

Private International Law Statute

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CHAPTER I GENERAL PROVISIONS

Article 1. Issues of fact related to foreign legal systems shall be governed by the rules of Public International Law on the issue, in particular those established in international treaties in force in Venezuela; in lack thereof, Venezuelan rules of Private International Law shall be applied; in lack thereof, use shall be made of analogy and, finally, generally accepted principles of Private International Law shall govern.

Article 2. Foreign law proving to be competent shall be applied in accordance with the principles governing in the respective foreign country, so as to allow the objectives sought by the Venezuelan rules of conflict should be met.

Article 3. When different legal systems coexist in the foreign law proving to be competent, the conflict of law arising between those systems shall be solved in accordance with the principles being in force in the corresponding foreign Law.

Article 4. When the competent foreign Law should provide that the Law of a third State is applicable, and this third State, on its turn, should provide that it is competent, this third State's domestic law shall be applicable.

When the foreign Law should provide that Venezuelan law is applicable, this Law shall be applied.

Article 5. Issues of law having been created in accordance with a foreign Law attributing its own competence under international admissible criteria shall produce effect in the republic, provided they are not in contradiction with Venezuelan rules of conflict, that the Venezuelan law should claim exclusive competence over the respective matter, or that they should be clearly incompatible with general principles of Venezuelan public policy.

Article 6. Previous, preliminary or incidental issues that may arise with respect to a main issue, need not necessarily be solved under the Law regulating the latter.

Article 7. The several Laws that may be competent to govern the different aspects of a juridical relationship, shall be applied harmoniously, aiming at reaching the goals sought by each of those Law.

Possible difficulties resulting from their simultaneous application shall be solved considering the requirements imposed by equity in the specific case.

Article 8. Provisions of foreign Law to be applied in accordance with this statute, shall only be excluded when their application should produce results being clearly incompatible with the essential principles of Venezuelan public policy.

Article 9. When the foreign Law having been declared applicable to the issue should establish essential institutions or proceedings for adequate application thereof not being contemplated by the Venezuelan legal system, applications of said foreign Law may be denied provided that Venezuelan Law should not have analogous institutions or proceedings.

Article 10. Notwithstanding the provisions of this statute, imperative norms of Venezuelan law having been adopted to regulate issues of fact connected to several juridical systems shall necessarily apply.

CHAPTER II OF DOMICILE

Article 11. An individual's domicile is in the territory of the State where he [she] has his [her] regular residence.

Article 12. The married woman has her own domicile different from her husband's if it has been acquired in accordance of what is provided in the former article.

Article 13. The domicile of minors and incompetent persons being subject to parental power, to guardianship or curatorship, is found in the territory of the State where they have their regular residence.

Article 14. When the regular residence in the territory of a State should be the exclusive results of functions conferred by a national, foreign or international public body, such will not produce the effects provided in the former articles.

Article 15. Provisions of this chapter apply as long as this statute refers to the domicile of an individual and, generally, when the domicile constitutes a mean to determine the applicable Law of the Courts' jurisdiction.

CHAPTER III OF PERSONS

Article 16. The existence, status and capacity of persons are governed by the Law of their domicile.

Article 17. The change of domicile does not restrict any acquired capacity.

Article 18. A person being incapable under the former provisions acts validly if deemed capable by the Law governing the act's contents.

Article 19. Limitations of capacity established in the Law of the domicile, based on racial, nationality, religion or rank differences shall not produce effects in Venezuela.

Article 20. The existence, capacity, operation and dissolution of bodies corporate of a private nature are governed by the Law of the place of their creation.

"Place of their creation" means that where the formal and substantial requirements for the creation of such bodies corporate are met.

CHAPTER IV OF THE FAMILY

Article 21. The capacity to enter into matrimony and the substantial requirements of matrimony are governed, for each of the contracting parties, by the Law of their respective domicile.

Article 22. The personal and property effects of matrimony are governed by the Law of the spouse's joint domicile. Should they have different domiciles, then the last joint domicile shall apply.

Prenuptial agreements being valid under a competent foreign Law may be recorded at any time with the corresponding Venezuelan Main Public Records Office, when pretending that they may produce effects as to third bona fide persons, over real property located in the territory of the Republic.

Article 23. Divorce and separation are governed by the Law of the domicile of the plaintiff spouse.

The plaintiff spouse's change of domicile produces its effects only one year after having entered into the territory of a State with the purpose of establishing regular residence therein.

Article 24. The establishment of filiation, as well as the relations between parents and their children, are governed by the Law of the child's domicile.

Article 25. The Law of their domicile shall apply to the adopting parent and the adopted child as to all related to substantial requirements being necessary for the adoption's validity.

Article 26. Guardianship and other institutions aimed at protecting the incapable persons are governed by the law of the incapable person's domicile.

CHAPTER V OF PROPERTY

Article 27. The creation, contents and extension of in rem rights over property, are governed by the Law of the place of their situation.

Article 28. The moving of personal property has no influence on the rights that may have been validly created under the rule of the former Law. Such rights, however, may only be opposed to third parties, after fulfillment of the requirements being provided therefore by the Law of the new situation.

CHAPTER VI OF OBLIGATIONS

Article 29. Conventional obligations are governed by the Law agreed to by the parties.

Article 30. Lacking a valid indication, conventional obligations are governed by the Law to which they are most directly linked. The Court shall consider all the objective and subjective elements arising from the contract in order to determine such Law. It shall bear in mind also the General Principles of Business Law accepted by international organizations.

Article 31. In addition to the provisions of the former articles, whenever it should so result, application shall be made of norms, customs and principles of International Business Law, as well of generally accepted trade uses and practices, with the purpose of reifying the requirements imposed by justice and fairness in the solution of a concrete case.

Article 32. Torts are governed by the Law of the place where its effects have been produced. The victim, however, may move for application of the Law of the State where the cause generating the tort was produced.

Article 33. Management of affairs, payment of what is undue and enrichment without consideration are governed by the Law of the place where the fact generating the obligation was realized.

CHAPTER VII OF SUCCESSIONS

Article 34. Successions are governed by the Law of the principal's domicile.

Article 35. Descendants, ascendants and the surviving spouse not being legally separated as to property, may, in all cases, make the right to the legally mandatory inheritance portion provided by Venezuelan Law, effective as to property situated in the Republic.

Article 36. In the event that, under the competent Law, the succession rights may correspond to the State, or if there were no heirs or if their existence should be ignored, property situated in the Republic shall pass to the Venezuelan Nation's patrimony.

CHAPTER VIII OF THE FORM AND PROOF OF ACTS

Article 37. Juridical acts are valid, as to the form, if they meet the requirements of any of the following juridical systems.

- 1) That of the place of the act's execution,
- 2) That governing the act's contents, or
- 3) That of the domicile of the executing party or of the executing parties' joint domicile.

Article 38. The means of evidence, their efficacy and the determination of the burden of the proof are governed by the Law governing the corresponding juridical relation, without prejudice to the fact that its procedural forwarding may adjust to the Law of the Court or of the officer before whom it is produced.

CHAPTER IX OF JURISDICTION AND COMPETENCE

Article 39. Additionally to the jurisdiction being vested by law on the Venezuelan Courts in actions filed against persons with domicile in the national territory, the Courts of the Republic shall have jurisdiction in actions filed against persons having their domicile abroad in cases contemplated in articles 40, 41 and 42.

Article 40. Venezuelan Courts shall have jurisdiction to hear in trials resulting from the filing of actions in property:

- 1) When the actions at issue should relate to the disposition or holding of personal or real property situated in the territory of the Republic.
- 2) When the actions at issue should relate to obligations to be complied within the territory of the Republic or deriving from contracts entered or facts verified in said territory.
- 3) When the defendant should have been personally served within the territory of the Republic.
- 4) When the parties should expressly or tacitly submit to their jurisdiction.

Article 41. Venezuelan Courts shall have jurisdiction to hear in trials resulting from the filing of actions related to estates [or universal assets]:

- 1) When Venezuelan Law should be competent, under the provisions hereof to govern the substance of the litigation;

2) When property being an integral part of the estate [or the universal assets] should be situated in the territory of the Republic

Article 42. Venezuelan Courts shall have jurisdiction to hear in trials resulting from the filing of actions on the status of persons or on family relationships:

1) When Venezuelan Law should be competent, under the provisions hereof to govern the substance of the litigation;

2) When the parties should expressly or tacitly submit to their jurisdiction, provided the cause should have some effective link.

Article 43. Venezuelan Courts shall have jurisdiction to adopt provisional measures to protect the persons being in the territory of the Republic, even when in want of jurisdiction to hear on the substance of the litigation.

Article 44. Express submission shall be evidenced in writing.

Article 45. Tacit submission shall result, for plaintiff, from the fact of filing the complaint and, for defendant, from the fact of performing during the trial, personally or through counsel, any action other than moving for dismissal for want of jurisdiction or to oppose a preventive measure.

Article 46. Submission is not valid in the issue of actions affecting the creation, amendment or extinction of rights in rem on real property, save when the Law of the real property's situation should so allow it.

Article 47. Jurisdiction corresponding to Venezuelan Courts, under the former provisions may not be waived conventionally in favor of foreign Courts or of arbitrators deciding abroad, in cases where the issue should refer to disputes related to rights in rem on real property situated in the territory of the Republic, or when dealing with issues not admitting settlement or affecting essential principles of Venezuelan public policy.

Article 48. Whenever Venezuelan Courts should have jurisdiction under this Chapter's provisions, territorial internal competence shall be governed by provisions in articles 49 through 51 hereof.

Article 49. As to competence to hear on trials originated by the filing of actions of a property related nature:

1) When forwarding actions related to the disposition or holding of personal or real property situated in the territory of the Republic, it shall pertain to the Court of the place where the property is located;

2) When forwarding actions related to obligations to be performed in the territory of the Republic or deriving from contracts entered or facts verified in said territory, it shall

pertain to the Court of the location where the obligation should be performed or where the contract should have been entered or where the fact originating the obligation should have been verified;

3) When the defendant should have been personally served in the territory of the Republic, [it shall pertain to] the Court of the place where service occurred;

4) When the parties should have expressly and generically submitted to the Courts of the Republic, [it shall pertain] to that turning to be competent by virtue of any of the criteria indicated in the three former paragraphs and, by default, to the Court of the capital of the Republic.

Article 50. As to competence to hear on trials originated by the filing of actions related to estates [or universal set of property]:

1) When Venezuelan Law should be competent, under the provisions hereof, to govern the substance of the litigation, it shall pertain to the Court where the person through whom competence is attributed to Venezuelan Law should have domicile.

2) When property being an integral part of an estate [or universal set of property] should be situated in the territory of the Republic, it shall pertain to the Court of the place where most of the property being part of the estate [or universal set of property] is situated.

Article 51. As to competence to hear on trials originated by the filing of actions related to the status of persons or to family relations:

1) When Venezuelan Law should be competent, under provisions hereof, to govern the substance of the litigation, it shall pertain to the Court where the person through whom competence is attributed to Venezuelan Law should have domicile.

2) When the parties should expressly or tacitly submit to its jurisdiction, it shall pertain to the Court of the place where the cause should be linked to the territory of the Republic.

Article 52. The norms established in articles 49, 50 and 51 do not exclude the competence of different Courts, when it should be attributed to them by other laws of the Republic.

CHAPTER X OF THE EFFICACY OF FOREIGN JUDGMENTS

Article 55. Foreign judgments shall be effective in Venezuela provided they meet the following requirements:

1) That they should have been issued in civil or commercial matters, or, generally, in matters related to private juridical relationships;

- 2) That they should force of res judicata under the Law of the State where they were pronounced;
- 3) That they should not relate to in rem rights on real property situated in the Republic or that exclusive jurisdiction to know of the affair should not have been taken away from Venezuela;
- 4) That the sentencing State's Courts should have jurisdiction to hear the cause, under the general principles on jurisdiction established by Chapter IX hereof;
- 5) That the defendant should have been duly served, with sufficient time to appear, and that, generally, procedural guarantees should have been afforded to ensure a reasonable possibility of defense;
- 6) That they should not be incompatible with a previous judgment having authority of res judicata; and that there should not be pending, before Venezuelan Courts, a trial with the same object and between the same parties having commenced before the foreign judgment should have been issued.

Article 54. If a foreign judgment should not be able to display full efficacy, its partial efficacy may be admitted.

Article 55. In order to proceed with the enforcement of a foreign judgment, domestic enforcement thereof should have been awarded in accordance with the procedure provided by law and after previous verification that it meets the requirements of article 53 hereof.

CHAPTER XI OF PROCEDURE

Article 56. The competence and form of procedure shall be governed by the Law of the officer before it is forwarded.

Article 57. The Venezuelan judge's want of jurisdiction with regard to the foreign Judge shall be declared ex officio, or at the request of party, at any stage or degree of process.

Any motion for a ruling on jurisdiction suspends the proceedings until the respective ruling should have been made.

In the event that jurisdiction of Venezuelan should be upheld, the cause shall go on as from the stage where it should be found when the ruling is made; however, the decision denying it shall be brought to the Supreme Court of Justice, at Political and Administrative Chamber, for which purpose the record shall be forthwith remitted to it and if such ruling should be upheld, the cause being thus closed.

Article 58. Exclusive Venezuelan jurisdiction is not excluded by the pendency before a foreign Judge of the same cause or of any other linked to it.

Article 59. The Courts of the Republic may address themselves to any competent foreign authority, by means of letters rogatory, for the performance of services, evidence related proceedings or any other judicial action turning to be necessary for good development of the process. They shall also process, as briefly as possible, the letters rogatory coming from foreign Courts adjusted to the principles of International Law applicable to the matter.

Article 60. Foreign Law shall be applied ex officio. The parties may bring information related to the applicable foreign Law and the Courts and authorities may issue orders tending to better knowledge thereof.

Article 61. Recourses provided by the law shall be admissible under any juridical system which should have been applied in the decision being subject to such recourses.

Article 62. Save for provisions in article 47 hereof, everything related to international commercial arbitration shall be governed by special norms regulating the matter.

CHAPTER XII FINAL PROVISIONS

Article 63. All norms regulating the subject matter of this statute are hereby derogated.

Article 64. This statute shall be in force six months after its publication in the Official Gazette.

Given, signed and under seal at the Federal Legislative Palace, in Caracas, on the ninth day of the month of July nineteen hundred ninety eight. Years 188th. of Independence and 139 th. of Federation.

THE PRESIDENT,

PEDRO PABLO AGUILAR

THE VICE-PRESIDENT,

IXORA ROJAS

THE SECRETARIES,

JOSÉ GREGORIO CORREA

YAMILETH CALANCHE

(L.S.)

Palace of Miraflores, in Caracas, on the sixth day of the month of August, nineteen hundred ninety eight.. Year 188th of Independence and 139 th of Federation.

Be it complied

(L.S.)

RAFAEL CALDERA

Countersigned

The Minister of Internal Relations

(L.S.)

ASDRÚBAL AGUIAR ARANGUREN

Countersigned

The Minister of External Relations

(L.S.)

MIGUEL ÁNGEL BURELLI RIVAS

Countersigned

The Minister of the Secretariat

of the Presidency

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JOSÉ GUILLERMO ANDUEZA