

Domov>Sprožitev sodnega postopka>Kje in kako>Uporaba nacionalne zakonodaje

Which country's law applies?

Litva

1 Sources of the rules in force

1.1 National rules

Chapter II, Part I, Book One of the Civil Code of the Republic of Lithuania

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

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

1.2 Multilateral international conventions

Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors.

Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

Convention on the Law Applicable to Contractual Obligations opened for signature in Rome on 19 June 1980.

Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Convention of 30 October 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the new Lugano Convention)

1.3 Principal bilateral conventions

Agreement between the Republic of Lithuania and the Republic of Armenia on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Uzbekistan on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Kazakhstan on legal assistance and legal relations in civil, family and criminal cases.

Protocol to the agreement between the Republic of Lithuania and the Republic of Kazakhstan on legal assistance and legal relations in civil, family and criminal cases

Agreement between the Republic of Lithuania and Ukraine on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Moldova on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Poland on legal assistance and legal relations in civil, family, labour and criminal cases.

Agreement between the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia on legal assistance and legal relations.

Agreement between the Republic of Lithuania and the Republic of Belarus on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the People's Republic of China on legal assistance in civil and criminal matters.

Agreement between the Republic of Lithuania and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases.

Agreement between the Republic of Lithuania and the Republic of Turkey on legal and judicial cooperation in commercial and civil matters.

2 Implementation of conflict of law rules

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

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

2.2 Renvoi

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

2.3 Change of connecting factor

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

2.4 Exceptions to the normal application of conflict rules

In accordance with Article 1.11 of the Civil Code of the Republic of Lithuania, the rules of foreign law do not apply if their application would be contrary to the public order established by the Constitution of the Republic of Lithuania and other laws. In such instances, the civil laws of the Republic of Lithuania apply. The mandatory rules of law of the Republic of Lithuania or of another state with which the dispute is most closely connected apply irrespective of the fact that the parties have chosen a different foreign law by agreement. In deciding on those matters, the court must take into account the nature and objectives of those rules and the consequences of their application or non-application. The foreign law applicable under this Code may not be given effect where, in the

light of all circumstances of the case, that law has no clear connection with the case or part of it, but rather the case is connected to the law of another state. This rule does not apply where the applicable law has been chosen by agreement between the parties to the transaction.

2.5 Proof of foreign law

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

3 Conflict of law rules

3.1 Contractual obligations and legal acts

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

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

- (1) the domicile or central administration of the party who is required to perform the obligation most characteristic of the contract. If the obligation is more connected to the law of the state in which the place of business of the party to the obligation is situated, the law of that state applies;
- (2) the location of immovable property, where the subject matter of the contract is a right in immovable property or a right to use immovable property;
- (3) the principal place of business of the carrier at the time of conclusion of a contract of carriage, provided that the cargo was loaded or the head office of the consignor or the place of dispatch of the cargo is located in the same state as the principal place of business of the carrier.

The latter provision does not apply where the place of performance of the obligation that is most characteristic of the contract cannot be determined and the presumptions laid down in that paragraph cannot be relied on because it is apparent from the circumstances of the case that the contract is more closely connected with another state.

Insurance contracts are governed by the law of the state of the insurer's domicile or, in the case of insurance of immovable property, by the law of the state in which the property is situated.

An arbitration agreement is governed by the law governing the main contract or, failing that, by the law of the place where the arbitration agreement was concluded or, where the place of conclusion cannot be determined, by the law of the state of the place of arbitration.

Contracts concluded at a stock exchange or an auction are governed by the law of the state of the exchange or auction.

In accordance with Article 1.39 of the Civil Code of the Republic of Lithuania, the right of the parties to a contract to choose the law applicable to a contractual obligation, as provided for in Article 1.37 of the Code, does not exclude or restrict the right of a consumer to defend his interests by the means and remedies defined by the law of the state of his habitual residence, provided that:

- (1) the consumer contract was concluded in the country of his habitual residence on the basis of a special offer or advertising in that country;
- (2) the consumer has been induced by the other contracting party to travel to a foreign country to conclude the contract;
- (3) the other party or its representative has received the order from the consumer in his state of habitual residence.

Where the parties to a consumer contract have not chosen the applicable law, the law of the state of the consumer's habitual residence applies. The provisions of this Article do not apply to contracts for carriage or to contracts for services where the services are only supplied to the consumer in a country other than the Republic of Lithuania.

In accordance with Article 1.38 of the Civil Code of the Republic of Lithuania, the law applicable to the form of the transaction is determined in accordance with the provisions of Article 1.37(1) of the Code. Where the parties to the transaction have not chosen the applicable law by mutual agreement, the form of the transaction is governed by the law of the place of the transaction. A contract concluded between parties located in different states is also valid if its form meets the legal requirements applicable to the form of such a transaction in at least one of those states. The form of transactions regarding any immovable property or rights in it must meet the requirements of the law of the state in which the immovable property is situated. The form of consumer contracts is governed by the law of the consumer's habitual residence.

In accordance with Article 1.40 of the Civil Code of the Republic of Lithuania, the form of a power of attorney is governed by the law of the state in which it is issued. The time-limit of validity of a power of attorney, unless specified in the power of attorney, the rights and obligations of the agent, the liability of the principal and the agent towards each other and their liability towards third persons are governed by the law of the state in which the agent operates.

In accordance with Article 1.41 of the Civil Code of the Republic of Lithuania, donation agreements are governed by the law of the state of the donor's habitual residence or place of business, with the exception of donation agreements for immovable property, for which the law of the location of the immovable property applies. A donation agreement may not be declared null and void if its form meets the requirements of the law of the place of conclusion of the donation agreement or of the state of the donor's habitual residence or place of business.

In accordance with Article 1.42 of the Civil Code of the Republic of Lithuania, relations connected with the assignability of a claim and the transfer of a debt are governed by the law chosen by agreement between the parties. The law chosen by the parties may not be invoked against debtors in relation to the assignment of the claim unless their consent to the choice of law has been obtained. If the parties have not chosen the applicable law, the law governing the underlying obligation for which the resulting claim (debt) is assigned (transferred) applies to the relationship connected with the assignment of the claim and the transfer of the debt. The form of the assignment of a claim or transfer of a debt is governed by the law applicable to the assignment of a claim or transfer of a debt.

The rules of the Rome I Regulation also apply.

3.2 Non-contractual obligations

In accordance with Article 1.43 of the Civil Code of the Republic of Lithuania, the rights and obligations of the parties under obligations arising from damage caused are determined, at the choice of the aggrieved party, by the law of the state in which the act or other circumstances giving rise to the damage

occurred or by the law of the state in which the damage occurred. Where it is not possible to determine the state in which the act was committed or other circumstances or the damage occurred, the law of the state with which the action for damage is most closely connected applies. After the occurrence of damage, the parties may agree that compensation for the damage will be governed by the law of the state of the court hearing the case. If both parties are habitually resident in the same state, the matter of compensation for damage is governed by the law of that state.

Obligations arising out of damage caused by defective products are governed by the law of the state in which the damage occurred if the habitual residence of the aggrieved party or place of business of the person liable for the damage is situated in that state or the aggrieved party has purchased the product in that state. If the place of business of the person liable for the damage is situated or the aggrieved party has purchased the product in the state of the aggrieved party's habitual residence, the law of the state of the aggrieved party's habitual residence applies. Where the applicable law cannot be determined on the basis of the criteria set out in this paragraph, the law of the state of the place of business of the person liable for the damage applies, unless the claimant bases his claim on the law of the state in which the damage occurred.

The law applicable to the obligations arising in relation to the damage determines the conditions of civil liability, its extent, the person responsible and the conditions for exemption from civil liability.

In accordance with Article 1.44 of the Civil Code of the Republic of Lithuania, the law applicable to claims for compensation of damage caused at the time of an accident is determined in accordance with the Hague Convention on the Law Applicable to Traffic Accidents.

In accordance with Article 1.45 of the Civil Code of the Republic of Lithuania, compensation claims for damage caused to personal non-property rights by the mass media is governed, at the choice of the aggrieved party, by the law of the state in which the aggrieved party's habitual residence or place of business is situated or the damage occurred, or by the law of the state of the habitual residence or place of business of the person causing the damage. The right to respond (denial) is subject to the law of the state in which the publication in question was published or from which the radio or television broadcast in question was aired.

In accordance with Article 1.46 of the Civil Code of the Republic of Lithuania, compensation claims for damage caused by unfair competition is governed by the law of the state in whose market the negative effects of unfair competition occurred. If unfair competition has only affected the interests of an individual person, the applicable law is that of the state in which the place of business of the aggrieved party is located.

The rules of the Rome II Regulation also apply.

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

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

Under Article 1.16 of the Civil Code of the Republic of Lithuania, the civil capacity of foreign citizens and stateless persons is determined by the law of the state of their habitual residence. If such persons have no habitual residence or it cannot be determined with certainty, their legal capacity is determined in accordance with the law of the state in which they entered into the transaction concerned. If a person lives in more than one state, the law of the state with which the person is most closely connected applies. Foreign citizens and stateless persons permanently resident in the Republic of Lithuania may be recognised as incapacitated in certain areas or as having limited legal capacity in certain areas or may be assisted in decision-making in accordance with the procedure laid down by the laws of the Republic of Lithuania. A change of habitual residence has no effect on legal capacity if legal capacity has been already acquired before the change of habitual residence.

In accordance with Article 1.17 of the Civil Code of the Republic of Lithuania, a person may not invoke incapacity under the law of the state of their habitual residence if they had legal capacity under the law of the state in which the transaction was concluded, unless the other party to the transaction was or should have been aware of that person's incapacity under the law of the state of his habitual residence. These provisions do not apply to family and succession law nor to rights in rem.

Under Article 1.18 of the Civil Code of the Republic of Lithuania, foreign citizens and stateless persons are recognised as missing or declared dead in accordance with the law of the state of their last known habitual residence.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

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

3.4.2 Adoption

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

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

3.5.1 Marriage

Capacity to marry and other conditions of marriage are determined by the law of the Republic of Lithuania. A marriage should be registered with civil registry authorities of the Republic of Lithuania if at least one of the spouses is habitually resident in Lithuania or at least one of them is a citizen of the Republic of Lithuania at the time of the marriage. Capacity to marry and other conditions of marriage of foreign citizens and stateless persons not habitually resident in the Republic of Lithuania may be determined by the law of the state of habitual residence of both persons wishing to marry, provided that the marriage will be recognised in the state of the habitual residence of at least one of the persons wishing to marry. A marriage lawfully entered into in a foreign state is

recognised in the Republic of Lithuania, except where both spouses habitually resident in the Republic of Lithuania married in a foreign state with the aim of avoiding annulment of the marriage in accordance with the laws of the Republic of Lithuania (Article 1.25 of the Civil Code). The procedure for contracting marriage is determined by the law of the state in which the marriage took place. A marriage is also recognised as valid if the procedure by which it was contracted is consistent with the requirements of the law of the state of habitual residence or nationality of at least one of the spouses at the time of marriage (Article 1.26 of the Civil Code). The personal relations between spouses are governed by the law of the state of their habitual residence. If the spouses are habitually resident in different states, their personal relations are governed by the law of the state of their last common habitual residence. If the spouses have not had a common habitual residence, the law of the state with which the spouses have the closest personal relations applies. If it is not possible to determine with which state the spouses have the closest personal relations, the law of the state where the marriage took place applies (Article 1.27 of the Civil Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

Not regulated.

3.5.3 Divorce and judicial separation

In accordance with Article 1.29 of the Civil Code, legal separation and divorce are governed by the law of the habitual residence of the spouses. If the spouses do not have a common habitual residence, the law of the state of their last common habitual residence or, in the absence thereof, the law of the state of the court examining the case applies. If the law of the state of citizenship of both spouses prohibits divorce or lays down special conditions for divorce, the marriage may be dissolved in accordance with the laws of the Republic of Lithuania where one spouse is also a national of the Republic of Lithuania or is habitually resident in the Republic of Lithuania.

The rules of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III) also apply.

3.5.4 Maintenance obligations

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

The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations also applies.

3.6 Matrimonial property regimes

In accordance with Article 1.28 of the Civil Code, the legal status of matrimonial property is determined by the law of the state of their habitual residence. If the spouses are habitually resident in different states, the law of the state of citizenship of both spouses applies. Where the spouses are citizens of different states and have never had a common habitual residence, the law of the state where the marriage took place applies. The legal status of matrimonial property under contracts is determined by the law of the state chosen by agreement between the spouses. In this case, the spouses may choose the law of the state of current or future habitual residence or the law of the state in which the marriage took place or of which one of the spouses is a citizen. An agreement between the spouses on the applicable law is deemed valid if it meets the requirements of the law of the state of their choice or of the state in which the agreement was concluded. The applicable law chosen by agreement may be invoked against third parties only if the third parties were or should have been aware of that fact. The applicable law chosen by agreement between the spouses may be used to resolve a dispute concerning rights in rem in immovable property only where the requirements for the public registration of that property and rights in rem in immovable property in the state in which the immovable property is situated have been met. Agreement between the spouses concerning a change in the legal status of property is governed by the law of the state of the spouses' habitual residence at the time of such change. If, at the time of the change of legal status, the spouses lived in different states, the law of the state of their last common habitual residence or, in the absence of such habitual residence, the law which determines the property relationship between the spouses applies.

3.7 Wills and successions

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

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

3.8 Real property

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

3.9 Insolvency

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