

Draft General Act on Private International Law for Colombia

For
Colombia



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In February 2022, professors Claudia Madrid Martínez, José Luis Marín Fuentes, and María Julia Ochoa Jiménez founded the Antioquia Institute of Private International Law (IADIP) in Medellín. Their purpose is to disseminate and structure the teaching and knowledge of Private International Law, not only regionally but also throughout Colombia as a whole. This has led to the organization and participation in numerous national and international symposia and publications. Their most significant work to date has been the drafting of a General Law on Private International Law for Colombia, which is expected that will be approved soon. This would allow Colombia to join the region as a state whose legal framework in this area is on par with those already regulating it in most Latin American countries.

Content

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Chapter 1

Purpose of the Act

Article 1: Purpose of the Act

The purpose of this Act is to determine the jurisdiction and the law applicable to legal matters connected with foreign laws. It shall also regulate the effectiveness of acts and decisions of foreign judicial and administrative authorities in Colombia.

International treaties signed and ratified by Colombia and in force in the Colombian legal system shall have a preferential application to the provisions of this Act.

Chapter 2

Problems in the application of conflict of law rules

Article 2: Application of foreign law

The judges and competent authorities shall apply *ex officio* the foreign law that is designated as applicable by the Colombian conflict of laws rules. However, if the judge or competent authority deems it appropriate, it may request the cooperation of the parties to determine the content, validity, and meaning of such law.

All remedies granted by Colombian procedural law shall also be admitted in cases of application of foreign law designated by the conflict rule.

When in the competent foreign law there coexists diverse juridical systems, the conflict of laws arising between those systems shall be resolved in accordance with the principles in force in the corresponding foreign law.

Article 3: Interpretation of foreign law

The interpretation of the competent foreign law shall be made in accordance with the foreign law itself.

When the competent foreign law has institutions or procedures essential for its proper application that are not provided for in Colombian law, the application of such foreign law may be refused, provided that Colombian law does not have any analogous institutions or procedures.

Article 4: Overriding mandatory rules

Notwithstanding the provisions of this Law, the judge shall apply the overriding mandatory rules of Colombian Law which, according to this Act, must prevail even when a foreign law is competent.

The judge may consider the overriding mandatory rules of other States closely connected with the case, considering the consequences of their application or non-application.

Article 5: Rights of indigenous peoples or communities

Provisions to protect the rights of indigenous peoples or communities over the natural resources existing on their lands, traditional knowledge, the conservation of biological diversity, the sustainable use of resources, and plant varieties have the character of overriding mandatory rules.

Article 6: Public policy in private international law

The provisions of foreign law which must be applied in conformity with this Act shall be excluded only when their application would lead to a result manifestly incompatible with essential principles of Colombian public policy. A foreign rule that is manifestly incompatible with fundamental rights shall not be applied.

Such incompatibility shall be assessed by considering, in particular, the intensity of the connection of the situation with Colombia, the level of social harm, and the gravity that the application of such foreign rule in Colombia would produce.

When a provision of the competent foreign law is not applicable due to such incompatibility, Colombian law shall apply.

Article 7: Evasion of law (*fraus legis*)

The law designated by the conflict rule shall not apply when the essential principles of the law designated as applicable by the conflict rules have been artificially evaded.

Article 8: *Renvoi*

When foreign law referred to by the Colombian conflict rule declares Colombian law applicable, Colombian substantive rules shall apply.

When the competent foreign law declares applicable the law of a third State, which in turn declares itself applicable, the substantive law of that State shall apply.

In all other cases, the substantive law designated by the Colombian conflict rule shall apply.

When an international treaty applies to the disputed relationship, the provisions of the treaty itself shall apply regarding *renvoi*.

Article 9: Juridical relationship validly created outside Colombia

A juridical relationship validly created in a foreign State, according to the law of that State, shall be recognized in Colombia, provided that at the time of its creation, it had a sufficient connection with that State and is not manifestly contrary to the essential principles of Colombian public policy.

Article 10: Harmonic application

The different laws that may be applicable to regulate various aspects of one and the same juridical relationship shall be applied harmoniously to attain the purposes pursued by each of such laws.

Any difficulties that may be caused by their simultaneous application shall be resolved considering the requirements of equity in each specific case.

Chapter 3

Domicile

Article 11: Domicile of Natural Person

The domicile of a natural person is found in the territory of the state where he/she has his/her habitual residence with the intention of exercising his/her rights there.

Article 12: Domicile of incapable persons

The domicile of incapable persons shall be in the place where they have their habitual residence, according to Article 11.

Article 13: Domicile of the spouses

The domicile of the spouses shall be that in which they live together, without prejudice to the right of each spouse to fix his or her domicile as provided for in Article 11.

Article 14: Domicile of diplomatic officials

The domicile of diplomatic officials shall be that which they last had in the territory of the accrediting State. The domicile of natural persons temporarily residing abroad for employment or commission of their Government shall be that of the State that designated them.

Article 15: Domicile of legal entities

The domicile of a legal entity is in the State where the principal place of business or professional activities of the legal entity is located.

Article 16: Scope of application of this chapter

The rules of this Chapter shall apply whenever this Act, or any other Colombian Private International Law rule, refers to the domicile of persons to determine the applicable law or the competent court or authority.

Chapter 4

International process

Section 1

The law applicable to the form of the procedure

Article 17: Law applicable to the form of proceedings

The jurisdiction of the Colombian courts and the form of the proceedings conducted in Colombia are governed by Colombian law.

Section 2

General international jurisdiction

Article 18: General jurisdiction

Colombian courts shall have jurisdiction to hear all types of civil and commercial cases when the defendant, regardless of his/her nationality, is domiciled in Colombia.

Article 19: Transnational access to justice

Colombian courts may assume jurisdiction, although this Act does not formally attribute it to them, when the performance of a judicial proceeding abroad appears to be impossible. In this case, the Colombian court of the place having the closest links with the object of the litigation shall have jurisdiction.

Article 20: Actions against persons domiciled abroad

If the defendant is not domiciled in Colombia, the jurisdiction of the Colombian courts shall be determined by the rules established in Section 3 of this Chapter.

Section 3

Special criteria of international jurisdiction

Article 21: Jurisdiction in matters of marriage

1. Colombian civil or judicial authorities shall be competent to witness the marriage celebration if one of the engaged parties is domiciled in Colombia or if he/she is Colombian.
2. Foreigners not domiciled in Colombia may marry in Colombia before the competent authority, when the marriage can be recognized in the State of their domicile.

3. Colombian courts are competent to hear any lawsuit concerning the validity of the marriage and its effects when one of the spouses is domiciled in Colombia.

Article 22: Jurisdiction over filiation and other relations between parents and children

Colombian courts shall have jurisdiction to hear actions relating to filiation and other relations between parents and children, if:

1. the person whose filiation is disputed is domiciled in Colombia at the time the lawsuit is filed.
2. the person whose paternity or maternity is invoked or contested has his/her domicile in Colombia at the time the lawsuit is filed, or
3. the person whose filiation is disputed and the person whose paternity or maternity is invoked or contested are Colombian at the time the lawsuit is filed.

Article 23: Jurisdiction over adoption

Colombian courts shall have jurisdiction to hear actions relating to adoption if the person whose adoption is involved is domiciled in Colombia at the time of the adoption.

Article 24: Jurisdiction over freely negotiated contracts

In the case of actions relating to freely negotiated contracts, understood as those in which the parties have equal bargaining power, Colombian courts shall have jurisdiction when:

1. the contract has been concluded in Colombia.
2. the disputed obligation has been or must be performed in Colombia; or
3. the parties decide to submit expressly or tacitly to them.

Article 25: Jurisdiction over asymmetric contracts

In the case of actions relating to asymmetric contracts, understood as those in which one of the parties does not have equal or equivalent bargaining power, Colombian courts will have jurisdiction if:

1. the party with the least bargaining power is domiciled in Colombia, even when it acts as a plaintiff.
2. the disputed obligation has been or should be performed in Colombia.
3. the parties have expressly or tacitly chosen the Colombian courts after the dispute has been initiated.

Article 26: Express or tacit choice of Colombian courts

The express choice of the Colombian courts must be established in writing. The tacit choice will derive from the conduct of the plaintiff when filing the lawsuit

and on the part of the defendant when performing any action at trial other than opposing the lack of jurisdiction.

Article 27: Choice of a foreign court

When the parties in their agreement validly choose a foreign court, the Colombian court must decline jurisdiction, unless it is a case of exclusive jurisdiction of the Colombian courts.

Article 28: Jurisdiction over non-contractual civil liability

Colombian courts shall have jurisdiction over non-contractual civil liability when:

1. the event giving rise to the obligation has occurred in Colombia.
2. the harmful effect has occurred or threatens to occur, in whole or in part, in Colombia; or
3. the parties have decided to submit to the Colombian courts expressly or tacitly, provided that such submission occurs after the occurrence of the event giving rise to civil liability.

Article 29: Jurisdiction over intellectual property protection

Colombian courts shall have jurisdiction to hear actions relating to the protection of intellectual property when the defendant is domiciled in Colombia or, in the absence of domicile, when the protection is invoked before Colombian courts.

Article 30: Jurisdiction over entire estates

Colombian courts shall have jurisdiction to hear actions relating to entire estates (*universitas iuris*) if:

1. the debtor's domicile is in Colombia, or
2. property that is part of the entire estate is situated in Colombia.

Article 31: Jurisdiction over acts of voluntary jurisdiction

The Colombian courts shall have jurisdiction to hear acts of voluntary jurisdiction when the person who motivates them has or has had his/her domicile in Colombia.

Article 32: Exclusive jurisdiction

The exclusive jurisdiction of Colombian courts has exceptional nature, must be interpreted restrictively, and cannot be extended to other issues that may arise concerning the same matter.

Matters relating to rights in immovable property located in Colombia are considered matters of exclusive jurisdiction.

Article 33: *Forum necessitatis*

Colombian courts may order protective measures for persons who are in

Colombia, even if they lack jurisdiction to hear the merits of the dispute.

Section 4

International *lis pendens*

Article 34: International *lis pendens*

Colombian courts shall suspend the exercise of their jurisdiction when the same cause, with the same object and between the same parties, has been previously initiated in the court of a State that is reasonably related to the matter or the parties unless it is evident that in that forum the process will not be resolved in a fair, effective and diligent manner.

The suspension based on *lis pendens* may be extended until the decision in the foreign State acquires the force of *res judicata*, provided that such a decision is rendered within a reasonable period and may be effective in Colombia.

Section 5

International legal cooperation

Article 35: International legal cooperation

Colombian courts may request any competent foreign authority, using commissions (*exhortos*) and letters rogatory (*comisiones rogatorias*) for the carrying out of citations, probative steps, or any other judicial actions necessary for the proper development of the proceeding. They shall also comply promptly with those commissions and letters rogatory sent by foreign tribunals which conform to the applicable principles of international law.

Chapter 6

Effectiveness of foreign decisions

Article 36: Effectiveness requirements

Foreign judicial or administrative judgments or decisions shall produce effects in Colombia, without substantive review, through a summary proceeding, provided they comply with the following requirements:

1. that the authorities of the State in which the decision was rendered are competent according to reasonable criteria.
2. that the decision is not subject to any appeal and is final according to the law of the State in which it was rendered.
3. that the due process rights of the parties have been respected.
4. that the subject matter of the dispute does not fall within the exclusive jurisdiction of the Colombian authorities.
5. that Colombian courts have not ruled on the dispute in a decision not subject to appeal through ordinary channels between the same parties, on the same

subject matter and for the same cause of action; or a foreign decision that has ruled on the case has not been previously recognized in Colombia; and

6. that the decision is not contrary to Colombian public policy, for which purpose the criteria established in Article 6 of this Act shall be considered.

Article 37: Competent authority

The application for recognition of the probatory and *res judicata* effects of a foreign judgment may be filed with the authority before which such effects are sought.

To proceed with the enforcement, the request for recognition must be filed before the Civil Chamber of the Supreme Court of Justice for enforcement requests in the Special District of Bogotá.

For enforcement in other departments, the Superior Civil District Courts shall have jurisdiction.

Article 38: Formal requirements

The application for recognition must be submitted in writing and be accompanied by:

1. the complete text, legalized and, if applicable, translated, of the foreign administrative or judicial decision.
2. a certificate proving that the decision is not subject to ordinary appeals, that it is final, and that it has the force of *res judicata* when these requirements cannot be deduced from the decision itself; and
3. in case of a judgment or decision by default, an official document stating that the convicted person was lawfully summoned and did not take advantage of the opportunity to assert his/her rights.

Article 39: Procedure

The application for recognition must be accompanied by the formal requirements established in Article 38. The competent authority shall reject the application if any of such formal requirements are missing. The application shall also be accompanied by proof of the requirements established in Article 36 of this Act.

The party against whom the foreign judgment is to be enforced shall be notified of the application and shall have 15 days to oppose the recognition, to provide evidence of such refusal, and to assert its rights. Upon expiration of this period, the competent authority shall issue the decision.

No appeal shall lie against a decision on the recognition of a foreign administrative or judicial decision.

Once recognition has been granted, if the party so requests, it shall be enforced immediately by the procedure established in the corresponding regulations.

Chapter 6

Natural persons

Article 40: Existence, status, and capacity of natural persons

The existence, status, and legal capacity of natural persons are governed by the law of the State of their domicile.

If the law governing the act for which capacity is to be determined prescribes special conditions as to the capacity of a person, that law shall be considered.

Article 41: Principle of equality

Limitations on capacity established in the law of domicile, which are based on differences of nationality, race, sex, language, religion, political or any other opinion, origin, economic or social condition, or any other, shall have no effect.

Article 42: Change of domicile

The change of domicile does not restrict the capacity acquired under the law of the previous domicile.

Article 43: Names

The names and surnames of a person are governed, at his/her choice, by the law of the State of which he/she is a national or in which he/she is domiciled.

Article 44: Absence

The conditions and effects of the absence, disappearance, and presumed death of a person are governed by the law of the person's last domicile.

Chapter 7

Marriage and non-marital unions

Article 45: Capacity and substantive requirements of marriage

The law of the place of domicile of each of the contracting parties governs the capacity to contract marriage and the other substantive requirements for its celebration.

Article 46: Capacity and substantive requirements of non-marital unions

The capacity and other substantive requirements for the formalization of non-marital unions are governed by the law of the place of their formation.

Article 47: Personal and patrimonial effects of marriage

The personal and patrimonial effects of marriage are governed by the law chosen by the spouses, who may choose between:

1. the law of the State in which the spouses or future spouses, or one of them, have their domicile, or
2. the law of the State of nationality of either of the spouses or future spouses.

The law applicable to the effects of marriage under this article shall apply to all property included in the matrimonial property regime, regardless of the State in which it is located.

Article 48: No choice of applicable law

In the absence of a choice of applicable law by the spouses, the effects of marriage are governed by the law of the State of their common domicile or, failing that, by the law of the State of their last common domicile.

Article 49: Personal and patrimonial effects of non-matrimonial unions

The personal and patrimonial effects of non-matrimonial unions are governed by the law of the place where they are intended to be enforced.

Chapter 8

Divorce, legal separation and nullity of marriage, and dissolution of non-matrimonial unions.

Article 50: Divorce and legal separation

Divorce and legal separation are governed by the law of the State of the common domicile or, failing that, by the law of the State of the last common domicile.

Article 51: Nullity of marriage

The nullity of marriage is governed by the law which governs the cause of such nullity.

Article 52: Dissolution of non-marital unions

The dissolution of non-marital unions is governed by the law of the common domicile or, failing that, by the law of the last common domicile.

Chapter 9

Family relations

Article 53: Best interests of the child

If in the cases regulated by this chapter there are children involved, the judge or authority shall always consider their best interests.

Article 54: Filiation and other relations between parents and children

Establishment and effects of filiation and other relations between parents and children are governed by the law of the domicile of the person whose filiation is involved.

Article 55: Adoption

The capacity to adopt and to be adopted, as well as the conditions and limitations of adoption, are governed by the law of the domicile of the person whose adoption is involved.

Article 56: Protection of incapable persons

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

Article 57: Maintenance obligations

Maintenance obligations are governed by the law of the domicile of the creditor of the obligation.

Article 58: Restitution and protection of children

The restitution and protection of children are governed by the international treaties in force in Colombia.

Chapter 10

Successions

Article 59: Successions

Successions are governed by the law of the last domicile of the decedent.

Article 60: Testamentary capacity

The capacity to dispose by testament, to modify it or to revoke it is governed by the law of the testator's domicile at the time of testament.

Chapter 11

Juridical persons

Article 61: Recognition of juridical persons

Juridical persons of a private nature duly constituted in a State shall be recognized by operation of law in Colombia.

Recognition by operation of law does not exclude the power of the Colombian authorities to require verification of the existence of the juridical person in accordance with the law of the place of its constitution.

In no case may the capacity recognized to juridical persons constituted abroad be greater than the capacity that Colombian law grants to juridical persons constituted in Colombia.

Article 62: Law applicable to juridical persons

The existence, capacity, operation, merger, and dissolution of juridical persons of a private nature are governed by the law of the place of their constitution.

The place of their constitution is understood to be the place where the requirements of form and substance required for the creation of such juridical persons are fulfilled.

Article 63: Capacity to act

For the direct or indirect exercise of the acts included in the corporate purpose of juridical persons, they shall be subject to the law of the State where they perform such acts.

Article 64: Branches

Branches of juridical persons that have their principal place of business abroad may be established in Colombia and shall be governed by Colombian law.

Article 65: Change of the applicable law

If the foreign law that regulates the juridical person allows it, this may be subject to Colombian law without the need to be liquidated or to create a new society. The juridical person must comply with the conditions set by foreign law and adapt to one of the forms of juridical persons existing in Colombia.

Chapter 12

Property

Article 66: Law applicable to property

Property and rights in it are governed by the law of the state where the property is located.

The acquisition and loss, by legal acts, of rights in property in transit are governed by the law of the State of destination.

Property subject to movable guarantees is governed by the law designated by the special rules on the subject.

The provisions of other acts regarding property rights on ships, aircraft, and other means of transport are reserved.

Publicity of acts of creation, transfer, and extinction of property rights is governed by the law of the State where the formalities of such publicity are carried out.

Article 67: Change of situation

The change of location of movable property does not affect the rights acquired under the law of the place where it was located at the time of its acquisition.

However, such rights may be opposed to third parties only after the requirements of the law of the new situation have been fulfilled.

Article 68: Cultural property

If an object considered by a State as part of its cultural heritage has left its territory in a manner that the law of that State considers illegitimate at the time of departure from its territory, the restitution requested by that State is governed by its own law or, at its choice, by the law of the State on whose territory the object is located at the time of the request for restitution.

If the law of the State that considers the property to be part of its cultural heritage does not grant protection to the possessor in good faith, the possessor may invoke the protection granted by the law of the State in whose territory the property is located at the time of the request for restitution.

If a property of cultural value to an indigenous people or community is returned to the national territory, the destination of such property is governed by the rules of that people or community, unless such people or community decides that it should be governed by the law of the State of which it is part.

Chapter 13

Form and proof of legal acts

Article 69: Form of legal acts

Legal acts shall be valid as to their form if they comply with the requirements of one of the following laws:

1. that of the place of conclusion of the act.
2. that which governs the content of the act; or
3. that of the domicile of the person doing the act, or of the common domicile of the persons doing the act.

Article 70: Proof of legal acts

The modes of proof, their efficacy, and the determination of the burden of the proof, are governed by the law governing the juridical relationship concerned, without prejudice to adjustment of their procedural implementation to the law of the court or official before which they take place.

Chapter 14

Obligations

Section 1

Legal transactions

Article 71: Unilateral Promise

A unilateral promise is governed by the law of the State in which it is made.

Article 72: Voluntary representation

Voluntary representation is governed by the law of the State in which the representative has his/her place of business if he/she acts in a professional capacity and that such place of business is known or could have been known to third parties. In the absence of such conditions, the law of the State in which the representative primarily exercises its powers shall be applied.

Section 2

Contracts

Article 73: Freely negotiated contracts

A contract is governed by the law chosen by the parties. The parties may choose:

1. the law applicable to the whole or a part of the contract; or
2. different laws for different parts of the contract.

The choice may be made or modified at any time. A choice or modification made after the contract has been concluded shall not affect its formal validity or the rights of third parties.

No connection is required between the law chosen and the parties or their transaction.

Article 74: Rules of law

The parties may choose, as the law applicable to the contract, rules of law generally accepted at the international, supranational, or regional level as a set of neutral and balanced rules.

Article 75: Express or implied choice of law

A choice of the applicable law, or any modification of a choice of law, must be made expressly, or appear clearly from the provisions of the contract or the circumstances.

An agreement between the parties to confer jurisdiction on a court or arbitral tribunal to determine disputes under the contract is not in itself equivalent to a choice of law.

Article 76: Formal validity of the choice of law

The choice of law is not subject to any requirement as to form unless otherwise agreed by the parties.

Article 77: Substantial validity of the choice of law

The law of the State in which a party is domiciled determines whether that party consented to the choice of law.

However, in determining whether the parties agreed on the choice of the applicable law, the law presumed to have been chosen by the parties shall be used.

Article 78: Battle of forms

If the parties have used standard terms designating two different laws and under both of these laws the same standard terms prevail, the law indicated in those standard terms shall apply; if under these laws different standard terms prevail, or if no standard term prevails, it shall be treated as if there had been no choice

of law.

Article 79: Law applicable in the absence of choice

In the absence of choice or in case of ineffective choice, the law of the place of performance of the obligation in dispute shall apply.

Article 80: Exclusion of *renvoi*

For the purposes of this section, “law” means the law in force in a State, excluding its conflict rules.

Article 81: Scope of the law applicable to the contract

The law indicated in this section governs all aspects of the contract, in particular:

1. its interpretation
2. the rights and obligations arising from the contract.
3. the performance of the contract and the consequences of its non-performance, including the assessment of damages.
4. the various ways of extinguishing obligations, including prescription and limitations periods.
5. the validity and the consequences of the nullity of the contract.
6. the burden of proof and the legal presumptions; and
7. the pre-contractual obligations.

Article 82: Employment contracts and employment relations of natural persons

In employment contracts and employment relationships, the choice of law by the parties shall have no effect if it deprives the employee of the protection afforded by the mandatory provisions of the law applicable in the absence of choice.

In the absence of choice of law, employment contracts are governed by the law of the State:

1. in which the employee, in performance of the contract, habitually performs his/her work, even if he/she has temporarily commenced his/her work in a different State; or
2. in which the place of business where the employee is located, provided that the employee does not habitually carry out his/her work in the same State.

Article 83. Consumer contracts

Consumer contracts, understood as those in which one of the parties, as the final recipient, acquires, enjoys, or uses a certain product or service for the satisfaction of an own, private, family, or domestic and business need when it is not intrinsically linked to its economic activity, are governed by the law of the domicile of the consumer.

The parties may agree on the application of a different law if this does not prejudice the rights of the consumer recognized by the law of his/her domicile.

Section 3

Obligations arising from the law

Article 84: Obligations arising from the law

Management of affairs (*gestión de negocios*), undue payment (*pago de lo indebido*), unjust enrichment (*enriquecimiento sin causa*), and other legal obligations are governed by the law of the State in which the act giving rise to the obligation occurs.

Section 4

Non-contractual civil liability

Article 85. Law applicable to non-contractual civil liability

Non-contractual civil liability is governed, at the choice of the victim, by the law of the State where the cause of the damage has occurred or where the effect of the damage has occurred.

Where the tortfeasor and the victim are domiciled in the same State, the law of that State shall apply.

Article 86: Product liability

In addition to the provisions of the preceding article, in case of liability arising from defective products, the victim may also choose the law of the State:

1. in which the manufacturer has his/her place of business.
2. in which the product was purchased, unless the manufacturer proves that the product was put into circulation there without his/her approval; or
3. in which the victim is domiciled.

Article 87: Civil liability arising from traffic accidents

Civil liability arising from traffic accidents shall be governed by the law of the place of the accident.

When the victim is domiciled in the State where the vehicle causing the accident is registered, the law of that State shall apply.

Article 88: Liability arising from environmental pollution

In case of liability arising from environmental pollution, in addition to the laws indicated in Article 85, the victim may choose the law of his/her domicile.

Article 89: Scope of the applicable law

The law applicable to non-contractual civil liability shall govern in particular:

1. the conditions and extent of liability;
2. the grounds for exemption, as well as any limitation of liability, except for the liability of the insurer for excess or objective delimitation of the risk;
3. the liability for acts or facts of third parties;
4. the liability of the owner of the thing for the acts or facts of his/her dependents or subordinates, or of any legitimate user;
5. the existence and nature of the damage susceptible to reparation;
6. the modalities and extent of the reparation; and
7. the prescription and limitations periods.

Chapter 15

Intellectual property

Article 90: Intellectual Property

Rights relating to intellectual property shall be governed by the law of the State in which intellectual property is claimed.

Contracts relating to intellectual property shall be governed by the provisions on contractual obligations of this Act.

Chapter 16

Securities

Article 91: Circulation of credits, securities, or other rights of credit

The law chosen by the parties shall govern the circulation of credits, securities, or other credit rights. The choice of law shall not be enforceable against third parties.

In the absence of choice of law, the law of the place of payment shall apply.

Article 92: Principle of autonomy

The non-existence or invalidity of an obligation arising from security under the applicable law shall not affect other obligations which are valid under the law governing them.

Article 93: Procedures and time limits

The procedures and time limits for acceptance, presentation for collection,

payment, protest, and other formalities necessary to avoid forfeiture of the right of the holder of the security shall be governed by the law of the place of payment and, subsidiary, by the law of the place where the act is to be performed.

Article 94: Loss, theft, or destruction

The law of the State where the instrument is to be paid shall determine the measures to be taken in case of theft, robbery, forgery, loss, destruction, or physical uselessness of the document.

Notwithstanding the foregoing, in the case of securities issued in series and publicly offered, the dispossessed holder shall comply with the provisions of the law of the domicile of the issuer.

Chapter 17

Prescription

Article 95: Applicable law

The acquisitive prescription of movable or immovable property is governed by the law of the place where it is located.

The extinctive prescription of real actions is governed by the law of the place where the property is located.

The extinctive prescription of personal actions is governed by the law to which the obligations concerned are subject.

Chapter 18

Final provisions

Article 96: Repeals

This Act replies to all rules that are contrary to its provisions.

Article 97: Entry into force

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



Instituto Antioqueño de Derecho Internacional Privado

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