

## New Civil Code of Puerto Rico

### ATTORNEYS

- Rubén Méndez-Benabe
- Ricardo J. García-Negrón
- Samuel T. Céspedes Jr.
- Ernesto N. Mayoral
- Francisco J. Pavía
- Lizzie M. Portela-Fernández
- Antonio J. Ramírez-Aponte
- Marcos Rodríguez-Ema
- Antonio Escudero-Viera
- Jaime F. González-Suárez
- Adrián P. Goyco-Vera
- Gabriela Pérez-Vélez
- Diego R. Puello-Álvarez
- Natalia C. Rodríguez-Alegría

### PRACTICE AREAS

- Corporate

### An McV Corporate Alert

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On June 1, 2020, Governor Wanda Vázquez-Garced signed into law Act No. 55-2020, which enacted the new Civil Code of Puerto Rico (the “New Code”). The New Code will repeal the current Civil Code 1930, as amended (the “Previous Code”). **The New Code becomes effective on November 28, 2020.**

The Previous Code is the main source of private law in Puerto Rico, regulating numerous aspects of a person’s life and daily interactions with others. It was approved ninety (90) years ago and is based on the Spanish Civil Code of 1889, which originates from the Napoleonic Code of 1804, the first modern civil code.

The provisions of the Previous Code - which set forth the basic norms governing family relations, contracts, obligations, torts, real and personal property, estates, and many others - have been subject to countless amendments over the years but have lacked a uniform, cohesive update to conform it to modern life in Puerto Rico. Since it governs countless aspects of daily life in Puerto Rico, this complete overhaul of the Previous Code is of paramount importance.

This Alert is the first in a series that will summarize some of the most relevant changes introduced by the New Code in the following areas:

- Legal Relations (including Conflict of Laws)
- The Family Institution
- Real Property Rights
- Obligations
- Contracts
- Torts and Other Sources of Obligations
- Successions

This Alert specifically addresses the **Preliminary Title of the New Code**, which sets forth general concepts that span Puerto Rico’s entire legal system.

Chapters One through Five of the Preliminary Title - which focus on establishing how laws should be implemented, interpreted, and applied in Puerto Rico - do not reflect a significant deviation from the Previous Code. However, the 37 articles in Chapter Six of the Preliminary Title have no precedent in the Previous Code. These Articles are focused on regulating the applicable law in cases where a conflict arises between the laws of Puerto Rico and the laws of other jurisdictions ("Conflict of Laws").

The Conflict of Laws provisions codified in Chapter Six of the Preliminary Title of the New Code are discussed below:

### **General Principle on Conflict of Laws**

The New Code establishes that in disputes in which one of the parties is domiciled in Puerto Rico and the other is domiciled in another jurisdiction, the applicable law will be determined by international treaties, federal law and Chapter Six of the Preliminary Title.

### **Personal Law of Natural and Legal Persons**

Personal law is the set of legal rules that govern the status and capacity of a person. The New Code provides that in the case of natural persons, the applicable personal law will govern the natural person's capacity, marital status, and succession by cause of death. Similarly, in the case of a legal person, the applicable personal law will govern the legal person's capacity, incorporation, representation, transformation, dissolution, and extinction.

The personal law of a natural or legal person will be determined by said person's domicile. However, if legal persons of different nationalities merge, the applicable personal law will be determined by the domicile of the legal person which, prior to the merger, had the greatest economic control.

### **Conflict of Laws regarding Marriage**

- Validity of a Marriage Contracted in a Foreign Jurisdiction

If a marriage took place in a foreign jurisdiction, it will be valid in Puerto Rico if said marriage is valid either in: (i) such jurisdiction, (ii) the jurisdiction where either spouse was domiciled at the time of the marriage, or (iii) the jurisdiction where the marital domicile was established.

However, the New Code also establishes that if a marriage that took place in a foreign jurisdiction is incompatible with Puerto Rico's public policy, said marriage will not be recognized and will be considered null and void.

- Economic Consequences of a Marriage

If there is an agreement between the spouses, the economic consequences of the marriage will be determined by the rules of the jurisdiction they selected. If there is no agreement, the consequences will be determined by the rules of the jurisdiction where the spouses established their first marital domicile.

- Pre-nuptial agreements

Pre-nuptial agreements that stipulate, modify, or substitute the economic regime of the marriage will be governed by the law of the marital domicile.

If there is no marital domicile, the law of the domicile of either spouse will apply, provided that said law is not contrary to the rules of the domicile of the other spouse. If there is a conflict between the laws of the domicile of either spouse, the law of the jurisdiction where the marriage took place applies.

### **Conflict of Laws regarding Property**

- General Rule

The New Code provides that the rules regarding possession, ownership, and other rights in property, are governed by the laws of the jurisdiction where the property was located at the time of its acquisition.

- Security Interests

Security interests in personal and real property are generally governed by the law of the jurisdiction in which the property is located when the security interest was created. Notwithstanding, the parties may agree that security interests in personal property be governed by the laws of the jurisdiction to which the property will be transferred.

- Goods in Transit

Goods in transit are considered to be located at the place of shipment. However, the sender and the recipient may agree, expressly or tacitly, that the goods are deemed to be located at the place of their destination.

- Negotiable Instruments

The issuance and enforceability of a negotiable instrument are governed by the laws of the jurisdiction in which the instrument was issued, unless such law provides otherwise.

**Conflict of Laws regarding Contracts**

Unless the parties agree otherwise, the contracts listed below are presumed to be governed as follows:

- Contracts concerning real property rights are governed by the laws of the jurisdiction where the property is located.
- Contracts for the sale of personal property (other than consumer goods) are governed by the laws of the jurisdiction where the seller has its principal place of business.
- Transportation contracts (other than for consumer goods) are governed by the laws of the jurisdiction where the carrier has its principal place of business.
- Consumer contracts are governed by the laws of Puerto Rico if the consumer is domiciled in Puerto Rico at the time of the contract.
- Agency contracts are governed by the laws of the jurisdiction in which the agent normally carries out its business.
- Insurance contracts are governed by the laws of the domicile of the insured party.
- Donations are always governed by the laws of the donor's domicile.
- If none of the above apply, the contract will be governed by (in order of priority):
  - The laws of the jurisdiction of the parties' common domicile.
  - The laws of the jurisdiction in which the contract was executed.
  - The laws of the jurisdiction that has the closest connection to the agreement.

### **Conflict of Laws regarding Succession**

- Applicable Law

Succession by cause of death is governed by the laws of the domicile of the deceased at the time of his/her death. If the estate contains property located in a jurisdiction with public policy contrary to the laws of the domicile of the deceased at the time of his/her death, such public policy will prevail.

- Rights of the Surviving Spouse

The rights of the surviving spouse are usually governed by the same laws that regulate the effects of marriage.

- Validity of the Will and the Legal Capacity of the Testator

The validity of the will and the legal capacity of the testator are recognized if the testator has legal capacity according to the laws of Puerto Rico or those of his/her domicile.

- Formal Requirements of a Will

The formal requirements of a will or testament are governed by the laws of Puerto Rico, by the laws of the jurisdiction in which the will was executed, or by the laws of the domicile of the testator at the time of executing the will.

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