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# Lithuania

## International Estate Planning Guide

Individual Tax and Private Client Committee

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## I. Wills and Disability Planning Documents

### A. Will Formalities and Enforceability of Foreign Wills

#### 1. Lithuanian Wills

A testator may freely transfer his property (movable and immovable things or non-material objects such as securities, trademarks, etc.), claims of patrimonial character and property obligations by executing a will that can be altered, supplemented or revoked at any time by drawing up a new will, or not making a will. In cases provided for by law, property subject to succession may include intellectual property (authors' property rights to works of literature, science and art, neighboring property rights and rights to industrial property), as well as other property rights and duties stipulated by laws.

A will can be made, altered, supplemented or revoked exclusively by the testator himself and only by a legally capable person who is able to comprehend the importance and consequences of his or her actions. A testator must be at least eighteen years old unless before eighteen he or she entered into marriage and acquired full active civil capacity at the moment of entering into marriage or the court emancipated him or her at the age of sixteen. A testator may not authorize another person to establish or alter the contents of a will after the death of the testator.

Every will must be made freely in a written form and signed by the testator himself. In the event where the testator due to his physical disabilities, illness or any other reasons is unable himself to sign the will, it may be signed upon the testator's request and in the presence of the notary or any other official authorized to attest the will by another legally capable natural person who is not a testate successor, by concurrently indicating the reason for which the testator is not able to sign the will himself. In such cases witnesses also have to put their signatures in the will.

A will must be made without any coercion or error as well. Mistakes in the text of the will, incorrect naming of persons, or the fact that some characteristics or state of a certain person or thing have changed or disappeared have no effect if the true intent of the testator is clear from the contents of the will.

Wills may be official or private:

Official wills are wills which are made in writing in two copies and attested by the notary public or an official of the Consulate of the Republic of Lithuania in the relevant state. The place and time when the will was made must be indicated therein (later will annuls the whole previous will or a certain part thereof which contradicts the later will). The written up will has to be read to the testator alone or with the participation of witnesses and then signed. After that the will must be attested and registered in the Notarial Register in the testator's presence. One copy of the will is provided to the testator, the other remains with the institution which has attested it. The fact of making an official will may not be disputed.

All official wills that were made in the territory of Lithuania must be registered at the [State Enterprise Centre of Registers](#) and are kept in depository institution. Notaries and consular officers are obliged within three working days to notify the [State Enterprise Centre of Registers](#) when a will is attested and accepted for deposit or when a will is revoked.

The following wills are equivalent to official wills:

- wills of the persons undergoing treatment in hospitals or any other institutions of medical care and disease prevention or in sanatoriums, as well as the wills of persons living in the homes for old or disabled people attested by the chief doctors, their deputies for medical matters or doctors on duty of these hospitals, institutions of medical care or sanatoriums, likewise by the directors or chief doctors of such homes for old or disabled people;
- wills of persons sailing in seagoing vessels or ships of internal waters flying the flag of Lithuania, attested by the masters of those ships;
- wills of persons participating in surveying, research, sport or any other expeditions attested by the heads of those expeditions;

- wills of soldiers attested by the commanders of those units, formations or institutions and military schools;
- wills of inmates of places of confinement attested by the heads of these institutions;
- wills attested by the neighborhood executive managers of the testator's place of residence.

All these above indicated persons who have confirmed a will are obliged as soon as possible to transfer the attested will to the notary.

Under the laws of Lithuania a joint will of spouses is available. A joint will of spouses can be made exclusively as an official will and only by spouses. By their joint will, the spouses can appoint each other as the successor and after the death of one of the spouses, the whole property of the deceased (including the part of the common property of the spouses therefrom) is inherited by the surviving spouse, except the mandatory share of succession (for more information see section II subsection B, Intestate Succession and Forced Heirship). To inherit property after the death of the surviving spouse, another successor may be appointed by a joint will as well. A joint will must be signed by both spouses in the presence of a notary or any other person attesting it.

A private (holographic) will is a will written in hand by the testator indicating the first name and surname of the testator, the date and place where the will was made, expressing the true intent of the testator and signed by him. A private will may be written up in any language. Failure to indicate the date and place of the making of the will renders it invalid only in those cases where it is impossible to determine the date and place of the making of the will by any other way, or they are not possible to infer from other circumstances.

A testator can deposit a will with the notary public or a consular official of Lithuania in a foreign state. As a result it will be equivalent to an official will if the deposit was performed pursuant to the following requirements:

- the will was deposited by the testator himself or herself who declared that the will expressed his or her final true intent;
- the will was deposited in a sealed envelope, stamped with the stamp of the accepting institution, were used protection measures against infringement of envelope and both the testator and the person accepting the will put their signatures on the envelope; and
- an act on the acceptance of the will for deposit has been written up where it is indicated that the above specified requirements have not been violated. Additionally, should be described appearance of the envelope, the protection measures against infringement, indicated name, surname, personal code and residence of the testator, the place and date of expression the will, the type of the will, the position, also name and surname of official accepting the will. The act has to be signed by the testator and the official accepting the will for deposit. The testator shall be provided with a copy of the act.

In the event that a private will was not transferred for deposit in accordance with this procedure, it must be confirmed by the court within a period of one year from the death of the testator. In this case, only court confirmed wills shall be valid.

## 2. Enforceability of Foreign Wills

Unlike other countries Lithuania is not a party to the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention). As the result the validity of a will drawn up in another state depends on the requirements of applicable law. The principles of determination of applicable law are set up in the Civil Code. A testamentary disposition is valid as to its form if it complies with the internal law of the state:

- where the testator made it, or
- of the testator's domicile either at the time when the disposition was made, or at the time of the testator's death, or
- whose citizen the testator was either at the time when the disposition was made, or at the time of the

testator's death, or

- of the testator's residence either at the time when the disposition was made, or at the time of the testator's death, or
- so far as immovable things are concerned, of the place where they are located.

Whereas Lithuania being a member of the European Union applies EU Regulation No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, a person, who creates a will, may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

Lithuania has also entered into bilateral agreements on legal assistance and legal relations in civil, family and criminal matters. Lithuania has signed agreements with these countries: Russia, Belarus, Poland, Moldova, Ukraine, Kazakhstan, Uzbekistan, Turkey, China, Azerbaijan and Armenia, as well as tripartite agreement with Latvia and Estonia. These agreements are important for succession matters because pursuant to the agreements, Lithuania and its partner country share the rights of determination of applicable law. The main principle set up in these agreements is that the form of a will must comply with the requirements of the state of the testator's domicile at the time when the disposition was made.

#### B. Will Substitutes (Revocable Trusts or Entities)

Lithuania does not have trust law and is not a party of HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention). As a result there is no possibility to set up a trust in Lithuania. Moreover trusts governed by the laws of foreign jurisdiction may be not recognized in Lithuania and consequences of setting up a trust in other country cannot be predicted.

As possible alternative to a will, besides lifetime gifts (for more information see section III subsection A, Common Techniques), life insurance policies or pension funds with directives concerning a beneficiary can be used. The main problem is that the assets are in the possession of the insurance company and these will substitutes may be used on assets that a beneficiary does not expect to need personally during his lifetime until incurring insured event or retirement moment. However the advantages are that the donor is still free to change the beneficiary, can avoid personal income tax and forced heirship rules (for more info see section II subsection B, Intestate Succession and Forced Heirship Rules and section IV, Taxation).

#### C. Powers of Attorney, Directives, and Similar Disability Documents

Only persons of full active capacity may grant a power of attorney to another person to represent a principal in establishing and maintaining relations with third persons. An authorized agent only has the rights clearly defined in the power of attorney. However there are no cases authorizing an agent to make a will or accept succession in the principal's name. Lithuanian law has no statutory rules for power of attorney, directives or similar instruments providing for future disability or incapacity. Under the laws, the power of attorney expires upon the recognition of legal incapacity, partial capacity, absence or death of a person vested with power of attorney. As a result, rules of guardianship or curatorship become important for the control of assets of legally incapacitated or partially incapacitated persons.

A person may be declared incapacitated in a particular field and placed under guardianship by the court, when he or she due to a mental disorder becomes unable to understand the meaning of his or her actions in a particular field or control them as a result of mental illness. The court that declares the person incapacitated shall provide an exhaustive list of fields in which a person is recognized incapacitated. Guardianship of a person subsumes guardianship of the person's property in that particular field. As a result, all contracts in that field on behalf of and in the name of the person, who was declared incapacitated, are concluded by his guardian. The guardian is entitled to enter into all the necessary transactions in that particular field (for example, including acceptance of the succession) in the interests and in behalf of the represented legally incapacitated ward.

Where natural persons who, because of mental disorder in part, can not understand his or her actions in a particular field or control them the court may impose limitations on their civil capacity in a particular field.

After a person's capacity in particular field has been limited, he or she is placed under curatorship. Curatorship of a person subsumes curatorship of the person's property in that particular field. The court that limits the person's capacity shall provide an exhaustive list of fields in which a person has limited capacity. Upon imposition of a limitation on a person's capacity in particular field, he or she may enter into contracts in that field only with the consent of the curator.

## II. Estate Administration

### A. Overview of Administration Procedures

In the event that a private will was not deposited in accordance with the procedure established in the Civil Code (for more information see section I. subsection A. part 1, "Lithuanian Wills"), a private will must be confirmed by the court within a period of one year from the death of the testator. In this case, only a will confirmed by the court will be valid. An official will or a joint will of spouses does not need to be confirmed.

A will (official, joint of spouses or private) is executed by the executor of the will or a successor appointed by the testator, or by an administrator of inheritance appointed by the court. The person who has signed the will on behalf of the testator may not be an executor of the will. Nobody can be appointed executor of a will against his wish, however the person who has assumed the duties of the executor of the will may not relinquish those duties without important reasons. The testator may appoint one or several executors of the will. In such case they act jointly, unless the testator has clearly defined their corresponding rights and duties. The testator may also appoint a secondary executor of the will in case the primary executor is not able to fulfill his duties. In this event, the agreement of the secondary executor inscribed in the will itself or expressed in an application appended to the will is necessary.

In the event that the testator failed to appoint an executor, or the appointed executor or a successor are not able to fulfill their duties, the district court of the place of the opening of succession may appoint an administrator of inheritance to perform all the actions necessary for the execution of the will. A person who has embarked upon the execution of a will has no right to relinquish those duties without important reasons.

Having assumed the management of the inheritance, the executor of the will or the administrator of the inheritance must immediately compile an inventory of the inheritance which lists the whole inheritable estate, likewise all the amounts due to and owed by the testator. The executor of the will or the administrator of the inheritance has the right upon his discretion, or the obligation upon the demand of a successor, to apply to the bailiff with a request to compile the inventory. The executor of the will or the administrator of the inheritance may apply to the bailiff upon the issuing by the notary public of an executory assignment concerning the compilation of the inventory. Expenses incurred in the compilation of the inventory of inheritance are paid from the inherited assets.

The testator may authorize the executor of the will to possess the inheritance accepted pursuant to the established procedure, or to authorize the possession of the inheritance after other assignments of the testator have been fulfilled. The duration of possession may be specified in the will by indicating a definite time-limit or a certain event (attainment of a certain age by the successor, death of a successor, marriage, etc.). Such time-limit may not exceed the period of twenty years from day of the opening of succession. Having fulfilled the execution of the will, the executor of the will or the administrator of the inheritance is obliged upon the request of the successors to provide them with the report. In the event that the will is being executed for a period exceeding one year, and the possession of the inheritance is performed by the executor of the will or the administrator, such reports must be submitted every year.

The executor performs his duties gratuitously if nothing has been specified by the testator in his will concerning payment. Expenses incurred in the execution of the will are paid from the inherited estate.

In the event that the executor of the will or the administrator of the inheritance improperly fulfills his or her duty, or violates the interests of the successors, beneficiaries of the testamentary reservation, of the testator's creditors or those of other interested persons, the court of the place of the opening of succession have the right upon the demand of the latter persons to remove the executor of the will and

appoint an administrator of the inheritance, to replace the administrator appointed by the court.

## B. Intestate Succession and Forced Heirship

Succession arises by operation of law except to the extent the testator has changed the grounds for succession by his or her testamentary disposition. In succession by operation of law, the following have capacity to inherit: natural persons who survived the bequeather at the moment of his death, children of the bequeather who were born after his death, likewise the State of Lithuania (either the testator has no intestate heirs and heirs by a will, or has no intestate heirs, while only a part of the estate of a testator has been bequeathed by a will, or none of the successors accepted the succession, or when the testator deprives all the heirs of the right to succession). The state is liable for the testator's debts not exceeding the real value of the inherited property devolved to it.

In intestate succession, heirs who will inherit in equal shares are the following persons (except in cases when an heir by operation of law renounces succession, then the share of succession belonging to that successor devolves to the intestate heirs divided into equal shares among them):

First degree descendants: bequeather's children born:

- to their parents in marriage;
- to parents whose marriage was acknowledged null and void;
- out of wedlock with their paternity established in accordance with laws;
- after bequeather's death.

Adopted children and their descendants entitled to inherit after the deaths of their adoptive parent or their relatives are equivalent to the children of the adoptive parent and their descendants. They do not inherit by operation of law after the death of their parents and other blood relatives of a higher degree in the line of descent, likewise after the death of their blood brothers and sisters.

Second degree descendants: parents and grandchildren.

Adoptive parents and their relatives entitled to inherit after the death of their adoptive child or his descendants are equivalent to the parents and other blood relatives. Parents of the adopted child and other blood relatives of a superior degree in the line of descent do not inherit by operation of law after the death of the adopted child or his descendants.

Third degree descendants: grandparents both on the father's and mother's side, great grandchildren;

Fourth degree descendants: brothers and sisters, great grandparents both on the father's and mother's side;

Fifth degree descendants: nephews and nieces, likewise uncles and aunts;

Sixth degree descendants: cousins.

Under the intestate succession rules, second degree heirs inherit by operation of law only in the absence of the first degree heirs, or in the event of the latter's non-acceptance or renunciation of succession, likewise in cases where the first degree heirs are deprived of the right to inherit. The third, fourth, fifth and sixth degree heirs inherit in the absence of heirs of superior degree or in the event of latter's renunciation of succession or deprivation of the right to succession.

The grandchildren and great-grandchildren inherit by operation of law their parent's share in the event a parent predeceases the decedent. They are entitled to equal shares of that part of estate which would have been inherited by their deceased father or mother pursuant to intestate succession.

Where a successor entitled to inherit by operation of law dies after the opening of succession without having been able to accept the inheritance within the established time, the right to accept succession shall be transferred to his heirs.

The surviving spouse is entitled to inherit pursuant to intestate succession or with the heirs (if any) of either the first or second degree of descent. Together with the first degree heirs, the spouse inherits one fourth of the inheritance in the event of existence of not more than three heirs apart from the spouse. In the event that there are more than three heirs, the spouse inherits in equal shares with the other heirs. If the spouse inherits with the second degree heirs, he is entitled to one-half of the inheritance. In the event of absence of the first and second degree heirs, the spouse inherits the whole inheritable estate.

Ordinary house furnishing and household equipment are devolved to intestate heirs irrespective of their degree of descent and the share of inheritance if they resided together with the bequeather for a period of at least one year before his or her death.

Irrespective of the contents of the will, the testator's children (including adoptees), spouse, parents (including adoptive parents) who were entitled to maintenance on the day of the testator's death inherit one-half of the share that each of them would have been entitled to by operation of law (mandatory share) unless more is bequeathed by the will. The mandatory share is determined by taking into account the value of the inheritable estate, including ordinary house furnishing and household equipment.

### C. Marital property

According to Lithuanian international private law, the matrimonial property law regime is governed by the law of the state of domicile of the spouses. Where the spouses are domiciled in different states, the law of their common state of citizenship applies. Where the spouses have never had a common domicile and are citizens of different states, the law of the state where the marriage was solemnized applies.

When matrimonial property is governed by Lithuanian private law, the surviving spouse under certain circumstances may inherit between less than one fourth of the inheritable estate and the whole of it. The part of the surviving spouse's inheritable estate depends on the number and degree of descent's heirs (for more information see section II. subsection B, Intestate Succession and Forced Heirship). However in order to define which assets are parts of the deceased's estate, it is necessary to identify the matrimonial property law regime.

The statutory Lithuanian marital property regime (with some exceptions) is that of joint community property. However spouses have the right to change their marital property regime by making a marriage contract (pre-nuptial or post-nuptial contract).

#### 1. Joint Community Property

According to the Civil Code, after the commencement of marriage (if a marriage contract was not made), the property acquired by the spouses is their joint community property. The property of spouses constitutes their joint community property until their separation as to property (e.g. post-nuptial agreement, divorce and etc.) or until the extinguishment of the joint community property rights in some other way (e.g. the death of one of the spouses, declaration of the nullity of the marriage, etc.). Such property can be used, managed and disposed of by the mutual agreement of the spouses. It is presumed that a spouse has the consent of the other spouse except in cases where entering into a transaction requires the written consent of the other spouse. The shares of the spouses in joint community property are presumed to be equal. On the death of one of the spouses, his or her share in the joint community property is inherited according to the succession rules.

However some kind of transactions can be concluded without any consent of the other spouse. Such consent is not required for the acceptance or rejection of succession to estate, refusal to enter a contract, urgent measures to protect the community property, bringing an action to protect the joint community property or to protect one's rights related to community property or one's personal rights unrelated to the interests of the family. In addition to this each spouse has the 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 on the account unless those funds have been made joint community property.

It is important that under the laws even after the commencement of marriage some kinds of assets are consisted as an individual property of each spouse. As a result individual property can be used, managed or disposed at a spouse's own discretion or a spouse may grant a power of attorney to the other spouse or to the third person to manage his or her individual property. The property that is owned as an individual



is:

- property acquired separately by each spouse before the commencement of the marriage;
- property acquired with the separate funds or proceeds from the sale of separate property with the express intention of the spouse at the time of the acquisition to acquire it as separate property;
- 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 a 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.

## 2. Marriage Contracts

A marriage contract means an agreement of the spouses defining their property rights and duties during the marriage as well as on divorce or separation. In their marriage contract the spouses may define a matrimonial legal regime both in respect of their existing and future property. Spouses have a right to stipulate in any marriage contract that:

- property acquired both before and during the marriage is the individual property of each spouse;
- individual property acquired by a spouse before the marriage becomes joint community property after the registration of the marriage;
- property acquired during the marriage will be partial community property.

Under the laws, it is possible to enter into two types of marriage contracts: pre-nuptial or post-nuptial contract. A pre-nuptial contract may be made before the registration of the marriage but it comes into effect on the day of the registration of the marriage. A post-nuptial contract may be made at any time after the registration of the marriage and so it comes into force on the date on which it is made unless the agreement stipulates otherwise. Both pre-nuptial and post-nuptial contracts must be entered into before a notary public and must be registered in the register of marriage contracts as well as subsequent amendments. Any amendment in a marriage contract can be done only with leave of the court.

It is also important that a minor may enter into a marriage contract only after the registration of the marriage and a spouse having limited active capacity in this field may enter into a marriage contract only with a written consent of his or her custodian. If the custodian refuses to give consent, the spouse may apply to the court for leave to enter into a marriage contract.

A marriage contract may contain a stipulation of rights and duties related to the management of property, mutual maintenance, participation in the provision for family needs and expenses, as well as a procedure for partitioning property on divorce and other matters related to the spouses' mutual relations in property.

### D. Tenancies, Survivorship Accounts, and Payable on Death Accounts

Joint tenancies as instruments to avoid probate are not generally recognized in Lithuanian law. If a contract for jointly owned property has a right of survivorship clause, such provisions will not make the decedent's share non-probate, and the right of surviving co-owner to take the decedent's share must be confirmed in the form of a will (unless a co-owner is a statutory heir).

However it is possible to make a rent for life contract under which rent is paid to a few natural persons who have transferred their property under the condition of payment of rent for life. In the case of death of one of the recipients of rent, his participatory share in the right to receive rent passes to the recipients of rent who survived him unless otherwise provided for by the contract of rent (obligation to pay the rent terminates upon the death of the last recipient of rent). In the event of rent being constituted for the

benefit of both spouses, on the death of either of the spouses the rent is reverted upon the life of the surviving spouse unless otherwise provided for by the contract of rent.

Survivorship accounts do not exist under Lithuanian law. If the deceased had any bank account (personal or joint account), as soon as the bank is informed of the death, the account is blocked and cannot function any more. If the deceased had a personal account the heirs who inherited assets in that account must present a certificate of the right of inheritance to the bank. When a bank receives an inheritance certificate it changes the owner of the account and overwrites the account in the name of the heir.

Although it is possible for spouses or any other persons to have a joint bank account this will not automatically give the surviving spouse or other co-owners ownership of the whole account. The deceased owner will be seen as a co-owner of the account (owner of the part of the account) and the amount of money belonging to the co-owner will have to be identified. That part will in due course be divided in accordance with the will or intestate succession rules. Heirs will obtain the right to start using money after presenting a certificate of the right of inheritance to the bank.

### III. Trusts, Foundations, and Other Planning Structures

#### A. Common Techniques

##### 1. Foundations

In succession pursuant to a will the decedent's property can pass to legal persons (including charity and sponsorship funds) which existed at the moment of death of the testator, or were established in executing the testator's true intent expressed in his or her will. A testator has the right to bequeath the whole estate, part of the estate, or an individual thing to the society for useful purpose or charity (e.g. for charity or sponsorship fund).

A charity and sponsorship fund is a separate public entity with limited liability having its name and full legal personality. Both the memorandum and articles of the association have to be approved by a notary prior to registration. The fund must be registered in the Legal Entities' Register. All founders of the fund become its stakeholders as of the date of the fund's registration. The fund must hold general meetings of stakeholders and set up a managing body (single person and/or collegiate).

Sponsorship funds aim to provide charity and/or sponsorship and other support to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, and environmental protection, as well as in other fields recognized as selfless and beneficial to society. Sponsorship funds also have the right to pursue economic and commercial activities which are not prohibited by the law and which do not contravene the fund's articles of association or the purposes of its activity and which are necessary to attain the fund's objectives.

One should bear in mind that a sponsorship fund is allowed to transfer assets and funds managed by the right of ownership and any other right, dispose of them by way of security for its obligations or restrict its right to the management, use and disposal of such assets and funds only in the event that this is done to attain the fund's objectives indicated in the articles of association (including the purposes of charity and sponsorship specified in the articles pursuant to the law on Charity and Sponsorship). Even for the above purposes it is prohibited for a sponsorship fund:

- to transfer, free of charge, the fund's assets into the ownership of stakeholders, members of managing and collegiate bodies, persons employed by the fund on the basis of an employment contract or persons related to such persons under trust or loan for use under contracts;
- to pay benefits to the founders or stakeholders of the fund in the form of profit participation or to transfer to them a share of assets of the fund under liquidation where such a share exceeds the stakeholder's contributions; or
- to distribute in any manner the fund's assets and funds, including profits, among the founders of the fund and/or members of its managing bodies, or persons employed by the fund on the basis of an employment contract, excluding the payment of wages and salaries, other payments relating to an employment relationship, payments made under copyright contracts and remuneration for services rendered or goods sold.

## 2. Trusts

The common law trust is not a generally recognized legal concept in Lithuanian law, and Lithuania has not ratified the Hague Trust Convention of 1 July 1985. However it is possible under the Civil Code to make a property trust agreement where the trustor assigns to the trustee its property (movable, immovable things, securities or any other property) by the trust right for a certain period of time, and the other party undertakes to possess, use and dispose of such property in the interests of the trustor or its beneficiary. The trustor still remains the owner of the assigned property while the trustee can conclude the transactions in his own name, but specifying that he or she acts pursuant to a property trust right.

According to the Civil Code the right of trust may also originate from the law, administrative act, will, or court judgment. However these cases are left without clear regulation and as a result trust arrangements are not often used in private legal relationships. Historically the property of the State or municipality is usually possessed, used or disposed of by a State or municipal enterprise, institution or organization in the trust right.

## 3. Other instruments

A contract providing for the transfer of a gift to the ownership of the donee after the death of the donor is null and void (relations of such kind are governed by the provisions regulating succession). However as an alternative to a will regular lifetime gifts may be used. Despite that, for the following reasons this will substitute is not very popular in practice. First of all, their tax treatment is not favorable: gifts (with some exceptions) are taxed on personal income tax (for more information see section IV. Taxation). Secondly, gift contracts must meet all the requirements set up in the Civil Code. For example, a gift contract with value over EUR 1,500 must be in written form and a gift contract with value over EUR 14,500 or of immovable property must be notarized.

A testator has the right by his will to designate another successor in case the successor appointed by the will died before the opening of succession or renounced the succession. The testator may likewise appoint another successor to the secondary successor in case the secondary successor died before the opening of succession or renounced the succession. The number of the appointments of other successors is not limited.

The testator also can obligate a testate successor to fulfill a certain obligation (testamentary reservation) for the benefit of one or several persons, while these persons acquire the right to demand fulfillment of this obligation. Beneficiaries of the testamentary reservation may be intestate heirs as well as any other persons. The testator may appoint a successor or a beneficiary of testamentary reservation by specifying one or several conditions to be fulfilled by them in order to inherit.

By his will the testator has the right to establish a time-limit during which the successors have to jointly possess the inherited estate. This time-limit may not exceed the period of five years from the day of the opening of succession, except in cases when there are minors among the successors. In this event the testator may prohibit division of the estate until the successor concerned reaches the age of eighteen.

An heir by operation of law or successor by a will has the right within three months from the day of the opening of succession to renounce inheritance. Renunciation may not be in part or subject to conditions or exceptions. No renunciation is allowed in the instances where the successor has filed an application on the acceptance of succession with the notary public of the place of the opening of succession or asked for issuance of the certificate of the right to inheritance.

### B. Fiduciary Duties (trustees, board members, directors, etc.)

In his activity, the executor of the will has to perform all the actions necessary for the execution of the will and is guided by it. In performing his duty, the executor of the will is obliged to act with the same diligence as in taking care of his private interests. In the event that the executor of the will receives payment for his work, he is liable before the successors and other interested persons for any loss caused by his negligent actions. Pending the appointment of the administrator of inheritance or the establishment of the successors, the executor of the will performs the functions of a successor: possesses the inheritance, compiles the inventory of the inheritance, pays the debts of the inheritance, recovers the debts from the testator's debtors, provides maintenance for the successors who are entitled to it, performs the search of

successors, establishes whether the successors accept the inheritance, etc.

The trustee, complying with the law and agreement, exercises the owner's rights to the property assigned to him by the trust right. The trustee must submit a report on his activities to the trustor and the beneficiary in the procedure and terms established in the agreement. If the term for submission of the report is not provided, the report shall be submitted once a year. The owner has the right to control the trustee's activities at any time. The trustee which has failed to duly take care of the property assigned to him in the interests of the trustor and the beneficiary, has to indemnify to the beneficiary and the trustor the damages incurred due to the loss or damage of property as well as the loss of income. If the trustee enters a transaction in excess of the powers granted to him or in violation of limitations established in the agreement, he is personally liable under such transaction.

### C. Treatment of Foreign Trusts and Foundation

As mentioned before, Lithuanian authorities can be expected to be very skeptical about trust arrangements. Although under the Civil Code the civil capacity of foreign legal persons or any other organizations are governed by the laws of the state where these persons or organizations are founded, foreign trusts in civil cases have not been recognized as having a legal personality and claims have been discontinued by the court.

As a result the use of foreign trust in Lithuania is not recommended. First of all, it remains unclear how a trust would be treated if the assets were placed in foreign trust during the decedent's life. According to the case law it can be expected that such assets would be included in the decedent's estate. It means that all assets (including those assets placed in foreign trust) would be subject to intestate succession and forced heirship rules. Probably inheritance from the decedent's estate could not be placed in a foreign trust under the will for the same reasons as well. In addition to this, legal title to Lithuanian real property or bank accounts in financial institutions could normally not be registered in the name of foreign trustee. As a result such assets would have no legal owner for an indeterminate period of time.

Despite the fact that foreign trusts have not been involved in any tax cases so far, it can be expected that distributions from foreign trusts will be treated as ordinary taxable income of a beneficiary. As a result Lithuanian residents will have to pay 15% personal income tax.

## IV. Taxation

### A. Domicile and Residency

In Lithuania there is no concept of domicile. Residence is important for tax purposes because an individual resident of Lithuania is subject to Lithuanian tax on his whole world-wide income. Non-residents of Lithuania pay the tax only on income sourced in Lithuania.

The person (irrespective of whether he is a citizen of Lithuania or of a foreign state, or a person without citizenship) is considered a resident of Lithuania for tax purposes during the calendar year, if he meets at least one criterion specified:

- any natural person whose permanent place of residence is in Lithuania during the calendar year; or
- any natural person who has more personal, social and economic interests in the calendar year in Lithuania than abroad; or
- any natural person who is present in Lithuania for a period or periods in the aggregate of 183 days or more during the calendar year; or
- any natural person who is present in Lithuania for a period or periods in the aggregate of 280 days or more during two successive calendar years and who stayed in Lithuania for a period or periods in the aggregate of 90 days or more in either such year (in this case the person shall be considered a resident of Lithuania during both years of his presence in Lithuania); or
- any natural person who is a citizen of the Republic of Lithuania and who receives remuneration or whose costs of living are covered from the state budget of the Republic of Lithuania shall be considered a resident of Lithuania.

According to this system, the following person shall be considered as a non-resident of Lithuania for tax purposes:

- whose permanent place of residence during a calendar year is only outside of Lithuania, and
- whose place of personal, social or economic interests during a calendar year is in a foreign country rather than in Lithuania, and
- who is present in Lithuania continuously or intermittently for 183 days or less during a calendar year, and
- who is present in Lithuania continuously or intermittently for 280 days or less during two successive calendar years.

## B. Gift, Estate, and Inheritance Taxes

### 1. Gift Tax

Taxation of gifts is regulated by the Tax on Personal Income of Lithuania. Subject to that, gifts received by non-residents (in taxation sense) are not subject to personal income tax in Lithuania.

Gifts received by residents (in taxation sense) are taxed by tax on personal income at the standard rate of 15%. According to the Law on Personal Income tax, the following gifts are exempt from taxation in Lithuania (on the condition that they are received from natural or legal persons who do not have their residence in the target territories):

- gifts received from spouses, children (including adopted children), parents (including adoptive parents), grandparents, grandchildren, brothers, and sisters are exempt from taxation;
- the value of gifts received from other natural persons, not exceeding EUR 2,500;
- sports prizes if such prizes are established and awarded by Olympic (Paralympic) committees, international sports federations (unions, associations) or members of such federations (unions, associations), Lithuanian sports federations (unions, associations), and also personal gifts granted in accordance with the procedure prescribed by the laws of the Republic of Lithuania;
- lottery winnings, provided that they are paid out by entities of the EEA Member States which are subject to the lottery turnover tax in accordance with the procedure prescribed by legal acts of these states;
- monetary gifts and winnings (prizes) received from a person who is not connected by labor relations with the recipient, if their value does not exceed EUR 100;
- the amount of prizes received during the tax period from a person connected with an individual by employment relations or relations in their essence corresponding to employment relations, which does not exceed EUR 200;
- other sports prizes, other prizes and winnings which do not exceed EUR 200, provided that they are received from the same person not more than 6 times during the tax period.

### 2. Inheritance Tax

Residents and non-residents of Lithuania may be required to pay inheritance tax in Lithuania (for more information see section IV. subsection A, Domicile and Residency). All property inherited by a resident of Lithuania is subject to inheritance tax (including immovable property, movable property, securities or money). The following property inherited by a non-resident of Lithuania is also subject to inheritance tax: movable property subject to legal registration under legislation of Lithuania, or immovable property located in Lithuania.

The tax is calculated from the taxable value of the inherited property (70% of the value of total assets) applying the following rates:

- if the taxable value of the inherited property does not exceed EUR 150,000 (the total value of the

property does not exceed app. LTL 714,286, i.e. app. EUR 206,872) – 5%;

- if the taxable value of the inherited property exceeds EUR 150,000) (the total value of the property exceeds app. LTL 714,286, i.e. app. EUR 206,872) – 10%.

The tax is calculated in accordance with inheritance valuation documents provided to notaries public. The duty to calculate the inheritance tax on property inherited in Lithuania rests with notaries public who issue inheritance documents. The duty to pay the tax on inherited property rests with the inheritor.

The following property is exempt from inheritance tax in Lithuania:

- property inherited by the spouse of deceased;
- property inherited by the children (including adopted children), parents (including adoptive parents), guardians (curators), foster-child (ward), grandparents, grandchildren, brothers, or sisters of deceased;
- property whose taxable value does not exceed EUR 3,000 (total value of the property does not exceed app. LTL 14,286, i.e. app. EUR 4,138).

Municipal councils have the right to reduce inheritance tax for individuals or to completely exempt such payment at the expense of their budget and may defer payment of the tax for a period of up to one year after the date of issuing the inheritance certificate.

An individual who inherits property in Lithuania must pay the tax prior to issuance of the inheritance certificate, except for cases where a municipal council has deferred the payment of the tax or exempted from payment thereof. A resident of Lithuania who has inherited property in foreign states must, either himself or through a person authorized by him, submit to the Lithuanian tax administrator a relevant tax declaration and pay the tax by 1 March of the calendar year following the calendar year in which the property was inherited.

### 3. Real Estate Tax

Any legal or natural person (despite his citizenship or residency) owning or acquiring immovable property (except the land which is taxed under the separate land tax) located in the Republic of Lithuania must pay real estate tax, except:

- immovable property not in use, where construction thereof has not been completed;
- immovable property created or acquired on the basis of the general public-private partnership as defined by the Law of the Republic of Lithuania on Investments for the period of implementation of the general public-private partnership agreement and use of the immovable property for purpose specified in the agreement;
- the total value of structures (premises) owned by natural persons and intended for dwelling purposes, gardens, garages, homesteads, greenhouses, farms, subsidiary farms, science, religion, and recreation, fish-farming structures as well as engineering structures, not exceeding EUR 220,000.

Property used for the specific purposes listed by the law is exempt from the real estate tax as well (e.g., property used for cult accessories production, social care and social assistance, to earn income from agricultural activities, for education work, for providing funeral services or located in the cemetery area, etc.).

If the taxable immovable property owned by a natural person is transferred to the use of a legal person for a period longer than 1 month, the duty to pay the real estate tax rests with that legal person.

The value of the property indicated in point 3 above and exceeding EUR 220,000 is taxed at a 1% tax rate.

The tax rate for the other real property within the range from 0.3% to 3% of the taxable value of the property is determined by municipalities with regard to one or more of the following criteria: purpose of immovable property, use, legal status, technical features, maintenance condition thereof, categories of

taxpayers (size or legal form or social status) or the location of immovable property in the territory of the municipality (according to the priorities set forth in strategic and land-use planning documents).

The tax period of the immovable property tax is a calendar year. The tax for the property indicated in point 3 above with a value exceeding EUR 220,000 must be declared and paid by 15 December of the current calendar year. Tax for other real property must be declared and paid not later than 1 February of the successive calendar year.

#### 4. Land Tax

Landowners are responsible for paying land tax in the Republic of Lithuania, despite their citizenship or residency (except forestry land, which is exempt from the land tax).

The annual rate of the tax on land within the range from 0.01% to 4% of the taxable value (average market value) of land is determined by municipalities with regard to the criteria established by the law (e.g. purpose of use of land plot, location of land plot, categories of taxpayers).

Tax period is a calendar year. The tax on land must be paid by 15 November of the running year.

### C. Taxes on Income and Capital

The direct taxes on income levied in Lithuania are corporate income tax and personal income tax. There is no additional tax on capital or wealth as such and no separate capital gains tax as well. However capital gains may also be taxable for personal income tax or corporate income tax on transfer by sale, exchange and etc. of shares in limited liability companies, business or other assets.

#### 1. Personal Income Tax

Residents' (for more information about residency see section IV subsection A, Domicile and Residency) taxable base is all income of a resident of Lithuania sourced inside and outside of Lithuania.

Non-residents taxable base is (i) income from individual activities carried out through the fixed base in Lithuania, (ii) income derived in foreign countries, which is attributed to the fixed base in Lithuania and related to the activities of a non-resident of Lithuania through the fixed base, and (iii) the following income sourced in Lithuania and derived otherwise than through the fixed base:

- income from interest;
- income from distributed profit and annual payments (bonus shares) to members of the board of directors and of the supervisory board (from 1 January 2014 – all payments to the members of the board of directors/supervisory board);
- income from the lease of immovable property located in Lithuania;
- royalties;
- income related to employment relationships or equivalent relationships;
- income from sports activities, including income directly or indirectly related to such activities, irrespective of whether it is paid directly to an athlete or any third party acting on behalf of the athlete;
- to such activities, irrespective of whether it is paid directly to a performer or any third party acting on behalf of the performer;
- proceeds from the sale or other transfer of movable property if that type of property is subject to legal registration under legal acts of the Republic of Lithuania and is (or must be) registered in Lithuania, as well as immovable property located in Lithuania;
- compensation for infringements of copyright and related rights.

Beginning on 1 January 2009, all income is subject to a uniform tax rate of 15%, unless otherwise provided for in Law of Personal Income Tax. Such cases are:

- Rate of 20% is applied to income from distributed profit. Such income includes dividends (funds received by a member of an entity as a result of the distribution of the profit thereof or the reduction of the authorized capital thereof, or the fair market value of property received). Income from distributed profit does not include income received by a member of an entity of unlimited civil liability. It should be noted that distributed profit shall be taxed at the regular rate of 15% starting from 1 January 2014.
- Rate of 5% is applied to income from individual activities, except for income from free professions and from securities (including income from derivative financial instruments).

Income tax of a fixed amount is paid to acquire a certificate for the specific kinds of business. The fixed amount of the income tax is set by municipal councils.

The tax period of income tax coincides with the calendar year. The first tax period of the tax on the income derived by a non-resident of Lithuania through the fixed base in Lithuania is the calendar year during which the fixed base was or should have been registered. Taxpayers who have derived income during the tax period, must at the close of the tax period, not later than on 1 May of the calendar year following that tax period, personally or through an authorized person file his or her annual income tax declaration for the previous tax period with the Lithuanian tax administrator, reporting therein all income derived during the previous tax period and the income tax calculated thereon, and must pay the tax on personal income due.

## 2. Corporate Income Tax

Companies that earn income during tax period must pay corporate income tax. The corporate income tax period is the fiscal year which coincides with a calendar year (unless at the request of the taxpayer it is changed for objective reasons with the consent of the Lithuanian tax administrator).

Lithuanian or foreign persons that pay corporate income tax are called taxable entities. The concept of taxable entity is conceived in order to be able to tax any form of legal entity that operates in Lithuania and receives any type of income in the State. A Lithuanian taxable entity (resident) is a legal entity registered in Lithuania according to the organization, whose headquarters are in a foreign country and set up or otherwise organized under foreign law, as well as any other taxable entity established or otherwise organized abroad.

The tax base of a Lithuanian entity is its world-wide income after deduction of allowable/partly allowable deductions. Meanwhile the tax base of a foreign entity is income from activities carried out through its permanent establishment in Lithuania and income sourced in Lithuania and received otherwise than through permanent establishments (passive income set in exhausted list). The main tax rate is 15%, but some kind of income may also be taxed at 10%, 5% or 0% rates.

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