

INTERNATIONAL PRIVATE LAW ACT  
PART ONE  
APPLICABLE LAW

Chapter I  
GENERAL PROVISIONS

Scope

Article 1

The present Act shall govern the rules designating applicable law in private law matters having international implications (“conflict provisions”), the rules on the jurisdiction of judicial and other authorities to hear such actions, and the rules of procedure, as well as the rules for the recognition and enforcement of foreign judgments and arbitration awards, and of decisions of other authorities.

Supremacy of international treaties and other legislation

Article 2

The provisions of the present Act shall not apply to the matters from Art. 1 of the present Act where such matters are governed by an international treaty or other legislation.

Legal gaps

Article 3

In the absence from the present Act of a rule to designate law applicable to a matter from Art. 1 of the present Act, such matter shall be subject to provisions and principles of this present Act, the principles of legal order of Montenegro and the principles of international private law.

Reference to foreign law

Article 4

Where under the present Act reference is made to foreign law, the legislation, including conflict provisions, of that state shall apply, unless otherwise provided for by the present or other act.

Reference to the law of Montenegro or to the law of a third state is not allowed where the case is relating to any of the following:

- 1) legal status of legal persons and forms of organisation without legal personality;
- 2) form of legal transactions;
- 3) choice of applicable law;
- 4) maintenance;
- 5) contractual relations, and
- 6) non-contractual relations.

Where the conflict provisions of a foreign state make reference to the law of Montenegro or make reference to the law of a third state, the substantive law of Montenegro and substantive law of the third state shall apply.

#### States with multiple legal systems

##### Article 5

Where the applicable law is from a state with multiple legal systems, and where the provisions of the present Act do not refer to a particular jurisdiction within that state, applicable law shall be designated according to the rules of that legal system.

Where applicable law of a state with multiple legal systems may not be designated as provided for in paragraph 1 of this Article, the law of the jurisdiction within that state which has closest connections with the legal relationship shall apply.

#### Determination of content of foreign applicable law

##### Article 6

A judicial or other authority duly empowered by law (“judicial or other authority”) shall act ex officio to determine the content of applicable law.

The judicial or other authority from paragraph 1 of this Article shall determine the content of applicable law in accordance with international treaties, and may seek information on foreign law from the ministry responsible for justice affairs as well as opinions from experts and specialised institutions.

Parties to a proceeding may also file documents on the content of foreign law or otherwise assist the judicial or other authority.

The judicial or other authority may commit the parties to cooperate in determining the content of a foreign law when the parties have decided which foreign law shall apply.

#### Interpretation and application of foreign law

##### Article 7

Foreign law shall be interpreted and applied in the way it is interpreted and applied in its state of origin.

Where foreign law is not applied, or where foreign law is interpreted and applied wrongly, legal remedies shall be allowed.

#### Exception clause

##### Article 8

By way of exception, the law designated according to the present Act shall not apply where, taking into account all the circumstances of the case, the connection to that law is manifestly weak, and where there is significantly stronger connection to other law.

This provision shall not apply when the parties themselves have designated the law applicable to their relationship.

#### Public order

##### Article 9

Where a provision of foreign law is manifestly contrary to the public order of Montenegro, that provision shall not apply.

#### Direct application of certain provisions

##### Article 10

The provisions of Montenegrin law whose application is deemed particularly significant to the protection of public interest, such as political, social, or economic system of the state, shall apply to all the cases that the provisions refer to, irrespective of the applicable law designated.

By way of exception, a court may take into account the direct application provisions of another state that the legal relationship is closely connected to.

In deciding to take into consideration the provisions from paragraph 1 of this Article, the court shall take into account their nature and purpose, as well as the consequences of their application or non-application.

## Chapter II LEGAL STATUS OF PERSONS

### I. LEGAL STATUS OF A NATURAL PERSON

#### Nationality

##### Article 11

The issue whether a natural person has the nationality of a state shall be governed by the law of that state.

Where a person who is a Montenegrin national also holds nationality of another state, the person shall be deemed to have Montenegrin nationality only.

Where a person who is not a Montenegrin national has two or more nationalities, the person shall be deemed to have the nationality of the state with which that person, taking all circumstances and notably his habitual residence into account, has the closest connections.

Where a person is stateless or his nationality cannot be established, applicable law shall be designated according to his habitual residence.

Where a person has the status of a refugee or aslyee, applicable law shall be the law of the state where that person has habitual residence.

Where the habitual residence of a person cannot be established, applicable law shall be the law of a state that the person has closest connections to.

#### Habitual residence

##### Article 12

For the purpose of the present Act, habitual residence of a natural person is a place where a natural person habitually resides, independently of the registration with the competent body and independently of residence or domicile permit, and irrespective of whether the residence is restricted in advance. In determining habitual residence, due consideration

should be taken of the circumstances of personal or professional nature that show durable connections with that place or indicate the intention to create such connections.

For the purpose of the legal relationships from Chapters V and VI of the present Act, habitual residence of a natural person pursuing a business activity shall be subject to Articles 40 and 51 of the present Act.

#### Legal capacity

##### Article 13

Legal capacity of a natural person shall be governed by the law of the state of which the natural person is a national.

#### Business capacity

##### Article 14

Business capacity of a natural person shall be governed by the law of the state of which the natural person is a national. Where applicable law for a particular matter envisages specific provisions on business capacity, that law shall apply.

Where a contract was signed by persons present in the same state, the person who according to the law of that state has business capacity may not claim his business incapacity according to the law of a third country, except where the other contractual party was aware of business incapacity at the time the contract was concluded, and where the person was not aware of it for reason of gross negligence.

Paragraph 2 of this Article shall not apply to legal transactions related to family and succession relations, or to legal transactions relating to the rights in rem in immovable property located in a third state, rather than a state where the contract was concluded.

#### Business capacity of entrepreneurs

##### Article 15

Business capacity of a natural person pursuing a business activity without establishing a legal person shall be governed by the law of the state where the person is registered as an entrepreneur. Where no registration is required, business capacity shall be governed by the law of the state where the natural person has the principal place of business.

#### Guardianship

##### Article 16

Placement under guardianship and cessation of guardianship as well as relationships between a guardian and persons under guardianship shall be governed by the law of the state of which the person under guardianship is a national.

Provisional protection measures with respect to a foreign national or a stateless person present in Montenegro are governed by the law of Montenegro and last until the state whose judicial or other authority has given a decision and taken necessary measures.

Paragraph 2 of this Article also applies to the protection of property of an absent foreign national and of a stateless person present in the territory of Montenegro.

## Name

### Article 17

Determination or change of name shall be governed by the law of the state of which that person is a national.

The effect that a change in nationality has on one's name shall be governed by the law of the state of which that person has obtained nationality. In case of a stateless person, the effect of a change in habitual residence on the name shall be governed by the law of the state where the person has his new habitual residence.

The protection of name shall be governed by the law designated pursuant to Chapter VI of the present Act.

Notwithstanding paragraph 1 of this Article, spouses may subject the determination or a change in name on the occasion of or after the conclusion of their marriage in Montenegro, to the law of the state of which one spouse has nationality, or to the law of Montenegro if one of the spouses has habitual residence in Montenegro. Where the affidavit on the change of name is given after the conclusion of marriage, that statement must be in the form of a public document.

Notwithstanding paragraph 1 of this Article, holders of parental rights may make a statement before the registry officer that the child's surname shall be governed by the law of the state in which one of the spouses has habitual residence in Montenegro. Where the statement on the change of name is made after the birth certificate is issued, the statement must be in the form of a public document.

The effects on a child of the determination of name, or of surname made pursuant to paragraphs 4 and 5 of this Article, where the change is made in a surname of a minor who has turned ten, require the consent of the child on condition that the child is capable of expressing his opinion.

#### Declaring a missing person dead

##### Article 18

Declaring a missing person dead shall be governed by the law of the state of which the person was a national at the time he disappeared. Where the person is stateless, the terms and effects of declaring the missing person dead shall be governed by the law of the state in which the person had his last habitual residence.

Provisional measures for the preservation and protection of property owned by the person present in the territory of Montenegro shall be governed by Montenegrin law.

A person who has habitual residence in Montenegro may be declared dead according to Montenegrin law where so required by the person who has a legal interest in it.

## II. LEGAL STATUS OF A LEGAL PERSON, ORGANISATIONAL FORMS WITHOUT LEGAL PERSONALITY AND OF THE STATE

#### Legal person

##### Article 19

A legal person shall be governed by the law of the state where it was established.

Where a legal person has its actual seat in a state other than the state where it was established and where according to the law of that other state the law of that state is applicable, applicable law shall be the law of the state of the actual seat.

#### Organisational forms without legal personality

##### Article 20

Organisational forms without legal personality shall be governed by the law of the state where they were registered or established.

#### Scope of application of applicable law

## Article 21

The law applicable under Articles 19 and 20 of the present Act refer in particular to the following:

- 1) establishment, legal nature and legal form;
- 2) name or title;
- 3) legal subjectivity and system of management;
- 4) establishment, competence and functioning of the bodies of the legal person or of other organisational form;
- 5) agency;
- 6) acquisition and loss of membership, and related rights and obligations;
- 7) liability for obligations;
- 8) consequences of any violations of law or of founding documents;
- 9) reorganisation and cessation of a legal person or of other organisational form.

State as an entity in private law relationships with an international element

## Article 22

Provisions of the present Act also apply to private law relations with an international element in which one party is a state unless otherwise provided for by law.

## Chapter III

### LEGAL AFFAIRS, REPRESENTATION AND STATUTE OF LIMITATIONS

#### Form of legal transactions and legal actions

## Article 23

Unless otherwise provided for by the present Act, a legal transaction and a legal action are deemed valid with respect to their form if they are valid either according to the law of the place where the legal transaction is concluded or the legal action initiated or according to the law applicable to the content of the legal transaction or of legal action.

#### Contractual representation

## Article 24

Relationships between the grantor of attorney and a third party, the existence and scope of authority given to a representative, as well as effects arising out of the usage or alleged usage of such authority, shall be governed by the law chosen by the grantor and the third party, on condition that the choice made is known or could have been known to the representative.

In the absence of a choice of law, the matters from paragraph 1 of this Article shall be governed by the law of the state where the representative acted. If the representative acted in the conduct of his professional activity, applicable law shall be the law of the place where the representative had his statutory seat, on condition that the place is known or could have been known to the third party.

Notwithstanding paragraphs 1 and 2 of this Article, where the subject of representation is the right to immovable property, the matters from paragraph 1 of this Article shall be governed by the state where the immovable property is located.

The right established pursuant to paragraphs 1 and 2 of this Article shall also apply to the relationship between the representative and the third party that arise out of the fact that the representative acted within the scope of his authority, that he has exceeded such authority, or that he has acted without any authority.

#### Statute of limitations

##### Article 25

The statute of limitations shall be governed by the law applicable to the content of the legal matter or of the legal transaction.

#### Chapter IV

### RIGHTS IN REM AND INTELLECTUAL PROPERTY RIGHTS

#### III. RIGHTS IN REM

##### Rights in rem in respect of immovable property

##### Article 26

The acquisition, loss, content and exercise of the right in rem in respect of immovable property shall be governed by the law of the state on the territory of which the property is located.

##### Rights in rem in respect of movable property

##### Article 27

The acquisition and loss of the right in rem in respect of movable property shall be governed by the law of the state on the territory of which the movable property is located when the action or facts that are invoked as basis of the acquisition or the loss occur.

Where particular actions or circumstances, that are prerequisite to acquisition or loss of the right in rem in respect of movable property, were initiated in one state, they shall be deemed also consummated in another state where the last action or circumstance occurred thereby initiating acquisition or loss of the right in rem.

The content and exercise of the right in rem in respect of movable property shall be governed by the law of the state on the territory of which the movable property is located.

#### Type of property

##### Article 28

The determination of whether a property is considered to be movable or immovable shall be governed by the law of the state where the property is located.

#### Transfer of movable property to Montenegro (conflict of laws in respect of movable property)

##### Article 29

Where a movable property, in respect of which the right in rem has been acquired in another state, is transferred to Montenegro, the acquired right in rem shall be recognized in Montenegro on condition that Montenegrin law knows the right in rem which in terms of its content and effects is equivalent to the right in rem which has been acquired in another state.

The content, exercise and registration of the right in rem in respect of movable property from paragraph 1 of this Article shall be governed by Montenegrin law.

Where Montenegrin law requires the registration of the right in rem from paragraph 1 of this Article and where the right is registered within 30 days of the date the property arrived in Montenegro, the date of registration shall be deemed to be the date when the property arrived in the territory of Montenegro.

#### Goods in transit

##### Article 30

The acquisition and loss of the rights in rem in respect of goods in transit shall be governed by the law of the state of destination.

The rights in rem in respect of personal belongings that the passenger carries with him shall be governed by the law of the state of his habitual residence.

#### Means of transport

##### Article 31

The acquisition, transfer and loss of the rights in rem in respect of means of transport shall be governed by:

- 1) the law of the flag of vessel;
- 2) the law of the state of registration of an aircraft;
- 3) the law of the state where the person exploiting the means of railroad or road transport does business.

#### Validity of registration

##### Article 32

The validity of registration by which the rights in rem are acquired, transferred or lost shall be governed by the law of the state in the territory of which the property was located at the time the legal transaction was concluded.

#### Cultural property

##### Article 33

If an item, which is proclaimed as being cultural heritage of a state, has unlawfully left the territory of that state, the revindication by the state shall be governed by the law of that state except where the state chooses the law of the state on the territory of which the property is located at the time of the revindication claim.

If the law of the state that has proclaimed an item as being its cultural heritage does not grant any protection to the possessor in good faith, the latter may invoke the protection that is attributed to him by the law of the state on the territory of which the item is located at the time of the revindication claim.

#### Scope of application of the law applicable to the rights in rem

##### Article 34

The law applicable to the rights in rem refers to the following in particular:

- 1) existence, type, content and scope of rights;
- 2) holders of the rights;
- 3) transferrability of the rights;

- 4) manner of acquisition, transfer and loss of the rights;
- 5) registration requirements and possibility to oppose third parties.

#### IV. INTELLECTUAL PROPERTY RIGHTS

##### General provisions

##### Article 35

The existence, validity, scope, property, transferrability, duration and violations of copyrights, related rights and other non-registered intellectual property rights shall be governed by the law of the state in respect of which protection is sought.

The existence, validity, scope, property, transferrability, duration and violations of a registered industrial property right shall be governed by the law of the state which has granted or registered this right.

##### Intellectual property rights arising in the context of employment

##### Article 36

The law applicable to a labour contract shall also apply to a holder of an intellectual or industrial property right if the subject of the right was created in the context of employment.

##### Article 37

Contracts relating to intellectual or industrial property rights shall be governed by the law designated under Chapters V and VII hereof.

#### Chapter V

#### CONTRACTUAL RELATIONS

##### Choice of applicable law

##### Article 38

A contract shall be governed by the law chosen by the parties to the contract. The choice of law must be exclusive and be clearly arising from the provisions of the contract or the circumstances of the case. The contractual parties may choose applicable law for the contract in its entirety or only for a part thereof.

Contractual parties may agree at any time on another law as the law applicable to their contract. The change of applicable law following the conclusion of a contract shall be

without effect on the validity of the form within the meaning of Article 45 of the present Act and on the rights of third parties.

Where all other elements of the facts at the time of choice of applicable law are related to another state rather than the state whose law has been chosen, the choice of law cannot exclude the application of regulations that cannot be derogated from by agreement of the law of that other state.

The existence and validity of the agreement of the parties on applicable law shall be governed by Articles 14(2), 44 and 45 of the present Act.

#### Absence of choice of applicable law

##### Article 39

To the extent that the law applicable to the contract has not been chosen by the parties in accordance with Article 38 of the present Act, and without prejudice to the contracts from Articles 41, 42 and 43 of the present Act, the governing law shall be designated as follows:

- 1) a contract for the sale of goods shall be governed by the law of the state where the supplier has his habitual residence;
- 2) a contract for the provision of services shall be governed by the law of the state where the service provider has his habitual residence;
- 3) a contract relating to a right in rem in respect of immovable property or to a tenancy of immovable property shall be governed by the law of the state where the property is located;
- 4) a contract relating to a tenancy of immovable property concluded for temporary private use for a period of not more than six consecutive months shall be governed by the law of the state where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same state;
- 5) a franchise contract shall be governed by the law of the state where the franchisee has his habitual residence;
- 6) a distribution contract shall be governed by the law of the state where the distributor has his habitual residence;
- 7) a contract for the sale of goods by auction shall be governed by the law of the state where the auction takes place, if such a place can be determined.

Where the contract is not covered by any of the categories from paragraph 1 of this Article or where the elements of the contract would be covered by more than one of the points from paragraph 1 of this Article, the contract shall be governed by the law of the state

where the party required to effect the characteristic performance of the contract has his habitual residence.

Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a state other than the state indicated in paragraphs 1 or 2 of this Article, the law of that other state shall apply.

Where the law applicable cannot be designated pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the state with which it is most closely connected.

### Habitual residence

#### Article 40

Within the meaning of the present chapter, habitual residence of companies and other business establishments, whether they are legal persons or organisational forms without the capacity of a legal person, shall be the place of their administration.

Habitual residence of a natural person pursuing a business activity shall be the place which is the principal place of its business and activities.

Where a contract is concluded within the framework of business activities of a branch, representative unit or secondary establishment, or where the contract stipulates that a branch, representative office, or secondary establishment is responsible for execution of the contract, habitual residence shall be the place where the branch office, representative office or secondary establishment is located.

The designation of habitual residence shall be governed according to the time the contract was concluded.

### Contracts of carriage

#### Article 41

To the extent that the law applicable to a contract for the carriage of goods has not been chosen by the parties in accordance with Article 38 of the present Act, the law applicable shall be the law of the state of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also located in that state. Where those requirements are not met, the law of the state where the place of delivery as agreed by the parties is located shall apply.

The parties may choose as the law applicable to a contract of carriage only the law of the state where:

- 1) the passenger has his habitual residence; or
- 2) the carrier has his habitual residence; or
- 3) the carrier has his place of central administration; or
- 4) the place of departure is located, or where
- 5) the place of destination is located.

To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with paragraph 2 of this Article, the law applicable shall be the law of the state where the passenger has his habitual residence, provided that either the place of departure or the place of destination is located in that state. Where these requirements are not met, the law of the state where the carrier has his habitual residence shall apply.

#### Consumer contracts

##### Article 42

Consumer contracts shall be governed by the law of the state where the consumer has his habitual residence, provided that the supplier:

- 1) pursues his commercial or professional activities in the state where the consumer has his habitual residence; or
- 2) by any means, directs such activities to that state or to several states including that state, and the contract falls within the scope of such activities.

The parties may choose other law as applicable but such a choice may not have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable pursuant to paragraph 1 of this Article.

Where the requirements under paragraph 1 of this Article are not met, the law applicable to a consumer contract shall be designated pursuant to Articles 38 and 39 of the present Act.

Paragraphs 1 and 2 of this Article shall not apply to:

- 1) service contracts where the services are to be supplied to the consumer exclusively in a state other than that in which he has his habitual residence;

- 2) contracts of carriage other than a contract relating to package travel (contracts providing a combined service of travel and accommodation for a single price);
- 3) contracts relating to a right in rem in immovable property or a tenancy of immovable property other than timeshare contracts.

### Individual employment contracts

#### Article 43

An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 38 of the present Act. Such a choice of law may not have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of a choice of law, would have been applicable pursuant to paragraphs 2 and 3 of this Article.

To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the state in which or, failing that, from which the employee habitually carries out his work in performance of the contract. In case of an employee's temporary employment in another state, he shall be deemed to be working in a state in which he habitually carries out his duties.

Where the law applicable cannot be designated pursuant to paragraph 2 of this Article, the contract shall be governed by the law of the state where the place of business through which the employee was engaged is located.

### Existence and material validity

#### Article 44

The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it if the contract or term were valid.

A party, in order to establish that he did not consent, may rely upon the law of the state in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1 of this Article.

### Form of contract

#### Article 45

A contract concluded between the persons who, or whose agents, are in the same state at the time of its conclusion, is formally valid if it meets the formal requirements of the law

which governs it in substance under the present Act or the law of the state where it was concluded.

A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under the present Act, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under the present Act, or of the law of the state where the act was done, or of the law of the state where the person by whom it was done had his habitual residence at that time.

The form of consumer contracts shall be governed by the law of the state where the consumer has his habitual residence.

A contract the subject matter of which is a right in rem in immovable property or a tenancy of immovable property shall be subject to the formal requirements of the law of the state where the property is located if by that law:

- 1) those requirements are imposed irrespective of the state where the contract is concluded and irrespective of the law governing the contract; and
- 2) those requirements cannot be derogated from by agreement.

#### Assignment of claims

##### Article 46

The relationship between a creditor (assignor) who has assigned his claim against another person (debtor) and a new creditor (assignee) shall be governed by the law that applies to the contract of assignment of claims.

The law governing the assigned claim shall determine its assignability, the relationship between the new creditor and debtor, the conditions under which the assignment can be invoked against the debtor and the conditions under and the manner in which the debtor can discharge his obligations.

The assignment of claims within the meaning of this Article includes outright transfer of claims, transfers of claims by way of security and pledges or other security rights over claims.

#### The duty of third person to satisfy the creditor

##### Article 47

Where the duty of a third person to satisfy the creditor is not provided for by the contract, it shall be governed by the law applicable to claims in respect of which the duty is stated.

#### Scope of applicable law

##### Article 48

The law applicable to contractual relations shall govern in particular:

- (1) interpretation of the contract;
- (2) performance of the obligations arising from the contract;
- (3) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;
- (4) the various ways of extinguishing obligations;
- (5) statute of limitations;
- (6) extinguishing of rights due to expiry of the time limits;
- (7) the consequences of nullity of the contract.

In relation to the type and manner of performance and the steps to be taken by the creditor in the event of defective performance, account shall be taken of the law of the state in which performance takes place.

#### Interpretation and application of this chapter

##### Article 49

The provision under this chapter shall be interpreted and applied in accordance with Regulation of (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.

#### Chapter VI

#### NON-CONTRACTUAL RELATIONS

#### V. GENERAL PROVISIONS

## Definitions

### Article 50

For the purposes of this chapter, damage shall be interpreted to mean any consequence arising from tort/delict, unjust gain, management without an order or pre-contractual obligation.

The provisions of this chapter shall also apply to non-contractual obligations that are likely to occur.

Any reference in this chapter to a tort/delict, shall also include torts/delicts that are likely to occur.

Any reference in this chapter to damage, shall also include damage that is likely to occur.

## Habitual residence

### Article 51

For the purposes of this chapter, habitual residence of companies and other bodies pursuing a business activity, whether they are legal persons or organisational forms without legal personality, shall be the place of their central administration.

Where the tort/delict, or the damage arises, in the course of operation of a branch, representative unit or secondary establishment, the place where the branch, representative unit or secondary establishment is located shall be treated as the place of habitual residence.

The habitual residence of a natural person pursuing a business activity shall be his principal place of business.

## VI. NON-CONTRACTUAL OBLIGATIONS ARISING OUT OF TORT/DELICT

### General rule

#### Article 52

The law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the state in which the damage occurs irrespective of the state in which event giving rise to the damage occurred and irrespective of the state or states in which the indirect

consequences of that event occurred, unless otherwise provided for in the provisions of this chapter.

Where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time the damage occurs, the law of that country shall apply.

Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a state other than that indicated in paragraphs 1 or 2 of this Article, the law of that other state shall apply. A manifestly closer connection with another state might be based in particular on a preexisting relationship between the parties, such as a contract that is closely connected with the tort/delict in question.

### Unfair competition and acts restricting competition

#### Article 53

The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the state where competitive relations or the collective interests of consumers are, or are likely to be, affected.

Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 52 of the present Act shall apply.

The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the state where the market is, or is likely to be, affected.

When the market is, or is likely to be, affected in more than one state, and the defendant has his domicile in Montenegro, the person seeking compensation for damage may choose to base his claim on the Montenegrin law, provided that the market of Montenegro is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises. Where the claimant sues more than one defendant, he can choose to base his claim on the Montenegrin law if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in Montenegro.

The law applicable under paragraphs 1, 2, 3 and 4 of this Article may not be derogated from by an agreement on the choice of applicable law under Article 63 of the present Act.

### Environmental damage

#### Article 54

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law designated pursuant to Article 52, paragraph 1 of the present Act, unless the person seeking compensation for damage chooses to base his claim on the law of the state in which the event giving rise to the damage occurred.

#### Breach of right of person

#### Article 55

The law applicable to obligations arising out of the breach of the right of person by way of the media, the press in particular, radio, television and other media, shall, at the choice of the injured party, be the law of the state:

- 1) in which he has his habitual residence;
- 2) in the territory of which the damage occurred; or
- 3) in which the person responsible has his habitual residence or domicile.

In the cases from subparagraphs 1 and 2 of paragraph 1 of this Article, the person claimed to be responsible needs to have been able to reasonably expect that the damage will occur in the state of habitual residence or in the territory of which the damage occurred.

The law applicable to the right to publish a correction in case of a breach of right of person through the media shall be the law of the state in which the right of person was breached through the media.

Paragraph 1 of this Article shall also apply to obligations arising out of the breach of rights relating to the protection of data on person.

#### Industrial action

#### Article 56

Without prejudice to Article 52 of the present Act, the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by a strike or other form of industrial action, pending or carried out, shall be the law of the state where the strike or other form of industrial action is to be, or has been, taken.

#### Product liability

#### Article 57

The law applicable to non-contractual obligations arising out of damage caused by a product shall be designated in accordance with the 1973 Convention on the Law Applicable in Cases of Product Liability (“Official Gazette of SFRY - International Treaties”, No. 8/77).

#### Road accidents liability

##### Article 58

The law applicable to non-contractual obligations arising from road accidents shall be designated in accordance with the Convention on the Law Applicable to Road Accidents (“Official Gazette of SFRY - International Treaties”, No. 26/76).

#### Damage on vessel in open sea or on aircraft

##### Article 59

If the event giving rise to an obligation to compensate for the damage caused on a vessel in an open sea or on an aircraft, the law of the place where the facts giving rise to the obligation of compensation of damage occurred shall be considered the law of the state of the flag or the law of the state in which the aircraft is registered.

### VII. UNJUST ENRICHMENT, NEGOTIORUM GESTIO AND CULPA IN CONTRAHENDO

#### Unjust enrichment

##### Article 60

If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

Where the law applicable cannot be designated on the basis of paragraph 1 of this Article and the parties have their habitual residence in the same state when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

Where the law applicable cannot be designated on the basis of paragraphs 1 or 2 of this Article, it shall be the law of the state in which the unjust enrichment took place.

#### Negotiorum gestio

## Article 61

If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

Where the law applicable cannot be designated on the basis of paragraph 1 of this Article, and the parties have their habitual residence in the same state when the event giving rise to the damage occurred, the law of that country shall apply.

Where the law applicable cannot be designated on the basis of paragraphs 1 or 2 of this Article, it shall be the law of the country in which the act was performed.

## Culpa in contrahendo

### Article 62

The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

Where the law applicable cannot be designated on the basis of paragraph 1 of this Article, it shall be:

- (1) the law of the country in which the damage occurs, irrespective of the state in which the event giving rise to the damage occurred and irrespective of the state or states in which the indirect consequences of that event occurred; or
- (2) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country.

## VIII. GENERAL PROVISIONS ON NON-CONTRACTUAL OBLIGATIONS

### Choice of applicable law

#### Article 63

The parties may agree to submit non-contractual obligations to the law of their choice:

- (1) by an agreement entered into after the event giving rise to the damage occurred;

or

- (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a state other than the state whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

Non-contractual obligations arising from an infringement of an intellectual property right are not subject to the rule on the freedom of choice of applicable law.

### Scope of applicable law

#### Article 64

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

- (1) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (2) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (3) the existence, the nature and the assessment of damage or the remedy claimed;
- (4) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (5) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (6) persons entitled to compensation for damage sustained personally;
- (7) liability for the acts of another person;
- (8) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

### Application of rules of safety and conduct

#### Article 65

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

## Direct action against the insurer of the person liable

### Article 66

The person having suffered damage may bring his claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

## Interpretation and application of this chapter

### Article 67

The provisions of this chapter shall be interpreted and applied in accordance with Regulation (EC)/864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations - Rome II.

Paragraph 1 of this Article shall not apply to Articles 57, 58 and 59 of the present Act.

## Chapter VII

### COMMON RULES

#### ON CONTRACTUAL AND NON-CONTRACTUAL RELATIONS

## Subrogation

### Article 68

Where a creditor has a non-contractual claim upon a debtor, and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

## Multiple liability

### Article 69

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's obligation towards the creditor.

## Burden of proof

### Article 70

The law governing contractual and non-contractual obligations shall apply to the extent that it contains rules which raise presumptions of law or determine the burden of proof.

The legal effect of a contract or act may be proven by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 45 of the present Act under which that act is formally valid, provided that such mode of proof can be administered by the forum.

## Chapter VIII SUCCESSION

### General Rule

#### Article 71

The law applicable to the succession as a whole shall be that of the state in which the deceased had his habitual residence at the time of his death.

### Choice of applicable law

#### Article 72

A person may choose as the law to govern the succession as a whole the law of the state whose nationality he possesses or the law of the state in which he has habitual residence at the time of choice of applicable law or at the time of his death.

A person may choose as the law to govern the succession to immovable property the law of the state in which the property is located.

The choice of law must be expressly determined or clearly inferred from the circumstances of the case and in the form of a disposition of property upon death (will, joint will or inheritance agreement).

The existence and material validity of the choice of applicable law shall be governed by the determined law.

Paragraphs 1 through 3 of this Article shall also apply to a modification or revocation of an earlier choice of applicable law.

### Validity of the form of will

### Article 73

A will shall be valid as to form if its form complies with the law:

- 1) of the place where it was made;
- 2) of the state of which the testator had nationality at the time of disposition or at the time of his death;
- 3) of the place in which the testator had his domicile at the time of disposition or at the time of his death;
- 4) of Montenegro;
- 5) so far as immovable property is concerned, of the place where the property is located;
- 6) which was applicable or would have been applicable to succession at the time of disposition.

The revocation of a will shall be valid as to form if its form complies with any of the laws according to the terms of which, under paragraph 1 of this Article, the will could have been validly drawn up.

The validity of form of a will is also affected by:

- existence of limitations as to age, nationality or other personal characteristics of the testator;
- fulfillment of conditions in respect of witnesses;
- prohibition of certain types of dispositions in the event of death.

### Existence, material validity, effects and interpretation of disposition of estate in the event of death

### Article 74

The existence, material validity, effects and interpretation of disposition of estate in the event of death shall be governed by the law which was applicable to the succession to the deceased person at the time when the disposition was made.

The disposition shall also be valid when it is valid according to the law applicable to the succession at the time of death of the deceased person. In that event, the same law shall be applicable to the effects and interpretation of disposition with the estate in the event of death.

Paragraphs 1 and 2 of this Article shall also apply to the capacity to make a testamentary disposition. Subsequent change of applicable law shall have no effect on this capacity.

The parties to a joint testamentary disposition or an inheritance agreement may agree to subject the existence, material validity, effects and interpretation of their disposition to an applicable law that one of them can designate under Article 72, paragraphs 1, 2 and 5 of the present Act.

#### Estate without a claimant

##### Article 75

An estate without a claimant shall be governed by the law of the state where it is located.

#### Scope of applicable law

##### Article 76

The law applicable to succession shall govern the following in particular:

- 1) the causes and time of the opening of succession;
- 2) the circle of heirs and legatees, inheritance shares, and other rights resulting from the opening of succession;
- 3) the capacity to inherit;
- 4) the particular causes of the incapacity to dispose or receive;
- 5) disinheritance and debarment from succession;
- 6) the transfer of assets making up the succession to the heirs and legatees, including the conditions and effects of accepting or waiving the succession or legacy;
- 7) the powers of the heirs, the executors of the wills and other administrators of the succession, in particular the sale of property and the payment of creditors;
- 8) responsibility for the debts under the succession;
- 9) the freely disposable portion, the reserved portions and the other restrictions on the freedom to dispose of property upon death, including the allocations deducted from the succession by a court of other authority to the advantage of the relatives of the deceased;
- 10) any obligation to return or calculate the value of a gift and their calculation in the succession parts;
- 11) sharing the inheritance.

### Chapter IX

## FAMILY RELATIONS

### IX. MARRIAGE

## Terms of conclusion of marriage

### Article 77

The terms of conclusion of a marriage shall be governed, for respective persons, by the law of the state of which the respective person has nationality at the time marriage is concluded.

## Form of marriage

### Article 78

The form of marriage shall be governed by the law of the place in which marriage is concluded.

## Annulment of marriage

### Article 79

The annulment of a marriage shall be governed by the law of the state the law of which applied to the terms of conclusion of the marriage.

## Relations between spouses

### Article 80

The personal relations between the spouses shall be governed by the law of state of their nationality.

Where the spouses are nationals of different states, the law of the state where they both habitually reside shall apply.

Where the spouses do not have the same nationality, or the same habitual residence in the same state, the law of the state where the spouses were last habitually resident shall apply.

Where applicable law cannot be designated pursuant to paragraphs 1, 2 and 3 of this Article, the law of Montenegro shall apply.

## Law applied to property relations between spouses

### Article 81

The property relations between the spouses shall be governed by the law of the state which also applies to their personal relationships.

Where the change of nationality or habitual residence of one or both spouses results in a change of applicable law, the new applicable law shall apply to the property of the spouses independently of the time it is acquired.

#### Contractual relations between spouses

##### Article 82

The spouses may agree in writing to subject their contractual property relations to the law:

- 1) of the state of nationality of either of the spouses;
- 2) the state of habitual residence of either of the spouses;
- 3) the state in which they intend to establish their common habitual residence;
- 4), in relation to immovable property, the law of the place in which the immovable property is located.

The spouses may modify or revoke their choice of law. The choice made after the marriage is concluded shall start producing effect from the moment of conclusion of marriage, except as otherwise agreed by the parties.

#### Protection of third parties

##### Article 83

With their choice of law as applicable to their matrimonial property regime, the spouses may not oppose the rights of third parties, except where such parties knew or could have known of the application of that law.

Where in respect of rights in rem in immovable property the registration requirements are met under the law of the state in which the immovable property is located, the third parties are deemed to know of the application of the designated law.

#### Property regime of common law marriage

##### Article 84

Property relations between the persons living in common law marriage shall be governed by the law under Articles 81 through 83 of the present Act.

#### Divorce

##### Article 85

Divorce shall be governed by the law of the state of which the spouses are nationals at the time the divorce application is introduced.

Where the spouses do not have the same nationality, the law of the state where they have their common habitual residence at the time the divorce application is introduced.

Where the spouses do not have the same nationality, or common habitual residence at the time the divorce application is introduced, the law of the state where the spouses had their last common habitual residence shall apply.

Where applicable law cannot be designated under paragraphs 1, 2 and 3 of this Article, the law of Montenegro shall apply.

Where either of the spouses is a Montenegrin national who does not habitually reside in Montenegro, and the marriage could not be divorced under the law designated under paragraphs 1, 2 and 3 of this Article, the divorce shall be governed by the law of Montenegro.

#### Choice of law

##### Article 86

The spouses may at any event choose the law applicable to a divorce, and in addition to one of the laws from Article 85 of the present Act may also choose the law of nationality of either spouse at the time the divorce application is made.

The agreement designating the applicable law must be made in writing and certified in accordance with law, not later than at the time the divorce application is made.

## X. PARENTAL RIGHT

#### Family status of child

##### Article 87

The recognition, establishment or contestation of parentage shall be governed by the law of the state the nationality of which the child obtained at the time of birth.

Where that is more favourable to the child, the following may apply:

- 1) the law of the state of which the child is a national or in which he has habitual residence, at the time his family status is determined;
- 2) the law that at the time of birth applies to personal relations of the spouses.

The recognition of parentage shall produce effect provided it is made in accordance with the law of the state of which the person whose parentage is invoked is a national, or the law of the state of nationality of the child at the time of recognition, or the law of the state in which the child habitually resides at the time of recognition.

#### Relations between parents and child

##### Article 88

The parent child relations shall be governed by the law of the state in which the child has habitual residence or the law of the state of the child's nationality, where so more favourable to the child.

##### Adoption

##### Article 89

The terms of establishment, effect, and termination of adoption of a child shall be governed by the law of the state of nationality of the adoptive parent.

Where the spouses jointly adopt a child, the law under Article 80 of the present Act shall apply.

The child's consent, in addition to the applicable law as designated under paragraph 1 of this Article, shall be governed by the law of the state of the child's nationality.

The form of adoption shall be governed by the place where the adoption is established.

## XI. MAINTENANCE

#### General rule

##### Article 90

The maintenance obligation shall be governed by the law of the state on the territory of which the maintenance creditor has his habitual residence, unless otherwise provided for by the present Act.

In the event of change of habitual residence of the maintenance creditor, the law of the state of the new habitual residence shall apply as of the moment the change takes effect.

## Specific rules to the advantage of certain maintenance creditors

### Article 91

Specific maintenance rules shall apply to maintenance obligations:

- 1) of parents to their children;
- 2) of persons other than parents to the persons who have not turned 21, except for the obligations from Article 92 of the present Act; and
- 3) of children to their parents.

If the law designated by Article 90 of the present Act does not grant the creditor a right to maintenance, the maintenance obligation shall be governed by the law of the state in which the court before which the proceeding is initiated is located.

Notwithstanding the general rule from Article 90 of the present Act, if the maintenance creditor initiated a procedure before the competent authority of the state in which the maintenance debtor has his habitual residence, the law of that state shall apply. If that law does not grant the creditor a right to maintenance from the debtor, the maintenance obligation shall be governed by the law of the creditor's habitual residence.

If the law designated by Article 90 of the present Act and paragraphs 2 and 3 of this Article does not grant the creditor a right to maintenance, the maintenance obligation shall be governed by the law of the state of their common nationality, provided that such common nationality exists.

## Specific rule applying to spouses and former spouses

### Article 92

The maintenance obligation between spouses, former spouses or parties to a marriage which is cancelled shall not be governed by Article 90 of the present Act in case of opposition by either of the parties and if the law of another state, the law of the state of their last common habitual residence in particular, is more closely connected to the marriage, in which case that law with which there is a closer connection shall apply.

## Contestation of right to maintenance of certain persons

### Article 93

In case of maintenance obligation other than maintenance obligation of the parents toward their children, and the obligations from Article 92 of the present Act, the maintenance debtor may contest the creditor's claim on the basis of the fact that no such maintenance

obligation is envisaged according to either the law of debtor's habitual residence or the law of common nationality of the parties.

#### Choice of law applicable to a procedure

##### Article 94

Notwithstanding the general rules from Articles 90 through 93 of the present Act, and exclusively for the purpose of a specific procedure, maintenance creditor and maintenance debtor may choose as the exclusive law applicable to maintenance obligation the law of the state in which the procedure is instituted.

The agreement designating applicable law made before a procedure is instituted must be made in writing and signed by both parties or recorded in any other way which makes its content accessible for use and later reference.

#### Choice of applicable law

##### Article 95

Notwithstanding the general rules from Articles 90 through 93 of the present Act, the maintenance creditor and maintenance debtor may at any time subject the maintenance obligation to any of the following laws:

- 1) law of any state of which either party is a national at the time of the choice;
- 2) law of the state of habitual residence of either party at the time of the choice;
- 3) law that they select as applicable, or the law actually applied to their property relations;
- 4) law that they select as applicable, or the law actually applied to their divorce or separation.

The agreement designating applicable law must be made in writing and signed by both parties or recorded in any other way which makes its content accessible for use and later reference.

Paragraph 1 of this Article shall not apply to maintenance obligations over a minor or an adult who for reason of his incapacity or inability cannot protect his interests.

Irrespective of the choice of law within the meaning of paragraph 1 of this Article, the issue of whether a maintenance creditor may waive his right to maintenance shall be governed by the law of the state in which maintenance creditor has habitual residence at the time of the choice.

The right designated by the parties shall not apply if the application of that law would result in manifestly unfair or unreasonable consequences to either party, except where at the time of designation the parties are fully informed and aware of the consequences of their choice.

#### Public bodies

##### Article 96

The right of state authorities and other entities exercising public authority ('public bodies') to a repayment claim in respect of the allowance given to the creditor instead of maintenance shall be governed by the law that such public bodies are subject to.

#### Scope of the law applicable to maintenance obligation

##### Article 96

The law applicable to the maintenance obligation governs, notably:

- 1) whether, to what extent, and from whom the maintenance creditor can claim maintenance;
- 2) within which delay the maintenance creditor can lodge a claim for maintenance;
- 3) the basis for fixing the amount of maintenance and indexation;
- 4) who can lodge a claim for maintenance, except for the issues of civil capacity and representation in the procedure;
- 5) statute of limitations or terms for initiating the procedure;
- 6) the limits of the duty of the maintenance debtor when a public body claims repayment for the allowance paid to the creditor instead of maintenance.

#### Setting the amount of maintenance

##### Article 98

Both the creditor's needs and the debtor's financial standing as well as any allowance that the creditor received instead of a regular payment of maintenance shall be taken into account, even where otherwise provided for by applicable law.

## PART TWO

### JURISDICTION AND PROCEDURE

#### Chapter X

### JURISDICTION OF JUDICIAL AND OTHER AUTHORITIES OF MONTENEGRO IN CIVIL MATTERS WITH AN INTERNATIONAL ELEMENT

## XII. GENERAL PROVISIONS

### General jurisdiction

#### Article 99

A court of Montenegro shall have jurisdiction if the defendant has his domicile or statutory seat in Montenegro.

If the defendant does not have his domicile in Montenegro or in the other state, a court in Montenegro shall have jurisdiction if the defendant has his residence in Montenegro.

### Material co-defendants

#### Article 100

In the event of a civil case with multiple defendants with the status of material co-defendants, a Montenegrin court shall also have jurisdiction when one of the defendants has his domicile or statutory seat in Montenegro.

### Jurisdiction for mutually related actions

#### Article 101

A Montenegrin court, with jurisdiction to hear one of several actions, shall also have jurisdiction to hear other actions if they are related to the action that the Montenegrin court has jurisdiction for.

The actions shall be deemed related if the connections among them are so close that it is justified to hear and determine them together to avoid the risk of irreconcilable judgments if the actions were heard separately.

### Jurisdiction according to the place of business

#### Article 102

A Montenegrin court shall have jurisdiction over a dispute arising out of business operation of a branch, representative unit or secondary establishment located in Montenegro even when the defendant does not have his statutory seat in Montenegro.

### Agreement on the jurisdiction of a Montenegrin court

#### Article 103

In a matter in which, according to Montenegrin law, parties can freely dispose of their rights, they may agree to confer jurisdiction on a Montenegrin court or Montenegrin courts to hear the disputes which have arisen or may arise in connection with a legal relationship.

The Montenegrin court from paragraph 1 of this Article shall have exclusive jurisdiction, except when otherwise agreed by the parties.

#### Agreement designating jurisdiction to a foreign court

##### Article 104

In matters in which parties can freely dispose of their rights, the parties may agree to confer jurisdiction on a foreign court or foreign courts to hear disputes which have arisen or may arise in connection with a legal relationship, provided that a Montenegrin court does not have exclusive jurisdiction.

The jurisdiction of a foreign court from paragraph 1 of this Article shall be exclusive, except when otherwise agreed by the parties.

#### Form of agreement on jurisdiction

##### Article 105

An agreement on jurisdiction is concluded:

- 1) or confirmed in writing;
- 2) in a form compliant with the practice that the parties have already established; or
- 3) in international trade and exchange, in a form compliant with the custom that the parties knew or ought to have known and which is generally known in that area of trade or exchange and is regularly followed by the parties in agreements of the same type.

An agreement on jurisdiction is deemed to be concluded in writing if it is concluded by electronic means of communication that may create a permanent record of the agreement.

#### Defendant's silent consent to jurisdiction

##### Article 106

In matters in which an agreement on jurisdiction of a Montenegrin court is allowed pursuant to Article 103 of the present Act, jurisdiction of a Montenegrin court may be established with the consent of the defendant.

A defendant is deemed to have given his consent for a Montenegrin court to have jurisdiction provided that he has filed his counterclaim or a complaint against a payment order, that at the preliminary hearing, or where there was no such hearing, at the first

hearing on the merit he entered into discussion without having contested jurisdiction, or that he has filed a counterclaim.

#### Exclusive jurisdiction

##### Article 107

A Montenegrin court shall have exclusive jurisdiction when so explicitly provided for by the present or another Act.

#### Jurisdiction to hear counterclaims

##### Article 108

A Montenegrin court shall also have jurisdiction to hear the counterclaim arising from the same agreement or facts on which the original action is based.

#### Jurisdiction over non-litigious procedures

##### Article 109

Where a legal relationship is determined in a non-litigious procedure involving several parties, a Montenegrin court shall have jurisdiction if the party against which the claim is filed has his domicile or statutory seat in Montenegro, and where the procedure involves only one person, if that person has his domicile or statutory seat in Montenegro, unless when otherwise provided for by the present Act.

#### Jurisdiction to grant provisional, protective and executory measures

##### Article 110

A Montenegrin court shall have jurisdiction to grant provisional, protective and executory measures with respect to persons present in Montenegro at the time the action was introduced, even if, under the present Act the Montenegrin court would not have jurisdiction to adjudicate the merits.

#### Jurisdiction to hear registration disputes

##### Article 111

A Montenegrin court shall have exclusive jurisdiction to hear disputes with respect to validity of registration with public registers kept in Montenegro.

#### Establishment of jurisdiction

##### Article 112

Jurisdiction of a judicial or other authority of Montenegro in matters with an international element shall be established ex officio on the basis of the facts and circumstances present at the time the procedure is initiated.

Jurisdiction of a judicial or other authority of Montenegro shall also exist when the facts that it is based on change during the procedure.

#### Exceptional jurisdiction

##### Article 113

If the present Act does not attribute jurisdiction to a judicial or other authority in Montenegro, and the proceedings cannot be initiated abroad or when it would be unreasonable to demand that the action be brought abroad, jurisdiction shall be conferred on a judicial or other authority in Montenegro in a place with which the case has a sufficient connection.

#### International lis pendens

##### Article 114

A court of Montenegro shall stay the proceedings at the request of a party when an action involving the same cause and the same parties is pending before a foreign court, provided that:

- 1) the action in that matter was first brought before the foreign court;
- 2) it is an action which is not under exclusive jurisdiction of a Montenegrin court;
- 3) it may be reasonably expected that the foreign court decision will be amenable to recognition and enforcement in Montenegro.

### XIII. SPECIFIC PROVISIONS

#### 1. Status of persons

##### Jurisdiction to hear guardianship issues

##### Article 115

A Montenegrin authority shall have jurisdiction to hear guardianship cases involving persons who are Montenegrin nationals or have habitual residence in Montenegro.

A Montenegrin authority shall take necessary provisional measures in order to protect person, rights and interests of a foreign national who is present or has property in Montenegro.

#### Name

##### Article 116

A court and/or authority of Montenegro shall be responsible for change and protection of the name for Montenegrin nationals or for persons who have habitual residence in Montenegro.

#### Declaring a missing person dead

##### Article 117

A court of Montenegro shall have jurisdiction to declare a missing person dead, provided that the person was a Montenegrin national or had habitual residence in Montenegro at the time of his death.

#### Legal persons

##### Article 118

A court of Montenegro shall have exclusive jurisdiction to hear proceedings on validity of incorporation, nullity or dissolution of a company or legal person, or validity of decisions of their bodies, provided that they have a statutory seat in Montenegro.

## 2. Jurisdiction for rights in rem and intellectual property rights

#### Immovable property

##### Article 119

A Montenegrin court shall have exclusive jurisdiction to hear proceedings involving rights in rem in immovable property or tenancy of immovable property provided that the immovable property is located in Montenegro.

The jurisdiction to hear proceedings in respect of a tenancy of immovable property concluded for temporary private use for period of not more than six consecutive months shall also be conferred on the court of the state where the defendant has his domicile, provided that the tenant is a natural person and that both the landlord and tenant have their domicile in the same state.

#### Movable property

## Article 120

The jurisdiction to hear disputes on rights in rem in movable property shall be conferred on a Montenegrin court if the movable property is located in the territory of Montenegro.

## Aircrafts and vessels

### Article 121

The jurisdiction to hear disputes in respect of the rights in rem in aircrafts, vessels, as well as disputes in respect of a lease of aircrafts and vessels shall be conferred on a Montenegrin court even when the register where the aircraft or vessel is registered is kept in Montenegro.

The jurisdiction to hear disputes in respect of disturbance of possession of the aircraft and vessel from paragraph 1 of this Article shall be conferred on a Montenegrin court even when the register in which the aircraft or vessel is registered is kept on the territory of Montenegro, and when the disturbance occurred on the territory of Montenegro.

## Industrial property rights

### Article 122

A Montenegrin court shall have exclusive jurisdiction to hear proceedings in respect of registration or validity of a patent, trade or service mark, industrial samples and models, or other related rights that may be deposited or registered, irrespective of whether the issue was raised by action or in a counterclaim, provided that the deposition or registration claim was filed in Montenegro, or that deposition or registration has taken effect, or that on the basis of international agreement the deposition or registration is deemed to have taken effect.

## 3. Jurisdiction to hear contractual disputes

### General rule

#### Article 123

The jurisdiction to hear contractual disputes shall be conferred on a Montenegrin court even when the subject matter of the dispute is an obligation that has been fulfilled or that should be fulfilled in Montenegro.

Unless the parties have otherwise agreed, the place of fulfillment of the obligation from paragraph 1 of this Article shall be deemed to be:

-in the supply of goods, the place in which, under the contract, the goods have been delivered or should be delivered;

-in the supply of services, the place in which, under the contract, the services have been delivered or should be delivered.

## Consumer contracts

### Article 124

In addition to the general jurisdiction rules, a Montenegrin court shall have jurisdiction to hear action brought by a consumer against a supplier, provided that the consumer has his domicile in Montenegro.

The supplier may bring action against the consumer who has his domicile in Montenegro only before a Montenegrin court.

Derogations from paragraphs 1 and 2 of this Article shall be allowed only on the basis of a jurisdiction agreement which:

- 1) was made after the dispute occurred;
- 2) allows the consumer to bring action before another court which would have jurisdiction under the criteria which were not listed in this Article; or
- 3) was concluded between the consumer and supplier provided that at the time of conclusion both parties had their domicile or habitual residence in the same state, and which confers jurisdiction on the courts of that state, provided that such an agreement is not in contravention of the law of that state.

Paragraphs 1, 2 and 3 of this Article refer only to the disputes arising out of:

- 1) sales contract for goods to be paid in installments;
- 2) loan agreements to be repaid in installments, or any other form of loan granted to finance sales of goods; or
- 3) any other case in which a contract is concluded with a person who pursues his commercial or professional activity in Montenegro or who, by any means, directs such activities to Montenegro or to several states including Montenegro, and that the contract falls within the scope of such activities.

Paragraphs 1 through 4 of this Article shall not apply to contracts of carriage, save for package travel.

## Individual employment contracts

## Article 125

In addition to general jurisdiction rules, a Montenegrin court shall have jurisdiction to hear action brought by an employee against his employer provided that:

- 1) the employee habitually carries out his duties in Montenegro or that the last place in which he habitually carried out his duties was in Montenegro; or
- 2) the employee does not or did not habitually carry out his duties in just one state, provided that the business unit which engaged the employee is or was located in Montenegro.

An employer may bring action against an employee who has his domicile in Montenegro only before a Montenegrin court.

The provisions of this Article may be derogated from only in the event of conclusion of a jurisdiction agreement which:

- 1) was concluded after the dispute occurred; or
- 2) which allows the employee to bring action before another court which would have jurisdiction on the basis of the criteria from paragraphs 1 and 2 of this Article.

## 4. Jurisdiction in respect of non-contractual relations

### General rule

#### Article 126

A Montenegrin court shall have jurisdiction to hear disputes in respect of non-contractual relations even when the tort/delict occurred or is likely to occurring the territory of Montenegro.

Paragraph 1 of this Article shall also apply to disputes against insurance company for damages to third parties on the basis of a regulation on direct liability of an insurance company, as well as to disputes in respect of repayment claims on the basis of the claim for damages from recourse debtors.

## 5. Jurisdiction in respect of succession

### General rule

#### Article 127

A Montenegrin court shall have jurisdiction in respect of succession if the deceased person had his habitual residence in Montenegro at the time of his death.

## Jurisdiction according to the location of assets

### Article 128

When the deceased person did not have his habitual residence in Montenegro at the time of his death, a Montenegrin court shall have jurisdiction on the basis of the fact that the assets that make up his inheritance are located in Montenegro and that:

- 1) the law of Montenegro was designated as applicable pursuant to Article 72 of the present Act; or
- 2) the deceased person was a Montenegrin national at the time of his death; or
- 3) that this Article applies only to such assets.

## Choice of jurisdiction

### Article 129

In respect of disposition of property in the event of his death, a person may designate a court or courts of the state the law of which can be chosen as applicable to succession under Article 72 of the present Act to also have jurisdiction in respect of disposition of his property, in its entirety or in part. Once chosen in this way, the jurisdiction shall be exclusive.

## 6. Jurisdiction in respect of family law disputes

### Marriage and related disputes

#### Article 130

A Montenegrin court shall have jurisdiction to hear actions relating to the existence of marriage, divorce or annulment of marriage, if:

- 1) one spouse is a Montenegrin national or was a Montenegrin national at the time the marriage was concluded;
- 2) both spouses have their habitual residence in Montenegro;
- 3) one spouse is a stateless person who has habitual residence in Montenegro; or
- 4) one spouse has habitual residence in Montenegro, except where it is clear that the decision of the Montenegrin court would not be recognized under the law of the state of which either of the spouses is a national.

The jurisdiction of a Montenegrin court pursuant to paragraph 1 of this Article also refers to a case when the marriage dispute seeks a decision on maintenance between the spouses or former spouses, parental care or child subsistence or marital property regime.

Paragraphs 1 and 2 of this Article shall also apply to common law marriage.

## Child family status

### Article 131

A Montenegrin court shall have jurisdiction to hear disputes relating to establishment or contestation of parentage provided that the child, mother, father or a person claiming to be the father or mother of the child:

- 1) is a Montenegrin national; or
- 2) has habitual residence in Montenegro.

## Parental care

### Article 132

A Montenegrin judicial or other authority shall have jurisdiction in respect of decisions on the care, raising and upbringing of children who have parental care if the child is a Montenegrin national or has habitual residence in Montenegro.

A Montenegrin judicial or other authority shall also have jurisdiction when the child needs the protection from such authority.

## Adoption

### Article 133

A Montenegrin judicial or other authority shall have jurisdiction in respect of decisions relating to adoption if the adoptive parent, one of the adoptive parents, or adoptee:

- 1) is a Montenegrin national; or
- 2) has habitual residence in Montenegro.

## Maintenance

### Article 134

A Montenegrin court shall have jurisdiction to hear maintenance disputes if:

- 1) the defendant has habitual residence in Montenegro;
- 2) the maintenance creditor has habitual residence in Montenegro; or
- 3) maintenance is decided in an action brought before a Montenegrin court on status relationships or parental care.

## Other family law relations

### Article 135

A Montenegrin court shall have jurisdiction in respect of other family law relations when the court has jurisdiction under the rights of territorial jurisdiction.

## Chapter XI OTHER PROVISIONS

### Capacity of natural person to act as party to civil proceedings

#### Article 136

The capacity of a natural person to be a party to and act independently in civil proceedings shall be governed by the law of the state of which the person has nationality.

Where a foreign national does not have the capacity to act independently in civil proceedings pursuant to paragraph 1 of this Article, but has such capacity under the law of Montenegro, the person may act in the proceeding to defend his cause on his own.

A legal representative acting on behalf of the foreign national from paragraph 2 of this Article may act in the proceeding only until the foreign national states that he will take over the conduct of the proceeding.

The capacity of a foreign legal person to be a party to proceedings shall be governed by the law designated under Article 19 of the present Act.

### Obligation to cover the cost of proceeding

#### Article 137

Where a foreign national or a stateless person without a domicile in Montenegro institute civil proceedings before a Montenegrin court, he shall cover the cost for the defendant, at his request.

The defendant shall file the request from paragraph 1 of this Article at the preliminary hearing at the latests, and where preparatory hearing is not held, at the first hearing on the merits before discussions on the merits begins, i.e. as soon as he learns that the requirements are met for him to seek security.

The security for the cost of proceedings shall be provided in money and the court may allow for the security to be provided in another appropriate form.

### Exemption from duty to cover cost of proceeding

## Article 138

A defendant shall not be entitled to security of the cost of proceedings:

- 1)if, in the state of which the claimant is a national, Montenegrin nationals are not under duty to provided security;
- 2)if the claimant enjoys the right of asylum in Montenegro;
- 3)if the claim is relating to the claimant's receivable arising out of his employment in Montenegro;
- 4)if the proceeding is relating to a marital dispute, a dispute to establish or contest parentage, or a case of statutory maintenance;
- 5)if the proceeding is an action upon a bill of exchange or cheque, a counterclaim or issuance of payment order.

The issue of whether Montenegrin nationals are under the duty, within the meaning of paragraph 1, subparagraph 1 of this Article, to provide security in the state of which the claimant is a national, shall be resolved by the state administration authority responsible for justice affairs.

## Court decision on security of cost of proceedings

### Article 139

In its decision granting the request for a security for the cost of proceedings, the court shall set the amount of security and the deadline by which it must be deposited, and warn the claimant of the consequences as provided for by law should he fail to deposit the security by the deadline.

Where the claimant does not prove by the agreed deadline that he has deposited the security, the claim will be deemed withdrawn, that is that the claimant has given up the legal remedy if the request for security was filed only during the proceeding on the legal remedy.

The defendant who filed a timely request for a security for the cost of proceedings shall not be under duty to continue the proceedings on the merits until a final decision has been reached on his request, and if the request is granted, until the claimant has deposited the security.

If the court dismisses the request for a security for the cost of proceedings, it may decide that the proceedings should continue even before the decision dismissing the request becomes final.

## Exemption from cost of the proceedings

### Article 140

Foreign nationals are entitled to exemption from cost of proceedings on reciprocity terms.

## PART THREE

### RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS

#### Chapter XII

### RECOGNITION AND ENFORCEMENT OF JUDGMENTS

#### A foreign judgment

##### Article 141

A foreign judgment shall be given the same effects as a domestic judgment of a Montenegrin court and shall produce legal effect in Montenegro only insofar as it is recognised by a Montenegrin court.

A foreign judgment within the meaning of paragraph 1 of this Article shall also be deemed to be a settlement made before a court of law ('court settlement').

A foreign judgment shall also be deemed to be a decision of other authority which, in the state in which it was given, is equalised with a court judgment, or court settlement, if such a decision governs the relations from Article 1 of the present Act.

#### Certificate of validity

##### Article 142

A foreign judgment shall be recognised if the person seeking recognition produces, together with the judgment, a certified transcript and a certificate issued by the competent foreign judicial or other authority certifying the validity of the judgment under the law of the state in which it was given.

If a foreign court judgment or its certified transcript are not made in an official language or a language in the official use in the court, the person seeking recognition must also file a certified translation of the foreign judgment.

#### Violation of the right to defence

#### Article 143

A Montenegrin court shall refuse to recognise a foreign judgment if upon examining the complaint filed by the defendant from the foreign judgment the court finds that the defendant could not take part in the proceedings due to irregularities in the procedure.

The defendant from the foreign judgment shall be considered to have been unable to take part in the procedure if the defendant was not served in person with the summons, charge, or decision which instituted the proceedings, or if no attempt of service has been made, or if he was not served the documents in sufficient time in which to prepare for his defence, except where the defendant took part in the hearing on the merits in the first instance proceeding.

#### Exclusive jurisdiction of Montenegrin court

##### Article 144

A foreign judgment shall not be recognized if the subject matter is within exclusive jurisdiction of a judicial or other authority of Montenegro.

#### Excessive jurisdiction of a foreign court

##### Article 145

A foreign judgment shall not be recognised if a foreign court based its jurisdiction on the facts not recognised by the law of Montenegro as the facts that may serve as grounds for the establishment of international jurisdiction of a Montenegrin court in handling the same dispute.

Existence of a final judgment on the same cause of action and between the same parties

##### Article 146

A foreign judgment shall not be recognised of a judicial or other authority of Montenegro gave a final judgment involving the same cause of action, or if another foreign judgment on the same cause of action was recognized in Montenegro.

The court shall stay the proceedings for a recognition of a foreign judgment if before a Montenegrin court the proceedings instituted earlier and involving the same cause of action and between the same parties are still pending. The proceedings will be stayed until the earlier proceedings have been completed.

#### Violation of public order

##### Article 147

A foreign judgment shall not be recognised if the effect of its recognition would be manifestly contrary to the public order of Montenegro.

Foreign judgment on personal or family status of a Montenegrin national

Article 148

Where a Montenegrin court finds that a foreign judgment refers to a personal status of a Montenegrin national, for such a judgment to be recognised, the judgment must be subject to review pursuant to Articles 142 through 147 of the present Act.

Enforcement of a foreign judgment

Article 149

Enforcement of foreign judgments shall be governed by Articles 142 through 147 of the present Article.

A person seeking recognition of a foreign judgment must produce, in addition to the certificate from Article 142 of the present Act, also the certificate of enforceability of the judgment under the law of the state in which it was given.

Chapter XIII

RECOGNITION AND ENFORCEMENT OF ARBITRATION AWARDS

Foreign arbitration award

Article 150

A foreign arbitration award shall be an arbitration award not given in Montenegro.

A foreign arbitration award shall belong to the state in which it was given.

Recognition and enforcement

Article 151

The recognition and enforcement of foreign arbitration awards shall be governed by the 1958 Convention on Recognition and Enforcement of Foreign Arbitration Awards (“Official Gazette of SFRY - International Treaties”, No. 11/81).

Chapter XIV

PROCEDURE FOR RECOGNITION AND ENFORCEMENT  
OF COURT AND ARBITRATION DECISIONS

## Procedure for making the application

### Article 152

The procedure for the recognition of a foreign court or arbitration decision shall be initiated by an application.

The recognition of a foreign judgment relating to a personal status may be sought by any person with a legal interest.

The recognition of foreign court and arbitration decisions shall fall within the territorial jurisdiction of the court having actual jurisdiction.

The enforcement of court and arbitration decisions shall fall within the territorial jurisdiction of the court in the territory of which the enforcement is to be carried out.

## Course of procedure and legal aid

### Article 153

In its procedure for a recognition of a foreign court or arbitration decision, the court shall limit itself to examining whether the conditions from Articles 142 through 147 of the present Act are in place.

If the court finds no obstacles to the recognition of the foreign court or arbitration decision, it shall issue a decision declaring the recognition of the foreign decision.

The decision declaring the recognition shall be served on the other party or other participants involved in the procedure for a foreign judgment, together with a notification that the decision may be appealed against within 30 days of the date of service.

The appeal is decided by the court which gave the decision declaring the recognition, in a panel of three judges. Where the decision on the appeal depends on any disputed facts, the court shall issue its decision after a hearing.

The court decision dismissing the application for a recognition of a foreign court or arbitration decision and the court decision on appeal may be appealed against with the appellate court within 30 days of the date of service.

Notwithstanding paragraph 3 of this Article, the court shall not serve a decision recognising a foreign judgment on divorce to the other party if the party seeking recognition is a Montenegrin national, and the other party has no domicile or habitual residence in Montenegro.

#### Extraordinary legal remedies

##### Article 154

An application for a review may be filed against a decision declaring recognition or enforceability of a foreign judgment which was vacated by an extraordinary legal remedy in the state in which it was given.

#### Recognition or declaration of enforceability of a foreign judgment as a preliminary question

##### Article 155

Where a Montenegrin court handles the matter of recognition or declaration of enforceability of a foreign judgment as a preliminary question, the Montenegrin court shall have jurisdiction in respect of its recognition or declaration as enforceable in the procedure in which it decides the matter in relation to which the application is made.

#### Documentation

##### Article 156

The following must be submitted together with the application for recognition or declaration of enforceability of a foreign judgment:

- 1) the original judgment or its certified transcript, together with a translation by a certified court interpreter;
- 2) certificate that the judgment is final under the law of the state in which it was given;
- 3) certificate that the judgment is enforceable under the law of the state in which it was given if the declaration of enforceability of the judgment is sought.

#### Cost of procedure

##### Article 157

The cost of procedure shall be decided by the court in accordance with the rules that would apply if the matter were decided by a judicial or other authority of Montenegro.

#### Due application of other legislation

##### Article 158

In the absence of specific provisions in the present chapter on the procedure for recognition of foreign court and arbitration decisions, the provisions of the law governing non-litigious procedure shall apply accordingly.

## PART FOUR SPECIFIC PROVISIONS

### Marriages concluded at diplomatic or consular missions

#### Article 159

Montenegrin nationals may conclude their marriage at a diplomatic or consular missions of Montenegro provided that the state in which the diplomatic or consular mission is located has no objections or where so provided for by an international agreement.

The ministry responsible for consular affairs shall designate diplomatic and consular missions of Montenegro where marriages between Montenegrin national may be concluded.

### Guardianship affairs

#### Article 160

Guardianship affairs relating to Montenegrin nationals present abroad are handled by a diplomatic or consular mission of Montenegro, provided the state in which the diplomatic or consular mission is located has no objections, or where so provided for by an international agreement.

### Drafting a will

#### Article 161

A Montenegrin national present abroad can have his will drafted by a diplomatic or consular mission of Montenegro pursuant to the provisions governing the drafting of a court will.

### Certification of signatures, manuscripts and transcripts

#### Article 162

A diplomatic or consular mission of Montenegro may certify signatures, manuscripts and transcripts pursuant to international treaties and regulations of the state in which the diplomatic or consular mission is located.

More specific rules governing the conduct of activities from paragraph 1 of this Article shall be enacted by the ministry responsible for consular affairs.

#### Issuance of certificates on regulations of Montenegro

##### Article 163

A certificate on regulations that are or were applicable in Montenegro, for their use before the authorities abroad, shall be issued by a state administration body responsible for justice affairs.

The certificate from paragraph 1 of this Article shall include the name of certificate, the date of issuance, effective date, date of expiry, and the text of the relevant provisions from that regulation.

#### PART FIVE

#### TRANSITIONAL AND FINAL PROVISIONS

##### Jurisdiction

##### Article 164

A judicial or other authority of Montenegro before which the proceedings were initiated to hear private law matters with an international element before the beginning of implementation of the present Act shall retain jurisdiction even when the present Act does not confer jurisdiction on that court to hear such matters.

The procedures from paragraph 1 of this Article whereby the judicial or other authority of Montenegro declared itself as incompetent before the beginning of implementation of the present Act may be instituted again after the beginning of implementation of the present Act if the present Act provides for the jurisdiction of a court or of other authority of Montenegro, and if the application concerned can still be filed.

##### Pending proceedings

##### Article 165

Where before the beginning of implementation of the present Act a first instance decision was given whereby the proceedings before a first-instance court or other authority is finalised, the proceedings shall continue under the regulations in effect until the day the implementation of the present Act started.

Where after the beginning of implementation of the present Act the first instance decision from paragraph 1 of this Article is vacated, the proceedings will continue according to the provisions of the present Act.

#### Applicable law

##### Article 166

The first-instance proceedings on a cause of action involving an international element which is still pending on the date the implementation of the present Act begins shall be governed by the law provided for by the present Act.

#### Recognition and enforcement

##### Article 167

The present Act shall apply to the terms of recognition and declaration of a foreign judgment enforceable provided that on the date when its implementation begins, the proceedings seeking recognition or declaration of a foreign judgment enforceable is still pending.

#### Legislation repealed and made ineffective

##### Article 168

As of the date the present Act enters into force, the Law on Resolving Conflict of Laws with Regulations of Other Countries (“Official Gazette of SFRY”, No. 43/82 and 72/82 and “Official Gazette of FRY” No. 46/96) shall be repealed, and the following provisions shall become ineffective: Article 15, paragraph 1, subparagraph 1 of the Law on Pledge as Security for Claims (“Official Gazette of RME”, No. 38/02), Article 10 of the Law on Foreign Trade (“Official Gazette of RME” No. 28/04), and Article 3 of the Law on Consumer Protection (“Official Gazette of ME”, No. 26/06).

#### Entry into force

##### Article 169

The present Act shall enter into force on the eight day of its publication in the “Official Gazette of Montenegro”, and its implementation will begin six months after its publication.

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