socialist Republic and the Polish People's Republic on Legal Aid and Settlement of Legal Relations in Civil, Family, Labour and Criminal Matters, 21.12.1987

3. Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, 12.8.1982

4. Treaty between the Czechoslovak Socialist Republic and the Republic of Austria on Mutual Legal Relations in the Civil Matters, on Documents and on Legal Information with Final Protocol, 10.11.1961

5. Treaty between the Slovak Republic and the Czech Republic on Legal Aid provided by Judicial Bodies and on Settlements of Certain Legal Relations in Civil and Criminal Matters, 29.10.1992

6. Treaty between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on Settlement of Legal Relations in Civil, Family and Criminal Matters, 20.1.1964

## **2 Implementation of conflict of law rules**

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

Establishing the relevant legal rule and its application to a particular legal relationship is a matter for the judicial authority, which does so on its own initiative on the principle that the parties to a legal dispute do not need to plead or prove the law that applies to their case. In terms of applicability, Slovak law distinguishes between mandatory and default conflict of law rules. Mandatory conflict of law rules are rules that must be applied by a judge regardless of the wish of the parties or of whether the parties have invoked that right. Default rules – which are typical for contract cases in Slovak law – are rules of law that can be overridden or modified by agreement of the parties concerned.

### **2.2 Renvoi**

Slovak private international law takes referral under its conflict of law rules as referral to that State's system of law as a whole, including its conflict of law rules. The general rule in the Private International Law Act (Section 35) is that renvoi may be accepted if it is conducive to a reasonable and equitable settlement of the matter. In deciding whether to accept or reject the remission and onward transmission, the court may take into consideration only factual and legal factors that may affect the choice of applicable law, but not factors that may affect the actual substantive resolution of the case. In Slovak law, renvoi is to be accepted in cases involving the individual, family law and law of succession. In contract cases, renvoi is applicable only very exceptionally and in choice of law cases it is directly excluded (Section 9(2) of the Private International Law Act). There is a special arrangement in the Bills of Exchange and Cheques Act, which states that renvoi must be accepted without the court having to examine the reasonable and equitable resolution requirement (Sections 69 and 91 of the Bills of Exchange and Cheques Act).

### **2.3 Change of connecting factor**

Slovak law does not contain any general rule concerning the effect of a change of connecting factor. If the Slovak conflict of law rule does not define the applicable moment in time at which the connecting factor is to be assessed, the Slovak courts infer it from another connecting factor or by using case law. In general, however, the applicable time is the time when the legal situation arises, or more precisely, the date on which the proceedings are initiated depending on the particular circumstances of the case.

Change of status is typical for movable property. Modification of the criterion of the law applicable by virtue of location is covered by Section 6 of the Private International Law Act, which distinguishes between movable property as such (in general) and movable property being transported under a contract (goods in transit). In the case of movable property as such, the applicable law is the law of the place where the property was at the time when the fact giving rise to or terminating the right occurred. However, case law has established that the content and effects of a substantive right acquired under another law (i.e. transposition of rights acquired in one country to an equivalent category in another country) are to be assessed under the law of the new (current) location of the property.

The connecting factor in cases of property being transported (where the carriage of the property must still be taking place) is the law of the place from which the property was dispatched. The issue of changing connecting factors for movable property may also arise in connection with prescription. Specifically for this purpose, Section 8 of the Private International Law Act specifies that prescription is governed by the law of the place where the property was at the start of the prescription period. However, the prescription acquirer is not precluded from relying on the law of the State in which prescription took place, if from the time when the property was in that State, all the conditions for prescription under the law of that State were met. If the property has been successively relocated to the territory of more than one State, the conditions will be assessed either by the law of the place where the property was located at the start of the prescription period, or by the law of the place where the property was located continuously during the whole period relevant for the prescription.

### **2.4 Exceptions to the normal application of conflict rules**

#### *Mandatory rules of law and the public order reservation*

The fundamental difference between mandatory rules and the public order reservation is their effect: mandatory rules operate offensively (regardless of the content of the foreign law), whereas the public order reservation operates defensively (only where applying foreign legislation would jeopardise declared interests). The public order reservation does not protect all mandatory provisions of Slovak law, but only those deemed to be fundamental matters of principle (such as the principle of monogamous marriage).

Mandatory rules are national law rules from which it is not possible to depart; they must be applied in every situation regardless of the law under which a particular legal relationship is to be handled on the basis of the conflict of law rules. In general, they have a public law character, but may also be of a private law nature, if their objective is to protect a particular substantial interest. The assessment of whether a particular legal rule is mandatory is at the discretion of the court. The law does not define them clearly; they are typical for consumer law and some areas of employment law (e.g. rules on health and safety, working hours and so on). In family law, for example, the rules of the Criminal Code governing crimes against the family and young people are mandatory rules.

The public order reservation is laid down in Section 36 of the Private International Law Act, under which a legal provision of a foreign State cannot be applied if the effect of applying it would contravene fundamentals of the social and state system of the Slovak Republic and its laws that must be abided by unconditionally, regardless of the will of the parties. This means in particular the constitutional rules enshrining the right to a fair trial and the basic principles of equality before the law and the prohibition of discrimination on the grounds of sex, race, colour, religion, nationality and so on. In line with the purpose of the Act, the public order reservation is to be applied sparingly and in applying it the court may not examine or evaluate the foreign State's legal provision, but only the effects that applying it would have on the public order of the Slovak Republic.

### **2.5 Proof of foreign law**

The Slovak Republic is one of the countries that treats a legal provision as law, rather than as a fact that needs to be proven. Therefore, judicial authorities take action to establish what the legal provisions are on their own initiative. Under Section 53 of the Private International Law Act, for the purpose of establishing foreign law, the judicial authority undertakes all necessary measures, including obtaining the content of the foreign law by using resources of its own, by consulting generally accessible sources, by obliging the parties to the proceedings to provide the information or by requesting information from the Ministry of Justice (which must act on such requests). This means that judges may also use their own knowledge of the content of foreign law or establish it using experts in the field of private international law or the parties to the proceedings, or even by consulting the internet. If the content of foreign law cannot be determined within a reasonable time or if establishing the content of foreign law is associated with serious obstacles or is impossible, then Slovak law applies. In the event of doubts arising when determining the content of foreign law, the courts are entitled to ask the Ministry of Justice for cooperation.

## **3 Conflict of law rules**

### **3.1 Contractual obligations and legal acts**

#### *Contractual obligations*

Only private law contracts fall within the scope of the Private International Law Act, i.e. civil law, commercial, family, employment and other similar contracts with an international component. In keeping with the principle of the autonomy of will of the contracting parties, in the case of property relations, Section 9 of the Private International Law Act clearly gives preference to choice of law by the contracting parties themselves (in addition, this allows a choice of law also in the area of employment). Choice of law is limited only in the case of consumer contracts, which, if the chosen law does not provide a sufficient degree of consumer protection, are covered by the legal system that ensures more favourable treatment of the consumer (Section 9(3) and Section 10(4) of the Private International Law Act). In the absence of a choice of law, the legislation applied is the legislation of the State that ensures reasonable settlement for contracts of that type. In line with the principle of reasonable settlement, Section 10(2) and (3) of the Private International Law Act gives examples of which law generally applies to specific types of contract: for example, purchase contracts are governed by the law of the place where the seller has its registered office. For contractual obligations the Private International Law Act also governs the substantive law effects of contractual relationships (Section 12), the statute of limitations and offsetting (Section 13), as well as arrangements for unilateral legal acts (Section 14), whether or not addressed to a named entity (the connecting factor in such cases being the debtor's domicile).

Contractual obligations in international law on bills of exchange and cheques are specifically governed by the Bills of Exchange and Cheques Act (Section 69 *et seq.* and Section 91 *et seq.*).

#### *Legal acts*

Conflict of law issues relating to the validity of legal acts, the consequences of nullity, and the form of a legal act are covered by Section 4 of the Private International Law Act. The law applicable to the effects of a legal act is also applicable to questions of its validity and nullity. The applicable law is determined by the relevant conflict of law rules specified for the particular legal act. There are two exceptions where the validity of a legal act and the consequences of its nullity are not governed by the same law as the effects: namely where the law provides otherwise or where this is essential for reasonable settlement. As regards the form of a legal act, it is sufficient that the legal act was carried out in accordance with the law of the place where the act was or is being performed. It is not therefore necessary to keep to the form of act required by the law chosen by the forum court, as in the case of its validity. However this subsidiary conflict of law rule cannot be used if the law chosen by the forum court applicable to the contract prescribes a written form of contract as a condition for its validity.

### **3.2 Non-contractual obligations**

The fundamental national conflict of law rule for non-contractual obligations is Section 15 of the Private International Law Act, under which claims for damages suffered as a result of breach of duty resulting from legislation of general application (tort) or in cases where the law requires compensation regardless of the unlawfulness of the action (responsibility for the outcome) are governed by the law of the place where the damage occurred or of the place where the event giving rise to entitlement to compensation occurred. Connecting factors applicable to *negotiorum gestor*, unjust enrichment etc. follow *mutatis mutandis* from Section 15 and other provisions of the Private International Law Act.

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

General conflict of law rules, i.e. determining the applicable law governing the legal personality of a natural person, are laid down in Section 3 of the Private International Law Act, which states that capacity of a person in respect of rights and legal acts is governed by the law of the State of which that person is a national. If a legal act is performed in the Slovak Republic by a foreigner who does not have legal capacity under the laws of the State of which he or she is a national, it is sufficient if he or she has capacity in respect of that act under Slovak law. However, such a legal act may not necessarily be deemed valid under the laws of other States, including the foreigner's home country.

Under Slovak national law, the capacity of a natural person in respect of rights and duties is created at birth (any conceived child, if born alive, also has such capacity) and ends on death (when a person is declared dead by a court). Full legal capacity is acquired at the age of 18 or through marriage (which is possible from the age of 16). Full legal capacity is a prerequisite for procedural capacity, although the law may confer procedural capacity on a party who would not otherwise have it, such as an under-age parent in adoption proceedings when he or she reaches the age of 16. Minors have legal capacity only for acts which by their nature are appropriate to the intellectual and mental maturity corresponding to their age. In addition to the age limit, to have full legal capacity a person must also be of sound mind. Only a court may remove or restrict a person's legal capacity.

Special national conflict of law rules on legal capacity apply to the capacity to enter into marriage (Section 19 of the Private International Law Act - see Point 3.5), to establish and revoke a will (Section 18 of the Private International Law Act - see Point 3.7.) and the procedural capacity of foreigners (Section 49 of the Private International Law Act). The conflict of law rules governing the capacity of legal entities under Slovak law are contained in Section 22 of the Commercial Code, under which the personal status of legal entities is governed by the incorporation principle, with the scope of the capacity granted to them under the applicable law also granted under Slovak law. The assessment of the capacity of a person to undertake obligations in respect of bills of exchange or cheques is laid down by the Bills of Exchange and Cheques Act, which states that the person is bound by the law of the State of which they are a national. As regards civil status, as a connecting factor the term 'domicile' is not used in Slovak law and is not the same as the Slovak term 'permanent residence' (which is recorded in the Population Register of the Slovak Republic). The right of a person to a name is subsumed under personal status by analogy, with the applicable law being the law applicable to the legal capacity and procedural capacity of the person concerned.

### **3.4 Establishment of parent-child relationship, including adoption**

#### **3.4.1 Establishment of parent-child relationship**

Under national law the mother is the woman who gave birth to the child. In the event of doubts over maternity, the court will decide on the basis of facts determined in relation to the birth. Paternity is determined on the basis of three rebuttable paternity presumptions, which are specified in Act No 36/2005 on the Family (the Families Act): (i) the duration of the marriage; (ii) a declaration of acknowledgement by the parents at a Registry Office, and (iii) the time of the sexual intercourse between the putative father and the mother of the child.

The Private International Law Act contains conflict of laws rules on establishing (acknowledging or rebutting) parenthood, connected to the time of birth of the child. Under Section 23 of the Private International Law Act the applicable law is the law of the State whose nationality the child has acquired by birth. That law applies in particular to determining who may be the subject of a declaration of parenthood, in what form such a declaration is to be made, and whether it is possible to acknowledge paternity of a conceived child. If at birth a child acquires more than one nationality or no nationality, Section 33 of the Private International Law Act applies. If a child has acquired Slovak nationality in this way but was born and lives abroad, the applicable law in this case is the law of the State where the child is habitually resident. Under Section 23 (3) of the Private International Law Act, if a child (regardless of nationality) lives (i.e. has permanent residence) in the Slovak Republic at the time of the determination, parenthood may be determined in accordance with Slovak law, if it is in the interests of the child. This provision allows the alternative of considering the validity of recognition under the law of the State where parenthood was recognised, and not under the law of the nationality of the child at the time of birth. However, for recognition of parenthood to be valid, it is sufficient for the recognition to be in accordance with the law of the State where it took place.

#### **3.4.2 Adoption**

Under the Slovak Families Act, adoption gives rise to a relationship between the adopted child and the adoptive parent (and his or her relatives) that is legally identical to a biological family. Only a court may rule on adoption, on a proposal by the adoptive parent, who need not be a Slovak citizen, but must be

entered on the adoption certificate in accordance with Act No 305/2005 on social and legal protection of children and social guardianship. Only children under the age of 18 may be adopted. Current legislation allows for the joint adoption of a child only by married partners (or by a spouse living with one of the child's parents in a marriage or by the widow/widower of a parent or adoptive parent). In exceptional circumstances a child may also be adopted by a single person. The adoption of a minor abroad requires the consent of the Slovak Ministry of Labour, Social Affairs and the Family or of a state administration authority designated by that Ministry. An adoption may be cancelled on the basis of a court ruling within six months of the validity of the adoption order. Under Section 26 of the Private International Law Act, adoption is governed by the law of the State of which the adoptive parent is a national. If the adoptive parents are of different nationalities, the applicable law is the law of the State of the joint habitual residence of the spouses. If such a residence does not exist, the adoption is governed by the law to which they have the closest links. Slovak law may be applied where the foreign law does not permit adoption at all or only under conditions which are exceptionally difficult, and the adoptive parent or at least one of the adoptive parents has lived for an extended period in the Slovak Republic (which in the case law means no less than a year). Under Section 26a of the Private International Law Act, the placement of a child in pre-adoptive care (which under Slovak law precedes adoption) is governed by the law of the State of habitual residence of the child. The law of the country of nationality of the child being adopted applies when assessing the need to request the child's consent for adoption or the approval of other persons or institutions (Section 27 of the Private International Law Act). This provision also applies in cases similar to adoption, such as recognition of an illegitimate child as legitimate (which is not recognised under Slovak law).

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

#### **3.5.1 Marriage**

Under Slovak law marriage may be entered into only by a man and a woman of sound mind; they may not, at the time of entering into the marriage, be in another marriage. The Act forbids marriage between ascendants, descendants and siblings, as well as minors (a court may exceptionally permit marriage of a minor aged over 16). This age qualification may be classified as a mandatory rule in Slovak law. Under Slovak legislation marriage is concluded by consensual declaration at a Registry Office or before a church authority.

Under the Private International Law Act (Sections 19 and 20) the capacity of a person to enter into marriage, and the conditions for its validity are governed by the law of the State of which the person is a national. For the form in which it is concluded, the applicable law is the law of the place where the marriage is concluded. In contrast to the general conflict of law rules (Sections 3 and 4 of the Private International Law Act), subsidiary use of Slovak law is excluded. When it comes to assessing the form in which a marriage is concluded, since the applicable law is the law of the place where the marriage takes place, that is the law used to consider questions such as, for example, the manner in which a person expresses consent to marriage, the number of witnesses, the body competent to conduct the marriage, the option to enter into marriage via a proxy, and so on. That criterion does not apply in the case of consular weddings. The conclusion of marriage abroad by Slovak citizens before an authority other than a Slovak authority authorised for that purpose is specifically covered by Section 20a of the Private International Law Act, which states that such a marriage is valid in the Slovak Republic, if it is valid in the State before whose authority it was concluded, and if there are no impediments to the marriage under Slovak substantive law.

#### **3.5.2 Unmarried/Cohabiting couples and partnerships**

Slovak law does not contain any provisions on partnerships other from marriage. Legal theory acknowledges the existence of common-law husband and wife, i.e. of a man and woman who are not married, but form a life partnership. However, this is a *de facto* union, with no legal meaning. Similarly, Slovak law does not recognise (registered) partnerships of persons of the same sex, or judicial (legal) separation.

#### **3.5.3 Divorce and judicial separation**

Under national substantive law, divorce means dissolution by a court of a marriage between living spouses. In the event of the divorce of the parents of a minor, the court must also rule on the exercise of their parental rights and obligations. Slovak legislation also allows for alternating custody. Section 22 of the Private International Law Act lays down conflict of law rules for the dissolution of marital co-habitation by divorce, by declaring the marriage to be invalid or by finding the marriage never to have existed. Therefore, it primarily applies to conflict of law rules on dissolution of marriage between living spouses. Dissolution of marriage by divorce is governed by the law of the State of which the spouses are nationals at the time the proceedings are initiated. As in the case of spouses' personal and property relations, the applicable criterion is their nationality tied to a specific point in time, namely the time of commencement of divorce proceedings (their original nationality or any change in nationality is therefore irrelevant). If at the time of commencement of divorce proceedings the spouses did not have the same nationality, the country of nationality criterion cannot be applied and Slovak law applies. If the applicable (foreign) law does not permit dissolution of marriage by divorce or permits it only under exceptionally difficult conditions, but the spouses – or at least one of them – has lived in the Slovak Republic for an extended period, then Slovak law can apply. Since this possibility is open only to people who have an appropriate link to the Slovak Republic, case law has established that such people must have resided in the Slovak Republic for at least one year. As regards the law of the State of which the spouses are nationals, the connecting factors laid down in Section 22(3) of the Private International Law Act for assessing the validity of a marriage and whether the marriage exists or not are at odds with Section 19 and Section 20 of the Private International Law Act, which governs the capacity to enter into marriage, the validity of a marriage and the form of marriage. Case law has established that Section 19 and Section 20 of the Private International Law Act apply if the possibility of concluding a marriage (in terms of capacity and form) is assessed before it is concluded, whereas Section 22(3) of the Private International Law Act applies if the validity of a marriage is assessed retrospectively or if the assessment concerns whether the marriage exists. Similarly, case law has established that for Section 22(3) of the Private International Law Act the applicable law is the law of the State of which the spouses were nationals at the time when the marriage was to be concluded.

#### **3.5.4 Maintenance obligations**

Slovak law recognises six basic types of maintenance obligation: the maintenance obligation of parents to children (considered the most important), the maintenance obligation of children to parents, the maintenance obligation between other relatives, the maintenance obligation between spouses, the contribution to maintenance for a divorced spouse and the contribution to maintenance and reimbursement of certain costs for an unmarried mother. The conflict of law rules contained in Section 24a of the Private International Law Act explicitly relate only to the maintenance obligations of parents towards children and cover all types of this maintenance obligation other than claims from a child's mother against its father (law of the nationality of the mother, Section 25 of the Private International Law Act), regardless of whether the beneficiary is of age or is a minor. These relationships are covered by the law of the State in which the beneficiary is domiciled or habitually resident in the case of a child who is a minor. In most cases the Slovak courts decide in accordance with the law of the country in which the action is brought. Other maintenance obligations (e.g. maintenance obligations between spouses) are governed by the law of the State in which the beneficiary of the maintenance is domiciled.

The connecting factor of habitual residence of the child is the main connecting factor applied to relationships between parents and children. Only in exceptional cases does the court also take into consideration the law of any other State that has a substantial connection with the case.

### **3.6 Matrimonial property regimes**

The conflict of law rules in Section 21 of the Private International Law Act relating to property relations between spouses establish the nationality of the spouses as the connecting factor. However, this can be consistently applied only if the spouses are nationals of the same State. In other cases the applicable law is Slovak law. The Private International Law Act does not address situations where there is a change in the connecting factor (a change in the

joint nationality of the spouses). Case law has, however, established that the applicable law is determined by the time when the legally significant event occurred. Section 21(2) of the Private International Law Act excludes potential conflicts by specifying that any marital property law arrangement agreed on (e.g. agreements on reducing community of property, marriage contracts, etc.) is to be assessed in accordance with the law applicable to the spouses' property regime at the time when the arrangement was entered into. This conflict of law rule can be applied only in connection with another conflict of law rule, but not on its own.

Slovak substantive law lays down a specific type of marital property regime: community of property between spouses, which is created on conclusion of marriage and ceases on termination of the marriage. The scope of the community property may subsequently be reduced or increased on the basis of mutual agreement between the spouses or modified in some other manner (including termination or restoration) by a court decision. Pre-nuptial agreements do not exist in Slovak law.

### **3.7 Wills and successions**

Under the conflict of law rule, inheritance is based on a single connecting factor: under the general conflict of law rule in the Private International Law Act, legal inheritance relations are governed by the law of the State of which the testator was a national at the time of his or her death (Section 17). This is the only connecting factor for the whole succession, with no distinction as to whether the property is tangible or intangible property. If at the time of death the testator was a national of two or more States or was stateless, the applicable nationality is determined in accordance with Section 33 of the Private International Law Act.

As regards capacity to make or revoke a will and the effects of defects of will and of defects in the expression of will, the applicable nationality is the testator's nationality at the time they express their intentions. This means that if there is a change in nationality after these intentions have been expressed, this does not affect the validity of a will or the validity of its revocation. Section 18 of the Private International Law Act is thus a special rule in relation to Section 3(2) of the Private International Law Act, which states that if a foreigner performs a legal act in the Slovak Republic, it is sufficient that he or she has capacity for it under Slovak law. The law determined in accordance with the country of nationality at the time of the expression of will is also applicable for determining how property can be bequeathed by will on death. The form of the will and revocation of a will are governed by the law of the State of which the testator was a national when the will was made. It is, however, sufficient if the will complies with the law of the State where it was made (Section 18). This additional conflict of law rule is applied where the testator did not comply with the form of will required by the State of which he or she was a national at the time of making the will. This means that if the testator fails to meet the conditions governing the form of a will laid down by the law of the State of which he or she was a national at the time of making the will, but meets the conditions laid down by the law of the place where the will was made, then the will is deemed to be valid.

Under Slovak substantive law, property may be inherited on the basis of the law, on the basis of a will or both. The law prescribes four levels of successors in order of succession rights whereby those in the preceding level exclude those in the successive ones. The first group includes the testator's children and spouse; further groups include other relatives and anyone who lived with the deceased in a common household for at least one year before his or her death and who for that reason took care of the common household or was dependent on the deceased for maintenance. For inheritance by will, the law provides for wills meeting the legally prescribed conditions to be drawn up by the testator or in the form of a notarial deed. The minimum age for drawing up a will is 15 years. There are restrictions on the freedom to dispose of property by will, in that minor descendants must receive at least as much as constitutes their share of the estate under the law and descendants of age must receive at least as much as one half of their share under the law. Slovak law allows for waivers of succession (only in its entirety, for both assets and liabilities), incapacity to inherit (as laid down by law), disinheritance of descendants (on the basis of an instrument of disinheritance drawn up by the deceased) and escheat (whereby, if there are no heirs, the estate passes to the State), but does not recognise joint wills, succession agreements or deathbed gifts.

### **3.8 Real property**

Slovak law defines real property as land or buildings attached to the ground with solid foundations (Section 119 of the Civil Code).

Under the Private International Law Act, the general connecting factor for material rights over real property is the law of the place where it is located (Section 5 of the Private International Law Act, which also applies to movable property if they are not covered by Section 6 and Section 8 – see 2.3.). However, Section 7 of the Private International Law Act takes precedence over that rule, stating that consideration is given to entries in public records establishing, amending or terminating material rights for property located in a State other than the State whose law governs the legal grounds for establishing, amending or terminating the material rights to that property. In such cases, the applicable legislation is the legislation on entries in public records in force in the place where the property is located.

Under current Slovak law, the term 'public records' is associated with the Land and Buildings Register (Cadastre) (Act No 162/1995 on the Land and Buildings Register), but the history of property records includes the Land Register, the Railways Register, the Mining Register and the Waterways Register.

### **3.9 Insolvency**

Insolvency proceedings with a foreign element involving Member States of the European Union or the European Economic Area are governed by Act No 7/2005 on insolvency and restructuring ('Insolvency Code'), unless Council Regulation (EC) No 1346/2000 stipulates otherwise. Under the Insolvency Code, if the Slovak Republic is not bound by an international treaty governing the satisfaction of the creditors of a debtor who is bankrupt, the principle of reciprocity applies for recognition of foreign judgments in proceedings under the Insolvency Code. Insolvency declared by a Slovak court also applies to assets located within the territory of a foreign country if the laws of that foreign country allow this.

The Private International Law Act contains conflict of laws rules that apply *mutatis mutandis* to bankruptcy, namely Section 5 (the connecting factor is the place where the movable or immovable property is situated), Section 7 (the connecting factor for registration in public records is the place where the property is located) and the provisions governing obligations (Section 9 *et seq.*).

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