

# Choice of Applicable Law in Matrimonial Property Regime Regulation

## Choice of applicable law for matrimonial property regime

**Connexity requirement:** Spouses or future spouses may choose one of the following laws as applicable:

1. Law of the State where spouses or one of them is **habitually resident** at the time the agreement is concluded;
2. Law of the State of **nationality** of spouses or one of them at the time the agreement is concluded.

**Time frame:** Choice may be made or changed at any moment, before the marriage, at the time of conclusion of the marriage or during the course of the marriage.

## Choice of applicable law limitations

1. Change of the law applicable made during the marriage has **prospective effects** only, unless otherwise agreed.
2. Retroactive change of the applicable law cannot adversely affect the **rights of third parties**.

## Choice of law material validity

Material validity is governed by the **chosen law** as if the agreement was valid.

**Additional material validity rules** which may apply: In order to establish that he did not consent, a spouse may rely upon the law of the country in which he has his habitual residence at the time the court is seised, if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the chosen law.

## Choice of law formal validity

Choice of law agreement has to be expressed in **writing, dated and signed** by both spouses.

Communication by **electronic means** is considered to be equivalent to writing if it provides a durable record of the agreement.

## Additional formal requirements which may apply

If spouses have **common habitual residence in an EU MS** at the time the agreement is concluded: formal requirements under the law of that EU MS if it lays down additional formal requirements;

If spouses are **habitually resident in different EU MSs** at the time the agreement is concluded: formal requirements under the law of either one of these MSs if they lay down additional formal requirements;

If only **one spouse is habitually resident in EU** at the time the agreement is concluded: formal requirements under the law of that MS if it lays down additional formal requirements.



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