

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

LATVIA

PREPARED BY:

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The main legal sources of the rules of jurisdiction in Latvia in civil and commercial matters apart from the Brussels I Regulation (Brussels/Lugano Conventions are not in force and applicable in Latvia) are:

- a) statutes and treaties
 - a. Civil Procedure Law adopted on October 14, 1998 and effective since March 1, 1999;
 - b. Bilateral treaties entered into with eight (8) countries on legal assistance in civil and commercial matters:
 - i. Agreement between the Republic of Latvia and the Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 10, 1997;
 - ii. Agreement between the Republic of Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on February 3, 1993;
 - iii. Agreement between the Republic of Latvia and the Republic of Moldova on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 14, 1993;
 - iv. Agreement between the Republic of Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1995;
 - v. Agreement between the Republic of Latvia and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1996;
 - vi. Agreement between the Republic of Latvia and Republic of Belarus on Legal Assistance and Legal Relations, entered into on February 21, 1994;
 - vii. Agreement among the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relations, entered into on November 11, 1992;
 - viii. Agreement between the Republic of Latvia and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labor and Criminal Matters, entered into on February 23, 1994;
 - ix. Convention on Jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for protection of children (19 October 1996);
 - x. Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of minors (October 5, 1961).

In addition to the statutes and treaties listed in this section, some other statutes are applicable to interpretation of national jurisdictional rules:

- a. The Constitution of the Republic of Latvia (Article 92);
- b. Civil Procedure Law (Articles: 1; 5; 7; 23; 26 -31; 78; 130; 132; 136; 219; 223, 637; 644⁷; 644¹⁴);
- c. Law on Judicial Power (Article 3);
- d. Constitutional Court Law (Article 32);
- e. Law on International Treaties of the Republic of Latvia (Article 13).

- b) jurisdictional rules are not based on case law

According to Article 5.6 of the Civil Procedure Law "*upon application of legal norms, the court shall take into consideration case law*". This provision does not mean that the motivation on application of a specific legal norm given in one court ruling is binding on the court examining some other case. According to general practice and law, the final court ruling can be used to prove facts and circumstances in a related case; however, prejudicial role is given only to rulings issued by the European Court of Justice. Also the rulings of the Constitutional Court are all in all binding on Latvian courts.

Currently there is no publicly available data base of all court rulings. Such data base is under construction and it will be available in the beginning of 2007. Only a part of all court rulings are published and usually those are final rulings of the Supreme Court, but rulings of lower courts are not publicly available. Under the given circumstances the report is more based on applicable legal norms and general practice, than court rulings.

2. Specific Rules (or Not) for Transnational Disputes

The Latvian law does not provide for any specific jurisdictional rules applicable to transnational disputes, and transnational disputes are solved mainly on the basis of the rules which apply to internal disputes.

In accordance with Article 1 of the Civil Procedure Law, every natural or legal person has a right to protection of their infringed or disputed civil rights, or their legal interests in court. It means that everyone – citizens and non-citizens of the Republic of Latvia, foreigners and stateless persons may apply to Latvian courts for legal protection. The same rights are attributed also to foreign legal entities. Latvian law does not provide for any restrictions on jurisdiction or specific provisions applicable to civil matters where foreign persons are involved.

Restrictions on jurisdiction could be imposed under international conventions binding on Latvia or agreements entered into between Latvia and relevant foreign countries on legal assistance and cooperation. Therefore, in determination of jurisdiction applicable to transnational disputes, Latvian courts shall follow EU norms, subject to the provisions of Part 3 of Article 5 of the Civil Procedure Law which state that if the relevant matter is regulated by legal norms of the European Union, which are directly applicable in Latvia, the Latvian law shall be applied insofar as it is allowed for by the legal norms of the European Union.

According to the Civil Procedure Law, all civil disputes shall be subject to court, unless otherwise provided for by law. It shall not deprive parties of the right to apply, upon mutual agreement, to an arbitration court in order to settle a dispute or apply other means of dispute resolution, for example, negotiations or reconciliation. .

In accordance with Article 26, of the Civil Procedure Law, claims against natural persons shall be brought in a court according to their place of residence, but claims against legal persons shall be brought in a court according to their registered address. If a place of residence of the defendant is unknown or the defendant has no permanent place of residence then claims shall be brought according to the place of location of his or her immovable property or his or her last known place of residence (Article 27 of the Civil Procedure Law).

The Civil Procedure Law lists the cases when the claimant may choose court where to file his claim and when the Latvian court has an exclusive jurisdiction.

The Civil Procedure Law also provides for contractual jurisdiction. When entering into a contract, the contracting parties may determine the court of first instance where potential disputes regarding such a contract or its performance shall be resolved. However, specific jurisdiction of matters (for example, if a matter concerning immovable property is subject to the jurisdiction of regional court as the court of first instance) and exclusive jurisdiction may not be altered by the agreement of parties.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

Currently there are no, and there are no plans to issue in Latvia, specific national rules to govern jurisdiction of courts pursuant to Article 4(1) of Regulation No 44/2001. Traditional rules of jurisdiction are applied to these cross-border cases.

4. Influence of EU Law

Since Latvia has become the member state of the EU, its legal norms are applicable in addition to the national legal norms. The application and interpretation practice is developing and, comparing the current court practice with the previous year, we can see the growing influence of the EU legal norms and the case law in interpretations made by national courts. Not always courts refer to the case law of the European Court of Justice, but it influences the outcome of the cases, in particular in the following issues concerning jurisdiction – exclusive jurisdiction, bringing claims according to domicile of defendants, reciprocity of other international agreements containing jurisdiction clauses, the meaning of judgment and recognition of judgments.

5. Impact of Other Sources of Law

A considerable contribution to the formation and development of understanding of legal principles in Latvia has been made by the Constitutional Court of Latvia which has derived the legal principles from the Constitution. Rulings of the Constitutional Court play an important role, because these rulings create case law and they can be referred to as legal sources as follows from Part 2 of Article 32 of the Law on Constitutional Court.

One of the most important principles developed by the Constitutional Court is the principle which provides for the rights of persons to a fair trial. During the period from the year of 2002 until the year of 2005 the Constitutional Court has reviewed a little over 50 cases, in 15 of which it was considered

whether the relevant disputed legal norm infringes constitutional rights to a fair trial. It means that every third case¹ was brought concerning this matter.

Theoretically this principle could be applied in the event that there would be a dispute concerning jurisdiction and, in accordance with the applicable legal norms, it would be impossible to hear the case either in courts of foreign country or the courts of Latvia, whereas none of these courts would have jurisdiction over the relevant matter.

The right to fair trial is one of the human rights principles which is widely applied in Latvia in cases of various character.

The application of this principle follows from:

- a. Article 92 of the Constitution which states that everyone has the right to defend their rights and lawful interests in a fair court²,
- b. Part 2 of Article 3 of the Law on Judicial Power which states that every person has a guaranteed right to have the rights and obligations of such person, or the validity of charges brought against him or her, determined on the basis of complete equality, by an independent and impartial court adjudicating the matter in open court hearing and having regard to all the requirements of justice³, and
- c. Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms which states that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.⁴

It should be noted that examination of cases in Latvian courts are long-lasting and thus the principle of reasonably timely hearing is not observed.

6. Other Specific Features

There are no specific features in Latvia with respect to the jurisdiction of national courts in cross-border disputes.

¹ Juris Jelāgins, Jurista vārds, 25.10.2005. No 40(395)

² Constitution of the Republic of Latvia, February 15, 1922

³ Law on Judicial Power, December 15, 1992

⁴ Convention for Protection of Human Rights and Fundamental Freedoms, November 4, 1950

7. Reform

The last changes to the Civil Procedure Law were adopted on September 7, 2006, harmonizing the provisions of the Civil Procedure Law of Latvia with bilateral and multilateral international treaties that are binding on Latvia. A considerable part of amendments is related to recognition and enforcement of foreign court rulings, but they do not provide for any changes in the rules of jurisdiction applicable to cross-border matters.

Other draft laws which are currently submitted to the Parliament do not provide for any changes in relation to the matters of jurisdiction either in respect of resolution of local disputes or in respect of cross-border disputes.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Latvia has entered into the following bilateral and multilateral treaties with third countries, containing jurisdiction clauses applicable to matters governed by Regulation No 44/2001:

- a. Agreement between the Republic of Latvia and the Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 10, 1997 (the text of the agreement is enclosed);
- b. Agreement between the Republic of Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on February 3, 1993 (the text of the agreement is enclosed);
- c. Agreement between the Republic of Latvia and the Republic of Moldova on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 14, 1993 (the text of the agreement is enclosed);
- d. Agreement between the Republic of Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1995 (the text of the agreement is enclosed);
- e. Agreement between the Republic of Latvia and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1996 (the text of the agreement is enclosed);
- f. Agreement between the Republic of Latvia and Republic of Belarus on Legal Assistance and Legal Relations, entered into on February 21, 1994 (the text of the agreement is enclosed);
- h. Convention on Jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for protection of children (19 October 1996).

9. Practical Impact of international conventions with third states

It is a common practice in the Republic of Latvia to enter into bilateral agreements with other countries on legal assistance and legal relations in civil, family and criminal matters. Bilateral agreements, as well as conventions, are usually applied in court practice, whereas, in accordance with Article 13 of the Law on International Agreements of the Republic of Latvia the international agreement prevails over the national law in case of any conflict,

It can be concluded for the above that the provisions of the Civil Procedure Law shall be applicable insofar as the relevant field is not regulated by the agreements and conventions binding on Latvia. The aforesaid is also supported by several court rulings.⁵

(C) Applicable National Rules Pursuant to Article 4 of Brussels I Regulation

10. Structure

Apart from EU Regulations, conventions or bilateral treaties to which Latvia is a party (see section A.1.), there are no specific national rules on jurisdiction in disputes with cross-border elements.

As a general rule according to Civil Procedure Law, claims shall be filed according to the place of residence of the defendant, but in respect to legal entities, according to its registered address. If a non-EU defendant resides or has previously resided in Latvia, a claim can be filed in Latvian courts. The Civil Procedure Law (Article 27) provides for the rule that in case if the place of residence is unknown or it is outside of Latvia, the claim shall be filed in the court of the territory where the immovable property is located or which has been the last known place of residence. In other cases the claim would be accepted in Latvian court only if the claim by its nature would fall either under exclusive jurisdiction of Latvian court or it would be subject to the jurisdiction chosen by the plaintiff.

Latvian courts have exclusive competence over disputes relating to immovable property located in Latvia and claims relating to the requested estate in Latvia. Exclusive competence can also be provided for by other laws, for example, in respect to consumer protection issues, insurance matters, etc.

It is the plaintiff's option to chose either Latvian court or court of the defendant's residence in cases against Latvian branch of a non-EU defendant, claims arising from personal injuries sustained in Latvia, claims for return of property or its compensation, maritime claims, claims against multiple defendants where one of them resides in Latvia, and claims arising from employment relationship.

⁵ Bilateral treaties are applied in following cases (please see enclosed the text of these decisions):

- The Supreme Court of the Republic of Latvia, judgments and decisions of the Department for Civil Matters of the Senate of the Supreme Court of the Republic of Latvia , 1999, Judicial Educational Centre of Latvia, Riga, 2000., pages 795-797, case No. SPC-71;
- The Supreme Court of the Republic of Latvia, judgments and decisions of the Department for Civil Matters of the Senate of the Supreme Court of the Republic of Latvia , 1998, Judicial Educational Centre of Latvia, Riga, 1999, pages 851-853, case No. SPC-79;
- Decision of July 20, 2006 of the Civil Trial Panel of the Riga District Court in Case No. C28140206, CA-3115/13, 2006.

In terms of the way the Civil Procedure Law is drafted, a judge can accept a claim only if he/she finds it within the jurisdiction of the specific court according to the Civil Procedure Law or binding international documents. In other cases the judge would have to deny jurisdiction and, therefore, Latvian judges do not have a wide scope of interpretation when determining jurisdiction.

11. General Jurisdiction

There are no specific general rules of jurisdiction that would apply to defendants domiciled in non-EU countries. The general rule applicable in all cases is that a claim shall be filed in home country of a non-EU defendant; however, if applicable, the courts apply rules on general and exclusive jurisdictions and take into consideration the rights of the plaintiff to choose the tribunal in the same manner as between the local parties.

12. Specific Rules of Jurisdiction

a) Contract

If none of the international instruments listed under section A.1) can be applied and the parties have not agreed on tribunal to hear the dispute, the tribunal shall be determined according to the general rule, i.e. according to the place of residence of the defendant. If it is unknown or it is in some other country than Latvia, the claim can be filed in the territory where this person had his last domicile known to the plaintiff or where his real estate is located (Article 27 of the Civil Procedure Law). This principle is used in Latvian courts to determine which national court has jurisdiction over the specific case and, theoretically, can be applied also in cases when the last domicile was outside of Latvia or the real estate is located in some other country.

There are no specific national rules applicable to claims in contract.

b) Tort

In addition to the general rule that claims shall be brought according to the place of residence of the defendant, in respect to tort claims the Civil Procedure Law allows plaintiffs to choose between various tribunals (location of a branch, plaintiff's place of residence or place where damage was inflicted).

In cases where a plaintiff has sustained personal injury, according to the Civil Procedure Law (Article 28.3), the plaintiff may also bring a claim at its own place of residence or at the place of the tort.

According to the Civil Procedure Law (Article 28.4), claims arising from damage to the property can be also brought according to the place where damage was caused.

c) Criminal Proceedings

A civil claim can be brought within criminal proceedings. Thus, the judge hearing the criminal matter concurrently examines the civil claim brought against the defendant within the scope of criminal proceedings. However, if the plaintiff fails to bring a civil claim while criminal proceedings are ongoing in Latvia or the claim is left without review, afterwards the plaintiff will be no longer entitled to bring a separate civil claim in Latvian courts and would have to seek remedy in non-EU country courts according to the place of residence of the defendant, except for cases where there are grounds for application of Latvian jurisdiction based on the rules of exclusive jurisdiction.

d) Secondary Establishment

Article 28.1 of Civil Procedure Law allows bringing of a claim against a legal entity that has a branch or establishment in Latvia. A claim shall arise from the activities of a subsidiary or representative office. The claim may be brought in a court in accordance with the location of the subsidiary or representative office.

e) Trust

There are no specific rules on jurisdiction in cases of trusts. However, if the claim regarding trusts involves recovery of property, it may fall under exclusive jurisdiction of Latvian courts over real estate or chosen jurisdiction in case of other property (if the plaintiff is a resident of Latvia).

f) Arrest and/or location of Property

According to Article 28.6 of Civil Procedure Law, maritime claims may be brought in accordance with the location of the arrest of the defendant's vessel. In respect to other cases, there are no specific grounds for jurisdiction.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

(i) Claim from EU Consumer against Non-EU defendant

As a general rule, consumer contract would be governed by Latvian law, provided that the sale of goods or services occurs in the territory of Latvia. In this event the seller, even if he is non-EU professional, has a branch or representative office in Latvia and, therefore, the claim can be brought according to the address of the branch or representative office (i.e. address of the defendant). However, if such representative office or branch cannot be found in Latvia, then according to the general rule, the non-EU professional would have to be sued in its home country.

(ii) Claim from EU professional against Non-EU Consumer

In general, Latvian courts would not find jurisdiction over such matters, unless the agreement between the professional and the consumer would provide for dispute resolution in Latvian courts.

b) Individual Employment Contracts

(i) Claim against a Non-EU employer

According to the Civil Procedure Law, Article 28.9, an employee may choose either to bring a claim according to the general rule (the place of residence of the defendant) or according to its own place of residence or workplace. If the place of residence or workplace is in Latvia, the employee can file a claim in Latvian court.

(ii) Claim against a Non-EU employee

Civil Procedure Law does not grant such right to employers.

c) Insurance Contracts

(i) Claim against a Non-EU insurer

In general, the claim should be brought according to the place of residence of an insurer. However, if the insurance contract concerns the real property located in Latvia, the claim could be brought in Latvian courts as well.

(ii) Claim against a Non-EU insured, policyholder or beneficiary

Latvian national rules do not provide for such a right.

d) Distribution Contracts

There are no specific protective rules; therefore, claims are filed according to the place of residence of the defendant.

e) Protective Rules in Other Matters

There are no additional jurisdictional rules in specific matters (in civil and commercial matters).

14. Rules for the Consolidation of Claims

a) Co-Defendants

According to the Civil Procedure Law (Article 28.7), a claim against several defendants may be brought in accordance with the place of residence or location of one defendant. If one of the defendants has the place of residence in Latvia, a non-EU defendant can also become a party to the proceedings.

b) Third Party Proceedings

A person whose rights or duties could be affected by the judgment in a matter may be invited to and become a third party in the case. According to the Civil Procedure Law (Article 78), third parties may enter the proceeding either themselves or by request of the parties or the prosecutor based on the court decision.

c) Counter-Claims

Based on Article 136 of the Civil Procedure Law, a counterclaim can be brought in the same court if it meets the following criteria:

- a. mutual set-off is possible as between the claims in the initial action and the counterclaim;
- b. approval of counterclaim would exclude, fully or partly, the approval of the initial claims; or
- c. the counterclaim and the initial claim are mutually related, and their joint examination would favor a faster and more correct adjudication of the matter.

If the counterclaim does not meet the above criteria, the judge shall decline accepting the counterclaim and a regular claim shall be brought according to the general rule – i.e. the place of residence of the defendant.

d) Related Claims

There are no jurisdictional rules for related claims.

e) Any Problems Pertaining to Lack of Harmonisation

We are not aware of any such problems in court practice considering the fact that there is no publicly available data base in Latvia where all court rulings would be available.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

The rules of jurisdiction listed in Annex I of Brussels I regulation are Article 27 and paragraphs 3, 5, 6 and 9 of Article 28 of the Civil Procedure Law.

Article 27 of the Civil Procedure Law provides that in case the place of residence of a defendant is unknown or it is located outside of Latvia, the claim shall be filed in the court of the territory where the immovable property is located or which has been the last known place of residence.

Article 28.3 of the Civil Procedure Law states that claims where a plaintiff has sustained personal injury may be brought to court at his or her own place of residence or at the place of the tort.

Article 28.5 allows initiating a claim regarding the return of a personal property or reimbursement of its value at the place of the plaintiff's residence.

Article 28.6 states that maritime claims may be brought in accordance with the place of the arrest of the defendant' vessel.

According to Article 28.9, an employee may choose either to bring a claim under the general rule (the place of residence of the defendant) or according to its own place of residence or workplace.

b) Practical use of the rules listed in Annex I

As for majority of these rules provide a plaintiff with a possibility to choose a court of its convenience, the courts are bound to accept and hear such cases. We are not aware of any cases where the courts would have rejected jurisdiction if it was claimed on the basis of the above listed articles. We are also not aware of any cases where jurisdiction would have been rejected if it was claimed under Article 27 of Civil Procedure Law.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

We are not aware of court practice applying article 4(2) of the Brussels I Regulation. It is important to note that there is no publicly available data base in Latvia where all court rulings would be available. Such data base is under construction and will be available later this year. Thus we have access only to the part of all court rulings which are published in the court websites or in the paper form.

16. Forum *necessitatis*

Our national rules do not allow courts to exercise jurisdiction based on *forum necessitates* principle.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

The grounds for rejection of recognition of foreign court rulings in Latvia are listed in Part 2 of Article 637 of the Civil Procedure Law. Paragraph 1 of Part 2 of Article 637 of the Civil Procedure Law states that the foreign court ruling shall not be recognized in Latvia if the foreign court which made the ruling was not competent in accordance with Latvian law to adjudicate the dispute or such dispute falls under exclusive jurisdiction of Latvian courts.

Rules of exclusive jurisdiction are provided for under Article 29 of Latvian Civil Procedure Law and applicable to cases involving real estate related disputes and disputes arising from inheritance matters, if the property is located in Latvia.

In respect to recognition and enforcement of court ruling issued in countries which are not EU member states, but which have entered into agreements on legal assistance with Latvia, the provisions of these agreements on legal assistance shall be primary, and the provisions of the Civil Procedure Law shall be applicable only in cases which are not governed by bilateral agreements. In respect to recognition and enforcement of judgments issued in countries which are not EU member

states and which have not entered into agreements on legal assistance with Latvia, the provisions of the Civil Procedure Law shall be applicable.

(E) Declining Jurisdiction

18. Forum Non Conveniens

Civil Procedure Law lists the grounds when a judge shall refuse the acceptance of a claim (Article 132) and some of these grounds are related to jurisdiction. For example, the court shall refuse to accept the claim and initiate legal proceedings, if:

- a. the dispute is not within the jurisdiction of the court;
- b. the parties have, in accordance with procedures set forth by law, agreed on transfer of the dispute for it to be adjudicated by an arbitration court;
- c. there is already a matter pending before the same court or **another** court, concerning a dispute between the same parties, regarding the same subject-matter, and on the same basis;
- d. the matter is not within the jurisdiction of this court;

In last two cases the court may rule on refusal to accept the claim in favor of other national court, the court of non-EU country or the court of EU country.

A judge shall take a reasoned decision regarding the refusal to accept a statement of claim, which may be appealed in higher instances.

A judge does not have a discretion not to accept a claim if all requirements (the form of a claim, proper accompanying documents and relevant jurisdiction of the court over the claim) have been satisfied. Thus, the principles such as *forum non-conveniens* or other do not apply. According to the law, if the court is obliged to refuse the acceptance of a claim, the same principles and requirements shall be applicable, irrespective of whether the case is subject to review by non-EU country court or the EU country court.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

If according to the choice of court clause, one of the designated courts is Latvian, the court cannot decline jurisdiction if the claim is duly filed and complies with formal requirements. Refusal could be exercised if a claim has been already filed before the alternate court (see the next paragraph).

(b) Parallel Proceedings in a non-EU court

According to Article 219.4 of the Civil Procedure Law, if the court establishes that the dispute is already brought between the same parties, regarding the same subject-matter and on the same basis, before the same or another court, it shall leave the claim unadjudicated. Thus it would be imperative for a judge to terminate the proceedings if one of the parties can prove that the claim is already pending before the non-EU court.

(c) "Exclusive" Jurisdiction in a non-EU State

There are no special provisions providing for a right to refuse jurisdiction if the subject-matter is closely related to a non-EU country, but the parties have nominated Latvian courts as being competent to resolve the dispute. However, the general idea is that Latvian courts would not examine claims over intellectual property, real estate or other registered rights in another country.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

(a) Non-EU Jurisdiction Agreements

There are no specific national rules applicable to these cases. Therefore, if the plaintiff has an option under the choice of law clause either to file a claim in Latvian courts or non-EU courts, and the plaintiff consequently opts for Latvian courts, then national courts would not be able to decline jurisdiction.

(b) Parallel Proceedings in a non-EU court

In the event that Latvian courts would establish the existence of parallel proceedings which have been initiated before a non-EU court before the claim was filed in Latvian courts, the courts would suspend the proceedings or refuse jurisdiction.

(c) "Exclusive" Jurisdiction in a non-EU State

There are no specific rules applicable to these cases. If, according to Latvian national rules, Latvian courts have jurisdiction, but the dispute, however, is governed by the laws of a non-EU country which provide for exclusive jurisdiction of the courts of the relevant non-EU country, Latvian courts would decline their jurisdiction in favor of a non-EU country.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

Having reviewed the information contained in the data bases of court rulings that are available in Latvia, the conclusion is that there has been no such matter where Latvian court would have applied jurisdiction on the grounds of national laws in cases when it has been proved that the claimant would be deprived of fair trial or due protection in the country which is not an EU member state.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) Claims from EU Consumers against non-EU defendants

We are not aware of such cases and do not have public access to court decisions to verify regarding that.

(b) Claims from EU Employees against non-EU Employers

According to Latvian law, Latvian employee can bring a claim against non-EU employer in Latvian court. However, we are not aware of any court decisions where court would have refused jurisdiction in such a case.

(c) Claims from EU Plaintiffs in Community Regulated Matters

We are not aware of such cases and do not have public access to court decisions to ascertain that.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

No such cases were found in the data bases of court rulings that we have an access to.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

Based on our knowledge, the courts have not adopted such practices. However, we do not have public access to all court rulings and cannot ascertain that. In general, the civil procedure rules are drafted in such a manner that the judge shall refuse jurisdiction in all cases, if the law or contract does not expressly state that the dispute falls under jurisdiction of that particular court.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

On September 7, 2006, the amendments were made to the Latvian Civil Procedure Law supplementing it with two new chapters regulating the issue of illegal transfer of minors abroad or detention in a foreign country, and transfer to Latvia and detention in Latvia. Before the introduction of these amendments the general legal norms governing jurisdiction matters were applicable.

In accordance with Part 2 of Article 644.⁷, an application regarding the submission of a request to a foreign country for return of a minor to Latvia *"shall be submitted to the district (city) court according to the place of residence of the applicant or the place of residence of a minor where he or she resided before illegal transfer or detention."*

In accordance with Part 1 of Article 644.¹⁴, if a minor is transferred across the border to Latvia or detained in Latvia, *"an application regarding the return of a minor to the country of his or her residence shall be submitted to the district (city) court according to the place of residence or whereabouts of a minor or the place of residence or whereabouts of a person who illegally transferred or detained the minor"*. Part Two of this Article states that in the event that the place of residence or whereabouts of a person is unknown, the application shall be submitted to the Riga City Central District Court.

In all other cases, general grounds of jurisdiction shall be applicable.

SUPPLEMENTAL REPORT FOR:

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

- a) Agreement between the Republic of Latvia and the Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 10, 1997;
- b) Agreement between the Republic of Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on February 3, 1993;
- c) Agreement between the Republic of Latvia and the Republic of Moldova on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on April 14, 1993;
- d) Agreement between the Republic of Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1995;
- e) Agreement between the Republic of Latvia and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, entered into on May 23, 1997;
- f) Agreement between the Republic of Latvia and Republic of Belarus on Legal Assistance and Legal Relations, entered into on February 21, 1994;
- g) Convention on Jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for protection of children (19 October 1996);

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

In Latvia the judgment of a non-EU State relating to matters of parental responsibility can be denied recognition or enforcement on the basis that the courts of Latvia are the only ones having jurisdiction to examine the matter.

The Latvian court may substantiate its refusal to recognize and to enforce it later by section 2.1 of Article 637 of the Civil Procedure Law, under which the Latvian court has the right not to recognize a judgment of a court of another country, including a non-EU State, if the foreign court was not competent in accordance with Latvian law to adjudicate the dispute or such dispute is under exclusive jurisdiction of the Latvian courts.

Exclusive jurisdiction of the Latvian courts is established in Article 29 of the Civil Procedure Law, however, this article does not list cases relating to matters of parental responsibility. Section 3 of Article 29 of the Civil Procedure law prescribes that the exclusive jurisdiction may be established also in other laws. Upon reviewing the Latvian laws no cases were found when the Latvian court would have an exclusive jurisdiction in matters relating to parental responsibility. However, in future it is possible that amendments are made in the existing laws or new laws are adopted which prescribe exclusive jurisdiction of the Latvian courts in matters on parental responsibility. Presently, each case has to be evaluated individually taking into account whether there are bilateral agreement concluded between Latvia and the respective third country and whether provisions of the conventions or any special law are applicable thereto.

The main factors which could form basis for reviewing the matters on parental responsibility in the Latvian courts is the place of residence of the child, citizenship of the child as well as location of the real estate owned by the child. However, there can be deviations from these basic rules considering each specific situation.

For instance, in accordance with the presently effective bilateral agreement which Latvia has concluded with Moldova the jurisdiction of the Latvian court is established in matters regarding determining paternity and challenging thereof as well as determining origin of the child, if the child is a citizen of Latvia; issues about the obligations and rights of parents and children if the common place of residence of the children and the parents is Latvia, however, if the place of residence of parents and children differs then the Latvian court reviews such matter, if the child is a citizen of Latvia; in matters on rights and obligations of a child born outside marriage and his mother and father if the child has a citizenship of Latvia; in issues about granting adoption if the permanent place of residence of the adopter is Latvia or he/she is a citizen of Latvia. It is established that matters of guardianship are within jurisdiction of a Latvian authority if the ward or the person under guardianship is a citizen of Latvia.

Similar provisions are included in the rest of the bilateral agreements which have been concluded between Latvia and non-EU states.

The Law on Orphan's Court of 1 January 2007 stipulates that the issue about termination and renewal of the custody rights as well as the issues about rights of guardianship have to be reviewed by the Latvian Orphan's Court if the place of residence of the child's parent is registered in Latvia. The Orphan's Court is an authority of guardianship and trusteeship established by the local government of a specific territory which protects personal and property interests and rights of a child or other incapacitated person, but it is not a court in a classical meaning thereof.

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