

NATIONAL REPORT: LITHUANIA

Prof. Valentinas Mikelenas
 Supreme Court of Lithuania
August 2008

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A. GENERAL

- 1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses)? If so, briefly indicate the current sources of these rules.**

Yes, there are. Book 3 ("Family Law") Lithuania Civil Code provides special rules concerning property relationships between spouses upon marrying, during marriage, upon separation, as well as upon divorce and upon the annulment of marriage (Art. 3.81-3.129 Lithuanian Civil Code). Special rules concerning the property relationship between spouses upon the death of one of the spouses are provided by Book 5 ("Law of Succession") Lithuanian Civil Code (Art. 5.7, 5.13, 5.43-5.49 Lithuanian Civil Code).

According to Art. 3.7 para. 2 Lithuanian Civil Code spouses are a man and a woman who have registered their marriage in the procedure provided for by law.

- 2. Give a brief history of the main developments and most recent reforms of the rules regarding the property relationship between spouses.**

Property relationships between spouses were regulated by the Lithuanian Statutes of 1529 (the First Lithuanian Statute), 1566 (the Second Lithuanian Statute) and 1588 (the Third Lithuanian Statute). The Third Lithuanian Statute of 1588 was in force in the largest part of Lithuania for more than 250 years – until 1840, when it was replaced by Russian legislation. The Lithuanian Statutes provided for the principle of the separation of the spouses' property and also the possibility of a pre-nuptial agreement.

After the restoration of independence in 1918, due to historic reasons, the reception of 4 different legal systems of Civil Law took place: the Russian civil legislation of 1840 was applied in the largest part of the territory of Lithuania; the French Civil Code of 1804 was applied in the territory located on the left side of the river *Nemunas*; the German *BGB* was applied in the *Klaipeda* region; and the Restatement of the Civil Laws for Baltic provinces in the *Palanga* and *Zarasai* regions.

During the Soviet period (1940-1990), the former legal system in Lithuania was replaced by the Soviet legal system. From 1940 until 1970, the Marriage and Family Code of the Russian Federation of 1926 was applied in Lithuania. In 1969 the Lithuanian Marriage and Family Code was adopted. In 1940 only one legal regime concerning the property relationship between spouses was introduced – common joint ownership. There was no possibility to conclude a marriage contract during this period. On July 1, 2001 the New Lithuanian Civil Code entered into force and it replaced the Marriage and Family Code of 1969. Family law was integrated into the Lithuanian Civil Code. The new Lithuanian Civil Code provided two possible legal regimes for the property relationship between spouses: statutory and contractual. The statutory legal regime applies in the event of the absence of a marriage contract and it is based on the principle of common joint ownership. The contractual regime means the regime provided by the marriage contract of the spouses.

- 3. Are there any recent proposals (e.g. parliament, reform bodies, academic community) for reform in this area?**

No, there are not. However, there are proposals to prepare a special Law on registered partnerships which is necessary for the entry into force of Chapter 15 of Book 3 Lithuanian Civil Code on registered partnerships.

4. Briefly explain whether or not the rules regarding the property relationship between spouses also apply to registered or civil partnerships?

No, special rules concerning property relationships between spouses only apply in respect of spouses and do not apply in respect of a registered partnership. There are special rules in the Lithuanian Civil Code concerning the property relationship between partners (Art. 3.230-3.235 Lithuanian Civil Code). However, these rules have not entered into force, because Parliament has not passed the special law regarding registered partnerships which is necessary for the entry into force of the relevant Articles of the Lithuanian Civil Code.

5. Are the rules concerning the matrimonial property relationship between spouses exclusive or are there other mechanisms of property law, such as joint ownership, which also play a role in relation between spouses?

Yes, they are. Some rules of property law (Book 4 ("Real Rights") Lithuanian Civil Code) also apply to the relationship between spouses. For example, if the marriage contract provides that the property relationships between spouses are based on common divided (partial) ownership, rules on common divided (partial) property shall be applied as well (Art. 4.72-4.85 Lithuanian Civil Code).

6. What is the relationship, if any, between the law regarding the property relationship between spouses and the law of succession?

The law regarding the property relationship between spouses does not regulate questions of inheritance between spouses. Art. 3.100 Lithuanian Civil Code only provides that the common joint ownership of spouses ceases upon the death of one of the spouses. Questions relating to inheritance upon the death of one spouse are regulated by the law on succession. However, inheritance between spouses is based on the rules of property law regarding spouses. For example, the general presumption of matrimonial property regarding the spouses' equal share in the community of property and the matrimonial property law rules regarding the distinction between the spouses' personal and commonly owned property, etc.

7. Are there distinct rules concerning general rights and duties of the spouses (as referred to in section B) that are independent of the specific property relationship of the spouses (matrimonial property regimes as referred to in section C)?

Yes, there are distinct rules concerning general rights and duties of the spouses. These rules apply in respect of "family property", e.g. a house or an apartment (Art. 3.84-3.86 Lithuanian Civil Code) and rules regarding household expenses (Art. 3.109 Lithuanian Civil Code). These rules are applied irrespective of the kind of legal matrimonial property regime.

B. GENERAL RIGHTS AND DUTIES OF SPOUSES CONCERNING HOUSEHOLD EXPENSES, TRANSACTIONS IN RESPECT TO THE MATRIMONIAL HOME AND OTHER MATTERS IRRESPECTIVE OF THE SINGEL MATRIMONIAL PROPERTY REGIME

8. What, if any, are the obligations of spouses to contribute to the costs and expenses of the family household? In answering this question, briefly explain what your system understands by "costs and expenses of the family household".

A marriage creates several duties for the spouses. Art. 3.27 Lithuanian Civil Code provides that spouses must contribute towards the common needs of the family or the needs of the

other spouse in proportion to their respective capabilities. Where, due to objective reasons, one of the spouses is unable to make a sufficient contribution towards the common needs of the family, the other spouse must do so in accordance with his or her abilities.

According to Art. 3.109 para. 2 Lithuanian Civil Code either spouse shall have a right to enter into transactions which are necessary to maintain the family household and to ensure the upbringing and education of the children. In creating and discharging obligations related to the needs of the family the spouses shall be as prudent and careful as if creating and discharging their own personal obligations.

The Lithuanian Civil Code does not define the notion of “costs and expenses of the family household”. This is considered to be a question of fact. In general, this notion means monetary sums payable as rent for a house (or an apartment), also for the electricity, water, heating, meals, furniture, various expenses related to raising and educating the children as well as other necessary expenses related to the needs of the family.

9. Is one spouse liable for the household debts incurred by the other? And if so, to what extent?

Yes. Both spouses are jointly liable for obligations arising from such transactions whatever their matrimonial regime may be. However, Art. 3.109 Lithuanian Civil Code provides two exceptions to this general principle. The first: there is no joint liability in cases where the price of transactions is clearly too high and unreasonable. The second: the joint liability of the spouses shall not apply where one of the spouses takes out a loan or acquires goods on credit, which are not necessary for the needs of the family, without the consent of the other spouse.

10. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of the matrimonial/family home irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by “matrimonial/family home”.

Yes, there are specific rules regarding the “family home”. According to Art. 3.84 Lithuanian Civil Code, the family dwelling (a house, an apartment, etc.) in which the family actually lives, are family assets. “Family assets” shall also include the right to use the family dwelling, e.g. the right to lease. Art. 3.85 Lithuanian Civil Code provides that the spouse who is the owner of immovable property which is considered to be part of the “family assets”, may transfer ownership rights thereto, charge it or encumber the rights thereto in any other way only with the written consent of the other spouse. When the spouses have minor children, transactions in respect of immovable property which is considered to be a “family house” require judicial authorisation. “Family assets” may not be used to pay a creditor if the creditor knew or should have known that the transaction is not related to meeting the needs of the family and is contrary to the interests of the family. The legal regime of “family assets” or the composition of the family assets may not be changed by an agreement between the spouses.

The legal regime of “family assets” will end upon divorce, a declaration as to the nullity of the marriage or the separation of the spouses. The court may award the right to use the “family home” or a certain part thereof (usufruct) to the spouse with whom the minor children of the marriage will live. The usufruct shall be valid until the children attain the age of majority. Where the spouses rent a family dwelling,, the court may transfer the lessee rights to the spouse with whom the children will live or the spouse who lacks earning capacity (Art. 3.86 Lithuanian Civil Code).

11. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of household goods irrespective of the matrimonial property

regime? In answering this question, briefly explain what your system understands by “household assets”.

“Household assets” shall include movable property used in the household: household utensils and furniture, except for works of art, collections or home libraries. The general rule is that household goods may only be acquired with the mutual consent of both spouses. However, Art. 3.92 Lithuanian Civil Code establishes the presumption of the consent of the other spouse except in cases where entering into a transaction requires the written consent of the other spouse.

Transactions entered into by a spouse without the consent of the other spouse, which should have been obtained, may be annulled under an action brought by the other spouse provided that the third party involved in the transaction had acted in bad faith. An action may be brought within a year of the date on which the spouse became aware, or should have become aware, of the transaction.

12. To what extent, if at all, are there other rules governing transactions entered into by one spouse irrespective of the matrimonial property regime (e.g. entering into guarantees, incurring debts...)?

According to Art. 3.35 Lithuanian Civil Code neither spouse may, without the consent of the other, alienate, pledge or lease movable property used in the household or encumber the right thereto in any other way. (As has already been said, the movable property serving used in the household shall include household utensils and furniture, except for works of art, collections or home libraries.) A spouse having neither consented to nor ratified such a transaction may apply to have it annulled except in cases where the transaction was by onerous title and the third party was acting in good faith. The court may also award the chattels intended for use in the household to the spouse who remains in the “family house” together with the minor children (Art. 3.86 Lithuanian Civil Code).

13. To what extent, if at all, are there specific rules concerning one spouse acting as agent for the other?

According to Art. 3.32 Lithuanian Civil Code either of the spouses may authorise the other to represent him or her and act on his or her behalf. So, a spouse is not an agent of the other spouse on the basis of marriage. For this reason, the general rules on representation (agency) are applied. Where certain acts require the consent of the other spouse, but for any objective reason the other spouse is unable to provide such consent, the court may, upon the interested spouse’s request, give the interested spouse permission to perform the act in question without the consent of the other spouse. Before giving permission, the court must satisfy itself that the consent of the other spouse is really unobtainable, while granting permission will serve the interests of the family. The court’s permission is only valid for the act specified in the court order and to be performed within the specified period of time. If the court finds that the spouse’s actions are contrary to the interests of the family or of the minor children, it may amend or revoke its permission at the request of the state institution for the protection of the child’s rights or the public prosecutor. Amendments to or a revocation of the court’s permission shall be effective only from the date of the court’s order to that effect. On the day of its adoption, such an order by the court must be sent to the Chamber of Notaries Public or, if the permission is related to the disposition of immovable property, to the public registrar.

If a spouse has acted on behalf of the other spouse without his or her permission or the permission of the court, such acts and their consequences shall be subject to the rules in Book 6 Lithuanian Civil Code regulating the management of the other spouse’s affairs.

14. What restrictions or limitations, if any, are there concerning transactions between spouses irrespective of the matrimonial property regime (e.g. gifts...).

There are no restrictions or limitations concerning transactions between spouses *inter vivos*. According to Art. 3.99 Lithuanian Civil Code spouses shall have a right to make gifts in the form of assets to each other in accordance with the rules of Book 6 ("Law on Obligations") Lithuanian Civil Code, regulating gift agreements.

However, transactions *post mortem* are only possible on the basis of the law on succession, e.g., spouses shall have a right to make a joint will (Art. 5.43-5.49 Lithuanian Civil Code).

C. MATRIMONIAL PROPERTY REGIMES

C.1. General issues

15. Are spouses entitled to make a contract regarding their matrimonial property regime?

Yes, they are. According to Art. 3.81 Lithuanian Civil Code spouses are entitled to make a contract regarding their matrimonial property. Such a contract is called a marriage contract. A marriage contract means an agreement between the spouses defining their property rights and duties during the marriage as well as upon divorce or separation (Art. 3.101 Lithuanian Civil Code).

A marriage contract may be made before the registration of the marriage (a pre-nuptial contract) or at any time after the registration of the marriage (a post-nuptial contract). A marriage contract made before the registration of the marriage shall come into effect on the day of the registration of the marriage. A post-nuptial contract shall come into force on the date on which it is made unless the agreement stipulates otherwise (Art. 3.102 Lithuanian Civil Code).

16. What regime is applicable, using the list below,¹ if spouses have not made a contract (default regime) or are not allowed to make a contract or are not allowed to make a contract with binding effect?

Community of property.

17. Using the list above, are there other alternative matrimonial property regimes regulated by statute for which spouses can opt besides the default regime (where applicable)?

Yes, there are. According to Art. 3.104 Lithuanian Civil Code spouses can select, by means of a marriage contract, several various legal regimes.

18. Briefly describe the regimes indicated in the answers to:

a. Question 16.

The statutory i.e. default regime means that the property acquired by the spouses after the commencement of their marriage shall be their joint community property. The property of the spouses constitutes their joint community property until the separation of this property or until the joint community property rights are extinguished in some other way (Art. 3.87 Lithuanian Civil Code). At the same time all property, acquired by each spouse before the marriage shall remain their personal property. Each of the spouses may also acquire personal

¹ For an explanation of this list, see the document: CLASSIFICATION OF MATRIMONIAL PROPERTY REGIMES PROPOSED BY THE CEFL.

property during the marriage, e.g. a gift or an inheritance. At the same time the law determines the kinds of assets which do not belong to the joint community property.

b. Question 17.

A contractual legal property regime is a regime established by a marriage contract. A marriage contract means an agreement between the spouses defining their property rights and duties during the marriage as well as upon divorce or separation (Art. 3.101 Lithuanian Civil Code). Spouses shall have a right to stipulate in the marriage contract that property acquired both before and during the marriage shall be the personal property of each spouse, or that personal property acquired by a spouse before the marriage shall become community property after the registration of the marriage, or that property acquired during the marriage shall be (partially) divided community property.

19. Indicate the frequency of the use made of the regimes (where possible by reference to statistical data) referred to in Questions 16 and 17.

The contractual legal regime (entering into a marriage contract) is quite rare. From 1 July 2002 (the entry into force of the Registration of Marriage Contracts) until mid-2008, only 1,919 marriage contracts were registered (428 pre-nuptial, and 1,491 post-nuptial marriage contracts). However, the tendency is that the number of marriage contracts seems to be increasing (in 2002: 24; in 2003: 160; in 2004: 210; in 2005: 306; in 2006: 488; in 2007: 600 marriage contracts were registered). This means that only about 2-3% of newly married couples enter into a marriage contract (e.g., during 2006 21,200 new marriages were registered in Lithuania).

C.2. Specific regimes

I. Community of property

I.1. Categories of assets

20. Describe the system. Indicate the different categories of assets involved.

According to the statutory (default) legal regime all assets acquired during a marriage are the community property of both spouses. There is a presumption of community property: all assets shall be presumed to be the community property of both spouses unless it is established that it is the personal property of one of them.

Art. 3.88 Lithuanian Civil Code in particular provides that community property shall be:

- property acquired after the formation of the marriage in the name of one or both of the spouses;
- the income and fruits from the personal property of a spouse;
- income derived from the joint activities of the spouses, and income derived from the activities of one of the spouses except for the funds required for that spouse's occupation;
- an enterprise and the income deriving from the operations of the enterprise or any other business provided that the spouses embarked on such business activities after the commencement of the marriage. Where the enterprise was owned by one of the spouses before the marriage, the community property shall include the income deriving from the operations of the enterprise or any other business and any increase in the enterprise (business) after the formation of the marriage;
- income from work or intellectual activities, dividends, pensions, benefits or other payments collected by both spouses or one of them after the commencement of the marriage except for payments received for specific purposes (such as damages for personal injury, non-pecuniary damages, support, allowances or other benefits paid specifically to only one of the spouses, etc.).

Property required for the operation of an enterprise (a farm, a business) established by one of the spouses after the formation of the marriage as well as the income from an enterprise established by one of the spouses before the formation of the marriage other than the funds required for the operation of the spouse's personal enterprise shall be joint community property provided that property exists at the moment of a divorce.

Both spouses must be registered as the owners of the community property in the public register. Where the property is registered in the name of one of the spouses, it shall be considered, for the purpose of third persons in good faith, to be community property provided it is registered as community property.

21. What is the legal nature of the different categories of assets, in particular the community?

Community property means that the shares of both spouses are not established. The shares are established only in the event of the division of community property.

22. What do the personal assets of each spouse comprise?

Even in the event of the statutory (default) legal regime some assets do not belong to the community property and comprise the personal property of each spouse. There are two criteria defining personal property – the time of acquisition (all assets acquired before entering into the marriage comprise personal property) and the source of acquisition

(donated, inherited assets comprise personal property). According to Art. 3.89 Lithuanian Civil Code the personal property of each spouse shall consist of:

- property acquired separately by each spouse before the commencement of the marriage;
- property devolved to a spouse by succession or gift during the marriage unless the will or donation agreement indicates that the property is devolved as joint community property;
- a spouse's personal effects (footwear, clothing, instruments required for the spouse's occupation);
- the rights to intellectual or industrial property except for the income derived from those rights;
- funds and chattels required for the personal business of one of the spouses other than the funds and chattels used in the business conducted jointly by both spouses;
- damages and compensation payments received by one of the spouses for non-pecuniary damage or personal injury, payments as financial aid for specific purposes and other benefits related specifically to only one of the spouses, rights that may not be transferred;
- property acquired with the personal funds or proceeds from the sale of a personal property with the express intention of the spouse at the time of the acquisition to acquire it as personal property.

Personal property that one of the spouses transfers to the temporary possession of the other spouse to meet the latter's personal needs shall remain the personal property of the transferor.

The fact of property being the personal property of one of the spouses may only be proved by written documents (evidence) except in cases where the law accepts the testimony of witnesses or the nature of the property is sufficient proof of it being the personal property of one of the spouses.

According to Art. 3.90 Lithuanian Civil Code the court may declare the personal property of one of the spouses to be community property if it is established that during the marriage the property was fundamentally improved with the joint funds of the spouses or with the funds of or due to the work of the other spouse (capital investments, reconstruction, etc.). Where a spouse used both his or her personal funds and the funds owned jointly with the other spouse to acquire property for his or her own personal needs, the court may declare the property so acquired to be community property provided the value of the community funds used to acquire such property exceeded the value of the personal funds of the spouse so expended.

23. Is substitution of personal assets (e.g. barter agreement) governed by specific rules? Distinguish where necessary between movables and immovables.

According to Art. 3.90 Lithuanian Civil Code the court may declare the personal property of one of the spouses to be community property if it is established that during the marriage the property was fundamentally improved with the joint funds of the spouses or with the funds of or due to the work of the other spouse (capital investments, reconstruction, etc.).

24. Is investment of personal assets governed by specific rules? Distinguish where necessary between movables and immovables.

There are special rules in matrimonial law regarding the investment of personal assets into community assets. According to Art. 3.98 Lithuanian Civil Code, the spouse who has increased the value of the community property by bringing in personal property shall be entitled to compensation against the community property. A spouse shall be entitled to compensation also in cases when his or her personal funds have been used for the acquisition of community property. This compensation shall be paid when the spouse's community ownership ends. Each of the spouses must also compensate for a reduction of the community property if he or she has used it for purposes unrelated to common obligations, except in

cases where he or she can prove that the property has been used to satisfy the needs of the family.

25. What assets does the community comprise? Are there special rules governing the spouses earnings?

All assets acquired during the marriage comprise community property. Art. 3.88 Lithuanian Civil Code especially provides that the earnings of the spouses are also community property, except for the funds required for that spouse's occupation. According to the prevailing opinion in the legal literature earnings are community property from the moment when they are received.

26. To which category of assets do pension rights and claims and insurance rights belong?

Pension and insurance rights and claims are community property if they were accumulated from community funds. Upon divorce, a spouse shall have the right to claim half of the funds accumulated in a private pension fund from the joint financial sources of the spouse (Art. 3.88 Lithuanian Civil Code). Social security pensions as well as earnings are also community property after they have been received.

27. Can a third party stipulate in e.g. a gift or a will to what category of assets a gift or bequest will belong?

Yes. According to Art. 3.89 Lithuanian Civil Code, a third party may stipulate in a gift by contract or in a will that the gift or bequest will belong to the personal property of one spouse or the community property of both spouses.

28. How is the categorisation of personal or community assets proved as between the spouses? Are there rebuttable presumptions of community property?

A presumption of community property exists: all assets shall be presumed to be community property unless it is established that one asset or another is the personal property of one of them. However, this presumption is rebuttable and the interested spouse may prove that the particular asset is his or her personal property. Such disputes normally arise during divorce proceedings in dividing community property between spouses.

29. How is the categorisation of personal or community assets proved as against third parties? Are there rebuttable presumptions of community property?

Yes, there are. A rebuttable presumption of community property also exists in respect of third parties as well. The interested third party may prove that the particular asset was or is the personal property of one of the spouses. Normally such disputes arise after the death of one of the spouses in succession proceedings.

30. Which debts are personal debts?

Personal debts are debts incurred before marriage, also debts exclusively related to the person of one of spouses, e.g. related to a personal gift or inheritance, alimony obligations, fines established by public law, etc.

31. Which debts are community debts?

According to Art. 3.109 Lithuanian Civil Code the following debts shall be community debts:

- obligations related to the encumbrances of property acquired in co-ownership that existed at the time of acquisition or were created later;
- obligations related to the costs of managing community property;

- obligations related to the maintenance of the household;
- obligations related to legal expenses where the action is related to community property or the interests of the family;
- obligations arising from transactions entered into by one of the spouses with the consent of the other spouse or subsequently ratified by the latter as well as obligations arising from transactions for which no consent of the other spouse was required, provided that the transactions were made in the interests of the family;
- joint and several obligations of the spouses.

32. On which assets can the creditor recover personal debts?

Personal debts may only be recovered from the personal property of the spouse. Art. 3.110 Lithuanian Civil Code provides that community property may not be used to discharge the personal obligations of spouses except those charged against the relevant spouse's share in the community property. In the case of a personal debt, the creditors are obliged to establish the share of the debtor spouse in the community property, i.e. a division of community property will occur in such a case.

33. On which assets can the creditor recover community debts?

Community debts are recovered from community property. Where the community property is not sufficient to meet the community debts, the claims of creditors shall be discharged from the individual property of the spouses (Art. 3.113 Lithuanian Civil Code).

I.2. Administration of assets

34. How are personal assets administered?

A spouse shall use, manage or dispose of his or her personal property at his or her own discretion. However, the management, use or disposal of property defined as family assets shall be subject to the restrictions laid down in Book 3 Lithuanian Civil Code. On the other hand, where a spouse cannot manage his or her personal property alone and contribute to the needs of the household due to an illness or any other objective reason, the other spouse shall have the right to use the personal funds and assets of the spouse incapable of managing his or her property alone for the needs of the household. This rule shall not be applied in cases where the spouses are separated or an administrator has been appointed for the personal property of the spouse unable to manage it alone and make a contribution towards meeting the needs of the household.

Where a spouse manages his or her personal property in such a negligent or unreasonable way that it endangers the interests of the family because the property may be lost or substantially reduced, the other spouse shall have a right to seek in the judicial appointment of an administrator for the management of such property. The court may appoint the applicant spouse to be the administrator. After the circumstances which caused the appointment of an administrator disappear, either spouse may apply to the court to have the appointment of an administrator revoked (Art. 3.97 Lithuanian Civil Code).

35. How are the community assets administered?

Community assets shall be used, managed and disposed of only by the mutual agreement of the spouses. Where a spouse does not give the other spouse the consent required to enter into a transaction, the interested spouse may seek judicial leave to enter into the transaction. The court shall allow a transaction to be entered into only if the interested spouse can prove that the transaction is necessary to meet the needs of the family or the needs of their community business (Art. 3.93 Lithuanian Civil Code). When entering into transactions a spouse shall be presumed to have the consent of the other spouse except in cases where entering into a

transaction requires the written consent of the other spouse. In exceptional cases where a delay would result in serious damage to the interests of the family while the other spouse is unable to express his or her will because of illness or some other objective reason, a spouse may enter into a transaction without the consent of the other spouse in accordance with the procedure laid down in Art. 3.32 para. 2 Lithuanian Civil Code. Transactions related to the disposal or encumbrance of a community immovable property or the rights thereto, also transactions on the alienation of a community enterprise or securities or the encumbrance of the rights thereto, may only be entered into by both spouses except where one of the spouses has been given a power of attorney by the other spouse to enter into such a transaction.

However, the consent of the other spouse shall not be required for:

- the acceptance or rejection of succession to an estate;
- the refusal to enter into a contract;
- urgent measures to protect the community property;
- bringing an action to protect joint community property;
- bringing an action to protect one's rights related to community property or one's personal rights unrelated to the interests of the family.

Each spouse shall have a right to open a bank account in his or her name without the consent of the other spouse and to dispose freely of the funds in the account unless those funds have been made community property.

Where a transaction has been entered into without the consent of the other spouse, that other spouse may ratify the transaction within one month of the date when he or she becomes aware of the transaction. Before its ratification the other party may withdraw from the transaction. If the other spouse does not ratify the transaction within a month, the transaction shall be declared as having been made without the consent of the other spouse. If the other party to the transaction knew that the person with whom it was entering into the transaction was married, it can only withdraw from the transaction if the spouse had misrepresented the existence of the other spouse's consent (Art. 3.92 Lithuanian Civil Code).

36. Can one spouse mandate the other to administer the community assets and/or his or her personal assets?

Yes. A spouse may give a power of attorney to the other spouse to manage, use and dispose of their community property. Where one of the spouses is absent or cannot participate in the management of the community property for important reasons, the other spouse may apply to the court to be authorised to manage such property alone. If the spouse is negligent or unreasonable in managing the community property alone, he or she shall be liable for the losses incurred through his or her fault and shall compensate them against his or her separate property. The management of property shall be governed *mutatis mutandis* by the rules of Book 4 Lithuanian Civil Code regulating the management of property owned by another person (Art. 3.94 Lithuanian Civil Code).

A spouse may also grant a power of attorney to the other spouse to manage his or her personal property. In such a case the mutual relations of the spouses concerning property shall be governed by the rules of Book 2 Lithuanian Civil Code on the regulation of legal agency relations (Art. 3.97 Lithuanian Civil Code).

37. Are there important acts concerning personal assets or community assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse?

Yes, there are. All important acts regarding community property need the consent of the other spouse. In the case of personal property, the consent of the other spouse is only necessary if this personal property belongs to the category of "family property", i.e. a family

dwelling (a house, an apartment, etc.) in which the family actually live. Art. 3.85 Lithuanian Civil Code provides that the spouse who is the owner of an immovable property which is considered to be a "family home" may only transfer ownership rights thereto, charge it or encumber the rights thereto in any other way with the written consent of the other spouse. Where the spouses have minor children, transactions in respect of immovable property considered to be a "family house" require judicial authorisation.

38. Are there special rules for the administration of professional assets?

No, there are no any special rules. The general rules on the administration of community and personal property are applied.

39. Is there a duty for one spouse to provide information to the other about the administration of the community assets?

Yes, there is. Each spouse has a duty to inform another spouse about all acts regarding the administration of community property. Where a transaction has been entered into without the consent of the other spouse, that other spouse may ratify the transaction within one month of the date when he or she became aware of the transaction.

40. How are disputes between spouses concerning the administration of personal or community assets resolved?

Disputes between spouses concerning the administration of community or personal property are resolved by the court. For example, where a spouse is unable to manage community property or does so in a way that incurs losses, the other spouse may apply to have the court remove the spouse from managing the property. The court shall grant the requested removal if the applicant can prove that it is necessary to ensure the needs of the family or the needs of their joint business (Art. 3.95 Lithuanian Civil Code). Where a spouse manages his or her personal property in such a negligent or unreasonable way that it endangers the interests of the family because the property may be lost or substantially reduced, the other spouse shall have a right to seek the judicial appointment of an administrator for the management of such property (Art. 3.97 Lithuanian Civil Code).

41. What are the possible consequences when a spouse violates the rules governing the administration of personal and community assets? What are the possible consequences in other cases of maladministration of the assets?

According to Art. 3.96 Lithuanian Civil Code, transactions entered into without the consent of the other spouse and not subsequently ratified by him or her, may be declared null and void by an action brought by that spouse within a year of the date when he or she became aware of the transaction, provided that it is proved that the other party to the transaction had acted in bad faith. The transactions that should have been entered into with the written consent of the other spouse or could only have been entered into jointly by both spouses (Art. 3.92 para. 4 Lithuanian Civil Code) may be declared null and void irrespective of the other party to the transaction having acted in good or bad faith except in cases where one or both of the spouses acted fraudulently in entering into the transaction or made misrepresentations to institutions in charge of public registers or to any other institutions or officials. In such cases the transaction may be declared void only if the other party to the transaction has acted in bad faith.

The share of one of the spouses in the community property may be reduced by the amount of income unrealised due to the spouse's negligence or because he or she concealed the income from the family and used it for his or her personal needs. The period for which such unrealised income is calculated should not exceed five years before instigating the lawsuit for the division of community property. Where, less than a year before the instigation of the

action for the division of the community property, one of the spouses reduced the value of the community property without the consent of the other spouse by donating some of it or by using it to increase his or her own personal property, the portion of this spouse in the community property may also be reduced while establishing the respective portions of the spouses in the community property by the value of the lost community property (Art. 3.123 Lithuanian Civil Code).

**42. What are the possible consequences if a spouse is incapable of administering
a. his or her personal assets**

Where a spouse is incapable of administering his or her personal property, the other spouse shall have a right to seek the judicial appointment of an administrator for the management of such property. The court may appoint the applicant spouse to be the administrator (Art. 3.97 Lithuanian Civil Code).

b. community assets.

Where one of the spouses is absent or cannot participate in the management of the community property for important reasons, the other spouse may apply to the court to be authorised to manage such property alone (Art. 3.94 Lithuanian Civil Code).

I.3. Distribution of assets upon dissolution

43. What are the grounds for the dissolution of the community property regime, e.g. change of property regime, separation, death of a spouse or divorce?

There are several grounds for the dissolution of the community property regime provided for by the Lithuanian Civil Code.

According to Art. 3.100 Lithuanian Civil Code the community property regime shall end on:

- the death of one of the spouses;
- a presumption of the death of one of the spouses or the judicial declaration that one of the spouses is missing;
- the declaration of the nullity of the marriage;
- divorce;
- separation;
- the judicial partitioning of the community property;
- a change to the legal regime of the property in accordance with the mutual agreement between the spouses;
- in other cases laid down by the law, e.g., in the case of the division of the community property at the request of the creditors of one of the spouses.

44. What date is decisive for the dissolution of the community property? Distinguish between the different grounds mentioned under Q 43. At what date are the community assets determined and valued? Is the fact that the spouses are living apart before the dissolution of the marriage relevant?

The date on which the dissolution of community property occurs depends on the ground for the dissolution. For example, in the case of divorce, this date is the date of initiating divorce proceedings or the date of the factual separation of the spouses (Art. 3.67 Lithuanian Civil Code). In the case of the death of one of the spouses the date of dissolution is the date of death.

45. What happens if community assets have been used for investments in the personal property? What happens if personal assets have been used for investments in the

community property? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?

In both cases the Lithuanian Civil Code provides special rules. First of all, if the personal property of one of the spouses during the marriage was fundamentally improved with the community funds of the spouses or with the funds of or due to the work of the other spouse (capital investments, reconstruction, etc.), the court may declare the personal property of one of the spouses to be community property. Where a spouse used both his or her personal funds and the community funds to acquire property for his or her own personal needs, the court may declare the property so acquired to be community property provided that the value of the community funds used to acquire such property exceeded the value of the personal funds of the spouse so expended (Art. 3.90 Lithuanian Civil Code). Secondly, if personal assets have been used for investments in the community property, the spouse has the right to compensation. According to Art. 3.98 Lithuanian Civil Code where the value of the joint community property is increased by adding the personal property of one of the spouses, the spouse the addition of whose property has increased the value of the community property shall be entitled to compensation against the community property. A spouse shall be entitled to compensation also in cases when his or her personal funds have been used for the acquisition of community property.

46. What happens if community assets have been used for the payment of personal debts? What happens if personal assets have been used for the payment of community debts? Is there a rule of compensation? And if so, how is compensation calculated?

If community assets have been used for the payment of personal debts, the spouse whose personal debts have been paid from the community property shall be obliged to compensate the reduction of the joint community property. If a transaction has been entered into in order to meet the personal needs of only one of the spouses by using community property, that spouse shall also be obliged to compensate the reduction of the community property (Art. 3.115 Lithuanian Civil Code).

47. What is the priority order between compensation rights and community debts?

The common creditors have priority against the mutual compensation right of spouses (Art. 3.118 Lithuanian Civil Code).

48. How are community assets administered after dissolution but before division?

Before the division the community property is administered by mutual consent between both spouses. In the event of the death of one of the spouses the heirs may request the court to apply provisional measures of protection, e.g. the appointment of an administrator or the preservation of property.

At the request of one of the spouses or a spouse's creditors, the court may seize the community property of the spouses or appoint an administrator for the property if that is necessary to protect the interests of the spouses in the community property or the rights of their creditors. These measures shall not be applicable where the other spouse submits adequate security for the claims of the spouse requesting the seizure of the property or the appointment of an administrator or for the claims of creditors (Art. 3.122 Lithuanian Civil Code).

49. Briefly explain the general rules governing the division of the community assets.

Community property may be divided by the mutual agreement of the spouses or by a court judgment on the application of one of the spouses or their creditors during the marriage and upon divorce or separation (Art. 3.116 Lithuanian Civil Code). The division of community

property means the establishment of the share of each spouse. According to Art. 3.117 Lithuanian Civil Code the shares of the spouses in joint community property shall be presumed to be equal, i.e. each has 50%. However, Art. 3.123 Lithuanian Civil Code provides the right of the court to depart from the principle of the equality of the shares of the spouses in the community property. Having regard to the interests of the minor children, the state of health or the financial position of one of the spouses or other important circumstances, the court may depart from the principle of the equality of the spouses' shares in the community property and award one of the spouses a greater portion of the property. These criteria must also be taken into consideration by the court in deciding on the way of partitioning community property. The share of the spouse obliged to make maintenance payments to the other spouse may be reduced by the amount of the maintenance if it is to be paid in the form of a lump-sum payment or by certain property given in payment.

The first step during the division of community property is the establishment of the community property and the respective personal property of the spouses. The second step after the establishment of community property is the payment of community debts from the community property (according to Art. 3.126 Lithuanian Civil Code the creditors of one or both of the spouses shall have the right to participate as third parties in the lawsuit for the division of community property and present their own individual claims. In his or her application the spouse who institutes proceedings for the division of property must indicate the creditors of one or both of the spouses which he or she is aware of and notify the creditors of the instigation of proceedings by sending them a copy of the application).

The third step is the drawing of a balance sheet containing details of all compensations indicating the amounts which each spouse must pay by way of compensating the community property or the amounts which each must receive from the community property. Where the balance of community property is positive it is divided equally between the spouses, except in cases when the court decides to depart from the equal shares principle (Art. 3.118 Lithuanian Civil Code).

The value of the community property to be partitioned shall be established at its market value on the date of the termination of the spouses' community property.

If possible, the property is divided in kind having regard to its value and the share of each spouse in the community property. If the property cannot be divided in kind, it is awarded in kind to one of the spouses, who is ordered to compensate the other spouse's share in the form of money. The decision on the way the property is to be divided and the actual division of property in kind is taken having regard to the interests of the minor children, the state of health and the financial situation of one of the spouses as well as other important circumstances (Art. 3.127 Lithuanian Civil Code).

Where the value of the property awarded by the court to one of the spouses is greater than his or her share in the joint community property, that spouse shall be obliged to pay compensation to the other spouse. Upon the presentation of adequate security for this liability, the court may defer the payment of compensation for no longer than two years (Art. 3.123 Lithuanian Civil Code).

50. How are the community debts settled?

According to Art. 3.118 Lithuanian Civil Code, the community property shall first be used to pay the debts that have fallen due and are payable from this property. Where the time-limit for meeting the liabilities from the community property has not expired or the liabilities are disputed, the value of the community property to be partitioned shall be reduced by the amount of these liabilities (debts).

When dividing the property, the court may award an amount of money from one spouse to the other to be used for the repayment of the outstanding debts of the marriage to third parties (Art. 3.123 Lithuanian Civil Code).

51. Do the spouses have preferential rights over the matrimonial/family home and/or the household's assets?

No, they do not. There are no such rights. However, the court when dividing community property must take into account the interests of the minor children, the state of health and the financial situation of one of the spouses as well as other important circumstances (Art. 3.127 Lithuanian Civil Code). For example, if the place of residence of the minor children after divorce is determined to be with the mother, the court will normally award the family home or the greater part thereof to the former wife.

52. Do the spouses have preferential rights over other assets?

No, they do not. But the court, when dividing community property, must take into account the interests of the minor children, the state of health and the financial situation of one of the spouses as well as other important circumstances (Art. 3.127 Lithuanian Civil Code). For example, if the family car is used by the husband for his professional purposes, the court would normally award the car to the husband, and for the wife: compensation.

53. To what extent, if at all, does the division of community property affect the attribution of maintenance?

The share of the spouse obliged to make maintenance payments to the other spouse may be reduced by the amount of the maintenance if it is to be paid in the form of a lump-sum payment or certain property given in kind (Art. 3.123 Lithuanian Civil Code).

54. To what extent, if at all, does the division of community property affect the pension rights and claims of one or both spouses?

Upon divorce, a spouse shall have the right to claim one half of the funds accumulated in a private pension fund from the joint financial sources of the spouses (Art. 3.88 Lithuanian Civil Code).

55. Can the general rules of division (above Q 49) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?

Yes, spouses have the right to enter into a contract regarding the division of community property and to make different provisions. They also have the right to provide special rules on the division of property in a marriage contract. However, the agreement between the spouses regarding the division of property may not violate the rights and interests of, e.g. minor children or creditors. For example, if the agreement between the spouses regarding the division of property violates the interests of their creditors, the creditors may initiate an *actio Pauliana*.

56. Are there besides the rules of succession specific rules for the division of community assets if one of the spouses dies? If so, describe briefly.

No, there are not. In the event of the death of one of the spouses, the rules of the law of succession will always apply.

II. Community of accrued gains/Participation in acquisitions

Not relevant.

III. Deferred community

Not relevant.

IV. Separation of property

Not relevant.

V. Separation of property with distribution by the competent authority

Not relevant.

D. MARITAL AGREEMENTS

191. Are future spouses permitted to make a pre-nuptial agreement regulating their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Yes, they are. According to Art. 3.102 Lithuanian Civil Code a marriage contract may be made before the registration of the marriage (in other words a pre-nuptial contract) or at any time after the registration of the marriage (a post-nuptial contract). However, a minor may not enter into a pre-nuptial contract. A marriage contract entered into before the registration of the marriage shall come into effect on the day of the registration of the marriage.

192. Are spouses permitted to make a post-nuptial agreement regulating or changing their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Yes, they are. According to Art. 3.102 Lithuanian Civil Code a marriage contract may be made at any time after the registration of the marriage (a post-nuptial contract). A post-nuptial contract shall come into force on the date on which it is made unless the agreement stipulates otherwise.

A marriage contract may be amended or terminated by the mutual agreement of the spouses at any time in the same form as that laid down for its formation. At the request of one of the spouses a marriage contract may be amended or terminated by a judgment of the court on the grounds provided for in Book 6 Lithuanian Civil Code for the amendment or termination of a contract.

A marriage contract shall terminate upon divorce or separation except in respect of the duties which under the agreement remain in force upon divorce or separation. The termination of a marriage contract shall be registered in the register of marriage contracts (Art. 3.107 Lithuanian Civil Code).

193. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid as between the spouses?

A marriage contract (pre-nuptial or post-nuptial) must be concluded before a notary public. A marriage contract may only be amended with the leave of the court (Art. 3.103 Lithuanian Civil Code).

194. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid in relation to a third party? Is there a system of registration of pre- and/or post-nuptial agreements? If so describe briefly the system and its effect.

A marriage contract (pre-nuptial or post-nuptial) and its amendments may be used against third parties provided the settlement and its amendments have been registered in the register of marriage contracts. This rule shall not apply if, at the time of the transaction, third parties knew of the marriage contract and its amendments (Art 3.103 Lithuanian Civil Code). The register of marriage contracts is maintained by the Central Mortgage Registry.

The creditors of one or both of the spouses whose rights have been prejudiced by the amendment or termination of the marriage contract may, within a year of becoming aware of the amendment or termination, challenge such an amendment or termination in the courts and request the restoration of their rights.

195. Is full disclosure of the spouses' assets and debts necessary for the making of a pre-and/or post-nuptial agreement?

No, it is not.

196. If the agreement has to be made before an official (e.g. a notary), is that official obliged to inform the spouses about the content and the consequences of the pre-and/or post-marital agreement? If so, what happens if the official does not fulfil his or her obligation?

Yes, he or she is. If a public notary does not inform the spouses of the content or consequences of the marriage contract, theoretically it is possible that one of the spouses will commence court proceedings regarding the annulment of the marriage contract on the basis of mistake.

197. Provide statistical data, if available, regarding the making of pre- and/or post-nuptial agreements.

From 1 July 2002 (the entry into force of the Register of Marriage Contracts Act) until mid-2008, only 1919 marriage contract were registered (428 pre-nuptial and 1491 post-nuptial marriage contracts): in 2002 - 24; in 2003 - 160; in 2004 - 210; in 2005 - 306; in 2006 - 488; and in 2007 - 600 marriage contracts were registered.

198. May spouses through pre- and/or post-nuptial agreements only choose, where applicable, a statutory matrimonial property regime and/or do they have the freedom to modify such a regime or even create their own regime?

The spouses have the freedom to choose from one of several possible legal regimes. According to Art. 3.104 Lithuanian Civil Code the spouses shall have a right to stipulate in the marriage contract that:

- property acquired both before and during the marriage shall be the personal property of each spouse (a total separation of assets);
- personal property acquired by a spouse before the marriage shall become community property after the registration of the marriage (a total community of assets);
- property acquired during the marriage shall be partial community property.

In their marriage contract the spouses may also stipulate that one of the matrimonial legal regimes referred to above shall be applied to their entire property or only to a certain part thereof or to specified chattels. For example, it is possible for the spouses to agree in the marriage contract that all immovable property shall be their community property, and all

movables will be personal property. In their marriage contract the spouses may define a matrimonial legal regime both in respect of their existing and future property. The rights and duties of the spouses provided for in their marriage contract may be limited in time, or the emergence or termination of rights and duties may be related to the fulfilment or omission of a certain condition stipulated in the marriage contract.

- 199. If spouses can modify through pre- and/or post-nuptial agreements a statutory regime or create their own regime, can those modifications be made to:**
- a. categories of assets;**
 - b. administration of assets;**
 - c. distribution of assets;**
 - d. depend upon the ground of dissolution of the marriage?**

If the spouses choose a statutory legal regime, i.e. a community of property legal regime, they are not able to make modifications regarding the categories of assets and the principle of equal shares in community property (Art. 3.105 Lithuanian Civil Code). However, they can make modifications regarding the management of property, mutual maintenance, participation in the provision for family needs and expenses as well as the procedure for partitioning property upon divorce and other matters related to the spouses' mutual relations in property.

If the spouses choose the separation of assets or another legal regime, they can make modifications regarding categories of assets, the administration of assets, the distribution of assets, etc.

- 200. Are there typical contractual clauses used in practice to modify essential elements of the matrimonial property regime, where applicable, or to achieve a certain result, e.g. that certain rights are excluded only upon divorce but not on death of a spouse?**

In practice marriage contracts are mainly used to escape the statutory legal regime, i.e. the community of property, and the majority of marriage contracts provide for a separation of assets legal regime.

- 201. Can the competent authority override, modify or set aside pre- and/or post-nuptial agreements on account of unfairness or any other ground?**

Yes, it can. There are several mandatory provisions in the Lithuanian Civil Code regarding a marriage contract. According to Art. 3.105 Lithuanian Civil Code conditions stipulated in a marriage contract shall be null and void if they:

- contradict mandatory legislative rules, good morals and public order;
- change the statutory legal regime in respect of the individual property of one of the spouses or in respect of their community property (Art. 3.88 and 3.89 Lithuanian Civil Code) where the matrimonial legal regime which the spouses have chosen provides for the community of property;
- prejudice the principle of equal shares in the community property as enshrined in Art. 3.117 Lithuanian Civil Code;
- restrict the passive or active legal capacity of the spouses;
- regulate the personal relations of the spouses which are unrelated to property;
- establish or change the personal rights and duties of the spouses towards their children;
- limit or annul the right of one (or both) of the spouses to maintenance;
- limit or annul the right of one (or both) of the spouses to bring legal proceedings in court;
- change the procedure and conditions for succeeding to the property.

In addition to the grounds provided for in Art. 3.105 Lithuanian Civil Code, a marriage contract may be declared null and void, wholly or in part, on the grounds for the nullity of transactions provided for in Book 1 Lithuanian Civil Code. The court may also declare a

marriage contract null and void at the request of one of the spouses if the agreement amounts to a serious breach of the principle of equality or is especially unfavourable to one of the spouses. The creditors of one or both of the spouses shall have a right to demand that the agreement be declared null and void because it is fictitious (Art. 3.108 Lithuanian Civil Code).