Prawo którego kraju zostanie zastosowane?

W przypadku sporów w sprawie, w której nie wszystkie okoliczności faktyczne są związane z tym samym krajem, trzeba ustalić, które prawo zostanie zastosowane przez sąd orzekający co do istoty sprawy.

W miarę jak rozwija się handel międzynarodowy i coraz więcej ludzi podróżuje do innych krajów, rośnie prawdopodobieństwo wystąpienia aspektów międzynarodowych w sporach z udziałem przedsiębiorstw lub osób fizycznych. Może to wynikać z tego, że strony są różnej narodowości, mieszkają w różnych krajach, bądź też zawarły umowę dotyczącą transakcji realizowanej za granicą.

W razie sporu nie wystarczy stwierdzić, który sąd posiada międzynarodową jurysdykcję do rozpoznania i rozstrzygnięcia danej sprawy; trzeba również ustalić, jakie prawo będzie miało zastosowanie przy rozstrzyganiu istoty sprawy.

Aby uzyskać szczegółowe informacje krajowe, należy kliknąć na flagę kraju.

Ostatnia aktualizacja: 16/01/2023

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Which country's law applies? - Belgium

1 Sources of the rules in force

1.1 National rules

The binding sources of Belgian domestic law are legislation, the general principles of law, and customary law. Legislation is necessarily enacted by a public authority; the general principles of law are legally binding because society is convinced of their legal value; customary law consists of unwritten usage and generally accepted practice.

In Belgium, courts are not required to follow precedent: case law, like academic opinion, carries authority but is not binding. Court judgments are valid only between the parties to the case and are not binding on other judges ruling in similar cases. With the exception of the Constitutional Court (*Cour constitutionnelle/Grondwettelijk Hof*), no court can require other courts to follow a precedent it sets. Even a judgment of the Court of Cassation (*Cour de cassation/Hof van Cassatie*), which may quash a judgment of a lower court and refer it for reexamination, does not give instructions that bind the court that hears the case afresh. Only if the Court of Cassation issues a judgment for the second time in the same case does the content of that judgment become binding on the court called upon to issue a final judgment.

1.2 Multilateral international conventions

Please note that the Federal Public Service for Foreign Affairs has a database providing an overview of bilateral and multilateral conventions signed since 1987:

https://diplomatie.belgium.be/fr/traites

https://diplomatie.belgium.be/fr/traites
https://diplomatie.belgium.be/fr/traites
https://diplomatie.belgium.be/fr/traites

The text of numerous conventions in force in Belgium is published in the Belgian official gazette (*Moniteur belge/Belgisch Staatsblad*), available electronically since 1997: https://justice.belgium.be

Moreover, the text of many conventions, even those concluded before 1987, can be found on the same website under the heading '*Législation consolidée*'/'*Geconsolideerde Wetgeving*' (which contained 2 800 items as of 1 August 2004).

Belgium is in principle a sovereign State which holds supreme authority over those subject to the jurisdiction of its courts. However, given the increasing internationalisation of society, Belgium is increasingly bound by the rules made by supranational and international organisations and institutions. In particular the European Union (EU), the United Nations (UN), the North Atlantic Treaty Organisation (NATO) and the Council of Europe have made their mark on Belgian law by enacting treaties and regulations (which may or may not be directly applicable) and by imposing directives and legal harmonisation processes in order to compel the Member States of these organisations to align their internal legal systems.

The human rights conventions directly applicable in Belgium are the European Convention on Human Rights and the European Social Charter, both of which were enacted by the Council of Europe. The corresponding texts at the United Nations level are the Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, respectively.

As a supranational organisation, the European Union (EU) has a significant influence on its Member States, including Belgium. The EU's main legal instruments are regulations, which are directly applicable, and directives, which have to be transposed by the Member States themselves.

Countless institutions and organisations are active in the development of various branches of law, such as private international law, international criminal law, and international trade and economic law. To mention only a few: the United Nations, Uncitral, the Hague Conference on Private International Law, Unidroit, the Council of Europe, the European Union and the European Community, the International Commission on Civil Status, the International Maritime Organisation (IMO), IATA (Air Transport), the Benelux Union, etc.

1.3 Principal bilateral conventions

Both the federal authorities and the authorities of Belgium's component states may conclude bilateral conventions with other countries or regions of the world, depending on whether the subject-matter lies within the scope of their own powers. Most of these conventions are concluded with neighbouring countries or countries with which Belgium has close or important commercial relations.

2 Implementation of conflict of law rules

The Law of 16 July 2004 establishing the Code of Private International Law (*Code de doit international privé*, hereinafter 'the Code') was published in the official gazette on 27 July 2004 (https://justice.belgium.be). It can be consulted via this weblink: 'législation consolidée'.

This factsheet explains the situation under the Code. The provisions of the Code relating to both international jurisdiction and the effects of foreign court judgments and authentic instruments are applicable to actions brought after the entry into force of the Law, as well as to court judgments and authentic instruments delivered after its entry into force. Earlier cases that fall outside the transitional arrangements in the Code are governed by a wide variety of legislation and a substantial body of case law and academic writing. The following websites may be useful:

- https://www.law.kuleuven.be/ipr/en

- https://www.ipr.be/fr
- https://www.dipr.be/fr

The Code applies only in so far as the case is not governed by international conventions, European Union law or specific legislation.

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

Belgian judges do not apply only Belgian law. They often have to give judgment on the basis of a foreign law.

Belgian private international law states that foreign law is to be applied on the basis of the interpretation that is accepted in the foreign country; if the court cannot determine the content of the foreign law itself, it may request the cooperation of the parties. Where it is clearly impossible for the court to determine the content of the foreign law in reasonable time, it must apply Belgian law (Article 15 of the Code).

2.2 Renvoi

Since the adoption of the Code, *renvoi* is no longer generally accepted (Article 16 of the Code). The Code does, however, contain an exception for the law applicable to legal persons (Article 110 of the Code) and a possible *renvoi* to Belgian law on the capacity of natural persons (see below).

2.3 Change of connecting factor

A connecting factor can vary in time (e.g. nationality) or in space (e.g. habitual residence).

The DIP Code attempts to specify the rule to be applied in the most common situations in which there is a change of connecting factor.

As regards the effects of marriage, for example, the first connecting factor under the Code is the spouses' habitual residence at the time when the effects are invoked (Article 48 of the Code).

In the case of filiation, the Code specifies that the applicable law is the law of the nationality held at the time of the child's birth by the person whose parentage is at issue (Article 62 of the Code).

Rights *in rem* to property are governed by the law of the State where the property is located at the time the right is invoked. However, the Code specifies that the acquisition and loss of such rights is governed by the law of the State where the property is located at the time of the acts or facts relied upon as the basis for the acquisition or loss of the right (Article 87 of the Code).

2.4 Exceptions to the normal application of conflict rules

The ordinary conflict-of-law rules do not apply in a number of cases defined in the Code.

1. By way of exception, the law designated by the Code is not applicable where it is obvious that, in view of all the circumstances, the situation has only a very weak connection with Belgium and is very closely connected with another State. In such case, the law of that other State applies (Article 19 of the Code).
2. The overriding or public-law rules of Belgian law which govern an international situation remain applicable, irrespective of the law designated by the conflict-of-law rules (Article 20 of the Code).
3. There is an exception for international public policy which makes it possible not to apply certain aspects of a foreign law if their effect would be unacceptable in the Belgian legal system (Article 21 of the Code).

2.5 Proof of foreign law

The Belgian court may require the parties to establish the content and scope of the foreign law. The court may also apply the European Convention on information on foreign law, signed in London on 7 June 1968. Where authentic evidence is requested, the party will be asked to produce a statement known as a *certificat de coutume*, in which the appropriate foreign authority gives authentic evidence of the rules that are or were applicable in its country.

3 Conflict of law rules

When the Belgian court has jurisdiction under the rules already mentioned, it still has to consider which law it should apply to the dispute. It decides that question in accordance with Belgian private international law. Depending on the subject-matter of the dispute, there are various factors that may connect the case to a particular legal system. The DIP Code is structured by subject, and indicates the relevant connecting factor according to the subject area. Some of these areas are discussed below.

3.1 Contractual obligations and legal acts

This subject area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, known as the 'Rome I' Regulation. The DIP Code extends the application of the old 1980 Rome Convention to those contractual matters which were excluded from its scope. The Code should shortly be adapted to take into account the situation resulting from the replacement of the old Rome Convention by the Rome I Regulation.

Certain matters excluded from the scope of the Regulation are, however, governed by specific rules, either:

- under international conventions (in particular the Geneva Convention of 7 June 1930 for the settlement of certain conflicts of laws in connection with bills of exchange and promissory notes, and the Geneva Convention of 19 March 1931 for the settlement of certain conflicts of laws in connection with cheques), or
- under specific provisions of the Code (in particular Article 124 on trusts and Article 111 on partnership agreements).

Finally, it should be noted that, pursuant to Article 25 of the Regulation, certain international conventions continue to apply, namely:

- the Budapest Convention of 21 June 2001 on the contract for the carriage of goods by inland waterway,
- the London International Convention of 28 April 1989 on assistance,
- the International Conventions for the unification of certain rules with respect to collisions and to assistance and salvage at sea, signed in Brussels on 23 September 1910, and the Protocol of Signature attached thereto.

3.2 Non-contractual obligations

This area is governed by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations, known as the 'Rome II Regulation'. The DIP Code extends its application to matters excluded from its scope.

Certain matters not covered by the Regulation are, however, governed by specific rules. Thus, the obligation deriving from an act of defamation or from an infringement of privacy or personality rights is governed by the law of the State where the act or the damage occurred or threatened to occur, at the choice of the applicant, unless the person responsible establishes that he or she could not have foreseen that the damage would occur in that State (see Article 99 of the Code).

It should be noted that, pursuant to Article 28 of the Regulation, certain international conventions continue to apply, namely:

- the Hague Convention of 4 May 1971 on the law applicable to traffic accidents,
- the International Convention for the unification of certain rules concerning civil jurisdiction in matters of collision, the International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation, and the International Convention for the unification of certain rules relating to the arrest of sea-going ships, all signed in Brussels on 10 May 1952,
- the International Convention on assistance, London, 28 May 1989,
- the Convention on the grant of European patents, Munich, 5 October 1973,
- the International Convention of 29 May 1933 for the unification of certain rules relating to the precautionary attachment of aircraft,

- the International Conventions for the unification of certain rules with respect to collisions and to assistance and salvage at sea, signed in Brussels on 23 September 1910, and the Protocol of Signature attached thereto.

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

Unless otherwise provided by the Code, the law applicable in disputes relating to personal status and capacity is the law of the State of which the person is a national. The same rule governs gender changes (Article 35 ter of the Code).

As regards the capacity of natural persons, the Code includes a provision for partial *renvoi*: the question will be governed by Belgian law if the foreign law calls for the application of Belgian law (Article 34 of the Code).

In accordance with the general principle, the law applicable to the determination of surnames and forenames is the law of the State of which the person is a national (Article 37(1) of the Code) or, if they hold several nationalities, the law of one of the States of which the person is a national (Article 37(2) of the Code).

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

As a general rule for the establishment of the applicable law, Article 62(1), first subparagraph of the Code states that the establishment and the challenging of a person's parentage is governed by the law of the State of which the parent is a national at the time of the birth of the child or, if the establishment of parentage results from a voluntary act, at the time of that act.

Where the designated law does not require the child's consent in the case of a voluntary establishment of parentage, the requirement and conditions of such consent and its forms of expression are determined by the law of the State in which the child was habitually resident at the time of the consent (Article 62(1), second subparagraph of the Code).

3.4.2 Adoption

The conditions for the establishment of an adoption are governed by the national law of the adopter or the joint common national law of the adopters. If the adopters do not have the same nationality, the conditions are governed by the law of their habitual residence or, failing that, by Belgian law (Article 67 of the Code).

The law applicable to the various consents required is that of the State of the adoptee's habitual residence. However, if this law does not require the consent of the adoptee or the authors or legal representatives, or does not provide for adoption, such consents will be governed by Belgian law (Articles 67 and 68 of the Code).

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

3.5.1 Marriage

As regards the law applicable to a marriage, the Code makes a distinction between:

1. the promise of marriage: the law of the State of the future spouses' habitual residence is applicable or, failing that, the law of the State of which the two future spouses are nationals or, failing that, Belgian law (Article 45 of the Code);
2. the formation of marriage: the national law of each of the spouses is applicable, with the possible exception of marriage between persons of the same sex, in that the provisions of a foreign law prohibiting such marriage will be disregarded if either spouse is a national of or has their habitual residence in a State whose law does permit such marriage (Article 46 of the Code);
3. formalities: the law of the State where the marriage is celebrated is applicable (Article 47 of the Code);
4. the effects of marriage: the law of the State where the spouses have their habitual residence is applicable, or, failing that, the law of the State of which both spouses are nationals or, failing that, Belgian law (Article 48 of the Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

As regards partnerships or any form of cohabitation subject to registration, Belgian law distinguishes between relationships between cohabitants that create a bond equivalent to marriage and relationships that do not create a bond equivalent to marriage.

The law applicable to the former is the law that applies to marriage (see above), whereas the law applicable to cohabiting relationships that do not create a bond equivalent to marriage is the law of the State where the cohabiting relationship was registered for the first time.

There are no specific provisions governing unregistered cohabiting relationships.

3.5.3 Divorce and judicial separation

As regards divorce and de facto separation, the rules contained in the Council Regulation (EU) of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, known as 'Rome III', have been made generally applicable. The choice of law applicable to the spouses must be specified no later than their first appearance before the court to which the petition for divorce or legal separation has been submitted.

3.5.4 Maintenance obligations

Article 15 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations refers to the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. Normally, the applicable law is that of the State where the recipient has his or her habitual residence. Special rules, however, exist between children and their parents, for persons under 21 years of age in their relationship to persons other than their parents, between spouses and ex-spouses, and between persons whose marriage has been annulled. The Protocol also has a provision allowing the parties to designate the applicable law.

In addition, the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children will be applied to relations between Belgium and a State which is a party to the 1956 Hague Convention but has not yet ratified the above-mentioned Hague Protocol of 23 November 2007.

3.6 Matrimonial property regimes

The partners themselves may choose the law applicable to their matrimonial property regime. Such choice is limited to either the law of the State of the partners' first habitual residence after the celebration of their marriage, or the national law of one of the spouses (Article 49 of the Code).

In the absence of a choice of applicable law, the matrimonial property regime is governed by the law of the State of the partners' first habitual residence after the celebration of their marriage. If their habitual residences were not in the same State, the applicable law is that of the State of which both partners were nationals at the time of their marriage celebration. In all other cases, the applicable law is the law of the State where the marriage was celebrated (Article 51 of the Code).

3.7 Wills and successions

This area is governed by Regulation (EU) No 650/2012 of 4 July 2012 on the jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession.

3.8 Real property

The place where property is situated is also used to determine the applicable law (Article 87 of the Code).

3.9 Insolvency

Insolvency is governed by Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings. The basic principle in the Regulation is that there is one main universal insolvency procedure, possibly followed by secondary territorial procedures.

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Which country's law applies? - Bulgaria

1 Sources of the rules in force

1.1 National rules

The essential provisions of Bulgarian private international law are contained in the Private International Law Code (*Kodeks na mezhdunarodnoto chastno pravo*) (KMCP). The main principle determining the law applicable to relationships at private law with an international element is that such relationships are governed by the law of the State with which they are most closely connected.

Under the Constitution, ratified international treaties are part of the country's domestic law and prevail over the rules of national legislation.

Conflict of law rules that are applied in civil proceedings can also be found in the Code of Civil Procedure (*Grazhdanski protsesualen kodeks, GPK*).

1.2 Multilateral international conventions

See above

1.3 Principal bilateral conventions

See above

2 Implementation of conflict of law rules

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

Under Article 28 of the KMCP, international jurisdiction is verified by the court on its own motion, without the parties to the case having to request this. The ruling determining that such jurisdiction exists or is absent is subject to intermediate and cassation appeal. The court is bound to be familiar with and apply conflict of laws rules.

Where determining which law applies depends on the classification of the essential elements or of the legal relationship, these elements or relationships are classified under Bulgarian law. In assessing the classification, the court must take account of the international element in the relationships that are being settled.

2.2 Renvoi

Bulgarian private international law is familiar with and resorts to the *renvoi* doctrine. Remission to Bulgarian law and transmission to the law of a third country are inadmissible with regard to:

1. the legal status of legal persons and of unincorporated entities;
2. the formal requirements for legal transactions;
3. the choice of applicable law;
4. maintenance;
5. contractual relationships;
6. non-contractual relationships.

Under Article 40(3) of the KMPC, Bulgarian substantive law or, respectively, the substantive law of the third country, applies in case *renvoi* is admitted.

2.3 Change of connecting factor

Under Article 27 of the KMCP, if the grounds for international jurisdiction existed when the case was instituted, such jurisdiction is retained even if these grounds lapse while the proceedings are in progress. If international jurisdiction did not exist when the case was instituted, such jurisdiction is conferred if the grounds for it arise while the proceedings are in progress

Any intervening change of circumstances that underlay the determination of the applicable law does not have a retroactive effect: Article 42 of the KMCP.

If the location of property is changed after a right *in rem* has been established or extinguished, the law applicable is changed accordingly. Under Article 66 of the KMCP, where a property is relocated, the rights acquired pursuant to the law of the State in which that property was previously located may not be exercised to the prejudice of the law of the State to which that property has been relocated.

Under Article 93(4) of the KMCP, the parties to a contract may at any time agree to subject that contract in whole or in part to a law other than that which previously governed the contract concerned.

2.4 Exceptions to the normal application of conflict rules

The only case where a provision of a foreign law does not apply is if the consequences of its application are manifestly incompatible with Bulgarian public policy.

The application of the conflict of law rules in the Private International Law Code does not prejudice the application of the mandatory rules of Bulgarian law that, considering their subject matter and purpose, must apply notwithstanding the transmission to a foreign law.

The court may have regard to the mandatory rules of another State with which the relationship has a close connection if these rules, under the law of the State that laid them down, must be applied notwithstanding what law has been determined as applicable by a conflict of law rule of the Code. To decide whether to have regard to such special mandatory rules, the court must have regard to the nature of these rules and their subject matter and to the consequences of applying or not applying them.

Bulgarian courts have jurisdiction over actions brought against multiple defendants if the grounds for jurisdiction exist in respect of one of these defendants. Where Bulgarian courts have jurisdiction over one of the actions brought by the claimant, they have jurisdiction for examining the rest of the actions as well.

2.5 Proof of foreign law

The court or another authority applying the law establishes the contents of the foreign law of its own motion. The court may resort to the methods provided for in international treaties, may request information from the Ministry of Justice or from another body, and request opinions from experts and specialised institutions.

Notwithstanding the above, the parties have the right to produce documents establishing the contents of the provisions of the foreign law on which they base their motions or objections, or otherwise assist the court or another authority applying the law. The court or another authority applying the law may order the parties to assist in establishing the contents of the foreign law.

The foreign law is interpreted and applied as it is interpreted and applied in the State which created it.

The apportionment of the burden of proof is determined by the substantive law which governs the consequences of the fact requiring proof.

Where the jurisdiction of the Bulgarian courts may be stipulated by an agreement between the parties to the dispute, this jurisdiction may be established even without any such agreement if the defendant accepts it explicitly or tacitly through acts on the merits of the dispute.
The Bulgarian enforcement authorities have exclusive jurisdiction to coerce enforcement where the obligation which is subject to such action must be performed by a person habitually resident in Bulgaria or where the subject matter of this action is located in Bulgaria.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

This area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), and Bulgaria is also party to the Rome Convention of 1980, Convention 80/934/EEC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980.
In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.
Bulgarian courts have jurisdiction over actions on contractual relationships where the defendant has a habitual residence, seat or principal place of business in Bulgaria, where the claimant or applicant is a Bulgarian national or is a legal person registered in Bulgaria, and where the place of performance of the obligation is in Bulgaria or where the defendant has a principal place of business in Bulgaria.
Contracts are governed by the law chosen by the parties.
Unless otherwise agreed, the parties are presumed to have accepted as applicable the usage of which the parties are or ought to have been aware, and which is widely known in international trade or commerce, and regularly observed by parties to contracts of the type involved in the particular trade or commerce involved.
By their choice, the parties can select a law applicable to the whole, or a part only, of the contract.
Where the subject matter of the contract is a right *in rem* in immovable property, the contract is presumed to be most closely connected with the State in which the immovable property is located.
The conclusion and material validity of a contract or of any separate provision of a contract is governed by the law of the State which applies to the validity of the contract. A contract is valid if it satisfies the formal requirements established by the law applicable to the contract as provided for by the Private International Law Code or by the law of the State in which the contract is concluded. The law governing the contract furthermore applies in connection with the proving of the contract, to the extent that this law contains rules which raise presumptions of law or other provisions regarding the burden of proof.
Bulgarian courts have jurisdiction over actions brought by a consumer where the defendant has a habitual residence, statutory seat or principal place of business in Bulgaria, where the claimant or applicant is a Bulgarian national or is a legal person registered in Bulgaria and where they have a habitual residence in Bulgaria.
The provisions of the Private International Law Code do not apply to any obligations arising under a bill of exchange, a promissory note and a cheque.

3.2 Non-contractual obligations

This area is governed by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).
In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.
The obligations arising out of a tort or delict are governed by the law of the State within whose territory the direct damage arises or is likely to arise (*lex loci delicti commissi*). Where the author of the tort or delict and the person sustaining damage both have their habitual residence or place of business in the same State at the time when the damage occurs, the law of that State applies.
Notwithstanding the above, if it appears from the circumstances as a whole that the tort or delict is manifestly more closely connected with another State, the law of that other State applies. A manifestly closer connection may be based on a pre-existing relationship between the parties, such as a contract that is closely connected with the tort or delict in question.
Bulgarian courts have jurisdiction over actions on damage sustained as a result of a tort or delict where the defendant has a habitual residence, seat, where the claimant satisfies the same conditions, and where the harmful act was committed in Bulgaria or where the damage occurred in Bulgaria.
Where the damage is caused, or there is a risk of damage being caused, by a defective product, the obligation for compensation is governed by the law of the State in which the person sustaining the damage is habitually resident.
The obligations arising out of an act of unfair competition and of restriction of competition are governed by the law of the State within whose territory the interests of competitors in the relationships therebetween, or the collective interests of consumers, are, or are likely to be, directly and substantially affected.
The obligations arising out of a violation of rights relating to the personality by the mass communication media and out of the violation of rights relating to personal data protection are governed, depending on the preference of the person sustaining damage, by the law of the State in which that person is habitually resident, or the law of the State within whose territory the damage occurred, or the law of the State of the defendant's place of business.
The obligations arising out of a violation of the environment are governed by the law of the State within whose territory the damage arises.
The obligations arising from an infringement of copyrights, of rights neighbouring on copyright, and on industrial property rights are governed by the law of the State for which protection of the right is sought (*lex loci protectionis*).
The obligations arising out of unjust enrichment are governed by the law of the State in which the enrichment takes place except where the unjust enrichment takes place in connection with another relationship between the parties (e.g. a contract that is closely connected with the unjust enrichment).
The obligations arising out of agency without authority are governed by the law of the State of habitual residence or place of business of the party concerned at the time of assuming the agency. Where the obligation arising out of agency without authority is connected to protection of a natural person or of a specific property, the applicable law is the law of the State in which the person was present or the property was located at the time of agency without authority. If it appears from the circumstances as a whole that the agency without authority is manifestly more closely connected with another State, the law of that other State applies.
After an obligation arising out of a non-contractual relationship comes into existence, the parties may submit this obligation to a law of their choice.
The law applicable to obligations arising out of a non-contractual relationship governs the conditions and extent of liability and the persons who are liable, the grounds for exemptions from liability and any limitation and division of liability, the measures taken to ensure enforcement, the kinds of injury or damage, the persons entitled to compensation for injury or damage sustained personally, the liability for injury caused by another person, the manners in which an obligation may be extinguished, and the proving of the obligations.
The applicable law does not govern the liability of the State and of bodies governed by public law, including their authorities and representatives, for acts performed by them in the course of exercise of their powers.
Whatever may be the applicable law, in determining liability, regard must be had to the rules of safety and conduct which were in force at the place and time of commission of the harmful act.
The right of persons who have suffered injury or damage to take direct action against the insurer of the person claimed to be liable is governed by the law applicable to the obligation arising out of the relevant non-contractual relationship.

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

The capacity of a person to have rights and duties and to enter into legal relationships is governed by their national law (*lex patriae*) (the law of the State whose nationality the person holds). Where the law applicable to a specific relationship establishes special conditions regarding the capacity to have rights and duties, that law applies. Under Article 50(2) of the KMCP, where the contract is entered into between persons who are present within the territory of the same State, the person who is capable of having rights and duties under the law of that State may not invoke their incapacity under the law of another State, except where the opposite party was aware of that incapacity or was unaware of that said incapacity through negligence at the time of the conclusion of the contract. The provision of paragraph 2 does not apply to any transactions in family and succession relationships, or to any transactions regarding rights *in rem* in immovable property located in a State other than the State of the place of conclusion of the transaction.

The capacity of a person to carry out activities of a commercial nature without incorporation of a legal person is determined by the law of the State where the person is registered as a merchant. Where registration is not required, the law of the State where the person has a principal place of business applies.

Under Article 53 of the KMCP, the name of a person and the change of that name are governed by the national law of the person. The effect of the change of nationality on the name is determined by the law of the State whose nationality the person has acquired. Where any such person is stateless, the effect of the change of their habitual residence on the name is determined by the law of the State in which the person establishes their new habitual residence.

The name and its change may be governed by Bulgarian law if this be requested by a person who is habitually resident in Bulgaria.

Bulgarian courts furthermore have jurisdiction over matters relating to a change or protection of a name where the person is a Bulgarian national or is habitually resident in Bulgaria, over matters relating to limitation or deprivation of Bulgarian nationals of the capacity to enter into legal relationships and over matters relating to revocation of the limitation or deprivation of the capacity of Bulgarian nationals to enter into legal relationships, to establish and terminate guardianship or curatorship, to declare an absence unheard from or death, where the person placed under guardianship or curatorship is a Bulgarian national or is habitually resident in Bulgaria.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Bulgarian courts and other authorities have jurisdiction over proceedings for establishment and contesting of a parent-child relationship where the defendant has a habitual residence in Bulgaria, where the claimant or applicant is a Bulgarian national, and where the child or the parent, who is a party, is a Bulgarian national or is habitually resident in Bulgaria. This jurisdiction furthermore applies to matters relating to relationships *in personam* and *in rem* between parents and children and to adoption, annulment or revocation of adoption, where the adopter, the adoptee or one of the parents of the adoptee is a Bulgarian national or is habitually resident in Bulgaria.

Establishment of a parent-child relationship is governed by the law of the State whose nationality the child acquired at the time of birth. The same law is applicable to the relationships *in personam* between the parents at the time of birth. *Renvoi* to the law of a third country is accepted where that law admits establishment of the child's parent-child relationship.

3.4.2 Adoption

The conditions for adoption are governed by the law of the State of which the adopter (or adopters) and the adoptee are nationals at the time of submission of the application for adoption. If these persons hold different nationalities, the national law of each of the persons applies. Where the adoptee is a Bulgarian national, the consent of the Minister of Justice must be requested. The terms and procedure for granting consent to the adoption of a person who is a Bulgarian national by a foreign national are established by a regulation of the Minister of Justice. Where the adoptee is a Bulgarian national, the adopter (whether a Bulgarian or a foreign national) who is habitually resident in another State must also satisfy the conditions for adoption under the law of that State.

The effect of adoption is governed by the common national law of adopter and adoptee. If adopter and adoptee hold different nationalities, the law of the State in which they have a common habitual residence applies.

Bulgarian courts have jurisdiction over actions on maintenance in cases where the defendant is habitually resident in Bulgaria, where the claimant or the applicant is a Bulgarian national, and where the maintenance creditor is habitually resident in Bulgaria.

Maintenance obligations are governed by the law of the State in which the maintenance creditor is habitually resident, except where that creditor's national law is more favourable to them. In such cases, the national law of the maintenance creditor applies. Where the applicable law does not admit the award of maintenance, Bulgarian law applies.

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

3.5.1 Marriage

Marriage in Bulgaria is celebrated by a civil status registrar if one of the future spouses is a Bulgarian national or is habitually resident in Bulgaria. Marriage between foreign nationals may be celebrated in Bulgaria by a consular official or a diplomatic agent of the State of origin of the foreign nationals concerned if this is permissible under the law of that State. Bulgarian nationals abroad may enter into marriage before a competent authority of the foreign State if this is permissible under the law of that State. Marriage between Bulgarian nationals abroad may be celebrated by a Bulgarian consular official or diplomatic agent if this is permissible under the law of the receiving State. Marriage between a Bulgarian national and a foreign national may be celebrated abroad by a Bulgarian consular official or diplomatic agent if this is permissible under the law of the receiving State and the national law of the foreign national.

Matrimonial matters are cognisable in Bulgarian courts if one of the spouses is a Bulgarian national or is habitually resident in Bulgaria. The formal requirements for marriages are governed by the law of the State of celebration.

The substantive requirements for entry into marriage are governed for each of the future spouses by the law of the State of which the person was a national at the time of celebration of the marriage.

In respect of a Bulgarian national who enters into marriage abroad, the authorisation referred to in Article 6(2) of the Family Code (*Semeen kodeks*) may be granted by the Bulgarian diplomatic agent or consular official.

Where one of the future spouses is a Bulgarian national or is habitually resident in Bulgaria, the marriage is celebrated by a Bulgarian civil status registrar and, if the applicable foreign internal law establishes any impediment to the entry into marriage which, under Bulgarian law, is incompatible with the freedom to enter into marriage, this impediment is disregarded.

A foreign national or a stateless person must certify to the Bulgarian civil status registrar that their national law recognises the validity of a marriage celebrated by a foreign competent authority and that there are no impediments to entry into that marriage under their national law.

3.5.2 Unmarried/Cohabiting couples and partnerships

There are no special conflict of law rules.

3.5.3 Divorce and judicial separation

This area is governed by Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

The divorce of spouses of the same foreign nationality is governed by the law of the State whose nationals they are when the divorce petition is lodged.

The divorce of spouses of different nationalities is governed by the law of the State in which they have their common habitual residence when the divorce petition is lodged. When the spouses have no common habitual residence, Bulgarian law applies.
If the applicable foreign law does not admit the divorce and one of the spouses is a Bulgarian national or is habitually resident in Bulgaria when the divorce petition is lodged, Bulgarian law applies.

3.5.4 Maintenance obligations

This area is governed by Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.
Maintenance obligations are governed by the law of the State in which the maintenance creditor is habitually resident, except where that creditor's national law is more favourable to them. In such cases, the national law of the maintenance creditor applies. Where the maintenance creditor and the maintenance debtor are nationals of the same State and the maintenance debtor is habitually resident in that State, the common national law of the two persons applies.
Where the applicable law does not admit the award of maintenance in the situations above, Bulgarian law applies.
Where maintenance obligations between former spouses arise by reason of annulment of a marriage or by reason of divorce, the applicable law is the law which applied upon the divorce or the annulment of the marriage.
The law applicable to maintenance determines:
1. whether maintenance may be claimed, in what amount, and by whom;
2. who can claim maintenance and within what time limits;
3. whether and under what terms the maintenance may be modified;
4. the grounds for extinguishment of the right to maintenance;
5. the obligation of the maintenance debtor to reimburse the authority which paid the maintenance instead of that debtor.

Upon determination of the amount of maintenance, account must be taken of the financial capabilities of the maintenance debtor and of the actual needs of the maintenance creditor, even where the applicable foreign law provides for otherwise.
Marriage annulment is governed by the law that was applicable to the substantive requirements for entry into the marriage.
For marriage annulment and divorce, see the relevant topic.

3.6 Matrimonial property regimes

The court having jurisdiction over matters relating to annulment and divorce has jurisdiction over matters relating to relationships *in personam* and *in rem* between the spouses.
The relationships *in personam* between spouses are governed by their common national law. The relationships *in personam* between spouses holding different nationalities are governed by the law of the State in which they have a common habitual residence or, when they have no common habitual residence, by the law of the State with which both spouses are most closely connected. The relationships *in rem* between spouses are governed by the law applicable to the relationships *in personam* between them.

3.7 Wills and successions

This area is governed by Regulation (EU) No 650/2012 of 4 July 2012 on the jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession.
In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.
Bulgarian courts and other authorities have jurisdiction over actions relating to succession where the deceased at the time of their death were habitually resident in Bulgaria or were then Bulgarian nationals, and where part of their estate is located in Bulgaria.
Inheritance of movable property is governed by the law of the State in which the deceased was habitually resident at the time of their death. Inheritance of immovable property is governed by the law of the State in which the property is located. The deceased choose the law of the State whose nationality they held at the time of making that choice to govern the inheritance of the whole of their estate. The choice of an applicable law must not affect the reserved share of the heirs determined under the applicable law above.
The capacity of a person to dispose of their estate by a will (making and revocation) is governed by the law applicable to succession. A will is formally valid if it conforms to the law of the State in which it was made, or whose nationality was held by the testator at the time of making the will or at the time of their death, or where the testator was habitually resident, or where the immovable property subject to the will be located.
The law applicable to succession governs the time and place of opening the succession, the range and precedence of the heirs, the shares of the heirs, the capacity to inherit, the assumption of the obligations of the deceased and their apportionment among the heirs, the acceptance and renunciation of succession, the time limits for acceptance of the succession, the disposable portion of the estate, and the conditions for material validity of the will.
Where there are no heirs under the law applicable to the succession, the estate located within the territory of Bulgaria reverts to the Bulgarian State or to the municipality.

3.8 Real property

This area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 July 2008 on the law applicable to contractual obligations (Rome I).
In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.
Matters relating to immovable property located in Bulgaria, matters relating to enforcement or security against such property and matters relating to the transfer or establishment of rights *in rem* in such property are exclusively cognisable in Bulgarian courts and other authorities.
Possession, ownership and other rights *in rem* in movable and immovable property are governed by the law of the State in which the property is located (*lex loci rei sitae*). Whether property is movable or immovable and the type of the rights *in rem* is determined by the same law.
The acquisition and termination of rights *in rem* and possessory rights is governed by the law of the State in which the property was located when the act was performed or when the circumstance justifying the acquisition or termination occurred.
The acquisition, transfer and termination of rights *in rem* in means of transport is governed by the law of the flag of the vessel, the law of the State where the aircraft is registered, or the law of the State where the operator of the railway rolling stock and of land motor vehicles has its place of business.

3.9 Insolvency

This area is governed by Council Regulation (EC) No 1346/2000 and, reckoned from 26 June 2017, by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

See Insolvency

The following websites may be useful:

https://www.justice.government.bg
http://www.vss.justice.bg

http://www.vks.bg/
http://www.vss.justice.bg/page/view/1397
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Which country's law applies? - Czechia

1 Sources of the rules in force

1.1 National rules

The key national measure in the conflict of law rules is Act No 91/2012 on Private International Law.

1.2 Multilateral international conventions

1.2.1 Selection of significant multilateral international conventions governing the applicable law:

1.2.1.1 Directly applicable

Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw 1929
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956
Guadalajara Convention on the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, 1961
Vienna Convention on Civil Liability for Nuclear Damage, 1963
Hague Convention on the Law Applicable to Traffic Accidents, 1971
Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), 1973
Convention on the Limitation Period in the International Sale of Goods, 1974
United Nations Convention on the Carriage of Goods by Sea, 1978
United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980
Convention concerning International Carriage by Rail (COTIF), 1980
Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999

1.2.2.2 Conflict of law

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, The Hague 1996
Hague Convention on the International Protection of Adults, 2000
Hague Protocol on the Law Applicable to Maintenance Obligations, 2007 (the EU as a whole is the party)

1.3 Principal bilateral conventions

1.3.1 Selection of significant bilateral international conventions governing the applicable law

Agreement between the Czechoslovak Republic and the People's Republic of Albania on legal assistance in civil, family and criminal cases, 1959
Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on the regulation of legal relations in civil, family and criminal cases, 1964 (applies to all successor states of the former Yugoslavia)
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Bulgaria on legal assistance and the regulation of legal relations in civil, family and criminal cases, 1976
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Mongolia on the provision of legal assistance and on legal relations in civil, family and criminal cases, 1976
Agreement between the Czechoslovak Socialist Republic and the Cuban Republic on mutual legal assistance in civil, family and criminal cases, 1980
Agreement between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance and legal relations in civil, family and criminal cases, 1982 (applies to the Russian Federation and many of the other successor states to the former USSR)
Agreement between the Czechoslovak Socialist Republic and the Socialist Republic of Vietnam on legal assistance in civil and criminal cases, 1982
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland on legal assistance and the regulation of legal relations in civil, family, employment and criminal cases, 1987
Agreement between the Czechoslovak Socialist Republic and the People's Republic of Hungary on legal assistance and the regulation of legal relations in civil, family and criminal cases, 1989
Agreement between the Czech Republic and Romania on legal assistance in civil cases, 1994
Agreement between the Czech Republic and Ukraine on legal assistance in civil cases, 2001
Agreement between the Czech Republic and the Republic of Uzbekistan on legal assistance and legal relations in civil and criminal cases, 2002

2 Implementation of conflict of law rules

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

This matter is governed by Section 23 of the Act on Private International Law.
The court applies the foreign law of its own motion. The law applies in the same way as in country where it is in force. The provisions of the law applied are the provisions that would be applied for a decision in the case in the country in which the law is in force, regardless of their ordering in the system or public law status, provided that they do not conflict with provisions of Czech law that must be applied.
The court determines, of its own motion, the part of the foreign law to be applied. The court or the public authority that decides in cases governed by the law in question takes all necessary steps to determine the law in question.

2.2 Renvoi

This matter is governed in general terms by Section 21 of the Act on Private International Law.
Renvoi is accepted, with the exception of relationships based on contract and employment law. Where the applicable law has been selected by the parties, conflict of law provisions may be taken into account only where this follows from the agreement of the parties.

2.3 Change of connecting factor

It is generally the case that a given criterion is evaluated only when a legally significant fact is under assessment. Specific conflict of law rules can, of course, settle an issue at certain moments – see for example the rules on rights in rem in point 3.8.

2.4 Exceptions to the normal application of conflict rules

This matter is governed in general terms by Section 24 of the Act on Private International Law (known as the 'escape clause').

The law that should be applied, according to the Act on Private International Law, need not be applied in wholly exceptional circumstances where, after proper reasoned consideration of a summary of all circumstances of the case and in particular of the parties' justified expectation regarding application of another law, it would appear disproportionate and contrary to a sensible and fair settlement of the relationship between the parties. Under these conditions, and where the rights of other persons are not affected, the law to be applied is the one that reflects such a settlement.

2.5 Proof of foreign law

This matter is governed by Section 23 of the Act on Private International Law.

The court determines, of its own motion, the part of the foreign law to be applied. The court or the public authority that decides in cases governed by the law in question takes all necessary steps to determine the law in question.

If the court or the public authority that decides in cases governed by the law in question is not familiar with the contents of the foreign law, it may request the opinion of the Ministry of Justice in order to determine them.

Where the foreign law cannot be determined within a reasonable period of time, or where such determination is impossible, Czech law applies.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Contractual obligations are governed by Sections 87 and 89 of the Act on Private International Law. This is limited to those contractual obligations or aspects thereof that do not fall within the scope of EU legislation or international agreements, unless that legislation or those agreements allow them to be covered by that Act. It is thus a residual provision.

Contracts are governed by the law of the State with which the contract is most closely connected, unless the parties have selected the applicable law. The selection of a law must be made explicitly or it must follow unambiguously from the provisions of the contract or from the circumstances of the case.

Insurance contracts are governed by the law of the State in which the policy holder is habitually resident. The parties may select the applicable law for an insurance contract.

In the case of insurance agreements that are subject to the Rome I Regulation, the Act utilises the option Member States have under Article 7(3) of that Regulation allowing the parties to select any applicable law to the extent allowed by the Regulation.

Legal relationships created from unilateral legal contracts are governed, under Section 90 of the Act, by the law of the State in which the party that makes the unilateral legal contract is habitually resident or has its registered office at the time when the legal contract was made, unless another law was selected for application.

3.2 Non-contractual obligations

Section 101 of the Act on Private International Law lays down, mainly in relation to the scope of the Rome II Regulation, a conflict of law measure only for non-contractual obligations arising from a breach of private and personality rights, including defamation. These obligations are governed by the law of the State in which the breach occurs. The injured party may, however, select application of the law of the State in which (a) the injured party is habitually resident or has its registered office, (b) the originator of the breach is habitually resident or has its registered office, or (c) the breach produced a result, provided that the originator of the breach could have foreseen this.

Non-contractual liability is also legally uniform in a number of the international transport agreements referred to above (see paragraph 1.2.1).

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

This matter is governed by Section 29 of the Act on Private International Law.

Unless the Act specifies otherwise, legal personality and legal capacity are governed by the law of the State in which the person is habitually resident. Unless the Act specifies otherwise, it suffices if the natural person performing a legal act has capacity for the act under the law that is applicable in the place in which the natural person performs that act.

The measure on names of natural persons is governed by the law of the State of which the person is a national. The person may, however, opt for application of the law of the State in which he is habitually resident. Where a person has multiple nationality, the procedure laid down in Section 28 of the Act on Private International Law is followed.

The personal status of natural persons is also regulated in several of the bilateral agreements on legal aid by which the Czech Republic is bound. Conflict of law rules in those agreements are generally based on the criterion of nationality and take precedence over the rules set out in the Act on Private International Law.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The establishment and contesting of parent-child relationships is governed by Section 54 of the Act on Private International Law. It is subject to the law of the State of which the child is a national by birth; where a child acquires more than one nationality by birth, Czech law applies. The law of the State in which the child's mother was habitually resident at the time of birth applies where this is in the interests of the child. Where the child is habitually resident in the Czech Republic and where it is in the child's interests, the establishment and contesting of a parent-child relationship is subject to Czech law. A parent-child relationship may be established in accordance with the law of the State in which the declaration of a parent-child relationship is made. Where a parent-child relationship is contested in another State in a judicial or extra-judicial procedure in accordance with the law of that State and the parent-child relationship is established in respect of another person, this will suffice to establish a parent-child relationship in respect of that person.

The applicable law for relationships between parents and children in matters of maintenance is determined in accordance with Article 15 of the Regulation on obligations relating to the Hague Protocol on the Law Applicable to Maintenance Obligations (2007). In other cases involving parental rights and obligations and measures to protect the person or property of a child, the applicable law is determined in accordance with the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures to Protect Children (1996).

3.4.2 Adoption

This matter is governed by Sections 61 and 62 of the Act on Private International Law.

For adoption it is necessary to fulfil the conditions laid down by the law of the State of which the adoptee is a national and the State of which the adoptive parent is a national. Where the adoptive parents are of different nationality, the conditions of the legal systems determined by the nationalities of both parents must be fulfilled, as well as law of the State of which the adoptee is a national. Where, under these rules, it would be necessary to apply the law of another country that does not allow the adoption or allows it only under highly restricted circumstances, Czech law applies, as long as the adoptive parent or at least one of the adoptive parents or the adoptee is habitually resident in the Czech Republic.

The effects of adoption are governed by the law of the State of which all parties are nationals at the time of the adoption or, where this is not the case, by the law of the State in which all parties are habitually resident at the time of the adoption or, where this is not the case, by the law of the State of which the adoptee is a national.

For relationships between an adoptive parent and an adoptee, or adoptive parents in matters of parental rights and obligations, child-rearing and maintenance, the law determined under the international agreements listed in paragraph 3.4.1 for parent-child relationships applies.

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

3.5.1 Marriage

This matter is governed by Sections 48 and 49 of the Act on Private International Law.

The capacity of a person to marry, as well as the conditions for the validity of a marriage, are subject to the law of the State of which that person is a national.

The form of a marriage is subject to the law applicable in the place in which the marriage takes place.

A marriage performed in an embassy of the Czech Republic in another country is subject to Czech law. A Czech national cannot enter into a marriage at a diplomatic mission of a foreign state in the Czech Republic.

Personal relationships between spouses are governed by the law of the State of which both persons are nationals. Where they are nationals of different States, the relationship is governed by the law of the State in which both spouses are habitually resident or, where this is not the case, by Czech law.

3.5.2 Unmarried/Cohabiting couples and partnerships

Section 67 of the Act on Private International Law governs the applicable law for partnerships and similar relationships and the effects thereof, capacity to enter into them, the procedures for entering into them or for dissolving, annulling and voiding them, and for settling personal and property matters between the partners.

All of these matters are subject to the law of the State in which the partnership or similar relationship is being or has been entered into.

Czech law does not include any conflict of law measures dealing with cohabitation.

3.5.3 Divorce and judicial separation

Section 50 of the Act on Private International Law governs the applicable law for divorce and for annulment of a marriage or a determination as to whether or not a marriage is void. The Czech Republic does not take part in enhanced cooperation in the area of the applicable law in divorce and legal separation cases and it is thus not bound by Council Regulation (EU) No 1259/2010.

Divorce is governed by the law of the State governing the personal relationship of the spouses at the time of starting the procedure. (Personal relationships between spouses are governed by the law of the State of which both persons are nationals. Where they are nationals of different States, the relationship is governed by the law of the State in which both spouses are habitually resident or, where this is not the case, by Czech law.) If, under those conflict of law rules, it would be necessary to apply foreign law that does not permit divorce or permits it only under highly restricted circumstances, Czech law applies, as long as at least one of the spouses is a citizen of the Czech Republic or at least one of the spouses is habitually resident in the Czech Republic.

In the annulment of a marriage or in determining whether or not a marriage is void, the capacity to conclude a marriage and the form of conclusion thereof are assessed under the laws applicable to them at the time the marriage was entered into.

Czech law does not include a conflict of law measure for separation.

3.5.4 Maintenance obligations

Maintenance obligations between spouses and former spouses are governed by Article 15 of the Regulation on obligations relating to the Hague Protocol on the Law Applicable to Maintenance Obligations (2007).

3.6 Matrimonial property regimes

Since 29 January 2019, the conflict of law rules relating to matrimonial property regimes included in the Act on International Private Law have been replaced by Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. The Regulation applies to legal proceedings instituted and agreements concluded after 29 January 2019.

This matter is governed by Section 49 of the Act on Private International Law. The property regimes of spouses are governed by the law of the State in which both spouses are habitually resident; where this is not the case, by the law of the State of which both spouses are nationals; and where this is not the case, by Czech law.

The contractual settlement of matrimonial property rights is governed by the law applicable to matrimonial property regimes at the time when the arrangement was made. Where this is not the case, spouses may also agree, for the contractual settlement of matrimonial property rights, that their property regimes will be governed either by the law of the State of which one of the spouses is a national, or by the State in which one of the spouses is habitually resident, or by the law of the State in which the immovable property at issue is located, or by Czech law. A notarial record of the agreement must be drawn up or a similar document where the agreement is concluded in another country.

3.7 Wills and successions

The applicable law in relation to the succession of persons dying on or after 17 August 2015 is governed by Regulation (EU) No 650/2012.

This matter is governed by Section 76 and 77 of the Act on Private International Law. This measure applies in relation to the succession of persons who died on or before 16 August 2015 (unless the applicable law is governed differently by a bilateral international agreement).

Pursuant to the Act on International Private Law, the legal regime of succession is governed by the law of the State in which the testator was habitually resident at the time of death. Where the testator was a national of the Czech Republic and at least one of the heirs is habitually resident in the Czech Republic, Czech law applies.

The capacity to make or annul a will, as well as the effects of defects in a will and manifestations thereof, are governed by the law of the State of which the testator is a national at the time of making the will, or in which the testator is habitually resident. A similar determination of the applicable law is performed in respect of capacity to make or annul other kinds of bequests upon death and for determining which other kinds of bequests upon death are admissible.

A will is valid as to its form where the form complies with the law of the State (a) of which the testator was a national at the time of making the will or at the time of his death, (b) on the territory of which the will was made, (c) in which the testator was habitually resident at the time of making the will or at the time of his death, (d) which is to be applied for the legal regime of succession or which was to have been applied for such a regime at the time of making the will, or (e) in which there is immovable property involved. These rules also apply to the form of annulment of a will. These rules also apply mutatis mutandis to the form of agreements as to succession and other bequests upon death, provided that the testator is a party to the agreement as to succession. This also applies to the form of annulment of an agreement as to succession or other bequests upon death.

The testator may specify in a will that, instead of the law otherwise applicable, the legal regime of succession will be governed by the law of the State in which the testator is habitually resident at the time of making the will, including for an immovable bequest, or he can specify that the legal regime of succession, including for an immovable bequest, will be governed by the law of the State of which he is a national at the time of arranging the will. The parties to a succession agreement can choose a legal regime of succession from these legal systems provided that the testator is one of the parties to the succession agreement. This also applies mutatis mutandis to other bequests upon death.

Under the Succession Regulation if, under the applicable law for inheritance according to the regulation, there is no heir for any of the assets, or legatee in accordance with the bequest upon death, or any natural person who is an heir, application of a law determined in this way does not exclude the right of a Member State or an entity designated by a given Member State for that purpose to take ownership, by right, of assets from an inheritance that are located on its territory, where creditors have a right to the payment of outstanding debts from the residual assets. In Czech law, this matter is governed by Section 1634

of the Civil Code. According to this, where there is no heir to inherit even under intestacy rules, succession passes to the State and the State is regarded as the legal heir. The State has the same standing vis-à-vis the other parties as an heir in accordance with the benefit of inventory. Under Section 78 of the Act on International Private Law, a testator's items and rights located in the Czech Republic pass to the Czech Republic where there is no heir; decisions in these matters lie within the jurisdiction of the Czech courts. The State or another territorial unit or existing institution is not, for these purposes, regarded as an heir, unless established as an heir in the will.

3.8 Real property

This matter is governed by Section 69 to 79 of the Act on Private International Law.

The general rule is that substantive rights to immovable property or to tangible movable property are governed by the law of the place where the property is located. It is also according to this law that a determination is made as to whether property is movable or immovable. For selected property and for certain aspects of rights in rem the Act nevertheless contains special conflict of law rules – see below:

Rights in rem to ships and aircraft that are recorded in a public register, the establishment and expiration of which are governed by the law of the State where the register is kept.

The establishment and expiration of rights in rem to tangible movable property are governed by the law of the place where the property was located at the time when the event occurred that led to the creation or expiration of that right.

The establishment and expiration of ownership in tangible movable property that is transferred on the basis of an agreement is governed by the law that governs the agreement that is the basis for the creation or expiration of ownership.

Where a legal procedure that is to be the basis for the establishment and expiration of rights in rem to tangible movable property is made after the start of shipping of the property and for the duration of the shipping, such establishment and expiration shall be governed by the law of the place from where the property was dispatched. If, however, the establishment and expiration of rights in rem to the property in question is made through the handling of a certificate that must be presented for the purpose of surrendering the property and handling it, the law of the place in which the certificate is located at the time of the handling thereof applies.

The provisions on entries in public books and similar lists valid in the place where the immovable or movable property is located are also applied where the legal reason for the establishment, expiration, restriction or transfer of the recorded right is assessed under another legal system.

Acquiescence is governed by the law valid in the place where the property was located at the start of the period of acquiescence. The holder, however, may refer to the law of the State on which the acquiescence takes place, where – from the time when the property arrived in the State in question – all of the conditions for acquiescence under the law of that State have been met.

3.9 Insolvency

This matter is governed by Section 111 of the Act on Private International Law. The conflict of law provisions of the Insolvency Regulation apply mutatis mutandis, except for cases subject to that Regulation.

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Which country's law applies? - Germany

1 Sources of the rules in force

1.1 National rules

Between 2007 and 2016 the EU codified the conflict-of-law rules of important areas of private law in the form of Regulations (in particular Regulation (EC) No 593/2008 (the 'Rome I Regulation'), Regulation (EC) No 864/2007 (the 'Rome II Regulation') and Regulation (EU) No 650/2012 (the 'EU Succession Regulation'). For an overview please refer to the guide 'Judicial cooperation in civil matters in the European Union' (https://e-justice.europa.eu/content_ejn_s_publications-287-en.do)). Consequently, the scope of Germany's autonomous conflict-of-law rules has become ever narrower.

The main source of domestic German conflict-of-law rules (or private international law) is the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche* –EGBGB), in particular Articles 3 to 48. Under Article 3 EGBGB, conflict-of-law rules laid down in EU legislation and in international conventions take precedence over the provisions of the Act in their fields of application.

German law also contains scattered conflict-of-law rules elsewhere than in the EGBGB, for example in the Insolvency Code (*Insolvenzordnung* – InsO).

In fields that are not regulated by legislation, for example in international company law, the applicable law is determined by the courts.

The remarks under 2 are essentially confined to the domestic German conflict-of-law rules.

1.2 Multilateral international conventions

A list of all multilateral conventions signed and ratified by Germany can be found in Directory B of the Federal Law Gazette (*Bundesgesetzblatt*) (online orders via https://www.bgbl.de/). The multilateral international conventions listed include conventions containing unified conflict-of-law rules.

Multilateral conventions of this type are often initiated by international organisations. Particular mention should be made of the Hague Conference on Private International Law (www.hcch.net https://www.hcch.net/de/home/), of which Germany has long been a member.

1.3 Principal bilateral conventions

Individual conflict-of-law provisions can also be contained in bilateral conventions. A list of such conventions between Germany and other states can be found in Directory B of the Federal Law Gazette (see 1.2 above).

2 Implementation of conflict of law rules

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

Questions of the conflict of laws do not arise only in disputes before the courts. Business partners in different states need to know which law governs the contract between them, irrespective of any future legal dispute. That law determines their rights and obligations. Car drivers travelling on holiday to other states must be aware of the law under which they are liable if they cause a traffic accident there. That law determines the nature and scale of any compensation.

Where the facts of a dispute present some connection to the law of another state, a German court adjudicating the case will determine which law is to be applied by referring to the German conflict-of-law rules. German judges must be conversant with the German conflictof-law rules. They must apply them whether or not a party so requests.

2.2 Renvoi

If under the German conflict-of-law rules the law of another state is applicable, but the law of that state in turn refers to the law of a further state, German law generally accepts the further reference, under Article 4(1), first sentence, EGBGB, subject to specific provisions in EU legal acts or international conventions. If the foreign law refers back to German law, the German substantive provisions are applicable (Article 4(1), second sentence, EGBGB).

Where the German conflict-of-law provisions allow the parties to choose the applicable legal system, Article 4(2) EGBGB states that that choice relates only to the substantive provisions.

2.3 Change of connecting factor

A switch in the applicable law in a situation where the facts of the matter are still open to change is a phenomenon familiar to German law. For example, rights *in rem* are in principle assessed according to the law of the location of the property, which means that if an item's location is changed it may come to be governed by a different legal system.

A change of connecting factor is also accepted in other areas of law, an example being a change of nationality.

However, no change in the applicable law is possible if the conflict-of-law rules establish a specific time of connection. For example, to determine the law governing a succession, the connecting factor in the case of persons who die on or after 17 August 2015 will be the place of habitual residence of the testator at the time of death (see 3.7 below).

2.4 Exceptions to the normal application of conflict rules

Article 6 EGBGB formulates the German reservation relating to public policy, whereby a provision of a foreign law is not to be applied where its application would be manifestly incompatible with the fundamental principles of German law. 'Fundamental principles' here means the basic principles of justice. Generally, this refers to serious violations of fundamental rights guaranteed in the German Constitution. For the applicability of the public policy reservation it is also important that the facts of the case present a domestic connection; otherwise the German legal system cannot be involved. Here too, precedence has to be given to any special rules, in particular those laid down in EU legal instruments that take precedence (see, for example, Article 21 of the Rome I Regulation, Article 26 of the Rome II Regulation and Article 35 of the EU Succession Regulation). A further exception to the application of conflict-of-law rules applies in the case of overriding mandatory provisions. Under an overriding mandatory provision national rules are applied compulsorily, as respect for these provisions is regarded as crucial by a country for safeguarding its public interests, in particular its political, social or economic organisation. Mandatory provisions assume their greatest importance in questions of contractual and non-contractual obligations. Special rules on the subject are laid down in the EU legal instruments that take precedence (see in particular Article 9 of the Rome I Regulation, which contains a legal definition, and Article 16 of the Rome II Regulation) and in international conventions.

2.5 Proof of foreign law

Not only must German courts apply the conflict-of-law rules of their own motion, but, according to Section 293 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO), they are also required, after due consideration, to determine the substance of the applicable foreign law. This is not limited to perusal of the foreign legislation: the court must consider the treatment of the legislation in academic writing and case-law. The court must put itself in a position to be able to apply the foreign law in the same way as a court would do in the country concerned.

To determine the substance of foreign law, courts may use any sources of reference available to them.

One source of information for contracting states is provided by the European Convention on Information on Foreign Law, signed in London on 7 June 1968. The request must be sent to the competent agency of the foreign state concerned via the competent receiving/transmitting agency.

Instead of a request for legal information under the London European Convention, the court can also obtain a legal opinion from an expert, provided the expert also possesses knowledge concerning the practical application of the foreign law.

For straightforward questions, under certain circumstances, information obtained from the contact point of the European Judicial Network in civil and commercial matters or from the court's own research into the foreign law may also suffice to establish the substance of the foreign law.

Courts may also call on the cooperation of the parties for proof of foreign law, but are not bound by their pleadings. They can therefore exploit any source of reference, of their own motion, without being bound by the evidence submitted by the parties.

In exceptional cases where despite all due care the content of the foreign law to be applied cannot be established, German law is to be applied as an alternative.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

International sales contracts are subject in the first place to the UN Convention on Contracts for the International Sale of Goods, which applies automatically between businesses from any of the large number of contracting states unless the parties have ruled this out sufficiently clearly, for example by 'waiving the UN Sales Convention'.

For all other promissory contracts concluded since 17 December 2009, the question of the applicable law is, in principle, determined in accordance with the Rome I Regulation, unless the contract is outside the scope of that Regulation, such as property-law contracts. In addition, Articles 46b to 46d EGBGB are also applicable.

Up to 17 December 2009 the old version of Article 27 et seq. EGBGB applied. This was based on the 1980 Rome Convention on the Law applicable to Contractual Obligations. It was repealed with effect from 17 December 2009, but still applies to contracts concluded before that date.

For certain insurance contracts concluded before 17 December 2009, Articles 7 to 14 of the Introductory Act to the Insurance Act (*Einführungsgesetz zum Versicherungsvertragsgesetz* – EGVVG), in the version valid until 16 December 2009, contain special conflict-of-law rules.

3.2 Non-contractual obligations

Since 11 January 2009, the selection of the legal system applicable to non-contractual obligations has generally been determined by the Rome II Regulation, supplemented by Article 46a EGBGB.

In cases not covered by the Regulation, such as, for instance, infringements of the right to protection of one's personality (*Persönlichkeitsrecht*), German law provides for specific conflict-of-law rules to determine which country's law will apply; these rules are laid down in Articles 38 bis-42 EGBGB.

Article 38 EGBGB lays down rules on the law to be applied in respect of different types of claims based on unjust enrichment.

Under Article 39 EGBGB, legal claims arising out of acts performed without due authority in connection with the affairs of another person are governed by the law of the state in which the act was performed. A special rule applies to settlement of a debt owed by another person.

Under Article 40 EGBGB, claims for damages arising from an unlawful act are in principle governed by the law of the place in which the liable party has acted (*Recht des Handlungsorts*); the injured party can decree that instead of that law, the law of the country in which the injury occurred (*Recht des Schadenseintritts*) is to be applied.

Article 42 EGBGB provides that the parties may in any event choose the law applicable to a non-contractual relationship after the event that gave rise to it.

In addition, under Article 41 EGBGB, the applicable system of law may be replaced by a system of law which, owing to particular circumstances, has a substantially closer connection to the facts of the case.

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

Under German conflict-of-law rules, legal questions raised by the personal legal status of a natural person are governed by the legal system of the country of which the person concerned is a national (*Heimatrecht*). This applies in principle to names (for details, see Article 10 EGBGB) and to the question of whether a natural person enjoys legal capacity and capacity to contract (Article 7 EGBGB).

Where a person has more than one nationality (*Mehrstaater*), Article 5(1), first sentence, EGBGB stipulates that reference must be made to the 'effective nationality', i.e. the nationality of the state with which the person with multiple nationalities has the closest connection. If, however, a person with multiple nationalities also has German nationality, Article 5(1), second sentence, EGBGB provides that German nationality alone applies.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Under Article 19 EGBGB, the parentage of a child is subject in the first place to the law of the state in which the child is habitually resident. In the relationship to each parent, the parentage can also be determined by the law of the state of that parent's nationality. Lastly, if the mother is married, the law governing the effects of the marriage (*Ehewirkungsstatut*) (Article 14 EGBGB) that applies at the time of the birth may also acquire significance in the matter of determining parentage. Different rules apply for children born before 1 July 1998.

Under Article 20 EGBGB, challenges to parentage are governed generally by the legal system that determines parentage, and, where a challenge is brought by a child, by the law applying in the place where the child is habitually resident.

3.4.2 Adoption

Since 31 March 2020 the adoption of a child within Germany has been subject to German law. It is otherwise governed by the law of the state in which the adoptee is habitually resident at the time of the adoption (new version of Article 22(1) EGBGB). Adoption procedures completed before 31 March 2020 are subject to the previously applicable international private law, i.e. the adoption is governed by the law of the state of which the adopter was a national at the time of the adoption (old version of Article 22(1), first sentence, EGBGB). Adoption by one or both spouses is subject to the law that governs the general effects of the marriage (old version of Article 22(1), second sentence, EGBGB).

The recognition and establishment of the effectiveness of foreign adoptions are regulated in the Act on the effects of adoption of a child under foreign law (*Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht*) (Effectiveness of Adoption Act (*Adoptionswirkungsgesetz* – AdWirkG)).

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

3.5.1 Marriage

The following remarks are applicable only to opposite-sex marriages. Please refer to 3.5.2 for same-sex marriages.

Under Article 13 EGBGB, the conditions for the conclusion of marriage are usually governed by the law of the state of which the person engaged to be married is a national. Exceptionally, under special circumstances, German law may apply instead.

In Germany, a marriage may be concluded only in the presence of the registrar, or exceptionally of a person specifically empowered by a foreign state (Article 13(4), second sentence, EGBGB).

If general effects of the marriage do not fall within the scope of Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (EU Matrimonial Property Regulation), they are subject to the law chosen by the spouses (Article 14(1) EGBGB).

3.5.2 Unmarried/Cohabiting couples and partnerships

Same-sex marriages and registered life partnerships (*eingetragene Lebenspartnerschaften*) are governed by Article 17b EGBGB. Under that Article the formation and dissolution of a registered partnership, as well as any general effects that do not fall within the scope of Council Regulation (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (EU Registered Partnership Property Regulation), are governed by the law of the country in which the life partnership is registered (Article 17b(1), first sentence, EGBGB). The same applies by analogy if the spouses are of the same sex or if at least one spouse is of neither the female nor the male sex (Article 17b(4), first sentence, EGBGB). Since 1 October 2017 it has no longer been possible for registered partnerships to be formed in Germany (Article 3(3) of the Act introducing the right of marriage for same-sex couples (*Eheöffnungsgesetz*)) and Article 17b(1), first sentence, EGBGB is therefore, in relation to the formation of a life partnership, an extremely rare case of a German conflict-of-law rule covering a legal relationship that can only come into being abroad.

3.5.3 Divorce and judicial separation

The law applicable to divorce has been determined since 21 June 2012 by Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (the 'Rome III Regulation'). The Regulation applies even if under its provisions the applicable law is the law of a state not participating in the enhanced cooperation (Article 4 of the Regulation). Divorce and legal separation are also governed by the Rome III Regulation in the case of opposite-sex marriages (Article 17b(4), first sentence, EGBGB).

Articles 17 and 17a EGBGB are applicable in addition.

In Germany, a divorce can be decreed only by a court (Article 17(3) EGBGB).

According to Article 17(4) EGBGB, the law applicable to sharing pension entitlements is determined by the law applicable to the divorce (the divorce law). In certain circumstances where sharing pension entitlements is not recognised by the foreign law, it will alternatively be implemented in accordance with German law, if the parties so request.

The usufruct of a marital home and household effects located in Germany is governed by German substantive law (Article 17a EGBGB).

3.5.4 Maintenance obligations

The question which law is applicable to maintenance claims between relatives or between spouses has been determined since 18 June 2011 by the Hague Protocol on the Law Applicable to Maintenance Obligations of 23 November 2007. According to Article 2 of the Protocol, the Protocol has universal application, i.e. even if the law to be applied under its provisions is that of a non-contracting state. The German rules in the EGBGB that were applicable hitherto in that respect have therefore been repealed.

3.6 Matrimonial property regimes

The property consequences of a marriage are governed by the EU Matrimonial Property Regulation. This also applies in the case of same-sex marriages (Article 17(4), second sentence, EGBGB). The EU Matrimonial Property Regulation gives priority to the autonomy of the parties: the future spouses can choose the law applicable to their matrimonial property regime (Article 22(1) of the EU Matrimonial Property Regulation). In the absence of an agreement between the parties, the connecting factor is the place of residence of the spouses or, alternatively, their nationality or the state with which they jointly have the closest connection (see Article 26 of the EU Matrimonial Property Regulation).

Owing to its date of application (30 January 2019), the EU Registered Partnership Property Regulation does not cover life partnerships formed in Germany, as since 1 October 2017 it has not been possible to enter into a life partnership under German law (see 3.5.2 above). Under the EU Registered Partnership Property Regulation the choice of the parties is also the principal connecting factor (Article 22(1) of the EU Registered Partnership Property Regulation). In the absence of a choice-of-law agreement, the law applicable to the property consequences of registered partnerships is the law of the state under whose law the registered partnership was created (Article 26(1) of the EU Registered Partnership Property Regulation).

3.7 Wills and successions

Where death occurs on or after 17 August 2015, the rules applicable in the first place are those laid down in the EU Succession Regulation. Under that Regulation the last habitual place of residence of the testator is the fundamental connecting factor for the law applicable to the succession. Successions dating from before 17 August 2015 are governed by the law of the country of which the testator was a national at the time of death, in accordance with the old version of Article 25 EGBGB (the new version of Article 25 EGBGB declares the EU Succession Regulation applicable by analogy). It was possible to opt for German law with respect to immovable property located in Germany.

For successions dating from after 17 August 2015, the formal requirements for dispositions of property upon death are governed by the new version of Article 26 EGBGB, which, for testamentary dispositions, essentially provides for the direct application of the Hague Convention of 5 October 1961, to which Germany, as a contracting state, has been subject since 1965 (paragraph 1), and, with regard to the form of other dispositions of property upon death, refers to Article 27 of the EU Succession Regulation (paragraph 2). Successions dating from before 17 August 2015 are subject to the old version of Article 26 EGBGB, which incorporated the main conflict-of-law provisions of the Hague Convention of 1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions. A disposition is valid as regards form if its form satisfies the requirements of a legal system with which it has a connection, for instance by virtue of nationality, the habitual residence of the testator, or the place where the will was made.

3.8 Real property

Under Article 43 EGBGB, rights *in rem* are governed by the law of the state in which the property is situated. That local law governs, for example, the scope of ownership rights and the manner in which the property can be transferred or encumbered with a lien or pledge.

Article 45 EGBGB provides for a special connecting factor for means of transport.

Article 43(2) EGBGB lays down a special rule for the transfer of property from one state to another.

Finally, emissions from land are dealt with separately in Article 44 EGBGB.

Strictly speaking there is no choice of law as regards rights *in rem*. However, under Article 46 EGBGB, it is possible to depart from the law determined by reference to the aforementioned connecting factors if the circumstances show a substantially closer connection to the law of another state.

3.9 Insolvency

In addition to the conflict-of-law rules under Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings, which contains rules governing the relationships between Member States, Section 335 of the Insolvency Code provides in relation to third countries that, in principle, the insolvency proceedings and their effects are subject to the law of the state in which the proceedings have been opened. Section 336 et seq. of the Insolvency Code defines special connecting factors for specific aspects of international insolvency law which may depart from that principle (e.g. employment, set-off, and voidability of transactions in insolvency proceedings).

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Which country's law applies? - Estonia

1 Sources of the rules in force

1.1 National rules

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

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

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

1.2 Multilateral international conventions

Hague Convention on the conflicts of laws relating to the form of testamentary dispositions, signed in The Hague on 4 October 1961 – further information: https://www.riigiteataja.ee/akt/78853.

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

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

Protocol on the law applicable to maintenance obligations, signed in The Hague on 23 November 2007 – further information: https://eur-lex.europa.eu/resource.html?uri=cellar:f30b46bd-fcdd-4b33-8b08-5b06e4a09b88.0022.02/DOC_2&format=PDF.

1.3 Principal bilateral conventions

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

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

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

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

European Union Regulations

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

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

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

Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107-134);

Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ L 343, 29.12.2010, p. 10-16);
Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction;
Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (OJ L 141, 5.6.2015, p. 19-72).

2 Implementation of conflict of law rules

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

If a law, international agreement or transaction requires that foreign law be applied, the courts will do so regardless of whether such application is requested. That is to say, the courts' obligation to apply foreign law does not depend on whether a party has requested it (Section 2(1) of the PILA).
In some civil court cases where the parties were entitled to agree on the choice of applicable law, Estonian courts have applied Estonian law instead of foreign law as the parties have implicitly waived their right to choose foreign law.

2.2 Renvoi

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

2.3 Change of connecting factor

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

2.4 Exceptions to the normal application of conflict rules

Foreign law is not applied if this results in obvious conflict with the essential principles of Estonian law (public order). In such cases, Estonian law is to be applied (Section 7 of the PILA).
Whether or not the foreign law provides for a legal rule that does not exist in Estonian law is not decisive in such cases; instead, under the public order clause, Estonian law is to be applied in place of foreign law where application of the latter would result in a clear conflict with the essential principles of Estonian law.
The legislation applicable to contractual obligations also provides that the provisions of the relevant Chapter in the PILA do not prejudice the application of such provisions of Estonian law that are applicable, regardless of the law governing contracts (Section 31 of the PILA). Section 32(3) of the Act further points out that the fact that parties have chosen foreign law to govern a contract, regardless of whether or not they also have chosen foreign jurisdiction, does not, where all the elements relevant to the contract at the time of the choice are only connected with one country, prejudice the application of such rules of the law of that country, and that these cannot be derogated from by contract (mandatory rules).

2.5 Proof of foreign law

Although it is provided as a general principle that the courts must apply foreign law in situations where this is required by a law, international agreement or transaction regardless of whether such an application is requested (Section 2(1) of the PILA), the authorities and courts may request the assistance of the parties or government authorities in determining the foreign law to be applied.
While the parties may submit documents to the courts in order to determine the content of foreign law, the courts are not required to adhere to such documents (Section 4(2) of the PILA). The courts also have the right to request assistance from the Ministry of Justice or the Ministry of Foreign Affairs of the Republic of Estonia and to engage experts (Section 4(3) of the PILA).
The parties in a civil procedure are only required to prove law in force outside of the Republic of Estonia, international law or customary law in so far as the court is not acquainted with such law in compliance with Section 234 of the Code of Civil Procedure (hereinafter 'the CCP'). The court may also use other sources of information and perform other acts to determine the content of law, as described in the previous paragraph in reference to Section 4 of the PILA.
The courts' right to request information to determine the content of the law to be applied is based upon the adversarial principle of civil procedure. This principle is mainly expressed by Sections 5(1) and (2) of the Code of Civil Procedure, which provide that proceedings in an action are conducted on the basis of the facts and petitions submitted by the parties based on the claim, and that the parties have equal rights and opportunities to substantiate their claims and refute or contest the submissions of the opposing party. In doing this, a party may choose the facts that it submits in order to substantiate its claim as well as the evidence to prove such facts.
The law also allows for exceptions whereby Estonian law is applicable when the content of foreign law cannot be determined within a reasonable period of time despite all efforts (Section 4(4) of the PILA).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Similarly to other matters of private international law, the law governing contracts is regulated by the PILA in Estonia, unless otherwise prescribed by international legislation. The law governing a contract may also be determined on the basis of an agreement between the parties or, where the PILA does not entitle the parties to choose the applicable law, on the basis of the applicable law determined using the established criteria. As, in accordance with Section 3 (2) of the Bankruptcy Act, the provisions of the Code of Civil Procedure apply to bankruptcy proceedings unless otherwise provided by the Bankruptcy Act and, pursuant to Section 8(1) of the Code of Civil Procedure, case proceedings in court are conducted on the basis of Estonian civil procedure law, the law applicable to the bankruptcy proceedings conducted in Estonia is Estonian law or the law applicable on the basis of an agreement between the parties or, in the absence of such an agreement, the applicable law determined on the basis of the criteria provided for in the PILA.
The PILA lays down that contracts must be governed by the law of the country agreed upon by the parties. The parties may choose the law governing the whole contract or a part thereof if the contract is divisible in such a manner (Sections 32(1) and (2) of the Act). However, the choice of the governing law by agreement is not absolute. Section 32(3) of the Act states that the fact that the parties have chosen foreign law to govern a contract, regardless of whether or not they have also chosen foreign jurisdiction, does not, where all the elements relevant to the contract at the time of the choice are only connected with one country, prejudice the application of such rules of the law of the country which cannot be derogated from by contract (mandatory rules).
Where the parties have not chosen the law governing a contract, the contract is governed by the law of the country with which the contract is most closely connected. If the contract is divisible and a part of the contract is independently more closely connected with another country, such part may be governed by the law of that other country (Section 33(1) of the PILA).
A contract is presumed to be most closely connected with the country where the party that is to perform the obligation characteristic of the contract has, at the time of conclusion of the contract, its domicile or, in the case of the management body of that party, its seat. If the contract is concluded in the course of

the trade or profession of the party that is to perform the obligation characteristic of the contract, the contract is presumed to be most closely connected with the country where the principal place of business of that party is situated. If the contract requires the obligation characteristic of the contract to be performed in a place of business other than the principal place of business, the contract is presumed to be most closely connected with the country where such other place of business is situated (Section 33(2) of the PILA).

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

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

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

In the case of an employment contract, the choice of law may not result in depriving the employee of the protection afforded to them by the mandatory rules of the law of the country which would be applicable in the absence of a choice of law. In the absence of a choice of law, an employment contract is governed by the law of the country in which: 1) the employee habitually carries out their work in performance of the contract, even if they are temporarily employed in another country; 2) the place of business through which the employee was recruited is situated, if the employee does not habitually carry out their work in any one country.

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

3.2 Non-contractual obligations

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

Claims against unjust enrichment that arise from the performance of an obligation are governed by the country's law that governs the actual or presumed legal relationship on the basis of which the obligation was performed; claims against unjust enrichment that arise from the violation of a right of another person are governed by the law of the country in which the violation occurred. In other cases, claims arising from unjust enrichment are governed by the law of the country in which unjust enrichment occurred (Section 48^1 (1)-(3) of the PILA).

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

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

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

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

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

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

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

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

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

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

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

3.4.2 Adoption

Adoption is governed by the law of the country of domicile of the adoptive parent. Adoption by spouses is governed by the law governing the general legal consequences of the marriage at the time of adoption (Section 63(1) of the PILA). This means that adoption by spouses is mainly governed by the law of the shared country of domicile of the spouses (Section 57(1) of the PILA), but the Act also lists a cascade of alternative grounds for the choice of law for cases where the spouses do not share a country of domicile (Sections 57(2)-(4) of the PILA).
If adopting a child under the law of the child's country of domicile requires the consent of the child or another person in a family law relationship with the child, the law of that country applies to the consent (Section 63(2) of the PILA).
If an adoption is governed by foreign law or if a child is adopted on the basis of a foreign court judgment, the Act separately specifies that such an adoption has the same effect in Estonia as it does pursuant to the law under which the child was adopted (Section 64 of the PILA). It should also be emphasised that when adopting a child whose domicile is in Estonia, all other conditions for adoption arising from Estonian law must also be met, as required by the law of the child's or spouses' country of domicile (Section 63(3) of the PILA).

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

3.5.1 Marriage

The general legal consequences of a marriage are mainly to be determined by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), but the Act also lists a sequence of alternative grounds for the choice of applicable law for cases where the spouses do not share a country of domicile: the same citizenship, last shared country of domicile if one of the spouses still resides in the same country or, failing the above, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).
Estonian law applies to the procedure for marriage in Estonia. A marriage that took place in a foreign country is deemed valid in Estonia if it was concluded pursuant to the appropriate procedure laid down by the law of the country in which the marriage took place and met the material prerequisites for a marriage specified by the laws of the countries of domicile of both spouses (Sections 55(1)-(2) of the PILA).
As a general rule, the prerequisites for and hindrances to marriage and the consequences arising therefrom are governed by the law of the country of domicile of the prospective spouse (Section 56(1) of the PILA). A previous marriage of a prospective spouse is not a hindrance to concluding a new marriage if the previous marriage has been terminated by a decision made or recognised in Estonia, even if that decision does not comply with the law of the country of domicile of the prospective spouse (Section 56(3) of the PILA).
A special rule applies to Estonian citizens in respect of the law applicable to the prerequisites for marriage; this states that if an Estonian citizen does not meet a prerequisite for marriage under the law of their country of domicile, Estonian law applies if the person meets the prerequisites for marriage under Estonian law (Section 56(2) of the PILA).

3.5.2 Unmarried/Cohabiting couples and partnerships

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

3.5.3 Divorce and judicial separation

Divorces are granted according to the law governing the general legal consequences of the marriage that is applicable at the time of commencement of the divorce proceeding (Sections 60(1) and 57 of the PILA). This means that divorces are primarily governed by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), but the Act also lists a sequence of alternative grounds for the choice of applicable law for cases where the spouses do not share a country of domicile: the same citizenship, last shared country of domicile if one of the spouses still resides in the same country or, failing the above, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).
As an exception, Estonian law may be applied instead of foreign law if a divorce is not permissible under the law governing the general legal consequences of the marriage (Section 57 of the PILA) or is permissible only under extremely strict conditions. This exception applies provided that one of the spouses resides in Estonia or has Estonian citizenship or resided in Estonia or had Estonian citizenship at the time of celebration of the marriage (Sections 60(1)-(2) of the PILA).

3.5.4 Maintenance obligations

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

3.6 Matrimonial property regimes

Spouses are allowed to choose the law applicable to their proprietary rights in respect of marital property. Therefore, if the spouses have chosen the applicable law, the law of their choice will be applied. However, spouses are not allowed to choose the law of any country they wish. They may choose between the law of the country of domicile of one of the spouses and that of the country of citizenship of one of the spouses. If a spouse has several citizenships, the law of any of the countries of citizenship may be chosen (Section 58(1) of the PILA).
In Estonia, the choice of applicable law is subject to mandatory formal requirements. The choice of law applicable to the proprietary rights of spouses must be notarised. If the applicable law is not chosen in Estonia, the choice of law is formally valid if the formal requirements for marital property contracts prescribed by the law chosen are complied with (Section 58(2) of the PILA).
If the spouses have not chosen the applicable law, the proprietary rights of the spouses are governed by the law applicable to the general legal consequences of the marriage at the time they concluded their marriage (Sections 58(3) and 57 of the PILA). The general legal consequences of marriage are primarily governed by the law of the spouses' shared country of domicile (Section 57(1) of the PILA), in the absence of which the law of the spouses' shared country of citizenship, the law of their last shared country of domicile if one of the spouses still resides in the same country or, in the absence of all three, the law of the country with which the spouses are otherwise most closely connected is applied (Sections 57(2)-(4) of the PILA).

3.7 Wills and successions

Succession is governed by the law of the last country of domicile of the testator. A person may stipulate in their will or a succession contract that the law of the country of their citizenship applies to their estate. Such a stipulation is invalid if the person is no longer a citizen of the corresponding country at the moment of their death.
The law governing succession determines, in particular, the following: 1) the types and effect of testamentary dispositions; 2) the capacity to inherit and debarment from succession; 3) the extent of succession; 4) the successors and the relationships between them; and 5) the liability for the debts of the testator.
The Hague Convention of 1961 on the conflicts of laws relating to the form of testamentary dispositions applies to the form of wills and succession contracts. A person may make, amend or revoke their will if they have the relevant capacity under the law of the country of their domicile at the time of making, amending or revoking the will. If, according to the law of that country, the person does not have the legal capacity to make a will, they may make, amend or

revoke their will if they are entitled thereto according to the law of the country of which the person was a citizen at the time of making, amending or revoking the will. A change of domicile or citizenship does not restrict any already acquired legal capacity to make a will. The foregoing applies to the capacity of a person to enter into, amend or terminate a succession contract, respectively.
Succession contracts are governed by the law of the country of domicile of the testator at the time of entry into the contract or by the law of the country of citizenship if so determined by that person. The governing law determines the admissibility, validity, content and binding force of a succession contract, and the consequences of the contract under the law of succession.
At the time reciprocal will is made, it must comply with the laws of the countries of domicile of both testators or with the law of the country of domicile of one of the spouses, jointly chosen by the testators.

3.8 Real property

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

3.9 Insolvency

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

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Which country's law applies? - Ireland

1 Sources of the rules in force

1.1 National rules

The conflict of law rules in Ireland have their source primarily within the common law and, as such, are subject to change and evolution. However, as case law in this area is relatively sparse, it is difficult to be conclusive as to the state of the prevailing law in a number of areas. This is particularly so in relation to family law. As with the laws governing jurisdiction, the traditional laws governing choice of law are gradually being superseded by international conventions and by EU legislation.

1.2 Multilateral international conventions

Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961
Rome Convention 1980 on the Law Applicable to Contractual Obligations

1.3 Principal bilateral conventions

We are not aware of any bilateral conventions containing choice of law provisions to which Ireland is a party.

2 Implementation of conflict of law rules

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

The general position is that the conflict of laws' rules are only applied if at least one of the parties has argued that they be applied.

2.2 Renvoi

Cases requiring consideration of the doctrine seldom arise before the Irish courts.

2.3 Change of connecting factor

No single approach has been adopted in this jurisdiction.

2.4 Exceptions to the normal application of the conflict rules

While there is a lack of case law on this point, it is unlikely that Ireland would apply a foreign law which is contrary to Irish public policy.

2.5 Proof of foreign law

The Irish courts require that the content of foreign law be proved as if it were a fact. The party seeking to rely on it is required to plead it and to prove the content of foreign law as a fact to the satisfaction of the judge. In the event of conflict between the evidence submitted by the parties, the judge may assess the credibility of the experts and may then consider the primary evidence (*e.g.* foreign statutes and cases), especially where they apply concepts that are familiar to an Irish judge. If Irish choice of law rules indicate that foreign law is to be applied, but if neither party produces evidence of what that law is, the court will usually presume it to be the same as Irish law unless the contrary is proved
Expert evidence is usually adduced to prove the content of foreign law and it is not sufficient for the parties to put the text of a foreign statute, case, or authority before the court. Any person who is qualified as a lawyer in a foreign legal system, or who has sufficient experience of that system in practice, may give evidence of the foreign law. The court will not normally conduct its own researches into the foreign law.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Ireland is a signatory to the Rome Convention 1980 on the Law Applicable to Contractual Obligations. Ireland has implemented this Convention by legislation, the Contractual Obligations (Applicable Law) Act, 1991. The rules of the Convention apply to contractual obligations in any situation involving a choice between the laws of different countries. However, certain types of contracts such as contractual obligations arising out of a family relationship are not subject to the Convention.
It should be noted that Regulation 593/2008 on the Law Applicable to Contractual Obligations ("Rome I") is directly applicable in Ireland. However, Ireland has not agreed to the implementation of Regulation 1259/2010 ("Rome III"), which implements enhanced cooperation in the area of law applicable to divorce and legal separation in participating Member States' jurisdictions.

3.2 Non-contractual obligations

In family law or divorce applications the Irish courts regard *lex fori* as an appropriate principle because it provides certainty. There has been no legislation in Ireland on conflict of laws in tort cases and there is very little case law. The Irish courts have regard to the *lex fori* principle which argues that the law of the forum should apply, and also to the *lex loci delicti* principle which suggests that the law of the place where the tort was committed should apply. The courts may also have regard to the proper law of tort which recommends a flexible approach, allowing the court to consider all the different connecting factors and deciding the jurisdictional issue accordingly.
It should be noted that Regulation 864/2007 on the Law Applicable to Non-Contractual Obligations ("Rome II") is directly applicable in Ireland.

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

A child takes the domicile of his / her father if his / her parents were married to each other at the time of the child's birth. If the child's parents were not married to each other at the time of the child's birth, or if the father is dead at the time of birth, the child's domicile is the same as that of his / her mother. This rule continues to apply until the child is 18 at which time the child attains majority and has legal capacity to adopt a domicile of choice.
A person can only adopt a domicile of choice by actually residing in the relevant jurisdiction with the intention of residing there indefinitely or permanently. If either of these elements ceases to apply the person reverts to his / her domicile of origin. A married woman acquires her own domicile independently of her husband.

3.4 Establishment of parent-child relationship, including adoption

The Status of Children Act 1987 abolished the concept of illegitimacy. Under that Act,, the relationship between every person and his / her father and mother is to be determined irrespective of whether the father and mother are or have been married to each other.
Despite this, where the parents of a child are not married to one another either at the child's date of birth or at the time of conception, the child is not regarded as legitimate. However, a child may be legitimated by the subsequent marriage of their parents. There is no difference between the constitutional position of the legitimate child and the legitimated child. There is also no difference between the rights of a child to be maintained by his or her parents or to inherit from either parent, whether or not the parents are ever married to each other.
Once the Irish courts exercise jurisdiction in a case on the basis of Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility ("Brussels II bis") they will generally apply Irish law.
Where the Irish courts have jurisdiction in relation to an adoption case, Irish law will also be applied.
It should be noted that the superior courts have an inherent jurisdiction, to make orders which will enforce an Irish citizen child's constitutional rights regardless of the child's place of habitual residence. Any decision by the court to exercise its jurisdiction will be guided by whether it is appropriate or proper in the circumstances for the court to do so bearing in mind the private international law rule of the comity of courts.

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

In relation to marriage, under Irish law, the 34th Amendment to the Constitution, passed on 22nd May 2015, provides that any two persons may enter into a marriage in accordance with law regardless of their sex. Accordingly, persons having capacity to marry and who are free to marry will be able to do so regardless of their biological genders when the Marriage Bill 2015 is enacted and commenced. A marriage will not be deemed valid in Ireland where one of the parties is a transsexual and marries in a newly acquired gender. Under the rules of Private International Law, a marriage contracted abroad will be recognised only if a number of conditions are satisfied. The parties must have complied with the formalities applicable in the jurisdiction in which the marriage ceremony takes place (*lex loci celebrationis).* The parties must have the legal capacity to marry according to the rules of the jurisdiction in which they were domiciled. The marriage celebrated abroad must be analogous to what is generally understood to be a marriage in Ireland. If a marriage is potentially polygamous, for example, it will not be recognised.
Orders made under Section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provide for recognition of certain categories of foreign registered relationships as entitled and obliged to receive the same treatment in Irish law as a civil partnership registered in Ireland, provided the couple concerned would have had the legal capacity to register a civil partnership in Ireland.
In relation to jurisdiction in divorce, legal separation or annulment proceedings, Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility ("Brussels II bis") is directly applicable in Ireland. In cases where no other Member State has jurisdiction pursuant to Brussels II bis the Irish courts can take jurisdiction where at least one of the parties is domiciled in the State at the time of the institution of the proceedings.
Once an Irish court has jurisdiction in divorce proceedings, it will then apply its own law to the family law proceedings and to any ancillary or related issues.
In cases where Brussels II bis does not apply, a foreign divorce will be recognised if granted in a country where either spouse was domiciled at the date of the institution of the divorce proceedings.

3.5.1 Maintenance Obligations

Maintenance claims are currently dealt with under Council Regulation 4/2009 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters Relating to Maintenance Obligations.
In essence, the aim of the Maintenance Regulation is to provide a set of common rules relating to jurisdiction, applicable law, recognition, enforcement, co-operation and standardised documents to facilitate the effective recovery of maintenance within the European Union. Given that one of the primary aims of the Regulation is to ensure that a maintenance creditor can easily obtain in a Member State a decision which will be automatically enforceable in another Member State without further formalities, the Maintenance Regulation includes measures relating to jurisdiction, conflict of laws, recognition and enforceability, enforcement, and legal aid, and is designed to bring about co-operation between central authorities. The obligation for the terms of the original order to be enforced without modification is very definite within the terms of the Regulation, and under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition and enforcement is subsequently sought. Thus the net effect of the Regulation is to bar the ability of the court of a Member State not seised of the action from making new or associated orders.

3.6 Matrimonial property regimes

In the absence of a contrary intention, a marriage settlement (contract) between the parties will be construed according to the law of the matrimonial domicile. Where there is no such settlement, the applicable law will also be determined by the matrimonial domicile. Where the spouses share a domicile, this equates to the matrimonial domicile. Where they do not, it is likely that the matrimonial domicile will be determined according to the applicable law with which the parties and the marriage have the closest connection.

3.7 Wills and successions

As a general principle, the law governing succession to immovables is the law of the place where the property is located while the law of the country in which the deceased was domiciled at the time of his death governs the distribution and the succession to his movables.
The capacity of the testator is determined by the law of his or her domicile although there is a view that, in the case of immovable property, the *lex situs* should apply.
Where the testator's domicile changes between the date of the making of the will and the date of death, there are divided views as to whether capacity should be tested by the law of domicile at the time of the making of the will or at the time of death.
A will is formally valid under the Succession Act 1965 if its form complies with any one of the following laws: the law of the place where the testator made the testamentary disposition; the law of a nationality, domicile or habitual residence of the testator either at the time when the disposition was made or at the time of the testator's death; or, insofar as immovables are concerned, the law of the place where they are situated.

3.8 Real property

Irish law distinguishes between movable and immovable property and applies the law of the country in which the property is located to determine whether the interest in question is in a movable or an immovable property.
As a general rule, the applicable law in the case of immovable property is the law of the place where the property is situated.

3.9 Insolvency

Regulation No. 1346/2000 on Insolvency Proceedings (the “Insolvency Regulation”) provides jurisdictional rules for insolvency proceedings within the EU[1]. Article 3 of the Insolvency Regulation provides that the courts within the Member State where the debtor’s centre of main interest is located have jurisdiction to open insolvency proceedings. Therefore, insolvency proceedings opened in Ireland will be determined by the Irish courts in accordance with the Irish law governing the lodging, verification and admission of claims in insolvency proceedings. The main relevant legislation is the Companies Act 2014, the Personal Insolvency Acts 2012-2015 and the Bankruptcy Act 1988.

Useful links

http://www.irishstatutebook.ie/1995/en/act/pub/0026/sec0027.html

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[1] Replaced, with effect from 26 June 2017, by the recast EU Regulation 2015/848 on insolvency proceedings

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Which country's law applies? - Greece

Where a legal relationship between individuals has elements which connect it with more than one state (an international element) and a dispute arises, the Greek courts do not necessarily apply Greek law and will investigate which law must be applied (the applicable law) on the basis of private international law. Private international law is a mechanism which operates on the basis of connecting factor rules in order to determine the applicable law (i.e. the provisions of the law of one country), which may be the law of the court in question or of another country. One or more connecting factors are used to determine the applicable law on the basis of the connecting factor rules. The connecting factor is the factor of a dispute with an international element that activates a specific rule of private international law in order to determine the applicable law in the case in question, i.e. the law of Greece or the law of a foreign state (conflict of laws).

1 Sources of the rules in force

Greek laws are the basic source for determining the applicable law. The concept of law also includes bilateral and multilateral international conventions ratified by Greece which, once they have been ratified, apply in the same way as Greek national law. The concept of law also encompasses the law produced by the European Union, regulations in particular. Given the ongoing increase in private transactions effected at an international level, both in terms of number and type, Greek case law and the Court of Justice of the European Union, despite not being a formal source, play an essential role in filling gaps in private international law, which is used to determine the applicable law.

1.1 National rules

The key provisions are laid down in Articles 4-33 of the Civil Code as well as in other legislation, e.g. Articles 90-96 of Law 5325/1932 on bills of exchange and promissory notes and Articles 70-76 of Law 5960/1933 on cheques.

1.2 Multilateral international conventions

The following are some of the multilateral international conventions:

The Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road, ratified by Greece by Law 559/1977.

The Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, ratified by Greece by Law 1325/1983.

The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, ratified by Greece by Law 1334/1983.

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, ratified by Greece by Law 4020/2011.

1.3 Principal bilateral conventions

The following are some of the bilateral international conventions:

Convention of 17 May 1993 on Judicial Assistance in Civil and Criminal Matters between the Hellenic Republic and the Republic of Albania, ratified by Greece by Law 2311/1995.

Convention-Treaty of 3 August 1951 on Friendship, Commerce and Shipping between Greece and the USA, ratified by Greece by Law 2893/1954.

2 Implementation of conflict of law rules

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

When, under the connecting factor rules in Greek private international law, the law of another country is the applicable law, the Greek judge takes this into account on his/her own initiative, i.e. without the need for the litigants to cite it, and has to investigate which provisions of foreign law apply (Article 337 of the Code of Civil Procedure).

2.2 Renvoi

Where the rules of Greek private international law stipulate that the law of another country applies, the provisions of its substantive law apply, i.e. reference is made only to them instead of the provisions of that country's private international law (Article 32 of the Civil Code), which in turn might stipulate that Greek law or the law of some third state applies.

2.3 Change of connecting factor

The connecting factor of a legal relationship often changes during the course of the relationship, e.g. the domicile of a company is transferred from one country to another, in which case the applicable law also changes. There are rules which explicitly provide a solution as to which law ultimately applies; otherwise the court applies the applicable law which applied initially, before the change of connecting factor, or subsequently, or a combination of the two, depending on the actual circumstances of the case.

2.4 Exceptions to the normal application of conflict rules

If Greek private international law (connecting factor rules) stipulates that foreign law applies but its application clashes with the fundamental moral or legal perceptions that inform Greek public policy (Article 33 of the Civil Code), when the case in question is heard, the Greek court will not apply the relevant provision of foreign law but will apply the other foreign provisions (negative function). If, however, once its application has been precluded there is a legal vacuum in the foreign law, this will be bridged by applying Greek law (positive function).

One way of protecting the interests of the Greek legal system is to enact rules that apply directly. These rules regulate particularly important matters in the internal legal relationships of the state and are also applied directly by the Greek courts in cases with an international element that are not resolved by the operation of Greek private international law.

2.5 Proof of foreign law

The Greek judge may use any means they consider appropriate to find which foreign law to apply. Such knowledge may be based on legal information they personally know, or the judge may search for it within (multilateral and bilateral) international conventions — under which the member states have undertaken the mutual obligation to provide information — or from domestic or foreign scientific organisations. Where determining the applicable foreign law is difficult or proves impossible, the Greek judge may even ask for the litigants' assistance without, however, being restricted to the evidence they provide (Article 337 of the Code of Civil Procedure).

By way of exception, a Greek judge will apply Greek law instead of applicable foreign law if, despite making all possible effort to find the provisions of foreign law, this has proved impossible.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The Greek judge will determine the applicable law in most contracts and legal acts entered into on or after 17 December 2009 on the basis of Regulation (EC) No 593/2008, known as Rome I. As a general rule, the law chosen by the parties will apply.

As regards contracts and legal acts entered into from 1 April 1991 to 16 December 2009, the applicable law is identified on the basis of the Community's Rome Convention of 19 June 1980, which sets out the same general rule as that referred to above.

As regards all categories of contractual obligations and legal acts which are explicitly excluded from the scope of the above Regulation and Convention, as well as those entered into before 1 April 1991, the applicable law is identified on the basis of Article 25 of the Civil Code, which sets out the same general rule as that laid down in the Regulation.

3.2 Non-contractual obligations

The Greek judge will determine the law which applies to obligations arising from tort and to obligations arising from unjust enrichment, negotiorum gestio and culpa in contrahendo, on or after 11 January 2009, on the basis of Regulation (EC) No 864/2007, known as Rome II. As a general rule, the law of the state in which the wrong was committed will apply.

As regards tort which does not fall under the scope of the above Regulation and tort committed before 11 January 2009, the applicable law is determined on the basis of Article 26 of the Civil Code, which sets out the same general rule as that laid down in the Regulation.

According to Greek case law, the law which applies to culpability arising from unjust enrichment before 11 January 2009 is the law of the state which is most appropriate in the overall specific circumstances.

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

- Natural persons

Name, domicile

As a name and domicile are used to identify a natural person individually, the law which applies to them is determined each time in the context of the specific legal relationship that needs to be regulated. Thus, the name and domicile of spouses are regulated by the law which governs their personal relationships in accordance with Article 14 of the Civil Code; in respect of minor children, they are governed by the law on the parent-child relationship in accordance with Articles 18-21 of the Civil Code.

Capacity

In respect of matters relating to the capacity of any person, whether a Greek or an alien, to become the subject of rights and obligations, to carry out legal acts and to be party to a court case and participate in a trial in person, the law of the state of which the person is a national will apply (Articles 5 and 7 of the Civil Code; Articles 62(a) and 63(1) of the Code of Civil Procedure). Where an alien does not have the capacity to carry out legal acts or participate in a trial in person under the law of the state of which he/she is a national, but the law of Greece provides that he/she does have the above capacities (except for legal acts falling under the scope of family law, law of succession, and property law for properties outside Greece), the law of Greece will apply (Article 9 of the Civil Code and Article 66 of the Code of Civil Procedure).

- Legal persons

In respect of matters relating to the legal capacity of legal persons, the law of the place where the legal person has its domicile will apply in accordance with Article 10 of the Civil Code. According to Greek case law, the term 'domicile' means the actual, not the statutory, domicile.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Parent-child relationship issues relate to the family ties between parents and children and the associated rights and obligations arising from them.

When deciding if a child qualifies as having been born in or out of wedlock (Article 17 of the Civil Code), the applicable law is:

the law of the state which regulated the personal relationship between the child's mother and her spouse when the child was born, as defined in Article 14 of the Civil Code;

where the marriage was dissolved before the child was born, the law of the state which regulated the personal relationship between the child's mother and her spouse when the marriage was dissolved, as defined in Article 14 of the Civil Code.

The applicable law for the parent-child relationship for children born in wedlock, even if the marriage is dissolved:

the Greek judge will determine the applicable law in accordance with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, ratified by Greece by Law 4020/2011, in respect of parental responsibility and child protection measures, in the event of the law of a state which is a member of the above Convention.

Applicable law for a state which is not a signatory to the above Convention or in respect of matters which are not regulated by the above Convention, in accordance with Article 18 of the Civil Code:

where they are nationals of the same state — the law of that state;

where they have acquired a new common nationality after the birth — the law of the state of their most recent common nationality;

where they are nationals of different states before the birth and their nationality does not change after the birth or where they are nationals of the same state before the birth but the parents' or the child's nationality changes after the birth — the law of the state in which they had their most recent joint habitual residence at the time of the birth;

where they have no joint habitual residence — the law of the state of which the child is a national.

Applicable law for relationships between the mother and father and a child born out of wedlock (Articles 19 and 20 of the Civil Code):

where they are nationals of the same state — the law of that state;

where they have acquired a new common nationality after the birth — the law of the state of their most recent common nationality;

where they are nationals of different states before the birth and their nationality does not change after the birth or where they are nationals of the same state before the birth but the parents' or the child's nationality changes after the birth — the law of the state in which they had their most recent joint habitual residence at the time of the birth;
where they have no joint habitual residence — the law of the state of which the father or the mother is a national.
Applicable law for the parent's maintenance obligations to the child:
The Greek judge will determine the applicable law, on or after 18 June 2011, on the basis of Regulation (EC) No 4/2009, as specified by the Hague Protocol of 23 November 2007. As a general rule, the law of the state in which the obligated party has his/her habitual residence will apply.

3.4.2 Adoption

The applicable law for the conditions of adoption and termination of adoption with an international element is the law of the state of which each person involved in the adoption is a national (Article 23 of the Civil Code). The applicable law for the form of adoption is the law provided for in Article 11 of the Civil Code, i.e. either the law which governs its content, or the law of the place in which it was drawn up, or the law of the state of which all parties are nationals. Where the persons involved in the adoption are nationals of different states, the conditions under all the laws of the corresponding states must be met and there must be no impediments under those laws in order for the adoption to be valid.
Applicable law for relationships between the adoptive parents and the child being adopted:
where they are nationals of the same state after the adoption — the law of that state;
where they acquire a new common nationality at the time of the adoption — the law of the state of their most recent common nationality;
where they are nationals of different states before the adoption and their nationality does not change after the adoption or where they are nationals of the same state before the adoption but the nationality of one of the persons involved in the adoption changes on completion of the adoption — the law of the state of their most recent joint habitual residence at the time of the adoption;
where they have no joint habitual residence — the law of the state of which the adoptive parent is a national or, if spouses are adopting, the law which regulates their personal relationship.

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

3.5.1 Marriage

Substantive conditions
The applicable law for the conditions which must be met by and the impediments in the way of persons wishing to marry is the law of the state of which they are nationals if they are nationals of the same state or, if they are nationals of different states, the law of either state (Article 13(1)(a) of the Civil Code).
Procedural conditions
In order for the marriage to be formally valid, the applicable law is the law of the state of which the persons to be married are nationals, where they are nationals of the same state or, if they are nationals of different states, the law of either of the states of which they are nationals or the law of the state in which the marriage is celebrated (Article 13(1)(b) of the Civil Code). The Greek legal system requires certain formalities to be adhered to in order to celebrate a marriage; the unions of couples who cohabit but who have not been formally married are recognised as valid in Greece provided that they are recognised as valid under foreign law and the persons cohabiting are not Greek.
Personal relationships between spouses
The personal relationships between spouses are those based on their marriage, which have nothing to do with property, such as cohabitation and rights and obligations, including maintenance.
Applicable law for personal relationships between spouses (Article 14 of the Civil Code), other than maintenance:
where the spouses are nationals of the same state after the marriage — the law of that state;
where the spouses have acquired a new common nationality during the marriage — the law of the state of their most recent common nationality;
where the spouses were nationals of the same state during the marriage and one later became a national of another state — the law of the state of their most recent common nationality, provided the other spouse is still a national of that state;
where the spouses were nationals of different states before the marriage and their nationality does not change after the marriage or where they were nationals of the same state before the marriage but the nationality of one of them changes on marriage — the law of the state of their most recent joint habitual residence;
where they do not have a joint habitual residence during the marriage — the law of the state with which the spouses are most closely connected.
Maintenance obligations
The applicable law is determined in accordance with Article 4 of the Hague Convention of 2 October 1973, ratified by Greece by Law 3137/2003, i.e. it is the law of the state in which the beneficiary has his/her habitual residence.
Matrimonial property regimes
The matrimonial property regime applies to the property rights and corresponding obligations created by reason of the marriage.
The applicable law is the law regulating the spouses' personal relationship immediately after the marriage is celebrated (Article 15 of the Civil Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

The Greek legal system also recognises a form of cohabitation other than marriage, as provided for by Law 3719/2008. On the basis of an explicit provision laid down in the above Law, the said Law applies to all civil partnerships established in Greece or before the Greek consular authorities, irrespective of whether the parties are Greeks or aliens, both in terms of form and of the overall relations of the parties. Where a civil partnership is established abroad, the applicable law in respect of the form thereof is the law specified in Article 11 of the Civil Code, i.e. it is either the law that governs its content, or the law of the state in which it is established, or the law of the state of which all the parties are nationals; the applicable law in respect of the relations of the parties is the law of the state in which the partnership was established.

3.5.3 Divorce and judicial separation

The applicable law for matters concerning divorce or any other form of judicial separation is determined on the basis of Regulation (EC) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, known as Rome III. As a key rule, the spouses may agree to choose the law applicable to divorce and legal separation provided that it is one of the following laws: (a) the law of the state where the spouses are habitually resident at the time the agreement is concluded; or (b) the law of the state where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or (c) the law of the state of nationality of either spouse at the time the agreement is concluded; or (d) the law of the presiding court.

3.5.4 Maintenance obligations

The above Regulation provides explicitly that it does not apply to maintenance obligations for ex-spouses, as this matter is regulated by Article 8 of the Hague Convention of 2 October 1973, ratified by Greece by Law 3137/2003, which specifies that the applicable law is the law of the state in which the divorce or separation procedure was carried out.

3.6 Matrimonial property regimes

See the last paragraph of section 3.5.1 above.

3.7 Wills and successions

In respect of all matters relating to inheritance, except for the form used to draw up and revoke a will, the applicable law is determined on the basis of Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Where there is a will, it will be deemed to be valid if made in the form provided for under any of the following laws (Article 1 of the Hague Convention of 5 October 1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions):

the law of the state in which the deceased made his/her will;

the law of the state of which the deceased was a national when he/she made his/her will or when he/she died;

the law of the state in which the deceased was resident or domiciled when he/she made his/her will or when he/she died;

where the will relates to property: the law of the state in which the property is located.

3.8 Real property

The applicable law for relationships in rem pertaining to real estate is determined by Article 27 of the Civil Code, i.e. it is the law of the state in which it is located.

The applicable law for culpable relationships under the law of obligations pertaining to real estate is determined on the basis of Regulation (EC) No 593 /2008, known as Rome I, the general rule being that the law chosen by the parties will apply.

The applicable law for the form of the above transactions is the law of the state in which the real estate is located (Article 12 of the Civil Code).

3.9 Insolvency

The applicable law for insolvency and its results is determined on the basis of Regulation (EC) No 1346/2000 on insolvency proceedings, i.e. it is the law of the state in which the relevant proceedings were opened.

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Which country's law applies? - Spain

1 Sources of the rules in force

1.1 National rules

Most of the rules on conflicts of law are contained in the Preliminary Title of the Civil Code (Articles 9-12). There are also applicable legal provisions in some special laws, such as, for example, the Law on International Adoption.

1.2 Multilateral international conventions

With regard to applicable law, the following EU Regulations are currently in force in Spain:

- Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (Recast)
- Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I)
- Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)
- Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III)
- Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
- Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012. Applicable as of 16 February 2019.
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

International conventions

Spain is also a Contracting State to several conventions on conflict of law. The main multilateral conventions in this regard are:

- Convention on the law applicable to surnames and forenames, Munich, 5 September 1980.
- Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, The Hague, 19 October 1996.
- Protocol on the law applicable to maintenance obligations, The Hague, 23 November 2007.
- Convention on the conflicts of laws relating to the form of testamentary dispositions, The Hague, 5 October 1961.
- Convention on the law applicable to traffic accidents, The Hague, 4 May 1971.
- Convention on the law applicable to products liability, The Hague, 2 October 1973.

1.3 Principal bilateral conventions

With regard to applicable law, the Convention between the Kingdom of Spain and the Eastern Republic of Uruguay on conflicts of law in matters relating to child maintenance and the recognition and enforcement of court judgments and settlements relating to maintenance, signed in Montevideo on 4 November 1987, is currently in force.

Dual Nationality Convention between France and Spain. Although the Convention has already been signed by the Spanish Prime Minister and the French President, its entry into force requires a series of formalities in both countries, which will take time.

2 Implementation of conflict of law rules

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

Article 12.6 of the Civil Code establishes that ‘courts and authorities shall apply ex officio the conflict-of-law rules in Spanish Law’.

2.2 Renvoi

Article 12.2 of the Civil Code states that reference to foreign law is deemed to be to its substantive law, irrespective of the renvoi that its conflict rules make to another law that is not Spanish law. This implies that only first-degree renvoi is accepted.
Second-degree renvoi is not allowed except in the case of bills of exchange, cheques and promissory notes, with regard to the capacity to enter into such obligations.
When an EU Regulation or International Convention is applicable, the special rules of these instruments relating to renvoi will apply.

2.3 Change of connecting factor

In Spanish law, there is no general rule for cases of mobility conflict, that is, changes in the circumstances used by the conflict rule as the connecting factor. Article 9.1 of the Civil Code, in relation to the age of majority, states that a change in the connecting factor does not affect an age of majority already acquired. The criterion employed is to consider the law that was applicable at the time when the legal situation arises even if the connecting factor subsequently changes.
When an EU Regulation or International Convention is applicable, the special rules of these instruments relating to mobility conflict will apply.

2.4 Exceptions to the normal application of conflict rules

Article 12.3 of the Civil Code states that in no case will the foreign law apply if it is contrary to public policy. Hence, application of the foreign law is ruled out if it leads to a result that is in clear breach of the basic principles of Spanish law. Constitutionally recognised principles are considered to be essential.

2.5 Proof of foreign law

The content and validity of the foreign law must be proved by the parties, and the court can check this by any means that it considers necessary for its application. The system is a mixed one combining the principle of submission of pleadings and examination only upon application by the party with the possibility of the court cooperating in carrying out checks. In exceptional cases where the content of the foreign law cannot be proved, Spanish law will apply.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The question of determining the law applicable to contractual obligations is regulated, in general terms, by Regulation (EC) No 593/2008 of the European Parliament and of the Council (Rome I Regulation). Cases where the Rome I Regulation is not applicable are resolved in accordance with the provisions of article 10.5 of the Civil Code, which is based on recognition of freedom of choice provided that the applicable law is expressly chosen and that this law has some connection with the matter in question. Failing this, the national law common to the parties is applied; failing this, the law of their common habitual residence, and, in the last instance, the law of the place where the contract was concluded.

3.2 Non-contractual obligations

This matter is governed by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 (Rome II). In matters relating to traffic accidents and manufacturer liability, the conflict rules contained in the Hague Conventions of 1971 and 1973, respectively, are applied.
Matters not included in any of the above provisions come under Article 10.9 of the Civil Code, according to which cases of non-contractual liability are governed by the law of the place where the event that gave rise to them occurred. Unauthorised *negotiorum gestio* is governed by the law of the place where the agent performs the principal activity and unjust enrichment is governed by the law under which the transfer of value to the enriched party occurred.

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

Article 9 of the Civil Code states that the applicable law in these matters is determined by the nationality of the natural persons. There are provisions concerning cases of dual nationality and indeterminate nationality. In the case of dual nationality a distinction is made based on whether it is dual nationality according to Spanish law or dual nationality not provided for by Spanish law. Dual Nationality Treaties exist with Chile, Peru, Paraguay, Nicaragua, Guatemala, Bolivia, Ecuador, Costa Rica, Honduras, the Dominican Republic, Argentina and Colombia. In these cases the provisions of the international treaties apply; if they make no provision, preference is given to the nationality corresponding to the last habitual residence and, failing this, the last nationality acquired. If the dual nationality is not provided for in Spanish law and one of the individual's nationalities is Spanish, this takes precedence, although the principle of non-discrimination on the grounds of nationality must be applied if both nationalities are of EU countries. For persons of indeterminate nationality, the law of the place of habitual residence is applied as the personal law. In the case of stateless persons, Article 12 of the New York Convention of 28 September 1954 applies, under which the applicable law is the law of the stateless person's country of domicile or, failing that, the law of his or her country of residence.
The law applicable to the name of natural persons is governed by the Munich Convention of 1980. The forenames and surnames of a natural person are determined by the law of the State of which the person in question is a citizen.

3.4 Establishment of parent-child relationship, including adoption

Article 9.4 of the Civil Code stipulates that the law applicable to the determination of biological parent-child relationships is that of the habitual residence of the child at the time the relationship is established. In the absence of a habitual residence of the child, or if this law does not permit establishment of the parent-child relationship, the applicable law will be the national law of the child at the time. If this law does not permit establishment of the parent-child relationship or the child lacks a nationality, Spanish substantive law will apply.
The law applicable to adoption is governed by a special regulation, Law 54/2007 on international adoption. Article 18 of this Law states that the conclusion of an adoption by the competent Spanish authority will be governed by Spanish substantive law when the adoptee has his or her permanent residence in Spain at the time of the adoption or has been or will be taken to Spain for the purpose of taking up residence in Spain.
The law applicable to the content of the parent-child relationship, either biological or by adoption, and the exercise of parental responsibility will be determined in accordance with the Hague Convention of 19 October 1996. Article 17 of the Convention stipulates that the exercise of parental responsibility is governed by the Law of the State of the child's habitual residence.

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

Rules exist for the celebration of and consequences of marriage. With regard to the form of the celebration, the Civil Code states that in or outside Spain, a couple can be married:
1) by the judge, mayor or official indicated by the Code;
2) in the religious form legally provided for. It also states that Spaniards can marry outside Spain in the form laid down by the law of the place where the marriage is celebrated. If both parties are foreigners they can marry in Spain in accordance with the same provisions as for Spaniards or the provisions of the personal law of either party. The capacity for marriage and consent are subject to the national law of each of the spouses (Article 9.1 of the Civil Code).
Under Article 9.2 of the Civil Code, the consequences of the marriage are governed by the common national law of the spouses at the time the marriage was celebrated. In the absence of a common national law, the consequences are governed by the personal law or habitual residence of either party, chosen by them both in an authentic act executed before the marriage is celebrated. If this choice has not been made, the law of the common habitual residence immediately after the marriage took place applies and, failing this, the law of the place where the marriage took place.

Legal separation and divorce are governed by Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III). Article 107.1 of the Civil Code stipulates that marriage annulment is governed by the law applicable to the celebration of the marriage.
There is no provision in Spanish private international law for unmarried couples (which means, in principle, resorting to analogy).
Maintenance obligations are governed by the Hague Protocol of 2007 on the law applicable to maintenance obligations.

3.6 Matrimonial property regimes

The rule governing the consequences of marriage (Article 9.2 of the Civil Code) includes both personal consequences and those affecting property. The common personal law of the spouses at the time the marriage is celebrated therefore applies; failing that, the personal law or the law of the habitual residence of either party, chosen by both of them in an authentic act executed before the marriage took place; if this choice has not been made, the applicable law is the law of the common habitual residence immediately after the marriage took place and, failing this, the law of the place where the marriage took place.
Contracts or agreements that stipulate, amend or replace the matrimonial property regime are valid if they comply either with the law that governs the consequences of marriage or with the law of the nationality or the law of the habitual residence of either of the parties at the time of execution (Article 9.3 of the Civil Code).

3.7 Wills and successions

Spain applies the provisions of Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. Under this Regulation, the law of the habitual residence of the deceased at the time of death is applicable unless the deceased had chosen the law corresponding to his or her nationality as the applicable law.
The form of wills is governed by the Hague Convention of 1961.

3.8 Real property

Under Article 10.1 of the Civil Code, ownership, property and other rights over real estate, and its publicity, are governed by the law of the place where they are located, which also applies to movable property. For the purposes of establishing or assigning rights over goods in transit, these goods are deemed to be situated in the place from which they were dispatched, unless the consignor and the consignee have expressly or tacitly agreed that they are deemed to be situated in the place of destination. Ships, aircraft and means of railway transport, and all rights established over them, are subject to the law of the flag State or country of registration. Motor vehicles and other means of road transport are subject to the law of the place where they are located. The issuing of securities is governed by the law of the place where they are issued.

3.9 Insolvency

In cases not covered by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, the provisions of Royal Legislative Decree 1/2020 of 5 May 2020 approving the recast Bankruptcy Law apply. Article 200 of that Law states that as a general rule, insolvency proceedings in Spain and the effects thereof, and the procedures for carrying out and concluding these proceedings, are governed by Spanish law (Law 22/2003 of 9 July 2003, amended by Law 9/2015 on urgent measures in the area of insolvency (Official State Gazette of 26 May 2015)).
The Bankruptcy Law also contains private international law provisions establishing the law applicable to the various legal relationships involved in the proceeding.

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Which country's law applies? - France

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 Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

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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Which country's law applies? - Croatia

1 Sources of the rules in force

1.1 National rules

In the Republic of Croatia, private international law is governed by the Private International Law Act (*Zakon o međunarodnom privatnom pravu*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) No 101/17), which entered into force on 29 January 2019. The Private International Law Act addresses private law relations with an international dimension, the jurisdiction of Croatian courts and other authorities in these private law relations with an international dimension and the relevant rules of procedure, as well as the recognition and enforcement of foreign court judgments. The Private International Law Act is applied to private law relations with an international dimension unless they are already regulated by binding legal instruments of the European Union, international treaties in force in Croatia and other laws in force in Croatia.

1.2 Multilateral international conventions

Hague Convention of 1954 on Civil Procedure
Hague Convention of 1961 on the Conflicts of Laws relating to the form of Testamentary Dispositions
Hague Convention of 1971 on the Law applicable to Traffic Accidents
Hague Convention of 1973 on the Law applicable to Products Liability

1.3 Principal bilateral conventions

Based on the notification of succession, the Republic of Croatia became a party to a number of bilateral international treaties, such as legal assistance treaties, consular conventions, and trade and navigation treaties. Legal assistance treaties also containing rules on the resolution of conflicts of laws have been concluded with specific countries:
Convention of 1954 on Mutual Judicial Cooperation with Austria, Vienna, 16 December 1954:
Agreement of 1956 on Mutual Legal Assistance with Bulgaria, Sofia, 23 March 1956;
Treaty of 1964 on Settlement of Legal Relations in Civil, Family and Criminal Matters with the Czech Republic, Belgrade, 20 January 1964;
Convention of 1959 on the Mutual Recognition and Enforcement of Judgments with Greece, Athens, 18 June 1959;
Agreement of 1968 on Mutual Legal Assistance with Hungary.

2 Implementation of conflict of law rules

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

Courts use three methods to apply private international law to legal situations with an international dimension: conflict-of-law rules, overriding mandatory rules, and special substantive rules.

2.2 Renvoi

Article 9 of the Private International Law Act says that the application of the law of any state referred to in the Act means the application of the rules of law in force in that state (but not its rules on the choice of applicable law).

2.3 Change of connecting factor

A change of instruments is a phenomenon which occurs when the factual situation on which the connecting factor is based changes during a legal relationship, leading to a change of the applicable law. The same conflict-of-law rule applies, but the circumstances on which the connecting factor is based have changed. Such issues arise only where the choice of applicable law is determined by means of changeable rather than permanent connecting factors. Article 21 of the Private International Law Act provides for the acquisition or loss of a right *in rem* (property right) already established in a property arriving in another state to be governed by the law under which such right *in rem* has been acquired. The type and content of that right is subject to the applicable law of the state in which the property is located. If no right *in rem* has been acquired in the property being relocated from one state to another, the circumstances arising in the other state should also be acknowledged in the acquisition or termination of such right.

2.4 Exceptions to the normal application of conflict rules

It should be noted that the law applicable under the provisions of the Private International Law Act does not apply where all circumstances indicate that a private law relationship has only a minor connection with the law in question and is manifestly more closely related to another law. (Article 11)
The rules of [law] of a foreign state applicable under the provisions of the Private International Law Act do not apply if the effect of their application is manifestly contrary to the public policy of Croatia. (Article 12)
Notwithstanding other provisions of the Private International Law Act, a court may apply a provision of Croatian law which is regarded as crucial for safeguarding Croatia's public interest, such as its political, social and economic organisation, to such an extent that it is applicable to any situation falling within its scope, irrespective of the applicable law. Where the performance of an obligation is contrary, in whole or in part, to a provision of the law of a foreign state in which that obligation is to be performed, the court may recognise the effect of that provision. When deciding on the recognition of the effects of that provision, account should be taken of the nature, purpose and consequences of recognising or not recognising its effect. (Article 13)

2.5 Proof of foreign law

A court of law or other authority in Croatia determines the content of the law of a foreign state ex officio (automatically). The foreign law applies as interpreted in that state. The court or other Croatian authority may seek information about the content of the foreign law from the Ministry of Justice or other authority, as well as from expert witnesses or specialised institutions. Parties may submit public or private documents concerning the content of the foreign law. If the content of the foreign law cannot be determined by any of these methods, the Croatian law applies. (Art. 8)

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The law governing contractual obligations is determined in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('the Rome I Regulation') within its scope.
The law governing contractual obligations excluded from the scope of the Rome I Regulation (where the applicable law is not determined by another act or international treaty in force in Croatia) is determined under the provisions of the Rome I Regulation relating to such contractual obligations.

3.2 Non-contractual obligations

The law governing non-contractual obligations is determined in accordance with Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('the Rome II Regulation').
The law governing non-contractual obligations excluded from the scope of the Rome II Regulation (where the applicable law is not determined by another act or international treaty in force in Croatia) is determined under the provisions of the Rome II Regulation relating to such contractual obligations.
The law governing non-contractual obligations resulting from road traffic accidents is determined by the application of the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.
The law applicable to the responsibility of manufacturers for defective products is determined by the application of the Hague Convention of 2 October 1973 on the Law Applicable to Products Liability.

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

The law governing the legal capacity and the capacity to act of a natural person is the law of the state of which that person is a citizen. Once acquired, the capacity to act is not lost by a change of nationality.

The law governing the personal name of a natural person is the law of the state of which that person is a citizen.
If a marriage is concluded in Croatia, the bride and groom may determine their surname in accordance with the law of the state of which one of them is a citizen or, if at least one of them has their habitual residence in Croatia, under Croatian law.
Legal representatives may determine the personal name of a child at a registry office, in accordance with the law of the state of which one of them is a citizen or, if at least one of them has their habitual residence in Croatia, under Croatian law

3.4 Establishment of parent-child relationship, including adoption

The law that applies to relations between parents and children is determined on the basis 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 (the 1996 Hague Convention).
The law that applies parental and child relations that fall outside the scope of the 1996 Hague Convention (where not determined by another act or international treaty in force in Croatia), is determined under the provisions of the 1996 Hague Convention governing such relations.
Determining or contesting maternity or paternity is governed by the law applicable at the time proceedings are initiated, either:
1. the law of the child's habitual residence; or
2. where it is in the child's best interests, the law of the state of which the child is a national or the law of the state of which the persons whose paternity or maternity is being determined or contested are nationals.
The validity of the recognition of maternity or paternity is governed by:
1. the law governing the child's nationality or habitual residence at the time of recognition; or
2. the law governing the nationality or habitual residence of a person who recognises maternity or paternity at the time of recognition.

3.4.1 Adoption

The law governing the prerequisites for adoption and termination of adoption is the law of the state of which the adopting and the adopted persons are nationals at the time.
If the adopting and the adopted persons are citizens of different states, the laws governing the prerequisites for adoption and its termination are cumulatively the laws of both states of which each is a national.
In the case of a joint adoption by two persons, in addition to being governed by the law of the state of the adopted person, the prerequisites for adoption and its termination are also subject to the law of the common nationality of the adopting persons. If they do not have the same nationality at the time, the law of the state in which they have their common habitual residence is to be applied. If they have no common habitual residence at the time either, the laws of the states of which both adopting persons are nationals are applicable.
The law governing the effect of adoption is the law of the common nationality of the adopting and the adopted persons at the time the adoption takes place. If they do not have the same nationality at that time, the law of the state in which they have their common habitual residence is to be applied. If they have no common habitual residence at that time either, the Croatian law is applicable if one of them is a Croatian national. If neither of the adopting persons nor the adopted person is a citizen of the Republic of Croatia, the applicable law is the law of the state of which the adopted person is a citizen.
By way of exception, where the adoption in the child's country of origin has no termination effect on the existing actual parent-child relationship, the adoption may be converted into an adoption with such effect if the parties, institutions and competent authorities, whose consent or authorisation is required for adoption, have given or are to give their consent for the purpose of such adoption and where such adoption is in the child's best interests.
If the application of the foreign law (based on the above) is contrary to the best interests of the adopted person, and if the adopted or the adopting person or persons have a manifestly closer connection with Croatia, the Croatian law applies.

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

3.5.1 Marriage

The law governing the prerequisites for marriage contracted in Croatia, in respect of each person, is the law of the state of which that person is a citizen at the time the marriage is contracted. A marriage will not be contracted if it is manifestly contrary to the public policy of Croatia.
The law governing the formal requirement of a marriage contracted in Croatia is the Croatian law.
A marriage contracted in a foreign state is recognised if contracted under the law of that state.
Where a marriage between persons of the same sex is contracted in a foreign state, it is recognised as a civil partnership if contracted under the law of the state in which it has been contracted.
The law governing the validity of a marriage is the law of the place of marriage.
The law governing divorce is the law chosen by the spouses. The spouses may choose one of the following laws:
1. the law of the state in which both have their habitual residence at the time they choose the applicable law; or
2. the law of the state in which they had their last common habitual residence if one of them still has their habitual residence in that state; or
3. the law of the state of which at least one of them is a citizen at the time they choose the applicable law; or
4. the Croatian law.
An agreement on the applicable law referred to in paragraph 1 of this article needs to be concluded in writing. It may be concluded or amended by the time divorce proceedings are initiated at the latest.
If the spouses have not chosen the applicable law (in accordance with Article 36 of the Private International Law Act), the law governing divorce is:
1. the law of the state in which both spouses have their habitual residence at the time divorce proceedings are initiated; alternatively
2. the law of the state in which they had their last common habitual residence if one of them still has their habitual residence in that state; alternatively
3. the law of the state of which they are both citizens at the time divorce proceedings are initiated; alternatively
4. the Croatian law.

3.5.2 Unmarried/Cohabiting couples and partnerships

The law governing the entry into and termination of a life (civil) partnership in Croatia, established by registration in the register of life partnerships, is the Croatian law.
A registered same-sex life partnership entered into in another state is recognised in Croatia if it has been established under the law of that state.
The law governing the establishment and termination of life partnerships is the law of the state to which a life partnership is or, if it has ceased to exist, was most closely connected.

3.5.3 Divorce and judicial separation

The law governing divorce is the law chosen by the spouses. The spouses may choose one of the following laws:
1. the law of the state in which both spouses have their habitual residence at the time they choose the applicable law; or
2. the law of the state in which they had their last common habitual residence if one of them still has their habitual residence in that state; or
3. the law of the state of which at least one of them is a citizen at the time they choose the applicable law; or

4. the Croatian law.

An agreement on the applicable law is to be concluded in writing. It may be concluded or amended by the time divorce proceedings are initiated at the latest.

If the spouses have not chosen the applicable law (in accordance with Article 36 of the Private International Law Act), the law governing divorce is:

1. the law of the state in which both spouses have their habitual residence at the time divorce proceedings are initiated; alternatively
2. the law of the state in which they had their last common habitual residence if one of them still has their habitual residence in that state; alternatively
3. the law of the state of which they are both citizens at the time divorce proceedings are initiated; alternatively
4. the Croatian law.

3.5.4 Maintenance obligations

The law governing maintenance obligations is determined by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

3.6 Matrimonial property regimes

The law applicable to property relationships between spouses is determined under Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

3.7 Wills and successions

The law governing succession is determined by application of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012).

The law applicable to the form of testamentary dispositions is determined under the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the form of Testamentary Dispositions.

3.8 Real property

The law governing rights *in rem* in properties is the law of the place in which the property in question is located.

3.9 Insolvency

Insolvencies or bankruptcies are subject to the application of Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

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Which country's law applies? - Italy

1 Sources of the rules in force

The sources of private international law in Italy are domestic law, European Union regulations and the international conventions to which Italy is a signatory.

1.1 National rules

In Italy, issues of private international law are governed by Law No 218 of 31 May 1995, which replaced sections 16 to 31 of the general legal provisions placed at the beginning of the Civil Code (*Codice Civile*).

1.2 Multilateral international conventions

Complete list of multilateral conventions in force

For the multilateral conventions in force in Italy please see the attached list(13 Kb) (13 Kb) it.

1.3 Principal bilateral conventions

Non-exhaustive list of the bilateral conventions most frequently applied by the courts

The bilateral conventions that applied in the past to private international law issues arising between Italy and other individual Member States of the European Union have been superseded by the Community legislation adopted in the same field. The regulations that are applied most frequently are Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; Council Regulation (EC) No 1206 /2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; Council Regulation (EC) No 2201 /2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility; and Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

For issues between Italy and non-member countries, the most frequently applied bilateral conventions are those on legal aid and on the recognition and enforcement of judgments which are in force with Argentina (Rome, 9 December 1987), Brazil (Rome, 17 October 1989), the Russian Federation and the other states of the former USSR (Rome, 25 January 1979), the republics of former Yugoslavia (Belgrade, 7 May 1962), some of the United Kingdom's former dominions, including Australia and Canada (London, 17 December 1930), Switzerland (recognition and enforcement of civil and commercial judgments, Rome, 3 January 1933, and damages for road accidents, Rome, 16 August 1978), Bulgaria (Rome, 18 May 1990), Romania (Bucharest, 11 November 1972) and Turkey (Rome, 10 August 1926).

2 Implementation of conflict of law rules

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

To what extent and under what circumstances?

Under Italian law a court must apply the conflict-of-law rules to the case before it of its own motion: it must identify the law that is applicable without being confined to any pleadings on the subject by the parties (*iura novit curia*). For researching foreign law, the judge can obtain assistance from the Ministry of Justice, and also through the London Foreign Law Convention of 1968.

2.2 Renvoi

When the conflict-of-law rules of the court hearing the case designate a foreign law, it may happen that the conflict-of-law rules in that foreign law themselves designate another applicable law ('*renvoi*').

For example: to govern the capacity of an English national residing in France, the French conflict rule designates English law. The English conflict rule, however, refers to the law of the country of residence, i.e. French law.

What happens in Italy in such a case? What happens where Italian law designates the law of another state, which in turn refers to Italian law, or to the law of a third country?

Each time that Italian law designates the law of another state, which in turn refers to the law of a further state, the *renvoi* will be accepted and the law of the further state applied only in the following cases:

(1) if the law of the further state accepts the *renvoi*;

(2) if the *renvoi* is to Italian law.

Renvoi does not occur when the applicable foreign law was chosen by the parties or relates to the form of acts, or in the case of non-contractual obligations.

2.3 Change of connecting factor

What happens if the connecting factor changes, e.g. in the case of a transfer of movables?

The above rules apply.

2.4 Exceptions to the normal application of conflict rules

May the courts refuse to apply the applicable foreign law of referral where it is inconsistent with international public policy? And are there statutes or other national rules that prevail over the conflict rules (overriding provisions, in the sense of '*lois de police*')?

Under Italian law (Article 16 of Law 218/1995) the court cannot apply the foreign law of referral if its effects are 'contrary to public policy' (*contrari all'ordine pubblico*). This is usually understood to mean 'international public policy'. Capacity and other conditions for entering into a civil union are governed by the domestic law of each party to the union at the time that the union is contracted. If, however, the applicable law does not allow for civil union between adults of the same gender, Italian law applies (Article 32-*ter* of Law 218 of 1995).

In cases of conflict of laws (Article 17 of the above Law), Italian law prevails and no departure is allowed, notwithstanding a reference to the foreign law, if that is required by the purpose and scope of the provisions of Italian law (these are 'overriding mandatory provisions', in Italian *norme di applicazione necessaria*).

2.5 Proof of foreign law

Roles of the judge and the parties

It is the responsibility of the judge to establish the foreign law; he or she can obtain help from the parties, the universities, or the Ministry of Justice.

What modes of proof are accepted?

As modes of proof of the foreign law, use can be made of the instruments indicated in international conventions, information provided by the foreign authorities via the Ministry of Justice, and opinions of experts or specialist bodies.

What happens if the foreign law cannot be ascertained?

If possible the court will apply the law identified by other connecting factors that come into play in cases of the particular kind. Failing this, Italian law applies.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Article 57 of Law 218/1995 states that the law applicable to contractual obligations is the law indicated in the Rome Convention of 19 June 1980.

Generally speaking that convention establishes that the law applicable to a contract is the law chosen by the parties.

If no choice has been made, the law that applies is the law of the state with which the contract is most closely connected, subject, however, to the application of any other international conventions that may relate to the specific obligation (e.g. the 1955 Hague Convention on the sale of movable goods will apply in preference to the Rome Convention of 1980).

The application of the law designated by an international convention or by the will of the parties can, however, be refused if it would be incompatible with public policy (for example, if it is incompatible with mandatory rules or safety provisions).

Following the implementation of Regulation (EC) No 593/2008 (the 'Rome I Regulation'), contract cases of a cross-border nature which involve EU Member States are no longer subject to the rules laid down in the international conventions but are governed by that Regulation.

The Regulation provides that the main criterion for determining the law applicable to a contractual relationship is the choice of the parties. However, the law selected by the contracting parties cannot restrict the application of overriding mandatory provisions in the legal system with which the contract is most closely connected.

Where no choice has been made, the Regulation provides a series of specific connection criteria for individual types of contract. For example:

a contract for the sale of goods is governed by the law of the country where the seller has his or her habitual residence;

a contract relating to a tenancy is governed by the law of the country in which the property is situated;

a contract for the provision of services is governed by the law of the country where the service provider has his or her habitual residence.

Jurisdiction and the recognition and enforcement of judgments in such matters is governed by Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation').

3.2 Non-contractual obligations

Law 218/1995, cited above, specifies the rules applicable in the following cases of noncontractual obligations:

unilateral promise (law of the state in which the promise is made);

credit instruments (the Geneva Conventions of 1930 on bills of exchange and promissory notes, the Geneva Convention of 1931 regarding cheques; whereas for other credit instruments, the primary obligations are governed by the law of the state in which the instrument is issued);

agency (law of the state in which the representative has his or her business establishment or in which he or she primarily exercises other powers);

obligations arising from the law (law of the place in which the event occurred that gave rise to the obligation);

liability in tort/delict (law of the state in which the event occurred, but where requested by the victim, the law of the country in which the event giving rise to the damage occurred; and if citizens of only one state are involved, the law of that state applies).

Following the implementation of Regulation (EC) No 864/2007 (the 'Rome II Regulation'), cases of a cross-border nature involving EU Member States are subject to that Regulation. It provides that obligations arising from tort/delict, from liability arising out of dealings prior to the conclusion of a contract, from liability incurred while managing the affairs of another and from unjust enrichment are governed by the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred. The parties may make a choice of law on the basis of an agreement entered into after the occurrence of the event giving rise to the damage.

Jurisdiction and the recognition and enforcement of judgments in such matters is governed by Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation').

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

Personal status and capacity and the existence and content of personal rights, including the right to a name, are governed by the domestic law of the interested party, except for the rights that derive from family relationships, to which the referral rules laid down by Law 218/1995 apply on a case-by-case basis.

3.4 Establishment of parent-child relationship, including adoption

Filiation and citizenship are acquired on the basis of the national law of the parents or one of the parents at the time of birth. The parent-child relationship and the personal and financial relationships between parents and child, including parental responsibility, are governed by the national law of the child at the time of birth.

However, in spite of these references to other laws, the foreign law will be overridden by the Italian legislation enshrining the principle that there is one status of 'child' (and thus that children born to married and unmarried couples are to be treated equally), conferring parental responsibility on both parents, requiring

both parents to provide for the child's maintenance, and empowering the courts to adopt measures restricting or removing parental responsibility in cases of conduct detrimental to the child.
When an application is made to an Italian court for the adoption of a child, giving the child the status of a legitimate child, Italian law applies (Law 184/1983). Articles 29 *et seq*. of Law 184/1983 contain, *inter alia*, a particular rule for cases where the adoption of foreign children is requested by persons resident in Italy, which implements the requirements in the Hague Convention of 29 May 1993 concerning international adoption.
For other conflict-of-law rules, Article 38 of Law 218/1995 contains detailed provisions on different scenarios.
Jurisdiction and the recognition and enforcement of judgments relating to parental responsibility are governed by Regulation (EC) No 2201/2003.
3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations
In matrimonial matters the personal relationships between spouses are regulated by the law of nationality of the spouses, if they have the same nationality, and otherwise by the law of the state where most of their married life is spent.
The law applicable to personal relationships extends as a general rule to the matrimonial property regimes governing joint or separate ownership of property, but here exceptions can be made where so agreed by the spouses or in other cases specifically provided for by law.
Italian law also recognises unions between persons of the same gender (*unioni civili*, 'civil unions'), subject to almost exactly the same legal rules as marriage, excluding the right to adopt. Civil unions are regulated by the law of the state in which the union was entered into, unless one of the parties asks the court to apply the law of the state where most of their life together is spent. The law applicable to property regimes is also that of the state in which the civil union was entered into, but it is possible to register an agreement between the parties that the law applicable is to be the law of a state in which at least one of them resides, or whose nationality he or she possesses.
A marriage entered into abroad by an Italian citizen with an individual of the same gender has the effect of a civil union governed by Italian law.
Judicial separation and divorce, and the dissolution of a civil union, are regulated by Regulation (EU) No 1259/2010, which takes precedence over Law 218 /1995. This permits spouses (or civil partners) to designate the applicable law, provided it is one of the following: the law of the state where they are both resident; the law of the state where they last resided together, if one of them still resides there at the time of the agreement; the law of the state of nationality of either of them; or the law of the court hearing the case. If the parties have not concluded an agreement, the same connecting factors apply in order of priority (the first takes precedence over the second, and so on).
Lastly, it is possible for persons who are not married or in a civil union to enter into cohabitation agreements. These are regulated by the law of the nationality of the couple, if they have the same nationality, and failing that by the law of the state in which most of their life together is spent.
Family maintenance obligations are regulated in line with the Hague Convention of 2 October 1973.
Jurisdiction and the recognition and enforcement of judgments relating to matrimonial matters are governed by Regulation (EC) No 2201/2003.
3.6 Matrimonial property regimes
In Italy the general principle is that matrimonial property is held jointly (*comunione dei beni*).
The spouses may instead opt for an alternative system, such as one where they each own their own property separately (*separazione dei beni*), or another arrangement they establish by agreement between them.
3.7 Wills and successions
It is necessary to differentiate between two periods.
Where the opening of the succession (*apertura della successione*) took place before 17 August 2015, the succession is regulated by the national law of the deceased at the time of death. While still alive, a testator can, by means of a statement in the will, make the succession subject to the law of the country in which he or she resides; if he or she is an Italian national, this choice does not affect the rights of heirs resident in Italy who are entitled by law to a share of the estate (*legittimari*, Article 46 of Law 218/1995).
For successions opened on and after 17 August 2015, Regulation (EU) No 650/2012 applies, and replaces the arrangement outlined above. These successions are regulated by the law in the deceased's habitual place of residence at the time of death. A testator may dispose that the law to govern his or her succession is to be the law of the state whose nationality he or she possesses at the time of making the choice or at the time of death. The Regulation also introduced the European certificate of succession, which confirms the holder's status as heir, legatee or executor in the various Member States.
3.8 Real property
Immovables, movables (it does not appear useful in this context to insist on detailed rules on intangibles).
Property and other rights *in rem* are governed by the law of the state in which the property is situated.
In the case of immovable property situated in an EU Member State, Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation') applies: it establishes that for rights *in rem* in immovable property, the courts of the Member State in which the property is situated have jurisdiction.
3.9 Insolvency
Italian law does not make any express provision for the law applicable where there is a conflict of laws relating to insolvency.
Uniform rules on conflicts of laws between the EU Member States are laid down in Regulation (EU) No 848/2015. This provides for insolvency proceedings to be opened in the Member State where the debtor's centre of main interests is situated; the law applicable to insolvency proceedings and to their effects is that of the Member State within the territory of which such proceedings are opened.
List of the Multilateral Conventions to which Italy belongs
1. MARRIAGE, SEPARATION, DIVORCE
Hague Convention of 1 June 1970 on the recognition of divorces and legal separations.
Council of Europe Convention on preventing and combating violence against women and domestic violence, opened for signature in Istanbul on 11 May 2011 (Law No 77 of 27 June 2013).
2. PATERNITY AND ADOPTION
Munich Convention of 5 September 1980 on the law applicable to surnames and forenames.
Hague Convention of 29 May 1993 on protection of children and co-operation in respect of intercountry adoption.
3. MINORS
Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants.
Hague Convention of 25 October 1980 on the civil aspects of international child abduction.
Luxembourg European Convention of 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children.
Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (Law No 101 of 18 June 2015).
4. MAINTENANCE OBLIGATIONS IN FAMILY RELATIONSHIPS

New York Convention 20 June 1956 on the Recovery Abroad of Maintenance.
Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations.
Hague Convention of 2 October 1973 on the law applicable to maintenance obligations.

5. CITIZENSHIP AND STATELESSNESS

New York Convention of 28 September 1954 relating to the status of stateless persons.
Geneva Convention of 28 July 1951 relating to the status of refugees and New York Protocol of 31 January 1967.

6. SUCCESSION

Washington Convention of 26 October 1973 providing a uniform law on the form of an international will.
Hague Convention of 2 October 1973 concerning the international administration of the estates of deceased persons.

7. CONTRACTUAL OBLIGATIONS

Rome Convention of 19 June 1980 on the law applicable to contractual obligations.
Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

8. INTERNATIONAL TRADE

Hague Convention of 15 June 1955 on the law applicable to international sales of goods.
Vienna (UN) Convention of 11 April 1980 on contracts for the international sale of goods.
Geneva Convention of 19 May 1956 on the contract for the international carriage of goods by road.

9. CREDIT INSTRUMENTS

Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes and for the settlement of certain conflicts of laws.
Geneva Convention of 19 March 1931 providing a uniform law for cheques and for the settlement of certain conflicts of laws.

10. NON-CONTRACTUAL OBLIGATIONS

Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy (and additional protocols).
Brussels Convention of 29 November 1969 on civil liability for oil pollution damage.

11. ARBITRATION

New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards.
European Convention of 21 April 1961 on international commercial arbitration.

12. JUDICIAL ASSISTANCE AND COOPERATION

Hague Convention of 1 March 1954 on civil procedure.
Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters.
Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.
Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

13. TRUSTS

Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition.
Coordination between the rules of international conventions, in particular uniform rules of law, and the corresponding domestic rules of private international law, is ensured by Article 2 of Law 218/1995, whereby the fact that a situation or relationship is within the scope of domestic law does not prejudice the application to the same case of the international conventions in force for Italy.

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Which country's law applies? - Cyprus

1 Sources of the rules in force

1.1 National rules

Where a cross-border case is brought before court, the rules on which law is applicable in Cyprus are primarily those provided for under EU law, in particular Regulations (EC) No 593/2008 (Rome I) on the law applicable to contractual obligations and (EC) No 864/2007 (Rome II) on the law applicable to non-contractual obligations.
In other respects, the Cypriot courts are guided by their own case law, as there are no relevant national laws or encoded rules. In the absence of relevant Cypriot case law, the courts apply English common law under Article 29(1)(c) of the Courts Act (Law 14/60).

1.2 Multilateral international conventions

The Hague Convention of 1 July 1985 on the Law Applicable to trusts and on their recognition, as ratified by the Republic of Cyprus by virtue of Ratifying Act 15(III) of 2017.

1.3 Principal bilateral conventions

Not applicable.

2 Implementation of conflict of law rules

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

The judge is not obliged to apply these rules on his own initiative. The issue may only be brought up by a party to the case, who has to successfully prove through evidence that the law of another state supersedes the law of Cyprus. If the court is not satisfied, the law of Cyprus shall apply.
As the above practice is a matter of evidence and procedure, it is not affected by the above-mentioned Regulations (EC) No 593/2008 and (EC) No 864/2007.

2.2 Renvoi

Regulations (EC) No 593/2008 and (EC) No 864/2007 do not permit the application of the rule of *renvoi.* In cases not covered by the Regulations, however, the rule of *renvoi* may be applied as follows:
The court hearing a case for which it is established that the law of another state should be applied must apply either only the internal national rules of that law or that law in its entirety, including the international rules applicable under that law.
The difficulty in the latter case arises from the fact that the rules on the law applicable under the legal system of the other state concerned may refer the judge to the law of Cyprus, which he must apply (*renvoi*). In that case, the court has two options: either to accept the *renvoi* rule and apply the law of Cyprus (*'partial renvoi'* theory), or to reject it and apply the law of the other state in its entirety (*'total renvoi'*).

2.3 Change of connecting factor

To prevent any problems that could arise from a change of connecting factor (e.g. the domicile, the place to which the movable property or trust has been transferred, etc.), the rule on applicable law is customarily used to determine the date on which the connecting factor is identified. By way of example, see Article 7 of the Hague Convention of 1 July 1985 on trusts.

2.4 Exceptions to the normal application of conflict rules

The law of another state should not be applied even where the rules on applicable law require that it be applied if its application is incompatible with public order in the Republic of Cyprus. Under case law, 'public order' includes the essential principles of justice and public morality and ethics (*Pilavachi & Co Ltd v. International Chemical Co Ltd (1965) 1 CLR 97).*

The law of another state should also not be applied in respect of duties, taxes and taxation.

2.5 Proof of foreign law

The rule established in the case ***Royal Bank of Scotland plc v Geodrill Co Ltd and Others (1993) 1 JSC 753,*** applies, which held that a party which argues that a foreign law is applicable to its case must first make this claim and then provide expert evidence of it to the court's satisfaction. If the court is not satisfied by that evidence or none of the parties makes such a claim, the law of Cyprus shall apply.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Regulation (EC) No 593/2008 (Rome I) applies to all contractual obligations and legal acts where the question of which law should apply is raised.

3.2 Non-contractual obligations

Regulation (EC) No 864/2007 (Rome II) applies in most cases, the general rule of which is that the law applicable should be determined on the basis of where the damage occurs (*lex loci damni*) regardless of the country or countries in which the indirect consequences could occur. The Regulation also lays down specific rules on how to determine the applicable law for specific types of non-contractual obligations, such as unfair competition and product liability.

As regards trusts, the (Ratifying) Law Applicable to Trusts and on their Recognition of 2017 (Law 15(III)/2017), which ratified the Hague Convention of 1985,, applies. Under the Ratifying Law and the Convention, a trust should be governed by the law chosen by the trustee. Otherwise, a trust should be governed by the law with which it is most closely connected.

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

Surname

The Law on the relationship between parents and children (Law 216/90) applies to determining the surname. Under Law 216/90, the surname of a child is determined by a joint declaration made by its parents within three months of the date of birth. If they fail to make such a declaration, the child is given the father's surname. The mother's surname should be given to a child born outside wedlock unless, or until, the child is recognised by the father.

Domicile

A person's domicile is determined by Chapter 195 of the Wills and Succession Act, which provides that each person has at any given time either the domicile received at birth ('domicile of origin') or a domicile they have acquired or retained of their own accord ('domicile of choice').

In the case of a legitimate child born during its father's lifetime, the child's domicile of origin is the father's domicile as of its birth.

In the case of a child born outside wedlock, or a child born after the death of its father, the child's domicile of origin is the mother's domicile as of its birth.

Capacity

A person's capacity to marry is subject to the Marriage Act (Law 104(I)/2013), Article 14 of which provides that a person does not have the capacity to marry if he is under eighteen years of age or is, as of the date the marriage is contracted, unable to give consent due to a mental disorder or deficiency, or brain or other condition or disease, or substance addiction, that renders him unable to understand and be aware of what he is doing.

However, even if the couple concerned, or one of them, is under eighteen years of age, they are regarded as having the capacity to marry if they are at least sixteen years of age or if their guardians have consented in writing or there are serious reasons that justify the marriage. Where the above-mentioned consent is refused or there is no guardian, the question of whether a person has the capacity to marry should be settled by the family court of the district in which the person concerned resides.

As regards the capacity to carry out legal acts, Article 11 of Chapter 149 of the Contracts Act provides that a person has the capacity to enter into contracts if he is of sound mind and has not been deprived of that capacity by law. The law provides that a married person is not regarded as incapable of entering into contracts for the sole reason that is he is under eighteen years of age.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The legal relationship between a patent and a child, including parental responsibility, maintenance and communication, is regulated by the law of Cyprus, in particular the Law on the relationship between parents and children (Law 216/90).

Regulation (EC) No 2201/2003 (Brussels IIa) and Regulation (EC) No 4/2009, as well as the Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, also apply in respect of the matters they cover.

3.4.2 Adoption

Where adoption proceedings are conducted in the Cypriot courts, the law of Cyprus applies regardless of whether the adoption case is cross-border in nature.

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

3.5.1 Marriage

Matters relating to contracting and dissolving a marriage are regulated in Cyprus by the Marriage Act of 2003 (Law 104(I)/2003). They are also subject to the UN Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, as ratified in the Republic of Cyprus by Law 16(III)/2003.

3.5.2 Unmarried/Cohabiting couples and partnerships

3.5.3 Divorce and judicial separation

Matters relating to divorce are governed by Article 111 of the Constitution and the Attempt at Reconciliation and Spiritual Dissolution of Marriage Act of 1990 (Law 22/1990) with regard to religious marriages and the Marriage Act (Law 104(I)/2003).

The Hague Convention on the Recognition of Divorces and Legal Separations of 1971, as ratified by the Republic of Cyprus by Law 14(III)1983, applies to matters relating to the recognition of divorce and legal separation.

3.5.4 Maintenance obligations

Maintenance obligations

Under the Matrimonial Property Act (Law 232/1991), as amended:

If the spouses cease to cohabit, the court may, at the request of a spouse, issue a maintenance order for the other spouse to pay a maintenance allowance to the applicant spouse.

The maintenance obligations between ex-spouses apply where either of them is unable to support himself/herself from his/her own income or property and:

(a) if, when the divorce is finalised or upon expiry of the time periods specified below, his/her age or state of health is such that he/she cannot take up or continue an occupation which would ensure that he/she could support him/herself;
(b) if he/she has care of a minor or adult child or other dependent who is unable to take care of himself/herself due to physical or mental disability, and the person making the claim is thereby prevented from finding suitable employment;
(c) he/she cannot find steady and appropriate employment or needs vocational training, for no more than three years from when the divorce is finalised;
(d) in any other case where the award of maintenance at the time the divorce is finalised is necessary for reasons of equity.
Maintenance may be denied or restricted for important reasons, especially if the marriage was short or if the spouse who might be entitled to maintenance is to blame for the divorce or cessation of the cohabitation or has voluntarily brought about his or her own poverty.
Also, entitlement to maintenance should end or the maintenance order should be modified accordingly where circumstances require.
Maintenance obligations for a minor child
Under the Law on the relationship between parents and children (Law 216/90), the maintenance obligations for a minor child rest upon the parents jointly in accordance with their financial means. The above parental obligation may be continued, by virtue of a decision and a judicial settlement, even after the child reaches adulthood, where this is justified by exceptional circumstances (e.g. the child is incapacitated or disabled or serves with the National Guard or attends courses at an educational establishment or vocational school).
A minor child's entitlement to maintenance from his/her parents still stands even he/she owns property.

3.6 Matrimonial property regimes

Article 13 of Law 232/1991 applies, the general rule of which is that marriage does not alter the spouses' autonomy with regard to property. However, Article 14 of the Law allows one spouse to claim the other's property in the event of the dissolution or annulment of the marriage, provided that the spouse making the claim has contributed towards the increase of the other spouse's property in any way whatsoever. The party making the claim may, through legal action, request that the part of the increase which resulted from his/her contribution be paid to him/her.
The contribution made by one spouse towards increasing the property of the other spouse is deemed to stand at one third of the increase, unless a lower or higher contribution is proved.
The increase in the spouses' property does not include what they acquired by virtue of gift, inheritance, bequest or other donation.

3.7 Wills and successions

Succession, and all matters relating to inheritance, except for the form used to draw up and revoke a will, are regulated by Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.
In accordance with Article 22 of the above Regulation, a person may choose as the law to govern his succession the law of the state whose nationality he possesses at the time of making the choice or at the time of death. The choice of law is made by an explicit declaration.
Where there is a will in place, the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions applies.
In accordance with Article 1 of the Convention, a testamentary disposition shall be valid as regards form if its form complies with the internal law:
(a) of the place where the testator made it, or
(b) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
(c) of a place in which the testator had his domicile or habitual residence either at the time when he made the disposition, or at the time of his death, or
(d) so far as immovables are concerned, of the place where they are situated.

3.8 Real property

Regulation (EC) No 593/2008 (Rome I), which provides that a contract is governed by the law chosen by the parties, applies to relationships creating obligations which are associated with immovable property. In the absence of choice, Article 4 of the Regulation applies, which explicitly specifies the applicable law in each case.
As regards contracts relating to rights *in rem,* in accordance with the case law of the courts of Cyprus, the court applies the jurisdiction of the country in which the immovable property is situated (*lex situs*).

3.9 Insolvency

The applicable law is determined by Regulation (EC) No 1346/2000 on insolvency proceedings. It is the law of the state within the territory of which such proceedings are opened.

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Which country's law applies? - Lithuania

1 Sources of the rules in force

1.1 National rules

Chapter II, Part I, Book One of the Civil Code of the Republic of Lithuania
Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

1.2 Multilateral international conventions

Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.
Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors.
Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.
Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.
Convention on the Law Applicable to Contractual Obligations opened for signature in Rome on 19 June 1980.
Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.
Convention of 30 October 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the new Lugano Convention).

1.3 Principal bilateral conventions

Agreement between the Republic of Lithuania and the Republic of Armenia on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Uzbekistan on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Kazakhstan on legal assistance and legal relations in civil, family and criminal cases.
Protocol to the agreement between the Republic of Lithuania and the Republic of Kazakhstan on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and Ukraine on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Moldova on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Poland on legal assistance and legal relations in civil, family, labour and criminal cases.
Agreement between the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia on legal assistance and legal relations.
Agreement between the Republic of Lithuania and the Republic of Belarus on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the People's Republic of China on legal assistance in civil and criminal matters.
Agreement between the Republic of Lithuania and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases.
Agreement between the Republic of Lithuania and the Republic of Turkey on legal and judicial cooperation in commercial and civil matters.

2 Implementation of conflict of law rules

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

In accordance with Article 33(1) of the Law of the Republic of Lithuania on Courts, when hearing cases courts are guided by the Constitution of the Republic of Lithuania, laws, international agreements to which the Republic of Lithuania is a party, resolutions of the Government, and other legal acts in force in the Republic of Lithuania which are not in conflict with laws. In accordance with Article 1.10(1) of the Civil Code of the Republic of Lithuania, foreign law applies to civil relationships where it is so provided by the international agreements to which the Republic of Lithuania is a party, agreements between parties or the laws of the Republic of Lithuania.

2.2 Renvoi

In accordance with Article 1.14 of the Civil Code of the Republic of Lithuania, if the applicable foreign law provides for renvoi back to the law of the Republic of Lithuania, the law of the Republic of Lithuania applies only in the cases provided for in this Code or in foreign law. If the applicable foreign law provides for renvoi to the law of a third state, the law of the third state applies only in the cases provided for in this Code or the law of the third state. If, when determining the civil legal status of a person, the applicable foreign law refers back to the law of the Republic of Lithuania, the law of the Republic of Lithuania is applicable. These rules do not apply in the instances where the applicable law has been chosen by the parties to a transaction, including the determination of the law applicable to the form of the transaction and the law applicable to non-contractual obligations. Where the rules of private international law require the application of an international treaty/convention, issues of renvoi and renvoi to the law of a third state are governed by the provisions of the applicable international treaty/convention.

2.3 Change of connecting factor

The Civil Code of the Republic of Lithuania does not lay down a general rule in this regard.

2.4 Exceptions to the normal application of conflict rules

In accordance with Article 1.11 of the Civil Code of the Republic of Lithuania, the rules of foreign law do not apply if their application would be contrary to the public order established by the Constitution of the Republic of Lithuania and other laws. In such instances, the civil laws of the Republic of Lithuania apply. The mandatory rules of law of the Republic of Lithuania or of another state with which the dispute is most closely connected apply irrespective of the fact that the parties have chosen a different foreign law by agreement. In deciding on those matters, the court must take into account the nature and objectives of those rules and the consequences of their application or non-application. The foreign law applicable under this Code may not be given effect where, in the light of all circumstances of the case, that law has no clear connection with the case or part of it, but rather the case is connected to the law of another state. This rule does not apply where the applicable law has been chosen by agreement between the parties to the transaction.

2.5 Proof of foreign law

In accordance with Article 1.12 of the Civil Code of the Republic of Lithuania, in cases referred to by international agreements or laws of the Republic of Lithuania, foreign law is applied, interpreted and its content determined by the court ex officio (on its own initiative). Where the application of foreign law is provided for by an agreement between the parties, all evidence relating to the content of the foreign law applied, taking into account the official interpretation of that law, the practice of its application and the doctrine of the foreign state concerned, should be provided by the party relying on the foreign law. At the request of a party to the dispute, the court may provide assistance in gathering information on the applicable foreign law. If the court or a party relying on the foreign law fails to comply with those obligations, the law of the Republic of Lithuania applies. In exceptional cases, where it is necessary to take urgent interim measures to protect the individual's rights or his assets pending the determination of the law applicable to the dispute and its content, the court may resolve urgent matters by applying the law of the Republic of Lithuania.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In accordance with Article 1.37 of the Civil Code of the Republic of Lithuania, contractual obligations are governed by the law chosen by agreement between the parties to the obligation. Such agreement between the parties may be provided for under the terms of the contract concluded between the parties or may be inferred from the factual circumstances of the case. The parties may, by mutual agreement, choose the law of a particular country, which will apply to the whole contract or to a part or parts thereof. The parties may at any time, by mutual agreement, replace the previously chosen law applicable to the contractual obligation by another law. A change of the applicable law has retroactive effect, but may not be invoked against third parties and does not render the contract ineffective. The fact that the parties have, by mutual agreement, chosen a foreign law to be applicable to the contract does not constitute grounds for refusing to apply the mandatory rules of law of the Republic of Lithuania or of another state, which the parties may not amend or waive by agreement.

If the parties have not chosen the applicable law, the law of the state with which the contractual obligation is most closely connected applies. In such a case, it is presumed that the state most affected by the obligation under the contract is the state in whose territory the following are situated:

(1) the domicile or central administration of the party who is required to perform the obligation most characteristic of the contract. If the obligation is more connected to the law of the state in which the place of business of the party to the obligation is situated, the law of that state applies;

(2) the location of immovable property, where the subject matter of the contract is a right in immovable property or a right to use immovable property;

(3) the principal place of business of the carrier at the time of conclusion of a contract of carriage, provided that the cargo was loaded or the head office of the consignor or the place of dispatch of the cargo is located in the same state as the principal place of business of the carrier.

The latter provision does not apply where the place of performance of the obligation that is most characteristic of the contract cannot be determined and the presumptions laid down in that paragraph cannot be relied on because it is apparent from the circumstances of the case that the contract is more closely connected with another state.
Insurance contracts are governed by the law of the state of the insurer's domicile or, in the case of insurance of immovable property, by the law of the state in which the property is situated.
An arbitration agreement is governed by the law governing the main contract or, failing that, by the law of the place where the arbitration agreement was concluded or, where the place of conclusion cannot be determined, by the law of the state of the place of arbitration.
Contracts concluded at a stock exchange or an auction are governed by the law of the state of the exchange or auction.
In accordance with Article 1.39 of the Civil Code of the Republic of Lithuania, the right of the parties to a contract to choose the law applicable to a contractual obligation, as provided for in Article 1.37 of the Code, does not exclude or restrict the right of a consumer to defend his interests by the means and remedies defined by the law of the state of his habitual residence, provided that:
(1) the consumer contract was concluded in the country of his habitual residence on the basis of a special offer or advertising in that country;
(2) the consumer has been induced by the other contracting party to travel to a foreign country to conclude the contract;
(3) the other party or its representative has received the order from the consumer in his state of habitual residence.
Where the parties to a consumer contract have not chosen the applicable law, the law of the state of the consumer's habitual residence applies. The provisions of this Article do not apply to contracts for carriage or to contracts for services where the services are only supplied to the consumer in a country other than the Republic of Lithuania.
In accordance with Article 1.38 of the Civil Code of the Republic of Lithuania, the law applicable to the form of the transaction is determined in accordance with the provisions of Article 1.37(1) of the Code. Where the parties to the transaction have not chosen the applicable law by mutual agreement, the form of the transaction is governed by the law of the place of the transaction. A contract concluded between parties located in different states is also valid if its form meets the legal requirements applicable to the form of such a transaction in at least one of those states. The form of transactions regarding any immovable property or rights in it must meet the requirements of the law of the state in which the immovable property is situated. The form of consumer contracts is governed by the law of the consumer's habitual residence.
In accordance with Article 1.40 of the Civil Code of the Republic of Lithuania, the form of a power of attorney is governed by the law of the state in which it is issued. The time-limit of validity of a power of attorney, unless specified in the power of attorney, the rights and obligations of the agent, the liability of the principal and the agent towards each other and their liability towards third persons are governed by the law of the state in which the agent operates.
In accordance with Article 1.41 of the Civil Code of the Republic of Lithuania, donation agreements are governed by the law of the state of the donor's habitual residence or place of business, with the exception of donation agreements for immovable property, for which the law of the location of the immovable property applies. A donation agreement may not be declared null and void if its form meets the requirements of the law of the place of conclusion of the donation agreement or of the state of the donor's habitual residence or place of business.
In accordance with Article 1.42 of the Civil Code of the Republic of Lithuania, relations connected with the assignability of a claim and the transfer of a debt are governed by the law chosen by agreement between the parties. The law chosen by the parties may not be invoked against debtors in relation to the assignment of the claim unless their consent to the choice of law has been obtained. If the parties have not chosen the applicable law, the law governing the underlying obligation for which the resulting claim (debt) is assigned (transferred) applies to the relationship connected with the assignment of the claim and the transfer of the debt. The form of the assignment of a claim or transfer of a debt is governed by the law applicable to the assignment of a claim or transfer of a debt.
The rules of the Rome I Regulation also apply.

3.2 Non-contractual obligations

In accordance with Article 1.43 of the Civil Code of the Republic of Lithuania, the rights and obligations of the parties under obligations arising from damage caused are determined, at the choice of the aggrieved party, by the law of the state in which the act or other circumstances giving rise to the damage occurred or by the law of the state in which the damage occurred. Where it is not possible to determine the state in which the act was committed or other circumstances or the damage occurred, the law of the state with which the action for damage is most closely connected applies. After the occurrence of damage, the parties may agree that compensation for the damage will be governed by the law of the state of the court hearing the case. If both parties are habitually resident in the same state, the matter of compensation for damage is be governed by the law of that state.
Obligations arising out of damage caused by defective products are governed by the law of the state in which the damage occurred if the habitual residence of the aggrieved party or place of business of the person liable for the damage is situated in that state or the aggrieved party has purchased the product in that state. If the place of business of the person liable for the damage is situated or the aggrieved party has purchased the product in the state of the aggrieved party's habitual residence, the law of the state of the aggrieved party's habitual residence applies. Where the applicable law cannot be determined on the basis of the criteria set out in this paragraph, the law of the state of the place of business of the person liable for the damage applies, unless the claimant bases his claim on the law of the state in which the damage occurred.
The law applicable to the obligations arising in relation to the damage determines the conditions of civil liability, its extent, the person responsible and the conditions for exemption from civil liability.
In accordance with Article 1.44 of the Civil Code of the Republic of Lithuania, the law applicable to claims for compensation of damage caused at the time of an accident is determined in accordance with the Hague Convention on the Law Applicable to Traffic Accidents.
In accordance with Article 1.45 of the Civil Code of the Republic of Lithuania, compensation claims for damage caused to personal non-property rights by the mass media is governed, at the choice of the aggrieved party, by the law of the state in which the aggrieved party's habitual residence or place of business is situated or the damage occurred, or by the law of the state of the habitual residence or place of business of the person causing the damage. The right to respond (denial) is subject to the law of the state in which the publication in question was published or from which the radio or television broadcast in question was aired.
In accordance with Article 1.46 of the Civil Code of the Republic of Lithuania, compensation claims for damage caused by unfair competition is governed by the law of the state in whose market the negative effects of unfair competition occurred. If unfair competition has only affected the interests of an individual person, the applicable law is that of the state in which the place of business of the aggrieved party is located.
The rules of the Rome II Regulation also apply.

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

In accordance with Article 1.15 of the Civil Code of the Republic of Lithuania, foreign citizens in the Republic of Lithuania have the same civil legal capacity as citizens of the Republic of Lithuania. Exceptions to this rule may be laid down by the laws of the Republic of Lithuania. The time of birth or death of foreign citizens is determined by the law of the state of their habitual residence (Article 2.12 of the Code) at the time of birth or death. Stateless persons in the Republic of Lithuania have the same civil legal capacity as citizens of the Republic of Lithuania. Individual exceptions to this rule may be laid down by the

laws of the Republic of Lithuania. The time of birth or death of stateless persons is determined by the law of the state of their habitual residence at the time of birth or death.
Under Article 1.16 of the Civil Code of the Republic of Lithuania, the civil capacity of foreign citizens and stateless persons is determined by the law of the state of their habitual residence. If such persons have no habitual residence or it cannot be determined with certainty, their legal capacity is determined in accordance with the law of the state in which they entered into the transaction concerned. If a person lives in more than one state, the law of the state with which the person is most closely connected applies. Foreign citizens and stateless persons permanently resident in the Republic of Lithuania may be recognised as incapacitated in certain areas or as having limited legal capacity in certain areas or may be assisted in decision-making in accordance with the procedure laid down by the laws of the Republic of Lithuania. A change of habitual residence has no effect on legal capacity if legal capacity has been already acquired before the change of habitual residence.
In accordance with Article 1.17 of the Civil Code of the Republic of Lithuania, a person may not invoke incapacity under the law of the state of their habitual residence if they had legal capacity under the law of the state in which the transaction was concluded, unless the other party to the transaction was or should have been aware of that person's incapacity under the law of the state of his habitual residence. These provisions do not apply to family and succession law nor to rights in rem.
Under Article 1.18 of the Civil Code of the Republic of Lithuania, foreign citizens and stateless persons are recognised as missing or declared dead in accordance with the law of the state of their last known habitual residence.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The filiation of a child (the recognition, determination or challenge of paternity or maternity) is established either in accordance with the law of the state the citizenship of which the child acquired at his birth or the law of the state recognised as the habitual residence of the child at his birth or the law of the habitual residence of one of the child's parents or of the state of his/her nationality at the time of the child's birth, whichever is more favourable to the child. The consequences of the establishment of the child's filiation are determined by the law of the state of the child's habitual residence. The capacity of the child's father (mother) to recognise paternity (maternity) is determined by the law of the state in which he/she has his/her habitual residence at the time of recognition of paternity (maternity). The form of recognition of paternity (maternity) is governed by the law of the place of recognition of paternity (maternity) or the law of the state of the child's habitual residence (Article 1.31 of the Civil Code). The personal and property relationships between children and parents are governed by the law of the state of the child's habitual residence. If neither of the parents of the child is habitually resident in the state of the child's habitual residence and the child and both of his parents are citizens of the same state, the law of the state of their citizenship applies (Article 1.32 of the Civil Code).

3.4.2 Adoption

Adoption relationships are determined by the law of the state of the child's habitual residence. If it is clear that adoption under the law of the state of habitual residence of the child to be adopted will not result in the recognition of adoption in the state of habitual residence or citizenship of the adoptive parent(s), such adoption may take place under the law of those states provided that it would not be contrary to the best interests of the child. If it is not clear whether the adoption will be recognised in another state, the adoption is prohibited. Relations between the adopted child, his adoptive parent(s) and their relatives are governed by the law of the state of habitual residence of the adoptive parent(s) (Article 1.33 of the Civil Code).

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

3.5.1 Marriage

Capacity to marry and other conditions of marriage are determined by the law of the Republic of Lithuania. A marriage should be registered with civil registry authorities of the Republic of Lithuania if at least one of the spouses is habitually resident in Lithuania or at least one of them is a citizen of the Republic of Lithuania at the time of the marriage. Capacity to marry and other conditions of marriage of foreign citizens and stateless persons not habitually resident in the Republic of Lithuania may be determined by the law of the state of habitual residence of both persons wishing to marry, provided that the marriage will be recognised in the state of the habitual residence of at least one of the persons wishing to marry. A marriage lawfully entered into in a foreign state is recognised in the Republic of Lithuania, except where both spouses habitually resident in the Republic of Lithuania married in a foreign state with the aim of avoiding annulment of the marriage in accordance with the laws of the Republic of Lithuania (Article 1.25 of the Civil Code). The procedure for contracting marriage is determined by the law of the state in which the marriage took place. A marriage is also recognised as valid if the procedure by which it was contracted is consistent with the requirements of the law of the state of habitual residence or nationality of at least one of the spouses at the time of marriage (Article 1.26 of the Civil Code). The personal relations between spouses are governed by the law of the state of their habitual residence. If the spouses are habitually resident in different states, their personal relations are governed by the law of the state of their last common habitual residence. If the spouses have not had a common habitual residence, the law of the state with which the spouses have the closest personal relations applies. If it is not possible to determine with which state the spouses have the closest personal relations, the law of the state where the marriage took place applies (Article 1.27 of the Civil Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

Not regulated.

3.5.3 Divorce and judicial separation

In accordance with Article 1.29 of the Civil Code, legal separation and divorce are governed by the law of the habitual residence of the spouses. If the spouses do not have a common habitual residence, the law of the state of their last common habitual residence or, in the absence thereof, the law of the state of the court examining the case applies. If the law of the state of citizenship of both spouses prohibits divorce or lays down special conditions for divorce, the marriage may be dissolved in accordance with the laws of the Republic of Lithuania where one spouse is also a national of the Republic of Lithuania or is habitually resident in the Republic of Lithuania.
The rules of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III) also apply.

3.5.4 Maintenance obligations

The law applicable to family maintenance relationships (alimony) is determined in accordance with the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations (Article 1.36 of the Civil Code).
The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations also applies.

3.6 Matrimonial property regimes

In accordance with Article 1.28 of the Civil Code, the legal status of matrimonial property is determined by the law of the state of their habitual residence. If the spouses are habitually resident in different states, the law of the state of citizenship of both spouses applies. Where the spouses are citizens of different states and have never had a common habitual residence, the law of the state where the marriage took place applies. The legal status of matrimonial property under contracts is determined by the law of the state chosen by agreement between the spouses. In this case, the spouses may choose the law of the state

of current or future habitual residence or the law of the state in which the marriage took place or of which one of the spouses is a citizen. An agreement between the spouses on the applicable law is deemed valid if it meets the requirements of the law of the state of their choice or of the state in which the agreement was concluded. The applicable law chosen by agreement may be invoked against third parties only if the third parties were or should have been aware of that fact. The applicable law chosen by agreement between the spouses may be used to resolve a dispute concerning rights in rem in immovable property only where the requirements for the public registration of that property and rights in rem in immovable property in the state in which the immovable property is situated have been met. Agreement between the spouses concerning a change in the legal status of property is governed by the law of the state of the spouses' habitual residence at the time of such change. If, at the time of the change of legal status, the spouses lived in different states, the law of the state of their last common habitual residence or, in the absence of such habitual residence, the law which determines the property relationship between the spouses applies.

3.7 Wills and successions

A testator's ability to draw up, modify or cancel a will is determined by the law of the testator's state of habitual residence. If a person did not have a habitual residence or it cannot be established, the capacity to draw up a will is determined by the law of the state in which it was drawn up (Article 1.60 of the Civil Code). The form of a will, its amendment or revocation are governed by the law of the state in which such acts have been drawn up. A will, its amendment or revocation are also deemed valid if the form of those acts satisfies the requirements of the law of the state of the testator's habitual residence or citizenship at the time when the acts were executed or of the state of his place of residence at the time when the acts were executed or of his death. A will concerning immovable property, as well as the modification or revocation thereof, is deemed valid if its form complies with the law of the state in which the immovable property is located (Article 1.61 of the Civil Code). In accordance with Article 1.62 of the Civil Code, the law of the state in which the deceased was habitually resident at the time of his death applies to successions other than those relating to succession concerning immovable property. Succession relationships concerning immovable property are subject to the law of the state in which the immovable property is situated. If succession occurred after the death of a citizen of the Republic of Lithuania, his/her heirs residing in the Republic of Lithuania and entitled to a reserved portion of the estate will, irrespective of the applicable law, inherit that portion in accordance with the law of the Republic of Lithuania, except as regards immovable property. If, under the law applicable to succession relationships, the property cannot be transferred to a foreign state in the absence of other heirs and the property is located in Lithuania, the property in question Lithuania is transferred to the ownership of the Republic of Lithuania.

The rules of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession also apply.

3.8 Real property

In accordance with Article 1.48 of the Civil Code, ownership of and other property rights in immovable and movable property are determined by the law of the state in which the property was located at the time of the change of its legal status. Property is recognised as immovable or movable under the law of the state in which it is situated. The official registration of ownership and other property rights is governed by the law of the state in which the property is situated at the time of registration. The ownership of immovable property in the case of acquisitive prescription is determined by the law of the state in which the property is situated.

3.9 Insolvency

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Which country's law applies? - Luxembourg

1 Sources of the rules in force

1.1 National rules

Luxembourg does not have a private international law code. Provisions on conflicts of law in internal law are scattered throughout various codes and special laws. The subject is mainly regulated by multilateral international conventions and European secondary legislation.

1.2 Multilateral international conventions

A significant number of conflict of law rules come from multilateral international conventions to which Luxembourg is party. Most of these conventions were concluded at the Hague Conference on Private International Law.

A list of these conventions is available on the Hague Conference website.

1.3 Principal bilateral conventions

Some bilateral conventions contain conflict of law rules. For details, please visit the Legilux website.

2 Implementation of conflict of law rules

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

In matters of personal status, the court applies the conflict of law rules on its own initiative. This is not the case where the parties have a free choice of law, such as in contractual matters, due to the principle of the parties' freedom to choose the applicable law. In such cases, the court applies the conflict of law rules on its own initiative only if there has been a clear fraudulent evasion of the law.

The court seized will automatically apply its national law if the parties have not requested the application of a foreign law.

2.2 Renvoi

In Luxembourg, in fields not covered by an international convention or a European regulation specifically excluding referral (*renvoi*), case-law allows referral to a certain extent. Where, after application of the conflict of law rules, the referral designates the national law of the court seized, the referral is allowed, but goes no further. It is regarded as referring to the substantive law of the court seized.

Referral is excluded in matters where the parties are free to choose the applicable law.

2.3 Change of connecting factor

This is the case where, due to a change in the connecting factor designating the applicable law, a situation is successively subject to two different legal systems. It is defined as a conflict of law in time due to the movement in space of the connecting factor.

In Luxembourg, the new law is applied to the future effects of a situation arising in the past but with effects in the present. However, the new law designated by the conflict of law rules will apply when changes are made to a situation arising under the previous law that was recognised as applicable.

2.4 Exceptions to the normal application of conflict rules

There are cases in which the court seized must apply its own national law even though the conflict of law rules confer jurisdiction on a foreign law:
It is impossible to determine the foreign law.
Stateless persons are involved.
There is no solution in the foreign law.
Urgent interim measures are taken.
The foreign law conflicts with the public policy of the State of the court seized.
Where provisions are immediately applicable, the court also applies the law of the *forum* for:
Procedural laws and laws regulating the courts.
Legal provisions regulating the protection of workers and property leases.
Legal protection of consumers.
Finally, if, for purposes that are clearly fraudulent, the parties have chosen not to apply the national law of the court seized, but a foreign law that is artificially made applicable, the court must refuse to apply this law and must re-apply its own national law.

2.5 Proof of foreign law

Given that, in Luxembourg, the foreign law is a fact that must be taken into account by the Luxembourg court, the burden of proof in principle lies with the party choosing the foreign law. Therefore, the burden of proof lies with the parties and more specifically the party whose claim is subject to the foreign law.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In principle, contractual obligations are governed by the law chosen by the parties, subject to compliance with mandatory legal provisions regulating public policy and fraudulent evasion of the law.
If the parties do not express a preference, the provisions of the 1980 Rome Convention and Regulation (EC) No 593/2008 of 17 June 2008 apply. In the latter case, the court will apply the law that is objectively most appropriate.

3.2 Non-contractual obligations

In principle, non-contractual obligations are governed by the law of the place where the damage or obligation arises, unless a different law is more closely connected with the facts or an international convention applies.

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

In principle, personal status is governed by the national law of the natural person, except where there are situation-specific criteria such as the habitual residence of the persons concerned and, in particular, that of any children concerned. This also applies to the formation and composition of names, as well as the conditions for changing names, as these form part of a person's status.
The general capacity to enter into a legal act and the capacity to bring legal proceedings are governed by the national law of the person concerned. However, the *locus standi* is governed by the law applicable to that right, given that it concerns the substance of the law. In contractual matters, this rule is mitigated if the co-contracting party is acting in good faith but incapacity is invoked on grounds that do not exist in the country where the act was performed. The law of the place of performance will then supersede the national law.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

In Luxembourg, in matters of legitimate descent, it is in principle the law governing the marriage that applies, i.e. the common national law of the parents, or the law of the common domicile, or the law of the *forum*.
Everything connected with the establishment of natural descent is in principle governed by the national law of the child.
As regards the type of evidence required to establish descent, the substantive conditions for recognition, the time limit and limitations for filing a petition contesting descent, and the means of defence against such a petition, it is the national law of the child that applies.

3.4.2 Adoption

- Conditions for adoption

In principle, in accordance with Article 370 of the Civil Code (*Code civil*), the conditions to be met for adoption are governed by the national law of the adopter (s). Where the two adopting spouses are of different nationalities, the applicable law is that of the common habitual residence at the time of the application. However, the conditions to be met in order to be adopted are governed, in principle, by the national law of the adoptee. The exception to this principle is where the adoptee acquires the nationality of the adopter as a result of the adoption. In this case, the conditions are governed by the national law of the adopter.

- Effects of adoption

It is the national law of the adopter(s) that governs the effects of the adoption. Where the adoption is carried out by two spouses who hold different nationalities or are stateless, or where one of the spouses is stateless, the applicable law is that of their common habitual residence at the time when the adoption takes effect.
In the case of adoptions carried out abroad, there may be a conflict between the rules of jurisdiction laid down by the national law of the adopter and those of the adoptee. In such cases, the adoption is considered valid if the rules laid down by the law of the country where the adoption took place were observed and if the adoption was carried out before the competent authorities according to that law.

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

3.5.1 Marriage

- Conditions for the validity of marriage

The formal requirements are in principle governed by the law of the place where the marriage is contracted.
In order for a marriage to be valid under the Hague Convention of 14 March 1978 on celebration and recognition of the validity of marriages, the substantive conditions imposed by the internal laws of each of the two spouses must be observed. The internal laws are those designated by the conflict of law rules of the State where the marriage is contracted. Where at least one spouse holds the nationality of that State or habitually resides there, the substantive conditions required by the law of the State where the marriage is contracted must also be observed. The law governing the conditions for the validity of marriage also applies to the substantive conditions of any action to annul a marriage.
For marriages contracted abroad, there is a presumption of validity if the marriage certificate drawn up in accordance with the formal requirements of the law of the place where the marriage was contracted has been provided. Recognition may be refused if the marriage contracted abroad is clearly incompatible with Luxembourg's public policy.

- Effects of marriage

If there is no common nationality, the effects in Luxembourg are governed in principle by the law of the spouses' common domicile, i.e. the place where the couple actually resides.

3.5.2 Unmarried/Cohabiting couples and partnerships

Unmarried cohabitation is not subject to any conflict of law rules as, under Luxembourg law, relationships between unmarried couples represent a de facto situation.

The law applicable to partnerships entered into in Luxembourg is the law of the *forum*.

Partners who registered their partnership abroad may have this entered in the civil register provided that both partners met the requirements of Article 4 at the time when the partnership was entered into abroad. Once a partnership entered into abroad has been recognised in Luxembourg, the same benefits as those conferred on Luxembourg partnerships will apply.

3.5.3 Divorce and judicial separation

Where spouses have the same nationality, divorce and legal separation are governed by the national law of the spouses. Otherwise, the law of their actual common domicile will be applied. If neither criterion is met, the law of *the forum* applies.

These rules also apply to the admissibility of the divorce in general, its causes, its effects and related measures.

3.5.4 Maintenance obligations

Under Article 15 of Council Regulation (EC) No 4/2009 on maintenance obligations, the law applicable in this respect is determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. The principle is that the law of the State of habitual residence of the creditor applies, but the parties can agree to designate, for proceedings that have already started, 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 designation;

(b) the law of the State in which either party has his/her habitual residence at the time of designation;

(c) the law designated by the parties to govern their property regime or the law effectively applied to that regime;

(d) the law designated by the parties to govern their divorce or legal separation or the law effectively applied to that divorce or legal separation.

3.6 Matrimonial property regimes

The matrimonial property regime is governed by the internal law designated by the spouses before their marriage.

If, when the marriage was contracted, the spouses did not make this choice, the applicable law is determined in accordance with the Hague Convention of 14 March 1978 on the law applicable to matrimonial property regimes.

Under the Hague Convention of 14 March 1978, the spouses may designate only one of the following laws:

1. the law of any State of which either spouse is a national at the time of designation;
2. the law of the State in which either spouse has his/her habitual residence at the time of designation;
3. the law of the first State where one of the spouses establishes a new habitual residence after marriage.

The law thus designated applies to the whole of their property.

Nonetheless, the spouses, whether or not they have designated a law under the previous paragraphs, may designate with respect to all or some of the immovables, the law of the place where these immovables are situated. They may also provide that any immovables which may subsequently be acquired shall be governed by the law of the place where such immovables are situated.

If the parties do not choose the applicable law, the judge will have to find out what their tacit choice was. The internal law of the State in which they establish their first habitual residence after marriage is presumed to apply.

Nonetheless, in accordance with the Hague Convention of 14 March 1978, the matrimonial property regime is governed by the internal law of the State of the common nationality of the spouses in the following cases:

1. where the declaration provided for in Article 5 has been made by that State and its application to the spouses is not excluded by the provisions of the second paragraph of that Article;
2. where that State is not a Party to the Convention and according to the rules of private international law of that State its internal law is applicable, and the spouses establish their first habitual residence after marriage:

(a) in a State which has made the declaration provided for in Article 5,

or

(b) in a State which is not a Party to the Convention and whose rules of private international law also provide for the application of the law of their nationality;

3. where the spouses do not establish their first habitual residence after marriage in the same State.

If the spouses do not have their habitual residence in the same State and they do not have a common nationality, their matrimonial property regime is governed by the internal law of the State with which, taking all circumstances into account, it is most closely connected.

It is possible to voluntarily change the applicable law if this is permitted by the new law chosen.

3.7 Wills and successions

The provisions of Regulation (EU) No 650/2012 of 4 July 2012 apply to successions on or after 17 August 2015. Article 21 of this Regulation provides that the law applicable to the succession as a whole shall be the law of the State in which the deceased had his/her habitual residence at the time of death.

Successions before 17 August 2015 continue to be governed by the Luxembourg conflict of law rules.

- Legal succession

In Luxembourg, the estate is divided into several parts: a movable estate and one or more immovable estates. To determine whether a property is movable or immovable, the law of the *forum* must be applied.

Succession to movable property is in principle governed by the law of the last domicile of the deceased on the date of death. Domicile is to be determined according to the rules of the Civil Code.

Succession to immovable property is governed by the law of the State in which each property is located.

- Testate succession

In principle, it is personal status that governs the general capacity to make a will. However, specific cases of incapacity are regulated by succession law. The general capacity to be a beneficiary of a gift is governed by personal law.

3.8 Real property

In accordance with Article 3 of the Civil Code, property ownership is governed by the law of the State in which the property is located. This also applies to the content of rights *in rem* associated with property, their creation and transfer, and their acquisition by enjoyment (*usucapion*).

3.9 Insolvency

Outside the scope of Council Regulation (EC) No 1346/2000 and Regulation (EU) No 2015/848 on insolvency proceedings, it is the law of the place where such proceedings are initiated that applies.

This applies to the effects of all collective proceedings initiated in Luxembourg and to those declared abroad. However, for the particular effects of the insolvency of one of the parties on the rights that may be invoked by its co-contracting party, it is the law of the State where the insolvency has been declared that applies.
The jurisdiction of that law is limited to the specific effects of the insolvency and does not extend to all aspects of the operation affected by the insolvency.
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Which country's law applies? - Hungary

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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Which country's law applies? - Malta

1 Sources of the rules in force

1.1 National rules

National laws are statutory (i.e. written laws). These are freely accessible on the Laws of Malta website. Having acceded to the European Union in 2004, the Maltese legal system also incorporates EU laws and regulations which are directly applicable or transposed into Maltese laws and which are likely to prevail over domestic legislation.
Although the principle of precedent is not rooted in the Maltese law and find not binding application in Malta, Maltese courts do generally tend to give weight to former judgements, particularly decisions delivered by the Court of Appeal and Constitutional Court (both Superior Courts in Malta).

1.2 Multilateral international conventions

Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents
Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters
Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
Convention of 25 October 1980 on International Access to Justice
Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
Convention of 25 January 1988 on Mutual Administrative Assistance in Tax Matters
Convention of 16 January 1992 on the Protection of Archaeological Heritage
Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
1980 Rome Convention on the Law Applicable to Contractual Obligations
Convention of 30 June 2005 on Choice of Court Agreements
Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance
Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

Malta ratified also a number of United Nations Treaties - the ratification status can be viewed here.

1.3 Principal bilateral conventions

We are unaware of any bilateral conventions containing choice of law provisions to which Malta is a party to.

2 Implementation of conflict of law rules

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

Conflict of law rules cannot be raised *ex officio* by the judge; such rules are only applicable if at least one of the parties to the suit has argued that there is conflict of laws. The party that raises such plea must proof to the satisfaction of the court of the content of foreign law. In the absence of such plea, or in the absence of satisfactory proof, domestic courts are to adjudicate in accordance to Maltese law.

2.2 Renvoi

The Maltese position is unclear with regards to the application of the renvoi doctrine. Codified rules on choice of law are limited and therefore uncodified rules of Private International law must very often be applied by the courts in the determining which law should apply to a particular case. In fact, the Maltese Courts held that in the absence of legislation regulating private international law, Maltese Courts are to have recourse to the principles of English Common Law. In view of this, the English application of renvoi is adopted by the Maltese courts. It thus follows, that the doctrine of renvoi will be rejected when it comes to tort, insurance and contract. It however applies when it comes to validity of wills, claims of foreign immovable and family law issues.

2.3 Change of connecting factor

This is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified.

2.4 Exceptions to the normal application of conflict rules

Maltese Courts can refuse to apply a foreing law that goes contrary to Maltese public policy and if that foreign law can be characterised as being a foreign revenue law or characterised as being a penal law.

2.5 Proof of foreign law

The plea of foreign law is to be proved as a matter of fact and not as a point of law. Maltese Courts are empowered to interpret domestic legislation and are not permitted to interpret content of foreign law themselves. To be able to understand foreign law, experts on foreign law are appointed by the Court. The parties to the suit may also bring forward as part of their evidence, reports drawn up by different experts.

The burden of proof is on the party raising such plea, namely the defendant to the suit.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In cases concerning contractual obligations within non-EU countries, the Rome Convention 1980 applies, as a result of the Rome Convention on Contractual Obligations (Ratification) Act, Chapter 482 of the Laws of Malta. On the other hand, contractual obligations within EU countries are regulated by Rome I Regulation (Regulation (EC) 593/2008 on the law applicable to contractual obligations.

3.2 Non-contractual obligations

Conflict of law rules for non-contractual obligations is regulated by Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (known as Rome II).

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

Maltese citizenship is acquired upon birth, of his/her father or mother is a citizen of Malta.

Contrary to citizenship, habitual residence can be chosen by the individual when of age. Habitual residence is attributed according to the place where s/he resides together with the intention to reside in that relevant jurisdiction indefinitely or permanently.

Capacity to undertake particular obligations, such as to enter into marriage, to contract, to enter into commercial activity, to make a will, etc, is determined by rules specific to that area.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The responsibilities of a parent to a child is determined by the Maltese Civil Code, however parental authority cease *ipso jure* when the child attains the age of eighteen years. The Maltese court jurisdiction is determined by Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility (Brussels II bis). This is further discussed in the relevant section.

3.4.2 Adoption

Adoption is also regulated by the Maltese Civil Code and this is applied by Maltese Courts every time it has jurisdiction. Foreign adoptions are recognised under Maltese law in terms of Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.

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

3.5.1 Marriage

The formal validity of a marriage is governed by the law of the place where the marriage is being celebrated. In Malta, the formalities for marriage can be found under Chapter 255 of the Laws of Malta (the Marriage Act). The said Act regulates amongst others, restrictions on marriage. One of the restrictions therein mentioned is that 'a marriage contracted between persons either of whom is under the age of sixteen shall be void'.

The applicable law in Malta is the domicile of the spouses that is taken into account.

3.5.2 Unmarried/Cohabiting couples and partnerships

Civil Unions are regulated by Chapter 530 of the Laws of Malta (the Civil Union Act), which in turn makes reference to Chapter 255. Thus the formalities and requisites required under Chapter 255 are to be satisfied as when it comes to civil unions.

3.5.3 Divorce and judicial separation

A Maltese Court will only have jurisdiction over divorce proceedings pursuant to Regulation (EC) 2201/2003 concerning jurisdiction and the recognition of judgements in matrimonial matters and the matters of parental responsibility. This is discussed in further detail in the relevant section.

3.5.4 Maintenance obligations

Malta is bound by Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. This is discussed in further detail in the relevant section.

3.6 Matrimonial property regimes

The applicable law in Malta is the law where the matrimonial home (lex situs) is situated. The Civil Code under Article 1316 provides that any marriage celebrated in Malta would give rise to community of acquests regime. Furthermore, a marriage celebrated outside Malta who subsequently establish themselves in Malta, the community of acquests will arise between them as soon as they establish their residence in Malta, unless they would have previously entered into an agreement excluding the community of acquests regime.

3.7 Wills and successions

In cases of wills and successions, the Maltese Courts have consistently adopted the common law. Thus 'in cases of intestate succession (i.e. where the is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located applies to succession to immovable property. In cases involving wills, the capacity of the testator to make a will is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator'. Furthermore, 'a will is formally valid if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the law of the jurisdiction in which the property is situated.'

3.8 Real property

3.9 Insolvency

Malta is bound by Regulation (EC) 1346/2000 on insolvency proceedings, as amended. The said Regulation sets out, amongst others, the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor's main interests are in an EU Member State. In cases falling outside Regulation (EC) 1346/2000, Maltese law will be applied where the Maltese court has jurisdiction, namely when the company is registered in Malta.

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Which country's law applies? - Austria

1 Sources of the rules in force

1.1 National rules

Austrian private international law has been codified, principally in the Private International Law Act (*Gesetz über das internationale Privatrecht – IPR-Gesetz*) of 15 June 1978, BGBl. No 304/1978. The following conflict-of-law provisions are to be found in laws other than the Private International Law Act (below, IPRG):

§ 13a of the Federal Act of 8 March 1979 adopting consumer protection provisions (Consumer Protection Act – KSchG) (*Bundesgesetz vom 8. März 1979, mit dem Bestimmungen zum Schutz der Verbraucher getroffen werden (Konsumentenschutzgesetz - KSchG)*), BGBl. No 140/1979

§ 11 of the Federal Act on the purchase of the right to use immovable properties on a timeshare basis (Timeshare Act – TNG) (*Bundesgesetz über den Erwerb von Teilzeitnutzungsrechten an unbeweglichen Sachen (Teilzeitnutzungsgesetz – TNG)*), BGBl. I No 32/1997

§ 20 of the Federal Act implementing Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State of the European Community (*Bundesgesetz zur Umsetzung der Richtlinie 93/7/EWG über die Rückgabe von unrechtmäßig aus dem Hoheitsgebiet eines Mitgliedstaates der Europäischen Gemeinschaft verbrachten Kulturgütern*), BGBl. I No 67/1998

§ 23 of the Federal Act on civil liability for damage caused by radioactivity (Nuclear Liability Act 1999 – AtomHG 1999) (*Bundesgesetz über die zivilrechtliche Haftung für Schäden durch Radioaktivität (Atomhaftungsgesetz 1999 – AtomHG 1999)*), BGBl. I No 170/1998

§§ 16 and 18 of the Federal Act on settlement finality in payment and securities settlement systems (Settlement Finality Act) (*Bundesgesetz über die Wirksamkeit von Abrechnungen in Zahlungs- sowie Wertpapierliefer und -abrechnungssystemen (Finalitätsgesetz)*), BGBl. I No 98/2001

§§ 221 to 235 of the Insolvency Code (*Insolvenzordnung*)

• § 1 of the Federal Act on advance directives (Advance Directives Act) (*Bundesgesetz über Patientenverfügungen (Patientenverfügungs-Gesetz – PatVG)*), BGBl. I No 55/2006

• § 1 of the Federal Act establishing death directives (Death Directives Act) (*Bundesgesetz über die Errichtung von Sterbeverfügungen (Sterbeverfügungsgesetz – StVfG)*), BGBl. I No 242/2021

1.2 Multilateral international conventions

§ 53 IPRG states that it does not affect international agreements, which take precedence not only over the provisions of this Act, but also over other national conflict-of-law rules. The following **multilateral international conventions**, to which Austria is party, contain conflict-of-law rules:

Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children

Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants

Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions

Hague Convention of 4 May 1971 on the law applicable to traffic accidents

CIEC Convention of 20 September 1970 on legitimation through subsequent marriage

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

Hague Convention of 13 January 2000 on the international protection of adults

Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

1.3 Principal bilateral conventions

The following bilateral treaties contain conflict-of-law rules:

Friendship and Residence Treaty of 9 September 1959 between the Republic of Austria and the Empire of Iran

Treaty of 16 December 1954 between the Republic of Austria and the Federal People's Republic of Yugoslavia on mutual legal dealings

Treaty of 11 December 1963 between the Republic of Austria and the People's Republic of Poland on mutual relations in civil law matters and on documentation

2 Implementation of conflict of law rules

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

Foreign law is applicable officially and as in its original area of application (§ 3 IPRG).

2.2 Renvoi

According to § 5 IPRG, *renvoi* is to be complied with unless particular reference is made to the substantive law of the other State. If the foreign law refers back to Austrian law, then Austrian law is decisive. If the foreign law refers to law to which reference has already been made, the applicable law is that to which reference was first made.

2.3 Change of connecting factor

Subsequent changes to the conditions that are decisive for the connection to a specific legal system do not normally affect elements of a case that have already been resolved (§ 7 IPRG), although some specific conflict-of-law rules contain exceptions to this principle. In principle, the decisive law for issues which have already been drawn to a conclusion is the law applicable at the time these issues arose and the decisive law for unresolved issues is the law applicable at the time of judgment.

2.4 Exceptions to the normal application of conflict rules

The law referred to is not applicable if its application were to produce a result that is incompatible with the fundamental values of the Austrian legal system (§ 6 IPRG).

Under Austrian law, there are provisions which are applicable irrespective of the rules of private international law (overriding mandatory rules). For some of these provisions, their character as overriding mandatory rules arises from their wording, in others merely from their object.

Overriding mandatory rules are laid down, for example, in §§ 7, 7a and 7b of the Act amending the labour contract law (*Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG*) and provide that, irrespective of the applicable law, workers in Austria are entitled to at least the wages negotiated by collective agreement and to minimum holiday. A further overriding mandatory rule is provided for in § 13a(2) KSchG, according to which § 6 KSchG (on inadmissible contract terms), § 864a of the Civil Code (ABGB) (on the validity of unusual provisions in general terms of business and contract forms) and § 879(3) ABGB (on the nullity of contractual provisions in general terms of business and contract forms which are grossly prejudicial to consumer protection) are decisive, irrespective of the law governing the contract, if the contract was concluded in connection with an activity carried out by the trader in Austria with the aim of concluding such contracts.

2.5 Proof of foreign law

Foreign law is to be established officially. To this end, the court can rely on the cooperation of the parties, on information from the Federal Ministry of Justice or on expert reports. If, despite considerable efforts, it is unable to prove the foreign law within a reasonable period of time, Austrian law is applicable (§ 4 IPRG).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Contractual obligations which are not covered by Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), OJ L 177 of 4 July 2008, p. 6, are to be judged according to the choice of law expressly or conclusively specified by the parties. If no choice of law has been made, the decisive law is that of the State of the habitual residence (establishment) of the party performing the service that is characteristic of the contract (§ 35 IPRG). Special conflict-of-law rules apply to consumer contracts. The conflict-of-law rules provided for in a number of consumer protection directives are transposed in Article 13a(1) of the Consumer Protection Act, which mainly restricts the freedom of choice of law in order to ensure consumer protection.

3.2 Non-contractual obligations

Non-contractual rights to claim damages which are not covered by Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II – OJ L 199 of 31 July 2007, p. 40) are to be judged according to the choice of law expressly or conclusively demonstrated by the parties. If no choice of law has been made, the decisive law is that of the State in which the conduct giving rise to the damages occurred. However if, for the parties concerned, there is a stronger connection to the law of one and the same different State, then the law of that State is decisive (§ 48 IPRG).

This conflict-of-law rule determines the applicable law for the question of whether liability for damages has arisen, who is liable for damages and how much is payable. It also includes questions of contributory negligence and the direct claim of the injured party against the insurer, as well as the limitation period for claims for damages.

Rights to claim compensation arising from **traffic accidents**, which fall within the scope of the Hague Convention of 4 May 1971 on the law applicable to traffic accidents, are to be connected under this Convention.

Non-contractual rights to claim damages which have arisen in Austria as a result of **ionising radiation** are, at the request of the injured party, to be judged under Austrian law (§ 23(1) AtomHG 1999). If damage caused by ionising radiation occurs abroad and is to be judged under Austrian law, damages are to be awarded only if and to the extent that the personal status of the injured party so provides (§ 23(2) AtomHG 1999).

Which law is applicable to ***negotiorum gestio*** or to **claims arising out of unjust enrichment** is regulated in the Rome II Regulation.

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

A person's **personal status** is governed by the law of the State of his or her nationality. If a person has more than one nationality, the decisive law is that of the State to which the person has the closest connection; however, Austrian citizenship always takes precedence. For refugees and stateless persons, the personal status is governed by the law of the State of their habitual residence (§ 9 IPRG).

The right of a person to bear a **name** is to be judged according to their respective personal status, whatever the ground on which the taking of the name is based (§ 13 IPRG).

The married name, for example, is therefore not to be judged according to marital status, but according to the name status. The general formal status of § 8 IPRG applies for the form of name designation declarations. (Accordingly, the form of a legal act is to be judged by the same law as the legal act itself; however, compliance with the formal requirements of the State in which the legal act is carried out suffices.) According to case-law, a name taken under a previous personal status is changed not simply by changing the personal status (nationality).

A person's **legal capacity and capacity to act** are also to be judged according to that person's personal status (§ 12 IPRG). This reference includes any restriction of the capacity to act, for example as a result of mental illness, but not capacity to marry. If a person has come of age, then they remain so, even if they would not yet have done according to a newly acquired personal status.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The requirements for the **legitimacy of a child** and for contesting it are to be judged according to the personal status that the spouses had at the time of the birth of the child or, if the marriage has been dissolved beforehand, at the time of the dissolution. If the spouses have different personal statuses, the personal status of the child at the time of birth is decisive. The scope of application of this conflict-of-law rule also includes the presumption of paternity of the husband, the grounds for contesting legitimacy and also the question of which persons are entitled to contest legitimacy and time limits in which to do so.

The requirements for **legitimation** of an illegitimate child through a declaration of legitimacy (i.e. by act of a public authority, not by subsequent marriage), are to be judged according to the personal status of the father (§ 23 IPRG).

Under the legitimation agreement, legitimation through subsequent marriage of the parents is effective if such is the case according to the law of the State of nationality of the father or mother.

The requirements for the **establishment and recognition of paternity** in relation to an illegitimate child are to be assessed according to the personal status of the child at the time of birth. A subsequent personal status of the child is decisive if establishment or recognition is permissible according to this status, but not according to the personal status at the time of birth. The law under which paternity is established or recognised is also decisive for contesting it (§ 25 IPRG).

Parent-child relationship: The **effects** of the legitimacy and legitimation of a child and of illegitimacy are to be judged according to the personal status of the child. §§ 24 and 25 IPRG cover questions of care and upbringing of the child, administration and use of the child's assets, legal representation by one or both parents, including the need for official approval of certain acts of representation, as well as, for legitimate children, the settlement of custody after divorce of the parents and mutual maintenance claims. These provisions are largely overlapped by the Hague Convention on the Protection of Children and by the Hague Convention of the Protection of Infants of 1961 in cases where it is (still) in force (in relation to Turkey and Macao). Accordingly, the competent authorities have to apply their domestic law for measures to ensure the protection of minors; the authorities in the State of residence are usually competent. Whereas for questions of parentage, it comes down to the personal status at a given time, this is not so for questions regarding the relationship between parents and child; what matters is the respective personal status of the child. If the personal status changes, the parent-child relationship is to be assessed according to the new personal status from the time of the change of status (the change of the relevant connecting factors, nationality).
Case-law has repeatedly not applied custody regulations under foreign legal systems on the grounds that they were **contrary to public order** if they did not consider the best interests of the child.

3.4.2 Adoption

Under § 26 IPRG, the conditions for the adoption of a child and for terminating the adoption are based on the personal status of each adopter. In addition, the personal status of the child is decisive, although in the case of children who are minors, only to the extent that it provides for the consent of the child or of a third party who has a family-law relationship with the child. The conditions for adoption of a child include for example the age of the adopter, the difference in age between the adopters and the child for adoption and the question of whether and under what conditions the existence of the adopter's own children bars adoption of a child, as well as any requirements of consent, including the possibility of officially overruling refused consent.
The effects of the adoption of a child are to be judged according to the personal status of the adopter and in the case of adoption by spouses, according to the decisive law in terms of governing the personal legal effects of the marriage. Following the death of one of the spouses, the personal status of the other spouse is decisive for these effects.
The effects of the adoption of a child in terms of succession law are to be judged not according to the adoption status, but according to the succession status.
The adoption of a child as such is a concluded factual circumstance, so the judgment does not change if the personal status or the connecting factor is subsequently changed. The adoptee status is inherently a permanent legal relationship. The status that is decisive for the effects of the adoption of a child may therefore change: it depends on the respective personal status of the adopter.

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

3.5.1 Marriage

The **form of a marriage** in Austria is to be judged according to Austrian law and the form of a marriage abroad is to be judged according to the personal status of each of the betrothed persons; however, it is sufficient to comply with the formal requirements of the place of celebration of the marriage (§ 16 IPRG). The limited reference to the formal requirements of the place of celebration of the marriage refers to the substantive law provisions of the law referred to, so any *renvoi* under local law is therefore irrelevant (exception from § 5 IPRG).
The **requirements for marriage** and **nullity of a marriage** and the requirements for **annulling** the marriage (as distinct from divorce) are to be judged for each of the betrothed persons according to their personal status (§ 17 IPRG). However, if the law applicable to the personal status of one or both of the betrothed persons makes no marriage provisions on the basis of the gender of one or both of the betrothed persons, the requirements for marriage are to be judged in accordance with the law of the State in which the marriage is founded.
This conflict-of-law rule relates to material requirements for marriage, such as the required age, the absence of impediments to marriage, any consent requirements and their substitutability.
Under § 18 IPRG, the **personal legal effects of marriage** are to be judged according to the common personal status of the spouses or, in the absence of a common personal status, according to the last common personal status, if one of them has kept it. Otherwise, they are to be judged according to the law of the State in which both spouses habitually reside or, in the absence of such a residence, according to the law of the State in which both spouses had their last habitual residence, if one of them has kept it.
The scope of this conflict-of-law rule also covers the obligation of conjugal community, consequence for residence, obligation to provide assistance, as well as each spouse's right to maintenance, but not the law relating to the use of the married name or the marital property regime. The reference may change; if the connecting factors change, a different law may become decisive.

3.5.2 Unmarried/Cohabiting couples and partnerships

The Registered Partnership Act (Gesetz über die eingetragene Partnerschaft) inserted §§ 27a to 27d in the IPRG.
The **requirements (and also the form) of the registered partnership**, its **nullity** and **dissolution due to fault** are to be judged according to the law of the State in which it was founded (§ 27a IPRG).
Under § 27b IPRG, the **personal effects of the registered partnership** are to be judged according to the law of the State in which the registered partners have their common habitual residence or, in the absence of a common habitual residence, according to the law of the State in which both had their last habitual residence, if one of them has kept it. If, accordingly, the law of the State of residence cannot be applied or if this law does not regulate the personal legal effects, the common personal status of the registered partners is decisive or, in the absence of a common personal status, the last common personal status, if one of them has kept it. Otherwise, Austrian law is applicable, which is also the case if the personal status does not regulate the personal legal effects of the registered partnership.
The **property regime** of the registered partnership is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1104 on the property consequences of registered partnerships**.
The **dissolution** of the registered partnership not due to fault is governed by the law of the State in which the registered partners have their common habitual residence at the time of the dissolution, or in the absence of such a common habitual residence, according to the law of the State in which they had their last common habitual residence, if one of them has kept it. If, accordingly, the law of the State of residence cannot be applied or if, accordingly, the registered partnership cannot be dissolved on the basis of the facts adduced, the common personal status of the registered partners is decisive or, in the absence of a common personal status, the last common personal status, if one of them has kept it. Otherwise, Austrian law is applicable, which is also the case if the personal status does not allow the dissolution of the registered partnership on the basis of the facts adduced.

3.5.3 Divorce and judicial separation

Under § 20 IPRG, aspects of **divorce** not regulated by the Rome III Regulation (Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343 of 29 December 2010, p. 10) (property consequences of divorce) are to be judged according to the law that is decisive for the personal legal effects of the marriage. What matters here is the time of the divorce; the reference therefore cannot be changed.
The **matrimonial property regime** is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1103 in matters of matrimonial property regimes**.

The **dissolution of a marriage** is unknown under Austrian law. In so far as it is not regulated by the Rome III Regulation, it would have to be connected according to the closest relationship in accordance with § 1 IPRG. The closest relationship could well be found in case-law by analogy with § 20 IPRG.

3.5.4 Maintenance obligations

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, p. 1 (EU Maintenance Regulation), refers for the maintenance status to the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. Accordingly, the law of the State in which the person to whom maintenance is owed has his or her habitual place of residence is primarily applicable (supplemented by tendencies towards *lex fori*, special connecting factors, a defensive clause against 'surprising' claims and a – very restrictive – possibility to choose the applicable law).

3.6 Matrimonial property regimes

The **matrimonial property regime** is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1103 in matters of matrimonial property regimes** (see above).

3.7 Wills and successions

Successions are regulated in the EU Succession Regulation (Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201 of 27 July 2012, p. 107). For old cases, § 28 IPRG applies, according to which the decisive law depends on the personal status of the deceased at the time of death. This conflict-of-law rule also in principle covered liability for the debts of the estate and the acquisition of succession. However, if probate proceedings were carried out in Austria, the acquisition of succession and liability for the debts of the estate were to be judged according to Austrian law (§ 28(2) IPRG).

3.8 Real property

The **acquisition and loss** of rights in rem in respect of tangible property, including possession, are to be judged according to the law of the State in which the property is located on completion of the factual circumstances underlying the acquisition or loss. The legal category of property and the content of the rights are to be judged according to the law of the State in which the property is located (§ 31 IPRG).

The scope of the conflict-of-law rule covers in particular ownership, servitudes (land charges), lien, building right, home ownership, but also rights of retention effective against third parties and reservation of title. The consequences of transfer of ownership are also covered by this law.

A subsequent change of location does not affect the applicable law because the acquisition of the right represents a completed factual circumstance.

The **effects** of acquisition of a right are based on the law of the respective location; this connecting factor may therefore change. Questions relating to the extent of legal protection of the owner, whether and to what extent the person entitled to the right in rem has a right of disposal, for example whether a pledge of chattels can be sold without judicial intervention, as well as other questions, are also to be judged according to this law.

A special regulation applies for **means of transport** (§ 33 IPRG). Rights in rem with respect to ships and aircraft that have been entered in a register are to be judged according to the law of the State of registry; for railway vehicles, the applicable law is that of the State in which the railway company in whose service the vehicles are used has its actual central administration. For legal and compulsorily justified pledges or legal rights of retention to secure claims for compensation for damage caused by the vehicle or expenditure on this, the applicable law is that of the State in which the property is located on completion of the underlying factual circumstances.

There is also a special regulation for **immovable tangible property**: if rights in rem to immovable property are also covered by the scope of another conflict-of-law rule (for example that for the matrimonial property regime), the property law reference, i.e. the connection to the law of the State in which the property is located, takes precedence.

There is no conflict-of-law rule for **intangible property**. Under § 1 IPRG, the applicable law under property law is that to which the closest connection exists. Securitised rights are judged according to the *lex cartae*. § 33a IPRG, which transposes Article 9 of Directive 2002/47/EC on financial collateral arrangements with a wider scope, contains a special rule for book entry securities. For securities in settlement systems, the special regulations of §§ 16 and 18 of the Settlement Finality Act (*Finalitätsgesetz*), which transpose Settlement Finality Directive 98/26/EC, are applicable.

3.9 Insolvency

International **insolvency law** is regulated in Part Eight of the Insolvency Code (IO). According to § 217 IO, the provisions are applicable only in so far as not otherwise provided by international law or in particular legal acts of the European Communities, primarily through Regulation (EC) No 848/2015 on insolvency proceedings (EU Insolvency Regulation). In terms of content, the provisions largely follow the corresponding provisions of the EU Insolvency Regulation.

In principle, the prerequisites for opening insolvency proceedings and the effects of the insolvency proceedings are governed by the law of the State in which the proceedings are opened. In particular, §§ 221 to 235 IO contain rules on third-party rights in rem, set-off, reservation of title, contracts relating to immovable property, regulated markets, contracts of employment, the effects of insolvency proceedings on rights subject to registration, as well as the law applicable to detrimental acts and the protection of third-party purchasers, the effects on lawsuits pending, the law of *lex rei sitae* with regard to the exercise of property rights or other rights, set-off and novation agreements, repurchase agreements and payments after the opening of insolvency proceedings.

Where regulations overlap with those of the IPRG or other conflict-of-law provisions, the more specialised provisions of the Insolvency Code take precedence.

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Which country's law applies? - Poland

NOTICE: The answers given below DO NOT APPLY to situations governed by EU law

1 Sources of the rules in force

1.1 National rules

Private International Law Act of 4 February 2011 (consolidated text: Journal of Laws 2015, item 1792), ('the PILA').

1.2 Multilateral international conventions

The Hague Convention of 17 July 1905 relating to deprivation of civil rights and similar measures of protection

The Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions

The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
The Hague Convention of 4 May 1971 on the law applicable to traffic accidents
The Hague Convention of 2 October 1973 on the law applicable to maintenance obligations
Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980
The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children

1.3 Principal bilateral conventions

Poland has signed a number of bilateral agreements on legal transactions, which also set out conflict of law rules. These include agreements with both EU Member States and with third countries. Since instruments which bind EU Member States and include conflict of law rules concerning various subject areas take **precedence** over bilateral agreements signed between Member States, in principle, only third country agreements are currently of practical importance. These include agreements with Belarus (26 October 1994), Russia (16 September 1996), Ukraine (24 May 1993), the Democratic People's Republic of Korea (28 September 1986), Cuba (18 November 1982), Vietnam (22 March 1993) and, by succession (on the basis of the agreement with Yugoslavia dated 6 February 1960), with Bosnia and Herzegovina, Montenegro and Serbia.

2 Implementation of conflict of law rules

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

Yes, the court applies conflict of law rules *ex officio*. It also applies foreign law *ex officio* where a conflict of law rule identifies that law as applicable to a specific issue.

2.2 Renvoi

Under Article 5 of the PILA, only reverse renvoi is permitted in Polish law.

Paragraph 1 does not apply if the applicable law was determined:

1) by choice of law;

2) with regard to the form of the legal transaction;

3) with regard to contractual obligations, non-contractual obligations or unilateral legal transactions for which this Act stipulates the applicable law.

2.3 Change of connecting factor

2.4 Exceptions to the normal application of conflict rules

Derogations from application of the law stipulated in the conflict of law rules pertaining to the legal relationship have been set out in Articles 3 and 10 of the PILA.

Article 3(1). *Where the Act requires the application of lex patriae and it is impossible to determine the nationality of the person concerned, they have no nationality or the content of the lex patriae cannot be established, the law of the person's domicile shall apply and, where they have no domicile, the law of the country of their habitual residence shall apply.*

Article 10(1). *Where it is impossible to establish the circumstances which determine the applicability of law, the law with which the legal relationship is most closely connected shall apply. In addition, Polish law shall apply where it is impossible to determine the content of the applicable foreign law within a reasonable amount of time.*

Moreover, Article 67 of the PILA stipulates that where no applicable law has been identified in the PILA, in specific regulations, in international agreements ratified and enforceable in Poland or in EU law, the law governing the legal relationship **should be the law of the country with which that legal relationship is most closely connected**.

2.5 Proof of foreign law

The court identifies and applies foreign law *ex officio* – Article 51a(1) of the Ordinary Courts Organisation Act of 27 July 2001 (consolidated text: Journal of Laws 2019, item 52, as amended).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Relevant conflict of law rules enshrined in the PILA:

Article 28(1): *The law applicable to contractual obligations shall be determined by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177 of 4 July 2008, p. 6).The provisions of the Regulation shall apply where appropriate to contractual obligations excluded from its scope by Article 1(2)(j) of the Regulation referred to in paragraph 1.*

Under Article 29(1) *of the PILA, where Polish law provides for an insurance obligation, the insurance contract shall be governed by Polish law.*

2. Where the law of a European Economic Area Member State which provides for an insurance obligation requires the law of that Member State to be applied to the insurance contract, that law shall apply.

Article 30(1) *With the exception of the cases specified in the Regulation referred to in Article 28, the choice of law of a country other than a European Economic Area Member State with regard to a contract which is closely connected with the territory of at least one Member State may not deprive consumers of the protection awarded to them under the Polish law transposing the following directives:*

1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95 of 21 April 1993, p. 29; OJ EU special edition in Polish, Chapter 15, Volume 2, p. 288);

2) (repealed);

3) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171 of 7 July 1999, p. 12; OJ EU special edition in Polish, Chapter 15, Volume 4, p. 223);

4) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271 of 9 October 2002, p. 16; OJ EU special edition in Polish, Chapter 6, Volume 4, p. 321);

5) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133 of 22 May 2008, p. 66, as amended).

2. Where the law applicable to a contract caught by Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33 of 3 February 2009, p. 10) is the law of a country other than a Member State of the European Economic Area, consumers must not be deprived of the protection they enjoy under the Polish law which transposes that Directive:

1) if any of the real estate is located in one of the Member States, or

2) as regards an agreement which is not directly related to real estate, if an economic operator conducts its business or professional activity in one of the Member States or transfers that activity to one of the Member States in any way and the contract comes under that activity.

Article 31. *An obligation resulting from a security other than a bill of exchange or cheque shall be governed by the law of the country in which that security was executed or issued.*
Article 32(1) *An obligation resulting from a unilateral legal transaction shall be governed by the law chosen by the party performing the transaction. Where both parties to such an obligation are identified, the law shall be chosen, amended or repealed on the basis of an agreement between the parties.*
2. In cases where no express choice of law is made, an obligation resulting from a unilateral legal transaction shall be governed by the law of the country in which the person performing the transaction has their habitual residence or registered office. If the facts of the case suggest that the obligation is more closely related to the law of a different country, the law of that country shall apply.
…
Under ***Article 36****, the effects of an assignment of receivables with respect to third parties shall be determined by the law of the country with jurisdiction over the assigned receivables.*
Article 37. *The law applicable to debt assumption shall be the law of the country with jurisdiction over the assumed debt.*
Article 38. *The effect of a change in the value of a currency on the amount of a liability shall be assessed according to the law applicable to the liability.*

3.2 Non-contractual obligations

The relevant conflict of law rules are enshrined in the PILA:
Article 33. *The law applicable to obligations resulting from events other than legal transactions shall be determined by Regulation No 864/2007/EC of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199 of 31 July 2007, p. 40).*
Article 34. *The Hague Convention of 4 May 1971 on the law applicable to traffic accidents (Journal of Laws 2003/63, item 585) shall determine the law applicable to non-contractual third-party liability resulting from traffic accidents.*
Article 35. *Third-party liability for the actions and omissions of bodies exercising public authority in a given country shall be governed by the law of that country.*

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

Conflict of law rules which apply to the status of a natural person:
A natural person's ***legal capacity and their capacity to perform legal transactions*** *shall be governed by their lex patriae (Article 11(1)).*
2. Where a natural person is performing a legal transaction within the framework of their business, it shall be sufficient that they have capacity to perform that transaction under the law of the country in which the business is based.
3. Paragraph 1 does not preclude application of the law governing the legal transaction if it lays down specific requirements as regards capacity to perform that legal transaction.
Under Article 12, where an agreement has been signed by parties located in the same country, a natural person who has capacity to sign the agreement under the law of that country may invoke incapacity pursuant to the law referred to in Article 11(1) only where the other party was aware of that incapacity when they signed the agreement or where the other party was negligently unaware of that incapacity at that point in time.
2. A natural person who performs a unilateral legal transaction and who has capacity to do so under the law of the country in which the transaction is performed may invoke incapacity pursuant to the law referred to in Article 11(1) only where this will not adversely affect any persons who, acting with due diligence, relied on the assumption that the person performing that legal transaction had the requisite capacity to do so.
3. If a natural person is acting through a representative, the applicability of paragraphs 1 and 2 shall be determined by the relevant circumstances concerning the representative.
4. Paragraphs 1 and 2 shall not apply to legal transactions in the area of family and guardianship law or inheritance law, or to any regulations concerning real estate located in a country other than the country in which the legal transaction was performed.
Under Article 13(1), legal incapacitation *shall be governed by the lex patriae of the incapacitated natural person. Where a Polish court rules on the incapacitation of a foreign national, Polish law shall apply.*
Article 14(1) *requires the application of lex patriae to* ***the presumption or declaration of death*** *of a natural person. Where a Polish court rules on the presumption or declaration of death of a foreign national, Polish law shall apply.*
Under Article 16(1), the personal rights *of a natural person shall be governed by their lex patriae.*
A natural person whose personal rights are threatened or have been violated may demand protection under the law of the country in whose territory the event causing such threat or violation occurred, or under the law of the country in whose territory the effects of the violation occurred.
If the personal rights of a natural person have been violated in the mass media, the right to reply, to a correction or to a similar protective measure shall be governed by the law of the country in which the publisher or broadcaster has its registered office or place of habitual residence.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Conflict of law rules applicable to relationships between parents and children (PILA):
A child's parentage may be established or disputed *under the lex patriae of the child at the time of birth (Article 55(1) of the PILA).If the lex patriae of the child at the time of birth does not permit the establishment of paternity by court order, establishment of paternity by court order shall be governed by the lex patriae of the child at the time when the child's parentage was established. Acknowledgement of a child's parentage shall be governed by the lex patriae of the child at the time of acknowledgement. Where that law does not provide for the acknowledgement of a child, the lex patriae of the child at the time of birth shall apply, provided that it permits such acknowledgement. Acknowledgement of a conceived or unborn child shall be governed by the lex patriae of the mother at the time of acknowledgment.*
Under Article 56(1) of the PILA, the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (OJ L 151 of 11 June 2008, p. 39; Journal of Laws 2010/172, item 1158) ***determines the law applicable to parental responsibility and custody rights****.*
Where the place of the child's habitual residence changes to a country which is not party to the convention referred to in paragraph 1, the law of that country shall thenceforth determine the terms of application of the measures imposed in the country of the child's former habitual residence.
The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children determines the law applicable to the ***guardianship*** *of children (Article 59 of the PILA).*
Where the place of the child's habitual residence changes to a country which is not party to the convention referred to in paragraph 1, the law of that country shall thenceforth determine the terms of application of the measures imposed in the country of the child's former habitual residence.

3.4.2 Adoption

Under Article 57 of the PILA, adoption shall be governed by the lex patriae of the adopting parent.
Joint adoption by spouses shall be governed by their common lex patriae. Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the

country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.

***As stated in Article 58 of the PILA**, adoption shall be impossible without application of the lex patriae of the prospective adoptee concerning their consent, the consent of their legal representative and the consent of a competent authority, as well as any restrictions on adoption following a change of domicile to a different country.*

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

3.5.1 Marriage

***The capacity to enter into marriage** shall be determined with respect to each of the parties by their lex patriae at the time of marriage (Article 48 of the PILA.)*

***In accordance with the provisions of Article 49(1), the form in which the marriage is celebrated** shall be governed by the law of the country in which it is celebrated. If the marriage is celebrated outside Poland, it shall be sufficient to comply with the requirements of the lex patriae of both spouses or the law of the domicile or habitual residence of both spouses at the time when the marriage is celebrated.*

Under Article 50 of the PILA, the law referred to in Articles 48 and 49 shall apply mutatis mutandis to the effects of inability to celebrate the marriage and failure to comply with the requirements concerning the form in which the marriage is celebrated.

The spouses' personal relations and marital property regime shall be governed by their common lex patriae (Article 51(1)).Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.

3.5.2 Unmarried/Cohabiting couples and partnerships

None

3.5.3 Divorce and judicial separation

Under Article 54 of the PILA, dissolution of marriage shall be governed by the common lex patriae of the spouses at the time when they apply for the marriage to be dissolved. Where the spouses do not have a common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled at the time when they apply for the marriage to be dissolved and, where they do not have a common domicile when they apply for the marriage to be dissolved, the applicable law shall be the law of the country in which the spouses had their last common habitual residence, provided that it continues to be the habitual residence of one of the spouses. Polish law shall apply where there are no circumstances enabling the applicable law to be determined.

The above provisions shall apply mutatis mutandis to marital separation.

3.5.4 Maintenance obligations

Under Article 63, the law applicable to maintenance shall be determined by Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7 of 10 January 2009, p. 1).

3.6 Matrimonial property regimes

The spouses' personal relations and marital property regime shall be governed by their common lex patriae (Article 51(1)).Where the spouses have no common lex patriae, the applicable law shall be the law of the country in which both spouses are domiciled and, if they are not domiciled in the same country, then the applicable law shall be the law of the country in which both spouses have their habitual residence. Where the spouses do not have their habitual residence in the same country, the applicable law shall be the law of the country with which both spouses are otherwise most closely connected.

Under Article 52(1) of the PILA, spouses may choose the lex patriae of one of the spouses, or the law of the country in which one of them has a domicile or habitual residence as the law applicable to their marital property regime. The choice of law may also be made before the marriage is celebrated.

Matrimonial property contracts shall be governed by the law chosen by the parties as per paragraph 1. In cases where no express choice of law is made, the matrimonial property contract shall be governed by the law applicable to the spouses' personal relations and marital property regime at the time when the contract was signed. When choosing the law governing the marital property regime or marital contract, it shall be sufficient to retain the form required for marital property contracts under the chosen law or under the law of the country in which the law was chosen.

3.7 Wills and successions

The law applicable to inheritance is set out in Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201 of 27 July 2012, p. 107, as amended).

3.8 Real property

Under Article 41(1) of the PILA, ownership and other property rights shall be governed by the law of the country in which their object is located. The acquisition and loss of ownership and the acquisition, loss or change of the content or priority of other property rights shall be governed by the law of the country in which their object was located when the event which gave rise to the legal effects referred to above occurred.

3.9 Insolvency

The conflict of law rules which determine the law applicable to bankruptcy proceedings are set out in the Bankruptcy Act of 28 February 2003 (consolidated text: Journal of Laws 2019, item 498):

Under Article 460 of the Bankruptcy Act, Polish law shall apply to bankruptcy proceedings instituted in Poland, unless the provisions of this chapter stipulate otherwise.

According to Article 461 of the Bankruptcy Act, the labour of workers employed in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area shall be regulated by the law governing their employment contract.

The law which determines whether a particular object constitutes real estate shall be the law applicable in the place where that object is located.

Agreements on the use or purchase of real estate located in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area shall be governed by the law of the country in which the real estate is located.

Rights relating to real estate located in another EU Member State or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement on the European Economic Area, or to registered sea-going vessels or aircraft, shall be governed by the law of the country which keeps the relevant register.

A declaration of bankruptcy shall not infringe the rights of creditors or any third parties encumbering assets or other property of the bankrupt party located in a different Member State of the European Union or a Member State of the European Free Trade Association (EFTA) which is party to the Agreement of the European Economic Area, not excluding any organised parts of the property and, in particular, the right to dispose of the property to cover any liabilities or the right to cover liabilities from benefits yielded by the property, pledge and mortgage rights, the right to demand the release of the property by the persons responsible for it against the will of the authorised party or the right to use the property as its trustee (Article 462 of the Bankruptcy Act). This shall apply to personal rights and claims entered in land and mortgage registers and in other public registers whose exercise or pursuit results in the creation of the above-mentioned rights.

Under Article 463(1) of the Bankruptcy Act, reservation of the right of ownership to the seller in a sales agreement shall not expire as a result of a declaration of bankruptcy of a domestic bank which is the purchaser of the object of the agreement if, when bankruptcy was declared, the object of the agreement was located in a different Member State of the European Union or a Member State of the European Free Trade Agreement (EFTA) which is party to the Agreement on the European Economic Area.

A declaration of bankruptcy of a domestic bank which is disposing of an asset may not provide a basis for withdrawing from the sales agreement if the object of the sale was transferred before bankruptcy was declared and the object of the sale was located abroad when bankruptcy was declared.

***Under Article 464,** the exercise of the rights which, in order to be created, exist or be disposed of, must be entered in a register, disclosed in an account or deposited in a central deposit, shall be governed by the law of the country in which such registers, accounts or deposits are kept.*

Without prejudice to Article 464, the right of repurchase shall be governed by the law applicable to contractual obligations which governs the agreement giving rise to the right.

Without prejudice to Article 464, the law applicable to contractual obligations which governs transactions concluded in the regulated market shall apply to agreements signed within the framework of transactions performed in the regulated market within the meaning of the Trade in Financial Instruments Act of 29 July 2005.

The offsetting provided for in Article 467 of the Bankruptcy Act shall be governed by the law on contractual obligations which applies to the offsetting agreement.

***Moreover, pursuant to Article 4671**of the Bankruptcy Act, the declaration of bankruptcy shall not infringe the creditor's right to offset their debt against the debt of the bankrupt party where this is allowed under the law applicable to the bankrupt party's debt.*

The enforceability and validity of a legal transaction performed following a declaration of bankruptcy and consisting of the disposal of real estate, a sea-going vessel or aircraft which must be entered in a register, or of the disposal of rights which, in order to be created, exist or be disposed of, must be entered into a register, disclosed in an account or deposited in a central deposit, shall be governed by the law of the country in which the property is located or in which such registers, accounts or deposits are kept.

***Under Article 469 of the Bankruptcy Act**, provisions on the unenforceability and invalidity of a legal transaction performed to the detriment of creditors shall not apply where the law applicable to the transaction does not permit legal transactions performed to the detriment of creditors to be deemed unenforceable.*

Under Article 470 of the Bankruptcy Act, the effects of a declaration of bankruptcy on legal proceedings pending before a court of law of a European Union Member State or a Member State of the European Free Trade Agreement (EFTA) which is party to the Agreement on the European Economic Area shall be assessed under the law of the country in which the proceedings are pending.

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Which country's law applies? - Portugal

1 Sources of the rules in force

The following sources of domestic law are provided for in Articles 1, 3 and 4 of the Portuguese Civil Code:

• Laws
• Usage
• Equity

The following are sources of international law (Article 8 of the Portuguese Constitution):

• The rules and principles of general or common international law form an integral part of Portuguese law.
• The rules set out in duly ratified or approved international conventions enter into force in Portuguese national law following their official publication and remain so for as long as they are internationally binding on the Portuguese State.
• The rules established by the competent bodies of international organisations to which Portugal belongs enter directly into force in Portuguese national law, provided that such is laid down in their respective founding treaties.
• The provisions of the treaties that govern the European Union and the rules established by its institutions in the exercise of their respective responsibilities apply in Portuguese national law in accordance with Union law and with respect for the fundamental principles of a democratic State based on the rule of law.

1.1 National rules

Laws

Laws are an immediate source of domestic law. Article 1(2) of the Portuguese Civil Code deems all general provisions established by competent bodies of the State. Article 112(1) of the Portuguese Constitution states that laws, decree-laws and regional legislative decrees are legislative acts.

Usage

Usage is legally justifiable as a source of domestic law when both of the following conditions obtain:

• it is not contrary to the principles of good faith, and
• this is established by law (Article 3(1) of the Portuguese Civil Code).

Equity

Portuguese courts may settle a dispute in accordance with the principles of equity only under one of the following circumstances:

• when the law allows it (Article 4(a) of the Portuguese Civil Code), or
• when the parties agree and the legal relationship is available to them (Article 4(b) of the Portuguese Civil Code), or
• when the parties have agreed to equitable remedy in advance (Article 4(c) of the Portuguese Civil Code).

1.2 Multilateral international conventions

Conventions of the Hague Conference on Private International Law

Portugal is bound by 26 Hague Conventions:

1. Convention on civil procedure (The Hague, 1954)
See: here
2. Convention on the law applicable to maintenance obligations towards children (The Hague, 1956)
See: here

3. Convention Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children (The Hague, 1958)
See: here
4. Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (The Hague, 1961)
See: here
5. Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (The Hague, 1961)
See: here
6. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (The Hague, 1961)
See: here
7. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, 1965)
See: here
8. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971)
See: here
9. Supplementary Protocol to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971)
See: here
10. Convention on the Recognition of Divorces and Legal Separations (The Hague, 1970)
See: here
11. Convention on the Law Applicable to Traffic Accidents (The Hague, 1971)
See: here
12. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (The Hague, 1970)
See: here
13. Convention Concerning the International Administration of the Estates of Deceased Persons (The Hague, 1973)
See: here
14. Convention on the Law Applicable to Products Liability (The Hague, 1973)
See: here
15. Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (The Hague, 1973)
See: here
16. Convention on the Law Applicable to Maintenance Obligations (The Hague, 1973)
See: here
17. Convention on the Law Applicable to Matrimonial Property Regimes (The Hague, 1978)
See: here
18. Convention on Celebration and Recognition of the Validity of Marriages (The Hague, 1978)
See: here
19. Convention on the Law Applicable to Agency (The Hague, 1978)
See: here
20. Convention on the Civil Aspects of International Child Abduction (The Hague, 1980)
See: here
21. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague, 1993)
See: here
22. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (The Hague, 1996)
See: here
23. Convention on the International Protection of Adults (The Hague, 2000)
See: here
24. Convention on Choice of Court Agreements (The Hague, 2005)
See: here
25. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (The Hague, 2007)
See: here
26. Protocol on the Law Applicable to Maintenance Obligations (The Hague, 2007)
See: here

Conventions of the International Commission on Civil Status (ICCS)

Portugal is bound by 10 ICCS Conventions

These conventions can be found here
1. Convention on the issue of certain extracts from civil status records for use abroad (Paris, 27 September 1956). Approved: Law No 33/81, published in the Portuguese Official Gazette, Series I, No 196 of 27.8.1981
See: here
2. Convention on the issue free of charge and exemption from legalisation of copies of civil status records (Luxembourg, 26 September 1957). Approved: Law No 22/81, published in the Portuguese Official Gazette, Series I, No 189 of 19.8.1981
See: here
3. Convention on the international exchange of information relating to civil status (Istanbul, 4 September 1958). Approved: Decree-Law No 39/80, published in the Portuguese Official Gazette, Series I, No 145 of 26.6.1980
See: here
4. Convention on changes of surnames and forenames (Istanbul, 4 September 1958). Approved: Resolution of the Assembly of the Republic No 5/84, published in the Portuguese Official Gazette, Series I, No 40 of 16.2.1984
See: here
5. Convention extending the competence of authorities empowered to receive declarations acknowledging natural children (Rome, 14 September 1961). Approved: Resolution of the Assembly of the Republic No 6/84, published in the Portuguese Official Gazette, Series I, No 50 of 28.2.1984
See: here

6. International Convention on the issue of multilingual extracts from civil status records (Vienna, 8 September 1976). Approved: Government Decree No 34 /83, published in the Portuguese Official Gazette, Series I, No 109 of 12.5.1983
See: here
7. International Convention on the issue of multilingual extracts from civil status records (Vienna, 8 September 1976). Approved: Government Decree No 34 /83, published in the Portuguese Official Gazette, Series I, No 109 of 12.5.1983
See: here
8. Convention on the exemption from legalisation of certain records and documents (Paris, 15 September 1977). Approved:
Decree-Law No 135/82, published in the Portuguese Official Gazette, Series I, No 292 of 20.12.1982
See: here
9. Convention on the law applicable to surnames and forenames (Munich, 5 September 1980). Approved: Resolution of the Assembly of the Republic No 8 /84, published in the Portuguese Official Gazette, Series I, No 54 of 3.3.1984
See: here
10. Convention on the issue of certificate of legal capacity to marry (Munich, 5 October 1980). Approved: Government Decree No 40/84, published in the Portuguese Official Gazette, Series I, no. 170 of 24.7.1984
See: here

Other relevant multilateral conventions that are binding on Portugal:

Paris Convention for the Protection of Industrial Property (Stockholm, 1967)
See: here and here
1951 UN Convention relating to the Status of Refugees and its 1967 Protocol
See: here and here
Protocol: here
Convention providing a Uniform Law for Bills of Exchange and Promissory Notes and Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes (Geneva, 1930)
See: here
Convention providing a Uniform Law for Cheques and Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques (Geneva, 1931)
See: here
1973 Washington Convention providing a Uniform Law on the Form of an International Will, to which Portugal is a party, accession approved under Decree-Law No 252/75
See: here
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)
See: here
Lugano II Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Council Decision 2009/430/EC of 27 November 2008)
See: here
Decision: here
1980 Convention concerning International Carriage by Rail, as amended by the Vilnius Protocol of 1999
See: here
The European Convention on Information on Foreign Law, signed in London in 1970
See: here
Council of Europe Convention on preventing and combating violence against women and domestic violence – 2011 Istanbul Convention
See: here
United Nations Convention on the Recovery Abroad of Maintenance – 1956 New York Convention
See: here and here

1.3 Principal bilateral conventions

Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Republic of Angola, signed in Luanda (1995)
See: here
Agreement on Legal Cooperation between the Portuguese Republic and the Republic of Guinea-Bissau, signed in Bissau (1988)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the People's Republic of Mozambique, signed in Lisbon (1990)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Democratic Republic of São Tomé and Príncipe (1976)
See: here
Agreement for the recovery of maintenance between Portugal and the Republic of Cabo Verde (1982)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Republic of Cabo Verde (2003)
See: here
Agreement between the Government of the Portuguese Republic and the Government of the United States of America for the Recovery of Maintenance (2000)
See: here
Convention between the Portuguese Republic and the Grand Duchy of Luxembourg on legal aid in matters relating to custody and access rights (1992)
See: here

2 Implementation of conflict of law rules

When a conflict-of-law rule refers to a foreign law, this only implies the application of domestic law of that State; it does not mean that the Courts of that State have jurisdiction. The only exception to this is if it runs counter to some specific precept (Article 16 of the Portuguese Civil Code).
The application of foreign law is limited to the rules of the foreign legal system which are a part of the regime governing the area of law covered by the conflict-of-law rule (e.g. successions, family, obligations, rights in rem) (Article 15 of the Portuguese Civil Code).

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

In Portugal, the Court is not subject to claims of the parties with regard to inquiry, interpretation and application of the rules of law (Article 5(3) of the Portuguese Code of Civil Procedure). From this general principle it follows that the national Court applies the conflict-of-law rules on its own initiative.

2.2 Renvoi

In Portugal, there are three key rules when it comes to *renvoi*:
a rule which provides for *renvoi* to the law of another State (Article 17 of the Portuguese Civil Code)
a rule which provides for *renvoi* to Portuguese law (Article 18 of the Portuguese Civil Code)
a rule which provides for cases in which *renvoi* is not permitted (Article 19 of the Portuguese Civil Code).

Renvoi to the law of another State

In Portugal, the Court may resort to the law of another State.
Renvoi to the law of another State may be made when the Portuguese conflict-of-law rule refers to the law of another State and that State is deemed competent to handle the case (Article 17(1) of the Portuguese Civil Code).
Renvoi ends if:
the foreign law referred to by the Portuguese conflict-of-law rule is personal law, **and**
the interested party has their habitual residence in Portugal, or
resides in a country whose conflict-of-law rules deem that the laws of the State of their nationality are applicable (Article 17(2) of the Portuguese Civil Code).
However, there is always *renvoi* should both of the following conditions be met cumulatively:
the cases involve guardianship, curatorship, property relations between spouses, paternal responsibility, relations between the adopter and the adopted or successions upon death, and
the foreign law specified by the Portuguese conflict-of-law rule refers to the law of the place in which the immovable property is situated and it is deemed competent. (Article 17(3) of the Portuguese Civil Code).

Renvoi to Portuguese law

There is *renvoi* to Portuguese law when the Portuguese conflict-of-law rule refers to the law of another State which in turn has a conflict-of-law rule that refers back again to Portuguese law. In this case, Portuguese law will apply (Article 18(1) of the Portuguese Civil Code).
However, in matters relating to **personal status**, *renvoi* to Portuguese law is permitted only if the following additional requirement is met:
the interested party has their habitual residence in Portuguese territory, or
the law of the interested party's country of residence deems Portuguese law competent (Article 18(2) of the Portuguese Civil Code).

Cases in which *renvoi* is not permitted

None of the aforementioned types of *renvoi* are permitted in the following cases:
when *renvoi* renders invalid or unenforceable a transaction which would be valid if the Portuguese conflict-of-law rule were simply applied (with no *renvoi*) (Article 19(1) of the Portuguese Civil Code)
when *renvoi* results in the illegitimacy of a state which would otherwise be legitimate (Article 19(1) of the Portuguese Civil Code)
when the interested parties have specified the applicable foreign law, in cases where this is allowed (Article 19(2) of the Portuguese Civil Code).

2.3 Change of connecting factor

The connecting factor is a factual or legal circumstance, chosen by the conflict-of-law rule, which serves as a basis for specifying the applicable law. Depending on the case, it may be, for example, nationality or the place where a transaction took place, where an intellectual work was created, where an entitlement was registered, where assets are located or where the interested party resides.
The Portuguese judicial system places at least two limitations on changes of connecting factor:
Fraudulent evasion of the law – a change of connecting factor arising from a situation of fact or of law created by the interested parties to avoid the application of a law which would otherwise be applicable is deemed irrelevant (Article 21 of the Portuguese Civil Code).
Age of majority – reached according to the preceding personal law is not affected by a change in personal law (Article 29 of the Portuguese Civil Code).
If it is impossible to determine the connecting factor on which specification of the applicable law depends, the law otherwise applicable is used (Article 23 of the Portuguese Civil Code).

2.4 Exceptions to the normal application of conflict rules

Violation of public policy

The provisions of foreign law specified by the conflict-of-law rule do not apply if they violate the fundamental principles of the Portuguese State's international public policy (Article 22(1) of the Portuguese Civil Code). In this case, other provisions of foreign law which are deemed more appropriate or, in the alternative, the rules of Portuguese domestic law apply (Article 22(2) of the Portuguese Civil Code).

International conventions and EU legislation

Where international conventions that are binding on the Portuguese State or EU legislation provide for rules on applicable law that differ from those provided for in national conflict of law rules, those national rules do not apply.

2.5 Proof of foreign law

Whoever invokes foreign law has the burden of proving its existence and content. However, the Court must seek on its own initiative to acquire knowledge of the foreign law. The foreign law is interpreted within the system to which it belongs and in accordance with the rules of interpretation established therein (Article 23(1) of the Portuguese Civil Code).
In order to obtain information on foreign law on civil and commercial matters, reference may be made to the two conventions Portugal is a party to:
The European Convention on Information on Foreign Law (London, 1968)
The Convention on Information on Legal Matters with Respect to the Law in Force and its Application (Brasilia, 1972)
Should it not be possible to ascertain the content of the foreign law, the law that is otherwise applicable is used (Article 23(2) of the Portuguese Civil Code).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Regime provided for in EU legislation

In the Member States of the European Union (except Denmark), the law applicable to contractual obligations is determined according to Regulation (EC) No 593/2008 of 17 June 2008 (Rome I), which overrides the national conflict-of-law rules indicated below insofar as they provide differently.
Denmark is the only EU Member State to which Regulation (EC) No 593/2008 of 17 June 2008 does not apply. It continues to be covered by the Rome Convention of 1980 on the law applicable to contractual obligations. In Denmark, the law applicable to contractual obligations is determined according to the Rome Convention of 1980, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

Regime provided for in the national conflict-of-law rules

Matters relating to the confirmation, interpretation and completion of a declaration of intent and to lack of will or defects of will are governed:

by the law applicable to the substance of the transaction (Article 35(1) of the Portuguese Civil Code).
The value of a behaviour as a declaration of intent is determined:
by the law of the common habitual residence of the declarant and of the recipient of the declaration, or, failing that,
by the law of the place where the behaviour took place.
The value of silence as a means of declaration is determined:
by the law of the common habitual residence of the declarant and of the recipient of the declaration, or, failing that,
by the law of the place where the proposal was received (Article 35(2) and (3) of the Portuguese Civil Code).
The form of the declaration of intent is governed:
by the law applicable to the substance of the transaction, or
by the law in force in the place where the declaration is made, or
by the law of the State referred to by the conflict-of-law rule in force in the place where the declaration is made (Article 36(1) and (2) of the Portuguese Civil Code).
NB:
Alternatives 2) and 3) are admissible only if the law governing the substance of the transaction does not provide for the declaration to be null or unenforceable in the event of non-compliance with a certain form even if the transaction is concluded abroad.
The law applicable to legal representation is:
the law governing the legal relationship from which the representative power arises (Article 37 of the Portuguese Civil Code).
The law applicable to representation of legal persons by their statutory bodies is:
the relevant personal law.
Voluntary representation is governed as follows:
The law of the State where the representative powers are exercised governs the existence, extension, amendment, effects and extinction of the representative powers (Article 39(1) of the Portuguese Civil Code).
The law of the country where the represented person has their habitual residence applies if the representative exercises its powers in a country other than the one indicated by the represented person and if such is known by the third party with whom it enters into a contract (Article 39(2) of the Portuguese Civil Code).
The law of the place of the representative's registered office applies if the said representative exercises the representation professionally and such is known by the contracting third party (Article 39(3) of the Portuguese Civil Code).
The law of the place where the immovable property is situated applies when the representation relates to the disposition or administration of that property (Article 39(3) of the Portuguese Civil Code).
Limitation periods and forfeiture are governed:
by the law applicable to the right to which one or the other relates (Article 40 of the Portuguese Civil Code).
The obligations arising from legal transactions and the substance of the transaction are governed:
I. by the law which the contracting parties chose or had in mind (Article 41(1) of the Portuguese Civil Code), provided that one of the following conditions is met:
its applicability corresponds to a serious interest of the declarants, or
it is connected with one of the aspects of the transaction which fall under the scope of private international law (Article 41(2) of the Portuguese Civil Code).
II. Should the parties not determine the law, the applicable law is as follows:
the law of the habitual residence of the declarant, in the case of a unilateral transaction;
the law of the common habitual residence of the parties, in the case of a contract (Article 42(1) of the Portuguese Civil Code).
III. In the case of a contract in which the parties have not determined the law and they do not have a common habitual residence, a distinction must be made between two situations:
gratuitous contracts, for which the applicable law is the law of the habitual residence of the contracting party who granted the benefit;
onerous contracts, for which the applicable law is the law of the place where they were concluded (Article 42(2) of the Portuguese Civil Code).
The law applicable to the management of business is:
the law of the place where the manager's main activity takes place (Article 43 of the Portuguese Civil Code).
The law applicable to unjust enrichment is:
the law on which the transfer of assets in favour of the enriched party was based.

3.2 Non-contractual obligations

Regime provided for in EU legislation

In the Member States of the European Union (except Denmark), the law applicable to non-contractual obligations is determined according to Regulation (EC) No 864/2007 of 11 July 2007 (Rome II), which overrides the national conflict-of-law rules indicated below insofar as they provide differently.
However, in relations between Portugal and the States that are parties to the 1971 Hague Convention on the Law Applicable to Traffic Accidents, the applicable law in such cases is determined in accordance with said convention, which overrides the conflict-of-rule laws relating thereto laid down in the Rome II Regulation (Article 28 of the Rome II Regulation).

Regime provided for in the national conflict-of-law rules

I. The law applicable to extra-contractual liability based on a wrongful act or on risk is as follows:
a) the law of the State where the main harmful activity took place, or
b) in the case of an omission, the law of the place where the person responsible should have acted (Article 45(1) of the Portuguese Civil Code).
II. If the perpetrator is not deemed responsible under the law of the place where the harmful activity occurred or, in the case of an omission, the law of the place where the person should have acted, the applicable law is the law of the State where the harmful effect occurred, provided that two requirements are met cumulatively:
a) the law of the State where the harmful effect produced its effect deems the perpetrator responsible, and
b) the perpetrator should have foreseen the damage caused in that State as a consequence of their action or omission (Article 45(2) of the Portuguese Civil Code).
III. The aforementioned rules in I and II do not apply under the following circumstances:
a) if the perpetrator and the injured party have the same nationality or the same habitual residence and are occasionally abroad, the applicable law is that of their nationality or of their common habitual residence, as appropriate;
b) this is the case without prejudice to the provisions of the local State which must apply to all persons equally (Article 45(3) of the Portuguese Civil Code).

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

The concept of personal law

Individuals:

The personal law is that of the individual's nationality (Article 31(1) of the Portuguese Civil Code).

In the case of stateless persons, the personal law of the stateless person is that of their habitual residence (Article 32(1) of the Portuguese Civil Code).

However, should the stateless person be a minor or deprived person, the personal law is that of their legal domicile (Article 32(2) of the Portuguese Civil Code).

Legal persons:

The personal law of legal persons is that of the State where its main registered office and real seat of administration is situated (Article 33(1) of the Portuguese Civil Code).

The personal law of individuals governs:

marital status (Article 25 of the Portuguese Civil Code);

capacity (Article 25 of the Portuguese Civil Code);

the beginning and the end of legal personality (Article 26(1) of the Portuguese Civil Code);

the rights of personality – existence, protection and restrictions (with the proviso that the foreigner or stateless person enjoys no legal protection whatsoever that is not recognised under Portuguese law) (Article 27 of the Portuguese Civil Code);

age of majority (with the proviso that a change of personal law does not affect the majority reached under the previous personal law) (Article 29 of the Portuguese Civil Code);

guardianship and similar institutions aimed at protecting incapable persons (Article 29 of the Portuguese Civil Code).

The personal law of legal persons governs:

the capacity of the legal person;

incorporation, operation and competence of its bodies;

ways of acquiring and losing membership and the rights and duties pertaining thereto;

third party liability of the legal person, its respective bodies and members;

transformation, dissolution and termination of the legal person (Article 33(2) of the Portuguese Civil Code).

Transfer and merger of legal persons:

The transfer from one State to another of the registered office of a legal person does not extinguish its personality if the laws of both registered offices agree on this.

the merger of legal persons coming under different personal laws is assessed under both laws (Article 33(3) and (4) of the Portuguese Civil Code).

International legal persons:

The personal law is determined in the convention that created them or in the articles of association.

If this is not the case, the applicable law is the law of the country where the main registered office is located (Article 34 of the Portuguese Civil Code).

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The law applicable to the establishment of a parent-child relationship is as follows:

The personal law of the parent at the time the relationship was established (Article 56(1) of the Portuguese Civil Code)

The common national law of both parents. Failing this, the law of the common habitual residence of the spouses or, failing this, the personal law of the child, if it is the child of a married woman and the establishment of the parent-child relationship relates to the father (Article 56(2) of the Portuguese Civil Code).

The relationships between parents and children are governed:

by the common national law of the parents or, failing this,

by the law of the common habitual residence of the parents; or,

should the parents reside in different States, by the personal law of the child (Article 57(1) of the Portuguese Civil Code).

3.4.2 Adoption

The law applicable to adoption, the relationships between the adopter and the adopted, and the relationships between the adopted and their biological family is as follows:

the personal law of the adopter (Article 60(1) of the Portuguese Civil Code), or

if the adopters are married or if the adopted is the child of one of them, the common national law of the adopters or, failing this

the law of the common habitual residence of the adopters or, failing this,

the law of the country with which the family life of the adopters is most closely connected (Article 60(2) of the Portuguese Civil Code).

Situations under which adoption is not permitted:

Adoption is not permitted if the competent law which governs the relationships between the adopted and their biological parents does not recognise or does not allow adoption in those circumstances (Article 60(4) of the Portuguese Civil Code).

Situations under which consent is required for adoption or assuming a parent-child relationship:

When the personal law of the adopted requires their consent (Article 61(1) of the Portuguese Civil Code).

When the law which governs the relationship between the interested party and a third party with whom they have a legal family or guardian relationship, requires consent from the third party (Article 62(2) of the Portuguese Civil Code).

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

3.5.1 Marriage

The personal law of each of the betrothed applies:

to their capacity to wed;

to their capacity to sign a prenuptial agreement;

to the rules concerning absence of consent or vitiated consent of the contracting parties (Article 49 of the Portuguese Civil Code).

The law applicable to the forms of marriage is as follows:

The law of the State in which the marriage is celebrated;

The national law of either of the spouses if they are both foreigners who wed in Portugal before the respective consular or diplomatic officials, and if that law affords equal competence to Portuguese consular and diplomatic officials (Article 51(1) of the Portuguese Civil Code);

The diplomatic or consular officials of the Portuguese State or Catholic ministers may officiate the marriage of two Portuguese nationals or of one Portuguese national and a foreigner abroad (Article 51(2) of the Portuguese Civil Code);

In either of the situations mentioned in the last indent, the marriage must be preceded by publication of notices organised by the competent body, unless this has been waived (Article 51(3) of the Portuguese Civil Code);
A canonical marriage, officiated abroad, of two Portuguese nationals or of one Portuguese national and a foreigner, is deemed a Catholic marriage and is transcribed in Portugal based on the parish records, regardless of the legal form of the marriage (Article 51(4) of the Portuguese Civil Code).
The law applicable to the relationships between spouses and to changes to the matrimonial property regime is as follows:
the common national law (Article 52(1) of the Portuguese Civil Code) or, failing this,
the law of the common habitual residence or, failing this,
the law of the country with which the family life is most closely connected (Article 51(2) of the Portuguese Civil Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

There are no national conflict-of-law rules that specifically provide for unmarried/cohabiting couples and partnerships.
Under domestic law, cohabitation is governed by Law No 7/2001 of 11 May 2001 (Protection of Domestic Partnerships), last amended by Law No 71/2018 of 31 December 2018.
Portuguese law defines cohabitation as the legal situation of a couple who, regardless of their gender, have been living together as if they were married for more than two years (Article 1(2) of the Law on the Protection of Domestic Partnerships).
In the absence of conflict-of-law rules specifically providing for cohabitation, the conflict of law rules relating to the relationships between spouses and to changes to the matrimonial property regime may be applied by analogy. However, this interpretation is subject to fluctuations in national case-law.

3.5.3 Divorce and judicial separation

Regime provided for in EU legislation

In the Member States of the European Union that participate in this mechanism of closer cooperation, the law applicable to divorce and judicial separation is determined by Council Regulation (EU) No 1259/2010, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

Regime provided for in the national conflict-of-law rules

The law applicable to divorce and judicial separation of persons and assets is:
the common national law or, failing this,
the law of the common habitual residence or, failing this,
the law of the country with which the family life is most closely connected (Article 52 of the Portuguese Civil Code, applicable to the judicial separation of persons and assets, in accordance with Article 55(1) of the same Code).
Change in the law applicable to constancy of marriage:
In this case, only a fact that was relevant at the time it was established can be used as a basis for divorce or separation (Article 55(2) of the Portuguese Civil Code).

3.5.4 Maintenance obligations

Regime provided for in the Hague Protocol of 2007

In the Member States of the European Union (with the exception of Denmark), the law applicable to maintenance obligations arising from family relationships, parent-child relationships, marriage or affinity, including maintenance obligations owed to children whose parents are not married, is determined in accordance with the Hague Protocol on the law applicable to maintenance obligations of 23 November 2007, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

Regime provided for in the national conflict-of-law rules

The applicable law, as appropriate, is the law indicated above:
under the heading *"Establishment of parent-child relationship, including adoption"* insofar as it concerns the *relationships between parents and children*, and the *relationships between adopters and the adopted*;
under the heading *"Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation and maintenance obligations"* insofar as it concerns the *relationships between spouses*.
In cases where maintenance is owed based on other family relationships:
The applicable law is the personal law of the respective parties.
In cases where maintenance is owed based on legal transactions:
The applicable law is the law indicated above under the heading *"Contractual obligations and legal acts"*, in particular the reference to *the obligations arising from legal transactions and the substance of the transaction*.
In cases where maintenance is owed based on a succession or testamentary disposition:
The applicable law is the law indicated below under the heading *"Wills and successions"*.

3.6 Matrimonial property regimes

Regime provided for in EU legislation

In the Member States of the European Union that participate in this mechanism of closer cooperation, one of which is Portugal, the law applicable to matrimonial property regimes and the property consequences of registered partnerships is determined, respectively, by Council Regulation (EU) No 2016/1103 and Council Regulation (EU) No 2016/1104 , which override the national conflict-of-law rules indicated below, insofar as they provide differently.

Regime provided for in the national conflict-of-law rules

The law applicable to prenuptial agreements (substance and effects) and to the matrimonial property regime (statutory or laid down by agreement) is as follows:
the national law of the couple at the time they wed (Article 53(1) of the Portuguese Civil Code); or, if they do not have the same nationality,
the law of the common habitual residence of the couple at the time they wed; or, failing this,
the law of the first matrimonial residence (Article 53(1) of the Portuguese Civil Code); or,
any of the previous regimes, if a foreign law is applicable, one of the betrothed habitually resides in Portugal and such is agreed to without prejudice to third party rights prior to the agreement (Article 53(3) of the Portuguese Civil Code).
As regards changes to the matrimonial property regime, see the reference to *the relationships between spouses and changes to the matrimonial property regime* under point 3.5.1 above – *'Marriage'* (Article 54 of the Portuguese Civil Code).

3.7 Wills and successions

Regime provided for in EU legislation

In the Member States of the European Union (with the exception of Denmark, Ireland and the United Kingdom), the law applicable to successions is determined according to Regulation (EU) No 650/2012, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

The EU succession regulation does not prejudice the application of international conventions to which Portugal is a party at the time of its adoption (Article 75 (1) of Regulation (EU) No 650/2012).
Although Portugal is a signatory of the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, to date (April 2021) Portugal has not ratified the convention and is, therefore, not bound by it.
As such, international wills are governed by the 1973 Washington Convention providing a Uniform Law on the Form of an International Will, to which Portugal is a party, accession approved under Decree-Law No 252/75 of 23 May 1975, and by the rules laid down in the Portuguese Notaries' Code.

Regime provided for in the national conflict-of-law rules

The personal law of the testator at the time of death applies:
to succession upon death
to the powers of the administrator of the inheritance and of the executor of the will (Article 61 of the Portuguese Civil Code).
The law of the testator at the time of the declaration applies:
to the capacity to carry out, change or revoke a disposition upon death (Article 63(1) of the Portuguese Civil Code);
to the special form required by virtue of the age of the person carrying out the disposition (Article 63(1) of the Portuguese Civil Code);
to the interpretation of the clauses and provisions upon death unless reference is made to another law (Article 64(a) of the Portuguese Civil Code);
to the absence of consent and vitiated consent (Article 64(b) of the Portuguese Civil Code);
to the admissibility of joint wills (Article 64(c) of the Portuguese Civil Code);
to the admissibility of agreements as to succession without prejudice to the regime indicated above under the heading *'Matrimonial property regimes'* (Article 64(c) of the Portuguese Civil Code).
NB:
In the event of a change of personal law after disposition of property upon death has been carried out, the person carrying out the disposition may still revoke said disposition pursuant to the preceding personal law (Article 65(1) of the Portuguese Civil Code).
Regarding the form of the dispositions of property upon death, and revocation of or change to the disposition, the following may be applied as an alternative:
the law where the act was carried out; or
the personal law of the deceased at the time of the declaration; or
the personal law of the deceased at the time of death; or
the law to which the local conflict-of-law rule refers *(Article 64(1) of the Portuguese Civil Code)*.
Limitations to this regime:
Compliance with the form required by the personal law of the deceased at the time of the declaration must be respected if non-compliance results in the invalidity or unenforceability of the declaration, even if it is it made abroad.

3.8 Real property

The law applicable to possession, ownership and other rights in rem is:
the law of the State in whose territory the property is situated *(Article 46(1) of the Portuguese Civil Code)*.
The law applicable to the establishment and transfer of rights in rem over property in transit is:
the law of the country of destination *(Article 46(2) of the Portuguese Civil Code)*.
The law applicable to the establishment and transfer of rights in rem over means of transport subject to registration is:
the law of the country where registration was carried out *(Article 46(3) of the Portuguese Civil Code)*.
The law applicable to the capacity to establish rights in rem over immovable property or to dispose of it is:
the law of the place where the property is situated, provided that said law so determines or, if it does not
the respective personal law *(Article 47 of the Portuguese Civil Code)*.
The law applicable to copyright is:
the law of the place where the work was first published or, if it has not been published,
the personal law of the author, without prejudice to the provisions in special legislation. *(Article 48(1) of the Portuguese Civil Code)*
The law applicable to industrial property is:
the law of the country in which it was created *(Article 48(2) of the Portuguese Civil Code)*.

3.9 Insolvency

As a general rule, the applicable law is that of the State in which the proceedings were brought (Article 276 of the Portuguese Insolvency and Corporate Recovery Code).
There are exceptions to this rule as regards the effects of the declaration of insolvency in certain cases:
• employment contracts and employment relationships are governed by the law applicable to the employment contracts (Article 277 of the Portuguese Insolvency and Corporate Recovery Code);
• in the case of the debtor's rights in relation to immovable property, a vessel or an aircraft subject to registration in a public register, the applicable law is that of the State under the authority of which the register is kept (Article 278 of the Portuguese Insolvency and Corporate Recovery Code);
• contracts conferring the right to acquire rights in rem over immovable property or the right to use that property are governed solely by the law of the State in whose territory the property is situated (Article 279(1) of the Portuguese Insolvency and Corporate Recovery Code);
• the rights of the seller in relation to assets sold to the insolvent debtor with reservation of title and the rights in rem of creditors or third parties over assets belonging to the debtor and which, at the time when the proceedings opened, were situated in the territory of the other State are governed solely by the law of that State (Article 280(1) of the Portuguese Insolvency and Corporate Recovery Code);
• the rights concerning registered or deposited securities are governed by the law applicable to the transfer thereof, under Article 41 of the Portuguese Securities Code (Article 282(1) of the Portuguese Insolvency and Corporate Recovery Code);
• the rights and obligations of the parties to a financial market or to a payment system as defined by Article 2(a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998, or the equivalent, are governed by the law applicable to that system (Article 285 of the Portuguese Securities Code and Article 282(2) of the Portuguese Insolvency and Corporate Recovery Code);
• sale and repurchase transactions within the meaning of Article 12 of Council Directive 86/635/EEC of 8 December 1986 are governed by the law applicable to such contracts (Article 283 of the Portuguese Insolvency and Corporate Recovery Code);
• ongoing proceedings concerning an asset or a right which forms an integral part of the insolvency estate are governed solely by the law of the State in which the proceedings are being conducted (Article 285 of the Portuguese Insolvency and Corporate Recovery Code).

Links to relevant national legislation:

Portuguese Constitution
Portuguese Civil Code
Portuguese Notaries' Code
Portuguese Insolvency and Corporate Recovery Code

Final Note

The information contained in this factsheet is of a general nature and is not exhaustive. It is not binding on the contact point, the European Judicial Network in civil and commercial matters, the courts or any other persons. It is not intended to replace consultation of the applicable legislation in force.

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Which country's law applies? - Romania

1 Sources of the rules in force

1.1 National rules

(selectively)

The national sources of private international law in Romania include: the Constitution; Title VII of the Civil Code and the Code of Civil Procedure; various special acts that relate to private international law on foreign nationals; companies; Trade Register; and citizenship.

1.2 Multilateral international conventions

(selectively)

The Conventions of the Hague Conference on Private International Law on civil procedure; abolishing the requirement to legalise documents; service of documents; obtaining evidence; facilitating access to justice; civil aspects of international child abduction; child protection; adoption; choice of court; maintenance obligations, and the recognition and enforcement of judgments in civil and commercial matters.

Council of Europe Conventions on commercial arbitration; recognition and enforcement of judgments in matters of custody of children; information on foreign law; adoption; legal status of children born out of marriage, and citizenship.

United Nations Conventions on matters of women's and children's rights; recovery of child support abroad; arbitration; immunity; transport; intellectual property; non-contractual liability; civil liability for pollution damage; boarding; limitation periods, and contract of sale.

1.3 Principal bilateral conventions

Treaties on legal assistance in civil cases have been concluded by Romania with Albania, Algeria, Austria, Belgium, Bulgaria, China, Czech Republic, Cuba, Egypt, France, Greece, Hungary, Italy, Macedonia, Morocco, Moldova, Mongolia, Poland, Russia, Serbia, Slovakia, Slovenia, South Korea, Spain, Syria, Tunisia, Turkey, Ukraine, and the United Kingdom.

2 Implementation of conflict of law rules

The application of foreign law to a legal relationship with an international element may be invoked both of its own motion by a court and by the party concerned.

A court may, based on its active role, raise of its own motion and have the parties debate the application of a foreign law where the Romanian conflict rule makes reference to it. Moreover, any interested party may invoke foreign law in a court, under the principle of availability.

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

Foreign law comprises the provisions of substantive law (including conflict rules), unless the parties opted for the applicable foreign law; cases of foreign law applicable to the form of legal acts and non-contractual obligations, and other special cases provided for in international conventions to which Romania is a party, by the European Union law or by law.

Where foreign law refers back to Romanian law or the law of another state, Romanian law applies, unless otherwise expressly provided for.

See Articles 2559 and 2560 of the Civil Code.

2.2 Renvoi

Foreign law comprises the provisions of substantive law (including conflict rules), unless the parties opted for the applicable foreign law; cases of foreign law applicable to the form of legal acts and non-contractual obligations, and other special cases provided for in international conventions to which Romania is a party, by the European Union law or by law.

Where foreign law refers back to Romanian law or the law of another state, Romanian law applies, unless otherwise expressly provided for.

See Articles 2559 and 2560 of the Civil Code.

2.3 Change of connecting factor

Cases where old law always applies even if the connecting factor changes include: law of the last citizenship (decision finding presumed death, absence or disappearance); law which, on the birth date of the child, governs the effects of marriage of the child's parents (filiation of the child inside marriage); the national law of the child from the date of his/her birth (filiation of the child outside marriage).

Cases where the old law takes precedence over the new law, even if the connecting factor changes include: the law of the state where the property was shipped (property to be shipped); the law of residence/registered office of the debtor of the characteristic performance upon the conclusion of the contract (establishing the closest links that a contract would present).

Cases in which either the new law or the old law may apply if the connecting factor changes include: the law of the place in which the movable property is located at the time of the occurrence of the legal fact that generated or extinguished the right (constitution, transmission or termination of real rights); the applicable law at the time and place where the forms of advertising are carried out (movable property previously displaced or to be later moved to another country); the law of the state where the property is located at the start of the period of possession or where it was moved (adverse possession).

Cases where the more favourable law applies where the connecting factor changes include: in case of changing nationality in relation to reaching the age of majority; in case of a child's filiation outside marriage (who has two citizenships upon birth).

2.4 Exceptions to the normal application of conflict rules

Foreign law does not apply if it contravenes public policy under Romanian private international law (for example, if it leads to a result which is incompatible with the fundamental principles of Romanian or European Union law and with fundamental human rights) or if that foreign law has become enforceable by committing a fraud to the Romanian law. If foreign law is not applied, the Romanian law applies.

Exceptionally, the enforcement of a law as determined according to national rules on private international law may be not be applied where the legal relationship has a very distant connection with this law. In that case, the law that has the closest links to the legal relationship applies.

The mandatory provisions under Romanian law for regulating a legal relationship with an international element shall have priority. Mandatory provisions under the law of another state may also be directly applied to regulate a legal relationship with an international element, where the legal relationship shows close links to the law of that state, and the legitimate interests of the parties so require.
See Articles 2564 and 2566 of the Civil Code.

2.5 Proof of foreign law

The content of foreign law shall be determined by the court through attestations obtained from the state bodies that prescribed it, by means of an expert opinion or by another appropriate manner. A party invoking a foreign law may be required to prove its contents.
See Article 2562 of the Civil Code; Article 29 of Law No 189/2003 on international judicial assistance in civil matters; The European Convention on Information on Foreign Law, London 1968, and the bilateral treaties concluded with the states referred to in point 1.3.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The substance of a legal act is established by the law chosen by the parties or by its author. The parties may choose the law applicable to all or only a part of a legal act.
In the absence of choice, the law of the state to which the legal document is most closely related (the state where the debtor of the characteristic performance or the author of the act has, on the date of the conclusion of the act, the normal place of residence or registered office) and, where this law cannot be identified, the law of the place where the legal act was concluded applies.
The formal requirements of a legal act are determined by the law which governs its substance. The act is deemed valid if it meets the conditions set by one of the following laws: the law of the place where it was drawn up; the citizenship law or the law of the habitual place of residence of the person who has agreed to it, or the applicable law according to the private international law of the authority examining the validity of the legal act.
The law applicable to contractual obligations is determined according to the regulations of European Union law, and in matters not falling within their scope, the domestic provisions on the law applicable to the legal act in question, unless otherwise provided by international conventions or by special provisions.
See Articles 2640 to 2646 of the Civil Code.

3.2 Non-contractual obligations

The law applicable to non-contractual obligations is determined according to the regulations of European Union law, and in matters not falling within their scope, the law that regulates the substance of the previous legal relationship between the parties shall, unless otherwise provided by international conventions or by special provisions, apply.
Remedy claims based on a violation of privacy and rights relating to personality are governed, at the choice of the injured person, by the law of the state: of the habitual place of residence of the injured person; in which the detrimental result was produced, or in which the author of the prejudice has its habitual place of residence or registered office.
The right of reply against violations relating to personality is subject to the law of the state where the publication was issued or the programme was broadcast.
See Articles 2641 and 2642 of the Civil Code.

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

An individual's name is governed by his/her national law. Setting the name of the child at birth is governed, by choice, either by the law of the state whose common nationality is shared by both parents and the child, or the law of the state where child was born and has lived since birth.
The individual's place of residence is subject to national law.
The marital status and capacity of individuals are governed by their national law. Special incapacities relating to a particular legal relationship are subject to the law applicable to that legal relationship. The commencement and termination of personality shall be determined by the national law of each individual.
Provision of care to an individual with full legal capacity is subject to the law of the state where he/she has its habitual place of residence at the date of guardianship establishment or at the date when other protection measure is taken.
See Articles 2570, 2572 to 2576 and 2578 to 2579 of the Civil Code.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Child filiation within marriage is established according to the law which, at the date of birth, governs the general effects of his/her parents' marriage. Where the parents' marriage terminated or was dissolved before the birth of the child, the law that at the date of termination or dissolution governed its effects shall apply. This also applies to denying the paternity of a child born within marriage, as well as to the acquisition of a name by the child.
Child filiation out of marriage is determined according to the child's national law since birth date, which applies to the recognition of filiation and its effects and to challenging recognition of filiation. Where the child has more than one nationality other than Romanian, the law of citizenship which is most favourable to him/her applies.
See Articles 2603 to 2606 of the Civil Code.

3.4.2 Adoption

The substantive conditions required to complete adoption are determined by the national law of the adopter and of the child to be adopted. These must also meet conditions that are mandatory for both regimes, as established by each of the two national laws. The substantive conditions required of spouses who jointly adopt or if one spouse adopts the child of the other are those established by the law that governs the general effects of marriage.
The effects of adoption, the relations between the adopter and the adoptee and the dissolution of adoption are governed by the national law of the adopter, and if both spouses are the adopters, the law governing the general effects of marriage shall apply.
The form of the adoption is subject to the law of the state in which territory it is concluded.
See Articles 2607 to 2610 of the Civil Code.

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

3.5.1 Marriage

The substantive requirements required for concluding marriage are determined by the national law of each of the future spouses at the time of the marriage ceremony.
The form of marriage conclusion is subject to the law of the state where it is celebrated.
The law governing the legal requirements for marriage conclusion also applies to invalidity of marriage and to the effects of such invalidity.
The general effects of marriage are subject to the law on common habitual residence of spouses and, in absentia, to the law on common citizenship of spouses. In the absence of common nationality, the law of the state where the marriage was celebrated applies.
See Articles 2585 to 2589 of the Civil Code.

3.5.2 Unmarried/Cohabiting couples and partnerships

3.5.3 Divorce and judicial separation

Romania applies Rome III Regulation.
According to national law, spouses may choose by mutual agreement one of the following laws applicable to divorce: the law of the state where the spouses have their common habitual residence on the date of the agreement on the applicable law chosen; the law of the state where the spouses had their last common habitual residence if at least one of them still lives there at the time the agreement on the applicable law chosen; the law of the state either spouse is a national of; the law of the state where the spouses have lived for at least 3 years, or Romanian law.
The agreement on choosing the law applicable to divorce may be concluded or modified no later than the date of referral to the authority responsible to rule the divorce. However, the court may take note of the spouses' agreement no later than the first trial hearing to which the parties were duly summoned.
If spouses do not make a choice of law, the law applicable to divorce is: the law of the state where the spouses have their common habitual residence on the date of filing for divorce; in the absence of a common habitual residence, the law of the state of the spouses' last common habitual residence if at least one spouse has his/her habitual residence in the territory of that state on the date of filing for divorce; failing that, the law of common citizenship of the spouses at the time of filing for divorce; in the absence of common citizenship of the spouses, the law of the last common citizenship of the spouses where at least one of them retained that citizenship on the date of filing for divorce, and Romanian law, in all other cases.
The law governing divorce duly applies to legal separation also.
See Articles 2597 to 2602 of the Civil Code.

3.5.4 Maintenance obligations

The Law applicable to maintenance obligation shall be determined as per regulations of European Union law (Article 2612 of the Civil Code).

3.6 Matrimonial property regimes

The law applicable to matrimonial regime is the law chosen by spouses (the habitual residence of one spouse on the date of choosing; the law on citizenship of either spouse on the date of choosing, or the law of the first common habitual residence after the celebration of marriage). It governs the measures of publicity and enforceability against third parties and, alternatively with law of the place of conclusion, the formalities required for the conclusion of the matrimonial convention.
Agreement on choosing the law applicable to matrimonial property regime may be concluded either before the celebration of the marriage, or at the time of concluding marriage or during marriage.
The formal conditions are those provided for either by the law chosen to govern the matrimonial regime or by the law of the place where the agreement was concluded. If the spouses have not chosen a law applicable to their matrimonial regime, it is subject to the law applicable to the general effects of marriage.
See Articles 2590 to 2596 of the Civil Code.

3.7 Wills and successions

Romania applies Regulation (EU) No 650/2012.
In national law, the law of the state where the deceased had his/her habitual residence at the time of death governs inheritance.
An individual may choose as the law applicable to the inheritance law of the state whose nationality he/she has. If applicable law is chosen, this governs the existence and validity of consent expressed by the statement of choice of the applicable law.
The preparation, amendment or revocation of the will shall be considered valid if the act meets the formal requirements applicable, either on the date when it was prepared, amended or revoked, or on the death of the testator, according to: the national law of the testator; the law of the habitual place of residence; the law of the place where the document was prepared, amended, or revoked; the law of the place of the real estate, or the law of the court or body that fulfils the procedure of transmitting the inherited assets.
Where, under the law applicable to inheritance succession is vacant, property located/situated in Romania's territory is taken over by the Romanian state as per Romanian law on the award of vacant succession property.
See Articles 2633 to 2636 of the Civil Code.

3.8 Real property

The law of the place where the property is located/situated (*lex rei sitae*) regulates matters such as: possession, ownership and other real rights on property, including collateral; (upon commencement of the period of ownership) adverse possession; (when the legal fact which generated, modified or extinguished that right occurred) the creation, transmission or termination of real rights over a property that changed its location; (on the conclusion of the movable property mortgage contract) the conditions of validity, advertising and effects of movable property mortgage; forms of advertising and those establishing rights relating to immovable property, and (at the time of theft/export or at the time of claim) claims of stolen or illegally exported property.
Property in transit is subject to the law of the state from which it was dispatched.
The establishment, transmission or termination of real rights over a means of transport are subject to: the law of the flag the vessel is flying or the law of the state of registration of the aircraft; the law applicable to the organisational status of the transport company for rail and road vehicles of its heritage.
The issuance of shares or bonds, in registered or bearer form, is subject to the law applicable to the organisational status of the issuing legal person.
The establishment, content and expiry of copyright for a work of intellectual creation shall be subject to the law of the State where it was for the first time made public.
The establishment, content and expiry of industrial property rights shall be subject to law of the state where the deposit or registration was performed or where the application for deposit or registration was lodged.
See Articles 2613 to 2632 of the Civil Code.

3.9 Insolvency

Provisions on applicable law may be found in Law No 85/2014 on insolvency and insolvency prevention proceedings, facilitating the application of Regulation (EU) 2015/848 on insolvency proceedings.

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Which country's law applies? - Slovenia

1 Sources of the rules in force

1.1 National rules

The basic law setting out the general rules of private international law is the Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*; abbreviated as ZMZPP, Official Gazette of the Republic of Slovenia (*Uradni list RS)* No 56/99). Specific conflict of laws are governed by laws on various topics (for example, Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*; abbreviated as ZFPPIPP).

1.2 Multilateral international conventions

Conventions which are ratified and published in the Republic of Slovenia are directly applicable and prevail over national laws. The conflict of law rules are governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), which covers Member States bound to amendments of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations and Regulation No 864/2007 (Rome II) of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). The conflict of law rules are also contained in multilateral conventions adopted by the Hague Convention on international private law, to which the Republic of Slovenia is a signatory.

1.3 Principal bilateral conventions

The conflict of law rules are also contained in bilateral conventions on legal assistance concluded with Austria, Bulgaria, Czech Republic, France, Hungary, Mongolia, Poland, Romania, the Russian Federation and Slovakia. The list of conventions is available at the webpages of the Ministry.

2 Implementation of conflict of law rules

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

A judge is bound by the law governing the conflict of laws but parties are free to agree which law they would like to govern their legal relationship. In such a case, the law chosen by the parties will apply. Furthermore, the law which would normally apply according to the Private International Law and Procedure Act, would not apply where, based on all the circumstances, it is clear that there is no significant connection to the law to be applied with the legal relationship at hand but there is a significantly closer connection with some other law.

2.2 Renvoi

The doctrine of renvoi is set out in Article 6 of the Private International Law and Procedure Act, which provides that where, in deciding which law to apply, the rules of a foreign State point to Slovenian law, then Slovenian law applies without taking into account Slovenian instructions as to which law is to apply. This provision does not apply where the parties choose the governing law.

2.3 Change of connecting factor

A specific choice of law rule governing changeable connecting factors usually also define the time in which such a rule is to apply. Certain connecting factors carry the time which is decisive in selecting governing law set out in the conflict of law rule (for example: nationality of a testator when drawing a will) while in other circumstances changes of the connecting circumstance may mean that the law of a different legal system applies. In cases of permanent relationships it is necessary to apply the principle of recognising already acquired rights.

2.4 Exceptions to the normal application of conflict rules

The law determined by the Private International Law and Procedure Act does not apply where the effect of its application would be contrary to Slovenian legal order. The public policy concept is a legal standard expressed through case law. In most cases it is based on the constitutional rules of the State, the fundamental principles of national laws and moral principles.

2.5 Proof of foreign law

A court or another competent authority determines upon own motion the content of the foreign law to be applied by using a notification of a foreign law of the ministry responsible for justice or examines its content by some other suitable method. Parties may submit a public or other document of a competent foreign authority or institution on the content of the foreign law. Where the content of the foreign law cannot be determined in a particular case, Slovenian law applies.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In relation to Member States, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations is applicable in the Republic of Slovenia and supersedes national laws governing substantive law. For matters to which the Regulation does not apply, bilateral conventions apply where relevant. Where there are no bilateral conventions, the national law governing conflict of laws in contractual relationships (Private International Law and Procedure Act) applies.

General conflict of law rule:

The Private International Law and Procedure Act provides that the law chosen by contracting parties applies to their contract unless a law or an international convention dictates otherwise. The will of the parties concerning the choice of law may be expressly stated, or the contractual provisions or other circumstances may clearly point to a given law having been chosen. The validity of the contract is then examined according to the law chosen. Where the parties did not choose which law to apply, then the law which is most closely associated applies. Where the circumstances do not point to another law, the law of the State in which the party with the obligation to perform the essential elements of the contract has permanent residence or principal place of business applies.

The law of the State in which a worker habitually performs his or her work governs employment agreements. By agreeing to the application of a different law in an employment contract, the parties may not exclude mandatory provisions on the protection of employees' rights contained in the law of the State which would have applied had the parties not chosen the other law.

A consumer contract is a contract for the transfer of goods, rights and/or services to a consumer. A consumer is a person who acquires goods, rights or services, predominately for personal or household use. A consumer contract does not include a transport contract or a contract for the provision of services to a consumer when that contract is fully performed outside the State in which the consumer has their permanent residence. Notwithstanding the provisions of the Private International Law and Procedure Act, a consumer contract is governed by the law of the State in which the consumer resides, where the contract was concluded subject to an offer or an advertisement in that State, or when the consumer took the steps necessary to conclude the contract in that State, or where the consumer is a cocontracting party or their representative obtains the consumer's order in that State, or where the sales contract was concluded in another State, or the consumer gave the order in another State, or where travel was organised by a seller with the intention of promoting conclusion of such contracts.

In the scenarios above, the parties to the contract cannot agree on the application of a law that excludes the mandatory provisions on consumer protection rights that are applicable in the State in which the consumer has their permanent residence.

For contracts related to real estate, the law of the State in which the real estate is situated always applies.

Where the contracting parties did not agree otherwise, the general conflict of laws rule applies to the relationship between the contracting parties to also decide from what time onwards an acquirer of a movable object has a right to its products and fruits and to decide the time from which an acquire accepted risks concerning the object.

Furthermore, where the contracting parties did not agree otherwise, the method of delivering the object and the measures necessary where delivery is refused is governed by the law of the state where the object was to be delivered.

Regarding the effect of an assignment of a claim or assumption of a debt: the legal status of any debtors or creditors not directly involved in the assignment or assumption is governed by the same law that governs the assignment or the assumption itself.

The law applicable to the main transaction applies to an auxiliary transaction unless decided otherwise.

The law of the state of the debtor's permanent residence or seat applies to a single-sided legal transaction.

3.2 Non-contractual obligations

With respect to non-contractual obligations not governed by an international convention or Regulation No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), the conflicts of law rules provide that national law applies.

The Private International Law and Procedure Act provides that the law of the state where an act was committed applies to non-contractual obligations. The law of the state where the consequence arises applies where that law is more favourable to the victim, provided the victim should have or could have foreseen the place of the consequences. Where such a law does not have a close connection to the relationship but a connection with another law exists, then that other law applies.

Where an event for which liability for compensation arises occurred on a vessel at open sea or on an aeroplane, the applicable law is presumed to be the law of the State in which the vessel or the aeroplane is registered.

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

Where a national of the Republic of Slovenia is also a national of another State, that person is regarded as only a Slovenian national for the purposes of the Private International Law and Procedure Act. Where a person who is not a national of the Republic of Slovenia but is a national or two or more States, the law of the State in which that person has their permanent residence applies for the purposes of the Private International Law and Procedure Act. Where a person does not have a permanent residence in any of the States of which he or she is a national, the law of the State with which the person has their closest connection applies for the purposes of the Private International Law and Procedure Act.

Where a person does not have a nationality or his or her nationality cannot be determined, the law of the State of his or her permanent residence applies. Where a person does not have a permanent residence or it cannot be determined, the law of the State of his or her temporary residence applies. Where it is not possible to determine even a temporary residence, Slovenian law applies.

The law of the State of which a person is a national applies to changing a personal name.

The law of the State of which a person is a national applies to a natural person's capacity to contract. A natural person who, according to the law of the State of which he or she is a national does not have capacity to contract is presumed to have that capacity if it has the capacity according to the law of the state where the obligation arose. Loss or restrictions of a natural person's capacity to contract is governed by the law of the State of which that person is a national.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Appointing or terminating guardianship and relationships between a guardian and the person under guardianship (person in care) is governed by the law of the State of which the person in care is a national. Temporary healthcare measures issued against a foreign or stateless national in the Republic of Slovenia are governed by Slovenian law and remain in effect until a competent State decides concerning the measure or annuls it, as appropriate. This rule also applies to the protection of property of a foreign or stateless national that is situated in the Republic of Slovenia.

Relationships between parents and children are governed by the law of the State of which they are nationals. Where parents and children are nationals of different States, the law of the State in which they all have permanent residence applies. Where parents and children are nationals of different States and do not have a permanent residence in the same State, the law of the State of which the child is a national applies.

The procedure for acknowledging, determining and contesting paternity or maternity are governed by the law of the State of which the child is a national.

The obligation to provide maintenance to blood relatives, excluding parents to children, and the obligation to provide maintenance to relatives by affinity (i.e. non-blood relatives), is governed by the law of the State of which the person requesting sustenance is a national.

The process of legitimising a child is governed by the law of the State of which the parents are nationals or by the law of the State of the parent according to which the adoption is to be valid where the parents are not nationals of the same State. Agreeing to a legitimisation by a child, another person or a national body is governed by the law of the State of which the child is a national.

3.4.2 Adoption

Conditions for and termination of adoption are decided by the law of the State of which the adopter and adoptee are nationals. Where an adopter and adoptee are nationals of different States, conditions for and termination of adoption are governed jointly by the States of which they are nationals. Where spouses adopt together, the conditions for and termination of adoption are governed the law of the State of which the adoptee is a national and also of the States of which one and the other spouse is a national. The form of adoption is governed by the law of the State in which the adoption occurred. The effect of the adoption is governed by the law of the State of which the adopter and adoptee were nationals at the time of granting the adoption. Where an adopter and an adoptee are nationals of different States, the law of the State in which they have permanent residence applies. Where an adopter and adoptee are nationals of different States and do not have a permanent residence in the same State, the law of the State of which the adoptee is a national applies.

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

3.5.1 Marriage

The conditions for entering into a marriage are governed by the law of the State of which each person is a national at the time of entering into the marriage. The form of marriage is governed by the law of the State in which the marriage was entered into. The invalidity of marriage is governed by the law according to which it was entered into by the rules of conflicts of laws described above.

3.5.2 Unmarried/Cohabiting couples and partnerships

The Private International Law and Procedure Act does not contain any special provisions concerning unmarried/cohabiting couples. However, given that the consequences of unmarried/cohabiting partnerships are the same as those of marriage, it could be that the provisions governing marriage would apply to unmarried/cohabiting partnerships as well.

Proprietary relationships between two people living in an unmarried/cohabiting partnership are governed by the law of the State of which they are nationals. Where persons are not of the same nationality, the law of the State in which they have common residence applies. For contractual proprietary relationships between people living in an unmarried/cohabiting partnership, the governing law is the law applicable to their proprietary relationship at the time of concluding the contract.

The Private International Law and Procedure Act does not contain any special provisions concerning registered same-sex partnerships and their conditions. However, given that the consequences of same-sex partnerships are the same as those of marriage, the same provisions governing marriage may apply.

3.5.3 Divorce and judicial separation

Divorce is governed by the law of the State of which both spouses are nationals at the time of filing for divorce. Where spouses are nationals of different States at the time of filing for divorce, the divorce is governed jointly by the States of which they are nationals. Where the divorce cannot take place based on the preceding rules, divorce is then governed by Slovenian law, if one of the spouses had his or her permanent residence in the Republic of Slovenia at the time of filing for divorce. Where one of the spouses is a Slovenian national but does not have a permanent residence in Slovenia and the divorce cannot take place based on the preceding rules, the divorce is then governed by Slovenian law.

The Private International Law and Procedure Act does not contain any special provisions concerning termination of same-sex partnerships. However, considering that the consequences of a same-sex partnership are the same as a marriage, the same provisions governing divorce may apply.

3.5.4 Maintenance obligations

Relationships between parents and children are governed by the law of the State of which they are nationals. Where parents and children are nationals of different States, the law of the State in which they all have permanent residence applies. Where parents and children are nationals of different States and do not have a permanent residence in the same State, the law of the State of which the child is a national applies.

3.6 Matrimonial property regimes

Personal and property regimes between spouses are governed by the law of the State of which they are nationals. Where spouses are nationals of different States, the law of the State in which they have permanent residence applies. Where spouses do not have the same nationality nor permanent residence in the same State, the law of the State in which they had their last joint residence applies. Where the applicable law cannot be determined under the these rules, then the law with which they have the closest connection applies.

Contractual property regimes between spouses are governed by the law of the State which governed their personal and proprietary relationship at the time of concluding the contract. Where this law provides that spouses may choose a law to govern their proprietary agreements, the law they choose applies.

Where a marriage is voided or dissolved, the same conflict of laws rules that apply to personal and property regimes between spouses, apply to personal and joint property regimes.

3.7 Wills and successions

The law of the State of which a deceased was a national at the time of death governs inheritance. Testamentary capacity is governed by the law of the State of which the testator was a national at the time of executing the will.

The form of the will is valid if it is valid according to one of the following legal systems: the law of the State in which the will was drawn; the law of the State of which the testator was a national at the time of drawing the will or at the time of death; the law of the State in which a testator had his or her permanent residence at the time of drawing the will or at the time of death; Slovenian law; or the law of the State in which the real estate is situated with regard to real estate.

A form of a revocation of a will is valid if it is valid according to any of the laws according to which the drawing of the will would be valid, as explained.

3.8 Real property

For proprietary relationships and other rights on objects, the law of the state where the object is situated applies. For proprietary relationships concerning objects in transport, the law of the state of destination applies. For proprietary relationships concerning transportation vehicles, the law of the State in which these vehicles are located, unless Slovenian law states otherwise.

3.9 Insolvency

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings applies directly in Slovenia to questions falling within its applicability and EU Member States. Where the Regulation does not apply, the governing law is the Slovenian national law, namely the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act *(Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*; abbreviated as ZFPPIPP, UL RS, ZFPPIPP-UPB7, No 63/2013).

In this Act, the chapter titled ‘Insolvency proceedings with international element’ contains general rules regarding insolvency proceedings with an international element, governs access of foreign creditors and administrators to a national court, and governs cooperation with foreign courts and foreign administrators. It also governs recognition of foreign insolvency proceedings and temporary measures, parallel measures due to insolvency, and the law to apply to the consequences of insolvency proceedings.

A national court that has jurisdiction over national insolvency proceedings, can decide on the recognition of a foreign procedure and cooperation with foreign courts. Local national courts competent to manage national insolvency proceedings are: 1. where a debtor who is a national legal entity or entrepreneur, is established in the Republic of Slovenia: the court in the territory where the debtor is established; 2. where a debtor who is a foreign person has a branch in the Republic of Slovenia: the court in the territory where the debtor's branch has its principal place of business; 3. in other cases: the Ljubljana District Court (Okrožno sodišče v Ljubljani).

Regarding the law governing the legal consequences of insolvency proceedings, the general rule is that the law of the State in which the proceedings are conducted applies, unless law provides differently for a particular case. There are rules on governing law in the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act concerning contracts that deal with the use of acquired real estate, as the law of the state in which the real estate is situated applies. Special rules on the law on rights registered in a register (law of the State whose authorisation is to manage the register) apply concerning the law to apply payment systems and financial markets (law of the State applied to such payment systems/financial markets), concerning the law to apply to offset contracts and buy-back contracts and the law governing employment contracts.

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Which country's law applies? - Slovakia

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.

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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Which country's law applies? - Sweden

1 Sources of the rules in force

1.1 National rules

Private international law is now largely regulated by EU legislation. The Swedish national rules for this area are laid down by statute and case-law. The legislation mainly gives effect to international conventions to which Sweden is a party. The main legislation in this area is as follows:

Marriage and children

• Sections 4 and 6 of Chapter 3 of the Act (1904:26, p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship (*lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*) (hereinafter *IÄL*);

• Sections 9, 12 and 13 of the Ordinance (1931:429) on Certain International Legal Relationships in Respect of Marriage, Adoption and Guardianship (*förordningen om vissa internationella rättsförhållanden rörande äktenskap, adoption och förmynderskap*) (hereinafter *NÄF*);

• Section 3 of the Act (2018:1289) on Adoption in International Situations (*lagen om adoption i internationella situationer*);

• Sections 2, 3, 3a, 5, 5a, 6 and 6a of the Act (1985:367) on International Paternity Questions (*lagen om internationella faderskapsfrågor*) (hereinafter *IFL*);

• Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes;

• Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships;

• The Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations (*lagen om makars och sambors förmögenhetsförhållanden i internationella situationer*);

• Section 1 of the Act (2012:318) on the 1996 Hague Convention (*lagen om 1996 års Haagkonvention*), and Articles 15-22 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children concluded at The Hague on 19 October 1996 (hereinafter *1996 Hague Convention*);

• Article 15 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter *Maintenance Regulation*), and the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations.

Inheritance

• Articles 20-38 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Contracts and purchases

• Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (hereinafter *Rome I Regulation*);

• Sections 79-87 of the Bills of Exchange Act (*växellagen*) (1932:130);

• Sections 58-65 of the Cheques Act (*checklagen*) (1932:131);

• The Act (1964:528) on the Law Applicable to Sales of Goods (*lagen om tillämplig lag beträffande köp av lösa saker*) (hereinafter *IKL*);

• Sections 25a, 31a and 42a of the Act (1976:580) on Co-Determination in the Workplace (*lagen om medbestämmande i arbetslivet*) (hereinafter MBL);
• The Act (1993:645) on the Law Applicable to Certain Insurance Contracts (*lagen om tillämplig lag för vissa försäkringsavtal*);
• Section 4 of Chapter 13 and Section 2 of Chapter 14 of the Shipping Code (*sjölagen*) (1994:1009);
• Section 14 of the Consumer Contracts Act (1994:1512) (*lagen om avtalsvillkor i konsumentförhållanden*);
• Section 4 of Chapter 1 of the Act (2011:914) on Consumer Protection in Agreements Concerning Residential Timeshares or Long-Term Holiday Products (*lagen om konsumentskydd vid avtal om tidsdelat boende eller långfristig semesterprodukt*);
• Section 14 of Chapter 3 of the Act (2005:59) on Distance Contracts and Remote Sales Agreements (*lagen om distansavtal och avtal utanför affärslokaler*);
• Section 48 of the Consumer Sales Act (*konsumentköplagen*) (1990:932).

Compensation for injury

• Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (hereinafter *Rome II Regulation*);
• Sections 8, 14 and 38 of the Road Traffic Injuries Act (*trafikskadelagen*) (1975:1410);
• Section 1 of the Act (1972:114) on the Convention of 9 February 1972 between Sweden and Norway on Reindeer Grazing (*lagen med anledning av konventionen den 9 februari 1972 mellan Sverige och Norge om renbetning*);
• Section 1 of the Act (1974:268) on the Environmental Protection Convention of 19 February 1974 between Denmark, Finland, Norway and Sweden (*lagen med anledning av miljöskyddskonventionen den 19 februari 1974 mellan Danmark, Finland, Norge och Sverige*).

Insolvency law

• Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter *2015 Insolvency Regulation*);
• Sections 1, 3 and 5-8 of the Act (1934:67) Laying Down Rules Governing Insolvencies Involving Property in Denmark, Finland, Iceland or Norway (*lag med bestämmelser om konkurs, som omfattar egendom i Danmark, Finland, Island eller Norge*);
• Sections 1, 4-9 and 13 of the Act (1934:68) on the Effects of Insolvencies Occurring in Denmark, Finland, Iceland or Norway (*lag om verkan av konkurs, som inträffat i Danmark, Finland, Island eller Norge*);
• Sections 1, 3-8 and 12 of the Act (1981:6) on Insolvencies Involving Property in Another Nordic Country (*lag om konkurs som omfattar egendom i annat nordiskt land*);
• Sections 1, 4-9, 13 and 14 of the Act (1981:7) on the Effects of Insolvencies Occurring in Another Nordic Country (*lag om verkan av konkurs som inträffat i annat nordiskt land*).

1.2 Multilateral international conventions

Sweden is a party to the following multilateral international conventions that lay down rules determining the applicable law. Since Sweden adopts a dualist approach to international treaties, these multilateral conventions have also been transposed into Swedish national law. Please see above.

The League of Nations

• The 1930 Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes;
• The 1931 Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques.

Hague Conference on Private International Law

• The 1955 Convention on the Law Applicable to International Sales of Goods;
• The 1961 Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions;
• The 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;
• The 2007 Hague Protocol on the Law Applicable to Maintenance Obligations.

European Union

• The 1980 Convention on the Law Applicable to Contractual Obligations (the Rome I Regulation has replaced the Convention for contracts entered into on or after 17 December 2009).

Nordic conventions

• The 1931 Convention between Denmark, Finland, Iceland, Norway and Sweden Laying Down Rules of Private International Law on Marriage, Adoption and Guardianship (last amended by the 2006 amendment convention);
• The 1933 Convention between Sweden, Denmark, Finland, Iceland and Norway on Insolvency (hereinafter *Nordic Insolvency Convention*);
• The 1934 Convention between Denmark, Finland, Iceland, Norway and Sweden on Succession, Wills and the Administration of Estates (last amended by the 2012 amendment convention);
• The 1974 Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden.

1.3 Principal bilateral conventions

The 1972 Convention between Sweden and Norway on Reindeer Grazing (*1972 års konvention mellan Sverige och Norge om renbetning*).

2 Implementation of conflict of law rules

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

In general terms, where a dispute has international connections, a court should address on its own initiative the question of which law is applicable. Several rules of Swedish private international law stipulate that the contracting parties' choice of law for matters relating to the agreement must be respected. Where a dispute is amenable to out-of-court settlement, it is also possible for the parties to agree upon the applicable law when the dispute is examined by the court. Where a case concerns a legal relationship for which conciliation is permitted under Swedish national law, a unanimous declaration of subjection to Swedish law should be approved by the court, provided that there is a connection to Sweden (please see New Law Archive (NJA) 2017 p. 168).

2.2 Renvoi

Swedish private international law does not as a general rule accept the doctrine of renvoi. There is, however, an exception in Section 79(2) of the Bills of Exchange Act and Section 58(2) of the Cheques Act, regarding the capacity of foreign nationals to enter into transactions involving bills of exchange or cheques. The reason is that these provisions are based on international conventions. There is another exception in Section 9(2) of the Act (1981:7) on the Effects of Insolvencies Occurring in another Nordic Country. Lastly, on the formal validity of a marriage, renvoi is recognised in Section 1(7) of Chapter 1 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship.

2.3 Change of connecting factor

There are no general rules governing the effect of a change of connecting factor. For example, the European Union Regulations on the property regimes of spouses and registered partners are based on the principle of immutability. This means that the applicable law determined for the connecting factor that existed when the marriage took place, or when the partnership was registered, will be changed only by way of exception and following an application, under certain conditions laid down in the relevant European Union Regulation.
The principle of mutability, on the other hand, applies to matrimonial property regimes in Nordic contexts. This means that, if the spouses have not entered into an agreement on the choice of applicable law, and if they have both subsequently been domiciled in another Nordic country and have resided there for at least two years, the law of that country will apply instead. If, however, both spouses were domiciled in that country previously during their marriage, or if the spouses are nationals of that country, the law of that country will apply from the time when they became domiciled there. A similar principle applies to cohabitation. (Please see Section 9 of Chapter 3 and Section 6 of Chapter 5 of the Act [2019:234] on Property Relations between Spouses or Cohabitants in International Situations.)

2.4 Exceptions to the normal application of conflict rules

It is regarded as a general principle of Swedish private international law that a provision of foreign law should not be applied if its application would be manifestly incompatible with the fundamental basis of the legal system in Sweden. Provisions to that effect may also be found in much private international law legislation, but it cannot be inferred from this that a public policy restriction requires a basis in legislation. There have been very few judgments finding that foreign law could not be applied on grounds of public policy.
Determining which rules of Swedish law are internationally binding is usually a matter for the judiciary.

2.5 Proof of foreign law

If the court finds that a foreign law is applicable but is not acquainted with its substantive content, it has two options to choose between. It can either investigate the matter itself or request a party to provide the necessary information. The option chosen will be a matter of expediency. If the court investigates the matter itself, it can seek assistance from the Ministry of Justice. In general, the court should play a more active role in disputes that are not amenable to an out-of-court settlement, whereas in disputes that are amenable to an outofcourt settlement it can delegate more of the investigative work to the parties themselves.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Sweden is a party to the 1980 Rome Convention on the Law Applicable to Contractual Obligations. There are separate rules relating to the choice of law in some areas. The Rome I Regulation has replaced the Convention in respect of contracts entered into on or after 17 December 2009.
Agreements concerning the **sale of goods** are governed by the Act (1964:528) on the Law Applicable to Sales of Goods, which transposes the 1955 Hague Convention on the Law Applicable to International Sales of Goods into Swedish law. That Act takes precedence over the rules laid down in the Rome I Regulation. It does not, however, cover consumer contracts. Section 3 of the Act allows the buyer and the seller to determine the applicable law by agreement. Section 4 states that, if the parties have not chosen the applicable law, then the law of the country where the seller is domiciled shall apply. Exceptions are made to this rule if the seller accepted the order in the country where the buyer is domiciled, and for purchases at a stock exchange or auction.
There is another exception to the rules of the Rome I Regulation for some **consumer contracts**. There are special rules aimed at protecting consumers from choiceoflaw clauses in Section 48 of the Consumer Sales Act (1990:932), Section 14 of the Consumer Contracts Act (1994:1512), Section 4 of Chapter 1 of the Act (2011:914) on Consumer Protection in Agreements Concerning Residential Timeshares or Long-Term Holiday Products, and Section 14 of Chapter 3 of the Act (2005:59) on Distance Contracts and Remote Sales Agreements. According to these provisions, the law of an EEA Member State must apply under certain circumstances if it offers better protection for the consumer.
There are specific rules for **bills of exchange and cheques** in Sections 7987 of the Bills of Exchange Act (1932:130) and Sections 5865 of the Cheques Act (1932:131). These are based on the 1930 Geneva Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes and the 1931 Geneva Convention on the Settlement of Certain Conflicts of Laws in connection with Cheques.
Some **indemnity insurance** contracts are governed by the Act (1993:645) on the Law Applicable to Certain Insurance Contracts.

3.2 Non-contractual obligations

The question of the law applicable to non-contractual obligations is governed by the Rome II Regulation.

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

In Swedish private international law, the decisive connecting factor for establishing personal status has traditionally been that of nationality. There are now so many cases where nationality has had to give way to domicile as the main connecting factor that it is questionable whether it can still be said that there is a single main connecting factor for personal status. In Swedish private international law, personal status is mainly understood to concern one's legal capacity and name.
Under Section 1 of Chapter 1 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship, **capacity to marry** before a Swedish authority must in principle be established in accordance with Swedish law if either party is a Swedish national or is domiciled in Sweden. Similar rules apply within the Nordic framework under Section 1 of the Ordinance (1931:429) on Certain International Legal Relationships in Respect of Marriage, Adoption and Guardianship.
There are special rules on **guardianship and trusteeship** in Chapters 4 and 5 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship, and in Sections 1421a of the Ordinance (1931:429) on Certain International Legal Relationships in Respect of Marriage, Adoption and Guardianship.
The question of the law applicable to **capacity to contract** is regulated in part by Article 13 of the Rome I Regulation. The capacity to enter into transactions involving bills of exchange or cheques is governed by special rules laid down in Section 79 of the Bills of Exchange Act and Section 58 of the Cheques Act.
There is a special rule on the **capacity to sue and be sued** in Section 3 of Chapter 11 of the Code of Judicial Procedure (*rättegångsbalken*), which states that a foreigner who is unable to conduct legal proceedings in his or her own country may do so in Sweden if he or she has capacity in accordance with Swedish law.
Swedish private international law regards **questions of name** as belonging to the law of personal status. This means, for example, that the taking by one spouse of the other spouse's name is not classified as a matter of the legal effects of marriage in the personal sphere. According to Section 31 of the Act (2016:1013) on Personal Names (*lagen om personnamn*), the Act does not apply to Swedish nationals who are domiciled in Denmark, Norway or Finland. It may be concluded *a contrario* that it does apply to Swedish nationals elsewhere. According to Section 32, the Act may also apply to foreign nationals who are domiciled in Sweden.

3.4 Establishment of parent-child relationship, including adoption

Swedish substantive law does not distinguish between **legitimate and illegitimate children**, and Swedish private international law has no specific choiceoflaw rules to determine whether a child is to be regarded as having been born in or out of wedlock, or whether a child born out of wedlock can be legitimised.

As regards the law applicable to the establishment of **paternity**, there are different rules for the presumption of paternity and for the establishment of paternity by a court of law. The presumption of paternity is governed by Section 2 of the Act (1985:367) on International Paternity Questions. According to that provision, a man who is or has been married to the mother of a child is deemed to be the child's father if that is the consequence of the law of the state in which the child became domiciled at birth, or, where that law does not consider anyone to be the father, if it is the consequence of the law of a state of which the child became a national at birth. If, however, the child became domiciled in Sweden at the time of birth, the question will always be decided in accordance with Swedish law. If paternity has to be established in court, the court will generally apply the law of the country in which the child was domiciled at the time of the judgment at first instance.

According to Section 3 of the Act (2018:1289) on **Adoption** in International Situations, a Swedish court considering an application for adoption must apply Swedish law.

A foreign adoption decision that is valid in Sweden has the same legal effect as a Swedish adoption decision.

The question of the law applicable to **child maintenance** is governed by the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations. The general rule is that maintenance obligations are governed by the law of the state where the child is domiciled. If the child is unable to obtain maintenance from the party who is obliged to provide it under that law, the law of the country where the court is located must be applied. If the child is unable to obtain maintenance from the party who is obliged to provide it under either of those laws, and both parties are citizens of the same state, the law of that state must be applied.

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

As regards **capacity to marry**, please see point 3.3 above. The general rule is that a marriage is considered to be **valid as to form** if it is valid in the country in which it was entered into; please see Section 7 of Chapter 1 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship.

The legal effects of marriage can be divided into two main categories: those in the personal sphere and those relating to the spouses' property (please see point 3.6 below). The main legal effect of the marriage in personal terms is that the spouses have a mutual obligation to maintain one another. In Swedish private international law, questions relating to the spouses' entitlement to inherit, their acquisition of the other spouse's name or their duty to maintain the other spouse's children are not regarded as legal effects of the marriage, and the law applicable is determined by the choiceoflaw rules that govern inheritance, personal names, etc.

The question of the law applicable to the **maintenance of a spouse** is regulated by the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations. The general rule is that maintenance obligations are governed by the law of the state where the party with the obligation to provide maintenance is domiciled. If either of the spouses objects to the application of that law, and the law of another state has a closer connection to the marriage (especially the law of the state where they were most recently domiciled together), the law of that other state must be applied.

With regard to **divorce**, Section 4(1) of Chapter 3 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship provides that the Swedish courts must apply Swedish law. Section 4(2) makes an exception if both spouses are foreign nationals and neither of them has been domiciled in Sweden for at least one year.

Swedish substantive law does not include the legal institutions of **legal separation** or **annulment of marriage**. The rules governing the division of property following legal separation are laid down in Section 6 of Chapter 2 and Section 13 of Chapter 3 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations.

3.6 Matrimonial property regimes

Questions relating to the law applicable to matrimonial property regimes are governed by Chapter III of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. There are similar rules for registered partners in Chapter III of Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships. Chapter 2 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations lays down provisions that supplement the European Union Regulations (please see *inter alia* Sections 4 and 5 of Chapter 2).

There are special provisions on the law applicable to matrimonial property regimes within the Nordic context in Chapter 3 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations (please see *inter alia* Sections 8–11 of Chapter 3).

3.7 Wills and successions

The question of the choice of law for wills and successions is regulated by Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. The choiceoflaw rules in that Regulation apply irrespective of whether the international connection is with a Member State or with any other state.

There are, however, special provisions concerning a will's validity as to form, according to Section 3 of Chapter 2 of the Act (2015: 417) on Succession in International Situations (*lagen om arv i internationella situationer*), which transposes the 1961 Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions into Swedish law. A will must be considered valid if it fulfils the requirements relating to its form under the law of the place where the testator made it, or under the law of the place where the testator was domiciled or a national when the will was made or at the time of death. A disposition relating to immovable property must also be considered valid as regards its form if it fulfils the requirements relating to its form under the law of the place where the property is situated. The same rules apply to the revocation of a will. A revocation must also be considered valid if it fulfils the requirements relating to the form of such revocation under any of the laws under which the form of the will was valid.

3.8 Real property

In the area of property law, codified choiceoflaw rules only exist for certain cases concerning ships and aircraft, financial instruments and unlawfully removed cultural objects, and for certain situations regulated by the Nordic Insolvency Convention and the Insolvency Regulation.

The effects in property law of a purchase or mortgage of movable or immovable property, for example, must be determined in accordance with the law of the country in which the property is situated at the time of the purchase or mortgage. That law will determine the nature of any property rights, the manner in which any property right arises and ceases to exist, any formal requirements that may apply, and the rights that a given property right confers against third parties.

As regards foreign security rights, the caselaw has established that if, at the time a security right arose, the seller knew that the property was to be taken to Sweden (and the security right was not valid in Sweden), the seller ought instead to have obtained a security that would satisfy the requirements of Swedish law. Furthermore, a foreign security right should not be given legal effect if some time has passed since the property was brought to Sweden. In such cases, the foreign creditor will have had the time either to obtain a new security or to recover the debt.

3.9 Insolvency

The 2015 Insolvency Regulation lays down rules governing the applicable law in relation to other Member States of the European Union (excluding Denmark).

With regard to those Nordic countries that are not subject to the 2015 Insolvency Regulation, there are separate provisions concerning the applicable law which are based on the 1933 Nordic Insolvency Convention and which were transposed into Swedish law by legislation enacted in 1981 (however, the provisions of earlier legislation dating from 1934 apply in relation to Iceland). The general rule of the Nordic Insolvency Convention is that an insolvency procedure in a contracting state (the country in which the insolvency procedure takes place) must also encompass property belonging to the debtor which is situated in another contracting state. As a general rule, the law of the country where the insolvency procedure takes place must be applied to matters concerning such property, such as the debtor's right to control his or her property and what is to be included in the insolvent estate.
The majority of Swedish international insolvency law is not laid down in legislation, other than the rules mentioned above. The fundamental assumption is that the law of the country in which the insolvency procedure takes place (*lex fori concursus*) is applied. This means *inter alia* that, for a Swedish insolvency, Swedish law will apply both to the procedure itself and to any other matters relating to insolvency law.

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Which country's law applies? - England and Wales

1 Sources of the rules in force

1.1 National rules

The conflict of laws rules in England and Wales dealing with applicable law today derive mainly from directly applicable EU Regulations. In relation to civil and commercial matters these are: Regulation 593/2008 (Rome I) on the law applicable to contractual obligations and Regulation 864/2007 (Rome II) on the law applicable to non-contractual obligations. The Contracts (Applicable Law) Act 1990 (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date). The Private International Law (Miscellaneous Provisions) Act 1995 is relevant only in relation to situations not covered by the Rome II Regulation (the Regulation applies to cases in which damage occurred after 11 January 2009). The traditional common law rules remain applicable to the tort of defamation and in relation to succession and property law.
In family matters, it is generally the common law that is the source of rules on applicable law, with some exceptions. English law is generally applied in family matters, subject to limited exceptions in common law (e.g. in relation to nullity of marriage) or in statute (e.g. in relation to maintenance under the Maintenance Orders (Facilities for Enforcement) Act 1920 and the Maintenance Orders (Reciprocal Enforcement) Act 1972). In parental responsibility and child protection matters covered by EU Regulation 2201/2003 and the Hague Convention of 19 October 1996, it is the Parental Responsibility and Measures for the Protection of Children (International Obligations (England and Wales and Northern Ireland)) Regulations 2012, and Article 15 of the 1996 Convention that contain the applicable law rules respectively i.e. that English law applies subject to limited exceptions.

1.2 Multilateral international conventions

Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961.
Rome Convention 1980 on the Law Applicable to Contractual Obligations (replaced by the Rome I Regulation in relation to contracts entered into on or after 17 December 2009).
Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

1.3 Principal bilateral conventions

We are unaware of any bilateral conventions containing choice of law provisions to which the UK is a party.
However, it should be noted that, although the Rome Convention 1980 and Hague Conventions permit a State to apply some other choice of law regime to "internal" conflicts – such as conflicts between the laws of England and Wales and Scotland – the UK has chosen not to make use of this facility. Hence, the Rome Convention (in relation to contracts entered into pre 17 December 2009) and Hague Convention rules apply to conflicts between the different jurisdictions of the UK as well as in international conflicts.

2 Implementation of conflict of law rules

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

The general position is that the conflict of laws rules are only applied if at least one of the parties has argued that they be applied. If this has not been argued, or if there is no satisfactory evidence of the content of foreign law, the judge will normally apply English law to the issue. This rule is one relating to evidence and procedure, and hence is unaffected by the EU Regulations.

2.2 Renvoi

The EU Regulations exclude the application of the doctrine of renvoi in cases regulated by EU choice of law rules and this was also the prevailing view under the Private International Law (Miscellaneous Provisions) Act 1995 and Contracts Applicable Law Act 1990. Hence, if the English choice of law rule for a tort of negligence points to French law, French domestic law will be applied, even if a French court would have applied some other country's law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.
The role of renvoi in remaining areas of law is now somewhat limited, and in some cases not entirely clear. In can be said that renvoi will apply in the case of land situate abroad, to which the lex situs is applied by English law. In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any English decision concerning the property will be effective. The balance of first instance court decisions as regards tangible movable property situate abroad is that a reference to the lex situs will not include renvoi.
In family matters, there is some limited case law that the doctrine of renvoi may apply in certain circumstances, but the issue very seldom arises because English law is generally applied in family matters.
It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).

2.3 Change of connecting factor

This problem is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified. For example, in the case of transfers of movables, the relevant applicable law is that applicable at the location of the movable in question at the time of the transfer.

2.4 Exceptions to the normal application of conflict rules

Under the traditional rules, English courts can refuse to apply a foreign law that is contrary to English public policy. However, the threshold is very high: for example, where it would lead to a result "wholly alien to fundamental requirements of justice as administered by an English court". The content of English

public policy is influenced by the UK's international obligations, in particular the European Convention on Human Rights; breaches of human rights is one well-known example of the public policy exception, another is where the law is a "flagrant violation of rules of international law of fundamental importance" (e.g. the invasion of Kuwait by Iraq in 1990).

In addition, the Rome 1 and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum irrespective of the law otherwise applicable to the contract. Those rules that exist are generally to be found in the consumer and employment spheres or in legislation supplementing an international convention.

2.5 Proof of foreign law

The content of foreign law is proved as if it were a fact. As such, it is for the parties to prove the content of foreign law; judges are not permitted to investigate the content of foreign law themselves. In the event of conflict between the evidence submitted by the parties, the judge may assess the credibility of the experts and is permitted to consider the primary evidence (e.g. foreign statutes and cases), especially where they are written in English and apply concepts that are familiar to an English judge.

The content of foreign law is normally proved by expert evidence. It is not enough to put the text of a foreign statute, case or text of authority before the court. Expert evidence as to foreign law may be given by anyone "suitably qualified to do so on account of his knowledge or experience," irrespective of whether he is entitled to act as a legal practitioner in the relevant jurisdiction. Nonetheless, it is usual for experts to be either academics or practitioners in the jurisdiction in question. If the content of foreign law has been determined in an earlier English case, this case may be cited as evidence of the content of foreign law, and the content of foreign law will be presumed to be the same as determined in that case unless proved otherwise.

The burden of proof is on the party relying on the foreign law. If foreign law is not proved satisfactorily, the general rule is that English law will be applied. However, in cases where there is no reason to think that the foreign law in any way resembles English law (e.g. a tax statute from another European jurisdiction), the suit may be dismissed.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In all cases concerning contractual obligations and involving a choice of law, the Rome 1 Regulation is directly applicable. The choice of law rules in the Rome Regulation may also apply to cases that English domestic law would not recognise as being contractual (e.g. where the agreement is not supported with consideration e.g. contracts of gift).

Matters of procedure are determined by the lex fori. Hence, the assessment of the level of damages (but not the heads of damage) and means of proof are regulated by the law of the forum. Limitation periods are substantive, and hence in the case of contractual obligations are determined by the law applicable under the Regulation. The primary substantive rules are as follows.

In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law (e.g. a Lloyd's marine insurance policy), or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice has been demonstrated with reasonable certainty.

Freedom of choice is circumscribed in several respects. First, in consumer and employment contracts, the choice of law cannot deprive the consumer or employee of the protection of mandatory rules that exist under the law that would, if there had not been an express choice of law, have applied to the case. Secondly, where all the elements of the situation are connected with one country, a choice of a different law cannot deprive the mandatory rules of that country of effect. There are also protective rules for consumers in relation to insurance contracts. It might also be noted that where there is disagreement in respect of the effectiveness of choice – for example, an allegation of duress – the question as to whether such a choice was effective is determined by the putative applicable law (i.e. the law that would govern the contract if the choice were valid), unless this would be "unreasonable" (in which case, the law of the habitual residence of the party claiming not to have consented may be applied).

In cases where there is no express choice of law, or one that is demonstrable with reasonable certainty, the Rome 1 Regulation provides specific rules depending on the type of contract, but where these rules are inconclusive, the law will generally be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the good or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more closely connected.

3.2 Non-contractual obligations

In respect of non-contractual obligations the Rome II Regulation will apply in most cases. The Private International Law (Miscellaneous Provisions) Act 1995 will only apply to issues relating to tort that do not fall under the Regulation, and defamation remains governed by the common law (see below). Limitation periods are also determined by the applicable law.

Under the Rome II Regulation the general rule is to apply the law of the place where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental torts and torts relating to intellectual property rights. The Regulation also allows the parties to choose the applicable law in certain circumstances, but this provision cannot be used to avoid mandatory rules of EU or domestic law. It should be noted that the assessment of damages is a matter for the applicable law.

As noted above, defamation (which includes slander of title, slander of goods, malicious falsehood and any foreign law claim "corresponding to or otherwise in the nature of [such] a claim") remains governed by the common law. In such cases, the "double actionability rule" applies: a tort is only actionable in England and Wales if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) and, if the act had occurred in England and Wales, it would be civilly actionable under English law. This rule was retained after pressure from media organisations fearful of the application of oppressive foreign laws. However, this rule is subject to an exception: where another country has a more significant relationship with the occurrence and the parties, the law of that jurisdiction will apply instead. It should be noted that this area is particularly uncertain.

In respect of the administration of trusts, the applicable law is governed by the Recognition of Trusts Act 1987 which implements the Hague Convention on the law applicable to trusts. This provides that the applicable law is that chosen by the settlor, or, in the absence of such choice, by the law with which the trust is most closely connected. This law determines the validity of the trust, its construction, effects and the administration of the trust.

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

At birth, a person's domicile (the domicile of origin) is the same as that of the child's father at the time of the child's birth, if the child is legitimate. If the child is illegitimate, or the father is dead at the time of birth, the child's domicile is the same as that of the child's mother. This rule continues to apply until the child is 16 (i.e. the child's domicile changes with that of the father or mother respectively).

For persons over 16 years of age, the domicile of origin continues to apply unless they adopt a domicile of choice. To adopt a domicile of choice, they must actually reside in the relevant jurisdiction and intend to reside there indefinitely or permanently. If either of these elements ceases to exist, the domicile of choice no longer applies and the domicile of origin applies.
The domicile of a wife is no longer determined by reference to that of her husband: it is assessed independently.
Capacity to undertake particular obligations (e.g. to contract, to make a will, to marry) is determined by rules specific to that area, and are discussed in the relevant sections.

3.4 Establishment of parent-child relationship, including adoption

Parental responsibility and child protection matters are generally determined by English law, subject to limited exceptions such as those (discussed above) applicable to 1996 Hague Convention matters and those matters falling under the Brussels IIa Regulation. Legitimacy matters and adoption matters are also generally determined by English law, subject to certain exceptions.

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

The formal validity of a marriage is generally governed by the law of the place of celebration of the marriage, subject to certain exceptions.
The capacity of persons to marry is generally determined by the domicile of the relevant person at the time immediately before the marriage. This law governs issues such as whether the parties consented, age requirements and which persons within one's extended family one may not marry. In the special case of age, no marriage will be valid if either of the participants was under 16 at the time, if they are domiciled in England and Wales.
In matters of divorce or separation, English law will generally be applied, subject to limited exceptions.
In respect of maintenance obligations, it is generally English law that applies, subject to certain exceptions.

3.6 Matrimonial property regimes

'Matrimonial property regime' is not a concept generally known in common law. In matters of financial provision on divorce, separation or nullity or matters of maintenance, English courts will generally apply English law, subject to limited exceptions.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located (lex situs) applies to succession to immovable property.
In cases involving wills (testamentary succession), the capacity of the testator to make a will of movable property is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator. There is no specific authority on the position regarding immovable property, but the lex situs would be the most likely outcome, and probably also determines a legatee's capacity to take a bequest of immovable property.
Pursuant to the Wills Act 1963, and where the testator died on or after the 1st January 1964, a will is formally valid (e.g. correct number of witnesses) if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the internal law of the jurisdiction in which the property is situated (thus excluding the application of renvoi despite this concerning immovables).
A will of movable property is materially valid (e.g. limitations on the amount one can leave under a will) if it complies with the law of the domicile of the testator at the time of death; a will of immovable property is materially valid if it complies with the law of the jurisdiction in which the property is located, i.e. whatever system of domestic law the lex situs would apply.
A will is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. This presumption is a prima facie rule which can be displaced by evidence that the testator manifestly contemplated and intended that his will should be contstrued under another system of law. In relation to immovable property, there may be an addtional limitation, whereby if the interest that arises from such construction is not permitted or not recognised by the lex situs, the latter law prevails.
The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation (it should be noted that under English domestic law, if that applies, marriage revokes a will unless it is shown that the will was expressly made in contemplation of marriage). However, where the revocation is alleged to have been achieved by a later will (as opposed to, for example, tearing up the will), whether this second will revokes the earlier one is determined by the laws applicable to the formal validity of the second will. If it is unclear whether a second will revokes an earlier will, the question of construction will be determined by the law intended by the testator, which is presumed to be the law of his domicile at the date of the second will.

3.8 Real property

Property cases are divided into movable and immovable property; whether property is movable or immovable is for the law of the place in which the property is situated.
In the case of immovable property, the applicable law is the law of the place in which the property is situated, and renvoi applies. This applies to all questions regarding the transaction, including capacity, formalities and material validity. It should be noted that there is of course a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).
In the case of proprietary (note, as opposed to contractual) questions concerning the transfer of tangible movable property, in general the applicable law is the law of the place in which the property was situated at the time of the event that was alleged to have affected title to it. It is unclear whether renvoi applies in this situation and the overall effect of first instance decisions of the English courts suggest it does not. A title to tangible property acquired in accordance with this general rule will be recognised as valid in England if the movable is then removed from the country in which it was situated at the time of the acquisition of title, unless and until that title is displaced by a new title acquired in accordance with the law of the country to which the property has been moved. A particular exception to the general rule on tangible movable property relates to where the tangible is in transit and its situs is not known to the parties, or temporary, a transfer which is valid under the applicable law of the transfer will be effective in England.
In the case of the assignment of intangible movable property, where the relationship between assignor and assignee is contractual (as in the case of most debts) and the issue relates only to the validity and effect of the assignment itself, the Rome I Regulation applies.
It should be noted that the choice of law rules on assignment and transfer of intangible property are difficult to summarise and no single choice of law rule covers them, mainly because the category of intangibles covers a very wide range of rights, not all of which are contractual in origin. It is suggested that specialist advice should be sought in the case of intangible movable property.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor's main interests are in an EU Member State (other than Denmark). If the English courts have jurisdiction (which will be the case if the debtor's main interests were centred in England and Wales, presumed to be the place of the registered office), English law will be applied.

In cases falling outside of Regulation 1346/2000, English law will be applied where the English courts have jurisdiction (which will be the case if the company is registered in England and Wales, or if there are persons in England and Wales who would benefit from the winding up and there are no good reasons to decline jurisdiction). An English discharge of debts is valid, irrespective of the law governing the debt.

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Which country's law applies? - Northern Ireland

1 Sources of the rules in force

1.1 National rules

The conflict of laws rules in Northern Ireland regarding applicable law are mainly derived from directly applicable EU Regulations. In relation to civil and commercial matters these are:

• Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); and

• Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

The Contracts (Applicable Law) Act 1990 (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date).

The Private International Law (Miscellaneous Provisions) Act 1995 is relevant only in relation to situations not covered by the Rome II Regulation (the Regulation applies to cases in which damage occurred after 11 January 2009).

The traditional common law rules remain applicable to the tort of defamation and in relation to succession and property law.

In family matters, it is generally the common law that is the source of rules on applicable law, with some exceptions. Northern Irish law is generally applied in family matters, subject to limited exceptions in common law (e.g. in relation to nullity of marriage) or in statute (e.g. in relation to maintenance under the Maintenance Orders (Facilities for Enforcement) Act 1920 and the Maintenance Orders (Reciprocal Enforcement) Act 1972). In parental responsibility and child protection matters covered by EU Regulation 2201/2003 and the Hague Convention of 19 October 1996, it is the Parental Responsibility and Measures for the Protection of Children (International Obligations (England and Wales and Northern Ireland) Regulations 2010, and Article 15 of the 1996 Convention that contain the applicable law rules respectively i.e. that the law in Northern Ireland applies subject to limited exceptions.

1.2 Multilateral international conventions

• Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961

• Rome Convention on the Law Applicable to Contractual Obligations 1980 (as mentioned above, the Rome I Regulation applies to contracts entered into on or after 17 December 2009)

• Hague Convention on the Law Applicable to Trusts and on their Recognition 1985

1.3 Principal bilateral conventions

We are unaware of any bilateral Conventions containing choice of law provisions to which the UK is a party.

It should be noted that, although the Conventions listed at 1.2 above permit a State to apply some other choice of law regime to its own "territorial units", the UK has chosen not to do so. Accordingly, the Conventions listed at 1.2 apply to conflicts between the constituent jurisdictions of the UK, as well as international conflicts and Northern Ireland is regarded as being a foreign jurisdiction from England, Wales and Scotland.

2 Implementation of conflict of law rules

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

Ordinarily the conflict of laws rules will only be applied if at least one of the parties has argued that they should be applied. If this has not been argued, or if there is no satisfactory evidence of the content of foreign law, the judge will normally apply the law of Northern Ireland to the issue. This rule is one relating to evidence and procedure, and hence is unaffected by the EU Regulations.

2.2 Renvoi

The EU Regulations exclude the application of the doctrine of renvoi in cases regulated by EU choice of law rules and this was also the prevailing view under the Private International Law (Miscellaneous Provisions) Act 1995 and Contracts Applicable Law Act 1990. Hence, if the choice of law rule in Northern Ireland points to, for example, French law, French domestic law will be applied, even if a French court would have applied some other country's law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.

The role of renvoi in remaining areas of law is now somewhat limited, and in some cases not entirely clear. In can be said that renvoi will apply in the case of land situate abroad, to which the lex situs is applied by Northern Ireland law. In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any decision concerning the property will be effective. The balance of first instance court decisions as regards tangible movable property situate abroad is that a reference to the lex situs will not include renvoi. It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).

2.3 Change of connecting factor

This problem is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified. For example, in the case of transfers of movables, the relevant applicable law is that applicable at the location of movable in question at the time of the transfer.

2.4 Exceptions to the normal application of conflict rules

Under the traditional rules, the courts in Northern Ireland can refuse to apply the law of any country or territory which is contrary to public policy. Public policy is influenced by the UK's international obligations, in particular the European Convention on Human Rights.

In addition, the Rome 1 and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum *irrespective of the law otherwise applicable to the contract*. Such rules are generally to be found in the consumer and employment spheres or in legislation supplementing an international Convention.

2.5 Proof of foreign law

The content of the law of any country or territory outside Northern Ireland is proved by the parties as if it were a fact. However, it is for the judge to determine the effect of the evidence given with respect to that law.
In proceedings before a court in Northern Ireland a person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any country or territory outside Northern Ireland, irrespective of whether he has acted, or is entitled to act, as a legal practioner in that country or territory.
In certain circumstances a court in Northern Ireland can take account of an earlier decision or finding of an English court with regard to the law of any country or territory outside Northern Ireland. Written notice that a party intends to rely on the earlier decision must be served on each of the other parties or their solicitors.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In all cases concerning contractual obligations and involving a choice of law, the Rome 1 Regulation is directly applicable. The choice of law rules in the Rome Regulation may also apply to cases that the law in Northern Ireland would not recognise as being contractual (e.g. where the agreement is not supported with consideration e.g. contracts of gift).
Matters of procedure are determined by the lex fori. Hence, the assessment of the level of damages (but not the heads of damage) and means of proof are regulated by the law of the forum. Limitation periods are substantive, and hence in the case of contractual obligations are determined by the law applicable under the Regulation.
In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice will have been found to have been demonstrated with reasonable certainty.
Freedom of choice is circumscribed in several respects. First, in consumer, and employment contracts, the choice of law cannot deprive the consumer or employee of the protection of mandatory rules that exist under the law that would have applied to the case if there had not been an express choice of law. Secondly, where all the elements of the situation are connected with one country, a choice of a different law cannot deprive the mandatory rules of that country of effect. There are also protective rules for consumers in relation to insurance contracts. It might also be noted that, where there is disagreement in respect of the effectiveness of choice – for example, an allegation of duress – the question as to whether such a choice was effective is determined by the putative applicable law (i.e. the law that would govern the contract if the choice were valid), unless this would be “unreasonable” (in which case, the law of the habitual residence of the party claiming not to have consented may be applied).
In cases where there is no express choice of law, or one that is not demonstrable with reasonable certainty, the Rome 1 Regulation provides specific rules, depending on the type of contract. However, where these rules are inconclusive, the law will generally be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the goods or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more closely connected.

3.2 Non-contractual obligations

In respect of non-contractual obligations the Rome II Regulation will apply in most cases. The Private International Law (Miscellaneous Provisions) Act 1995 will only apply to issues relating to tort that do not fall under the Regulation, so defamation remains governed by the common law (see below).
Limitation periods are also determined by the applicable law.
Under the Rome II Regulation the general rule is to apply the law of the place where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental torts and torts relating to intellectual property rights. The Regulation also allows the parties to choose the applicable law in certain circumstances, but this provision cannot be used to avoid mandatory rules of EU or domestic law. It should be noted that the assessment of damages is a matter for the applicable law.
As stated above, defamation (which includes slander of title, slander of goods, malicious falsehood and any foreign law claim “corresponding to or otherwise in the nature of [such] a claim”) remains governed by the common law. In such cases, the “double actionability rule” applies: a tort is only actionable in Northern Ireland if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) *and* would be civilly actionable under the law of Northern Ireland if the act had occurred in Northern Ireland. However, this rule is subject to an exception: where another country has a more significant relationship with the occurrence and the parties, the law of that jurisdiction will apply instead. It should be noted that this area is particularly uncertain.
In respect of the administration of trusts, the applicable law is governed by the Recognition of Trusts Act 1987 which implements the Hague Convention on the law applicable to trusts. This provides that the applicable law is that chosen by the settlor, or, in the absence of such choice, by the law with which the trust is most closely connected. This law determines the validity of the trust, its construction, effects and the administration of the trust.

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

At birth, a person’s domicile (the domicile of origin) is the same as that of his or her father at the time of his or her birth, if the child is legitimate. If the child is illegitimate, or the father is dead at the time of birth, the child’s domicile is the same as his or her mother. This rule continues to apply until the child is 16 (i.e. the child’s domicile changes with that of the father or mother respectively).
For persons over 16 years of age, the domicile of origin continues to apply unless they adopt a domicile of choice. To adopt a domicile of choice, they must actually reside in the relevant jurisdiction and intend to reside there indefinitely or permanently. If either of these elements ceases to exist, the domicile of choice no longer applies and the domicile of origin applies.
The domicile of a wife is no longer determined by reference to that of her husband: it is assessed independently.
Capacity to undertake particular obligations (e.g. to contract, to make a will, to marry) is determined by rules specific to that area, and are discussed in the relevant sections.

3.4 Establishment of parent-child relationship, including adoption

The responsibilities of a parent to a minor (under 18 years of age) are determined by the law of Northern Ireland in cases where the courts in Northern Ireland have jurisdiction, even if the child is residing abroad and is a foreign national. However, the court in Northern Ireland will only have jurisdiction – pursuant to EU Regulation 2201/2003 – when the child is resident in Northern Ireland or if the child is in another Member State and if at least one spouse has parental responsibility and jurisdiction has been accepted by the spouse.
A child will be legitimate if born in lawful wedlock wherever the child was born, or if the child was legitimate by the law of the domicile of each of the parents at the time of the child’s birth.

A court in Northern Ireland will apply the law of Northern Ireland to establish an individual as a guardian of a child, if it has jurisdiction (which it will have whenever the applicant is a UK national or is ordinarily resident or present in Northern Ireland).
A court in Northern Ireland will apply the law in Northern Ireland in adoption cases wherever it has jurisdiction (which it will have whenever the applicant is domiciled in Northern Ireland at the time of the application, but the court will also consider the likelihood of any order being recognised abroad where this is relevant to the exercise of its jurisdiction). The effect of such an order is to transfer all responsibilities away from the existing parents and to the adoptive parents.

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

The formal validity of a marriage is governed by the law of the place of celebration of the marriage. This law governs the validity of the ceremony and its components e.g. whether any particular words must be used, whether a particular building must be used, whether parental consent is required and whether a marriage can be conducted by proxy. There are some limited exceptions to this rule: in particular, if it is impossible to use the local form of marriage. Also, particular rules apply to members of the armed forces who are serving in a foreign, non-Commonwealth country.
The capacity of persons to marry is determined by the domicile of the relevant person at the time immediately before the marriage. This law governs issues such as whether the parties consented, age requirements and which persons within one's extended family one may not marry. In the special case of age, no marriage will be valid if either of the participants was under 16 at the time, if they are domiciled in Northern Ireland.
The law in Northern Ireland does not provide for same sex marriages. However, same sex unions from other countries may, in certain circumstances, be treated as civil partnerships under the law of Northern Ireland.
In respect of a divorce, a court in Northern Ireland will only have jurisdiction to entertain divorce proceedings pursuant to Council Regulation 2201/2003. If one of the following requirments is satisfied: the spouses are habitually resident or domiciled in Northern Ireland, the spouses were habitually resident in Northern Ireland and one of them is still resident there now, the respondent is habitually resident in Northern Ireland, the applicant was resident in Northern Ireland for at least one year before the date of the application (or six months if the applicant is a national of a Member State). If none of these is satisfied and no other Member State has jurisdiction, domestic law confers jurisdiction on the courts of Northern Ireland if at least one of the parties was domiciled in Northern Ireland at the time of the commmencement of the divorce proceedings. If a court in Northern Ireland has jurisdiction it will apply the law in Northern Ireland to the divorce proceedings. In proceedings for a decree of nullity, the laws referred to above (law of place of celebration or law of party's domicile) will apply depending on the ground of nullity. A foreign divorce will be recognised if one of the parties was habitually resident, domiciled, or a national of that country at the time of the foreign proceedings.
In respect of maintenance obligations, the UK is bound by Council Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. A court in Northern Ireland will have jurisdiction if it has jurisdiction over the divorce or, if the divorce was obtained in foreign proceedings, where one of the parties is domiciled in Northern Ireland at the time of the foreign divorce or had been habitually resident in Northern Ireland for a year up to that date, or if one party has a beneficial interest in a former matrimonial home located in Northern Ireland. The law of Northern Ireland will be applied to such cases.

3.6 Matrimonial property regimes

In the absence of a contract or marriage settlement, the rights of the husband and wife in each other's movable property (whether acquired before or during the marriage) is determined by the law of the matrimonial domicile at the time of marriage. Where the domiciles of husband and wife coincide, this will be the matrimonial domicile. Where they do not, it will be the law with which the parties and the marriage have their closest connection. The intentions of the parties at the time of marriage are only relevant if they indicate an implied choice of law. The same rule is likely to apply in respect of immovable property.
If there is a marriage contract or settlement, the law of the contract will apply: this is the law of the matrimonial domicile if there are no other indications as to the applicable law.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located (lex situs) applies to succession to immovable property.
In cases involving wills (testamentary succession), the capacity of the testator to make a will of movable property is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator. There is no specific authority on the position regarding immovable property, but the lex situs would be the most likely outcome, and probably also determines a legatee's capacity to take a bequest of immovable property.
Pursuant to the Wills Act 1963, and where the testator died on or after the 1st January 1964, a will is formally valid (e.g. correct number of witnesses) if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the internal law of the jurisdiction in which the property is situated (thus excluding the application of renvoi despite this concerning immovables).
A will of movable property is materially valid (e.g. limitations on the amount one can leave under a will) if it complies with the law of the domicile of the testator at the time of death; a will of immovable property is materially valid if it complies with the law of the jurisdiction in which the property is located, i.e. whatever system of domestic law the lex situs would apply.
A will is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. This presumption is a prima facie rule which can be displaced by evidence that the testator manifestly contemplated and intended that his will should be contstrued under another system of law. In relation to immovable property, there may be an additional limitation, whereby if the interest that arises from such construction is not permitted or not recognised by the lex situs, the latter law prevails.
The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation (it should be noted that under English domestic law, if that applies, marriage revokes a will unless it is shown that the will was expressly made in contemplation of marriage). However, where the revocation is alleged to have been achieved by a later will (as opposed to, for example, tearing up the will), whether this second will revokes the earlier one is determined by the laws applicable to the formal validity of the second will. If it is unclear whether a second will revokes an earlier will, the question of construction will be determined by the law intended by the testator, which is presumed to be the law of his domicile at the date of the second will.

3.8 Real property

Property cases are divided into movable and immovable property; whether property is movable or immovable is for the law of the place in which the property is situated.

In the case of immovable property, the applicable law is the law of the place in which the property is situated, and renvoi applies. This applies to all questions regarding the transaction, including capacity, formalities and material validity. It should be noted that there is of course a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).
In the case of proprietary (note, as opposed to contractual) questions concerning the transfer of tangible movable property, in general the applicable law is the law of the place in which the property was situated at the time of the event that was alleged to have affected title to it. It is unclear whether renvoi applies in this situation and the overall effect of first instance decisions of the English courts suggest it does not. A title to tangible property acquired in accordance with this general rule will be recognised as valid in England if the movable is then removed from the country in which it was situated at the time of the acquisition of title, unless and until that title is displaced by a new title acquired in accordance with the law of the country to which the property has been moved. A particular exception to the general rule on tangible movable property relates to where the tangible is in transit and its situs is not known to the parties, or temporary, a transfer which is valid under the applicable law of the transfer will be effective in England.
In the case of the assignment of intangible movable property, where the relationship between assignor and assignee is contractual (as in the case of most debts) and the issue relates only to the validity and effect of the assignment itself, the Rome I Regulation applies.
It should be noted that the choice of law rules on assignment and transfer of intangible property are difficult to summarise and no single choice of law rule covers them, mainly because the category of intangibles covers a very wide range of rights, not all of which are contractual in origin. It is suggested that specialist advice should be sought in the case of intangible movable property.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor's main interests are in an EU Member State (other than Denmark). If the Northern Ireland High Court has jurisdiction (which will be the case if the debtor's main interests were centred in Northern Ireland, presumed to be the place of the registered office), Northern Irish law will be applied.
In cases falling outside of Regulation 1346/2000, the law of Northern Ireland will be applied if the Court in Northern Ireland has jurisdiction (which will be the case if the company is registered in Northern Ireland or if there are persons in Northern Ireland who would benefit from the winding up and there are no good reasons to decline jurisdiction).

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Which country's law applies? - Scotland

1 Sources of the rules in force

1.1 National rules

Scotland has a separate and distinct "mixed" legal system. This area of "applicable law" has been particularly influenced by the Continental systems, as well as the common law. Scotland forms a separate jurisdiction within the UK, and conflicts rules are needed to determine intra-UK cases as well as truly international cases. Generally, when the UK has become party to an international instrument containing applicable law rules, a decision has been taken to apply the same rules to intra-UK conflicts, although there is usually no obligation to do so. Scots law recognises this field as international private law, private international law, or conflict of laws.
As in England and Wales, many rules today derive from directly applicable EU Regulations. In relation to civil and commercial matters these are: Regulation 593/2008 (Rome I) on the law applicable to contractual obligations and Regulation 864/2007 (Rome II) on the law applicable to non-contractual obligations. The Contracts (Applicable Law) Act 1990, (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date). The Private International Law (Miscellaneous Provisions) Act 1995 is only relevant to situations not covered by the Rome II Regulation (the Regulation applies to cases in which damage occurred after 11 January 2009). In other areas, common law generally applies. The sources in family law in Scotland are the common law; statute (often following recommendations made by the Scottish Law Commission); and EU and international obligations.

1.2 Multilateral international conventions

Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961.
Rome Convention 1980 on the Law Applicable to Contractual Obligations (replaced by the Rome I Regulation in relation to contracts entered into on or after 17 December 2009)
Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

1.3 Principal bilateral conventions

We are unaware of any bilateral Conventions containing choice of law provisions to which the UK is party.
However, it should be noted that, although the Rome Convention 1980 and Hague Conventions permit a State to apply some other choice of law regime to "internal" conflicts – such as conflicts between the laws of England and Wales and Scotland – the UK has chosen not to make use of this facility. Hence, the Rome Convention (in relation to contracts entered into pre 17 December 2009) and Hague Convention rules apply to conflicts between the different jurisdictions of the UK as well as in international conflicts.

2 Implementation of conflict of law rules

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

Foreign (i.e. non-Scots) law will be applied in the Scottish courts only if applicable under national conflicts rules and only if pleaded and proved by the party seeking to rely on it. This rule relates to evidence and procedure, and is not displaced by EU instruments.

2.2 Renvoi

Renvoi is the process by which a forum court adopts foreign law in a conflict of laws situation. This may be relevant in various areas of law, such as the law of succession and family law, although there is not a great deal of Scottish case law on renvoi. The relevant EU Regulations (such as Rome I and Rome II) exclude the application of renvoi, and the same approach was taken in the Private International Law (Miscellaneous Provisions) Act 1995 in relation to delict /tort.

2.3 Change of connecting factor

This would normally be dealt with by specifying the time at which the connecting factor is applied. In the case of transfer of title to moveables, the law would be that of the place where the moveables were located at the time of the event which allegedly transferred the title.

2.4 Exceptions to the normal application of conflict rules

Scottish courts may decline to apply a foreign law otherwise applicable on the basis that it is contrary to Scottish public policy. Although the term "international public policy" would not be used in this context, what is meant by "contrary to Scottish public policy" is that the law in question is regarded as unacceptable even allowing for the fact that the case is an international one to which Scots law could not be expected to apply. Scottish public policy will sometimes derive from international instruments or norms, such as the European Convention on Human Rights.

In addition the Rome I and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum irrespective of the law otherwise applicable to the contract. There are not many such rules in Scots law, and those that do exist are mainly to be found in UK-wide statutes. Examples would include the unenforceability of investment agreements made by or through unauthorised persons, or following an unlawful communication to the customer, under sections 26 and 30 of the Financial Services and Markets Act 2000.

2.5 Proof of foreign law

The content of foreign law is a matter of fact, and as such evidence has to be led by the parties and the judge must reach conclusions based on an analysis of this evidence. The judge cannot investigate and apply foreign law independently. Where the evidence is conflicting, the judge must decide which party's view appears more plausible, and may examine foreign statutes and cases which have been referred to in evidence in order to do so.

The only exception to the rule that foreign law is a matter of fact is that, where the UK Supreme Court hears an appeal from one part of the UK, it may apply the law of any other UK jurisdiction even though the content of that law has not been proved by evidence. This is because the Supreme Court contains judges from all the UK jurisdictions, and considers itself qualified to apply the law of any of them.

Where foreign law requires to be proved, this is normally done by the evidence of expert witnesses. It is not enough simply to put a text, such as a foreign statute before the court, which will not regard itself as qualified to interpret or apply foreign legal material without the guidance of someone with proper knowledge of that system. Expert evidence may be given by anyone with suitable knowledge or experience, even if not a practising lawyer in the other country. Academics for instance have been used.

Generally where the parties disagree about the content of foreign law, this will need to be proved by oral evidence by experts, in the course of which they may refer to documentary material which may be placed before the court. Where there is no dispute the parties may simply be able to agree, or to submit affidavit evidence.

There is a presumption that foreign law is the same as Scots law. This is obviously rebuttable by evidence which satisfactorily proves the (different) content of the foreign law.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In cases concerning contractual obligations in civil and commercial matters in situations involving a conflict of laws, the Rome I Regulation (Regulation (EC) No. 593/2008 on the law applicable to contractual obligations) is directly applicable. The principle of universality means that any law specified by Rome I shall be applied irrespective of whether it is the law of a Member State of the EU.

Rome I does not apply to matters of evidence or procedure, which continue to be governed by the law of the forum. An exception are rules determining the burden of proof, which Rome I specifies are to be governed by the law governing a contractual obligation under the Regulation. Prescription and limitation periods interpretation, performance and consequences of a breach of an obligation, among others, are governed by the applicable law under the Regulation.

The primary rules of the Rome I are as follows. Where the parties have made an express choice of law, or the choice can be clearly demonstrated by the terms of the contract or the circumstances of the case, that law applies.

There are limits on freedom of choice. Article 3 of Rome I provides that where a choice of law is made, but all other "elements relevant to the situation" are located in another country, the choice of law will not deprive of effect those provisions of the law of that country which cannot be derogated from by agreement. Article 9 provides that overriding mandatory provisions of a country should apply, even where parties have not exercised freedom of choice of law. Additionally, in consumer and employment contracts, the law chosen cannot generally deprive the consumer or employee of the protection of the mandatory rules of the system which would have applied in the absence of choice.

In cases where there is no express choice of law, or one that can be clearly demonstrated, Rome I sets out, in Article 4, further rules for determining the governing law, which is often tied to the habitual residence of the party who is not making payment for the product or service, e.g. the seller in a contract for the sale of goods, the lender of a bank loan or the guarantor in a contract of guarantee. This presumption may be rebutted in favour of a country with which the contract is manifestly more closely connected. Case law relating to the Rome Convention, which may remain relevant in the context of the interpretation of Rome I, confirms that in order to rebut the presumption there must be at least a clear preponderance of factors in favour of the other country. The majority of judges in the leading Scottish case of Caledonia Subsea v Microperi SA went further, and said that the presumption should only be rebutted if in the exceptional circumstances of the case the habitual residence of the characteristic performer had no real significance.

3.2 Non-contractual obligations

The Rome II Regulation (Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations) applies to non-contractual obligations in civil and commercial matters in situations involving a conflict of laws. For the rules specified in the Regulation to apply, damage must have occurred or be likely to occur. Damage is specified as covering any "consequence" arising from tort/delict, unjust enrichment, negotiorum gestio (a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person), or culpa in contrahendo (a non-contractual obligation arising out of dealings prior to the conclusion of a contract). The Rome II Regulation does not apply, among others, to cases of defamation, or an equivalent claim made under foreign law.

Under Rome II the general rule which applies to delicts is to apply the law of the country where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental damage and infringement of intellectual property rights. The Regulation also sets rules relating to unjust enrichment, negotiorum gestio and culpa in contrahendo. The Regulation allows the parties to choose the applicable law in certain circumstances. The Regulation however puts in place restrictions on the avoidance, through the operation of the Regulation's rules, of rules of the domestic law of the forum, and on the avoidance of rules of a country other than the country chosen where all elements relevant to the situation at the time of the event giving rise to the damage occurring are located in that country.

In Scotland, there are some cases to which Rome II does not apply where one of the Private International Law (Miscellaneous Provisions) Act 1995 or common law will apply.

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

Domicile

In Scotland, the status of illegitimacy was abolished by section 21 of the Family Law (Scotland) Act 2006. As a consequence of this, section 22(2) of the 2006 Act provides that where (a) the parents of a child under 16 are domiciled in the same country as each other; and (b) the child has a home with a parent or a home (or homes) with both of them the child shall be domiciled in the same country as the child's parents. In other cases, section 22(3) provides that the child shall be domiciled in the country with which the child has for the time being the closest connection.

For persons over 16, their previous domicile continues to apply unless they take a domicile of choice. To adopt a domicile of choice, the individual must have actually moved to the new country where they wish to reside, and they must show an intention to give up their previous domicile and also an intention to live permanently in the new country. If a domicile of choice is abandoned, the domicile of origin will revive to fill any gap until a new domicile of choice may be acquired.

The domicile of married persons is now assessed independently of that of the other spouse.

Section 1 of the Domicile and Matrimonial Proceedings Act 1973 provides that a married woman has the same rights with regards to domicile as any other person. However, if the woman married prior to the 1973 Act (and thereby acquired her husband's domicile under the old law) she shall continue to retain that domicile unless she abandons it or acquires a new domicile of choice.

Name

The right to name a child is part of parental responsibilities and rights (PRRs) In any dispute over PRRs section 11 of the Children (Scotland) Act 1995 requires the court to treat the welfare of the child as its paramount consideration.

Adults are generally entitled to call themselves by any name they like in Scotland, provided there is no fraudulent intent. Any person over 16, whose birth is registered in Scotland or who was legally adopted in Scotland, may apply to National Records of Scotland for a recorded change of name. However, there is no obligation to use this service. Further information on name changing can be found on the website of the National Records of Scotland.

Capacity to Contract

Capacity to enter into contracts, make wills etc. is governed by different laws depending on the issue in relation to which the question of capacity arises. The Age of Legal Capacity (Scotland) Act 1991 is relevant in certain circumstances. Under the Age of Legal Capacity (Scotland) Act 1991, a person of or over the age of 16 years has legal capacity to enter into any transaction. A younger person has capacity in some circumstances which are set out in the Act.

3.4 Establishment of parent-child relationship, including adoption

Scots law gives parents (and certain other individuals who have legal capacity to care for a child) parental rights and responsibilities. Provision is made in relation to parental rights and responsibilities in the Children (Scotland) Act 1995. Scots law will be applicable whenever the Scottish courts have jurisdiction subject to the provisions of the 1996 Hague Convention and Brussels IIa. Adoption matters in Scots law are determined by the Adoption and Children (Scotland) Act 2007.

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

A marriage will only be valid in Scotland if certain requirements are satisfied. Both parties must be free to marry, have full legal capacity and have fully consented to the marriage.

Section 38(1) of the Family Law (Scotland) Act 2006 also requires that the marriage must conform to the formalities required by the law of the place where the marriage is celebrated. This covers the validity of the ceremony and its elements e.g. whether any particular form of words must be used, whether the marriage must take place in a particular location, whether a marriage can be conducted by proxy.

The question of whether a person who enters into marriage had capacity to do so and had fully consented to the marriage is determined by the law of the place where, immediately before the marriage, that person was domiciled (section 38(2) of the 2006 Act). In Scotland, the age of legal capacity to enter into a marriage is 16. In terms of consent, there must be a genuine and serious exchange of consent between both parties to the marriage.

Scotland now also recognises same sex marriage following the introduction of the Marriage and Civil Partnership (Scotland) Act 2014. This includes same sex marriages entered into both in Scotland and overseas.

Provided there is no legal impediment to the marriage, anyone can marry in Scotland. There is no residence requirement in Scotland for couples seeking to marry here although persons from outside the EU may need immigration clearance.

Civil Partnership and Same Sex Marriage

Scots law also recognises civil partnerships in accordance with the Civil Partnership Act 2004. Section 85 of the 2004 Act provides that a civil partnership is formed when two persons of the same sex sign the completed civil partnership schedule before two witnesses aged 16 years and over and an authorised registrar (all being present).

The 2004 Act also makes specific provision for civil partnerships formed outside the UK. A foreign same-sex civil union which has been legally entered into outwith the UK will be treated as a civil partnership in Scotland provided it meets certain criteria set out in the 2004 Act.

Cohabitation

As a general rule in Scotland, if a couple live together as though they were married, their cohabitation will generate certain rights and duties. The Family Law (Scotland) Act 2006 makes provision for rights of cohabiting couples (which apply equally to both same sex and opposite sex couples). For example, section 26 provides for rights in certain household goods; section 27 makes reference to rights to certain money and property; section 28 makes provision for financial provision on separation; section 29 provides for financial provision where one of the cohabitants dies without leaving a will; and section 30 makes provision on civil protection orders to protect against abuse.

Divorce and Separation

In matters of divorce and separation there is provision in UK legislation (namely the Domicile and Matrimonial Proceedings Act 1973 and the Civil Partnership Act 2004) on when the Scottish courts have jurisdiction in divorce and dissolution cases. More details can be found on the website of the Scottish Courts and Tribunals.

Maintenance

In respect of maintenance, the Department for Work and Pensions runs a statutory child maintenance service across Great Britain.

In Scotland, provision is also laid down in the Family Law (Scotland) Act 1985 on obligations of aliment to family members, such as spouses and children. An obligation of aliment is an obligation to provide such support as is reasonable in the circumstances.

3.6 Matrimonial property regimes

Scotland has a system in law for financial provision on divorce or dissolution of a civil partnership. Scots law sets out certain principles that must be considered when deciding on financial provision and the division of matrimonial property and these principles are contained in the Family Law (Scotland) Act 1985.

The general rule in Scots law is that the net value of the matrimonial property should be shared fairly between the parties unless there is a reason against fair and equal sharing. Matrimonial property is defined as all property belonging to the parties to the marriage or civil partnership that was acquired before or during the marriage or civil partnership. Section 9 of the 1985 Act sets out the principles that should be considered when making any order of financial provision on divorce or dissolution of a civil partnership, which should assist in deciding whether the matrimonial property should be divided equally amongst the parties, or whether one spouse or civil partnership should receive a larger share than the other.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of domicile of the testator at the date of death applies to the succession to moveable property and the law of the country in which the property is located at the date of the death applies to succession to immovable property. The same rules

apply where “legal rights” (i.e. the rights of certain family members to share in the deceased’s estate which cannot be defeated by will) are in issue. Legal rights have to be taken into account in both intestate and testate succession. It is of note that at present under Scots law, legal rights are available only from the moveable estate, and are therefore only available where the deceased has died domiciled in Scotland. In cases involving wills, the capacity of the testator to make a will is governed by the law of his domicile at the date of the will with regard to moveable property, and the law of the country in which the property is located with regard to immovable property.

Under the Wills Act 1963 a will is considered to be validly executed (“formally valid”) (e.g. in the correct form, right number of witnesses) if it complies with any of the following internal laws: the law of the place where the will was executed (signed and witnessed); the law of the domicile, habitual residence or nationality of the testator at the date of execution; the law of the domicile, habitual residence or nationality of the testator on death. It will also be formally valid in respect of immovable property if it complies with the law of the country in which the property is located.

The provisions of a will relating to moveable property are valid and enforceable (“essentially valid”) (e.g. limits on proportion of estate which can validly pass under the will) if it complies with the law of the testator’s domicile at the date of death. A will relating to immovable property is materially valid if it complies with the law of the country where the property is located at the date of death.

A will is interpreted by the law intended by the testator, which intention can be express or inferred from the language of the will. Otherwise it is presumed to be the law of the testator’s domicile at the date of the will with regard to moveable property. This rule probably also applies to immovable property. In exceptional cases, where the will does not clearly indicate a law, the law of domicile at the date of death has been applied.

It is of note that section 4 of the 1963 Act states that:

“The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.”

The essential validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the date of the alleged revocation with respect to moveable property and the law of the place where immovable property is situated where the revocation would affect that property. A will which seeks to revoke an earlier valid will or a provision of an earlier valid will is considered formally valid if the will revoking the earlier will, complies with the law of any country under which the revoked will or provision would have been treated as properly executed.

3.8 Real property

Whether property is to be classified as moveable or immovable is a question for the law of the place where the property is situated.

In the case of immovable property, the applicable law is the law of the place where the property is situated. This applies to all questions regarding the transaction, including capacity, formalities and material validity. There is a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).

In the case of corporeal moveable property, the applicable law is the law of the place where the property is situated at the time of the event alleged to have affected the title to it. A title to corporeal movable property acquired in accordance with this general rule will generally be recognised as valid in Scotland. Contractual issues are of course governed by the Rome I Regulation.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor’s main interests are in an EU Member State (other than Denmark). If the Scottish courts have jurisdiction (which will be the case if the debtor’s main interests were centred in Scotland, presumed to be the place of the registered office), Scots law will be applied.

In cases falling outside of Regulation 1346/2000, Scots law will be applied where the Scottish courts have and are exercising jurisdiction.

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Which country's law applies? - Gibraltar

1 Sources of the rules in force

1.1 National rules

The conflict of laws rules in Gibraltar dealing with applicable law today derive mainly from directly applicable EU Regulations. In relation to civil and commercial matters these are: Regulation 593/2008 (Rome I) on the law applicable to contractual obligations and Regulation 864/2007 (Rome II) on the law applicable to non-contractual obligations. The Contracts (Applicable Law) Act (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date). The Regulation applies to cases in which damage occurred after 11 January 2009. The traditional common law rules remain applicable to the tort of defamation and in relation to succession and property law. For example, the Contracts (Applicable Law) Act gives effect to the Rome Convention 1980 on the Law Applicable to Contractual Obligations.

In family matters, it is generally the common law that is the source of rules on applicable law, with some exceptions. Gibraltar law is generally applied in family matters, subject to limited exceptions in common law (e.g. in relation to nullity of marriage) or in statute (e.g. in relation to maintenance under the Maintenance Act and the Maintenance Orders (Reciprocal Enforcement) Act. In parental responsibility and child protection matters covered by EU Regulation 2201/2003 and The Hague Convention of 19 October 1996, it is Family Proceedings (Children) 1996 Hague Convention Rules 2011, and Article 15 of the 1996 Convention that contain the applicable law rules respectively i.e. that Gibraltar law applies subject to limited exceptions.

The conflict of laws rules in Gibraltar have both statutory and common law (case law) sources, and the balance of each varies in each field of law. For example, choice of law in contract is now dominated by the Contracts (Applicable Law) Ordinance. In turn, it may be noted that some of these statutes give effect to international agreements (such agreements, other than EU legislation with direct effect, require a statute to take effect in the United Kingdom and by extension, to Gibraltar). For example, the Contracts (Applicable Law) Ordinance gives effect to the Rome Convention 1980 on the Law Applicable to Contractual Obligations.

1.2 Multilateral international conventions

Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961, extended to Gibraltar in 1964.

Rome Convention 1980 on the Law Applicable to Contractual Obligations, extended to Gibraltar in 1994 (replaced by the Rome I Regulation in relation to contracts entered into on or after 17 December 2009).

Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, extended to Gibraltar in 1989.

1.3 Principal bilateral conventions

We are unaware of any bilateral conventions containing choice of law provisions to which the UK is a party.

However, it should be noted that, although the Rome Convention 1980 and Hague Conventions permit a State to apply some other choice of law regime to "internal" conflicts – such as conflicts between the laws of England and Wales and Scotland – the UK has chosen not to make use of this facility. Hence, the Rome Convention (in relation to contracts entered into pre 17 December 2009) and Hague Convention rules apply to conflicts between the different jurisdictions of the UK as well as in international conflicts.

2 Implementation of conflict of law rules

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

The general position is that the conflict of laws rules are only applied if at least one of the parties has argued that they be applied. If this has not been argued, or if there is no satisfactory evidence of the content of foreign law, the judge will normally apply Gibraltar law to the issue. This rule is one relating to evidence and procedure, and hence is unaffected by the EU Regulations, Rome Convention 1980 etc.

2.2 Renvoi

The EU Regulations exclude the application of the doctrine of renvoi in cases regulated by EU choice of law rules and this was also the prevailing view under the Contracts (Applicable Law) Act. Hence, if the Gibraltar choice of law rule for a tort of negligence points to French law, French domestic law will be applied, even if a French court would have applied some other country's law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.

The role of renvoi in remaining areas of law is now somewhat limited, and in some cases not entirely clear. In can be said that renvoi will apply in the case of land situate abroad, to which the lex situs is applied by Gibraltar law. In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any Gibraltar decision concerning the property will be effective. The balance of first instance court decisions as regards tangible movable property situate abroad is that a reference to the lex situs will not include renvoi.

In family matters, there is some limited case law that the doctrine of renvoi may apply in certain circumstances.

It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).The application of renvoi has been the subject of intense academic debate. The view that has prevailed in statutes concerning conflicts of law is to reject renvoi. Hence, if the Gibraltar choice of law rule for a tort of negligence points to French law, French domestic law will be applied, even if a French court would have applied some other country's law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.

However, renvoi does seem to apply in the case of succession to movable and immovable property, and possible transfers of such property generally, where the Gibraltar choice of law rules has referred to the law of the domicile or the law of the place where the immovable was situated, and in family law cases (which refers to the law of the domicile). In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any Gibraltar decision concerning the property will be effective. It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).

2.3 Change of connecting factor

This problem is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified. For example, in the case of transfers of movables, the relevant applicable law is that applicable at the location of the movable in question at the time of the transfer when the act in question is alleged to have affected title to that movable.

2.4 Exceptions to the normal application of conflict rules

Under the traditional rules, Gibraltar courts can refuse to apply a foreign law that is contrary to Gibraltar public policy. However, the threshold is very high: for example, where it would lead to a result "wholly alien to fundamental requirements of justice as administered by a Gibraltar court". The content of Gibraltar public policy is influenced by the UK's international obligations, in particular the European Convention on Human Rights; breaches of human rights is one well-known example of the public policy exception, another is where the law is a "flagrant violation of rules of international law of fundamental importance" (e. g. the invasion of Kuwait by Iraq in 1990).

In addition, the Rome I and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum irrespective of the law otherwise applicable to the contract. Those rules that exist are generally to be found in the consumer and employment spheres or in legislation supplementing an international convention.

2.5 Proof of foreign law

The content of foreign law is proved as if it were a fact. As such, it is for the parties to prove the content of foreign law; judges are not permitted to investigate the content of foreign law themselves. In the event of conflict between the evidence submitted by the parties, the judge may assess the credibility of the experts and is permitted to consider the primary evidence (e.g. foreign statutes and cases), especially where they are written in English and apply concepts that are familiar to a Gibraltar judge.

The content of foreign law is normally proved by expert evidence. It is not enough to put the text of a foreign statute, case or text of authority before the court. Expert evidence as to foreign law may be given by anyone "suitably qualified to do so on account of his knowledge or experience," irrespective of whether he is entitled to act as a legal practitioner in the relevant jurisdiction. Nonetheless, it is usual for experts to be either academics or practitioners in the jurisdiction in question. If the content of foreign law has been determined in an earlier Gibraltar or English case, this case may be cited as evidence of the content of foreign law, and the content of foreign law will be presumed to be the same as determined in that case unless proved otherwise.

The burden of proof is on the party relying on the foreign law. If foreign law is not proved satisfactorily, the general rule is that Gibraltar law will be applied. However, in cases where there is no reason to think that the foreign law in any way resembles Gibraltar law (e.g. a tax statute from another European jurisdiction), the suit may be dismissed.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In all cases concerning contractual obligations and involving a choice of law, the Rome I Regulation is directly applicable. The choice of law rules in the Rome Regulation may also apply to cases that Gibraltar domestic law would not recognise as being contractual (e.g. where the agreement is not supported with consideration e.g. contracts of gift).

Matters of procedure are determined by the lex fori. Hence, the assessment of the level of damages (but not the heads of damage) and means of proof are regulated by the law of the forum. Limitation periods are substantive, and hence in the case of contractual obligations are determined by the law applicable under the Regulation. The primary substantive rules are as follows.

In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law (e.g. a Lloyd's marine insurance policy), or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of

that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice has been demonstrated with reasonable certainty.
Freedom of choice is circumscribed in several respects. First, in consumer, and employment contracts, the choice of law cannot deprive the consumer or employee of the protection of mandatory rules that exist under the law that would, if there had not been an express choice of law, have applied to the case. Secondly, where all the elements of the situation are connected with one country, a choice of a different law cannot deprive the mandatory rules of that country of effect. There are also protective rules for consumers in relation to insurance contracts. It might also be noted that where there is disagreement in respect of the effectiveness of choice – for example, an allegation of duress – the question as to whether such a choice was effective is determined by the putative applicable law (i.e. the law that would govern the contract if the choice were valid), unless this would be "unreasonable" (in which case, the law of the habitual residence of the party claiming not to have consented may be applied).
In cases where there is no express choice of law, or one that is demonstrable with reasonable certainty, the Rome I Regulation provides specific rules depending on the type of contract, but where these rules are inconclusive, the law will generally be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the good or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more closely connected.

3.2 Non-contractual obligations

In respect of non-contractual obligations the Rome II Regulation will apply in most cases. The Act will only apply to issues relating to tort that do not fall under the Regulation, and defamation remains governed by the common law (see below). Limitation periods are also determined by the applicable law.
Under the Rome II Regulation the general rule is to apply the law of the place where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental torts and torts relating to intellectual property rights. The Regulation also allows the parties to choose the applicable law in certain circumstances, but this provision cannot be used to avoid mandatory rules of EU or domestic law. It should be noted that the assessment of damages is a matter for the applicable law.
As noted above, defamation (which includes slander of title, slander of goods, malicious falsehood and any foreign law claim "corresponding to or otherwise in the nature of [such] a claim") remains governed by the common law . In such cases, the "double actionability rule" applies: a tort is only actionable in Gibraltar if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) and, if the act had occurred in Gibraltar, it would be civilly actionable under Gibraltar law. This rule was retained after pressure from media organisations fearful of the application of oppressive foreign laws. However, this rule is subject to an exception: where another country has a more significant relationship with the occurrence and the parties, the law of that jurisdiction will apply instead. It should be noted that this area is particularly uncertain.
In respect of the administration of trusts, the applicable law is governed by the Trustees Act which implements the Hague Convention on the law applicable to trusts. This provides that the applicable law is that chosen by the settlor, or, in the absence of such choice, by the law with which the trust is most closely connected. This law determines the validity of the trust, its construction, effects and the administration of the trust.

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

At birth, a person's domicile (the domicile of origin) is the same as that of the child's father at the time of the child's birth, if the child is legitimate. If the child is illegitimate, or the father is dead at the time of birth, the child's domicile is the same as that of the child's mother. This rule continues to apply until the child is 16 (i.e. the child's domicile changes with that of the father or mother respectively).
For persons over 16 years of age, the domicile of origin continues to apply unless they adopt a domicile of choice. To adopt a domicile of choice, they must actually reside in the relevant jurisdiction and intend to reside there indefinitely or permanently. If either of these elements ceases to exist, the domicile of choice no longer applies and the domicile of origin applies.
The domicile of a wife is no longer determined by reference to that of her husband: it is assessed independently.
Capacity to undertake particular obligations (e.g. to contract, to make a will, to marry) is determined by rules specific to that area, and are discussed in the relevant sections.

3.4 Establishment of parent-child relationship, including adoption

Parental responsibility and child protection matters are generally determined by Gibraltar law, subject to limited exceptions such as those (discussed above) applicable to 1996 Hague Convention matters and those matters falling under Brussels IIa. Legitimacy matters and adoption matters are also generally determined by English law, subject to certain exceptions.

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

The formal validity of a marriage is generally governed by the law of the place of celebration of the marriage, subject to certain exceptions.
The capacity of persons to marry is generally determined by the domicile of the relevant person at the time immediately before the marriage. This law governs issues such as whether the parties consented, age requirements and which persons within one's extended family one may not marry. In the special case of age, no marriage will be valid if either of the participants was under 16 at the time, if they are domiciled in Gibraltar. However, marriage can be contracted if a special marriage licence is applied for prior to the event.
In matters of divorce or separation, Gibraltar law will generally be applied, subject to limited exceptions.
In respect of maintenance obligations, it is generally Gibraltar law that applies, subject to certain exceptions.

3.6 Matrimonial property regimes

Matrimonial property regime is not a concept generally known in common law. In matters of financial provision on divorce, separation or nullity or matters of maintenance, Gibraltar courts will generally apply Gibraltar law or England and Wales case law when able to do so, subject to limited exceptions.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located (lex situs) applies to succession to immovable property.
In cases involving wills (testamentary succession), the capacity of the testator to make a will of movable property is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator. There is no specific authority on the position regarding immovable property, but the lex situs would be the most likely outcome, and probably also determines a legatee's capacity to take a bequest of immovable property.
Pursuant to the Wills Act 2009, a will is formally valid (e.g. correct number of witnesses) if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the internal law of the jurisdiction in which the property is situated (thus excluding the application of renvoi despite this concerning immovables).

A will of movable property is materially valid (e.g. limitations on the amount one can leave under a will) if it complies with the law of the domicile of the testator at the time of death; a will of immovable property is materially valid if it complies with the law of the jurisdiction in which the property is located, i.e. whatever system of domestic law the lex situs would apply.
A will is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. This presumption is a prima facie rule which can be displaced by evidence that the testator manifestly contemplated and intended that his will should be construed under another system of law. In relation to immovable property, there may be an additional limitation, whereby if the interest that arises from such construction is not permitted or not recognised by the lex situs, the latter law prevails.
The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation (it should be noted that under Gibraltar domestic law, if that applies, marriage revokes a will unless it is shown that the will was expressly made in contemplation of marriage). However, where the revocation is alleged to have been achieved by a later will (as opposed to, for example, tearing up the will), whether this second will revokes the earlier one is determined by the laws applicable to the formal validity of the second will. If it is unclear whether a second will revokes an earlier will, the question of construction will be determined by the law intended by the testator, which is presumed to be the law of his domicile at the date of the second will.

3.8 Real property

Property cases are divided into movable and immovable property; whether property is movable or immovable is for the law of the place in which the property is situated.
In the case of immovable property, the applicable law is the law of the place in which the property is situated, and renvoi applies. This applies to all questions regarding the transaction, including capacity, formalities and material validity. It should be noted that there is of course a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).
In the case of proprietary (note, as opposed to contractual) questions concerning the transfer of tangible movable property, in general the applicable law is the law of the place in which the property was situated at the time of the event that was alleged to have affected title to it. It is unclear whether renvoi applies in this situation and the overall effect of first instance decisions of the Gibraltar courts suggest it does not. A title to tangible property acquired in accordance with this general rule will be recognised as valid in Gibraltar if the movable is then removed from the country in which it was situated at the time of the acquisition of title, unless and until that title is displaced by a new title acquired in accordance with the law of the country to which the property has been moved. A particular exception to the general rule on tangible movable property relates to where the tangible is in transit and its situs is not known to the parties, or temporary, a transfer which is valid under the applicable law of the transfer will be effective in Gibraltar.
In the case of the assignment of intangible movable property, where the relationship between assignor and assignee is contractual (as in the case of most debts) and the issue relates only to the validity and effect of the assignment itself, the Rome I Regulation applies.
it should be noted that the choice of law rules on assignment and transfer of intangible property are difficult to summarise and no single choice of law rule covers them, mainly because the category of intangibles covers a very wide range of rights, not all of which are contractual in origin. It is suggested that specialist advice should be sought in the case of intangible movable property.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 and by extension Gibraltar on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor’s main interests are in an EU Member State (other than Denmark). If the Gibraltar courts have jurisdiction (which will be the case if the debtor’s main interests were centred in Gibraltar, presumed to be the place of the registered office), Gibraltar law will be applied.
In cases falling outside of Regulation 1346/2000, Gibraltar law will be applied where the Gibraltar courts have jurisdiction (which will be the case if the company is registered in Gibraltar, or if there are persons in Gibraltar who would benefit from the winding up and there are no good reasons to decline jurisdiction).

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