

Which law will apply? - Luxembourg

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1 Sources of the rules in force

1.1 National rules

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

1.2 Multilateral international conventions

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

A list of these conventions is available on the [Hague Conference](#) website.

1.3 Principal bilateral conventions

Some bilateral conventions contain conflict of law rules. For details, please visit the [Legilux](#) website.

2 Implementation of conflict of law rules

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

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

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

2.2 Renvoi

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

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

2.3 Change of connecting factor

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

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

2.4 Exceptions to the normal application of conflict rules

There are cases in which the court seized must apply its own national law even though the conflict of law rules confer jurisdiction on a foreign law:

- It is impossible to determine the foreign law.
- Stateless persons are involved.
- There is no solution in the foreign law.
- Urgent interim measures are taken.
- The foreign law conflicts with the public policy of the State of the court seized.

Where provisions are immediately applicable, the court also applies the law of the *forum* for:

- Procedural laws and laws regulating the courts.
- Legal provisions regulating the protection of workers and property leases.
- Legal protection of consumers.

- Finally, if, for purposes that are clearly fraudulent, the parties have chosen not to apply the national law of the court seized, but a foreign law that is artificially made applicable, the court must refuse to apply this law and must re-apply its own national law.

2.5 Proof of foreign law

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

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In principle, contractual obligations are governed by the law chosen by the parties, subject to compliance with mandatory legal provisions regulating public policy and fraudulent evasion of the law.

If the parties do not express a preference, the provisions of the 1980 Rome Convention and Regulation (EC) No 593/2008 of 17 June 2008 apply. In the latter case, the court will apply the law that is objectively most appropriate.

3.2 Non-contractual obligations

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

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

In principle, personal status is governed by the national law of the natural person, except where there are situation-specific criteria such as the habitual residence of the persons concerned and, in particular, that of any children concerned. This also applies to the formation and composition of names, as well as the conditions for changing names, as these form part of a person's status.

The general capacity to enter into a legal act and the capacity to bring legal proceedings are governed by the national law of the person concerned. However, the *locus standi* is governed by the law applicable to that right, given that it concerns the substance of the law. In contractual matters, this rule is mitigated if the co-contracting party is acting in good faith but incapacity is invoked on grounds that do not exist in the country where the act was performed. The law of the place of performance will then supersede the national law.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

In Luxembourg, in matters of legitimate descent, it is in principle the law governing the marriage that applies, i.e. the common national law of the parents, or the law of the common domicile, or the law of the *forum*.

Everything connected with the establishment of natural descent is in principle governed by the national law of the child.

As regards the type of evidence required to establish descent, the substantive conditions for recognition, the time limit and limitations for filing a petition contesting descent, and the means of defence against such a petition, it is the national law of the child that applies.

3.4.2 Adoption

- Conditions for adoption

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

- Effects of adoption

It is the national law of the adopter(s) that governs the effects of the adoption. Where the adoption is carried out by two spouses who hold different nationalities or are stateless, or where one of the spouses is stateless, the applicable law is that of their common habitual residence at the time when the adoption takes effect.

In the case of adoptions carried out abroad, there may be a conflict between the rules of jurisdiction laid down by the national law of the adopter and those of the adoptee. In such cases, the adoption is considered valid if the rules laid down by the law of the country where the adoption took place were observed and if the adoption was carried out before the competent authorities according to that law.

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

3.5.1 Marriage

- Conditions for the validity of marriage

The formal requirements are in principle governed by the law of the place where the marriage is contracted.

In order for a marriage to be valid under the Hague Convention of 14 March 1978 on celebration and recognition of the validity of marriages, the substantive conditions imposed by the internal laws of each of the two spouses must be observed. The internal laws are those designated by the conflict of law rules of the State where the marriage is contracted. Where at least one spouse holds the nationality of that State or habitually resides there, the substantive conditions required by the law of the State where the marriage is contracted must also be observed. The law governing the conditions for the validity of marriage also applies to the substantive conditions of any action to annul a marriage.

For marriages contracted abroad, there is a presumption of validity if the marriage certificate drawn up in accordance with the formal requirements of the law of the place where the marriage was contracted has been provided. Recognition may be refused if the marriage contracted abroad is clearly incompatible with Luxembourg's public policy.

- Effects of marriage

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

3.5.2 Unmarried/Cohabiting couples and partnerships

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

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

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

3.5.3 Divorce and judicial separation

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

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

3.5.4 Maintenance obligations

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

- (a) the law of any State of which either party is a national at the time of designation;
- (b) the law of the State in which either party has his/her habitual residence at the time of designation;
- (c) the law designated by the parties to govern their property regime or the law effectively applied to that regime;
- (d) the law designated by the parties to govern their divorce or legal separation or the law effectively applied to that divorce or legal separation.

3.6 Matrimonial property regimes

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

3.7 Wills and successions

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

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

- Legal succession

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

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

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

- Testate succession

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

3.8 Real property

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

3.9 Insolvency

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

This applies to the effects of all collective proceedings initiated in Luxembourg and to those declared abroad. However, for the particular effects of the insolvency of one of the parties on the rights that may be invoked by its co-contracting party, it is the law of the State where the insolvency has been declared that applies.

The jurisdiction of that law is limited to the specific effects of the insolvency and does not extend to all aspects of the operation affected by the insolvency.

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