Hinweis: Die ursprüngliche Sprachfassung dieser Seite pt wurde unlängst geändert. Die Sprachfassung, die Sie ausgewählt haben, wird gerade von unserer Übersetzungsabteilung erstellt.
Swipe to change

Portugiesisch

Which country's law applies?

Portugal

Es gibt keine amtliche Übersetzung der Sprachfassung, die Sie ansehen.
Zur maschinellen Übersetzung dieses Inhalts. Sie dient lediglich zur Orientierung. Der Urheber dieser Seite übernimmt keinerlei Verantwortung oder Haftung für die Qualität dieses maschinell übersetzten Texts.

-----Englisch

1 Sources of the rules in force

The following sources of domestic law are provided for in Articles 1, 3 and 4 of the Portuguese Civil Code:
• Laws
• Usage
• Equity
The following are sources of international law (Article 8 of the Portuguese Constitution):
• The rules and principles of general or common international law form an integral part of Portuguese law.
• The rules set out in duly ratified or approved international conventions enter into force in Portuguese national law following their official publication and remain so for as long as they are internationally binding on the Portuguese State.
• The rules established by the competent bodies of international organisations to which Portugal belongs enter directly into force in Portuguese national law, provided that such is laid down in their respective founding treaties.
• The provisions of the treaties that govern the European Union and the rules established by its institutions in the exercise of their respective responsibilities apply in Portuguese national law in accordance with Union law and with respect for the fundamental principles of a democratic State based on the rule of law.

1.1 National rules

Laws

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

Usage

Usage is legally justifiable as a source of domestic law when both of the following conditions obtain:
• it is not contrary to the principles of good faith, and
• this is established by law (Article 3(1) of the Portuguese Civil Code).

Equity

Portuguese courts may settle a dispute in accordance with the principles of equity only under one of the following circumstances:
• when the law allows it (Article 4(a) of the Portuguese Civil Code), or
• when the parties agree and the legal relationship is available to them (Article 4(b) of the Portuguese Civil Code), or
• when the parties have agreed to equitable remedy in advance (Article 4(c) of the Portuguese Civil Code).

1.2 Multilateral international conventions

Conventions of the Hague Conference on Private International Law

Portugal is bound by 26 Hague Conventions:

1. Convention on civil procedure (The Hague, 1954)
See: here
2. Convention on the law applicable to maintenance obligations towards children (The Hague, 1956)
See: here
3. Convention Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children (The Hague, 1958)
See: here
4. Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (The Hague, 1961)
See: here
5. Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (The Hague, 1961)
See: here
6. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (The Hague, 1961)
See: here
7. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, 1965)
See: here
8. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971)
See: here
9. Supplementary Protocol to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971)
See: here
10. Convention on the Recognition of Divorces and Legal Separations (The Hague, 1970)

See: here
11. Convention on the Law Applicable to Traffic Accidents (The Hague, 1971)
See: here
12. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (The Hague, 1970)
See: here
13. Convention Concerning the International Administration of the Estates of Deceased Persons (The Hague, 1973)
See: here
14. Convention on the Law Applicable to Products Liability (The Hague, 1973)
See: here
15. Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (The Hague, 1973)
See: here
16. Convention on the Law Applicable to Maintenance Obligations (The Hague, 1973)
See: here
17. Convention on the Law Applicable to Matrimonial Property Regimes (The Hague, 1978)
See: here
18. Convention on Celebration and Recognition of the Validity of Marriages (The Hague, 1978)
See: here
19. Convention on the Law Applicable to Agency (The Hague, 1978)
See: here
20. Convention on the Civil Aspects of International Child Abduction (The Hague, 1980)
See: here
21. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague, 1993)
See: here
22. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (The Hague, 1996)
See: here
23. Convention on the International Protection of Adults (The Hague, 2000)
See: here
24. Convention on Choice of Court Agreements (The Hague, 2005)
See: here
25. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (The Hague, 2007)
See: here
26. Protocol on the Law Applicable to Maintenance Obligations (The Hague, 2007)
See: here

Conventions of the International Commission on Civil Status (ICCS)

Portugal is bound by 10 ICCS Conventions

These conventions can be found here

1. Convention on the issue of certain extracts from civil status records for use abroad (Paris, 27 September 1956). Approved: Law No 33/81, published in the Portuguese Official Gazette, Series I, No 196 of 27.8.1981
See: here
2. Convention on the issue free of charge and exemption from legalisation of copies of civil status records (Luxembourg, 26 September 1957). Approved: Law No 22/81, published in the Portuguese Official Gazette, Series I, No 189 of 19.8.1981
See: here
3. Convention on the international exchange of information relating to civil status (Istanbul, 4 September 1958). Approved: Decree-Law No 39/80, published in the Portuguese Official Gazette, Series I, No 145 of 26.6.1980
See: here
4. Convention on changes of surnames and forenames (Istanbul, 4 September 1958). Approved: Resolution of the Assembly of the Republic No 5/84, published in the Portuguese Official Gazette, Series I, No 40 of 16.2.1984
See: here
5. Convention extending the competence of authorities empowered to receive declarations acknowledging natural children (Rome, 14 September 1961). Approved: Resolution of the Assembly of the Republic No 6/84, published in the Portuguese Official Gazette, Series I, No 50 of 28.2.1984
See: here
6. International Convention on the issue of multilingual extracts from civil status records (Vienna, 8 September 1976). Approved: Government Decree No 34 /83, published in the Portuguese Official Gazette, Series I, No 109 of 12.5.1983
See: here
7. International Convention on the issue of multilingual extracts from civil status records (Vienna, 8 September 1976). Approved: Government Decree No 34 /83, published in the Portuguese Official Gazette, Series I, No 109 of 12.5.1983
See: here
8. Convention on the exemption from legalisation of certain records and documents (Paris, 15 September 1977). Approved: Decree-Law No 135/82, published in the Portuguese Official Gazette, Series I, No 292 of 20.12.1982
See: here
9. Convention on the law applicable to surnames and forenames (Munich, 5 September 1980). Approved: Resolution of the Assembly of the Republic No 8 /84, published in the Portuguese Official Gazette, Series I, No 54 of 3.3.1984
See: here
10. Convention on the issue of certificate of legal capacity to marry (Munich, 5 October 1980). Approved: Government Decree No 40/84, published in the Portuguese Official Gazette, Series I, no. 170 of 24.7.1984
See: here

Other relevant multilateral conventions that are binding on Portugal:
Paris Convention for the Protection of Industrial Property (Stockholm, 1967)
See: here and here
1951 UN Convention relating to the Status of Refugees and its 1967 Protocol
See: here and here
Protocol: here
Convention providing a Uniform Law for Bills of Exchange and Promissory Notes and Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes (Geneva, 1930)
See: here
Convention providing a Uniform Law for Cheques and Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques (Geneva, 1931)
See: here
1973 Washington Convention providing a Uniform Law on the Form of an International Will, to which Portugal is a party, accession approved under Decree-Law No 252/75
See: here
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)
See: here
Lugano II Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Council Decision 2009/430/EC of 27 November 2008)
See: here
Decision: here
1980 Convention concerning International Carriage by Rail, as amended by the Vilnius Protocol of 1999
See: here
The European Convention on Information on Foreign Law, signed in London in 1970
See: here
Council of Europe Convention on preventing and combating violence against women and domestic violence – 2011 Istanbul Convention
See: here
United Nations Convention on the Recovery Abroad of Maintenance – 1956 New York Convention
See: here and here
1.3 Principal bilateral conventions
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Republic of Angola, signed in Luanda (1995)
See: here
Agreement on Legal Cooperation between the Portuguese Republic and the Republic of Guinea-Bissau, signed in Bissau (1988)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the People's Republic of Mozambique, signed in Lisbon (1990)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Democratic Republic of São Tomé and Príncipe (1976)
See: here
Agreement for the recovery of maintenance between Portugal and the Republic of Cabo Verde (1982)
See: here
Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Republic of Cabo Verde (2003)
See: here
Agreement between the Government of the Portuguese Republic and the Government of the United States of America for the Recovery of Maintenance (2000)
See: here
Convention between the Portuguese Republic and the Grand Duchy of Luxembourg on legal aid in matters relating to custody and access rights (1992)
See: here
2 Implementation of conflict of law rules
When a conflict-of-law rule refers to a foreign law, this only implies the application of domestic law of that State; it does not mean that the Courts of that State have jurisdiction. The only exception to this is if it runs counter to some specific precept (Article 16 of the Portuguese Civil Code).
The application of foreign law is limited to the rules of the foreign legal system which are a part of the regime governing the area of law covered by the conflict-of-law rule (e.g. successions, family, obligations, rights in rem) (Article 15 of the Portuguese Civil Code).
2.1 Obligation of the judge to apply conflict of law rules on his own initiative
In Portugal, the Court is not subject to claims of the parties with regard to inquiry, interpretation and application of the rules of law (Article 5(3) of the Portuguese Code of Civil Procedure). From this general principle it follows that the national Court applies the conflict-of-law rules on its own initiative.
2.2 Renvoi
In Portugal, there are three key rules when it comes to *renvoi*:
a rule which provides for *renvoi* to the law of another State (Article 17 of the Portuguese Civil Code)
a rule which provides for *renvoi* to Portuguese law (Article 18 of the Portuguese Civil Code)
a rule which provides for cases in which *renvoi* is not permitted (Article 19 of the Portuguese Civil Code).
***Renvoi* to the law of another State**
In Portugal, the Court may resort to the law of another State.
Renvoi to the law of another State may be made when the Portuguese conflict-of-law rule refers to the law of another State and that State is deemed competent to handle the case (Article 17(1) of the Portuguese Civil Code).
Renvoi ends if:
the foreign law referred to by the Portuguese conflict-of-law rule is personal law, **and**
the interested party has their habitual residence in Portugal, or
resides in a country whose conflict-of-law rules deem that the laws of the State of their nationality are applicable (Article 17(2) of the Portuguese Civil Code).
However, there is always *renvoi* should both of the following conditions be met cumulatively:

the cases involve guardianship, curatorship, property relations between spouses, paternal responsibility, relations between the adopter and the adopted or successions upon death, and
the foreign law specified by the Portuguese conflict-of-law rule refers to the law of the place in which the immovable property is situated and it is deemed competent. (Article 17(3) of the Portuguese Civil Code).

***Renvoi* to Portuguese law**

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

Cases in which *renvoi* is not permitted

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

2.3 Change of connecting factor

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

2.4 Exceptions to the normal application of conflict rules

Violation of public policy

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

International conventions and EU legislation

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

2.5 Proof of foreign law

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

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Regime provided for in EU legislation

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

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

Matters relating to the confirmation, interpretation and completion of a declaration of intent and to lack of will or defects of will are governed:
by the law applicable to the substance of the transaction (Article 35(1) of the Portuguese Civil Code).
The value of a behaviour as a declaration of intent is determined:
by the law of the common habitual residence of the declarant and of the recipient of the declaration, or, failing that,
by the law of the place where the behaviour took place.
The value of silence as a means of declaration is determined:
by the law of the common habitual residence of the declarant and of the recipient of the declaration, or, failing that,
by the law of the place where the proposal was received (Article 35(2) and (3) of the Portuguese Civil Code).
The form of the declaration of intent is governed:
by the law applicable to the substance of the transaction, or
by the law in force in the place where the declaration is made, or
by the law of the State referred to by the conflict-of-law rule in force in the place where the declaration is made (Article 36(1) and (2) of the Portuguese Civil Code).
NB:
Alternatives 2) and 3) are admissible only if the law governing the substance of the transaction does not provide for the declaration to be null or unenforceable in the event of non-compliance with a certain form even if the transaction is concluded abroad.
The law applicable to legal representation is:

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

3.2 Non-contractual obligations

Regime provided for in EU legislation

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

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

I. The law applicable to extra-contractual liability based on a wrongful act or on risk is as follows:
a) the law of the State where the main harmful activity took place, or
b) in the case of an omission, the law of the place where the person responsible should have acted (Article 45(1) of the Portuguese Civil Code).
II. If the perpetrator is not deemed responsible under the law of the place where the harmful activity occurred or, in the case of an omission, the law of the place where the person should have acted, the applicable law is the law of the State where the harmful effect occurred, provided that two requirements are met cumulatively:
a) the law of the State where the harmful effect produced its effect deems the perpetrator responsible, and
b) the perpetrator should have foreseen the damage caused in that State as a consequence of their action or omission (Article 45(2) of the Portuguese Civil Code).
III. The aforementioned rules in I and II do not apply under the following circumstances:
a) if the perpetrator and the injured party have the same nationality or the same habitual residence and are occasionally abroad, the applicable law is that of their nationality or of their common habitual residence, as appropriate;
b) this is the case without prejudice to the provisions of the local State which must apply to all persons equally (Article 45(3) of the Portuguese Civil Code).

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

The concept of personal law

Individuals:
The personal law is that of the individual's nationality (Article 31(1) of the Portuguese Civil Code).
In the case of stateless persons, the personal law of the stateless person is that of their habitual residence (Article 32(1) of the Portuguese Civil Code).
However, should the stateless person be a minor or deprived person, the personal law is that of their legal domicile (Article 32(2) of the Portuguese Civil Code).
Legal persons:
The personal law of legal persons is that of the State where its main registered office and real seat of administration is situated (Article 33(1) of the Portuguese Civil Code).

The personal law of individuals governs:

marital status (Article 25 of the Portuguese Civil Code);
capacity (Article 25 of the Portuguese Civil Code);
the beginning and the end of legal personality (Article 26(1) of the Portuguese Civil Code);
the rights of personality – existence, protection and restrictions (with the proviso that the foreigner or stateless person enjoys no legal protection whatsoever that is not recognised under Portuguese law) (Article 27 of the Portuguese Civil Code);

age of majority (with the proviso that a change of personal law does not affect the majority reached under the previous personal law) (Article 29 of the Portuguese Civil Code);
guardianship and similar institutions aimed at protecting incapable persons (Article 29 of the Portuguese Civil Code).
The personal law of legal persons governs:
the capacity of the legal person;
incorporation, operation and competence of its bodies;
ways of acquiring and losing membership and the rights and duties pertaining thereto;
third party liability of the legal person, its respective bodies and members;
transformation, dissolution and termination of the legal person (Article 33(2) of the Portuguese Civil Code).
Transfer and merger of legal persons:
The transfer from one State to another of the registered office of a legal person does not extinguish its personality if the laws of both registered offices agree on this.
the merger of legal persons coming under different personal laws is assessed under both laws (Article 33(3) and (4) of the Portuguese Civil Code).
International legal persons:
The personal law is determined in the convention that created them or in the articles of association.
If this is not the case, the applicable law is the law of the country where the main registered office is located (Article 34 of the Portuguese Civil Code).
3.4 Establishment of parent-child relationship, including adoption
3.4.1 Establishment of parent-child relationship
The law applicable to the establishment of a parent-child relationship is as follows:
The personal law of the parent at the time the relationship was established (Article 56(1) of the Portuguese Civil Code)
The common national law of both parents. Failing this, the law of the common habitual residence of the spouses or, failing this, the personal law of the child, if it is the child of a married woman and the establishment of the parent-child relationship relates to the father (Article 56(2) of the Portuguese Civil Code).
The relationships between parents and children are governed:
by the common national law of the parents or, failing this,
by the law of the common habitual residence of the parents; or,
should the parents reside in different States, by the personal law of the child (Article 57(1) of the Portuguese Civil Code).
3.4.2 Adoption
The law applicable to adoption, the relationships between the adopter and the adopted, and the relationships between the adopted and their biological family is as follows:
the personal law of the adopter (Article 60(1) of the Portuguese Civil Code), or
if the adopters are married or if the adopted is the child of one of them, the common national law of the adopters or, failing this
the law of the common habitual residence of the adopters or, failing this,
the law of the country with which the family life of the adopters is most closely connected (Article 60(2) of the Portuguese Civil Code).
Situations under which adoption is not permitted:
Adoption is not permitted if the competent law which governs the relationships between the adopted and their biological parents does not recognise or does not allow adoption in those circumstances (Article 60(4) of the Portuguese Civil Code).
Situations under which consent is required for adoption or assuming a parent-child relationship:
When the personal law of the adopted requires their consent (Article 61(1) of the Portuguese Civil Code).
When the law which governs the relationship between the interested party and a third party with whom they have a legal family or guardian relationship, requires consent from the third party (Article 62(2) of the Portuguese Civil Code).
3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations
3.5.1 Marriage
The personal law of each of the betrothed applies:
to their capacity to wed;
to their capacity to sign a prenuptial agreement;
to the rules concerning absence of consent or vitiated consent of the contracting parties (Article 49 of the Portuguese Civil Code).
The law applicable to the forms of marriage is as follows:
The law of the State in which the marriage is celebrated;
The national law of either of the spouses if they are both foreigners who wed in Portugal before the respective consular or diplomatic officials, and if that law affords equal competence to Portuguese consular and diplomatic officials (Article 51(1) of the Portuguese Civil Code);
The diplomatic or consular officials of the Portuguese State or Catholic ministers may officiate the marriage of two Portuguese nationals or of one Portuguese national and a foreigner abroad (Article 51(2) of the Portuguese Civil Code);
In either of the situations mentioned in the last indent, the marriage must be preceded by publication of notices organised by the competent body, unless this has been waived (Article 51(3) of the Portuguese Civil Code);
A canonical marriage, officiated abroad, of two Portuguese nationals or of one Portuguese national and a foreigner, is deemed a Catholic marriage and is transcribed in Portugal based on the parish records, regardless of the legal form of the marriage (Article 51(4) of the Portuguese Civil Code).
The law applicable to the relationships between spouses and to changes to the matrimonial property regime is as follows:
the common national law (Article 52(1) of the Portuguese Civil Code) or, failing this,
the law of the common habitual residence or, failing this,
the law of the country with which the family life is most closely connected (Article 51(2) of the Portuguese Civil Code).
3.5.2 Unmarried/Cohabiting couples and partnerships
There are no national conflict-of-law rules that specifically provide for unmarried/cohabiting couples and partnerships.
Under domestic law, cohabitation is governed by Law No 7/2001 of 11 May 2001 (Protection of Domestic Partnerships), last amended by Law No 71/2018 of 31 December 2018.
Portuguese law defines cohabitation as the legal situation of a couple who, regardless of their gender, have been living together as if they were married for more than two years (Article 1(2) of the Law on the Protection of Domestic Partnerships).
In the absence of conflict-of-law rules specifically providing for cohabitation, the conflict of law rules relating to the relationships between spouses and to changes to the matrimonial property regime may be applied by analogy. However, this interpretation is subject to fluctuations in national case-law.

3.5.3 Divorce and judicial separation

Regime provided for in EU legislation

In the Member States of the European Union that participate in this mechanism of closer cooperation, the law applicable to divorce and judicial separation is determined by Council Regulation (EU) No 1259/2010, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

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

The law applicable to divorce and judicial separation of persons and assets is:

the common national law or, failing this,

the law of the common habitual residence or, failing this,

the law of the country with which the family life is most closely connected (Article 52 of the Portuguese Civil Code, applicable to the judicial separation of persons and assets, in accordance with Article 55(1) of the same Code).

Change in the law applicable to constancy of marriage:

In this case, only a fact that was relevant at the time it was established can be used as a basis for divorce or separation (Article 55(2) of the Portuguese Civil Code).

3.5.4 Maintenance obligations

Regime provided for in the Hague Protocol of 2007

In the Member States of the European Union (with the exception of Denmark), the law applicable to maintenance obligations arising from family relationships, parent-child relationships, marriage or affinity, including maintenance obligations owed to children whose parents are not married, is determined in accordance with the Hague Protocol on the law applicable to maintenance obligations of 23 November 2007, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

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

The applicable law, as appropriate, is the law indicated above:

under the heading *"Establishment of parent-child relationship, including adoption"* insofar as it concerns the *relationships between parents and children*, and the *relationships between adopters and the adopted*;

under the heading *"Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation and maintenance obligations"* insofar as it concerns the *relationships between spouses*.

In cases where maintenance is owed based on other family relationships:

The applicable law is the personal law of the respective parties.

In cases where maintenance is owed based on legal transactions:

The applicable law is the law indicated above under the heading *"Contractual obligations and legal acts"*, in particular the reference to *the obligations arising from legal transactions and the substance of the transaction*.

In cases where maintenance is owed based on a succession or testamentary disposition:

The applicable law is the law indicated below under the heading *"Wills and successions"*.

3.6 Matrimonial property regimes

Regime provided for in EU legislation

In the Member States of the European Union that participate in this mechanism of closer cooperation, one of which is Portugal, the law applicable to matrimonial property regimes and the property consequences of registered partnerships is determined, respectively, by Council Regulation (EU) No 2016 /1103 and Council Regulation (EU) No 2016/1104 , which override the national conflict-of-law rules indicated below, insofar as they provide differently.

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

The law applicable to prenuptial agreements (substance and effects) and to the matrimonial property regime (statutory or laid down by agreement) is as follows:

the national law of the couple at the time they wed (Article 53(1) of the Portuguese Civil Code); or, if they do not have the same nationality,

the law of the common habitual residence of the couple at the time they wed; or, failing this,

the law of the first matrimonial residence (Article 53(1) of the Portuguese Civil Code); or,

any of the previous regimes, if a foreign law is applicable, one of the betrothed habitually resides in Portugal and such is agreed to without prejudice to third party rights prior to the agreement (Article 53(3) of the Portuguese Civil Code).

As regards changes to the matrimonial property regime, see the reference to *the relationships between spouses and changes to the matrimonial property regime* under point 3.5.1 above – *'Marriage'* (Article 54 of the Portuguese Civil Code).

3.7 Wills and successions

Regime provided for in EU legislation

In the Member States of the European Union (with the exception of Denmark, Ireland and the United Kingdom), the law applicable to successions is determined according to Regulation (EU) No 650/2012, which overrides the national conflict-of-law rules indicated below, insofar as they provide differently.

The EU succession regulation does not prejudice the application of international conventions to which Portugal is a party at the time of its adoption (Article 75 (1) of Regulation (EU) No 650/2012).

Although Portugal is a signatory of the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, to date (April 2021) Portugal has not ratified the convention and is, therefore, not bound by it.

As such, international wills are governed by the 1973 Washington Convention providing a Uniform Law on the Form of an International Will, to which Portugal is a party, accession approved under Decree-Law No 252/75 of 23 May 1975, and by the rules laid down in the Portuguese Notaries' Code.

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

The personal law of the testator at the time of death applies:

to succession upon death

to the powers of the administrator of the inheritance and of the executor of the will (Article 61 of the Portuguese Civil Code).

The law of the testator at the time of the declaration applies:

to the capacity to carry out, change or revoke a disposition upon death (Article 63(1) of the Portuguese Civil Code);

to the special form required by virtue of the age of the person carrying out the disposition (Article 63(1) of the Portuguese Civil Code);

to the interpretation of the clauses and provisions upon death unless reference is made to another law (Article 64(a) of the Portuguese Civil Code);

to the absence of consent and vitiated consent (Article 64(b) of the Portuguese Civil Code);

to the admissibility of joint wills (Article 64(c) of the Portuguese Civil Code);

to the admissibility of agreements as to succession without prejudice to the regime indicated above under the heading *'Matrimonial property regimes'* (Article 64(c) of the Portuguese Civil Code).

NB:

In the event of a change of personal law after disposition of property upon death has been carried out, the person carrying out the disposition may still revoke said disposition pursuant to the preceding personal law (Article 65(1) of the Portuguese Civil Code).

Regarding the form of the dispositions of property upon death, and revocation of or change to the disposition, the following may be applied as an alternative:

the law where the act was carried out; or

the personal law of the deceased at the time of the declaration; or

the personal law of the deceased at the time of death; or

the law to which the local conflict-of-law rule refers *(Article 64(1) of the Portuguese Civil Code).*

Limitations to this regime:

Compliance with the form required by the personal law of the deceased at the time of the declaration must be respected if non-compliance results in the invalidity or unenforceability of the declaration, even if it is it made abroad.

3.8 Real property

The law applicable to possession, ownership and other rights in rem is:

the law of the State in whose territory the property is situated *(Article 46(1) of the Portuguese Civil Code).*

The law applicable to the establishment and transfer of rights in rem over property in transit is:

the law of the country of destination *(Article 46(2) of the Portuguese Civil Code).*

The law applicable to the establishment and transfer of rights in rem over means of transport subject to registration is:

the law of the country where registration was carried out *(Article 46(3) of the Portuguese Civil Code).*

The law applicable to the capacity to establish rights in rem over immovable property or to dispose of it is:

the law of the place where the property is situated, provided that said law so determines or, if it does not

the respective personal law *(Article 47 of the Portuguese Civil Code).*

The law applicable to copyright is:

the law of the place where the work was first published or, if it has not been published,

the personal law of the author, without prejudice to the provisions in special legislation. *(Article 48(1) of the Portuguese Civil Code)*

The law applicable to industrial property is:

the law of the country in which it was created *(Article 48(2) of the Portuguese Civil Code).*

3.9 Insolvency

As a general rule, the applicable law is that of the State in which the proceedings were brought (Article 276 of the Portuguese Insolvency and Corporate Recovery Code).

There are exceptions to this rule as regards the effects of the declaration of insolvency in certain cases:

• employment contracts and employment relationships are governed by the law applicable to the employment contracts (Article 277 of the Portuguese Insolvency and Corporate Recovery Code);

• in the case of the debtor's rights in relation to immovable property, a vessel or an aircraft subject to registration in a public register, the applicable law is that of the State under the authority of which the register is kept (Article 278 of the Portuguese Insolvency and Corporate Recovery Code);

• contracts conferring the right to acquire rights in rem over immovable property or the right to use that property are governed solely by the law of the State in whose territory the property is situated (Article 279(1) of the Portuguese Insolvency and Corporate Recovery Code);

• the rights of the seller in relation to assets sold to the insolvent debtor with reservation of title and the rights in rem of creditors or third parties over assets belonging to the debtor and which, at the time when the proceedings opened, were situated in the territory of the other State are governed solely by the law of that State (Article 280(1) of the Portuguese Insolvency and Corporate Recovery Code);

• the rights concerning registered or deposited securities are governed by the law applicable to the transfer thereof, under Article 41 of the Portuguese Securities Code (Article 282(1) of the Portuguese Insolvency and Corporate Recovery Code);

• the rights and obligations of the parties to a financial market or to a payment system as defined by Article 2(a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998, or the equivalent, are governed by the law applicable to that system (Article 285 of the Portuguese Securities Code and Article 282(2) of the Portuguese Insolvency and Corporate Recovery Code);

• sale and repurchase transactions within the meaning of Article 12 of Council Directive 86/635/EEC of 8 December 1986 are governed by the law applicable to such contracts (Article 283 of the Portuguese Insolvency and Corporate Recovery Code);

• ongoing proceedings concerning an asset or a right which forms an integral part of the insolvency estate are governed solely by the law of the State in which the proceedings are being conducted (Article 285 of the Portuguese Insolvency and Corporate Recovery Code).

Links to relevant national legislation:

Portuguese Constitution

Portuguese Civil Code

Portuguese Notaries' Code

Portuguese Insolvency and Corporate Recovery Code

Final Note

The information contained in this factsheet is of a general nature and is not exhaustive. It is not binding on the contact point, the European Judicial Network in civil and commercial matters, the courts or any other persons. It is not intended to replace consultation of the applicable legislation in force.

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