

Bulgarian Key provisions.

For an English comment of the provisions, please refer to the relevant chapter in Queirolo, Dominelli (eds.), *European and National Perspectives on the Application of the European Insolvency Regulation*, Rome, 2017. The volume is freely available online.

PIL Law act 2005 - an English translation is freely available at <http://www.ifrc.org/Docs/idrl/868EN.pdf>.

Bulgarian Private International Law Code

Part One

BASIC PROVISIONS

Chapter One

SCOPE OF CODE

Subject Matter

Article 1. (1) The provisions of this Code shall govern:

1. the international jurisdiction of the Bulgarian courts, of other authorities, and proceedings in international civil matters;
2. the law applicable to relationships at private law with an international element;
3. the recognition and enforcement of foreign judgments and other authentic instruments in the Republic of Bulgaria.

(2) Within the meaning given by this Code, "relationship at private law with an international element" shall be a relationship involving two or more States.

Closest Connection Principle

Article 2. (1) Relationships at private law with an international element shall be governed by the law of the State with which the said relationships are most closely connected. The provisions contained in the Code regarding the determination of the applicable law express this principle.

(2) If the applicable law cannot be determined on the basis of the provisions of Part Three herein, the law of the State with which the relationship has the closest connection by virtue of other criteria shall apply.

Relations with International Treaties, International Instruments and Other Laws

Article 3. (1) The provisions of this Code shall not affect the regulation of relationships at private law with an international element as established in an international treaty, in another international instrument in force for the Republic of Bulgaria, or in another law.

(2) Upon application of an international treaty or of another international instrument, regard shall be had to the international character of the provisions thereof, to the qualification established in the said provisions, and to the need to achieve uniformity in the interpretation and application of the said provisions.

Part Two

INTERNATIONAL JURISDICTION OF BULGARIAN COURTS AND OTHER AUTHORITIES.

PROCEEDINGS IN INTERNATIONAL CIVIL MATTERS

Chapter Two

JURISDICTION OF BULGARIAN COURTS AND OTHER AUTHORITIES

General Jurisdiction

Article 4. (1) The Bulgarian courts and other authorities shall have international jurisdiction where:

1. the defendant has a habitual residence, statutory seat or principal place of business in the Republic of Bulgaria;
2. the claimant or applicant is a Bulgarian national or is a legal person registered in the Republic of Bulgaria.

(2) Actions against a legal person, where the dispute has arisen out of direct relationships with

a branch of the said person, may be brought before the Bulgarian courts if the branch is registered in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Personal Rights

Article 5. Apart from pursuant to Article 4 herein, the Bulgarian court and other authorities shall furthermore have jurisdiction:

1. over matters relating to a change or protection of a name, where the person is a Bulgarian national or is habitually resident in the Republic of Bulgaria;
2. over matters relating to limitation or deprivation of Bulgarian nationals of the capacity to enter into legal relationships;
3. to establish and terminate guardianship or curatorship, where the person placed under guardianship or curatorship is a Bulgarian national or is habitually resident in the Republic of Bulgaria;
4. to declare the absence unheard from or death of a person who is a Bulgarian national or who has a known habitual residence in the Republic of Bulgaria.

Celebration of Marriage

Article 6. (1) Marriage in the Republic of Bulgaria shall be celebrated by a civil-status registrar if one of the future spouses is a Bulgarian national or is habitually resident in the Republic of Bulgaria.

(2) Marriage between foreign nationals may be celebrated in the Republic of Bulgaria by a consular official or a diplomatic agent of the State of origin of the said foreign nationals, if this is permissible under the law of the said State.

(3) Bulgarian nationals abroad may enter into marriage before a competent authority of the foreign State if this is permissible under the law of the said State.

(4) 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.

(5) 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.

Jurisdiction in Matrimonial Matters

Article 7. Matrimonial matters shall be cognizable in the Bulgarian courts if one of the spouses is a Bulgarian national or is habitually resident in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Interspousal Relationships in Personam and in Rem

Article 8. Under the terms established by Article 7 herein, the Bulgarian courts shall furthermore have jurisdiction over matters relating to relationships in personam and in rem between spouses.

Jurisdiction in Matters Relating to Establishment of Parenthood

Article 9. (1) The Bulgarian courts and other authorities shall have jurisdiction over proceedings for establishment and contesting of parenthood except pursuant to Article 4 herein and where the child or the parent, who is a party, is a Bulgarian national or is habitually resident in the Republic of Bulgaria.

(2) Under the terms established by Paragraph (1), this jurisdiction shall furthermore apply to matters relating to relationships in personam and in rem between parents and children.

Jurisdiction in Matters Relating to Adoption

Article 10. (1) The Bulgarian courts and other authorities shall have jurisdiction over matters relating to admission of adoption, annulment or revocation of adoption, except in the cases covered under Article 4 herein and where the adopter, the adoptee or one of the parents of the adoptee is a Bulgarian national or is habitually resident in the Republic of Bulgaria.

(2) The Bulgarian courts shall have jurisdiction over matters relating to relationships in rem between adopter and adoptee, where the adopter or adoptee is a Bulgarian national or is

habitually resident in the Republic of Bulgaria, as well as in the cases covered under Article 4 herein.

Jurisdiction in Matters Relating to Maintenance

Article 11. The Bulgarian courts shall have jurisdiction over actions on maintenance save in the cases under Article 4 (1) herein and where the maintenance creditor is habitually resident in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Rights in Rem

Article 12. (1) (Amended, SG No. 59/2007) The matters under Article 109 of the Code of Civil Procedure relating to immovable property situated in the Republic of Bulgaria, the matters relating to enforcement or to security which such property constitutes, as well as the matters relating to transfer or establishment of rights in rem in such property, shall be exclusively cognizable in the Bulgarian courts and other authorities.

(2) The Bulgarian courts shall have jurisdiction over actions on rights in rem in movable property, save in the cases covered under Article 4 herein and where the property is situated in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Intellectual Property Rights

Article 13. (1) The Bulgarian courts shall have jurisdiction over actions on copyrights and neighbouring rights, where protection is sought within the territory of the Republic of Bulgaria.

(2) The Bulgarian courts shall have exclusive jurisdiction over actions on items of industrial property, where the patent has been issued or the registration has been effected in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Succession

Article 14. (Amended, SG No. 59/2007) The Bulgarian courts and other authorities shall have jurisdiction over actions under Article 110 of the Code of Civil Procedure and other proceedings relating to succession to the estates of deceased persons, where the deceased at the time of his or her death was habitually resident in the Republic of Bulgaria, or was then a Bulgarian national, as well as where part of the estate thereof is situated in the Republic of Bulgaria.

Jurisdiction in Matters Relating to Rights Arising out of Contractual Relationships

Article 15. The Bulgarian courts shall have jurisdiction over actions on contractual relationships, save in the cases covered under Article 4 herein and where the place of performance of the obligation is within the Republic of Bulgaria or where the defendant has a principal place of business within the Republic of Bulgaria.

Jurisdiction in Matters Relating to Consumer Rights

Article 16. (1) The Bulgarian courts shall have jurisdiction over actions brought by a consumer save in the cases covered under Article 4 herein and where the said consumer is habitually resident in the Republic of Bulgaria and the conditions under Article 95 (2) herein are in place.

(2) An agreement on choice of court shall be admissible solely if entered into after the dispute has arisen.

Jurisdiction in Labour Disputes

Article 17. (1) Matters relating to labour disputes shall be cognizable in the Bulgarian courts, where the factory or office worker habitually carries out his or her work in the Republic of Bulgaria, as well as in the cases covered under Article 4 herein.

(2) An agreement on choice of court shall be admissible solely if entered into after the dispute has arisen.

Jurisdiction in Matters Relating to Tortuous or Delictual Rights

Article 18. (1) The Bulgarian courts shall have jurisdiction over actions on damage sustained as a result of a tort or delict save in the cases covered under Article 4 herein and where the harmful act was committed in the Republic of Bulgaria or where the damage or part thereof occurred in the Republic of Bulgaria.

(2) The jurisdiction referred to in Paragraph (1) shall furthermore apply to direct actions taken by the party who has suffered the damage against the insurer of the person claimed to be liable.

Exclusive Jurisdiction in Matters Relating to the Legal Status of Legal Persons Registered in the Republic of Bulgaria

Article 19. (1) (Amended, SG No. 59/2007) The Bulgarian courts shall have exclusive jurisdiction over actions under Item 5 of Article 104 of the Code of Civil Procedure, where the legal person is registered in the Republic of Bulgaria.

(2) Paragraph (1) shall apply to actions which have as their object the nullity or the dissolution of a corporation or another legal person, or the revocation of acts of bodies thereof, protection of membership, as well as challenge of the transformation of a commercial corporation and pecuniary balancing upon transformation, where the corporation or the other legal person is registered in the Republic of Bulgaria.

Jurisdiction in Actions Brought against a Number of Defendants

Article 20. The Bulgarian courts shall have jurisdiction over actions brought against a number of defendants if the grounds for jurisdiction exist in respect of one of the said defendants.

Jurisdiction by Reason of Related Actions

Article 21. (1) Where the Bulgarian courts have jurisdiction over one of the actions brought by the claimant, the said courts shall furthermore have jurisdiction over the rest of the actions if the connection between the cases necessitates that they be heard and determined together.

(2) (Amended, SG No. 59/2007) Where the Bulgarian courts have international jurisdiction over the original claim, the said courts shall also have jurisdiction over the counter-claim under the terms established by Article 211 of the Code of Civil Procedure .

Exclusive Jurisdiction

Article 22. The international jurisdiction of the Bulgarian courts and other authorities shall be exclusive solely where so expressly provided for.

Submission of Action to Foreign Court

Article 23. (1) (Amended, SG No. 59/2007) Where an action is brought to assert a proprietary right and the dispute does not fall within the exclusive jurisdiction of the Bulgarian courts, any such action may be submitted to a foreign court by an agreement in writing between the parties. Where the Bulgarian court has been seized while such an agreement is in place, the defendant must raise his or her objection to the exercise of such jurisdiction within the time limit for response to the statement of action and before the court has taken a stand on the merits of the dispute. Sentence one shall not apply to actions on maintenance.

(2) Under the terms established by sentence one of Paragraph (1), a case cognizable in a foreign court may be submitted to the Bulgarian courts. This shall not apply to actions on maintenance.

(3) Save insofar as otherwise provided for by the agreement, it shall be presumed to confer on the Bulgarian or foreign courts exclusive jurisdiction over the dispute for the subject matter whereof the said agreement has been entered into.

Tacit Establishment of Jurisdiction by Bulgarian Court

Article 24. (Amended, SG No. 59/2007) Where the jurisdiction of the Bulgarian courts may be stipulated by an agreement under Article 23 (1) herein, the said jurisdiction may be established even without any such agreement if the defendant accepts the said jurisdiction expressly or tacitly through acts on the merits of the dispute within the time limit for response to the statement of action.

Jurisdiction upon Securing a Claim

Article 25. The Bulgarian courts shall furthermore have jurisdiction to secure a claim for the examination whereof they do not have international jurisdiction, if the subject matter of the conservatory attachment is situated in the Republic of Bulgaria and the judgment of the foreign court is entitled to recognition and enforcement in the Republic of Bulgaria.

Jurisdiction to Coerce Enforcement

Article 26. The Bulgarian enforcement authorities shall have exclusive jurisdiction to take action for coercive enforcement where the obligation which is the subject to such action must be performed by a person habitually resident in the Republic of Bulgaria or where the subject matter of this action is situated in the Republic of Bulgaria.

Jurisdiction upon Change of Circumstances

Article 27. (1) Where the grounds for international jurisdiction existed when the case was instituted, the said jurisdiction shall be retained even if the said grounds lapse while the proceedings are in progress.

(2) If the international jurisdiction did not exist when the case was instituted, the said jurisdiction shall be conferred if the grounds for it arise while the proceedings are in progress.

Verification Proprio Motu

Article 28. The court shall of its own motion verify international jurisdiction. The determination of the existence of absence of such jurisdiction shall be subject to intermediate and cassation appeal.

Chapter Three

PROCEEDINGS

Applicable Law

Article 29. The Bulgarian courts and other authorities shall hear and determine cases pursuant to Bulgarian law.

Rules of Evidence

Article 30. (1) The apportionment of the burden of proof shall be determined by the substantive law which governs the consequences of the fact requiring proof.

(2) (Amended, SG No. 59/2007) If the law applicable to the merits of the case admits testimony regarding the circumstances under Article 164 of the Code of Civil Procedure, this type of evidence shall be admissible if the fact materialized within the territory of the State whereof the law is applicable.

(3) The securing of evidence which is situated in the Republic of Bulgaria shall be effected by the Bulgarian courts even if they do not have jurisdiction over the case for the determination of which the said evidence is required. The opposite party shall be notified of the day of the securing, unless it brooks no delay.

Evaluation of Foreign Procedural Acts

Article 31. The Bulgarian courts and other authorities shall evaluate the validity of foreign procedural acts and authentic instruments in conformity with the law of the State where the said acts were performed or the said instruments issued.

Summoning and Service of Documents

Article 32. (1) The summoning, as well as the service of notices and documents abroad, shall be effected through the Bulgarian diplomatic agents or consular officials and the competent foreign authorities. The Bulgarian authorities shall approach the said agents, officers and authorities through the Ministry of Justice according to a procedure established by the Minister of Justice.

(2) Assistance from the Bulgarian diplomatic agents and consular officials shall be sought

solely for acts in respect of Bulgarian nationals.

Legal Address

Article 33. (1) A party with a known address abroad shall be summonsed at the said address, with the writ of summons indicating that the said party may name a legal address in the Republic of Bulgaria.

(2) The obligation referred to in Paragraph (1) shall furthermore apply to the legitimate representative, guardian and authorized representative of a person in the Republic of Bulgaria, should they leave the country.

(3) Upon non-performance of the obligation referred to in Paragraphs (1) and (2), the subsequent writs of summons shall be filed with the case records and shall be presumed served. The party shall be notified of these consequences upon the first summonsing.

Summonsing through Representative

Article 34. Where a party has a known address abroad, the said party may be summonsed through a representative thereof in the Republic of Bulgaria, if the said representative has concluded on behalf of the said party the transaction in connection with which the proceedings have been instituted.

Summonsing through Publication

Article 35. (1) Where a party has a known address abroad and an attempt at summonsing at the said address has failed, the said party shall be summoned by means of a publication in the Unofficial Section of the State Gazette, effected at least one month prior to the date of the hearing.

(2) If, notwithstanding the publication, the party does not appear at the hearing, the court shall appoint a representative of the said party.

Judicial Cooperation

Article 36. (1) The Bulgarian authorities shall be obliged to render judicial cooperation at the request of the foreign authorities, except where compliance with any such request is contrary to Bulgarian public policy.

(2) The requested cooperation shall be provided in accordance with Bulgarian law. At the request of the foreign authority, the said cooperation may be provided in accordance with the foreign law provided this is compatible with Bulgarian law.

(3) Where the Bulgarian authorities seek judicial cooperation abroad, the said authorities may request that the act be performed pursuant to Bulgarian law.

Decline of Jurisdiction over Lawsuit Pending

Elsewhere (Lis Pendens)

Article 37. The Bulgarian court shall of its own motion stay any proceedings brought before it if other proceedings based on the same facts, involving the same cause of action and between the same parties, were brought earlier before a foreign court and the latter proceedings are expected to be concluded within a reasonable time by a final judgment which is entitled to recognition and enforcement in the Republic of Bulgaria.

Jurisdiction over Pre-conditioning Legal Relationship

Article 38. (1) The Bulgarian court shall take a stand on legal relationships on which the outcome of the dispute depends, even where it does not have jurisdiction over the cases for such relationships.

(2) Where a lawsuit is pending abroad on the pre-conditioning legal relationship, the Bulgarian court may stay the proceedings brought before it if there is reason to expect that the foreign judgment will be recognized in the Republic of Bulgaria.

Part Three

APPLICABLE LAW

Chapter Four COMMON PROVISIONS

Qualification

Article 39. (1) Where determination of the applicable law depends on the qualification of the essential elements or of the relationships, the said qualification shall be performed according to Bulgarian law.

(2) Where a specific legal institution or legal concept are unknown to Bulgarian law and cannot be defined through interpretation pursuant to Bulgarian law, the foreign law which governs the said institution or concept must be taken into consideration for the qualification thereof.

(3) Upon performance of qualification, account must be taken of the international element in the relationships which are being settled and of the specifics of private international law.

Referral

Article 40. (1) Within the meaning given by this Code, the "law of a State" shall denote the legal standards of the said State, including the conflict of laws rules thereof, save as otherwise provided for in this Code or in another statute.

(2) Remission to Bulgarian law and transmission to the law of a third State shall be inadmissible regarding:

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

(3) In the cases covered under Paragraph (1), where referral is admitted, Bulgarian substantive law or, respectively, the substantive law of the third State, shall apply.

Applicable Law of State with Several Legal Systems

Article 41. (1) Where the State whereof the law has been determined as applicable by this Code has several territorial units with separate legal systems, the law of that State shall determine which of the said systems shall apply.

(2) Where a State has several territorial units each having its own legal regulation of contractual and non-contractual relationships, each territorial unit shall be treated as a separate State upon determination of the applicable law under Chapters Ten and Eleven herein.

(3) Where the State whereof the law has been determined as applicable by this Code comprises several legal systems applicable to different categories of persons, the law of that State shall determine which of the said systems shall apply.

(4) Where the law of the State referred to in Paragraphs (1) and (3) does not lay down criteria for determination of the applicable legal system, the legal system with which the relationship has the closest connection shall apply.

Change of Determination Criterion

Article 42. No subsequent change of circumstances on the basis of which the applicable law has been determined shall be retroactive.

Establishment of Content of Foreign Law

Article 43. (1) The court or another authority applying the law shall of its own motion establish the content of the foreign law. The said court may resort to the methods provided for in international treaties, may request information from the Ministry of Justice or from another body, as well as request opinions from experts and specialized institutions.

(2) The parties may present documents establishing the content of the provisions of foreign law on which they base their motions or objections, or otherwise assist the court or another

authority applying the law.

(3) Upon choice of applicable law, the court or another authority applying the law may order the parties to assist in the establishment of the content of the said law.

Interpretation and Application of Foreign Law

Article 44. (1) The foreign law shall be interpreted and applied as it is interpreted and applied in the State which created the said law.

(2) Non-application of a foreign law, as well as its misinterpretation and misapplication, shall be a ground for appeal.

Public Policy

Article 45. (1) A provision of a foreign law determined as applicable by this Code shall not apply only if the consequences of such application are manifestly incompatible with Bulgarian public policy.

(2) Incompatibility shall be evaluated while taking account of the extent of connection of the relationship with Bulgarian public policy and the significance of the consequences of application of the foreign law.

(3) Where an incompatibility referred to in Paragraph (2) is established, another appropriate provision of the same foreign law shall be applied. In the absence of such a provision, a provision of Bulgarian law shall apply, if necessary for settlement of the relationship.

Special Mandatory Rules

Article 46. (1) The provisions of this Code shall not affect the application of the mandatory rules of Bulgarian law which, considering their subject matter and purpose, must be applied notwithstanding the referral to a foreign law.

(2) The court may have regard to the mandatory rules of another State with which the relationship has a close connection if the said rules, according to the law of the State that created them, must be applied notwithstanding what law has been determined as applicable by a conflict of laws rule of this Code. To decide whether to have regard of such special mandatory rules, the court must have regard to the nature of the said rules and the subject matter thereof, as well as to the consequences of the application or non-application thereof.

Reciprocity

Article 47. (1) The application of a foreign law shall be independent of any requirement of reciprocity.

(2) In case a statutory instrument requires reciprocity, the existence of such reciprocity shall be presumed until the contrary is established.

Chapter Five

LEGAL STATUS OF SUBJECTS

Section I

Legal Status of Natural Persons

Common Provisions

Article 48. (1) Within the meaning given by this Code, the national law of a person (*lex patriae*) shall be the law of the State of the nationality of the said person.

(2) The national law of a person holding dual or multiple nationality, of which one is Bulgarian nationality, shall be Bulgarian law.

(3) The national law of a person who is a national of two or more foreign States shall be the law of the State of habitual residence of the said person. Where the person does not have a habitual residence in any State whereof the said person is a national, the law of the State with which the said person has the closest connection shall apply.

(4) Within the meaning given by this Code, the national law of a stateless person shall be the

law of the State of habitual residence of the said person.

(5) Within the meaning given by this Code, the national law of a person with a recognized refugee status and of an asylee shall be the law of the State of habitual residence of the said person.

(6) Where in the cases referred to in Paragraphs (3), (4) and (5) the person does not have a habitual residence or such cannot be established, the law of the State with which the said person has the closest connection shall apply.

(7) Within the meaning given by this Code, "habitual residence of a natural person" shall denote the place where the said person has settled predominantly to live without this being related to a need of registration or authorization of residence or settlement. For determination of this place, special regard must be had to circumstances of personal or professional nature arising from sustained connections of the person with the said place or from the intention of the said person to establish such connections.

Capacity to Have Rights and Duties

Article 49. (1) The capacity of a person to have rights and duties shall be governed by the national law thereof.

(2) Foreign nationals and stateless persons shall have in the Republic of Bulgaria the same rights as Bulgarian nationals, save as otherwise provided for by statute.

Capacity to Enter into Legal Relationships

Article 50. (1) The capacity of a person to enter into legal relationships shall be governed by the national law thereof. Where the law applicable to a specific relationship establishes special conditions regarding the capacity to have rights and duties, the said law shall apply.

(2) 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 the incapacity thereof under the law of another State, except where the opposite party was aware of the said incapacity or was unaware of the said incapacity through negligence at the time of conclusion of the contract.

(3) The provision of Paragraph (2) shall not apply to any transactions in family and succession relationships, as well as to any transactions regarding rights in rem in immovable property situated in a State other than the State of the place of conclusion of the transaction.

Acquired Capacity to Have Rights and Duties and to Enter into

Legal Relationships

Article 51. The capacity to have rights and duties and to enter into legal relationships, which is acquired pursuant to national law, shall not be affected by a change of nationality.

Capacity to Carry Out Activities of Commercial Nature

Article 52. The capacity of a person to carry out activities of a commercial nature without incorporation of a legal person shall be 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 shall apply.

Name

Article 53. (1) The name of a person and the change of the said name shall be governed by the national law of the person.

(2) The effect of the change of nationality on the name shall be 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 his or her habitual residence on the name shall be determined by the law of the State in which the said person establishes his or her new habitual residence.

(3) The protection of the name shall be governed by the law which is applicable according to the provisions of Chapter Eleven herein.

(4) The name and the change thereof may be governed by Bulgarian law, should this be requested by a person who is habitually resident in the Republic of Bulgaria.

Limitation and Deprivation of Capacity to Enter into Legal Relationships

Article 54. (1) The terms and consequences of limitation or deprivation of the capacity of a person to enter into legal relationships shall be governed by the national law of the said person. Where a person is habitually resident within the territory of the Republic of Bulgaria, the court may apply Bulgarian law.

(2) The law applied according to Paragraph (1) shall furthermore govern the terms for revocation of the limitation or deprivation of the capacity to enter into legal relationships.

Declaration of Absence Unheard from and Death

Article 55. (1) The terms and consequences of declaration of an absence unheard from and of death shall be governed by the law of State whose nationality the person held when last heard from. Where any such person is stateless, the terms and consequences of declaration of an absence unheard from and of death shall be governed by the law of State where the said person was last habitually resident.

(2) The provisional measures for conservation of the property of a person situated within the territory of the Republic of Bulgaria shall be governed by Bulgarian law.

(3) Any person, who was habitually resident in the Republic of Bulgaria, may be declared absent unheard from or dead under Bulgarian law, should this be requested by a justifiably interested party.

Section II

Legal Status of Legal Persons, Unincorporated Entities and the State

Legal Persons

Article 56. (1) Legal persons shall be governed by the law of the State where the said persons are registered.

(2) Where no registration is required for incorporation of the legal person, or where the legal person is registered in several States, the applicable law shall be the law of the State in which the statutory seat thereof is situated.

(3) If in the cases under Paragraph (2) the situs of the statutory seat is different from the situs of the actual place of management of the legal person, the law of the State where the actual place of management thereof is situated shall apply.

(4) The branch of a legal person shall be governed by the law of the State in which the said branch is registered.

Bodies Unincorporate

Article 57. Associations or organizations which are not legal persons shall be governed by the law of the State in which the said entities are registered or instituted.

Scope of Applicable Law

Article 58. The law applicable to the persons covered under Articles 56 and 57 herein shall govern:

1. the establishment, the legal nature, and the form of legal organization thereof;
2. the name or the corporate designation;
3. the legal personality and the system of management;
4. the composition, competence and functioning of the bodies;
5. the representation;
6. the acquisition and loss of membership, as well as the rights and duties thereto incidental;
7. the liability for obligations;
8. the consequences of violations of the law or of the basic instrument;

9. the transformation and dissolution.

Transfer of Central Administration and Transformation

Article 59. The transfer of the central administration to another State and the transformation of legal persons with central administration in different States shall take effect solely if carried out in accordance with the law of the said States.

Participation of State in Relationships at Private Law with International Element

Article 60. The provisions of this Code shall furthermore apply to the relationships at private law with an international element, whereto a State is a party, save as where otherwise established by statute.

Chapter Six

LEGAL TRANSACTIONS, AGENCY AND EXTINCTIVE PRESCRIPTION

Formal Requirements for Legal Transactions

Article 61. The formal requirements for legal transactions shall be governed by the law applicable to the transaction. Compliance with the formal requirements as established by the law of the State where performance of the transaction is to be made shall, however, suffice.

Relationships between Principal and Third Party in Voluntary Agency

Article 62. (1) In the relationships between the principal and the third party, the existence and the extent of the authority of the agent, as well as the effects of the agent's actual or purported exercise of the authority thereof, shall be governed by the law of the State in which the agent had his or her principal place of business at the time of performance of the relevant acts.

(2) Notwithstanding the provision of Paragraph (1), the law of the State in which the agent has acted shall apply if:

1. the principal place of business of the principal or the habitual residence thereof is situated in that State, and the agent has acted in the name of the principal, or
2. the principal place of business of the third party or the habitual residence thereof is situated in that State, or
3. the agent has acted at an exchange or auction, or
4. the agent has no principal place of business.

(3) The agent or the third party may choose in writing the law governing the matters covered under paragraph (1). The choice of applicable law must be expressly accepted by the other party and must not prejudice the interests of the agent.

Extinctive Prescription

Article 63. The law governing the relevant relationship shall apply to extinctive prescription.

Chapter Seven

RIGHTS IN REM AND INTELLECTUAL PROPERTY RIGHTS

Section I

Rights in Rem

Common Provisions

Article 64. (1) Possession, ownership and other rights in rem in movable and immovable property shall be governed by the law of the State in which the property is situated (*lex loci rei sitae*).

(2) The evaluation as to whether a corporeal object is movable or immovable, as well as the

type of the rights in rem, shall be determined by the law specified in Paragraph (1).

Acquisition and Termination of Rights in Rem

Article 65. (1) The acquisition and termination of proprietary and possessory rights shall be governed by the law of the State in which the corporeal object is situated during performance of the act or occurrence of the circumstance justifying the acquisition or termination.

(2) The acquisition of ownership and other rights in rem on the grounds of acquisitive prescription shall be governed by the law of the State in which the corporeal object was situated at the time of lapse of the period of acquisitive prescription. The time of possession in another State shall be assimilated to the said period.

Acquired Rights

Article 66. Upon change of the place in which the corporeal object is situated, the rights acquired pursuant to the law of the State in which the corporeal object was situated may not be exercised to the prejudice of the law of the State in which the said object is newly situated.

Corporeal Objects in Transit

Article 67. (1) The acquisition and termination of rights in rem in corporeal objects in transit shall be governed by the law of the State of destination of the said objects.

(2) The rights in rem in corporeal objects for personal use carried by a passenger shall be governed by the law of the State where the passenger is habitually resident.

Means of Transport

Article 68. The acquisition, transfer and termination of rights in rem in means of transport shall be governed by:

1. the law of the flag of the ship;
2. the law of the State where the aircraft is registered;
3. the law of the State where the person operating the railway rolling stock and land motor vehicles has its place of business.

Recording

Article 69. The recording of legal transactions for the acquisition, transfer and extinguishment of rights in rem shall be governed by the law of the State in which the corporeal object was situated at the time of performance of the transaction.

Cultural Property

Article 70. Where a given corporeal object belonging to the cultural heritage of a specific State has been wrongfully removed from the territory of the said State, the request of the said State for return of the said object shall be governed by the law of the said State, except where the said State has opted for application of the law of the State in which the object is situated at the time of making the request for return.

Section II

Intellectual Property Rights

Common Provisions

Article 71. (1) The arising, content, transfer and termination of copyright and of rights neighbouring on copyright shall be governed by the law of the State for which the protection of the said rights is sought (*lex loci protectionis*).

(2) The arising, content, transfer and termination of industrial property rights shall be governed by the law of the State in which the patent has been issued or the registration has been effected or, respectively, in which an application for a patent or for registration has been filed.

Rights in Intellectual Property Items Prepared within the Scope of Employment

Article 72. The law governing the contract of employment shall furthermore apply to the relationships between the employer and the author, the holder of intellectual property rights in respect of intellectual property items prepared within the scope of employment.

Law Applicable to Agreements

Article 73. The agreements transferring rights or granting consent to the use of intellectual property rights shall be governed by the law applicable according to Chapter Ten herein.

Section III

Scope of Law Applicable to Rights in Rem and to Intellectual Property Rights

Scope of Applicable Law

Article 74. The applicable law, determined according to the provisions of Sections I and II of this Chapter, shall govern:

1. the existence, type, content and scope of the rights;
2. the holders of the rights;
3. the transferability of the rights;
4. the methods of creation, modification, transfer and extinguishment of the rights;
5. the need of recording and the enforceability of the rights against third parties.

Chapter Eight

FAMILY RELATIONSHIPS

Formal Requirements for Marriage

Article 75. (1) The formal requirements for marriages shall be governed by the law of the State of celebration.

(2) The formal requirements for marriages celebrated by a duly empowered diplomatic agent or consular official shall be governed by the law of the sending State.

(3) The validity of a marriage celebrated abroad shall be recognized in the Republic of Bulgaria if the formal requirements established in the law applicable under Paragraphs (1) and (2) have been satisfied.

Substantive Requirements for Entry into Marriage

Article 76. (1) The substantive requirements for entry into marriage shall be 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 authorization referred to in Article 12 (2) of the Family Code may be granted by the Bulgarian diplomatic agent or consular official.

(2) Where one of the future spouses is a Bulgarian national or is habitually resident in the Republic of Bulgaria, the marriage shall be 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, the said impediment shall be disregarded.

Establishment of Absence of Impediments

Article 77. A foreign national or a stateless person must certify to the Bulgarian civil-status registrar that:

1. the national law of the said person recognizes the validity of a marriage celebrated by a foreign competent authority;
2. there are no impediments to entry into the said marriage under the national law of the said

person.

Marriage Annulment

Article 78. Marriage annulment shall be governed by the law which was applicable to the substantive requirements for entry into the marriage.

Interspousal Relationships in Personam and in Rem

Article 79. (1) The relationships in personam between spouses shall be governed by the common national law thereof.

(2) The relationships in personam between spouses holding different nationalities shall be governed by the law of the State in which they have a common habitual residence or, in the absence of such habitual residence, by the law of the State with which both spouses are most closely connected.

(3) The relationships in rem between spouses shall be governed by the law applicable to the relationships in personam there between.

(4) Spouses may select an applicable law to govern the relationships in rem therebetween if this is admissible under the law determined in Paragraphs (1) and (2).

Agreement on Choice of Applicable Law

Article 80. (1) The choice of applicable law under Article 79 (4) herein must be evidenced in writing, dated and signed by the spouses.

(2) The entry into and the validity of the agreement on choice shall be governed by the selected law.

(3) The choice may be made before or after entry into the marriage. The spouses may change or revoke the choice of applicable law. Where the choice has been made after entry into the marriage, the said choice shall take effect as from the time of entry into the marriage unless otherwise agreed between the parties.

Enforceability of Choice of Applicable Law

Article 81. If the relationships in rem between spouses are governed by a selected foreign law, they shall be enforceable against third parties solely if the said parties were aware of the application of the said law or were unaware through negligence. Enforceability shall apply to rights in rem in immovable property solely if the requirements for recording, established by the law of the State in which the property is situated, have been satisfied.

Divorce

Article 82. (1) A divorce between spouses possessing the same foreign nationality shall be governed by the law of the State whose nationals the said spouses were upon submission of the application for divorce.

(2) A divorce between spouses possessing different nationalities shall be governed by the law of the State in which the said spouses have a common habitual residence at the time of submission of the application for divorce. Where the spouses have no common habitual residence, Bulgarian law shall apply.

(3) If the applicable foreign law does not admit the divorce and at the time of submission of the application for divorce one of the spouses was a Bulgarian national or was habitually resident in the Republic of Bulgaria, Bulgarian law shall apply.

Establishment of Parenthood

Article 83. (1) Establishment of parenthood shall be governed by the law of the State whose nationality the child acquired at the time of birth.

(2) Notwithstanding the application of Paragraph (1), the following law may be applied should this be more favourable to the child:

1. the law of the State of which the child is a national or in which the child is habitually resident at the time of establishment of parenthood, or

2. the law applicable to the relationships in personam between the parents at the time of birth.

(3) Referral to the law of a third State shall be admissible where the said law admits

establishment of the parenthood of the child.

(4) Affiliation shall be effective if it conforms to the national law of the affiliator or to the national law of the child at the time of affiliation, or by the law of the State in which the child has a habitual residence at the time of affiliation.

(5) The formal requirements for affiliation shall be governed by the law of the State where the affiliation has been effected, or by the law applicable according to Paragraph (4).

Adoption

Article 84. (1) The conditions for adoption shall be 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.

(2) Should the said persons hold different nationalities, the national law of each of the persons shall apply.

(3) Where the adoptee is a Bulgarian national, the consent of the Minister of Justice shall be requested. The terms and procedure for the grant of consent to adoption of a person who is a Bulgarian national by a foreign national shall be established by an ordinance of the Minister of Justice.

(4) Where the adoptee is a Bulgarian national, the adopter, whether a Bulgarian or a foreign national habitually resident in another State, must satisfy the conditions for adoption under the law of that State as well.

(5) The effect of adoption shall be 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 shall apply.

(6) Annulment of adoption shall be governed by the law which was applicable to the conditions for the adoption according to Paragraphs (1), (2) and (4).

(7) The grounds for revocation of adoption, apart from annulment under Paragraph (6), shall be governed by the law applicable to the act of adoption according to Paragraph (5).

(8) Upon revocation of adoption, regard must be had to the best interests of the adoptee who has not attained full legal age.

Relationships between Parents and Children

Article 85. (1) The relationships between parents and children shall be governed by the law of the State in which they have a common habitual residence.

(2) If parents and child have no common habitual residence, the relationships therebetween shall be governed by the law of the State in which the child has a habitual residence or by the national law thereof, should this be more favourable to the child.

Guardianship and Curatorship

Article 86. (1) The institution and termination of guardianship and curatorship shall be governed by the law of the State in which the person who is placed under guardianship or curatorship has a habitual residence.

(2) The relationships between the person placed under guardianship or curatorship and the guardian or curator shall be governed by the law which applied according to Paragraph (1).

(3) The obligation to accept guardianship or curatorship shall be governed by the national law of the person designated as guardian or curator.

(4) Provisional or urgent protection measures may be taken under Bulgarian law where the person or any movable or immovable property thereof is situated within the territory of the Republic of Bulgaria.

Maintenance

Article 87. (1) Maintenance obligations shall be governed by the law of the State in which the maintenance creditor has a habitual residence, save as where the national law thereof is more favourable to the said creditor. In such case, the national law of the maintenance creditor shall apply.

(2) 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 shall apply.

(3) Where the law applicable under Paragraphs (1) and (2) does not admit the award of maintenance, Bulgarian law shall apply.

(4) Where maintenance obligations between former spouses arise by reason of annulment of a marriage or by reason of divorce, the applicable law shall be the law which applied according to Article 78 or Article 82 herein, as the case may be.

Scope of Law Applicable to Maintenance

Article 88. (1) The law applicable to maintenance shall determine:

1. whether maintenance may be claimed, to 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 the said debtor.

(2) 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.

Chapter Nine

SUCCESSION RELATIONSHIPS

Succession by Operation of Law

Article 89. (1) Succession to movable property shall be governed by the law of the State in which the antecessor had a habitual residence upon death.

(2) Succession to immovable property shall be governed by the law of the State in which the said property is situated.

(3) The antecessor may designate the law of the State of which the said antecessor was a national at the time of the designation to govern the succession to the whole of the estate thereof.

(4) The conditions for material validity of the act of designation of applicable law and the revocation of the said designation shall be governed by the law designated. The designation of applicable law and the revocation of the said designation must be expressed in a statement made in accordance with the formal requirements for testamentary dispositions.

(5) The choice of applicable law must not affect the reserved share of the heirs determined under the law applicable according to Paragraphs (1) and (2).

Testamentary Succession

Article 90. (1) The capacity of a person to dispose of the property thereof by means of a will (making and revocation) shall be governed by the law applicable according to Article 89 herein.

(2) A will shall be formally valid if it conforms to the law of the State:

1. in which it was made, or
2. of which the testator was a national at the time of making the will or upon death, or
3. in which the testator was habitually resident at the time of making the will or upon death, or
4. in which the immovable property subject to the will is situated.

(3) Paragraph (2) shall furthermore apply to the form of revocation of the testamentary disposition.

Scope of Applicable Law

Article 91. The law applicable to succession shall govern:

1. the time and place of opening of the succession;
2. the range and precedence of the heirs, devisees and legatees;
3. the respective shares of the heirs, devisees and legatees;
4. the capacity to inherit;
5. the assumption of the obligations of the deceased and the apportionment of the said obligations among the heirs, devisees and legatees;
6. the acceptance and renunciation of succession;
7. the time limits for acceptance of the succession;
8. the disposable part of the estate;
9. the conditions for material validity of the will.

Vacant Succession

Article 92. Where under the law applicable there is no heir, devisee or legatee under a disposition of property upon death and no natural person is an heir by operation of law, the assets of the estate situated within the territory of the Republic of Bulgaria shall be appropriated by the Bulgarian State or by the municipality.

Chapter Ten

CONTRACTUAL RELATIONSHIPS

Choice of Applicable Law

Article 93. (1) Contracts shall be governed by the law chosen by the parties. Any such choice must be expressed or clearly demonstrated by the terms of the contract or by the circumstances whereunder the contractual relationship evolves.

(2) Unless otherwise agreed, the parties shall be 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.

(3) By their choice, the parties can select a law applicable to the whole or a part only of the contract.

(4) The parties may at any time agree to subject the contract in whole or in part to a law other than that which previously governed the said contract. Any variation by the parties of the law to be applied, made after the conclusion of the contract, shall not prejudice the formal validity of the contract according to Article 98 herein or adversely affect the rights of third parties.

(5) Where all the elements of a contract at the time of choice are connected with one State only, the choice of a foreign law must not prejudice the application of the mandatory rules of the said State which cannot be derogated from by contract.

(6) The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 97 and 98 herein.

Applicable Law in the Absence of Choice

Article 94. (1) To the extent that the parties have not chosen an applicable law, the law of the State with which the contract is most closely connected shall apply. If any part of the contract can be separated from the other clauses thereof and should the said part have a closer relation to another State, the law of the latter may apply as an exception.

(2) It shall be presumed that the contract is most closely connected with the State in which the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his or her habitual residence or central administration.

(3) If the contract is entered into in the course of the trade or profession of the party referred to in Paragraph (2), it shall be presumed that the contract is most closely connected with the

State within whose territory the main place of business is situated. If the place where the performance is effected differs from the main place of business of the party, it shall be presumed that that the contract is most closely connected with the State within whose territory, as of the moment of the contract conclusion, the place of business wherethrough the performance is to be effected is situated.

(4) The provisions of Paragraphs (2) and (3) shall not apply if the performance which is characteristic of the contract cannot be determined.

(5) Where the subject matter of the contract is a right in immovable property, it shall be presumed that the contract is most closely connected with the State in which the said immovable property is situated.

(6) The provisions of Paragraphs (2) and (3) shall not apply to a contract for the carriage of goods. It shall be presumed that a contract for the carriage of goods is most closely connected with the State within whose territory the principal place of business of the carrier is situated at the time of conclusion of the contract, subject to the condition that:

1. the place of loading, or
 2. the place of discharge, or
 3. the principal place of business of the consignor
- is also situated in that State.

(7) The provision of Paragraph (6) shall furthermore apply to single voyage charter parties or to other contracts whereof the main purpose is the carriage of goods.

(8) The provisions of Paragraphs (2), (3), (5), (6) and (7) shall not apply if it appears from the circumstances as a whole that the contract is more closely connected with another State. In such case, the law of that other State shall apply.

Law Applicable to Consumer Contracts

Article 95. (1) Within the meaning given by this Code, "consumer contract" shall be a contract under which one of the parties is a person who acquires goods, uses services, or is granted credit for the needs thereof or for the needs of the family thereof rather than for sale, production or practice of a trade.

(2) A consumer contract shall be governed by a law chosen by the parties. A choice of applicable law must not deprive the consumer of the protection afforded thereto by the mandatory rules of the State in which the said consumer is habitually resident where:

1. the conclusion of the contract in that State was preceded by a specific invitation addressed to the consumer or by advertising, and the consumer had taken in that State all the steps required for the conclusion of the contract, or
2. the other party or an agent of the said party received the consumer's order in that State, or
3. the contract is for the sale of goods and, for the purpose of inducing the consumer to buy goods, the seller arranged the consumer's journey to another State where the consumer gave his or her order.

(3) Where the parties have not chosen an applicable law, the contracts entered into in the circumstances described in Paragraph (2) shall be governed by the law of the State in which the consumer is habitually resident.

(4) The provisions of Paragraphs (2) and (3) shall not apply to contracts of carriage and to contracts for the supply of services where the services are to be supplied to the consumer exclusively in a State other than that in which the consumer is habitually resident. Any such contracts shall be governed according to Articles 93 and 94 herein.

(5) The contracts which, for an inclusive price, provide for a combination of travel and accommodation, shall be governed by the law determined as applicable under Paragraphs (2) and (3).

Law Applicable to Individual Employment Contracts

Article 96. (1) An employment contract shall be governed by the law chosen by the parties. A

choice of applicable law must not deprive the factory or office worker of the protection afforded thereto by the mandatory rules of the law which would be applicable in the absence of choice of applicable law.

(2) In the absence of choice of applicable law, a contract of employment shall be governed by the law of the State in which the factory or office worker habitually carries out his or her work, even if he or she is temporarily employed in another State.

(3) Where the factory or office worker does not habitually carry out his or her work in any one State, the law of the State in which the employer is habitually resident or in which the employer's principal place of business is situated shall apply.

(4) If, in the cases covered under Paragraphs (2) and (3), it appears from the circumstances as a whole that the contract is more closely connected with another State, the law of that other State shall apply.

Conclusion and Material Validity of Contracts

Article 97. (1) The conclusion and material validity of a contract, or of any separate provision of a contract, shall be governed by the law of the State which, according to this Chapter, would be applicable if the contract or provision were valid.

(2) To establish that he or she did not consent, each party may invoke the law of the State in which the said party is habitually resident if it appears from the circumstances that it would not be reasonable to determine the effect of his or her conduct in accordance with the law specified in Paragraph (1).

Formal Requirements for Contracts

Article 98. (1) A contract shall be formally valid if it satisfies the formal requirements established by the law applicable to the contract according to the provisions of this Chapter or by the law of the State in which the contract is concluded.

(2) A contract concluded at a time when the parties are present in different States shall be formally valid if it satisfies the formal requirements established by the law applicable to the contract according to the provisions of this Chapter or by the law of one of those States.

(3) Where a contract is concluded by an agent, account must be taken of the law of the State within whose territory the agent is present upon application of Paragraphs (1) and (2).

(4) A consumer contract concluded in the circumstances described in Article 95 (2) herein shall be formally valid if it satisfies the formal requirements established by the law of the State in which the consumer is habitually resident.

(5) A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements established by the law which, by virtue of the provisions of this Chapter, governs or would govern the contract, or by the law of the State where the act was done.

(6) A contract whereof the subject matter is a right in rem in immovable property shall be subject to the mandatory formal requirements established by the law of the State in which the immovable property is situated, to the extent that by the law of the State the said requirements are imposed irrespective of the State where the contract is concluded and irrespective of the law governing the contract.

Subrogation

Article 99. (1) Where a third party has a duty to satisfy a creditor or has satisfied a creditor, the law which governs the third party's duty to satisfy the creditor shall determine whether and to what extent the said third party is entitled to exercise against the debtor in full or to a limited extent the rights which the satisfied creditor had against the debtor under the law governing their relationship.

(2) Paragraph (1) shall furthermore apply in the cases where several persons are subject to the same duty and one of the said persons has satisfied the creditor.

Assignment of Claim

Article 100. (1) The relationship between an assignor and an assignee of a claim shall be governed by the law which, according to the provisions of this Chapter, applies to the contract of assignment.

(2) The law governing the claim assigned shall determine the assignability of the said claim, the relationship between assignee and debtor, the conditions whereunder the assignment can be invoked against the debtor, and the discharging effect of payment by the debtor.

Burden of Proof

Article 101. (1) The law governing the contract according to the provisions of this Chapter shall furthermore apply in connection with the proving of the contract, to the extent that the said law contains rules which raise presumptions of law or other provisions regarding the burden or proof.

(2) A contract or a unilateral act intended to have legal effect may be proved by any mode of proof admissible under the law of the State of the court seized (*lex fori*) or under the law referred to in Article 98 herein, according to which the said contract or act is formally valid.

Scope of Applicable Law

Article 102. (1) The law applicable to the contract, as determined by the provisions of this Chapter, shall govern:

1. the interpretation of the contract;
2. the performance of the obligations;
3. the consequences of full or partial non-performance of obligations;
4. the assessment of damages;
5. the grounds for extinguishment of the obligations;
6. the consequences of nullity of the contract;
7. the extinctive prescription;
8. the termination of rights consequent to the lapse of a specified period.

(2) In relation to the manner of performance and the steps that the creditor may take in the event of non-performance, the court shall have full or partial regard to the law of the State in which performance of the contract takes place (*lex loci solutionis*).

Interpretation and Application of the Provisions of this Chapter

Article 103. In the interpretation and application of the provisions of this Chapter, regard must be had to:

1. the circumstance that the said provisions are aligned with the Convention on the Law Applicable to Contractual Obligations of 19 June 1980, concluded in Rome by the Member States of the European Community, and
2. the need to achieve uniformity in the manner in which the rules of the said Convention are interpreted and applied in the States for which it is in force.

Inapplicability of the Provisions of this Chapter

Article 104. The provisions of this Chapter shall not apply to any obligations arising under a bill of exchange, a promissory note and a cheque.

Chapter Eleven

NON-CONTRACTUAL RELATIONSHIPS

Section I

Tort or Delict

Common Provisions

Article 105. (1) The obligations arising out of a tort or delict shall be governed by the law of the State within whose territory the direct damage arises or is likely to arise (*lex loci delicti commissi*).

(2) Where the author of the tort or delict and the person sustaining damage both have their habitual residence or a place of business in the same State at the time when the damage occurs, the law of that State shall apply.

(3) Notwithstanding the provisions of Paragraphs (1) and (2), 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 shall apply. 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.

Product Liability

Article 106. (1) Where the damage is caused or there is a risk of damage being caused by a defective product, the obligation for compensation shall be governed by the law of the State in which the person sustaining the damage is habitually resident, unless the person claimed to be liable can show that the product was introduced into the market of that State without the consent of the said person. In such case, the applicable law shall be the law of the State of the habitual residence or the place of business of the person claimed to be liable.

(2) Paragraph (1) shall not affect the application of the provisions of Article 105 (2) and (3) herein.

Unfair Competition and Restriction of Competition

Article 107. (1) The obligations arising out of an act of unfair competition and of restriction of competition shall be 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.

(2) Where an act of unfair competition affects exclusively the interests of a specific competitor, the provisions of Article 105 (2) and (3) herein shall apply.

Violation of Rights Relating to the Personality

Article 108. (1) The obligations arising out of a violation of rights relating to the personality by the mass communication media, and in particular print publications, radio, television or other means of dissemination of information, shall be governed, at the election of the person sustaining damage, by:

1. the law of the State in which the said person is habitually resident, or
2. the law of the State within whose territory the damage occurred, or
3. the law of the State of the habitual residence or the place of business of the person claimed to be liable.

(2) In the cases referred to in Items 1 and 2 of Paragraph (1), the person claimed to be liable must have reasonably foreseen that the damage would occur within the territory of the relevant State.

(3) The right of reply upon violation of rights relating to the personality by the mass communication media shall be governed by the law of the State in which the place of publication or transmission of the broadcast is situated.

(4) The provision of Paragraph (1) shall furthermore apply to obligations arising from violation of rights related to protection of personal data.

Violation of the Environment

Article 109. The obligations arising out of a violation of the environment shall be governed by the law of the State within whose territory the damage arises or is likely to arise, unless the person sustaining damage prefers to base the claim thereof on the law of the State in which the harmful act was committed.

Infringement of Intellectual Property Rights

Article 110. The obligations arising from an infringement of copyrights, of rights neighbouring on copyright, and on industrial property rights, shall be governed by the law of the State for which protection of the right is sought (*lex loci protectionis*).

Section II

Unjust Enrichment. Agency without Authority

Unjust Enrichment

Article 111. (1) The obligations arising out of unjust enrichment shall be governed by the law of the State in which the enrichment takes place.

(2) Where the unjust enrichment takes place in connection with another relationship between the parties, such as a contract that is closely connected with the unjust enrichment in question, the law governing that other relationship shall apply.

(3) Where at the time of the unjust enrichment taking place the parties had their habitual residence or place of business in the same State, the law of that State shall apply.

(4) If it appears from the circumstances as a whole that the unjust enrichment is manifestly more closely connected with another State, the law of that other State shall apply.

Agency without Authority

Article 112. (1) The obligations arising out of agency without authority shall be 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.

(2) Where the agency has been assumed in connection with another relationship between the parties, such as a contract that is closely connected with the agency without authority in question, the law governing that other relationship shall apply.

(3) 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 shall be the law of the State in which the person was present or the property was situated at the time of agency without authority.

(4) 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 shall apply.

Section III

Common Provisions on Non-Contractual Relationships

Choice of Applicable Law

Article 113. (1) After an obligation arising out of a non-contractual relationship regulated in Section I and II comes into existence, the parties may submit the said obligation to a law of their choice. The choice of applicable law must be expressed or clearly demonstrated by the circumstances of the case and may not affect the rights of third parties.

(2) Where at the time when the obligation comes into existence all the elements of the non-contractual relationship are connected to a State other than the State whose law has been chosen, the choice must be without prejudice to the application of the mandatory rules of that State, which cannot be derogated from by contract.

(3) The provisions of Paragraphs (1) and (2) shall not apply to the obligations regulated in Article 111 herein.

(4) The provisions of Articles 97 and 98 herein shall apply, mutatis mutandis, to the existence and material validity of the agreement on choice of applicable law.

Scope of Law Applicable to Non-Contractual Relationships

Article 114. (1) The law applicable to obligations arising out of a non-contractual relationship shall govern:

1. the conditions and extent of liability, including the determination of persons who are liable for acts performed thereby;

2. the grounds for exemption from liability, as well as any limitation of liability and any division of liability;
3. the measures which the court has power to take so as to ensure to prevention, termination of compensation of injury or damage;
4. the kinds of injury or damage for which compensation may be due;
5. the assessment of the damage or injury, in so far as prescribed by legal standards;
6. the assignability of a right to compensation;
7. the persons entitled to compensation for injury or damage sustained personally;
8. liability for injury caused by another person;
9. the manners in which an obligation may be extinguished, the extinctive prescription and the termination of rights consequent to the lapse of a specified period.
10. the proving of the obligations, to the extent that the applicable law contains rules which raise presumptions of law or other provisions regarding the burden of proof.

(2) The applicable law shall not govern the liability of the State and of bodies governed by public law, as well as of the authorities and representatives thereof, for acts performed thereby in the course of exercise of the powers thereof.

Taking Account of Rules of Safety and Conduct

Article 115. 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.

Direct Action against the Insurer

Article 116. The right of persons who have suffered injury or damage to take direct action against the insurer of the person claimed to be liable shall be governed by the law applicable to the obligation arising out of the relevant non-contractual relationship, unless the person who has suffered injury or damage prefers to base the claims thereof on the law applicable to the insurance contract.

Part Four

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND OTHER AUTHENTIC ACTS

Chapter Twelve

CONDITIONS OF AND PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND OTHER AUTHENTIC ACTS

Conditions of Recognition and Enforcement

Article 117. The judgments and authentic acts of the foreign courts and other authorities shall be entitled to recognition and enforcement where:

1. the foreign court or authority had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the State of the court seized was the only ground for the foreign jurisdiction over disputes in rem;
2. the defendant was served a copy of the statement of action, the parties were duly summonsed, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced;
3. if no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
4. if no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition is sought and the enforcement is applied for has been rendered;

5. the recognition or enforcement is not contrary to Bulgarian public policy.

Jurisdiction upon Recognition

Article 118. (1) A foreign judgment shall be recognized by the authority whereto the said judgment is presented.

(2) Should the conditions of recognition of the foreign judgment be raised as the issue in a dispute, an action for ascertainment may be brought before the Sofia City Court.

Jurisdiction upon Enforcement

Article 119. (1) An action for enforcement of a foreign judgment shall be brought before the Sofia City Court.

(2) A true copy of the judgment, authenticated by the rendering court, and a certificate issued by the same court, to the effect that the said judgment has taken effect, shall be attached to the statement of action. These documents must be certified by the Ministry of Foreign Affairs of the Republic of Bulgaria.

(3) Paragraph (2) shall furthermore apply in the cases referred to in Article 118 herein.

Verification of Conditions of Recognition and Enforcement

Article 120. (1) The court shall of its own motion verify the conditions covered under Article 117 herein.

(2) The defendant in the proceedings for recognition and enforcement of the foreign judgement may not invoke violations under Item 2 of Article 117 herein, which the said defendant could have raised before the foreign court.

Scope of Verification and Defence of Debtor

Article 121. (1) The court shall not examine the merits of the dispute decided by the foreign court.

(2) The debtor may raise the defence of extinguishment of the obligation on the basis of circumstances that have occurred after the foreign judgment took effect.

(3) The debtor may not raise the defence of extinguishment of the obligation on the basis of the circumstances referred to in Paragraph (2) after the judgment admitting enforcement has taken effect.

Recognition and Enforcement of Court Settlements

Article 122. The provisions of Article 117 to 121 herein shall furthermore apply to court settlements, if the said settlements enjoy equal status as judgments of court in the State in which the said settlements are reached.

Enforceability of Foreign Authentic Instruments

Article 123. The conditions covered under Articles 117 to 121 herein shall furthermore apply to the issue of a declaration of enforceability in the Republic of Bulgaria for a foreign authentic instrument which certifies a claim enforceable in the State in which the instrument was issued.

Recognition of Effects of Foreign Writs of Enforcement and Protection

Article 124. The civil effects of foreign writs of enforcement and protection shall be respected in the Republic of Bulgaria in connection with the presentment thereof, if the said writs were issued by a body which has international jurisdiction under Bulgarian law and if they are not contrary to Bulgarian public policy.

FINAL PROVISIONS

§ 1. In the Consumer Protection and Rules of Trade Act (promulgated in the State Gazette No. 30 of 1999; amended in Nos. 17 and 19 of 2003), Article 37a shall be repealed.

§ 2. In the Obligations and Contracts Act (promulgated in the State Gazette No. 275 of 1950; corrected in Transactions of the Presidium of the National Assembly No. 2 of 1951; amended

in No. 69 of 1951, No. 92 of 1952; State Gazette No. 85 of 1963, No. 27 of 1973, No. 16 of 1977, No. 28 of 1982, No. 30 of 1990; Nos. 12 and 56 of 1993, Nos. 83 and 104 of 1996, Nos. 83 and 103 of 1999, Nos. 34 and 19 of 2003), Articles 437 to 449 inclusive shall be repealed.

§ 3. In the Commerce Act (promulgated in the State Gazette No. 48 of 1991; amended in No. 25 of 1992, Nos. 61 and 103 of 1993, No. 63 of 1994, No. 63 of 1995, Nos. 42, 59, 83, 86 and 104 of 1996, Nos. 58, 100 and 124 of 1997, Nos. 52 and 70 of 1998, Nos. 33, 42, 64, 81, 90, 103 and 114 of 1999, No. 84 of 2000, Nos. 28, 61 and 96 of 2002, Nos. 19, 31 and 58 of 2003, No. 31 of 2005), Articles 281 and 282 shall be repealed.

§ 4. In the Code of Civil Procedure (promulgated in Transactions of the Presidium of the National Assembly No. 12 of 1952; amended in No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, Nos. 50 and 90 of 1961, corrected in No. 99 of 1961; amended in the State Gazette No. 1 of 1963, No. 23 of 1968, No. 27 of 1973, No. 89 of 1976, No. 36 of 1979, No. 28 of 1983, No. 41 of 1985, No. 27 of 1986, No. 55 of 1987, No. 60 of 1988, Nos. 31 and 38 of 1989, No. 31 of 1990, No. 62 of 1991, No. 55 of 1992, Nos. 61 and 93 of 1993, No. 87 of 1995, Nos. 12 and 26 of 1996, Nos. 37, 44 and 104 of 1996, Nos. 43, 55 and 124 of 1997, Nos. 59, 70 and 73 of 1998, Nos. 64 and 103 of 1999, Nos. 36, 85 and 92 of 2000, No. 25 of 2001, Nos. 105 and 113 of 2002, Nos. 58 and 84 of 2003, Nos. 28 and 36 of 2004), Article 7, Article 9 (3) and (4), Article 132 and Chapter Thirty-Two shall be repealed.

§ 5. The Family Code (promulgated in the State Gazette No. 41 of 1985; amended in No. 11 of 1992; corrected in No. 15 of 1992; amended in Nos. 63 and 84 of 2003) shall be amended as follows:

1. Article 129 to 135 and 137 to 143 inclusive shall be repealed.

2. In Article 136 :

(a) Paragraph (1) shall be repealed;

(b) Paragraph (2) shall be amended to read as follows:

"(2) A Bulgarian national who has attained the age of one year may be adopted by a foreigner who has presented an authorization to adopt a child according to his or her national law. By way of exception, considering the state of health of the child or where other important circumstances exist, any such child may be adopted even before attaining the age of one year, if this is in the child's best interests.";

(c) Paragraphs (3), (4), (5), (7), (8) and (9) shall be repealed.

§ 6. The Not-for-Profit Legal Entities Act (promulgated in the State Gazette No. 81 of 2000; amended in Nos. 41 and 98 of 2001, Nos. 25 and 120 of 2002) shall be amended as follows:

1. The heading of Chapter Four shall be amended to read as follows: "Branches of Foreign Not-for-Profit Legal Entities".

2. Article 51 shall be repealed.

3. In Article 52 :

(a) the heading shall be amended to read as follows: "Incorporation of a Branch";

(b) Paragraph (1) shall be repealed.

§ 7. In the Merchant Shipping Code (promulgated in the State Gazette Nos. 55 and 56 of 1970; corrected in No. 58 of 1970; amended and supplemented in No. 55 of 1975, No. 10 of 1987, No. 30 of 1990, No. 85 of 1998, No. 12 of 2000, No. 41 of 2001, No. 113 of 2002, No. 55 of 2004), Articles 21, 24 and 26 shall be repealed.

This Code was passed by the 39th National Assembly on the 4th day of May 2005 and the Official Seal of the National Assembly has been affixed thereto.