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32. CONVENTION ON THE LAW APPLICABLE TO SUCCESSION TO THE ESTATES OF DECEASED PERSONS

(Concluded 1 August 1989)

The States signatory to this Convention,
Desiring to establish common provisions concerning the law applicable to succession to the estates of deceased persons,
Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions
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CHAPTER I – SCOPE OF THE CONVENTION

Article 1

- (1) This Convention determines the law applicable to succession to the estates of deceased persons.
- (2) The Convention does not apply to –
 - a) the form of dispositions of property upon death;
 - b) capacity to dispose of property upon death;
 - c) issues pertaining to matrimonial property;
 - d) property rights, interests or assets created or transferred otherwise than by succession, such as in joint ownership with right of survival, pension plans, insurance contracts, or arrangements of a similar nature.

Article 2

The Convention applies even if the applicable law is that of a non-Contracting State.

CHAPTER II – APPLICABLE LAW

Article 3

- (1) Succession is governed by the law of the State in which the deceased at the time of his death was habitually resident, if he was then a national of that State.
- (2) Succession is also governed by the law of the State in which the deceased at the time of his death was habitually resident if he had been resident there for a period of no less than five years immediately preceding his death. However, in exceptional circumstances, if at the time of his death he was manifestly more closely connected with the State of which he was then a national, the law of that State applies.

- (3) In other cases succession is governed by the law of the State of which at the time of his death the deceased was a national, unless at that time the deceased was more closely connected with another State, in which case the law of the latter State applies.

Article 4

If the law applicable according to Article 3 is that of a non-Contracting State, and if the choice of law rules of that State designate, with respect to the whole or part of the succession, the law of another non-Contracting State which would apply its own law, the law of the latter State applies.

Article 5

- (1) A person may designate the law of a particular State to govern the succession to the whole of his estate. The designation will be effective only if at the time of the designation or of his death such person was a national of that State or had his habitual residence there.
- (2) This designation shall be expressed in a statement made in accordance with the formal requirements for dispositions of property upon death. The existence and material validity of the act of designation are governed by the law designated. If under that law the designation is invalid, the law governing the succession is determined under Article 3.
- (3) The revocation of such a designation by its maker shall comply with the rules as to form applicable to the revocation of dispositions of property upon death.
- (4) For the purposes of this Article, a designation of the applicable law, in the absence of an express contrary provision by the deceased, is to be construed as governing succession to the whole of the estate of the deceased whether he died intestate or wholly or partially testate.

Article 6

A person may designate the law of one or more States to govern the succession to particular assets in his estate. However, any such designation is without prejudice to the application of the mandatory rules of the law applicable according to Article 3 or Article 5, paragraph 1.

Article 7

- (1) Subject to Article 6, the applicable law under Articles 3 and 5, paragraph 1, governs the whole of the estate of the deceased wherever the assets are located.
- (2) This law governs –
 - a) the determination of the heirs, devisees and legatees, the respective shares of those persons and the obligations imposed upon them by the deceased, as well as other succession rights arising by reason of death including provision by a court or other authority out of the estate of the deceased in favour of persons close to the deceased;
 - b) disinheritance and disqualification by conduct;
 - c) any obligation to restore or account for gifts, advancements or legacies when determining the shares of heirs, devisees or legatees;
 - d) the disposable part of the estate, indefeasible interests and other restrictions on dispositions of property upon death;
 - e) the material validity of testamentary dispositions.
- (3) Paragraph 2 does not preclude the application in a Contracting State of the law applicable under this Convention to other matters which are considered by that State to be governed by the law of succession.

CHAPTER III – AGREEMENTS AS TO SUCCESSION

Article 8

For the purposes of this Chapter an agreement as to succession is an agreement created in writing or resulting from mutual wills which, with or without consideration, creates, varies or terminates rights in the future estate or estates of one or more persons parties to such agreement.

Article 9

- (1) Where the agreement involves the estate of one person only, its material validity, the effects of the agreement, and the circumstances resulting in the extinction of the effects, are determined by the law which under Article 3 or 5, paragraph 1, would have been applicable to the succession to the estate of that person if that person had died on the date of the agreement.
- (2) If under that law the agreement is invalid, it is nevertheless valid if it is valid under the law which at the time of death is the law applicable to the succession to the estate of that person according to Article 3 or 5, paragraph 1. The same law then governs the effects of the agreement and the circumstances resulting in the extinction of the effects.

Article 10

- (1) Where the agreement involves the estates of more than one person, the agreement is materially valid only if it is so valid under all the laws which, according to Article 3 or 5, paragraph 1, would have governed the succession to the estates of all those persons if each such person had died on the date of the agreement.
- (2) The effects of the agreement and the circumstances resulting in the extinction of the effects are those recognised by all of those laws.

Article 11

The parties may agree by express designation to subject the agreement, so far as its material validity, the effects of the agreement, and the circumstances resulting in the extinction of the effects are concerned, to the law of a State in which the person or any one of the persons whose future estate is involved has his habitual residence or of which he is a national at the time of the conclusion of the agreement.

Article 12

- (1) The material validity of an agreement valid under the law applicable according to Article 9, 10 or 11 may not be contested on the ground that the agreement would be invalid under the law applicable according to Article 3 or 5, paragraph 1.
- (2) However, the application of the law applicable according to Article 9, 10 or 11 shall not affect the rights of anyone not party to the agreement who under the law applicable to the succession by virtue of Article 3 or 5, paragraph 1, has an indefeasible interest in the estate or another right of which he cannot be deprived by the person whose estate is in question.

CHAPTER IV – GENERAL PROVISIONS

Article 13

Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, and where those laws provide differently for

this situation or make no provision at all, none of the deceased persons shall have any succession rights to the other or others.

Article 14

- (1) Where a trust is created in a disposition of property upon death, the application to the succession of the law determined by the Convention does not preclude the application of another law to the trust.
Conversely, the application to a trust of its governing law does not preclude the application to the succession of the law governing succession by virtue of the Convention.
- (2) The same rules apply by analogy to foundations and corresponding institutions created by dispositions of property upon death.

Article 15

The law applicable under the Convention does not affect the application of any rules of the law of the State where certain immovables, enterprises or other special categories of assets are situated, which rules institute a particular inheritance regime in respect of such assets because of economic, family or social considerations.

Article 16

Where under the law applicable by virtue of the Convention there is no heir, devisee or legatee under a disposition of property upon death, and no physical person is an heir by operation of law, the application of the law so determined does not preclude a State or an entity appointed thereto by that State from appropriating the assets of the estate that are situated in its territory.

Article 17

In this Convention, and subject to Article 4, law means the law in force in a State other than its choice of law rules.

Article 18

The application of any of the laws determined by the Convention may be refused only where such application would be manifestly incompatible with public policy (*ordre public*).

Article 19

- (1) For the purposes of identifying the law applicable under this Convention, where a State comprises two or more territorial units, each of which has its own system of law or its own rules of law in respect of succession, the provisions of this Article apply.
- (2) If there are rules in force in such a State identifying which law among the laws of the two or more units is to apply in any circumstance for which this Article provides, the law of that unit applies. In the absence of such rules the following paragraphs of this Article apply.
- (3) For the purposes of any reference in this Convention, or any designation by the deceased pursuant to this Convention,
 - a) the law of the State of the habitual residence of the deceased at the time of designation or of his death means the law of that unit of the State in which at the relevant time the deceased had his habitual residence;
 - b) the law of the State of the nationality of the deceased at the time of designation or of his death means the law of that unit of the State in which at the relevant time the deceased had his habitual residence, and in the absence of such an habitual residence, the law of the unit with which he had his closest connection.

- (4) For the purposes of any reference in this Convention, the law of the State of closest connection means the law of that unit of the State with which the deceased was most closely connected.
- (5) Subject to Article 6, for the purposes of any designation pursuant to this Convention whereby the deceased designates the law of a unit of the State of which at the time of designation or of his death
 - a) he was a national, that designation is valid only if at some time he had had an habitual residence in, or in the absence of such an habitual residence, a close connection with, that unit;
 - b) he was not a national, the designation is valid only if he then had his habitual residence in that unit, or, if he was not then habitually resident in that unit but was so resident in that State, he had had an habitual residence in that unit at some time.
- (6) For the purposes of any designation under Article 6 with regard to particular assets whereby the deceased designates the law of a State, it is presumed that, subject to evidence of contrary intent, the designation means the law of each unit in which the assets are situated.
- (7) For the purposes of Article 3, paragraph 2, the required period of residence is attained when the deceased for the five years immediately preceding his death had his residence in that State, notwithstanding that during that period he resided in more than one of the units of that State. When the period has been attained, and the deceased had an habitual residence in that State at that time, but no habitual residence in any particular unit of that State, the applicable law is the law of that unit in which the deceased last resided, unless at that time he had a closer connection with another unit of the State, in which case the law of the latter unit applies.

Article 20

For purposes of identifying the law applicable under this Convention, where a State has two or more legal systems applicable to the succession of deceased persons for different categories of persons, any reference to the law of such State shall be construed as referring to the legal system determined by the rules in force in that State. In the absence of such rules, the reference shall be construed as referring to the legal system with which the deceased had the closest connection.

Article 21

A Contracting State in which different systems of law or sets of rules of law apply to succession shall not be bound to apply the rules of the Convention to conflicts solely between the laws of such different systems or sets of rules of law.

Article 22

- (1) The Convention applies in a Contracting State to the succession of any person whose death occurs after the Convention has entered into force for that State.
- (2) Where at a time prior to the entry into force of the Convention in that State the deceased has designated the law applicable to his succession, that designation is to be considered valid there if it complies with Article 5.
- (3) Where at a time prior to the entry into force of the Convention in that State the parties to an agreement as to succession have designated the law applicable to that agreement, that designation is to be considered valid there if it complies with Article 11.

Article 23

- (1) The Convention does not affect any other international instrument to which Contracting States are or become Parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) Paragraph 1 of this Article also applies to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 24

- (1) Any State may, at the time of signature, ratification, acceptance, approval or accession, make any of the following reservations –
 - a) that it will not apply the Convention to agreements as to succession as defined in Article 8, and therefore that it will not recognise a designation made under Article 5 if the designation is not expressed in a statement made in accordance with the requirements for a testamentary disposition;
 - b) that it will not apply Article 4;
 - c) that it will not recognise a designation made under Article 5 by a person who, at the time of his death, was not or was no longer either a national of, or habitually resident in, the State whose law he had designated, but at that time was a national of and habitually resident in the reserving State;
 - d) that it will not recognise a designation made under Article 5, if all of the following conditions are met
 - the law of the State making the reservation would have been the applicable law under Article 3 if there had been no valid designation made under Article 5,
 - the application of the law designated under Article 5 would totally or very substantially deprive the spouse or a child of the deceased of an inheritance or family provision to which the spouse or child would have been entitled under the mandatory rules of the law of the State making this reservation,
 - that spouse or child is habitually resident in or a national of that State.
- (2) No other reservation shall be permitted.
- (3) Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the month following the expiration of three months after notification of the withdrawal.

CHAPTER V – FINAL CLAUSES

Article 25

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Sixteenth Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 26

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 28, paragraph 1.
- (2) The instrument of accession shall be deposited with the depositary.

Article 27

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all of its territorial units or only to one or more of them and may alter this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 28

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 25.
- (2) Thereafter the Convention shall enter into force –
 - a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b) for a territorial unit to which the Convention has been extended in conformity with Article 27, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 29

After the entry into force of an instrument revising this Convention a State may only become Party to the Convention as revised.

Article 30

- (1) A State Party to this Convention may denounce it, or only Chapter III of the Convention, by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of three months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 31

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 26 of the following –

- a) the signatures and ratifications, acceptances, approvals and accessions referred to in Articles 25 and 26;
- b) the date on which the Convention enters into force in accordance with Article 28;
- c) the declarations referred to in Article 27;
- d) the reservations and withdrawals of reservations referred to in Article 24;
- e) the denunciations referred to in Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 1st day of August 1989, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Sixteenth Session.