



**DERECHO
INTERNACIONAL
PRIVADO Y
COMPARADO**

EL ANUARIO DE LA
MAESTRÍA

Act on Private International Law

(Unofficial translation)

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**CHAPTER I
GENERAL PROVISIONS**

Article 1

Factual situations related to foreign legal systems shall be governed by the rules of Public International Law on the matter at issue, in particular those established in the international treaties in force in Venezuela; in lack thereof, the rules of Venezuelan Private International Law shall apply; in lack thereof, analogy shall be employed and, finally, generally accepted principles of Private International Law shall govern.

Article 2

The competent foreign law shall be applied in accordance with the principles governing in the respective foreign country, so as to allow for the realization of the objectives pursued by the Venezuelan conflicts rules.

Article 3

When different legal systems coexist in the competent foreign law, the conflict of laws arising between those systems shall be resolved in accordance with the principles in effect in the corresponding foreign law.

Article 4

When the competent foreign law declares that the law of a third State is applicable, and the law of this third State, in turn, declares its own competence, the domestic law of this third State shall be applicable.

When the foreign law declares that Venezuelan law is applicable, this law shall be applied.

In cases not provided for in the preceding paragraphs, the domestic law of the State which is declared competent pursuant to the Venezuelan conflicts rule shall be applicable.

Article 5

Juridical situations created in conformity with a competent foreign law in accordance with internationally admissible criteria shall be effective in the Republic, unless they contradict the objectives of Venezuelan conflicts rules, or Venezuelan law claims exclusive competence over the respective matter, or they are manifestly incompatible with essential principles of Venezuelan public policy (*ordre public*).

Article 6

Previous, preliminary or incidental questions that may arise from a principal question need not necessarily be resolved in accordance with the law that governs the principal question.

Article 7

The different laws that may be competent to govern various aspects of one and the same juridical relationship shall be applied in a harmonious manner, in order to realize the purposes pursued by each of such laws.

Any difficulties that may arise due to their simultaneous application shall be resolved in light of the requirements of equity in each specific case.

Article 8

The rules of foreign law applicable in accordance with this Act shall be excluded only when their application would produce results manifestly incompatible with the essential principles of Venezuelan public policy (*ordre public*).

Article 9

Whenever the applicable foreign law establishes institutions or procedures which are essential for its adequate application that are not contemplated by the Venezuelan legal system, said foreign law may be denied application provided that Venezuelan law does not provide for analogous institutions or procedures.

Article 10

Notwithstanding the provisions of this Act, the mandatory rules of Venezuelan law which have been enacted to regulate factual situations connected with several legal systems shall necessarily apply.

CHAPTER II ON DOMICILE

Article 11

The domicile of a natural person is in the territory of the State where he/she has his/her habitual residence.

Article 12

A married woman has a domicile of her own distinct from that of her husband if it has been established in accordance with the provisions of the preceding article.

Article 13

The domicile of minors and incapacitated persons subject to parental power, guardianship or curatorship, is in the territory of the State where they have their habitual residence.

Article 14

When the habitual residence in the territory of a State is the exclusive result of functions conferred by a national, foreign or international public entity, such habitual residence shall not produce the effects provided for in the preceding articles.

Article 15

The provisions of this chapter are applicable whenever this Act refers to the domicile of a natural person and, generally, when the domicile constitutes a means of determining the applicable law or the jurisdiction of the courts.

CHAPTER III ON 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 subject to incapacity under the provisions of the preceding articles acts validly if he/she is deemed capable by the law governing the substance of the act.

Article 19

Limitations on capacity, established by the law of the domicile, which are based upon differences of race, nationality, religion or class shall not be effective in Venezuela.

Article 20

The existence, capacity, operation and dissolution of juridical persons of a private nature are governed by the law of the place where they are constituted.

By the place where they are constituted it is meant the place where the formal and substantive requirements for the establishment of such juridical persons are fulfilled.

CHAPTER IV ON THE FAMILY

Article 21

The capacity to marry and the substantive requirements of marriage are governed, for each spouse, by the law of his/her respective domicile.

Article 22

The personal and property effects of marriage are governed by the law of the common domicile of the spouses. If they have different domiciles, the law of the last common domicile shall apply.

Marriage contracts valid under a competent foreign law may be recorded at any time with the appropriate Venezuelan Main Public Registry Office, when they are to be made effective vis-à-vis *bona fide* third persons over immovable property located in the territory of the Republic.

Article 23

Divorce and separation are governed by the law of the domicile of the spouse who files for divorce.

The change of domicile of the spouse filing for divorce becomes effective only one year after he/she has entered the territory of a State with the purpose of establishing habitual residence therein.

Article 24

The establishment of filiation, as well as the relationship between parents and their children are governed by the law of the domicile of the child.

Article 25

The law of the respective domicile of the adopting parent and the adopted child shall apply in what relates to the necessary substantive requirements for the validity of the adoption.

Article 26

Guardianship and other institutions for the protection of incapacitated persons are governed by the law of the domicile of the incapacitated person.

CHAPTER V ON PROPERTY

Article 27

The creation, content, and extent of rights *in rem* over property are governed by the law of the place where the property is situated.

Article 28

The transfer of movable property has no effect on the rights validly vested under the command of the previously applicable law. Such rights, however, may only be enforced against third parties after fulfillment of the requirements provided, in such respect, by the law of the new situs.

CHAPTER VI ON OBLIGATIONS

Article 29

Contractual obligations are governed by the law indicated by the parties.

Article 30

In the absence of a valid indication, contractual obligations are governed by the law with which they are most directly connected. The court shall take into account all the objective and subjective elements of the contract in order to determine such law. It shall also take into account the general principles of International Commercial Law recognized by international organizations.

Article 31

In addition to the provisions in the previous articles, the guidelines, customs and principles of International Commercial Law, as well as commercial usage and practices generally accepted shall apply in order to discharge the requirements of justice and equity in each particular case.

Article 32

Torts are governed by the law of the place where their effects have been produced. The victim, however, may request the application of the law of the State in which the cause generating the tort was produced.

Article 33

Management of affairs (*negotiorum gestio*), payment of what is not due (*solutio indebiti*) and unjustified enrichment are governed by the law of the place where the event giving rise to the obligation occurred.

CHAPTER VII ON SUCCESSIONS

Article 34

Successions are governed by the law of the domicile of the deceased.

Article 35

Descendants, ascendants and the surviving spouse not legally separated as to property, may in any event enforce over property located in the Republic the right to the mandatory inheritance portion (*legítima*) accorded to them by Venezuelan law.

Article 36

In the event that, under the competent law, the property of the estate belongs to the State, or if heirs do not exist or are unknown, property located in the Republic shall pass to the patrimony of the Venezuelan Nation.

CHAPTER VIII ON THE FORM AND PROOF OF ACTS

Article 37

Juridical acts are valid, as to form, if they meet the requirements prescribed by any of the following legal systems:

1. that of the place where the act is made;
2. that governing the substance of the act; or
3. that of the domicile of the maker or the law of the common domicile of the makers.

Article 38

The means of evidence, their efficacy, and the determination of the burden of proof are governed by the law that governs the corresponding juridical relationship, without prejudice to the conformity of their procedural materialization to the law of the court or officer before whom the proceeding takes place.

CHAPTER IX ON JURISDICTION AND COMPETENCE

Article 39

In addition to the jurisdiction vested by law in Venezuelan courts on actions instituted against persons domiciled in the national territory, the courts of the Republic shall have jurisdiction on actions instituted against persons domiciled abroad in the cases contemplated in articles 40, 41, and 42 of this Act.

Article 40

Venezuelan courts shall have jurisdiction to try cases arising from actions concerning claims involving economic interest:

1. When actions relating to the disposal or holding of movable or immovable property situated in the territory of the Republic are involved;
2. When actions relating to obligations which have to be performed within the territory of the Republic, or which derive from contracts entered into or events that have occurred in the said territory, are involved;
3. When the defendant has been personally served with process within the territory of the Republic;
4. When the parties submit, expressly or tacitly, to their jurisdiction.

Article 41

Venezuelan courts shall have jurisdiction to try cases arising from actions relating to estates (*universitas iuris*):

1. When, under the provisions of this Act, Venezuelan law is competent to govern the substance of the litigation;
2. When property forming an integral part of the estate is situated in the territory of the Republic.

Article 42

Venezuelan courts shall have jurisdiction to try cases arising from actions relating to the status of persons or family relationships:

1. When, under the provisions of this Act, Venezuelan law is competent to govern the substance of the litigation;
2. When the parties submit, expressly or tacitly, to their jurisdiction, provided that the case has an effective connection with the territory of the Republic.

Article 43

Venezuelan courts shall have jurisdiction to adopt provisional measures for the protection of persons located within the territory of the Republic, even when in want of jurisdiction over the substance of the litigation.

Article 44

Express submission shall be evidenced in writing.

Article 45

Tacit submission shall result, for the plaintiff, from the filing of the complaint and, for the defendant, from the performance during the trial, either personally or through an attorney-in-fact, of any action other than moving for dismissal for want of jurisdiction or objecting to a preventive measure.

Article 46

Submission is invalid with respect to actions which affect the creation, modification or extinction of rights *in rem* on immovable property, unless permitted under the law of the situs of such property.

Article 47

The jurisdiction vested in Venezuelan courts under the preceding provisions may not be contractually derogated in favor of foreign courts or arbitrators conducting the process abroad, in those cases in which the issue refers to disputes relating to rights *in rem* on immovable property situated in the territory of the Republic, or when they involve matters that do not allow settlement or matters that affect essential principles of Venezuelan public policy.

Article 48

Whenever Venezuelan courts have jurisdiction under the provisions of this Chapter, domestic competence *ratione loci* shall be governed by the provisions in articles 49, 50, and 51 of this Act.

Article 49

The competent court to try cases arising from actions concerning claims involving economic interest shall be:

1. When actions related to the disposal or holding of movable or immovable property situated in the territory of the Republic are involved, the court of the place where the property is located;
2. When actions related to obligations to be performed in the territory of the Republic or arising from contracts entered into or events occurred in the said territory are involved, the court of the place where the obligation is to be performed or where the contract was made or where the event giving rise to the obligation occurred;
3. When the defendant has been personally served in the territory of the Republic, the court of the place where service was performed;
4. When the parties have expressly and generically submitted to the courts of the Republic the court which is competent by virtue of any of the criteria indicated in the three preceding paragraphs and, by default, the court of the capital of the Republic.

Article 50

The competent court to try cases arising from actions related to estates (*universitas iuris*) shall be:

1. When, under the provisions of this Act, Venezuelan law is competent to govern the substance of the litigation, the court of the place where the person by virtue of whom Venezuelan law governs is domiciled;
2. When property forming an integral part of an estate (*universitas iuris*) is situated in the territory of the Republic, the court of the place where most of the estate's property is situated.

Article 51

The competent court to try cases arising from actions related to the status of persons or to family relationships shall be:

- 1) When, under the provisions of this Act, Venezuelan law is competent to govern the substance of the litigation, the court of the place where the person by virtue of whom Venezuelan law governs is domiciled;
- 2) When the parties expressly or tacitly submit to its jurisdiction, the court of the place with which the case is linked to the territory of the Republic.

Article 52

The provisions set forth in Articles 49, 50, and 51 do not exclude the competence of other courts when such competence is vested in them by other laws of the Republic.

CHAPTER X ON THE EFFICACY OF FOREIGN JUDGMENTS

Article 53

Foreign judgments shall be effective in Venezuela, provided that they meet the following requirements:

1. That they have been rendered on civil or commercial matters, or, in general, on matters related to private juridical relationships;
2. That they have the force of *res judicata* under the law of the State where they were rendered;
3. That they are not related to rights *in rem* on immovable property situated in the Republic or that Venezuelan courts have not been ousted of exclusive jurisdiction to try the case;
4. That the courts of the State issuing the judgment have jurisdiction to try the case, under the general principles on jurisdiction established in Chapter IX of this Act;
5. That the defendant has been duly served, with sufficient time to appear, and that he/she has been afforded, in general, the procedural guarantees which ensure a reasonable possibility of defense;
6. That they are not incompatible with a prior judgment having authority of *res judicata*; and that no trial on the same matter and between the same parties, instituted prior to the date when the foreign judgment was rendered, is pending before Venezuelan courts.

Article 54

If a foreign judgment is unable to produce effects in its entirety, it may be allowed to do so in part.

Article 55

In order for a foreign judgement to be enforced, it has to be declared executory in accordance with the procedure prescribed by the law, after previous ascertainment that it meets the requirements of Article 53 of this Act.

CHAPTER XI

ON PROCEDURE

Article 56

The competence and form of the proceeding shall be governed by the Law of the officer before whom it is conducted.

Article 57

The lack of jurisdiction of a Venezuelan judge vis-à-vis a foreign judge shall be declared *ex officio*, or at the request of party, at any stage or instance of the process.

The motion for a ruling on jurisdiction suspends the proceeding until the respective ruling has been issued.

In the event that the jurisdiction of Venezuelan courts is upheld, the suit shall continue as from the stage where it was at the time when the ruling was issued; however, the decision to deny jurisdiction shall be subject to the review of the Political and Administrative Chamber of the Supreme Court of Justice, for which purpose the court record shall be forthwith forwarded thereto, and if such ruling is upheld, the court record shall be filed and the action shall be dismissed.

Article 58

Exclusive Venezuelan jurisdiction is not preempted by the litispence before a foreign judge of the same cause of action or another linked to it.

Article 59

The courts of the Republic may request any competent foreign authority, by means of letters rogatory, to perform service of process, procedural acts relating to evidence, or any other judicial act necessary for the proper development of the process. They shall also execute, as promptly as possible, the letters rogatory issued by foreign courts in conformity with the principles of International Law applicable to the matter.

Article 60

Foreign law shall be applied *ex officio*. The parties may provide information regarding the applicable foreign law and the courts and authorities may issue orders aiming at a better knowledge thereof.

Article 61

Appeals and other recourses provided by law shall be admissible, regardless of the law that has been applied in the decision against which the appeals are made.

Article 62

Except for the provision in Article 47 of this Act, all issues concerning international commercial arbitration shall be governed by the special statutory provisions regulating this matter.

CHAPTER XII FINAL PROVISIONS

Article 63

All the statutory provisions regulating the subject matter of this Act are hereby abrogated.

Article 64

This Act shall enter into force six months after its publication in the Official Gazette of the Republic of Venezuela.