Guidance on the law applicable to contractual obligations (Rome I)

Outline of the main provisions

February 2010
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Introduction

Choice of law in contract is an issue affecting all UK businesses that enter into or advise on cross-border transactions as well as UK consumers buying goods or services from abroad. The scale of this economic activity is immense. The UK’s financial markets alone deal with billions of pounds worth of international transactions on a daily basis. This business extends beyond the City of London, with Edinburgh and Glasgow (taken together) being among the ten largest European centres in several financial markets. Sound choice of law rules help to give traders, investors and consumers confidence in the legal effect of their contracts and underpin their value.

The 1980 Rome Convention established uniform rules for choice of law between EU Member States. Since its implementation in the UK through the Contracts (Applicable Law) Act 1990, it had generally been considered a success. In December 2005, the European Commission published a proposal to replace the Convention with a Regulation. Negotiations on this Regulation concluded in December 2007; the final Regulation on the law applicable to contractual obligations (Rome I) came into force on 17 December 2009. This Regulation applies to the United Kingdom and to all other Member States with the exception of Denmark. Denmark, as a result of its own Protocol to the European Community Treaty, does not participate in the adoption of acts in relation to justice and home affairs matters.

The Rome Convention served a number of policy goals by providing party autonomy, legal certainty, flexibility and protection of weaker parties. The guiding principle of the Rome Convention was party autonomy which enabled commercial parties to determine the law that would apply to their contract generally through the insertion of a choice of law clause. This is a long-standing commercial practice and results in greater predictability and certainty for such parties. A second key component of the Convention was to provide contracting parties with adequate legal certainty, regarding the law that would apply to their contract. Where parties make a choice, and even where they do not, the legal effects of their contract should be reasonably certain. This helped to avoid the proliferation of litigation and the consequent burden on courts.

The primary objectives of choice and certainty sought by the Convention were tempered by flexibility and the importance of protecting weaker parties. As a result, the Rome Convention contained a number of provisions designed to ensure that, where the application of the general rules would be inappropriate, a broader test of connection would be applied. The Rome Convention also modified the general rule of unlimited party choice in cases where one party, such as a consumer, held less bargaining power.

While the Regulation differs in some respects from the Rome Convention, its overall policy orientation is the same. The guiding principle remains that of party autonomy which is expressed in Article 3 of the Regulation. Articles on specific contracts, such as consumer contracts (Article 6) or contracts for the carriage of passengers (Article 5(2)) have also retained party autonomy within specified limits. In both cases, the limitation of party autonomy has been established to secure the better protection of consumers.

The Regulation also maintains the requisite degree of flexibility. Generally this is through the inclusion of displacement provisions that envisage the general rules being overridden in certain circumstances. For example, displacement provisions are found in Article 4(3) on the applicable law in the absence of choice and Article 5(3) on contracts of carriage.
Aim of the guidance

The purpose of this guidance is to provide a brief summary of the most important provisions in the Regulation. The Regulation is a substantial and complex instrument in a technical area of law and the contents of this guidance is only intended to be a brief outline of some of the most significant provisions. This outline is not comprehensive in nature. For a more comprehensive view of the Regulation, and the many issues to which it will inevitably give rise to, reference should be made to specialist literature on private international law.

The Regulation provides uniform choice of law rules applicable in contractual obligations. These rules will enable courts throughout the European Union to select the national laws appropriate for the determination of proceedings where the case has a cross-border dimension. Issues concerning the interpretation of the rules in the Regulation can only be conclusively resolved by the European Court of Justice. As a result, any interpretative indications given in this guidance should not be regarded as conclusive in this sense.

A copy of the Regulation is attached as an Appendix I to this guidance.

Key Provisions

Article 3 – Freedom to choose a particular law

Article 3 of the Rome I Regulation enshrines, as the cornerstone of the Regulation, the principle of party autonomy in relation to choice of law. This principle, which was central to the Rome Convention, is important in delivering the benefits of legal certainty in international commerce.

The terms of this provision are substantively the same as those in Article 3 of the Rome Convention. However, the Rome I Regulation contains two useful clarifications. First, it has been clarified that a choice of law by the parties need not be made only in express terms. It is now considered sufficient for the choice to be clearly demonstrated by the parties by reference to the terms of the contract or the circumstances of the case. Clarity on this additional flexibility for parties to a contract is useful and reflects commercial practice in some instances. The position under the Rome Convention had not been entirely clear on this point. Secondly, Recital 14 clarifies the position that where parties’ to an agreement confer exclusive jurisdiction on one or more courts in the event of a dispute under the contract, this factor will be taken into account when determining whether a choice of law was demonstrated. Generally, this reflects the current position under English law.

Overall, the clarifications provided in Article 3 of the Regulation represent an improvement on the Rome Convention position. The effect of Article 3 of the Regulation should result in there being very little difference to that of the Rome Convention.

Article 4 – Applicable law in the absence of choice

Article 4 contains the general choice of law rules that operate where the parties have failed to choose an applicable law to their contract under Article 3. At first sight, with its lengthy list of types of contracts, the provisions appear to differ widely from the equivalent rules in the Rome Convention. However, its effect in practice is not likely to be significantly different from the way in which the UK courts applied the Rome Convention provision.
The Rome Convention provision was based on a test involving the application of the law with which the contract was most closely connected. This test was then subjected to various presumptions. In addition, the Rome Convention provided that these presumptions would not apply if it appeared from the circumstances of the case as a whole that the contract was more closely connected with another country. This conceptual structure was complex and inherently uncertain. It allowed national courts in Member States to interpret the provision in divergent ways according to their differing national traditions which in turn led to uncertainty, in particular as to how the provision might be ultimately interpreted by the European Court of Justice.

These problems should not arise in such an acute form under Article 4 of the Regulation which adopts a different approach and a much simpler structure. It proceeds initially by applying various specific choice of law rules for particular types of contract (Article 4(1)). Where these rules are inconclusive, they are then subject to a general rule in Article 4(2). Further general displacement rules are also included in Articles 4(3) and (4)(4). The purpose of these provisions is to create the necessary degree of flexibility for those situations where the application on its own of one of the specific choice of law rules would not, for whatever reason, produce an appropriate result. This mixture of specific rules, coupled with rules of displacement, strikes an appropriate and reasonably predictable balance between the competing objectives of certainty and flexibility. As such, the Regulation is an improvement on the equivalent provision contained in the Rome Convention and should represent a benefit for both business and legal practitioners.

Two aspects of Article 4 deserve special mention. The first is the choice of law rule in Article 4(1)(h) which creates a specific rule for certain types of financial contracts as defined by the Markets in Financial Instruments Directive (MiFID) (2004/39/EC). This instrument provides a harmonised regulatory regime for investment services across the Member States of the European Economic Area (EEA). Article 4(1)(h) ensures certainty as to the applicable law in this area (through the application of a single law governing such financial transactions). This will aid the retention of the certainty needed by financial systems.

The second aspect arises out of Article 4(3). This provides a rule of displacement for situations where it is clear from all the circumstances of the case that a contract is manifestly more closely connected with a country other than that indicated by Article 4(1) of the Regulation (i.e. one that is identified in accordance with the specific choice of law rules) or Article 4(2) (the rule to displace the choice of law rules in Article 4(1) in certain specific situations in favour of the law of the country of habitual residence of the party who is to effect the characteristic performance of the contract).

The rule in Article 4(3) provides for the application of the law of the country of “closest connection”. This should be of particular value in the context of related contracts where it is of commercial importance for a single law to be applied to the whole transaction rather than having different laws applying to each of the component parts of the transaction. Cases of this kind routinely arise in the context of letters of financial credit or bank indemnities. Further useful clarification of this issue is provided in Recitals 20 and 21.

In overall terms, Article 4 should represent an improvement on the Rome Convention.
Guidance on the law applicable to contractual obligations (Rome I)

Article 5 – Contracts of carriage

Article 5 of the Rome I Regulation covers both contracts for the carriage of goods and contracts for the carriage of passengers. Article 5(1), together with the general rule of displacement in Article 5(3), sets out the rules relating to contracts for the carriage of goods. These are broadly similar to those in the Rome Convention. In particular, freedom of the parties to choose the applicable law, which is routinely exercised in relation to contracts for the international carriage of goods, remains unchanged.

Article 5(2), together with the general rule of displacement in Article 5(3), sets out the rules relating to contracts for the carriage of passengers. The Rome Convention did not contain any special rules for such contracts. As a result, Articles 3 and 4 of the Rome Convention would have applied to such cases. The inclusion of a special rule for such contracts in the Rome I Regulation resulted from the desire of a number of Member States to create a greater degree of consumer protection in this field.

Commercial operators made it clear that party autonomy was prevalent in this field. Such autonomy is provided for in the second indent of Article 5(2) where permissible choices of law are listed. From the operator’s perspective, two of the available choices of law will be of particular importance – the law of the country where the carrier is habitually resident and the law of the country where the carrier has its place of central administration.

The availability of the former law should adequately cover situations where travel tickets are issued through an operator’s head office. The availability of the latter will be particularly useful for international operators in those frequent situations where tickets are issued through one of many branch offices situated around the world. The second option should prevent the undesirable and unmanageable proliferation of different laws that would otherwise reflect the fact that there may be many countries in which branches are situated. There may, however, be some marginal loss of business to UK based law firms which would otherwise service foreign carriers who wish to apply UK law to their contracts. This loss of business is unlikely to constitute a significant cost, as the number of foreign carriers that wish to select UK law is likely to be limited. Overall the rules in Article 5(2) appear to strike a satisfactory balance between the interests of passengers and commercial operators.

Article 6 – Consumer contracts

Article 6 governs the choice of law applicable to consumer contracts. The scope of the equivalent provision in the Rome Convention was restricted to contracts for the supply of goods and services. Article 6 of the Rome I Regulation, however, contains no such limitation. As a result, special exclusions have been made for certain transactions where it remains essential for a single law to apply. These specific contracts have been excluded from Article 6 and, as a result, parties can continue to choose the law that will apply without restriction.

The most significant exclusions that apply are those arising in the financial context and are referred to in Article 6(4) of the Regulation. These exclusions support the objectives of MiFID which establishes a high level of harmonisation in this field, including an important degree of consumer protection. In addition, these exclusions avoid any limitation on the parties to choose the applicable law in this field which, had such contracts been covered by the Regulation, could have imposed costs in assessing the different applicable laws where contracts had been concluded with individuals from different Member States. This latter point would have been contrary to the underlying purpose of MiFID which is intended to foster a thriving internal market in investment services and to deliver savings to MiFID regulated firms, and thereby to their clients. This is done by enabling such firms to rely on their home-state public and regulatory law in their dealings throughout the European Economic Area.
Recital 31 of the Rome I Regulation also clarifies that the Regulation does not prejudice the operation of a “system” within Article 2 of the Settlement Finality Directive (98/25/EC). The participants in a system of that type will be able to choose the law governing the system. An example of such a system in the UK is the CREST share settlement system.

The retention of some degree of party autonomy for consumer contracts, combined with specific provision for certain financial instruments, should to a greater extent align the Rome I Regulation with the Rome Convention and broadly strike an appropriate balance between consumer and business interests.

**Article 7 – Insurance contracts**

Choice of law in relation to insurance was previously covered by both the Rome Convention (for direct insurance risks situated outside of the Community and all reinsurance risks) and the Insurance Directives (for direct insurance risks situated within the Community).

Article 7 of the Rome I Regulation is a consolidation of the rules of the Rome Convention and the Insurance Directive. The provision retains the substance of the current law, whilst ensuring that all the relevant applicable law rules are situated in one instrument. This should help facilitate reform in this complex area of law at some future date.

**Article 9 – Overriding mandatory provisions**

Article 9(3) focuses on the discretionary application of certain rules of the country where a contract is to be, or has been, performed and which renders contractual performance unlawful. There is currently authority under English law (see *Ralli Bros v Cia Naviera Sota y Aznar* [1920] 2 KB 287) where in similar circumstances, a contract governed by English law, could be unenforceable in accordance with the English law relating to the frustration of contracts. There is no conclusive English authority as to the situation where the law applicable to the contract is not English law. There is also another line of authority (see *Foster v Driscoll* [1929] 1KB 470) under which illegality of contractual performance, in terms of the breach of a foreign law, may also prevent enforcement of a contract on the basis that to do so would be against the comity of nations and therefore contrary to English public policy.

Article 9(3) generally reflects the English law position in the light of the *Ralli Bros* decision, and to that extent is unlikely to introduce any significant additional uncertainty into the law. It also constitutes an improvement in terms of legal certainty as follows:

- Article 9(3) removes the current ambiguity as to whether the European Court of Justice would consider that the old English jurisprudence would continue to be applied under the Rome Convention in light of the UK’s reservation in respect of Article 7(1) of the Rome Convention. In particular, it was not clear whether the *Ralli Bros* decision was consistent with that reservation and whether it would remain available to our courts. It is also unclear whether the *Foster v Driscoll* decision would fall within the scope of the public policy rule and whether on that basis it too would remain available to courts in the UK in light of the reservation on Article 7(1) of the Convention.

- Article 9(3) is formulated in terms that are sufficiently broad to cover situations of unlawful contractual performance where the applicable law is foreign. There is no such clarity under English law.
• Article 9(3) also provides a uniform solution on this topic for the whole of the EU. This contrasts favourably with the situation under the Convention where no such uniformity exists. This should create greater legal predictability for British businesses in all cases where they are involved in contractual litigation in another Member State.

**Article 14 – Voluntary assignment and contractual subrogation**

Article 14 deals with the issue of assignment, including in particular transactions that involve the assignment of debts contained in financial instruments. For example, under a financial contract governed by one law, a debtor undertakes to pay a creditor a sum of money. Under a later contract, governed by another law, the creditor assigns their right under the first contract to a third party.

The functions of Article 14 include identifying the law which regulates the legal relationship between the creditor and the third party and determines whether there is a valid contract of assignment between the creditor and that third party, the rights of those parties under that contract, whether they have complied with it and, if its terms have been breached, what remedies are available. The Article also identifies the law that will determine whether the creditor’s rights are assignable under the first contract, and if so, under what conditions. The wide range of issues covered by this Article explains the critical importance for the financial markets that the rules are satisfactory.

Subject to some minor changes in drafting, Article 14(1) and Article 14(2) reflect the substance of the equivalent rules in the Rome Convention (Articles 12(1) and 12(2)). These provisions appear satisfactory.

The rules in this area to regulate the priority of successive assignments in respect of third parties will form part of a review to be carried out by the European Commission under Article 27(2) of the Rome I Regulation. This review is to be completed in June 2010. There were no equivalent rules in the Rome Convention to regulate this issue; it was governed by national law. There is a general desire amongst Member States to find a uniform solution. In light of the importance of this area to the UK’s financial sector, it remains the intention to engage constructively with the review process and consult fully with expert stakeholders in the field.

**Article 19 – Habitual residence**

The concept of habitual residence is central to the operation of the Rome I Regulation and is helpfully defined in Article 19 as being, for legal persons, the place of central administration and, for natural persons, the principal place of business. In addition, there is an appropriate extension of the connecting factor for situations where the contract is concluded in the course of operations of a branch, agency or other establishment. The time at which the connecting factor must be ascertained must also be fixed by reference to the time of conclusion of the contract. This clarity did not exist in the Rome Convention and is therefore helpful.

**Article 22 – States with more than one legal system**

Article 22 leaves to Member States the decision as to what choice of law rules to apply between their internal jurisdictions. As a result, disputes that are connected to two or more of the jurisdictions of England and Wales, Scotland, and Northern Ireland can be subject to whatever choice of law rules the UK deems appropriate. This limitation in the Rome I Regulation recognises the proper boundaries of EU legislation.
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To maximise the consistency of the rules that determine the applicable law in contractual obligations, UK Regulations:

(England and Wales) - http://www.opsi.gov.uk/si/si2009/uksi_20093064_en_1 and
(Scotland) - http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090410_en_1

have extended the scope of Rome I to conflicts solely between the laws of England, Wales, Scotland, Northern Ireland and Gibraltar.

**Article 27 – Review clause**

Article 27 commits the European Commission to undertake a number of reviews and, if appropriate, produce proposals to amend the Rome I Regulation. The reviews cover:

- a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any;
- a review of the application of Article 6, in particular in terms of consumer protection.

Both these reviews are to be completed by 17 June 2013.

In addition, the European Commission is committed to carrying out a review on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. This review is to be completed by 17 June 2010.

**Article 28 – Application in time**

This rule provides that the Regulation will only apply to contracts concluded after the date the Regulation comes into operation, i.e. 17 December 2009.
Appendix I

REGULATION (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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,\(^1\)

Acting in accordance with the procedure laid down in Article 251 of the Treaty,\(^2\)

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.

(2) According to Article 65, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

(4) On 30 November 2000 the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters.\(^3\) The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.


\(^1\) J C 318, 23.12.2006, p. 56.
\(^3\) OJ C 12, 15.1.2001, p. 1.
(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.


(8) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(9) Obligations under bills of exchange, cheques and promissory notes and other negotiable instruments should also cover bills of lading to the extent that the obligations under the bill of lading arise out of its negotiable character.

(10) Obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of Regulation (EC) No 864/2007. Such obligations should therefore be excluded from the scope of this Regulation.

(11) The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

(12) An agreement between the parties to confer on one or more courts or tribunals of a Member State exclusive jurisdiction to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law has been clearly demonstrated.

(13) This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.

(14) Should the Community adopt, in an appropriate legal instrument, rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.

(15) Where a choice of law is made and all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement. This rule should apply whether or not the choice of law was accompanied by a choice of court or tribunal. Whereas no substantial change is intended as compared with Article 3(3) of the 1980 Convention on the Law Applicable to Contractual Obligations\(^7\) ("the Rome Convention"), the wording of this Regulation is aligned as far as possible with Article 14 of Regulation (EC) No 864/2007.

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(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.

(17) As far as the applicable law in the absence of choice is concerned, the concept of "provision of services" and "sale of goods" should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.

(18) As far as the applicable law in the absence of choice is concerned, multilateral systems should be those in which trading is conducted, such as regulated markets and multilateral trading facilities as referred to in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, regardless of whether or not they rely on a central counterparty.

(19) Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.

(20) Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause should provide that the law of that other country is to apply. In order to determine that country, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.

(21) In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of habitual residence of the party required to effect the characteristic performance of the contract, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.

(22) As regards the interpretation of contracts for the carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the Rome Convention. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of this Regulation, the term "consignor" should refer to any person who enters into a contract of carriage with the carrier and the term "the carrier" should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

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(23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

(24) With more specific reference to consumer contracts, the conflict-of-law rule should make it possible to cut the cost of settling disputes concerning what are commonly relatively small claims and to take account of the development of distance-selling techniques. Consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that "for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer's residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities". The declaration also states that "the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor".

(25) Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, and the contract is concluded as a result of such activities.

(26) For the purposes of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC, and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)\(^9\), should be subject to Article 6 of this Regulation. Consequently, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, that reference should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of financial services.

(27) Various exceptions should be made to the general conflict-of-law rule for consumer contracts. Under one such exception the general rule should not apply to contracts relating to rights in rem in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.\(^\text{10}\)

(28) It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to different laws being applicable to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not necessarily be subject to the mandatory application of the law of the country of habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(h), in respect of which it should be ensured that the law of the country of habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.

(29) For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offers to the public or public take-over bids of transferable securities and references to the subscription and redemption of units in collective investment undertakings should include the terms governing, inter alia, the allocation of securities or units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 10, 11, 12 and 13, thus ensuring that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.

(30) For the purposes of this Regulation, financial instruments and transferable securities are those instruments referred to in Article 4 of Directive 2004/39/EC.

(31) Nothing in this Regulation should prejudice the operation of a formal arrangement designated as a system under Article 2, point (a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.\(^\text{11}\)

(32) Owing to the particular nature of contracts of carriage and insurance contracts, specific provisions should ensure an adequate level of protection of passengers and policy holders. Therefore, Article 6 should not apply in the context of those particular contracts.

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\(^\text{10}\) OJ L 280, 29.10.1994, p. 83.

Where an insurance contract not covering a large risk covers more than one risk, at least one of which is situated in a Member State and at least one of which is situated in a third country, the special rules on insurance contracts in this Regulation should apply only to the risk or risks situated in the relevant Member State or Member States.

The rule on individual employment contracts should not prejudice the application of the overriding mandatory provisions of the country to which a worker is posted in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by agreement or which can only be derogated from to their benefit.

As regards individual employment contracts, work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.

Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of "overriding mandatory provisions" should be distinguished from the expression "provisions which cannot be derogated from by agreement" and should be construed more restrictively.

In the context of voluntary assignment, the term "relationship" should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term "relationship" should not be understood as relating to any relationship that may exist between assignor and assignee. In particular, it should not cover preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment or contractual subrogation in question.

For the sake of legal certainty there should be a clear definition of habitual residence, in particular for companies and other bodies, corporate or unincorporated. Unlike Article 60(1) of Regulation (EC) No 44/2001, which establishes three criteria, the conflict-of-law rule should proceed on the basis of a single criterion; otherwise, the parties would be unable to foresee the law applicable to their situation.

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(40) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, should not exclude the possibility of inclusion of conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)\textsuperscript{13}.

(41) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the Official Journal of the European Union on the basis of information supplied by the Member States.

(42) The Commission will make a proposal to the European Parliament and to the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude, on their own behalf, agreements with third countries in individual and exceptional cases, concerning sectoral matters and containing provisions on the law applicable to contractual obligations.

(43) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to attain its objective.

(44) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified its wish to take part in the adoption and application of the present Regulation.

(45) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

\textsuperscript{13} OJ L 178, 17.7.2000, p. 1.
(46) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Chapter I
Scope

Article 1

Material Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

   It shall not apply, in particular, to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

   (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;

   (b) obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;

   (c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;

   (d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

   (e) arbitration agreements and agreements on the choice of court;

   (f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;

   (g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;

   (h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
(i) obligations arising out of dealings prior to the conclusion of a contract;

(j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance \(^{14}\) the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term "Member State" shall mean Member States to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member States.

**Article 2**

**Universal application**

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

**Chapter II**

**Uniform rules**

**Article 3**

**Freedom of choice**

1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country 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.

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4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

(c) a contract relating to a right in rem in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

(d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

(e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;

(f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;

(g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

(h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.
3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

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

**Article 5**

**Contracts of carriage**

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country 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 situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. 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 the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply.

The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

(a) the passenger has his habitual residence; or
(b) the carrier has his habitual residence; or
(c) the carrier has his place of central administration; or
(d) the place of departure is situated; or
(e) the place of destination is situated.

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

**Article 6**

**Consumer contracts**

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession ("the consumer") with another person acting in the exercise of his trade or profession ("the professional") shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:
(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, 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 on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;\(^\text{15}\);

(c) a contract relating to a right in rem in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;

(d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;

(e) a contract concluded within the type of system falling within the scope of Article 4(1), point (h).

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**Article 7**

**Insurance contracts**

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

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\(^{15}\) OJ L 158, 23.6.1990, p. 59.
2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

(a) the law of any Member State where the risk is situated at the time of conclusion of the contract;

(b) the law of the country where the policy holder has his habitual residence;

(c) in the case of life assurance, the law of the Member State of which the policy holder is a national;

(d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;

(e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:

(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;

(b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.

Article 8

Individual employment contracts

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, 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 choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. 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 country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

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Article 9

Overriding mandatory provisions

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Article 10

Consent and material validity

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

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country 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.

Article 11

Formal validity

1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

2. 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 this Regulation, 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.

3. 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 this Regulation, or of the
law of the country where the act was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.

4. Paragraphs 1, 2 and 3 of this Article shall not apply to contracts that fall within the scope of Article 6. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

5. Notwithstanding paragraphs 1 to 4, 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 requirements of form of the law of the country where the property is situated if by that law:

(a) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract, and

(b) those requirements cannot be derogated from by agreement.

Article 12

Scope of the law applicable

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:

(a) interpretation;

(b) performance;

(c) 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;

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

(e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

Article 13

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.
Article 14

Voluntary assignment and contractual subrogation

1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person ("the debtor") shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.

Article 15

Legal subrogation

Where a person ("the creditor") has a contractual claim against another ("the 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 to what extent 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.

Article 16

Multiple liability

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 law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Article 17

Set-off

Where the right to set-off is not agreed by the parties, set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.
Article 18

Burden of proof

1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

Chapter III

Other provisions

Article 19

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.

Article 20

Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law, unless provided otherwise in this Regulation.
Article 21

Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy ("ordre public") of the forum.

Article 22

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State where different territorial units have their own rules of law in respect of contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 23

Relationship with other provisions of Community law

With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.

Article 24

Relationship with the Rome Convention

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.

2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation.

Article 25

Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.
2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 26

List of Conventions

1. By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union:
   (a) a list of the conventions referred to in paragraph 1;
   (b) the denunciations referred to in paragraph 1.

Article 27

Review clause

1. By 17 June 2013, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If appropriate, the report shall be accompanied by proposals to amend this Regulation. The report shall include:
   (a) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and
   (b) an evaluation on the application of Article 6, in particular as regards the coherence of Community law in the field of consumer protection.

2. By 17 June 2010, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.

Article 28

Application in time

This Regulation shall apply to contracts concluded after 17 December 2009.
Chapter IV

Final provisions

Article 29

Entry into force and application

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union. It shall apply from 17 December 2009 except for Article 26 which shall apply from 17 June 2009.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 17 June 2008.

For the European Parliament
The President
H.-G PÖTTERING

For the Council
The President
J. LENARČIČ