

## **11. CONVENTION ON THE CONFLICTS OF LAWS RELATING TO THE FORM OF TESTAMENTARY DISPOSITIONS<sup>1</sup>**

*(Concluded 5 October 1961)*

The States signatory to the present Convention,  
Desiring to establish common provisions on the conflicts of laws relating to the form of testamentary dispositions,  
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

### Article 1

A testamentary disposition shall be valid as regards form if its form complies with the internal law:

- a) of the place where the testator made it, or
- b) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- c) of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- d) of the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- e) so far as immovables are concerned, of the place where they are situated.

For the purposes of the present Convention, if a national law consists of a non-unified system, the law to be applied shall be determined by the rules in force in that system and, failing any such rules, by the most real connexion which the testator had with any one of the various laws within that system.

The determination of whether or not the testator had his domicile in a particular place shall be governed by the law of that place.

### Article 2

Article 1 shall apply to testamentary dispositions revoking an earlier testamentary disposition. The revocation shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under Article 1, the testamentary disposition that has been revoked was valid.

### Article 3

The present Convention shall not affect any existing or future rules of law in Contracting States which recognise testamentary dispositions made in compliance with the formal requirements of a law other than a law referred to in the preceding Articles.

### Article 4

The present Convention shall also apply to the form of testamentary dispositions made by two or more persons in one document.

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<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Neuvième session (1960)*, Tome III, *Forme des testaments* (180 pp.).

#### Article 5

For the purposes of the present Convention, any provision of law which limits the permitted forms of testamentary dispositions by reference to the age, nationality or other personal conditions of the testator, shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications that must be possessed by witnesses required for the validity of a testamentary disposition.

#### Article 6

The application of the rules of conflicts laid down in the present Convention shall be independent of any requirement of reciprocity.

The Convention shall be applied even if the nationality of the persons involved or the law to be applied by virtue of the foregoing Articles is not that of a Contracting State.

#### Article 7

The application of any of the laws declared applicable by the present Convention may be refused only when it is manifestly contrary to "*ordre public*".

#### Article 8

The present Convention shall be applied in all cases where the testator dies after its entry into force.

#### Article 9

Each Contracting State may reserve the right, in derogation of the third paragraph of Article 1, to determine in accordance with the *lex fori* the place where the testator had his domicile.

#### Article 10

Each Contracting State may reserve the right not to recognise testamentary dispositions made orally, save in exceptional circumstances, by one of its nationals possessing no other nationality.

#### Article 11

Each Contracting State may reserve the right not to recognise, by virtue of provisions of its own law relating thereto, forms of testamentary dispositions made abroad when the following conditions are fulfilled:

- a) the testamentary disposition is valid as to form by reason only of a law solely applicable because of the place where the testator made his disposition,
- b) the testator possessed the nationality of the State making the reservation,
- c) the testator was domiciled in the said State or had his habitual residence there, and
- d) the testator died in a State other than that in which he had made his disposition.

This reservation shall be effective only as to the property situated in the State making the reservation.

#### Article 12

Each Contracting State may reserve the right to exclude from the application of the present Convention any testamentary clauses which, under its law, do not relate to matters of succession.

### Article 13

Each Contracting State may reserve the right, in derogation of Article 8, to apply the present Convention only to testamentary dispositions made after its entry into force.

### Article 14

The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

### Article 15

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 14.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

### Article 16

Any State not represented at the Ninth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 15. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

### Article 17

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

### Article 18

Any State may, not later than the moment of its ratification or accession, make one or more of the reservations mentioned in Articles 9, 10, 11, 12 and 13 of the present Convention. No other reservation shall be permitted.

Each Contracting State may also, when notifying an extension of the Convention in accordance with Article 17, make one or more of the said reservations, with its effect limited to all or some of the territories mentioned in the extension.

Each Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

### Article 19

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 15, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.  
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.  
It may be limited to certain of the territories to which the Convention applies.  
The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

#### Article 20

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 14, and to the States which have acceded in accordance with Article 16, of the following:

- a) the signatures and ratifications referred to in Article 14;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 15;
- c) the accessions referred to in Article 16 and the date on which they take effect;
- d) the extensions referred to in Article 17 and the date on which they take effect;
- e) the reservations and withdrawals referred to in Article 18;
- f) the denunciation referred to in the third paragraph of Article 19.

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

Done at The Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law.