

BOOK FIVE INTERNATIONAL PRIVATE LAW

TITLE I GENERAL PROVISIONS ON INTERNATIONAL PRIVATE LAW

Article 1576. Determination of Law Applicable to Civil Relations with Foreign Elements

(1) The law applicable to civil relations containing foreign elements shall be determined on the basis of international treaties of the Republic of Moldova, this Code, other laws of the Republic of Moldova, and international customs recognized by the Republic of Moldova.

(2) If it is impossible to determine the applicable law as provided by par.(1), the law most closely connected with the civil relations with foreign elements shall be applied.

Article 1577. Qualification of Legal Concepts

(1) In determining the law applicable to civil relations with foreign elements, account shall be taken of qualification of legal concepts in accordance with the law of the Republic of Moldova, unless statutes and international treaties, to which the Republic of Moldova is a party, provide otherwise.

(2) If legal concepts requiring legal qualification are not known to the law of the Republic of Moldova or are known under another name or with other content and cannot be determined by interpretation under the law of the Republic of Moldova, then the law of a foreign country may be applied for their legal qualification, unless civil rights are thus limited or civil liability measures are thus established.

Article 1578. Establishment of Substance of Norms of Foreign Law

(1) In the application of foreign law the court shall establish the substance of its norms by means of confirmations received from the bodies of the foreign state that has published the law, having regard of the official interpretation and practice of application in the respective foreign country.

(2) For the purposes of establishing the substance of norms of foreign law the court may request their interpretation by the competent bodies of the Republic of Moldova or abroad, or may involve experts in the field.

(3) The party relying on a foreign law may be bound by court to give proof of its substance.

(4) Where it is impossible to establish the substance of the foreign law, the law of the Republic of Moldova shall apply.

Article 1579. Application of Law of a Country with Multiple Legal Systems

In cases when the law of a country in which several legal systems are in effect is applicable, and it is impossible to determine which of the legal systems is to be applied, the legal applicable provisions shall be determined by the law of that state or legal system which the given relationship is most closely connected with shall be applied.

Article 1580. Principle of Reciprocity

(1) The court shall apply foreign law regardless of whether the law of the Republic of Moldova is applicable to analogous relations in the respective foreign country, with the exception of cases when the application of foreign law on the principle of reciprocity is provided by a statute of the Republic of Moldova.

(2) If the application of foreign law depends on reciprocity, it shall be presumed that it exists, unless it is proved otherwise.

Article 1581. Proviso of Public Order

A norm of foreign law subject to application in accordance with art.1576 par.(1) shall not be applied if the consequences of its application would clearly contradict the legal order of the Republic of Moldova. In such a case, the law of the Republic of Moldova shall be applied.

Article 1582. Application of Mandatory Rules

(1) The provisions of this Book shall not prejudice the effectiveness of those peremptory rules of the law of the Republic of Moldova that, in view of an indication in the rule itself or in view of their special significance for ensuring the rights and interests of civil law subjects govern the respective relations regardless of the applicable law.

(2) A refusal to apply a norm of foreign law may not be based merely on the difference of the legal, political or economic system of the respective foreign country from that of the Republic of Moldova.

Article 1583. Reference to Foreign Law

Any reference to foreign law in accordance with the provisions of this Book shall be deemed as a reference to the material law and not the conflict law of the respective country.

Article 1584. Retortion

The Government of the Republic of Moldova may establish retaliatory limitations (retortions) with respect to the property and personal non-property rights of citizens and legal entities of those countries where there are special limitations of the property and personal non-property rights of citizens and legal entities of the Republic of Moldova.

Article 1585. Acknowledgement of Rights Acquired in Another Country

Rights acquired in another country shall be acknowledged and observed in the Republic of Moldova, unless they contravene to legal order.

Article 1586. International Treaties

The provisions of this Book shall apply unless otherwise provided for in international treaties.

TITLE II CONFLICT NORMS

CHAPTER I STATUS OF NATURAL PERSON

Article 1587. National Law of Natural Person

(1) The civil status and the capacity of the natural person are governed by his national law.

(2) By national law of a citizen is understood the law of the country whose citizenship this person has. Citizenship shall be determined in accordance with the law of the country, the citizenship of which is invoked. If a person has two or more citizenship, his national law shall be deemed to be the law of the country with which the person is most closely connected.

(3) For a person without citizenship, the law of the country in which this person has his domicile or residence shall be deemed his national law.

(4) The law of the country that has given asylum to a refugee shall be deemed to be the refugee's national law.

(5) The national law of the citizen of the Republic of Moldova, who under foreign law, is deemed to have another citizenship, shall be the law of the Republic of Moldova.

Article 1588. Legal Capacity of Foreign Citizens and Persons without Citizenship

The legal capacity which foreign citizens and persons without citizenship enjoy in the Republic of Moldova is equal to that of the citizens of the Republic of Moldova except for the cases provided by the Constitution of the Republic of Moldova, the laws of the Republic of Moldova or international treaties of the Republic of Moldova.

Article 1589. Name of Foreign Citizen or Person without Citizenship

The rights of a foreign citizen or person without citizenship to his name, its use and protection are subject to his national law. The protection against acts infringing upon the right to one's name committed on the territory of the Republic of Moldova shall be ensured as provided by its legislation.

Article 1590. Capability of Foreign Citizens and Persons without Citizenship

(1) The civil capability of foreign citizens or persons without citizenship shall be determined by their national law.

(2) A party not enjoying capability under his national law does not have the right to rely on his lack of capability if he is capable under the law of the place of entering into the legal transaction, with the exception of those cases when the other party knew or should have known of the lack of capability.

(3) The capability of a foreign citizen or a person without citizenship in respect of transactions concluded in the Republic of Moldova and of obligations arising from causation of damage shall be determined by the law of the Republic of Moldova.

(4) The application of a new law as the national law of a person shall not prejudice the attainment of adult age and its recognition under the law that was previously applicable.

Article 1591. Declaration of Foreign Citizen or Person without Citizenship Incapable or with Limited Capability

(1) The foreign citizen or the person without citizenship may be declared incapable or with limited capability, in accordance with the law of the Republic of Moldova.

(2) Legal representation of the foreign citizen or of the person without citizenship deprived of his capability, as well as the assistance accorded to the foreign citizen or the person without citizenship with limited capability, shall be governed by the law regulating legal relations of representation and assistance.

Article 1592. Guardianship and Protectorship

(1) Establishment, modification, effects and termination of relations of guardianship and protectorship over minors, adult persons that are incapable or with limited capability, as well as relations between the guardian or protector and the ward, shall be regulated by the national law of the ward.

(2) Acceptance of guardianship and Protectorship shall be regulated by the national law of the person appointed as guardian or protector.

(3) Relations between guardian or protector and the ward shall be regulated by the law of the state, whose authorities have appointed the guardian or the protector. Where the person under guardianship or protectorship resides on the territory of the Republic of Moldova, the law of the Republic of Moldova shall apply where it is more favorable with regard to the ward.

(4) The guardianship or protectorship established over citizens of the Republic of Moldova residing outside the territory of the Republic of Moldova shall be acknowledged as valid where the consular office of the Republic of Moldova accredited in the respective country or, absent such office, the embassy, does not produce any legally-grounded objections.

Article 1593. Declaration of Absence or Death of Foreign Citizen or Person without Citizenship

The court judgement regarding declaration of absence of a foreign citizen or a person without citizenship shall be issued or revoked in accordance with his national law. Where the determination of this law is impossible, the legislation of the Republic of Moldova shall apply.

Article 1594. Registration Abroad of Acts of Civil Status of Moldovan Citizens

Consular institutions or, absent such institutions, embassies of the Republic of Moldova shall conduct registration of civil acts of citizens of the Republic of Moldova residing outside of the Republic of Moldova, applying the laws and other statutes of the Republic of Moldova.

Article 1595. Entrepreneurial Activity of Foreign Citizen or Person without Citizenship

The status of entrepreneur of a foreign citizen or a person without citizenship allowing him to conduct a business without creating a legal entity shall be determined by the law of the country where the foreign citizen or person without citizenship has obtained permission to carry out entrepreneurial activity.

CHAPTER II

STATUS OF LEGAL ENTITY

Article 1596. National Law of Foreign Legal Entities

(1) By national law of a foreign legal entity is understood the law of the country where the legal entity is founded.

(2) On the basis of the national law of a legal entity person, there shall be determined, in particular:

- a) the status of the organization as a legal entity;
- b) its legal form of incorporation;
- c) requirements regarding name of the entity;
- d) grounds for entity's creation and termination;
- e) terms of reorganization, including legal succession;
- f) substance of entity's legal capacity;
- g) the procedure for acquisition by the legal person of civil rights and assumption of civil duties;
- h) relations within the legal entity, including relations of the entity with its participants;
- i) liability of legal entity.

(3) The foreign legal entity may not rely upon a limitation of the power of its body or representative to enter into a legal transaction, which is unknown to the law of the country where the body or representative of the foreign legal entity entered into the transaction, except when it is proved that the other party to the transaction was or obviously should have been aware of this limitation.

Article 1597. Law Applicable to Representation Offices (Divisions) and Branch Offices of Foreign Legal Entities

(1) The legal status of the representation offices (divisions) of the legal entity, located on the territory of another state, shall be regulated by the national law of the legal entity.

(2) The legal status of the branch office of a legal entity, located on the territory of another state, shall be regulated by the law of the state where the branch office has been established, regardless of the national law of the legal entity.

Article 1598. National Regime for Foreign Legal Entities in the Republic of Moldova

The foreign legal entity in the Republic of Moldova shall carry out entrepreneurial and other activity regulated by civil legislation, in compliance with the provisions set by this legislation for a similar activity carried out by the legal entities of the Republic of Moldova, unless the law of the Republic of Moldova provides otherwise in regard of foreign legal entities.

Article 1599. National Law of Organizations which Are Not Legal Entities under Foreign Law

By the national law of a foreign organization which is not a legal entity under foreign law is understood the law of the country where the organization is founded. The rules of this Code and of other normative acts regulating the activity of legal entities shall apply to the activity of such organizations, unless it follows otherwise from the law or the nature of the legal relation.

Article 1600. Participation of State in Civil Relations with Foreign Elements

The rules of this Book shall apply to the participation of the state in civil relations with foreign elements on general bases, unless otherwise provided by law.

CHAPTER III

REAL RIGHTS AND PERSONAL NON-PROPERTY RIGHTS

Article 1601. General Provisions on Law Applicable to Real Rights

(1) The substance of the right of possession, ownership and of other real rights over immovable and movable property, their exercise and protection shall be determined according to the law of the country where this property is located, unless otherwise provided.

(2) The classification of property as immovable or movable, as well as any other legal qualification of property shall be determined according to the law of the country where this property is located.

Article 1602. Rise and Termination of Property Rights

(1) The rise and termination of the right of ownership and of other real rights over property shall be determined according to the law of the country where this property was located at the time of occurrence of the action or other circumstance which served as the basis for the rise or termination of the right of ownership or of other real rights, unless otherwise provided by the legislation of the Republic of Moldova.

(2) The rise and termination of the right of ownership and of other real rights to property that is the object of a transaction shall be determined by the law of the country applicable to the given transaction, unless otherwise established by agreement of the parties.

(3) The rise of the right of ownership and of other real rights as a result of acquisitive prescription shall be determined by the law of the country where the property was situated at the time of expiration of the period of acquisitive prescription.

Article 1603. Real Rights to Means of Transportation

(1) Establishment, assignment and extinction of real rights to means of transportation shall be regulated by:

- a) the law of the flag under which the ship or the aircraft is registered;
- b) the law applicable to the legal status of the transport enterprise, in regard of railroad vehicles and motor-vehicles that belong to it.

(2) Provisions of par.(1) also apply to:

- a) assets on board composing the technical equipment;
- b) claims pertaining to outlays for technical assistance of the means of transportation.

Article 1604. Real Rights to Assets Subject to Registration

The right of ownership and other real rights to assets subject to state registration shall be determined in conformity with the law of the country on the territory of which the rights to those assets are entered in the state register.

Article 1605. Property Rights to Movables in Transit

The rise and termination of the right of ownership and of other property rights under a transaction concerning movables in transit shall be determined by the law of the country from which this property has been shipped, unless:

- a) the agreement of the parties provides otherwise;
- b) the assets are personal assets of the passenger. In such a case, the assets are subject to passenger's national law.

Article 1606. Securities

(1) Issuance of securities is regulated by the law governing the legal status of the issuer legal entity.

(2) Terms and effects of security conveyance are subject to:

- a) the law of the place of payment of security by order;
- b) the law of the place of the bearer security at the moment of conveyance;
- c) the law applicable to the legal status of the legal entity of the nominal security.

Article 1607. Personal Non-Property Rights

(1) Rise, substance and extinction of copyrights over a creative work are governed by the law of the country on the territory of which this work was for the first time made public by exhibition, spreading, publication, representation or by any other method.

(2) The copyrights over a creative work that has not been made public shall be regulated by author's national law.

(3) The rise, substance and extinction of intellectual property rights shall be regulated by the law of the state on whose territory those rights are registered.

(4) The claim for compensation of material or moral damage is regulated by the law of the country on the territory of which the copyright or the intellectual property right has been infringed.

(5) Foreign citizens and persons without citizenship shall be accorded on the territory of the Republic of Moldova national treatment with regard to copyrights and intellectual property rights.

Article 1608. Forms of Publicity

(1) Any form of publicity regarding property is regulated by the law applicable at the date and in the place it is done.

(2) Forms of publicity indicated in par.(1) that result in the arising of the rights to immovable assets are governed by the law of the state on the territory of which the assets are, even if the legal grounds of arising, conveyance or extinction of the real right or of the real guaranty have arisen under another law.

CHAPTER IV TRANSACTIONS

Article 1609. Law Applicable to Transactions

(1) The form of legal transaction shall be determined by the law of the country that governs the substance of the transaction. The transaction concluded outside the territory of the Republic of Moldova shall be deemed valid as to its form, where it fulfills one of the following conditions:

- a) the law of the place where the transaction was drawn up has been complied with;
- b) the requirements of the legislation of the Republic of Moldova have been complied with;

c) the national law or the law of the domicile of the person that drafted the transaction has been complied with;

d) the transaction is valid under the law applicable to the authority that examines the validity of the transaction.

(2) The substance validity conditions of the transaction are governed by the law chosen by the author or by the law of the country with which the transaction has most close relations or by the law of the place where the transaction was concluded. Where the law applicable to the substance of the transaction imposes certification of any kind, this requirement may not be removed, even if the transaction was concluded abroad.

(3) The accessory transaction is governed by the law of the country that regulates the substance of the main transaction, unless otherwise provided by the agreement of the parties.

CHAPTER V

CONTRACTUAL AND EXTRA-CONTRACTUAL OBLIGATIONS

Article 1610. Law Applicable to Substance of Contract

(1) A contract shall be regulated by the law of the country chosen by agreement of the parties.

(2) The parties to a contract may choose the applicable law both for the contract as a whole and for individual parts of it.

(3) The choice of the applicable law must be expressed or follow from the content of the contract or from other circumstances.

(4) The determination of the applicable law may be made by the parties to the contract at any time, both at the conclusion of the contract and later. The parties may at any time agree on changing the law applicable to the contract.

(5) A choice of applicable law made after the conclusion of the contract shall have retroactive force and is considered effective from the time of its conclusion, without prejudice to the validity of the form of contract or rights acquired by third parties in relation to this contract.

(6) If trade terms accepted in international commerce are used in a contract, then, in the absence of other indications in the contract, it shall be deemed that the parties have agreed on the application to their relations of the trade usages and customs corresponding to those trade terms.

Article 1611. Law Applicable to Contract Absent Parties' Agreement

(1) In the absence of agreement of the contractual parties on the applicable law, the law to be applied shall be that of the country with which the contract has the most tight relations. It shall be deemed that such relations exist with regard to the law of the state where, at the moment of conclusion of contract, the debtor of the obligation has his domicile, residence or is registered as legal entity.

(2) In the absence of agreement of the contractual parties on the applicable law and by derogation from the provisions of par.(1):

a) the law of the country where the property is located shall apply to a contract whose subject is immovable property and also to a contract of trust on property;

b) the law of the country where the results envisioned by a contract for construction works and the contract for design and exploratory works shall apply to the respective contracts;

c) the law of the country where the activity of the civil society is carried out shall apply to the contract of civil society;

d) the law of the country on the territory of which the auction of the contest takes place shall apply to the contract concluded by virtue of that auction or contest.

Article 1612. Scope of Applicable Law

(1) The law applied to a contract by virtue of the provisions of this Book shall include in particular:

- a) interpretation of contract;
- b) rights and duties of the parties;
- c) performance of contract;
- d) consequences of nonperformance or improper performance of the contract;
- e) termination of contract;
- f) consequences of nullity or invalidity of contract;
- g) assignment of claims and assumption of debt in connection with the contract.

Article 1613. Law Applicable to Form of Contract

(1) The contract must correspond to the form requirements set by the law provided for in art.1609 par.(1).

(2) The contract shall be deemed valid where:

a) at the moment of contract conclusion, the contracting parties are located in different countries and the form requirements set by the legislation of one of those countries have been complied with;

b) the agent of a contracting party complied with the form requirements set by the legislation of the state on whose territory he was located at the moment of contract conclusion.

Article 1614. Management of Affairs and Unjust Enrichment

(1) The management of affairs is subject to the law of the place where the agent performs the acts of management.

(2) The obligations arising from unjust enrichment are subject to the law of the place where it occurred.

Article 1615. Illicit Act

(1) The illicit act shall be qualified as a tort in accordance with the law of the state where it occurred.

(2) The law that governs obligations arising from causation of damage shall set:

- a) the tort capacity;
- b) forms, terms and extent of tort liability;
- c) the conditions for limitation or exoneration from tort liability;
- d) the nature of damage for which compensation may be claimed;
- e) the transmissibility of the right to compensation;
- f) the persons entitled to receive compensation.

(3) Where all or part of the damaging consequences of the illicit act occur on the territory of another country than that on which the illicit act occurred, the law of this country shall apply.

Article 1616. Liability for Personal Damage

Claims regarding compensation for personal damage caused through mass media shall be regulated, at the choice of the injured person, by:

- a) the national law of the injured person;

- b) the law of the country on the territory of which the injured person has his domicile or residence;
- c) the law of the country on the territory of which the damaging consequences ensued;
- d) the law of the country where the author of the damage has his domicile or residence.

Article 1617. Liability for Defective Products

(1) Claims concerning compensation for damage caused by defective products shall be regulated, at the choice of the injured consumer, by:

- a) the law of the country of the territory of which the injured person has his domicile or residence;
- b) the law of the country on the territory of which the product was acquired, contingent on the fact that the manufacturer or the provider proves that the product has been released on the market without his consent.

(2) Claims provided for in par.(1) may be filed only where the products are designated for personal or family consumption.

Article 1618. Liability for Unfair Competition

(1) Claims regarding compensation for damage caused by an act of unfair competition shall be regulated by:

- a) the law of the country on the territory of which the damaging result occurred;
- b) the law of the country on the territory of which the injured person is registered;
- c) the law that governs the substance of the contract concluded by the parties, if the act of unfair competition has been committed and damaged the relations between them.

Article 1619. Conveyance and Extinction of Obligations

(1) The assignment of claim is regulated by the law of the assigned claim, unless the parties agree otherwise. The choice of another law, by agreement between assignor and assignee, shall not be opposable to the debtor, unless he consents to this. The relations between the assignor and the assignee shall be regulated by the law applicable to the legal relation on which the assignment is based.

(2) The contractual subrogation is regulated by the law of the obligation, the creditor of which is substituted, unless otherwise provided by agreement between the parties.

(3) The delegation and novation are regulated by the law applicable to the obligation that forms their substance.

(4) Set-off shall be regulated by the law applicable to the claim that admits extinction by set-off.

Article 1620. Payment Currency

(1) The payment currency shall be determined by the law of the issuer state.

(2) The effects currency exerts over the extent of a debt shall be set by the law applicable to the debt.

(3) The currency of payment shall be set by the law of the state, on the territory of which the payment must be made, unless otherwise agreed by the parties.

CHAPTER VI RELATIONS OF INHERITANCE WITH FOREIGN ELEMENTS

Article 1621. Law Applicable to Inheritance

The law applicable to inheritance refers to:

- a) the time of inheritance accrual;
- b) the persons that are entitled to inherit;
- c) legal conditions of the passive capacity to inherit;
- d) exercise of the right of possession over property left by the decedent;
- e) conditions and effects of inheritance option;
- f) extent of the obligation of the heirs to bear the liabilities of the decedent;
- g) rights of the state over vacant inheritance.

Article 1622. Law Applicable to Assets of Inheritance

(1) Inheritance relations regarding movable assets are regulated by the national law in force at the moment of the decease of the person that left the inheritance.

(2) Inheritance relations regarding immovable assets are regulated by the law of the country on the territory of which the assets are located.

Article 1623. Law Applicable to Testamentary Succession

(1) The testator may subject conveyance of his property by inheritance to another law than that provided for in art.1622, contingent on non-removal of application of imperative norms. The chosen law shall apply to situations provided for in art.1621.

(2) The drafting, amendment or revocation of will shall be deemed valid, where the will has complied with the applicable form requirements, on the date when the will was drawn up, amended or revoked, or on the date of testator's decease, in accordance with either of the following laws:

- a) the national law of the testator;
- b) the law of testator's domicile;
- c) the law of the place where the will has been drawn up, amended or revoked;
- d) the law of the place where the immovable asset that is the object of inheritance is located;
- e) the law of the court or of the body that accomplishes the procedure of conveyance of inheritance property.

CHAPTER VII STATUTE OF LIMITATIONS

Article 1624. Law Applicable to Statute of Limitations

The statute of limitations of the right to file action is regulated by the law applicable to the subjective right.