

CIVIL CODE OF THE REPUBLIC OF LITHUANIA

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Vilnius

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Article 1.24. Law applicable to a promise to marriage

1. A promise to marry and its legal effects shall be governed by the law of the state of domicile of the parties to the promise.

2. Where the parties to the promise of marriage are domiciled in different states, the promise of marriage and its legal effects shall be governed by the law of the place where the promise was made, or by the law of the state of domicile of one of the parties, or by the law of the state of citizenship of one of the parties, whichever law is most closely related with the dispute.

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Article 1.25. Law applicable to the conditions to contract marriage

1. Matrimonial capacity and other conditions to contract marriage shall be governed by the law of the Republic of Lithuania.

2. Civil Registration Bureaus of the Republic of Lithuania shall have jurisdiction to perform the registration of marriage if either of the persons intending to marry is domiciled in the Republic of Lithuania or is a Lithuanian citizen at the time of solemnization of the marriage.

3. Matrimonial capacity and other conditions to contract marriage in respect of foreign citizens and stateless persons without Lithuanian domicile may be determined by the law of the state of domicile of both persons intending to marry if such marriage is recognized in the state of domicile of either of them.

4. A marriage validly performed abroad shall be recognized in the Republic of Lithuania, except in cases when both spouses domiciled in the Republic of Lithuania performed the marriage abroad with the purpose of evading grounds for nullity of their marriage under Lithuanian law.

Article 1.26. Law applicable to the procedure of contracting marriage

The procedure of contracting marriage shall be determined in accordance

with the law of the state where the marriage is solemnized. Marriage shall also be recognized valid if the procedure of its contracting is in compliance with the requirements of the law of the state of domicile of either of the spouses or the law of the state of citizenship of either of them at the moment of solemnization of the marriage.

Article 1.27. Law applicable to personal relations between spouses

1. Personal relations between spouses shall be governed by the law of the state of their domicile.

2. Personal relations between the spouses domiciled in different states shall be governed by the law of the state of their last common domicile. Where the spouses have never had a common domicile, the law applicable to their personal relations shall be the law of the state to which the personal relations between the spouses are the most closely related. Where it is not possible to determine to the law of which state the personal relations between the spouses are the most closely related, the law of the state where the marriage was solemnized shall apply.

Article 1.28. Law applicable to matrimonial property relations between spouses

1. The matrimonial property legal regime shall be 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 shall apply. 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 shall apply.

2. The law applicable to contractual legal regime of matrimonial property shall be determined by the law of the state chosen by the spouses upon agreement. In this event, the spouses may choose the law of the state in which they are both domiciled or will be domiciled in future, or the law of the state in which the marriage was solemnized, or the law of the state a citizen of which is one of the spouses. The agreement of the spouses upon the applicable law shall be valid if it is in compliance with the requirements of the law of the chosen state or the law of the state in which the agreement is made.

3. The applicable law chosen upon agreement of the spouses may be invoked against third persons only if they knew or should have known of that fact, i.e. if the third party knew or should have known the chosen law that governed the matrimonial property regime when the legal relationship commenced.

4. The applicable law chosen upon agreement of the spouses may be used in resolving a dispute related to real rights in immovable property only in the event if the requirements of public registration of this property and of the real rights therein, as determined by the law of the state where the property is located, were complied with.

5. Any agreed change of matrimonial property legal regime shall be governed by the law of the state of domicile of the spouses at the time of the change. If the spouses were domiciled in different states at the time of change of the matrimonial property legal regime, the applicable law shall be the law of their last common domicile, or failing that, the law governing matrimonial property relationships between the spouses.

Article 1.29. Law applicable to separation and dissolution of marriage

1. Separation and dissolution of marriage shall be governed by the law of the spouses' state of domicile.

2. If the spouses do not have their common domicile, the law of the state of their last common domicile shall apply, or failing that, the law of the state where the case is tried.

3. If the law of the state of common citizenship of the spouses does not permit dissolution of marriage or imposes special conditions for dissolution, the dissolution of marriage may be performed in accordance with the law of the Republic of Lithuania if one of the spouses is also a Lithuanian citizen or is domiciled in the Republic of Lithuania.

Article 1.30. Jurisdiction in the cases of annulment, dissolution of marriage and separation

The courts of the Republic of Lithuania shall have jurisdiction over actions of annulment, dissolution of marriage or separation in the cases provided for by the Code of Civil Procedure of the Republic of Lithuania.

Article 1.31. Law applicable to the ascertainment of the origin of a child (legitimation)

1. The origin of a child (ascertainment or contest of paternity or maternity) shall be established either in accordance with the law of the state the citizenship of which the child acquired at his birth, or with the law of the state which is recognized as the domicile of the child at the time of his birth, or with the law of the state in which one of the child's parents is domiciled, or with the law of the state the citizen of which one of the parents was at the time of the child's birth, whichever is more beneficial to the child.

2. The consequences of legitimation shall be governed by the law of the state of domicile of the child.

3. If a child or one of his parents is domiciled in the Republic of Lithuania, the questions of legitimation shall be decided by the courts or other state institutions of the Republic of Lithuania.

4. The parents' (the father's or the mother's) legal active capacity in acknowledging paternity (maternity) shall be governed by the law of the state of his or her domicile at the time of the acknowledgement. The form of the acknowledgement of paternity (maternity) shall be governed by the law of the state in which it is made or by the law of the state of the child's domicile.

5. The provisions of this Article shall also apply to the legitimation of a child born out of wedlock.

Article 1.32. Law applicable to relations between the parents and the child

1. Personal and property relationships between the parents and the child shall be governed by the law of the state of the child's domicile.

2. If neither parent is domiciled in the state of the child's domicile, while the child and the parents are citizens of the same state, the law of the state of their common citizenship shall apply.

Article 1.33. Law applicable to adoption relationship

1. Relationships of adoption shall be governed by the law of the state of the child's domicile.

2. Where it becomes evident that the adoption performed according to the law of the state of the child's (the adoptee's) domicile will not be recognized in the state of domicile or citizenship of the adoptive parents (adoptive parent), the adoption may be performed pursuant to the law of the state of domicile or citizenship of the adopter (the adopters) if this will not prejudice the best interests of the child. If the recognition of adoption remains uncertain, the adoption shall not be allowed.

3. Relations between the adopted person (the adoptee) on the one side, and the adopting persons (the adopters) and the relatives of the latter on the other side shall be governed by the law of the state of the adopters' (the adopter's) domicile.

4. Cases related with adoption shall belong to the jurisdiction of the courts of the Republic of Lithuania if the child (the adoptee) or the adopting persons (adopting person) are domiciled in the Republic of Lithuania.

Article 1.34. Law applicable to protective measures in relation to minors, their guardianship and curatorship

Law applicable to protection of minors, their guardianship and curatorship shall be determined pursuant to the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors.

Article 1.35. Law applicable to guardianship and curatorship of family members who have reached majority

1. Guardianship and curatorship of family members who have reached majority shall be governed by the law of the state of such incapable persons' domicile.

2. Cases related with guardianship or curatorship of persons who have reached majority shall belong to the jurisdiction of the courts of the Republic of Lithuania if the incapable person's domicile or his property is located in the Republic of Lithuania.

Article 1.36. Law applicable to maintenance obligations (alimony relationships) within the family

Maintenance obligations (alimony) within the family shall be governed by the Hague Convention of 2 October 1973 on

the Law Applicable to Maintenance Obligations.

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BOOK THREE – FAMILY LAW

PART I – GENERAL PROVISIONS

CHAPTER I – FAMILY LAWS

Article 3.1. Relationships governed by Book Three of the Civil Code of the Republic of Lithuania

1. The provisions of Book Three of the Civil Code of the Republic of Lithuania define the general principles of the legal regulation of family relations and govern the grounds and procedures of entering into marriage, validity and dissolution of marriage, property and non-property personal rights of spouses, filiation, mutual rights and responsibilities between children, parents as well as other family members, the basic provisions on adoption, guardianship, curatorship and on the procedures of registering Acts of Civil Status.

2. The provisions of the other Books of the Civil Code, as well as the provisions of other civil laws, shall apply to family relationships to the extent that they are not regulated by the provisions of this Book.

Article 3.2. Sources of family law

1. Family relations shall be governed by the Constitution, the Civil Code and other laws of the Republic of Lithuania as well as by the international treaties of the Republic of Lithuania.

2. The Government and other public authorities of the Republic of Lithuania may adopt regulations on family law matters only in the cases and to the extent provided for in this Code and other legislation.

3. Customs shall apply to family relations only in cases provided for by legislation. In case there is a contradiction between the law and the custom, the law shall prevail.

Article 3.3. Principles of the legal regulation of family relationships

1. In the Republic of Lithuania the legal regulation of family relationships shall be based on the principles of monogamy, voluntary marriage, equality of spouses, priority of protecting and safeguarding the rights and interests of children, up-

bringing of children in the family, comprehensive protection of motherhood and other principles of the legal regulation of civil relationships.

2. Family laws and their application must ensure the strengthening of the family and its significance in the society, the mutual responsibility of family members for the preservation of the family and the education of the children, the possibility for each member of the family to exercise his or her rights in an appropriate manner and to protect the children of minor age from the undue influence of the other members of the family or other persons or any other such factor.

Article 3.4. Analogy of statute or law

1. Where family relationships are not governed by this or the other Books of the Civil Code, they shall be governed by the provisions of other civil laws applicable to similar legal relations. The application by analogy of special legal norms stipulating derogation from the general provisions shall be prohibited.

2. Where it is not possible to apply statute by analogy and also where the resolution of the matter is left to judicial discretion, the rights and duties of the subjects of family relations shall be determined on the basis of justice, good faith, reasonableness and other general legal principles.

3. Where there are no mandatory rules, also in cases provided for in this Code and other laws, the subjects of family relations may determine their rights and duties by mutual agreement in accordance with the principles enshrined in paragraph 2 and Article 3.3 hereof.

Article 3.5. Implementation and protection of family rights

1. Persons are free to implement and exercise their family rights at their own discretion including the right to the protection of family rights. A waiver from a family right or its implementation shall not abolish the right except in cases provided for by law.

2. In exercising their family rights and performing their duties, persons must comply with the laws, respect the rules of their community life as well as the principles of good morality and act in good faith.

3. It is prohibited to abuse family rights, i. e. it is prohibited to exercise

them in such a way and by such means as would violate or restrict other persons' rights or interests protected by law, or would inflict harm on other persons. If a person abuses a family right, the court may refuse to protect it .

4. Family rights shall be protected by courts, institutions of guardianship and curatorship, governmental or non-governmental organisations in the ways provided for herein. Courts and other institutions shall seek that the parties to a dispute resolve their dispute peacefully by mutual agreement, and shall help the parties in every possible way to reach such an agreement.

Article 3.6 Limitation period for action

1. Claims arising from legal family relations shall be subject to statutory limitations except for the exemptions provided for in this Book hereof.

2. The procedures for the calculation, suspension, termination or restoration of limitation periods shall be stipulated in the rules of Book One hereof unless this Book provides for different rules.

PART II – MARRIAGE

CHAPTER II – CREATION OF MARRIAGE

SECTION ONE – AGREEMENT TO MARRY AND ITS LEGAL CONSEQUENCES

Article 3.7. Concept of marriage

1. Marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law.

2. A man and a woman who have registered their marriage in the procedure provided for in law shall be deemed to be spouses.

Article 3.8. Agreement to marry (engagement)

1. Agreement to marry is not binding and may not be enforced by force although it may give rise to legal consequences described in Articles 3.9 to 3.11 hereof.

2. An agreement to marry may be expressed orally or in writing.

3. An application to register a marriage submitted to the Register Office in the prescribed format shall be deemed to be a public agreement to marry.

Article 3.9. Return of gifts

1. If the engagement is terminated, both parties to the public agreement to marry shall have a right to demand that the other party return everything he or she has received from the other party as a gift in consideration of the intended marriage except where the value of the gift is under one thousand Litas or where the party who had received a gift died before the registration of the marriage and the marriage has not been contracted due to the death of one of the parties.

2. Requests for the return of gifts shall be governed by the rules of Book Six hereof regulating relations pertaining to unjust enrichment or acquisition of assets not due.

3. An action for the return of a gift may be brought within a year of the date of the refusal to marry.

Article 3.10. Compensation of damages

1. The party to the agreement to marry that has refused to contract the marriage without a reasonable cause must compensate the damages incurred by the other party due to the refusal to marry.

2. The damages include the actual expenses of the party in preparation to marry and the actual expenses made in performing the obligations related to the intended marriage.

3. Where a party refuses to marry for a weighty reason that has emerged through the fault of the other party, the party at fault shall pay damages under paragraphs and 2 hereof.

4. The time limit to present claims for damages shall be one year after the date of the refusal to marry.

Article 3.11. Compensation for non-pecuniary damage

1. Where the parties had made a public agreement to marry, the party entitled to damages under Article 3.10 hereof, may also claim compensation for non-pecuniary damage.

2. An action for compensation of non-pecuniary damage may be brought within a year of the date of the refusal to marry.

SECTION TWO – CONDITIONS FOR CONTRACTING A MARRIAGE

Article 3.12. Prohibiting marriage of persons of the same gender

Marriage may be contracted only with a person of the opposite gender.

Article 3.13. Voluntary nature of marriage

1. Marriage shall be contracted by a man and a woman of their own free will.

2. Any threat, coercion, deceit or any other lack of free will shall provide the grounds on which the marriage declared null and void.

Article 3.14. Legal age of consent to marriage

1. Marriage may be contracted by persons who by or on the date of contracting a marriage have attained the age of 18.

2. At the request of a person who intends to marry before the age of 18, the court may, in a summary procedure, reduce for him or her the legal age of consent to marriage, but by no more than three years.

3. In the case of a pregnancy, the court may allow the person to marry before the age of 15.

4. While deciding on the reduction of a person's legal age of consent to marriage, the court must hear the opinion of the minor person's parents or guardians or curators and take into account his or her mental or psychological condition, financial situation and other important reasons why the person's legal age of consent to marriage should be reduced. Pregnancy shall provide an important ground for the reduction of the person's legal age of consent to marriage.

5. In the process of deciding on the reduction of the legal age of consent to marriage, the state institution for the protection of the child's rights must present its opinion on the advisability of the reduction of the person's legal age of consent to marriage and whether such a reduction is in the true interests of the person concerned.

Article 3.15. Active capacity

1. A person who has been declared by a *res judicata* court judgement) to be

legally incapacitated may not contract a marriage.

2. If there is knowledge of a case pending before a court for the declaration of one of the parties to an intended marriage to be legally incapacitated, the registration of the marriage must be postponed until the judgement of the court becomes *res judicata*.

Article 3.16. Prohibition to violate the principle of monogamy

A married person who has not terminated his or her marital bond in accordance with the procedures laid down by the law may not enter into a second marriage.

Article 3.17. Prohibition to contract marriage between close relatives

Marriage between parents and children, adopters and adoptees grandparents and grandchildren, real or foster-brothers and real or foster-sisters, cousins, uncles and nieces, aunts and nephews shall be prohibited.

SECTION THREE – FORMATION OF MARRIAGE

Article 3.18. Application to register a marriage

Persons intending to marry must file an application to register the marriage in the procedure specified in Article 3.299 hereof.

Article 3.19. Making public the application to register a marriage

The fact of the submission of the application to register a marriage shall be made public in the procedure specified in Article 3.302 hereof.

Article 3.20. Confirmation of the compliance with the requirements for the formation of a marriage

1. While filing an application to register a marriage, the intended spouses must confirm in writing that they have met all the requirements laid down for the formation of marriage in Articles 3.12 to 3.17 hereof.

2. Before registering a marriage, the officials of the Register Office must check if all the requirements laid down in Articles

3.12 to 3.17 for the formation of marriage have been complied with.

Article 3.21. Premarital medical examination

1. At the time of filing an application to register a marriage, the officials of the Register Office shall suggest to the intended spouses that they undergo a premarital medical examination and prior to the date of the registration of their marriage submit a doctor's certificate drawn up in the form specified by the institution authorised by the Government.

2. Failure to submit a doctor's certificate shall not be an impediment for the registration of the marriage.

3. Failure of one of the parties to an intended marriage to inform the other party that he or she is suffering from a venereal disease or AIDS shall provide a cause for rendering the marriage null and void.

Article 3.22. Declaration on impediments to marriage

1. Any interested person shall have a right to make a written declaration to the Register Office that has made the application to register a marriage public to the effect that, subject to this Book, there are impediments to the marriage.

2. Having received a declaration on impediments to a marriage, the official of the Register Office shall postpone the registration of the marriage and request that the declarant submit written evidence of the facts alleged in the declaration within three days. If the declarant fails to submit such evidence within three days, the marriage shall be registered in accordance with the general procedures.

3. If the written evidence on the existing impediment to a marriage is presented, the official of the Register Office shall suspend the registration of the marriage and, in the event of a dispute, advise the intended spouses on their right to apply for the court to refute the declaration. In such a case the marriage shall be registered only after the intended spouses submit to the Register Office the *res judicata* court judgement on the refutation of the declaration on the impediments to the marriage as ill-founded.

4. Where the court decides to refute the declaration on the impediments to the marriage as unfounded, after the forma-

tion of the marriage the intended spouses shall have a right, within a year of the day on which the court's judgement became *res judicata*, to claim damages from the person who submitted the declaration on impediments to the marriage, except in cases where the declaration was presented by the parents of one of the spouses or a public prosecutor.

Article 3.23. Proof of marriage

1. The Register Office that has registered a marriage shall issue a Certificate of Marriage.

2. The proof of marriage shall be the record of the marriage and the Certificate of Marriage issued on the basis of the record.

Article 3.24. Formation of religious marriages in the procedure established by the Church (confessions)

1. A religious marriage is formed in accordance with the procedures established by the internal law (canons) of the respective religion.

2. The formation of a marriage in accordance with the procedures established by the Church (confessions) shall entail the same legal consequences as those entailed by the formation of a marriage in the Register Office provided that:

1) the conditions laid down in Articles 3.12 to 3.17 hereof have been satisfied;

2) the marriage has been formed according to the procedures established by the canons of a religious organisation registered in and recognised by the Republic of Lithuania;

3) the formation of a marriage in the procedure established by the Church (confessions) has been recorded at the Register Office in the procedure provided for herein.

Article 3.25. Official records of marriages formed in the procedure established by the Church (confessions)

Marriages formed according to the procedure established by the Church (confessions) shall be entered in the official records in accordance with Article 3.304 hereof.

SECTION FOUR – LEGAL EFFECTS OF MARRIAGE

Article 3.26. Equality of spouses

1. Having contracted a marriage, the spouses acquire the rights and duties defined in this Book.

2. Spouses shall have equal rights and equal civil liability in respect of each other and their children in matters related to the formation, duration and termination of their marriage.

3. Spouses may not waive, by mutual agreement, their rights or extinguish their duties that arise from a marriage.

Article 3.27. The duty of spouses to support each other

1. Spouses must be loyal to and respect each other, they must support each other morally and financially and contribute toward the common needs of the family or the needs of the other spouse in proportion to their respective capabilities.

2. Where due to objective reasons one of the spouses is unable to make a sufficient contribution toward the common needs of the family, the other spouse must do that in accordance with his or her abilities.

Article 3.28. Creation of family relations

By contracting a marriage the spouses create family relations as a basis for their life together.

Article 3.29. Passive and active capacity of spouses

Marriage shall not restrict the passive and active capacity of spouses, nevertheless the possibility of the spouses to exercise certain rights may be restricted by the contract of marriage or the mandatory rules hereof.

Article 3.30. Duties of the spouses in respect to their children

Spouses must maintain and bring up their children of minor age, care for their education and health, ensure the child's right to personal life, inviolability of his or her personality and freedom, the child's property, social and other rights laid down in the domestic and international law.

Article 3.31. The surnames of the spouses

Both spouses shall have the right to retain their respective surnames or to choose the surname of the other spouse as their common surname or to have a double surname by adjoining the surname of the other spouse to one's own surname.

Article 3.32. Representation

1. Any of the spouses may authorise the other to represent him and act on his behalf.

2. Where certain acts require the consent of the other spouse, but for any objective reason the other spouse is unable to give such a consent, the court may, upon the interested spouse's request, give the interested spouse permission to perform the act. Before giving the permission, the court must satisfy itself that the consent of the other spouse is really unobtainable, while the permission will serve the interests of the family. The court's permission is valid only for the act specified in the court's order to be performed in 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 children of minor age, it may amend or revoke its permission on the request of the state institution for the protection of the child's rights or the public prosecutor. The amendments or revocation of the 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 of 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 register.

3. 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 of Book Six regulating the management of the other spouse's affairs.

Article 3.33. Disputes of spouses relating to the performance of their duties or exercise of their rights

1. Where the spouses are unable to agree as to the performance of their duties or the exercise of their rights, either of them shall have a right to apply to the court for the resolution of their dispute.

2. In its efforts to resolve the dispute the court shall take measures for the reconciliation of the spouses.

3. The court must decide on the dispute of the spouses by taking account of the interests of their children of minor age and the interests of the family as a whole.

Article 3.34. Temporary Restriction of the property rights of a spouse

1. Where one of the spouses is in serious breach of his or her marital duties provided for in this Book hereof and poses a threat to the property interests of the family by his or her acts, the other spouse shall have a right to apply to the court for an order prohibiting the other spouse from disposing of their community property without the consent of the other spouse. The prohibition may not be valid for more than two years.

2. 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 the third party involved in the transaction was in bad faith. An action may be brought within a year of the date on which the spouse acquired or should have acquired knowledge of the transaction.

Article 3.35. Rights and duties of the spouses in the household

1. Neither spouse may, without the consent of the other spouse, alienate, pledge or lease movable property used in the household or encumber the right to it in any other way.

2. The movable property serving for the use of the household shall include household utensils, furniture, except for works of art, collections or home libraries.

3. 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 in good faith.

Article 3.36. The rights and duties of spouses in respect of the dwelling considered to be Family Property

1. Where the spouses live in a rented dwelling under a lease agreement, the spouse in whose name the dwelling is rented may not, without a written consent of the other spouse, terminate the lease

agreement before its term, sublease it or transfer the rights under the lease agreement. The spouse having neither consented nor ratified such an act may apply to have it annulled.

2. A spouse who is the sole owner of the family dwelling may not, without a written consent of the other spouse, alienate, pledge or lease this dwelling. The spouse having neither consented to nor ratified such an act may apply to have it annulled provided that the disputed premises have registered in the public register as a family asset.

3. The rules of paragraph 1 and 2 shall be applied also in cases of usufruct (i. e. the right of using and receiving the profits, products or fruits of property that belongs to another) and contract of use.

CHAPTER III – NULLITY OF MARRIAGE

Article 3.37. The grounds and procedures for declaring Marriage Null and Void

1. A marriage may be declared null and void if the conditions for the formation of a valid marriage set out in Articles 3.12 to 3.17 hereof have been violated as well as on the grounds provided for in paragraph 3 Article 3.21, Articles 3.39 and 3.40 hereof.

2. A marriage may be annulled only by the court.

3. A marriage that the court declares to be null and void shall be void *ab initio*.

4. Having pronounced a marriage null and void, the court must send a copy of its judgement to the Register Office where the marriage was registered within three business days of its effective date.

Article 3.38. Persons entitled to petition for a decree of nullity on the grounds of violation of the requirements for the formation of marriage.

1. A marriage formed in violation of the conditions set for the formation of marriage in Articles 3.16 and 3.17 hereof may be declared null and void on the petition of spouse who was ignorant of the impediments to the marriage, a public prosecutor or any other person whose rights and lawful interests were violated by the marriage.

2. A marriage formed in violation of the requirement set in Article 3.14 hereof may be declared null and void on the petition of a minor spouse, his or her parents, guardians or curators, public institutions for the protection of the child's rights or a public prosecutor. After the minor spouse attains the age of 18, he or she shall be the only person who may petition for a decree of nullity.

3. A marriage formed in violation of the requirement set in Article 3.15 hereof may be declared null and void on the petition of the guardian of the spouse lacking capacity to marry, a public prosecutor or any other person whose rights and lawful interests have been violated by the marriage.

4. A marriage formed in violation of the requirement set in Article 3.13 hereof may be declared null and void on the petition of the spouse who had failed to express his or her free will at the time of the marriage or a public prosecutor. Where the who failed to express his free will is a minor, the nullity of the marriage may be sought by his or her parents, guardians, curators or a State institution for the protection of the child's rights.

5. A judgement for the nullity of marriage on the grounds referred to in paragraph 3 Article 3.21 hereof may be sought by the party to the marriage who by the time of marriage had not been informed of the other party's illness.

Article 3.39. Nullity of a fictitious ('sham') marriage

A marriage formed fictitiously without the true intention of creating a legal family relationship may be declared null and void on the petition of either spouse or a public prosecutor.

Article 3.40. Declaring a marriage null and void due to the lack of free will

1. A marriage may be declared null and void if a spouse can prove that at the time of marriage he or she was incapable of understanding the true meaning of his or her actions or of being in charge of them of being in charge of them.

2. Nullity of marriage may be sought by a spouse if he or she entered into the marriage under threat, duress or fraud.

3. A spouse who gave consent to the marriage in consequence of an essential mistake may seek the nullity of the

marriage. The mistake is presumed to be essential if it is a mistake about the circumstances related to the other party the knowledge of which would have been a sufficient reason for the party not to enter into the marriage. The mistake is presumed to be essential if it is about:

1) the health condition or the sexual abnormality of a party which makes the usual family life impossible;

2) the grave crime committed by the other party.

Article 3.41. Bars to the nullity of marriage

1. The court may refuse to declare a marriage null and void if the circumstances which had constituted an impediment to the marriage hereunder disappeared during the proceedings of the case.

2. The court may refuse to declare a marriage contracted by a minor persons null and void if the nullity of the marriage were contrary to the interests of the minor children of the minor spouse or spouses.

3. A marriage may not be pronounced to be a fictitious marriage if prior to the petition for nullity the spouses had created family relations or had cohabited for over a year from the date of marriage or had given birth to or were expecting their own child.

4. A marriage may not be declared null and void after divorce, except where the marriage had been contracted in violation of the monogamy principle or within the prohibited degrees of relationship (Articles 3.16 and 3.13).

5. A marriage which was contracted without one of the spouses expressing his free will may not be pronounced null and void if, after the formation of the marriage or after the knowledge of the circumstances giving a sufficient ground for pronouncing it null and void, the spouses lived together for over a year or they have given birth to or are expecting their own baby.

Article 3.42. Statutes of limitation

1. A spouse who entered into a marriage under the age of 18 may petition for the nullity of the marriage within a year of the date of his or her attaining full age.

2. Petition for the nullity of a marriage contracted without a free and voluntary consent may be presented within a year of the date on which the circumstances constituting the grounds for pro-

nouncing the marriage null and void disappeared or became known.

3. Petition for the nullity of a fictitious marriage may be presented within a year of the date on which the marriage was contracted. A public prosecutor may petition for the nullity of a marriage under Article 3.39 hereof within five years of the date on which the marriage was contracted.

4. Petition for the nullity of a marriage on other grounds shall be subject to no limitations.

Article 3.43. Separation of spouses and maintenance order

1. In an effort to protect the interests of one of the spouses, the court may, circumstances permitting, order the spouses to separate pending the proceedings on the nullity of their marriage.

2. In pronouncing a marriage null and void, the court must decide as to the maintenance of the children and the spouse in good faith as well as to make a residence order in respect of the children.

Article 3.44. Extinguishment of the right to petition

1. The right to petition for the nullity of a marriage may not be devolved by succession or any other way.

2. After the death of one of the parties to a marriage, a public prosecutor may no longer initiate proceedings for the nullity of the marriage.

Article 3.45. Legal effects of marriage declared null and void

1. Any children born of a marriage subsequently decreed void by the court shall be treated as born within marriage.

2. Where both the spouses were in good faith, i. e. did not and could not know about the impediments to their marriage, the legal consequences of their marriage, although it has been declared null and void, shall be the same as those of a valid marriage except for the right of succession. Evidence of the good faith of the spouses must be indicated in the judgment of the court.

Article 3.46. Legal consequences of nullity where one or both spouses were in bad faith

1. With a null and void marriage where only one of the parties was in good faith, the party in good faith shall be entitled to all the rights a spouse is entitled to by virtue of a valid marriage.

2. With a null and void marriage where both the parties were in bad faith, they lose all the rights and duties spouses have by virtue of a valid marriage. Each of them shall have a right to recover their own property including the gifts to the other party.

Article 3.47. Rights of the spouse in good faith

1. If in need of maintenance, the spouse in good faith shall have a right to petition for maintenance from the spouse in bad faith for a period not exceeding three years.

2. The amount of the maintenance shall be at the discretion of the court having regard to the financial position of both the parties. The court may make an order for periodical monthly payments or one payment of a lump sum. If the financial position of one of the parties changes, the interested party may start apply for the increase, decrease or termination of maintenance.

3. An order for maintenance to the spouse in good faith terminates on the remarriage of the payee or at the end of the three-year period during which maintenance was paid.

Article 3.48. Mandatory participation of guardianship and care institutions

Where one or both spouses are of minor age or have been declared by the court lacking legal capacity, guardianship and care institutions or the public institution for the protection of the child's rights must attend the proceedings for the nullity of the marriage of such persons and give their opinion on whether the nullity of the marriage may prejudice the rights and interests of such persons or their children.

CHAPTER IV – DISSOLUTION OF MARRIAGE

SECTION ONE – FUNDAMENTALS OF DISSOLUTION OF MARRIAGE

Article 3.49. Cases of dissolution of marriage

1. A marriage is dissolved by the death of one of the spouses or by termination by the operation of law.

2. A marriage may be dissolved by the mutual consent of the spouses, on the application of one of the spouses or through the fault of a spouse (spouses).

Article 3.50. Dissolution of marriage by the death of one of the spouses

1. A marriage is dissolved by the death or a court judgement of presumption of death of one of the spouses.

2. Where one of the spouses is presumed dead, the marriage shall be considered dissolved from the date on which the court judgement becomes *res judicata* or from date specified therein.

3. If the spouse who has been presumed to be dead by a court judgement turns up, the marriage may be renewed by the mutual application of the spouses to be presented, after the annulment of the court judgement of presumption of death, to the Register Office that registered the dissolution of marriage.

4. A marriage may not be renewed if the other spouse had remarried or there are impediments under Articles 3.12 to 3.17 hereof.

SECTION TWO – DIVORCE BY THE MUTUAL CONSENT OF THE SPOUSES

Article 3.51. Conditions for divorce

1. A marriage may be dissolved by the mutual consent of the spouses provided all the following conditions have been satisfied:

1) over a year has elapsed from the commencement of the marriage;

2) the spouses have made a contract in respect of the consequences of their divorce (property adjustment, maintenance payments for the children, etc.);

3) both the spouses have full active legal capacity.

2. In cases provided for in this Article divorce shall be obtained under simplified procedures.

Article 3.52. Application for divorce

1. A mutual application of the spouses for divorce shall be presented to

the court of the district where one of the spouses resides.

2. The application must be accompanied by the contract as to the consequences of the divorce.

3. The application must contain reasons why, in the opinion of the spouses, their marriage has broken down.

Article 3.53. Divorce proceedings

1. The court grants a judgement of divorce if it is satisfied that the marriage has broken down irretrievably. A marriage shall be considered to have broken down irretrievably if the spouses no longer live together and it is not likely they will live together again.

2. An irretrievable breakdown of a marriage is presumed if the spouses have been separated form board and bed for over a year.

3. While granting a divorce decree, the court shall approve the contract of the spouses as to the consequences of divorce providing for the maintenance payments for the children of minor age and each other, the residence of their minor children, their participation in the education of their children and their other property rights and duties. The content of the contract shall be incorporated in the judgement of divorce. In case there is an essential change in the circumstances (illness of one of the former spouses, incapacity for work, etc.), the former spouses or one of them may petition the court to reconsider the terms and conditions of their contract as to the consequences of divorce.

4. Where the contract as to the consequences of divorce is not consistent with the public order or is an essential violation of the rights and lawful interests of the minor children of the spouses or of one of the spouses, the court shall not approve the contract and shall suspend the divorce proceedings until the spouses have made a new contract. If the spouses fail to comply with the directions of the court within six months of the suspension of the proceedings, the court shall not resume the consideration of the application for divorce.

Article 3.54. Reconciliation of spouses

1. The court must take measures to encourage the reconciliation of the spouses.

2. At the request of one of the spouses or on its own initiative the court

may provide for an up to a six-month-long reconciliation period. At the end of the reconciliation period the divorce proceedings shall be resumed at the request of one of the parties.

3. If neither of the spouses petitions for divorce within a year of the beginning of the reconciliation period, the court does not resume the divorce proceedings.

4. Where the spouses have lived apart for over a year or the reconciliation period is essentially contrary to the interests of one of the spouses or those of their children, or where both the spouses require a substantive consideration of their case, the court shall not set any reconciliation period.

SECTION THREE – DIVORCE ON THE APPLICATION OF ONE OF THE SPOUSES

Article 3.55. Conditions for obtaining divorce

1. A marriage may be dissolved on the application of one of the spouses filed with the court of the district where the applicant resides, if at least one of the following conditions are satisfied;

- 1) the spouses have been separated for over a year;
- 2) after the formation of the marriage one of the spouses has been declared legally incapacitated by the court;
- 3) one of the spouses has been declared missing by the court;
- 4) one of the spouses has been serving a term of imprisonment for over a year for the commission of a non-premeditated crime.

2. On behalf of the spouse lacking legal capacity the application for divorce may be filed by his or her guardian, a public prosecutor or a guardianship and care institution.

Article 3.56. The content of the application

1. The application must contain the indication of one of the grounds for divorce under paragraph 1 Article 3.55 hereof.

2. The application must also indicate how the applicant is going to perform his or her obligations toward the other spouse and their minor children.

3. The application must also contain the data provided for in the Code of Civil Procedure.

Article 3.57. Examination of the application

1. A spouse's application for divorce shall be examined in a simplified procedure.

2. Where divorce proceedings are commenced on the application of one of the spouses, the reconciliation measures referred to in Article 3.54 shall not be applied.

3. The court having regard to the age of one of the spouses, the duration of marriage, the interests of the minor children of the family may refuse to grant a divorce decree if the divorce may cause significant harm to the property and non-property interests of one of the spouses or their children.

4. The other spouse or his or her guardian shall have a right to declare that the marriage has broken down through the applicant's fault and demand that the court grant divorce on the basis of the applicant's fault. If the court considers the declaration to be well grounded, divorce shall be granted on the basis of the fault of the spouse who initiated the divorce proceedings (Article 3.60 hereof).

Article 3.58. Mandatory participation of guardianship and care institutions

Where one of the spouses lacks legal capacity, a guardianship and care institution must present its opinion to the court concerning the guarantees of the interests of the spouse lacking legal capacity on divorce.

Article 3.59. Matters to be resolved by the court in granting divorce

In granting a divorce the court must resolve matters relating to the residence and maintenance of the minor children, the maintenance of one of the spouses, adjustment of the community property of the spouses, except in cases where the property has been adjusted by the mutual agreement of the spouses certified in the notarial procedure.

SECTION FOUR – DIVORCE ON THE BASIS OF THE FAULT OF ONE OR BOTH OF THE SPOUSES

Article 3.60. Conditions for obtaining divorce

1. A spouse may apply for divorce on the grounds provided for in this Section where the marriage has broken down through the fault of the other spouse.

2. The fault of a spouse for the breakdown of the marriage shall be established if he or she has seriously breached the duties under this Book hereof, which is the reason why their matrimonial life has become impossible.

3. A marriage shall be presumed to have broken down through the fault of the other spouse where he or she has been convicted of a pre-meditated crime or has committed adultery or is violent toward the other spouse or the other members of the family or has deserted the family and has not been caring for it for over a year.

Article 3.61. Both spouses at fault

1. The respondent in a divorce suit may argue against his or her fault and adduce facts to prove that the other spouse is at fault for the breakdown of the marriage.

2. The court having regard to the circumstances of the case may declare that both parties are at fault for the breakdown of the marriage.

3. A divorce based on the fault of both spouses shall have the same consequences as the dissolution of marriage by the mutual consent of the spouses (Articles 3.51 to 3.54).

Article 3.62. Divorce procedure

1. A divorce on the basis of the fault of one of the spouses shall be granted by the court under contentious procedure.

2. At the request of one of the spouses divorce proceedings shall be held in a closed hearing.

3. Divorce proceedings shall be subject, *mutatis mutandis*, to Article 3.59 hereof.

Article 3.63. Omission of the specific causes of a divorce from the court judgement

At the request of both spouses the court, in granting a divorce, shall omit the specific facts evidencing the fault of one or both the spouses for the dissolution of the marriage from the judgement and merely indicate that the marriage has broken

down through the fault of one or both the spouses.

Article 3.64. Conciliation of spouses

1. The court must take measures to achieve a reconciliation of the spouses.

2. The court must suggest that the spouses reach an amicable settlement of their respective property interests, the maintenance and education of their children as well as other consequences of their divorce. If the spouses reach an agreement, paragraphs 3 and 4 of Article 3.53 hereof shall be applied.

3. The court shall apply measures provided for in paragraph 2 and 3 of Article 3.54 hereof, except in cases where the application of those provisions may be detrimental to the interests of the applicant or the minor children of the spouses.

Article 3.65. Provisional protection measures

1. The court having regard to the interests of the children of the spouses as well as the interests of one of the spouses may make orders for provisional protection measures pending the outcome of the divorce suit.

2. The court may make the following orders for provisional protection measures:

1) order one of the spouses to live separately;

2) determine the residence of the minor children with one of the parents;

3) demand for one of the spouses not to interfere with the use of certain property by the other spouse;

4) issue a maintenance order in favour of the minor children or the other spouse;

5) seize property until its ownership by one of the spouses is determined or in order to enforce maintenance payments;

6) seize the property of one of the spouses the value of which could be used to compensate for the litigation costs to the other spouse;

7) prohibit one of the spouses from having contact with his or her minor children or appearing in certain places.

SECTION FIVE – LEGAL EFFECTS OF DIVORCE

Article 3.66. The moment of the dissolution of marriage

1. A marriage shall be considered to be dissolved on the date when the divorce judgement becomes *res judicata*.

2. The court must send a copy of the divorce judgement to the local Register Office for the registration of the divorce within three business days of the date of *res judicata* of the judgement.

Article 3.67. Consequences of divorce to the property interests of the spouses

1. Legal consequences of divorce to the property interests of the spouses shall be produced from the moment of the commencement of divorce proceedings.

2. A spouse other than the one determined to be at fault for the breakdown of the marriage may ask the court to rule that the legal consequences of divorce to the interests of the spouses shall be produced from the day of their actual separation.

Article 3.68. Invalidation of transactions made after the commencement of the divorce proceedings

Transactions related to the joint property of the spouses made by one of the spouses after the commencement of the divorce proceedings may be invalidated by the court in an action brought by the other spouse provided the other spouse can prove that the transaction was made with the aim of prejudicing his or her interests while the third party was in bad faith.

Article 3.69. Surnames of the former spouses

1. On divorce, a spouse may retain his or her married surname or the surname he or she had before the marriage.

2. Where a marriage is dissolved on the basis of the fault of one of the spouses, the court may, at the request of the other spouse, prohibit the spouse at fault from retaining his or her married surname, except in cases where the spouses have children.

Article 3.70. Legal consequences of a divorce on the basis of the fault of one of the spouses

1. Where a divorce is granted on the basis of the fault of one of the spouses, the spouse at fault shall lose the rights of a divorcee under the law or under the marriage contract including the right to maintenance.

2. The other spouse may demand from the spouse responsible for the breakdown of the marriage damages related to the divorce as well as compensation for non-pecuniary damage done by the divorce. This provision shall not be applied where both spouses are responsible for the breakdown of the marriage.

3. At the request of the other spouse the spouse at fault for the breakdown of the marriage shall return the gifts received from him or her except for the wedding ring unless the marriage contract provides otherwise.

4. Where both spouses are responsible for the breakdown of the marriage, both of them shall have a right to demand the return of the immovable gifts given to each other unless more than ten years have elapsed from the gift contract and the immovable property has been transferred to third parties.

Article 3.71. Retention of the right to use the matrimonial dwelling

1. Where the matrimonial dwelling is owned by one of the spouses, the court may make a usufruct order and allow the other spouse to remain in the matrimonial dwelling if their minor children live with him or her.

2. The usufruct order shall be valid until the child (children) attain majority.

3. Where the matrimonial dwelling is rented, the court may award the rights of the lessee to the spouse that remains to live with their minor children or that lacks capacity for work and may evict the other spouse if he or she has been ordered to live separately.

Article 3.72. Mutual maintenance of the former spouses

1. The court when making a divorce judgement shall also make a maintenance order in favour of the spouse in need of maintenance unless the matters of maintenance are settled in the agreement of the spouses concerning the consequences

of divorce. A spouse shall have no right to maintenance if his or her assets or income are sufficient to fully support him or her.

2. Maintenance shall be presumed to be necessary if he or she is bringing up a minor child of the marriage or is incapacitated for employment because of his or her age or state of health.

3. A spouse that was not able to obtain any qualifications for work (complete his or her studies) because of the marriage, common interests of the family or the need to care for the children, shall have a right to demand from the former spouse to cover the costs related to the completion of his or her studies or retraining.

4. The spouse responsible for the breakdown of the marriage shall have no right to maintenance.

5. While making a maintenance order and deciding on its amount, the court shall take into account the duration of the marriage, the need for maintenance, the assets owned by the former spouses, their state of health, age, capacity for employment, the possibility of the unemployed spouse of finding employment and other important circumstances.

6. The amount of maintenance shall be reduced, made temporary or refused if one of the following circumstances exist:

- 1) the marriage lasted for a period not exceeding a year;
- 2) the spouse entitled to maintenance has committed a crime against the other spouse or his or her next of kin;
- 3) the spouse entitled to maintenance has created his or her difficult financial situation through his or her own irresponsible acts;
- 4) the spouse requesting maintenance did not contribute to the growth of their community assets or wilfully prejudiced the interests of the other spouse or the family during the marriage.

7. The court may demand from the spouse obliged to provide maintenance to the other spouse to produce an adequate guarantee of fulfilment of this obligation.

8. The court may make maintenance orders for a lump sum or periodical (monthly) payments or property adjustment.

9. Where divorce is based on the application of one of the spouses because of the

legal incompetence of the other spouse, the applicant spouse must cover the treatment and care expenses of the former incompetent spouse unless the expenses are covered from state social security funds.

10. The maintenance order shall be the basis for the forced pledge of the respondent's assets. If the former spouse defaults on his or her obligation to pay maintenance, his or her assets may be used to make payments in the procedure laid down by the law.

11. Where the maintenance order is for periodical payments, a significant change in the circumstances referred to in paragraph 5 of this Article may warrant the application of either of the former spouses for an increase, reduction or termination of maintenance payments. Periodical payments shall be for the life of the creditor and shall be inflation-indexed annually in the procedure laid down by the Government.

12. After the death of the spouse obliged to pay maintenance, the obligation to pay maintenance is devolved on his or her successors to the extent of his or her estate irrespective of the way the estate is accepted.

13. Where the payee dies or remarries, the maintenance payment shall be terminated. On the payee's death, the right to demand arrears of the maintenance payments shall pass to the payee's successors. The dissolution of the new marriage shall create a right to apply for the renewal of maintenance payments provided the payee is bringing up a child by his or her former spouse or is caring for a disabled child by his or her former spouse. In all other cases the duty of the subsequent spouse to maintain the payee shall take precedence over that of the first former spouse.

CHAPTER V – SEPARATION

Article 3.73. Application for separation

1. One of the spouses may apply to the court for the approval of the separation if due to certain circumstances, which may not depend on the other spouse, their life together has become intolerable (impossible) or can seriously prejudice the interests of their minor children or the spouses are no longer interested in living together.

2. Both spouses may jointly apply to the court for the approval of their separa-

tion if they have made a contract concerning the consequences of their separation providing for the residence, maintenance and education of their minor children as well as for the adjustment of their property and mutual maintenance.

Article 3.74. Counter-applications

1. The defendant in a separation case shall have a right to lodge a counter-claim for divorce.

2. The defendant in a divorce case shall have a right to lodge a counter-claim for separation.

3. Where one of the spouses seeks a divorce while the other spouse applies for separation, the court may make a divorce order on the basis of the fault of one or both of the spouses or it may make a separation order.

Article 3.75. Separation procedure

1. The court shall examine applications for separation in the contentious procedure.

2. Having regard to the interests of the minor children of the spouses as well as to the interests of one of the spouses the court shall take measures to foster a reconciliation of the spouses (Article 3.54 hereof).

3. The court may order provisional protection measures referred to in Article 3.65 hereof.

Article 3.76. Matters to be resolved in making a separation judgement

1. When making a separation judgement, the court must designate the spouse with whom the children are to live, the maintenance of the children and the involvement of the separated father (mother) in the education of their children.

2. Having regard to important circumstances, the court may make an order for the residence of the children with other persons or in a guardianship or care institution.

3. In deciding which of the spouses should have a right to stay in their matrimonial dwelling, first consideration must be given to the spouse with whom the minor children are to live or to the spouse lacking capacity for work.

4. Where the spouses have made a contract as to the consequences of separation (paragraph 2 Article 3.73), the court

shall approve the contract provided that it is consistent with public order, the rights and lawful interests of their minor children or one of the spouses. Having approved the contract, the court shall incorporate its content in the separation judgement.

5. If there is a serious change in the circumstances significant for the matters related to the separation of the spouses, either spouse may seek the reconsideration of the former judgement and a different resolution of matters referred to in paragraph 1 of this Article based on the change in the circumstances.

Article 3.77. Legal consequences of separation

1. When the court makes a separation judgement, it releases the spouses from the obligation to live together, but the other rights and duties of the spouses shall not be extinguished except in cases provided for herein.

2. Separation shall not produce any effects on the rights and duties of the spouses in respect of their minor children except in cases provided for herein.

3. When making a separation judgement, the court must always make a property adjustment order unless those matters are settled in the marriage contract of the spouses.

4. The legal consequences of separation for the property interests of the spouses shall be produced from the initiation of the separation suit. However, the spouse other than the one responsible, in the opinion of the court, for the separation may ask the court to make the legal consequences of separation retroactive to the date on which the spouses ceased to live together.

5. If one of the separated spouses dies, the survivor shall retain all the rights of a surviving spouse under the law, except where the surviving spouse has been declared by the court to be at fault for the separation. The same rule shall apply where the court makes a separation order on the basis of the joint application of the spouses unless the marriage contract of the spouses stipulates otherwise. The surviving spouse, however, shall lose the right of succession to the estate of the deceased spouse.

Article 3.78. Mutual maintenance of the spouses

1. When issuing a separation order, the court may order the spouse at fault for the separation to pay maintenance to the other spouse in need of it unless the maintenance matters are settled in the agreement of the spouses.

2. When making a maintenance order and determining the amount, the court must take into consideration the duration of the marriage, the need for maintenance, the financial position of both spouses, their state of health, age as well as their earning capacity, the unemployed spouse's chances of finding employment and other important circumstances.

3. The court may rule that the spouse under the obligation to pay maintenance to other spouse must provide a security that the obligation will be fulfilled.

4. Maintenance may be ordered as a lump sum of a certain amount or periodical monthly payments or property transfer.

5. The maintenance order shall be the basis for the statutory pledge of the respondent's assets. If a spouse defaults on his or her obligation to provide maintenance, his or her assets may be used to make payments in the procedure laid down by the law.

6. Where maintenance has been ordered in the form of periodical payments, a fundamental change in the circumstances referred to in paragraph 2 of this Article, either spouse may claim an increase, reduction or termination of the payments. Periodical payments shall be indexed annually in the procedure laid down by the Government.

Article 3.79. End of a separation

1. A separation shall end when the spouses start living together again and their life together proves their intention to live together permanently. A separation shall end when, on the joint application of the spouses, the court makes a judgement to end the separation, which revokes its former separation order.

2. On the resumption of their life together, the spouses shall remain separate as to property until they make a new marriage contract and set a new matrimonial regime.

3. The end of separation shall produce effects for third parties only if the spouses make a new marriage contract

and register it in the procedure provided for in Article 3.103 hereof.

4. Where the spouses are separated for more than a year after the date when the court judgement became *res judicata*, either spouse may seek divorce on the basis provided for in point 1 paragraph 1 Article 3.55 hereof.

Article 3.80. Mandatory participation of the state institution for the protection of the child's rights

Where the spouses have children of minor age, the state institution for the protection of the child's rights must participate in the proceedings and present its conclusion on the possible violation of the children's rights in taking decisions on separation matters.

PART III – RIGHTS AND DUTIES OF THE SPOUSES IN PROPERTY

CHAPTER VI – LEGAL REGIME OF PROPERTY OF SPOUSES

SECTION ONE – GENERAL PROVISIONS

Article 3.81. Kinds of legal regime of property of spouses

1. There shall be statutory and contractual legal regime of the property of spouses.

2. The statutory legal regime of the property of spouses shall be governed by Articles 3.87 to 3.100 hereof.

3. The contractual regime of the property of spouses shall be governed by Articles 3.101 to 3.108 hereof.

Article 3.82. Application of Statutory Legal Regime of Property

Where the spouses have not made a marriage contract, their property shall be subject to the statutory regime.

Article 3.83. The right of the spouses to fix their matrimonial regime in their marriage contract

1. When making a marriage contract, the spouses shall have a right to determine their matrimonial regime as they think fit.

2. Provisions of a marriage contract inconsistent with good morality or public order shall be null and void.

Article 3.84. Family assets

1. Any assets referred to in paragraph 2 of this Article owned by either spouse before or during the marriage shall be considered to be family assets. Family assets may be used only to meet the needs of the family.

2. The following assets owned by one or both spouses shall be family assets:

- 1) the family dwelling ;
- 2) movables intended for the use in the household including furniture.

3. Family assets shall include the right to use the family dwelling .

4. Assets referred to in paragraphs 2 and 3 of this Article shall acquire the legal status of family assets on the date of the registration of marriage, but the spouses may use this fact in respect of third parties in good faith only if an immovable is registered in the public register as a family asset.

Article 3.85. Legal regime of family assets

1. Assets referred to in paragraph 2 Article 3.84 hereof, which are the personal property of one of the spouses, may be used, managed or disposed of only in accordance with this Article.

2. The spouse who is the owner of an immovable considered to be a family asset, may transfer ownership rights to it, charge it or encumber the rights to it in any other way only with the written consent of the other spouse. Where the spouses have children of minor age, transactions in respect of an immovable considered to be a family asset require a judicial authorisation.

3. Family assets may not be used against 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.

4. The legal regime of family assets or the composition of the family assets may not be changed by an agreement of the spouses.

Article 3.86. End of the legal regime of family assets

1. The legal regime of family assets shall end on divorce, declaration of the nullity of marriage or separation of the spouses.

2. The court may award the right to use family assets or a certain part of them (usufruct) to the spouse with whom the minor children of the marriage will live. The usufruct shall be valid until the children attain majority.

3. Where the spouses rent a family dwelling , the court may transfer the lease rights to the spouse with whom the children will live or the spouse who lacks earning capacity.

4. The court may award the chattels intended for the use in the household to the spouse who stays in the family dwelling together with the minor children.

SECTION TWO – STATUTORY LEGAL REGIME OF PROPERTY OF SPOUSES

Article 3.87. Definition of the fundamentals of the legal regime of property

1. Under the legal regime the property acquired by the spouses after the commencement of their marriage shall be their joint community property.

2. The property of spouses constitute their joint community property until their separation as to property or until the extinguishment of the joint community property rights in some other way.

Article 3.88. Joint community property

1. Joint community property shall be:

1) property acquired after the formation of marriage in the name of one or both of the spouses;

2) the income and fruits collected from the individual property of a spouse;

3) 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;

4) an enterprise and the income derived from the operations of the enterprise or any other business provided that the spouses took up such business activities after the commencement of the marriage. Where the enterprise was owned by one of the spouses before the marriage, the joint community property shall include the income derived from the operations of the enterprise or any other business and the increase of the enter-

prise (business) after the formation of the marriage;

5) income from the 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 moral or corporal injury, support, allowance or other benefits paid specifically to only one of the spouses, etc.).

2. All property shall be presumed to be joint community property unless it is established that it is the individual property of one of them.

3. Both spouses must be registered as the owners of the joint community property in the public register. Where the property is registered in the name of one of the spouses, it shall be considered to be joint community property provided it is registered as joint community property.

4. On 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.

Article 3.89. Individual property of the spouses

1. The individual property of each spouse shall consist of:

1) property acquired separately by each spouse before the commencement of the marriage;

2) 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;

3) a spouse's personal effects (footwear, clothing, instruments required for the spouse's occupation);

4) the rights to intellectual or industrial property except for the income derived from those rights;

5) 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;

6) 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;

7) property acquired with the separate funds or proceeds from the sale of a separate property with the express intention of the spouse at the time of the acquisition to acquire it as a separate property.

2. The fact of property being a separate individual property of one of the spouses may be proved only by written documents (evidence) except in cases where the law allows to accept the testimony of witnesses or the nature of the property is sufficient proof of it being a separate property of one of the spouses.

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

Article 3.90. Declaration of individual property to be joint community property

1. The court may declare a individual property of one of the spouses to be joint 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.).

2. Where a spouse used both his or her separate funds and the funds owned jointly with the other spouse to acquire a property for his or her own personal needs, the court may declare the property so acquired to be joint community property provided the value of the joint community funds used to acquire such property exceeded the value of the separate funds of the spouse so expended.

Article 3.91. Enterprise (farm, business)

Property required for the operation of an enterprise (farm, business) established by one of the spouses after the formation of the marriage as well as the income of the enterprise (farm, business) 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 (farm, business) shall be joint community property provided that property exists at the moment of divorce.

Article 3.92. Management, use and disposal of joint community property

1. Joint community property shall be used, managed and disposed of by the mutual agreement of the spouses.

2. The consent of the other spouse shall not be required for:

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

3. When making 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 delay would cause 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 reasons, a spouse may enter into a transaction without the consent of the other spouse in accordance with the procedure laid down in Paragraph 2 Article 3.32 hereof.

4. Transactions related to the disposal or encumbrance of a jointly co-owned immovable or the rights to it, also transactions on the alienation of a jointly co-owned enterprise or securities or the encumbrance of the rights to them may be made only by both spouses except where one of the spouses has been given the power of attorney by the other spouse to enter into such a transaction.

5. 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 on the account unless those funds have been made joint community property.

6. Where a transaction has been made without the consent of the other spouse, that other spouse may ratify the transaction within a month of the date when he or she learnt about 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 withdraw from the transaction only if the spouse misrepresented the existence of the other spouse's consent.

Article 3.93. Consent to enter into a transaction

1. Where a spouse does not give the other spouse consent required to enter into a transaction, the interested spouse may seek leave to enter into the transaction in court.

2. The court shall award leave to enter into a transaction only if the interested spouse can prove that the transaction is necessary to meet the needs of the family or the needs of their jointly co-owned business.

Article 3.94. Power of attorney to manage property

1. A spouse may give a power of attorney to the other spouse to manage, use and dispose of their joint community property.

2. Where one of the spouses is away 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.

3. If the spouse is negligent or unreasonable in managing joint community property alone, he or she shall be liable for the losses sustained through his or her fault and shall compensate for them against his or her separate property.

4. Management of property shall be governed *mutatis mutandis* by the rules of Book Four hereof regulating the management of property owned by another person.

Article 3.95. Challenging the competence of managing joint community property

1. Where a spouse is unable to manage community property or does that 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 those of their joint business.

2. Once the grounds for removal disappear, the removed spouse may request the court to allow him or her to manage the community property again.

Article 3.96. Avoidance of transactions

1. Transactions made without the consent of the other spouse and not ratified by him or her later, may be avoided in an action brought by that spouse within a year of the date when he or she learnt about the transaction provided it is proved that the other party to the transaction was in good faith.

2. Transactions that should have been made with a written consent of the other spouse or could only have been made jointly by both the spouses (Paragraph 4 Article 3.92 hereof) may be declared void irrespective of the other party to the transaction being in good or bad faith except in cases where one or both of the spouses used fraud in making 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 was in bad faith.

Article 3.97. Management of the individual property of a spouse

1. A spouse shall use, manage or dispose of his or her individual property at his or her own discretion. Management, use or disposal of property defined herein as family assets shall be subject to the restrictions laid down in this Book.

2. Where a spouse manages his or her individual 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 court the appointment of an administrator for the management of such property. The court may appoint the applicant to be the administrator.

3. 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.

4. A spouse may grant a power of attorney to the other spouse to manage his or her individual property. In such a

case the mutual relations of the spouses in property shall be governed by the rules of Book Two hereof on the regulation of legal agency relations.

5. Where a spouse cannot manage alone his or her individual property and contribute to the needs of the household due an illness or any other objective reason, the other spouse shall have a right to use the individual funds and assets of the spouse incapable of managing alone his or her property for the needs of the household. The rule shall not be applied in cases where the spouses are separated or an administrator has been appointed for the individual property of the spouse unable to manage it alone and make a contribution towards meeting the needs of the household.

Article 3.98. Right to compensation

1. Where the value of the joint community property is increased by adding the individual property of one of the spouses, the spouse the addition of whose property has increased the value of the joint community property shall be entitled to compensation against the community property.

2. A spouse shall be entitled to compensation also in cases when his or her individual funds have been used for the acquisition of joint community property.

3. Each of the spouses must compensate for the reduction of the joint community property if he or she has used it for purposes unrelated to the duties referred to in Article 3.109 hereof, except in cases where he or she can prove that the property has been used to satisfy the needs of the family.

4. The compensations referred to in this Article shall be paid when the spouse's joint co-ownership ends.

Article 3.99. Gifts of the spouses

1. Spouses shall have a right to make gifts of assets to each other in accordance with the rules of Book Six hereof, regulating gift agreements.

2. An agreement on a gift of an immovable shall give rise to legal consequences for the creditors of the donor only if the agreement has been recorded in a public register.

3. The beneficiary spouse shall be liable to the creditors of the donor for the

obligations of the donor that existed at the time the gift agreement was made to the extent of the value of the gift. Where the gift is lost through no fault of the beneficiary, his or her liability for the obligations of the donor shall be extinguished.

Article 3.100. Grounds for termination of joint co-ownership of the spouses

Joint co-ownership rights of the spouses shall end on:

- 1) the death of one of the spouses;
- 2) presumption of the death of one of the spouses or the judicial declaration of one of the spouses as missing;
- 3) the declaration of the nullity of the marriage;
- 4) divorce;
- 5) separation;
- 6) the judicial partitioning of the community property;
- 7) the change of the legal regime of property in accordance with the mutual agreement of the spouses;
- 8) in other cases laid down by the law.

SECTION THREE – CONTRACTUAL LEGAL REGIME OF PROPERTY OF SPOUSES

Article 3.101. Marriage -contract

A marriage contract shall mean an agreement of the spouses defining their property rights and duties during the marriage as well as on divorce or separation.

Article 3.102. Making a marriage -contract

1. A marriage contract may be made before the registration of the marriage (pre-nuptial contract) or at any time after the registration of the marriage (post-nuptial contract).

2. 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.

3. A minor may enter into a marriage settlement only after the registration of the marriage.

4. A spouse declared by the court as having limited active capacity 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.

Article 3.103. The form of a marriage contract

1. A marriage contract must be entered into before the notary public.

2. A marriage contract as well as its subsequent amendments must be registered in the register of marriage contracts maintained by mortgage institutions in the procedure laid down by the rules of the register. A marriage contract may be amendment only with leave of the court. In no case may the amendments of a marriage contract be retroactive.

3. A marriage contract 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 the third parties knew of the marriage contract and its amendments.

Article 3.104. Content of a marriage contract

1. Spouses shall have a right to stipulate in the marriage contract that:

1) property acquired both before and during the marriage shall be the individual property of each spouse;

2) individual property acquired by a spouse before the marriage shall become ~~joint~~ community property after the registration of the marriage;

3) property acquired during the marriage shall be joint community property.

2. In their marriage contract the spouses may stipulate that one of the matrimonial legal regimes referred to in Paragraph 1 of his Article shall be applied to their entire property or only to its certain part or to specified chattels.

3. In their marriage contract the spouses may define a matrimonial legal regime both in respect of their existing and future property.

4. A marriage contract may contain the 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 the procedure for partitioning property on divorce and other matters related to the spouse's mutual relations in property.

5. 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.

Article 3.105. Nullity of conditions in a marriage contract

Conditions stipulated in a marriage contract shall be null and void if they:

- 1) contradict the mandatory legislative rules, good morality and public order;
- 2) change the legal regime in respect of the individual property of one of the spouses or in respect of their joint community property (Articles 3.88 and 3.89) where the matrimonial legal regime the spouses have chosen provides for joint community property;
- 3) prejudice the principle of equal parts in joint community property enshrined in Article 3.117 hereof;
- 4) restrict the passive or active legal capacity of the spouses;
- 5) regulate the personal relations of the spouses unrelated to property;
- 6) establish or change the personal rights and duties of the spouses towards their children;
- 7) limit or annul the right of one (or both) of the spouses to maintenance;
- 8) limit or annul the right of one (or both) of the spouses to bring legal proceedings in court;
- 9) change the procedure and conditions of succession in property.

Article 3.106. Amendments and termination of a marriage contract

1. 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.

2. An amendment to a marriage contract or its termination may be used against third parties provided the amendment or termination of the marriage contract has been registered in the register of marriage contracts settlements. This rule shall not be applied if at the time of the transaction the third parties knew of the amendment or termination of the marriage contract .

3. At the request of one of the spouses a marriage contract may be amended or terminated by the judgement of the court on the grounds provided for in Book Six hereof for the amendment or termination of a marriage contract.

4. 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 in court such an amendment or termination and require the restoration of their rights.

Article 3.107. Termination of a marriage contract

A marriage contract shall terminate on divorce or on separation except in respect of the duties which under the agreement remain in force on divorce or separation. The termination of a marriage contract shall be registered in the register of marriage contracts.

Article 3.108. Nullity of a marriage contract

1. In addition to the grounds provided for in Article 3.105 hereof, 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 One hereof.

2. The court may declare a marriage contract null and void at the request of one of the spouses if the agreement is in serious breach of the principle of equality or is especially unfavourable for one of the spouses.

3. 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.

CHAPTER VII – CIVIL LIABILITY OF SPOUSES FOR OBLIGATIONS IN PROPERTY

Article 3.109. Obligations discharged from community property

1. The following obligations shall be discharged from the community property of spouses:

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

2) obligations related to the costs of managing community property;

3) obligations related to the maintenance of the household;

4) obligations related to legal expenses where the action is related to community property or the interests of the family;

5) obligations arising from transactions made by one of the spouses with the consent of the other spouse or ratified by the latter subsequently 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;

6) joint and several obligations of the spouses.

2. Either spouse shall have a right to enter into transactions necessary to maintain the family and to secure the upbringing and education of the children. Both spouses shall be jointly and severally liable for the obligations arising from such transactions whatever their matrimonial regime may be except in cases where the price of the transactions is clearly too high and unreasonable.

3. Joint and several liability of the spouses shall not be created where one of the spouses takes a loan or acquires goods under credit purchase, which is not necessary for the needs of the family, without the consent of the other spouse.

4. In creating and discharging obligations related to the needs of the family the spouses shall be as prudent and careful as in creating and discharging their own personal obligations.

Article 3.110. Liability of spouses for obligations created before the registration of marriage

1. Community property may not be used to discharge the obligations of spouses created before the registration of marriage except those charged against the relevant spouse's share in community property.

2. The claims of the spouses' common creditors to be discharged from community property shall take precedence over the claims of the separate creditors of each spouse. This rule shall not apply to mortgage creditors.

Article 3.111. Obligations arising from gift agreements or succession

Where one of the spouses receives a gift or comes into inheritance, the obligations arising therefrom may not be paid from community property unless the gift or the inheritance has been received as community property.

Article 3.112. Liability for the obligations of one of the spouses

1. Claims arising from the transactions made after the registration of marriage by one of the spouses without the consent of the other spouse may be discharged from community property if the individual property of the spouse is not sufficient to meet the claims of the creditors.

2. Legal expenses shall be discharged from the individual property of a spouse if the lawsuit is not related to community property or the interests of the family.

Article 3.113. Enforcement against the individual property of spouses

Where the community property is not sufficient to meet the joint and several claims of creditors, the claims shall be discharged met from the individual property of the spouses.

Article 3.114. Separation of the liability of spouses

1. If the marriage contract stipulates that property acquired both before and during marriage is to be treated as the individual property of one and the other spouse, the spouses shall be liable for their obligations only by their individual properties. In such cases the spouses shall be jointly and severally liable for their joint obligations and the obligations in the interests of the family.

2. Spouses shall not be held to be each other's guarantors or surety in obligations arising in the management or disposal of property that is a individual property of one and the other spouse.

Article 3.115. Entitlement to compensation

1. The spouse whose fines for breaches of law or damages incurred through his or her actions have been paid from the joint community property shall be

obliged to compensate for the reduction of the joint community property.

2. If a transaction was made to meet the personal needs of only one of the spouses by using joint community property, that spouse shall be obliged to compensate for the reduction of the joint community property.

CHAPTER VIII – DIVISION OF JOINT COMMUNITY PROPERTY

Article 3.116. Ways of division

1. On the application of one of the spouses or their creditors, joint community property may be divided by the mutual agreement of the spouses or by a court judgement during marriage and on divorce or separation.

2. The rules of this Chapter shall be applicable where the spouses have not made a marriage contract.

Article 3.117. Shares of the spouses in joint community property

1. The shares of the spouses in joint community property shall be presumed to be equal.

2. Departure from the principle of the equality of the shares of the spouses in joint community property shall be permitted only in cases provided for herein.

3. 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 a compensation to the other spouse. Upon the presentation of an adequate security for this liability, the court may defer the payment of the compensation for no longer than two years.

4. On the death of one of the spouses, his or her share in the joint community property shall be inherited according to the rules of Book Five hereof.

Article 3.118. Balance of property

1. Before partitioning the joint community property of the spouses, first the community property and the respective individual property of the spouses shall be established.

2. The community property shall first be used to pay (award) 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).

3. After establishing the individual property of the spouses and deducing their personal debts from it, a balance sheet of compensations shall be drawn up indicating the amounts one or the other spouse must pay by way of compensating for the community property or receive from the community property.

4. Where the balance of community property is positive it is divided equally between the spouses, except in cases provided for herein.

Article 3.119. Assessment of the value of property

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

Article 3.120. Property not to be partitioned

1. Property to be partitioned shall not include chattels intended for the needs of the minor children of the marriage or the spouses' clothing, personal effects, personal property interests and non-property rights related only to that particular spouse.

2. Property intended to meet the needs of the minor children referred to in Paragraph 1 shall go, without deducing any compensations, to the spouse with whom the minor children are to live, while the remaining part of the property of personal nature goes to one and the other spouse.

Article 3.121. Attribution of individual property to joint community property

1. By the mutual consent of the spouses, property defined as the individual property of the spouses in the marriage contract may be attributed to the joint community property subject to partitioning.

2. Arrangements referred to in Paragraph 1 shall be prohibited if they can cause damage to the creditors of the spouse. Where due to such arrangements the claims of the creditor cannot be fully covered from the individual property of a spouse, the debt shall be charged against

the spouse's share in the community property.

Article 3.122. Security for the claims to a share in the community property

At the request of one of the spouses or a spouse's creditors, the court may seize the joint community property of the spouses or to 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 an 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 the creditors.

Article 3.123. Departure from the principle of the equality of the shares of the spouses in the community property

1. Having regard to the interests of the minor children, the health state 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 spouse's 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.

2. 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 by a lump sum or certain property given in payment.

3. Where, less than a year before the institution of the action for the partitioning of the 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 individual property, the portion of this spouse in the community property may be reduced while establishing the respective portions of the spouses in the community property by the value of the lost community property.

4. The share of one of the spouses in the community property may also 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 the institution of the lawsuit for the division of property.

Article 3.124. Division of property by the court judgement without divorce

Where one of the spouses has been declared incapable or of limited active capacity or where one of the spouses manages community property in a loss-making way or by his or her actions jeopardises the joint community property of the spouses or the interests of the family or without any justified reason fails to contribute to the needs of the family, the other spouse shall have a right to bring an action seeking a division of the property.

Article 3.125. Registration of division of property

The agreement of the parties or the judgement of the court under which the joint community property of the spouses is divided must be registered with the mortgage office that has registered the marriage contract or the division of property by making a relevant entry in the register of marriage contracts .

Article 3.126. Guarantees of the rights of the creditors

1. The creditors of one or both of the spouses shall have a right to participate as third parties in the lawsuit for the division of joint community property and present their own individual claims.

2. 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 he or she is aware of and notify the creditors of the institution of proceedings by sending them a copy of the application.

Article 3.127. Property to be divided

1. The court shall divide the property the spouses acquired as joint community property before the institution of the proceedings or before the day the court hands down its judgement.

2. On the application of one of the spouses the court may decide to divide only the property acquired before the separation of the spouses.

3. 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 for the other spouse's share in 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 to other important circumstances.

Article 3.128. Mutual obligations of spouses after the division of property without divorce

1. The spouse on whose application the property has been divided must, to the extent of his or her possibilities, contribute to the maintenance of the household and the upbringing and education of the children.

2. Where for objective reasons the other spouse cannot contribute to the maintenance of the household or the upbringing and education of the children, all such expenses must be covered by the spouse on whose application the property has been divided.

3. 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 the third parties.

Article 3.129. Limitations

Claims for the division of joint community property, except for immovables, may be made within five years of the date of the separation of the spouses.

PART IV – MUTUAL RIGHTS AND DUTIES OF CHILDREN AND PARENTS

CHAPTER IX – CONSANGUINITY AND AFFINITY

Article 3.130. Concept of consanguinity

1. Consanguinity is relationship by blood of persons descended from the same stock or common ancestor.

2. Consanguinity shall give rise to legal consequences only in cases provided for by the law.

3. Relationship between adopted children (and their descendants) and their adoptive parents (and their kindred) shall be treated as consanguinity.

Article 3.131. Lines of consanguinity

Two lines of consanguinity – direct and collateral consanguinity – shall be distinguished.

Article 3.132. Direct consanguinity

1. Direct consanguinity is that which subsists between the ancestor and the descendants in the direct line from one of the other (great-grandparents, grandparents, parents, children, grandchildren, great-grandchildren, etc.)

2. Consanguinity upward from the descendant to the ancestor is the direct ascending line (grandchildren, children, parents, grandparents, etc.)

3. Consanguinity downward from the ancestor to the descendant is the direct descending line (grandparents, parents, children, grandchildren, etc.)

Article 3.133. Collateral consanguinity

Collateral consanguinity is that which subsists between persons who have the same ancestors, but who do not descend one from the other (siblings, cousins, uncles or aunts, nephews and nieces, etc.)

Article 3.134. Degree of consanguinity

1. A degree of relationship is measured by the number of related births other than the birth of the ancestor (ancestors).

2. Only the degrees of relationship laid down by the law shall give rise to legal consequences.

Article 3.135. Close relatives

Close relatives shall embrace persons related by direct consanguinity up to the second degree of consanguinity inclusively (parents and children, grandparents and grandchildren) and persons related in the second degree of kinship by collateral consanguinity (siblings).

Article 3.136. Affinity

1. Affinity is the connection, in consequence of a marriage, between one of the spouses and the kindred of the other spouse (stepson, stepdaughter, stepfather, stepmother, father-in-law, mother-in-law, daughter-in-law, etc.) as well as between the kindred of both spouses (the husband's brother or sister and the wife's brother or

sister, the husband's father and mother and the wife's father or mother, etc.)

2. Affinity shall give rise to legal consequences only in cases provided for by the law.

CHAPTER X – FILIATION

SECTION ONE – GENERAL BASIS FOR FILIATION

Article 3.137. Legitimate filiation of a Child

1. Legitimate filiation of a child shall be confirmed in the procedure laid down in Articles 3.138 to 3.140 hereof.

2. The mutual rights and duties of the child and his or her parents shall be based on the legitimate filiation of the child.

3. A child's legitimate filiation from the parents shall be confirmed from the date of birth and shall create the respective rights and duties laid down by the law from that date.

Article 3.138. Proof of legitimate filiation

The parents of a child shall be proved by the record of birth in the Registrar's Office and by the certificate of birth issued on the basis thereof.

Article 3.139. Maternal affiliation

1. A woman shall be entered as a child's mother in the records of a Registrar's Office on the basis of the certificate of the child's birth issued by a hospital.

2. Where the child is born not in a hospital, the certificate of the child's birth shall be issued by a medical centre that makes a postnatal examination of the mother's and the baby's health.

3. If the child is born not in a hospital and no postnatal examination of the mother's and the baby's health is made, the certificate of the child's birth shall be issued by a consulting commission of doctors in the procedure laid down by the Government. According to such a certificate the mother of the baby is the woman in respect of whom the consulting commission of doctors have no doubt that it was she who gave birth to the baby.

4. If the record of the child's birth contains no data on the child's mother or if the maternity of the child has been successfully contested, the child's mother may

be established by the court in an action filed by the woman who considers herself to be the child's mother, by the adult child, by the child's father or guardian/curator or by the state institution for the protection of the child's rights.

Article 3.140. Paternal affiliation

1. Where a married woman gives birth to a baby, although the baby may have been conceived before the marriage, the man identified as the spouse of the baby's mother in the marriage record or the marriage certificate issued on the basis thereof shall be identified as the baby's father in the record of the baby's birth.

2. Where a child is born within three hundred days of the date of separation or the annulment of the marriage or divorce or the death of the husband, the ex-spouse of the mother shall be recognised as the child's father.

3. Where a mother who contracted a new marriage within less than three hundred days of the dissolution of her previous marriage gives birth to a baby, the new spouse of the mother shall be considered to be the baby's father.

4. Where an unmarried woman gives birth to a baby after more than three hundred days have elapsed from the dissolution of her previous marriage, the man who has acknowledged his paternity in the procedure established in this Book or whose paternity has been established by a judicial judgement may be identified as the baby's father in the record of the baby's birth.

5. Where a divorced mother gives birth to a baby within less than three hundred days of the divorce, the baby's mother, her ex-husband and the man who acknowledges his paternity of the child shall have a right to file a joint application seeking that the man who acknowledges his paternity of the child be identified as the baby's father. After the court approves such a joint application, the man who acknowledges his paternity of the child rather than the ex-husband of the baby's mother shall be entered in the record as the baby's father.

SECTION TWO – ACKNOWLEDGEMENT OF PATERNITY

Article 3.141. Conditions for the acknowledgement of paternity

1. Where the record of the baby's birth contains no data on the baby's father, the paternity of the baby may be determined on the basis of the application of the man who considers himself father of the baby.

2. Where a baby is born to a married mother or the baby is born within less than three hundred days of the dissolution of the marriage, the paternity of the baby may be determined on the basis of an application provided the paternity of the present or former spouse of the mother has been successfully contested.

3. If the adjudication of paternity on the basis of an application acknowledging paternity has been contested, determination of paternity on another application acknowledging paternity is inadmissible.

4. There shall be no period of limitation applicable to acknowledgement of paternity.

Article 3.142. Procedure for acknowledging paternity

1. The man considering himself the father of a child shall have a right to file an application of a standard form certified by a notary public with the Registrar's Office seeking to be recognised as the father of the child.

2. Where the child has attained the age of 10, the Registrar's Office may accept an application for the recognition of the child's paternity only with a written consent of the child.

3. Where the man acknowledging his paternity of a child is a minor, the filing of an application for the recognition of paternity with the Registrar's Office requires the written consent of the minor's parents, guardians or curators or care institutions. If the parents, guardians or curators or care institutions refuse to give their consent, such a leave may be handed down by the court at the minor's request.

Article 3.143. Acknowledging paternity before the child's birth

1. If there are circumstances that will bar the filing of an application acknowledging the paternity of a child after the birth of the baby, the man considering himself the father of the child conceived but not yet born may file a joint application with the child's mother for the recog-

niton of his paternity for the period of pregnancy with the Registrar's Office of the district where the child's mother resides.

2. The application acknowledging the paternity of a child before the child's birth shall be accompanied with the certificate of pregnancy issued by a medical centre.

3. Where before the child's birth the child's mother marries the man who has filed an application acknowledging his paternity of the child, or another man, the paternity of the child may not be confirmed after the birth of the child on the basis of that application.

4. Where the child's mother or the man who has filed an application acknowledging the paternity of the child before the birth of the child withdraws the application before the birth of the child has been recorded with the Registrar's Office, the child's paternity on the basis of that application shall not be registered.

Article 3.144. Acknowledging paternity without the consent of the child's mother

1. Where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the child's father for the recognition of his paternity, or the parents or guardian/curator of the man who considers himself the father of the child, but who is a minor or of limited legal competence, refuse to recognise his paternity or the child of 10 or over does not give his or her written consent, the application acknowledging paternity may be considered a valid basis for the registration of paternity if the court approves the application.

2. In examining an application acknowledging paternity where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the man acknowledging to be the child's father, the court must require that the child's father adduce evidence corroborating his paternity of the child.

3. The application acknowledging the paternity of a child may not be registered without the consent of the child who is of full age.

Article 3.145. Examination of the application for the approval of the acknowledgement of paternity

1. The court shall examine applications for the approval of the acknowledgement of paternity in a simplified procedure.

2. The *res judicata* judgement on the approval of the application acknowledging a child's paternity shall be sent to the Registrar's Office that has registered the birth of the child within three business days.

3. Where the application for the approval of the acknowledgement of a child's paternity is contested by the parents or guardians/curators of the minor or the person of limited legal capacity who considers himself the father of the child, the application shall be submitted to the court to be examined by contentious proceedings

SECTION THREE – PATERNITY AFFILIATION

Article 3.146. Conditions for paternity affiliation

1. Where the child is born out of wedlock, and in the absence of paternal acknowledgement, paternity affiliation may be determined by the court.

2. Where a child is born to a married woman or the child's paternity has been ascertained on the basis of an application acknowledging the child's paternity, paternity affiliation is possible only after a successful contesting of the data concerning the child's father contained in the record of the child's birth.

3. The paternity of a dead person may be ascertained only if the person had offspring.

Article 3.147. Persons entitled to petition for Paternity Affiliation

1. Where a child is born out of wedlock or the data on the father contained in the record of the child's birth have been successfully contested, an action for the paternity affiliation may be filed by the man considering himself the father of the child. The child and the child's mother shall act as defendants in such an action.

2. If a child's father refuses to acknowledge his paternity by an application for the approval of his acknowledgement of

the child's paternity or if a child's father is dead, the action for paternity affiliation may be filed by the child's mother or the child after having attained full active capacity or the child's guardian or curator or the state institution for the protection of the child's rights or the descendants of a child who is dead.

3. Having determined a child's paternity, the court shall send its *res judicata* judgement to the Registrar's Office that has registered the child's birth within three business days.

Article 3.148. Grounds for paternity affiliation

1. Grounds for paternity affiliation shall be scientific evidence (conclusions of expert examinations on consanguinity determination) and other means of proof provided for in the Code of Civil Procedure. If the parties refuse to undergo expert examination, the child's paternity may be adjudicated on the basis of facts that have a sufficient evidential value, such as the child's mother's and the putative father's life together, their joint participation in the upbringing and maintenance of the child and other evidence.

2. If the defendant refuses expert examination, the court having regard to the circumstances of the case may treat such a refusal as proof of the defendant's paternity of the child.

SECTION FOUR – CONTESTING PATERNITY (MATERNITY)

Article 3.149. Conditions for contesting paternity (maternity)

1. Data on the mother or father of a child contained in the record of the child's birth may be contested only in court.

2. Data on the mother or father of a child entered in the record of the child's birth on the basis of a *res judicata* judicial decision may not be contested.

Article 3.150. Grounds for contesting paternity (maternity)

1. The paternity of a child born to a married couple or within three hundred days of the dissolution of marriage may be contested only by proving that the person cannot be the father of the child.

2. The maternity or paternity of a child adjudicated on the basis of an appli-

cation acknowledging parentage may be contested by proving that the child's mother or father not the biological parent of the child.

Article 3.151. Persons entitled to file an action for contesting paternity (maternity)

1. Actions for contesting paternity or maternity may be filed by the person entered in the record of the child's birth as the child's mother or father, or the person who, although not recorded as the child's mother or father in the record of the child's birth, considers himself the mother or the father of the child, or the parents or guardians/ curators of the minor entered in the record of the child's birth as the child's father, or the child on attaining majority, or a minor on attaining full active capacity.

2. Where the child's mother or father is legally incapable or of limited active capacity, an action for contesting maternity or paternity may be filed by his or her guardians or curators.

3. An action for contesting the paternity of a man who is dead may be filed by his descendants if the person recorded as the child's father died within the limitation period provided for in Article 3.152 hereof.

Article 3.152. Limitation period for proceedings

1. The limitation period for filing a suit for contesting paternity (maternity) shall be one year as from the day when the plaintiff became aware of the disputed data in the record of the child's birth or of certain circumstances giving reason to believe that the data are not truthful.

2. Where the persons recorded in the record of the child's birth as a child's mother or father became aware of such a record at the time when they were minors or legally incapable, the one-year limit shall be calculated from the day they attained majority or full active capacity..

3. The res judicata court judgement on the annulment of paternity (maternity) shall be sent to the Registrar's Office that registered the child's birth within three business days of its effective date.

Article 3.153. Mandatory participation of the agency for the protection of the child's rights

In adjudicating paternity or disputes over paternity the participation of the agency for the protection of the child's rights shall be mandatory.

SECTION FIVE – ARTIFICIAL INSEMINATION

Article 3.154. Legal regulation of artificial insemination

The conditions, mode, procedures of artificial insemination as well as matters related to the paternity (maternity) of a child born from artificial insemination shall be regulated by other laws.

CHAPTER XI – PARENTAL RIGHTS AND DUTIES IN RESPECT OF THEIR CHILDREN

SECTION ONE – PARENTAL AUTHORITY

Article 3.155. Substance of paternal authority

1. Until they attain majority or emancipation, children shall be cared for by their parents.

2. Parents shall have a right and a duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child should be ready for an independent life in society.

Article 3.156. Equality of paternal authority

1. The father and the mother shall have equal rights and duties in respect of their children.

2. Parents shall have equal rights and duties by their children irrespective of whether the child was born to a married or unmarried couple, after divorce or judicial nullity of the marriage or separation.

Article 3.157. Representation of children

1. Legally incapable children shall be represented by their parents under the law, except where the parents have been declared legally incapable by a court judgement.

2. Parents shall represent their children on the presentation of the child's birth certificate.

Article 3.158. Authority of minor-aged parents

1. Minor parents with full active capacity shall have all personal rights and duties in respect of their children.

2. Minor parents who are legally incapable or of limited active capacity shall have a right to live together with their child and participate in the child's education. In such cases a guardian/foster person shall be appointed to the child in the procedure provided for in this Book hereof.

3. On attaining majority or full active capacity, the parents shall acquire all the rights and duties in respect of their children.

Article 3.159. Mandatory exercise of parental authority

1. A father's or mother's surrender of the rights and duties by his or her underage children shall be null and void.

2. Parents shall be jointly and severally responsible for the care and education of their children.

3. Parental authority may not be used contrary to the interests of the child.

4. Failure to exercise parental authority shall be subject to legal responsibility under the law.

Article 3.160. End of parental authority

1. Parental rights and duties shall end when the child attains majority or full active capacity.

2. In certain cases considered in the light of the child's interests, parental authority may be limited on a temporary or permanent basis or the child may be separated from the parents in the procedure laid down in this Book hereof.

SECTION TWO – CHILDREN'S RIGHTS AND DUTIES

Article 3.161. Children's rights

1. Every child shall have an inalienable right to life, healthy development and a name and surname from birth.

2. A child shall have a right to know his or her parents unless that prejudices

his or her interests or the law provides for otherwise.

3. A child shall have a right to live with his or her parents, be brought up and cared for in his or her parents' family, have contact with his or her parents no matter whether the parents live together or separately, have contact with his or her relatives, unless that is prejudicial to the child's interests.

4. Children shall have no ownership rights to the property of their parents and the parents shall have no ownership rights to the property of their children. Children's property rights are defined in this and the other Books hereof.

5. Children born within or outside marriage shall have equal rights.

6. Children's rights shall not be affected by their parents' divorce, separation or nullity of marriage.

Article 3.162. Children's duties

Children shall owe respect to their parents and perform their duties by their parents diligently.

Article 3.163. Assurance of children's rights

1. The rights of minor-aged children shall be assured by the parents.

2. The rights of children deprived of parental care shall be assured by the guardian/curator according to the rules laid down in this Book.

3. After a minor attains full active capacity, the protection of his or her rights shall be his or her own responsibility.

4. If the parents or guardians/curators abuse their children's rights, measures to defend the children's rights may be taken by the state institution for the protection of the child's rights or a prosecutor.

Article 3.164. Involvement of a minor in the assurance of his or her rights

1. In considering any question related to a child, the child, if capable of formulating his or her views, must be heard directly or, where that is impossible, through a representative. Any decisions on such a question must be taken with regard to the child's wishes unless they are contrary to the child's interests. In making a decision on the appointment of a child's guardian/curator or on a child's adoption,

the child's wishes shall be given paramount consideration.

2. If a child considers that his or her parents abuse his or her rights, the child shall have a right to apply to a state institution for the protection of the child's rights or, on attaining the age of 14, to bring the matter before the court.

SECTION THREE – PERSONAL PARENTAL RIGHTS AND DUTIES

Article 3.165. Substance of personal parental rights and duties

1. Parents shall have a right and duty to bring up their children; they shall be responsible for their children's education and development, their health and spiritual and moral guidance. In performing these duties, parents shall have a priority right over the rights of other persons.

2. Parents must create conditions for their children to learn during their compulsory school age.

3. All questions related to the education of their children parents shall decide by mutual agreement. In the event of the lack of agreement, the disputed matter shall be resolved by the court.

Article 3.166. Giving a child a name

1. Every child shall be given a name by his or her parents.

2. A child may be given two names.

3. A child shall be given a name by the mutual agreement of the parents. Where the child's mother and father cannot agree on the name, the child shall be given a name by a judicial order.

4. While registering the birth of a child whose parents' identity is not known, the child shall be given a name by the state institution for the protection of the child's rights.

Article 3.167. Giving a child a surname

1. Every child shall be given his or her parents' surname.

2. Where the surnames of the child's parents are different, the child shall be given the mother's or the father's surname by the mutual agreement of the parents. If the parents cannot agree, the child shall be given the surname of one of the parents by a judicial order.

3. While registering the birth of a child whose parents' identity is not known, the child shall be given a surname by the state institution for the protection of the child's rights.

4. The grounds and procedures for changing a child's name or surname shall be subject to the Rules of the Registration of Civil Status approved by the Minister of Justice.

Article 3.168. A child's residence

1. An underage child's residence shall be determined in accordance with the rules of Book Two hereof.

2. A child may not be separated from his or her parents against his or her will, except in cases provided for in this Book.

3. Parents shall have a right to demand the return of their children from any person who keeps them against the law or a court judgement.

Article 3.169. A child's residence where the parents are separated

1. Where the parents are separated, the child's residence shall be decided by the mutual agreement of the parents.

2. In the event of a dispute over the child's residence, the child's residence shall be determined by a residence order awarded by the court in favour of one of the parents.

3. If the circumstances change or if the parent with whom the child was to live lets the other parent live with and bring up the child, the other parent may file a second suit for the determination of the child's residence.

Article 3.170. The right of the separated parent to have contact with the child and be involved in the child's education

1. The father or the mother who lives separately from the child shall have a right to have contact with the child and be involved in the child's education.

2. A child whose parents are separated shall have a right to have constant and direct contact with both the parents irrespective of their residence.

3. The father or the mother with whom the child resides may not interfere with the other parent's contacts with the

child or involvement in the child's education.

4. Where the parents cannot agree as to the involvement of the separated father or mother in the education of and association with the child, the procedure of the separated parent's association with the child and involvement in the child's education shall be determined by the court.

5. The separated father or mother shall have a right to receive information about the child from all the institutions and authorities concerned with the child's education, training, health care, protection of the child's rights, etc. Such information may be denied only in cases where the child's life or health is imperilled by the mother or the father and in cases provided for by the law.

6. The refusal of authorities, organisations, institutions or natural persons to provide information to the parents about their children may be brought before the court.

Article 3.171. Contact with the child and involvement in the child's education in special circumstances

Parents shall maintain contact and be involved in the education of the child who is placed in a special situation (detention, arrest, imprisonment, in-patient clinic, etc.) in the procedure laid down by the law.

Article 3.172. Contact of other relatives with the child

Parents (or guardians/curators if there are no parents) shall be obliged to create conditions for the children to associate with their next of kin provided that it is consistent with the children's interests.

SECTION FOUR – DISPUTES OVER CHILDREN

Article 3.173. Disputes over the name or surname of the child

1. If a child's parents cannot agree on a name or surname to be given to the child, the child's father, mother or the parents (guardians/curators) of the child's legally incapable minor-aged parents shall have a right to petition to the court for an order giving the child a name or a surname.

2. The court shall deal with a petition for an order giving a child a name or a surname in the simplified procedure and, having heard the parents or having received their written explanations, shall hand down such an order.

Article 3.174. Disputes over a child's residence

1. Petitions for the determination of a child's residence may be filed by the child's father, mother, also by the parents or guardians/curators of the child's minor-aged parents of limited active capacity.

2. The court shall resolve the dispute having regard to the interests of the child and the child's wishes. The child's wishes may be disregarded only if they are contrary to the best interests of the child.

Article 3.175. Disputes of separated parents over contact with the child or involvement in the education of the child

1. Petitions for contact or involvement in the child's education orders may be filed by the child's father, mother or the parents (guardians/curators) of the child's legally incapable minor-aged parents.

2. The court shall determine the procedure for the separated parent's contact with the child by taking into consideration the child's interests and by creating a possibility for the separated parent to be involved in the education of the child to the greatest extent possible. Minimal contact with the child may be ordered only in cases where constant maximal contact is prejudicial to the child's interests.

Article 3.176. Disputes over the child's contact with his or her close relatives

1. If the parents refuse to create conditions for their children to have contact with their close relatives, the state institution for the protection of the child's rights shall obligate the parents to create such conditions.

2. The state institution for the protection of the child's rights may refuse to obligate the parents to create conditions for their child's contact with his or her next of kin if such contact is contrary to the child's interests.

3. If the parents fail to comply with the obligation of the institution for the protection of the child's rights or the child's next of kin do not agree with the decision

of the state institution for the protection of the child's rights refusing to oblige the child's parents to create conditions for their contact with the child, the child's next of kin may bring the matter before the court.

4. The court having regard to the child's interests may oblige the parents to create conditions for their child's contact with the close relatives provided it is not contrary to the child's interests.

Article 3.177. The child's right to express his or her views

When adjudicating on disputes over children, the court must hear the child capable of expressing his or her views and ascertain the wishes of the child.

Article 3.178. Mandatory participation of the state institution for the protection of the child's rights

1. The state institution for the protection of the child's rights must participate in the examination of disputes over children.

2. Having investigated the conditions in the family environment, the state institution for the protection of the child's rights shall present its opinion to the court. In adjudicating the dispute, the court shall take into consideration not only the opinion, but also the wishes of the child and the evidence adduced by the other parties.

SECTION FIVE – RESTRICTION OF PARENTAL AUTHORITY

Article 3.179. Separation of parents and children

1. Where the parents (the father or the mother) do not live together with the child for objective reasons (illness, etc.) and the court has to decide where the child is to live, the court may decide to separate the child from the parents (the father or the mother). Where only one of the parents is affected by unfavourable circumstances while the other parent can live and bring up the child, the child shall be separated only from that parent.

2. The child separated from the parents shall retain all the personal and property rights and duties based on consanguinity.

3. When a child is separated from the parents (the father or the mother), the

parents lose their right to live together with the child or demand the return of the child from other persons. The parents may exercise their other rights in so far as that is possible without living together with the child.

Article 3.180. Conditions, methods and consequences of the restriction of parental authority

1. Where the parents (the father or the mother) fail in their duties to bring up their children or abuse their parental authority or treat their children cruelly or produce a harmful effect on their children by their immoral behaviour or do not care for their children, the court may make a judgement for a temporary or unlimited restriction of parental power (that of the father or the mother.)

2. The court shall make judgements for temporary or unlimited indefinite restriction of parental authority (that of the father or the mother) by having regard to the circumstances of the case that require a restriction of parental authority. Parental authority may be restricted unlimitedly only where the court makes the conclusion that the parents (the father or the mother) do very great harm to the development of the child or do not care for the child and no change in the situation is forthcoming.

3. Temporary or unlimited restriction of parental authority involves the suspension of the personal and property rights of the parents based on consanguinity and under the law. The parents, however, shall retain the right of visitation, except where that is contrary to the child's interests. Where parental authority is restricted unlimitedly, the child may be adopted without the consent of the parents.

4. Restriction of parental authority shall extend only to the children and to the parent in respect of whom the court has made the judgement.

Article 3.181. Cancellation of the restriction of parental authority or the replacement of the kind of limitation with another kind of limitation

1. The separation of a child from the parents (the father or the mother) may be revoked after the disappearance of the circumstances that caused the order for separation.

2. A temporary or unlimited restriction of parental authority may be revoked on the proof that the parents (the father or

the mother) have changed their conduct and can bring up their child and if the cancellation of the restriction is not contrary to the interests of the child.

3. Where the circumstances have changed, but the grounds for a complete cancellation of the unlimited restriction of parental authority are insufficient, the indefinite limitation of parental authority may be replaced with a temporary restriction of parental authority.

4. If it transpires that the circumstances why the child may not live together with the parents remain after the cancellation of the temporary or unlimited restriction of parental authority, the temporary or unlimited restriction of parental authority may be replaced with an order for the separation of the child from the parents.

5. Where the parents (the father or the mother) separated from their children exercise their parental authority contrary to the interests of the children, their parental authority may be subject to temporary or unlimited restriction.

6. Restriction of parental authority may be revoked only if the child has not been adopted.

Article 3.182. Persons entitled to seek restriction of parental authority or the cancellation of the limitation of parental authority

1. An application for the separation of a child from the parents (the father or the mother) may be filed by the child's parents or close relatives or the state institution for the protection of the child's rights or a public prosecutor.

2. An action for a temporary or unlimited restriction of parental authority may be brought by one of the parents or close relatives or the state institution for the protection of the child's rights or a public prosecutor or the guardian/curator of the child.

3. An action for the cancellation of the restriction of parental authority may be brought by the parents (the father or the mother) to whose parental authority the restriction has been applied.

4. An application for the cancellation of the order on the separation of the child from the parents (the father or the mother) may be filed by the parents or one of the parents, or the guardian/curator or close relatives of the child or the state

institution for the protection of the child's rights or a public prosecutor.

Article 3.183. Examination of application for the restriction of parental authority

1. Applications for the separation of children from the parents shall be examined in a simplified procedure. If it transpires that there is a ground for temporary or unlimited restriction of parental authority, the application shall be referred to the court to be adjudicated in contentious proceedings.

2. In examining actions for the restriction of parental authority or applications for the separation of a child from the parents referred to it for adjudication in contentious proceedings, the court shall not be bound by the subject matter of the action and shall pass a judgement by taking account of the situation in hand and the interests of the child.

3. The court shall hear the child capable of expressing his or her views and take such views into account.

4. Having made a judgement to restrict parental authority, the court shall simultaneously place the child under guardianship (curatorship) and determine the residence of the child by the same judgement.

Article 3.184. Mandatory participation of the state institution for the protection of the child's rights

1. The state institution for the protection of the child's rights must participate in the examination of cases for the restriction of parental authority.

2. Having investigated the conditions of the family, the state institution for the protection of the child's rights shall present its opinion to the court. The court shall take the opinion into consideration together with the evidence adduced in the case.

CHAPTER XII – MUTUAL Property RIGHTS AND DUTIES of parents and children

SECTION ONE – PARENTAL RIGHTS AND DUTIES RELATED TO THE PROPERTY OWNED BY THE CHILDREN

Article 3.185 Management of the property owned by underage children

1. Property owned by underage children shall be managed by the parents under right of usufruct. The parents' right of usufruct may not be pledged or sold or assigned— or encumbered in any way, no execution may be made against it.

2. Parents shall manage the property that belongs to their underage child by mutual agreement. In the event of a dispute over the management of the child's property, either parent may petition for a judicial order establishing the procedure for the management of the property.

3. Where the parents, or one of the parents, cause harm to the child's interests by mismanaging their underage child's property, the state institution for the protection of the child's rights or a public prosecutor may apply to the court for the removal of the parents from the management of the property that belongs to their underage child. Where warranted, the court shall remove the parents from the management of their underage child's property, revoke their right of usufruct to the child's property and appoint another person an administrator of the minor's property. Where the grounds for the removal are no longer existent, the court may allow the parents to resume the management of their underage children's property under right of usufruct.

Article 3.186. The duties of the parents in managing their underage children's property

1. Parents must manage their underage children's property by giving paramount consideration to the interests of the children.

2. The parents may use the fruits and income derived from their underage child's property to meet the needs of the family by taking account of the child's interests.

3. In managing the property of their underage child, the parents have no right to acquire, directly or through intermediaries, this property or any rights to it. This rule shall also be applicable to auctioning a minor's property or interests in it. An action to have such transactions declared null and void may be brought by the child or the child's successors.

4. The parents of an underage child may not enter into a contract of —assignment of claim under which they would ac-

quire the right of claim to their underage child's property or the child's rights to it.

Article 3.187. Property of minors not subject to the right of usufruct

Parents shall have no right to manage the property under right of usufruct if that property

1) has been acquired for the money earned by the child;

2) is intended for the purposes of the child's education, hobbies or leisure;

3) has been devolved to the child by donation or succession on condition that it will not be made subject to usufruct.

Article 3.188. Transactions relating to an underage child's property

1. Without the prior leave of the court parents shall have no right to:

1) alienate or charge their underage children's property or encumber the rights to it in any other way;

2) accept or decline to accept inheritance on behalf of their underage children;

3) enter into a lease agreement in respect of their underage children's property for a longer than a five-year term;

4) enter into a an arbitration agreement on behalf of their underage children;

5) enter into a loan agreement on behalf of their underage children for an amount exceeding four minimal monthly wages;

6) invest the funds of their underage children in excess of ten minimal monthly wages.

2. If a transaction causes a conflict of interests between the underage children of the same parents or between an underage child and the child's parents, the court, on the application of either of the parents, shall appoint an ad hoc guardian as to the transaction.

3. Where there is a conflict of interests between an underage child and one of the child's parents, the child's interests shall be represented and transactions shall be made by the parent whose interests do not conflict with those of the child.

4. A breach of the rules laid down in Paragraphs 1, 2 and 3 may cause the court to declare the transaction null and void in

an action brought by the child, one of the child's parents or their successors.

Article 3.189. Prohibition to assign or encumber the right of usufruct

1. Parents who manage their underage children's property under right of usufruct may not assign or pledge or encumber the right of usufruct in any way.

2. The claims of the creditors of underage children's parents may not be executed against the property of the underage children or against the right of usufruct of their parents.

Article 3.190. Right of usufruct where the property is managed by one of the parents

1. Where parental authority is exercised only by one of the parents of a minor, the minor's property shall be managed only by that parent. Where the parents are divorced or separated, the right to manage the minor's property shall belong to the parent with whom the child is to live.

2. If the father (mother) of an underage child enters into a new marriage, he or she shall retain the right of usufruct in respect of the underage child's property, but shall be obliged to transfer all the fruits and income derived from the property to the minor's bank account and to maintain separate accounts for the fruits in excess of the expenses for the child's education (training, education, maintenance). If the new spouse of the child's father (mother) adopts the child, he or she shall also acquire the right to manage the underage child's property.

Article 3.191. End of the property management and right of usufruct

1. Parents shall lose the right to manage their underage children's property under right of usufruct, when:

- 1) the minor is emancipated under the law;
- 2) the minor contracts a marriage in the procedure laid down by the law;
- 3) the minor reaches majority;
- 4) the court makes an order for the removal of the parents from the management of their underage child's property;

5) the court separates the children from the parents or limits their parental authority.

2. Where the parents (or one of the parents with whom the child lives) continue to use the child's property after the end of the right of usufruct, they shall be obliged to return the property and all the income and fruits derived from the child's property to the child from the moment when the child or the child's representative demands it.

SECTION TWO – MUTUAL MAINTENANCE DUTIES OF PARENTS AND CHILDREN

Article 3.192. Parents' duty to maintain their children

1. Parents shall be obliged to maintain their underage children. The procedure and form of maintenance shall be determined by the mutual agreement of the parents.

2. The amount for maintenance must be commensurate with the needs of the children and the financial situation of their parents; it must ensure the existence of conditions necessary for the child's development.

3. Both parents must provide maintenance to their underage children in accordance with their financial situation.

Article 3.193. Parental agreement on the maintenance of their underage children

1. On divorce by mutual agreement (Article 3.51 hereof) or on separation (Article 3.73 hereof) spouses shall make an agreement providing for their mutual duties in maintaining their underage children as well as the procedure, amount and form of such maintenance. The agreement shall be approved by the court (Article 3.53 hereof).

2. Parents of underage children may conclude an agreement on the maintenance of their children also when their divorce is based on other grounds.

3. If one of the parents does not comply with the agreement on the maintenance of their underage children approved by the court, the other parent shall be have a right to apply to the court for the issuance of the writ of execution.

Article 3.194. Maintenance orders

1. If the parents (or one of the parents) fail in the duty to maintain their underage children, the court may issue a maintenance order in an action brought by one of the parents or the child's guardian (curator) or the state institution for the protection of the child's rights.

2. A maintenance order may also be issued if on divorce or on separation the parents did not agree on the maintenance of their underage children in the procedure provided for in this Book.

3. The court shall issue a maintenance order until the child attains majority, except in cases where the child lacks capacity for work due to a disability determined before the age of majority, or when the child is in need of support, he is a full-time student of institutions of secondary, vocational or higher education and is not older than 24 years of age.

4. The enforcement of the maintenance order shall be terminated when the child:

- 1) is emancipated;
- 2) attains majority;
- 3) is adopted;
- 4) dies.

5. If the person obliged to pay maintenance dies, the duty of maintenance shall pass to his or her successors within the limits of the inherited property irrespective of the way the estate is accepted under the rules of Book Five hereof.

Article 3.195. Maintenance duty when the children are separated from their parents

The parents' duty to maintain their underage children shall be retained after the separation of the children from their parents or the limitation of parental authority except in cases where the child is adopted.

Article 3.196. The form and amount of maintenance

1. The court may issue a maintenance order obligating the parents (one of the parents) who fail in their duty to maintain their children to provide maintenance to their children in the following ways:

- 1) periodical monthly payments;
- 2) a certain lump sum;
- 3) award of certain property.

2. Pending the outcome of the case, the court may give a ruling on the provisional payment of maintenance.

Article 3.197. Judicial pledge (hypothec)

If necessary, in making a maintenance order the court may institute pledge (hypothec) against the property of the parents (one of the parents). If the court judgement on the enforcement of the maintenance order is not executed, the maintenance shall be paid against the property subject to the pledge (hypothec).

Article 3.198. Maintenance orders in respect of two or more children

1. In making a maintenance order in respect of two or more children, the court shall determine a payment amount sufficient to meet at least the minimal needs of all the children.

2. The maintenance amount shall be used equally for all the children except in cases where objective reasons (illness, etc.) demand a departure from the principle of equality.

Article 3.199. Kinds of income against which maintenance payments shall be made

Maintenance payments for children shall be made against the wages and all the other kinds of income of the parent obliged to pay maintenance.

Article 3.200. The date on which a maintenance order becomes operative

A maintenance order shall take effect from the date on which the right to maintenance becomes operative; the arrears in maintenance payments, however, may not be enforced for a period exceeding three years from the date of the petition for action.

Article 3.201. Changing the amount and form of maintenance

1. In an action brought by the child, the child's parent, the state institution for the protection of the child's rights or a public prosecutor the court may reduce or increase the amount of maintenance if, after the award of the maintenance order, the financial situation of the parties has undergone a fundamental change.

2. An increase in the amount of maintenance may be ordered if there are additional expenses related to the care for the child (illness, injury, need for nursing or permanent attendance). If necessary, the court may issue an order for covering the future expenses related to the treatment of the child.

3. At the request of the persons referred to in Paragraph 1 the court may change the previously established form in which maintenance must be provided.

Article 3.202. Enforcement of maintenance to a child placed under guardianship/ (curatorship)

1. If a child is placed under guardianship/(curatorship), maintenance shall be paid to the guardian who shall use it exclusively for the interests of the child.

2. If a child receiving maintenance under a judicial order lives in an institution for the care of children , the maintenance shall be paid to the institution for the care of children . In such a case, the institution for the care of children opens a bank account for every child receiving maintenance with a credit institution controlled by the State. The funds on the bank account may be used, in the procedure established by the law, only by the child for its own needs or the child's guardian (curator) in the child's interests.

Article 3.203. Use of maintenance

1. The maintenance payments meant for the child shall be used only for the child's needs.

2. Maintenance used by the child's parents, guardians (curators) for other purposes shall be recovered against the assets of the person who has used the child's maintenance not for the needs of the child under a judicial order issued in an action brought by the representatives of the child, the state institution for the protection of the child's rights or a public prosecutor.

Article 3.204. Children maintained by the State

1. The State shall maintain underage children receiving no maintenance from their parents or adult close relatives who are in a position to maintain the child.

2. The amount, procedure and conditions of such maintenance shall be established by the Government.

3. After providing maintenance to an underage child under this Article, the State shall have the right of recourse to recover the maintenance provided to the child from the child's parents or his other adult close relatives provided the court declared the reasons why they failed to provide maintenance to the child to be insufficient.

Article 3.205. The duty of adult children to maintain their parents

1. Adult children shall be obliged to maintain their parents who have lost earning capacity and are in need of support.

2. Maintenance shall be paid according to a mutual agreement between the children and parents or on the basis of the court order issued in an action brought by the parents.

3. Maintenance shall be provided in monthly payments of an established amount.

4. The amount of maintenance shall be determined by the court having regard to the financial situation of the children's family and that of the parents as well as the other important circumstances of the case. In establishing the amount of the maintenance, the court shall have regard to the duty of all the adult children of the parent(s) to maintain their parent(s) irrespective of whether the action for maintenance has been brought against all the children or only one of them.

Article 3.206. Rejection of the parent's claims to maintenance

1. The court may relieve adult children of their duty to maintain their parents who have lost earning capacity if it establishes that the parents had failed in their duties in respect of their minor children.

2. Where the children had been separated permanently from their parents through the fault of the parents, such parents shall have no right to maintenance.

Article 3.207. Compensation for additional expenses of parents who have lost earning capacity

1. If adult children do not care for their parents who have lost earning capacity, the court may issue an order, in an action brought by the parents, for the compensation of the additional expenses the parents sustained due to illness, injury or indispensable attendance performed by strangers for a consideration.

2. In adjudicating on the compensation for such additional expenses, the court shall have regard to the financial situation of the children's family and of the parents as well as the other important circumstances of the case.

Article 3.208. Indexation of maintenance

1. Where the maintenance is to be made in periodical payments, the maintenance amount shall be indexed annually in accordance with the inflation rates in the procedure established by the Government.

PART V – ADOPTION

CHAPTER XIII – CONDITIONS AND PROCEDURES OF ADOPTION

Article 3.209. Children allowed to be adopted

1. Adoption should be possible exclusively for the interests of the child.

2. Only the children who have been included on the list of children offered for adoption may be adopted except in cases where a spouse adopts the other spouse's child or the child lives in the family of the adopter.

3. Only children over the age of three months may be adopted.

4. Adoption of one's own children, sisters or brother shall be prohibited.

5. An adopted child may be adopted only by the stepfather's (stepmother's) spouse.

6. Separation of siblings through adoption shall be allowed in exceptional cases where it is impossible to ensure their life together for health reasons or where the siblings have already been separated due to other circumstances and there are no possibilities to ensure their life together.

Article 3.210. Persons entitled to adopt a child

1. The adopter must be an adult woman or man under the age of 50 duly prepared for adopting a child. In exceptional cases the court may give leave for older persons to adopt a child.

2. The right to adopt a child may be exercised by married couples. In exceptional cases, an unmarried person or one of the spouses may be allowed to adopt a child.

3. Unmarried persons may not adopt the same child.

4. Persons declared legally incapable or of limited active capacity by the court, persons whose parental authority has been restricted the former guardians (curators) whose guardianship/curatorship has been cancelled through their fault shall not be allowed to adopt a child.

5. Persons who wish to adopt a child (except a parent's spouse or the relatives) must be listed in the list of prospective adopters managed by the State institution for adoption.

6. Where several adopters wish to adopt one and the same child, priority shall be given, having regard to the child's interests, to:

- 1) relatives;
- 2) spouses;
- 3) persons who adopt all the siblings together;
- 4) citizens of the Republic of Lithuania;
- 5) persons who adopt the children or adopted children of their spouses;
- 6) persons in whose family the child to be adopted lives and is maintained.

Article 3.211. Adopter-child age differential

1. The difference in the age of the adopter and the child to be adopted must be no less than eighteen years.

2. Where a person adopts the children or adopted children of his or her spouse, the age differential referred to in Paragraph 1 may be reduced to fifteen years.

Article 3.212. Consent of the parents to adoption

1. Adoption may be effected only with the written consent of the parents confirmed by the court.

2. Where the child's parents are minors or legally incapable, adoption may be effected only with the written consent of their parents or guardians (curators) confirmed by the court. If the child to be adopted has a legal guardian (curator)/ (except for a State care institution), his adoption may be effected with the written consent of the guardian/ curator confirmed by the court.

3. The child's parents may give their consent for the adoption of the child by a

specific person only if that person is a relative.

4. Having confirmed the parents' (guardians', curators') written consent to adoption, the court shall give a ruling in which it shall explicate to the parents (guardians, curators) the consequences of adoption referred to in Article 3.227 hereof and their right to revoke their consent to adoption.

5. Within three business days the court shall send a copy of the *res judicata* order confirming the consent to adoption to the State institution for adoption.

Article 3.213. Revocation of the parents' consent to adoption

1. The parents may revoke their consent to adoption before a court judgement is made on the adoption of the child.

2. The application for the revocation of the consent to adoption must be filed with the State institution for adoption. If the child has already been adopted, the State institution for adoption shall notify the parents of the fact without disclosing the identity of the adopters. If the application is filed before the day scheduled for the court's consideration of the application for adoption, the State institution for adoption shall notify the respective court of the revocation of the consent and refer the application for the revocation of the consent for the consideration of the court that confirmed the consent. The examination of the application for adoption shall be put on hold until the issue of the revocation of the consent is resolved.

3. The court shall not approve of the revocation of the consent to adoption if a year has elapsed since the limitation of the parental authority, which has not been lifted, or if the court ascertains that the parents try to revoke their consent to adoption only for material gain.

Article 3.214. Adoption without the consent of the parents

The consent of the parents of the child to be adopted shall not be required, if the identity of the parents is not known or if they are dead or if the parents' authority has been restricted for an unlimited period or if the parents are legally incapable or declared dead.

Article 3.215. The consent of the child to be adopted

1. Where the child to be adopted has already reached the age of 10, the child's consent to the adoption shall be required. The child shall file his or her consent with the court; adoption without such a consent shall not be permitted.

2. Where the child is under 10, he must be heard by the court if he or she is capable of expressing his or her views. In taking the decision, the court shall take account of the child's wishes if those wishes are not contrary to the child's interests.

Article 3.216. The consent of the adopter's spouse

1. Where a child is adopted by one of the spouses, the written consent of the other spouse shall be required.

2. The consent of the other spouse shall not be required if the spouses are legally separated by a court judgement or if the other spouse has been declared by the court missing or legally incapable.

Article 3.217. Verification of the readiness for adoption

1. Certified social workers of the State institution for adoption shall ascertain if there are any bars referred to in Book Three hereof for the prospective adoptive parents to adopt the child, investigate their living conditions, collect information on the status of their health and submit a conclusion on the preparedness of the prospective adopters to adopt the child. The list of medical contraindications to adoption shall be approved by the Government or an institution authorised by the Government.

2. If the prospective adoptive parents do not agree with the conclusion of the social worker on their preparedness to adoption, they may appeal against it in court.

3. The final decision on the suitability of conditions and preparedness for adoption shall be taken by the court examining the application for adoption.

4. The conclusion on the legal bars and the suitability and preparedness of the prospective adoptive parents for the adoption of a child in another country shall be approved by a ruling of the Regional Court of Vilnius.

Article 3.218. Provision of data on the child to be adopted

1. The State institution for adoption shall submit to the court data on the origin, development, state of health and family of the child to be adopted.

2. Before an application for the child's adoption is submitted to the court, the State institution for adoption shall provide the data on the child offered for adoption to all the persons included in the list of prospective adoptive parents.

Article 3.219. Registration of adoptions

1. The registration of prospective adoptive parents and children offered for adoption shall be administered by the State institution for adoption; the statutes of the institution for adoption shall be approved by the Government.

2. Having taken a decision on the unlimited restriction of parental authority or having confirmed a written consent of the parents to the adoption of their child, the court shall send its *res judicata* order to the State institution for adoption within three business days.

3. After a year since the temporary restriction of parental authority, the State institution for adoption shall ascertain if the limitation of parental authority has been lifted. If the limitation of parental authority has not been lifted, the child shall be entered in the list of children offered for adoption.

Article 3.220. Examination of applications for adoption

1. Applications for adoption submitted by citizens of the Republic of Lithuania shall be examined by the district courts of the applicant's or the child's domicile in the presence of the applicants and a representative of the public institution for adoption.

2. Applications for the adoption of a citizen of the Republic of Lithuania residing in the Republic of Lithuania or in another country shall be examined by the Regional Court of Vilnius.

3. Applications for adoption shall be examined under non-contentious procedure. Within three business days the court shall send the *res judicata* judgement to the Register Office which registered the birth of the child.

Article 3.221. Confidentiality of adoption

1. Adoption case shall be heard at the court in a closed hearing.

2. Until the child attains majority, data on the child's adoption may not be disclosed without the consent of the adoptive parents.

3. Information on a child's adoption may be provided to the child from the age of 14, the child's former close relatives (according to blood relationship) or to other persons with the leave of the court which examined the suit for adoption provided that the information is required for the considerations of the child's health or the health of the child's close relatives or of other persons as well as for other important reasons.

Article 3.222. Transfer of the child to the adoptive family before adoption

1. At the request of the State institution for adoption or at its own discretion the court may order a probationary period of six to twelve months and transfer the child to be brought up and cared for in the family of the prospective adoptive parents. If the court order is taken to transfer the child to the family of the prospective adoptive parents, the hearing of the adoption case shall be postponed.

2. The probationary period may be ordered taking into consideration the psychological preparedness of the child and the prospective adoptive parents for adoption, the duration of contact between the child and the prospective adoptive parents before the application for adoption, and other circumstances which may give rise to doubts whether the child can become adapted to the family of the adoptive parents.

3. After the child is transferred to the family by a court order before adoption, the mutual rights and duties, except those of succession, of the child and the prospective adoptive parents shall be treated as the mutual rights and duties of children and natural parents.

4. After the adoption of the child, the adoptive parents shall be treated as the child's parents under the law from the day on which the court order to transfer the child to their family became *res judicata*. The court shall specify this fact in its judgement.

Article 3.223. Priority for adoption

1. If there are several persons who wish to adopt one and the same child, the priority shall be determined in the following order:

- 1) persons adopting their spouse's children and adopted children;
- 2) relatives;
- 3) persons adopting siblings together;
- 4) spouses.

2. If the persons who wish to adopt a child are attributable to one and the same category, priority shall be given to the person who was the first to be registered in the list of prospective adoptive parents.

Article 3.224. Adoption where the adopter is a citizen of a foreign country

1. Provisions of Articles 3.209-3.221 hereof shall be applicable to adopters who are citizens of a foreign country.

2. In addition to the provisions of Articles 3.209-3.221 hereof, a citizen of a foreign country may adopt a child if:

- 1) during six months from the registration of the child in the list of children offered for adoption no application has been received from citizens of the Republic of Lithuania to adopt the child or place the child under guardianship or in curatorship;
- 2) the parents of the family where the child is brought up and maintained present to the court their written consent for the adoption of the child;
- 3) the guardian (or curator) presents to the court a written consent for the adoption of the child;

3. The court, having regard to the interests of the child, shall have the right to decide on the adoption of the child without the consent of the parents of the family, guardian/curator.

4. Where the child is adopted in another country, all the necessary measures must be taken to prevent persons related to the settlement of the child in another country from gaining any unjustified material gain.

5. In adjudicating on the adoption of a child by a citizen of another country, consideration must be given to the hereditary continuity of the child's education, the child's ethnic origin, religious and cultural

adherence and mother tongue, as well as the compliance of the legislation of the recipient country with the requirements of the 29 May 1993 Hague Convention on the Protection of Children and Co-operation in the Field of International Adoption.

Article 3.225. Recognition of adoption executed in another country

Adoption executed in another country shall be recognised in the procedure and in accordance with the terms and conditions laid down in international treaties and agreements and Book One hereof.

Article 3.226. Adoption of children who are citizens of a foreign country

1. Children who are citizens of a foreign country residing in the Republic of Lithuania shall be adopted in the procedure laid down in this Chapter unless provided for otherwise in an international treaty or agreement between the respective foreign country and the Republic of Lithuania.

2. Applications of foreign citizens for adoption shall be examined by the Regional Court of Vilnius.

CHAPTER XIV – LEGAL CONSEQUENCES OF ADOPTION**Article 3.227. Consequences of adoption**

1. Adoption shall invalidate the mutual personal and property rights and duties of the natural parents and children and their relatives while creating mutual personal and property rights for the adoptive parents, their relatives kindred and the adopted children and their descendants as relatives by blood.

2. The adoptive parents shall be treated as the child's parents under the law from the on which court judgement on the adoption became *res judicata* except for the exception provided for in paragraph 4 of Article 3.222 hereof.

Article 3.228. The name and surname of the adopted child

1. The adopted child is given the surname of the adoptive parents by a court judgement ; the child's name may be changed with the consent of the child capable of expressing his or her views.

2. At the request of the adoptive parents and the adopted child capable of

expressing his or her views, the child may be allowed to retain the surname of his or her natural parents.

3. When there is a dispute between the adoptive parents or the adoptive parents and the adopted child over the change of the child's surname or name, the dispute shall be resolved by the court taking account of the child's interests.

PART VI – RIGHTS AND DUTIES OF OTHER MEMBERS OF THE FAMILY

CHAPTER XV – LIVING TOGETHER OF PERSONS NOT LEGALLY MARRIED (COHABITATION)

Article 3.229. Scope

The provisions of this Chapter shall regulate the relations in property of a man and a woman who, after registering their partnership in the procedure laid down by the law, have been cohabiting at least for a year with the aim of creating family relations without having registered their union as a marriage (cohabitees).

Article 3.230. Assets subject to the legal regime set in this Chapter

1. The provisions of this Chapter shall regulate the legal regime of the assets referred to in this Chapter provided the assets have been acquired and used jointly by the cohabitees.

2. The community property of cohabitees shall include:

1) a dwelling house or a flat acquired and used together by cohabitees for their life together;

2) the rental, usufruct or any other right of one of the cohabitees to use the dwelling house or the flat which the cohabitees use for their life together;

3) immovable property related to the dwelling house or flat used and acquired together provided the immovable is used by the cohabitees together;

4) furniture and other household utensils acquired and used together by the cohabitees except for the chattels which the cohabitees use separately.

3. The provisions of this Chapter shall not be applicable to assets which the cohabitees use for recreation (garden, summer cottage, etc.).

Article 3.231. Legal regime of assets used by the cohabitees together

1. Where the immovables or the rights to the immovables referred to in Article 3.230 hereof are registered in the name of one of the cohabitees, both cohabitees may require, by submitting a joint application to the public register, the addition of a record to the effect that the cohabitees use these immovables or the rights to these immovable together. The signatures of the cohabitees adduced to such an application must be certified by a notary public.

2. Cohabitees shall have a right to make an agreement by a notarial deed on how the assets acquired and used together should be divided after their life together ends. Provisions of Articles 3.101-3.108 hereof shall be applicable to such agreements *mutatis mutandis*.

Article 3.232. Division of assets acquired and used together

At the request of one of the cohabitees the court may divide all the assets, acquired and used by the cohabitees together, after the death of one of the cohabitees or at the end of their life together provided the cohabitees had not made an agreement on the division of assets certified by a notary public.

Article 3.233. Limitations of the right to dispose of the assets used together

1. Without the written consent of the other cohabitee, a cohabitee shall have no right to sell, donate or alienate in any other way, lease or charge the assets acquired and used together or to encumber the rights to such assets in any other way.

2. Paragraph 1 of this Article shall not be applicable if a cohabitee is incapable of giving such a consent due to incompetence or the consent of the other cohabitee is unavailable due to other important reasons. In such a case the permission to make a transaction may be granted by the court at the request of the other cohabitee.

3. Transaction made in violation of the rules set in paragraphs 1 and 2 may be declared null and void in an action brought by the cohabitee who has not given his or her consent to the transaction except in cases where a third party recipient of the assets sold, charged or leased was in good faith. The time limit for bringing an action for the avoidance of such a transaction

shall be one year from the day when the cohabitee knew or should have known about the transaction.

Article 3.234. Division of assets used together

1. To divide assets acquired and used by cohabitees together in cases referred to in Article 3.232 the court shall first establish the assets acquired and used together and the separate assets of each cohabitee. Debts contracted by the cohabitees together and outstanding at the end of their life together shall be deducted from the assets acquired and used together by the cohabitees.

2. The assets acquired and used together remaining after the deduction of the joint outstanding debts of the cohabitees shall be divided into two equal shares except in cases provided for in this Article.

3. The court shall have a right to depart from the principle of equal shares if it is just and reasonable to award one of the cohabitees a bigger share of the assets taking account of the interests of their minor children, the duration of their life together, their age, health, financial situation, personal contribution to the community property and other important circumstances.

4. A dwelling house or a flat may be awarded to the cohabitee who is in greater need of a residence place taking into consideration his or her age, health, financial situation, the interests of his or her minor children and other important circumstances. In such cases the share of this cohabitee in other community assets shall be reduced. Where the value of the dwelling house or the flat exceeds the value of the cohabitee's share in the assets, he or she must be compensated in money to the other cohabitee for the difference in the value.

5. The dwelling house or the flat which belonged to one of the cohabitees before their life together can be left to the other cohabitee under right of usufruct if he or she has underage children born to the cohabitation or due to health, age or other important reasons does not have his or her own dwelling place.

6. Assets other than those referred to Article 3.230 hereof acquired and maintained by using the funds of both cohabitees, shall be divided in accordance with the rules of shared community property.

Article 3.235. Right to use a dwelling place

1. Having regard to the duration of cohabitation, the interests of the minor children of the cohabitees, the age, health, financial situation of the cohabitees and other important circumstances, the court shall have a right to award the use of the rented dwelling place to the cohabitee who is in greater need of the dwelling place.

2. Having regard to the circumstances of the case, the court may obligate the cohabitee who has been awarded the right to use the rented dwelling place to pay compensation to the other cohabitee for the expenses related to the search for and movement to another dwelling place.

CHAPTER XVI – DUTIES OF OTHER FAMILY MEMBERS RELATED TO MUTUAL MAINTENANCE

Article 3.236. The duty of an adult brother (sister) to maintain his (her) minor brother (sister)

1. Circumstances permitting, an adult brother (sister) must maintain his (her) minor sibling who is in need of support and deprived of parents or their maintenance.

2. Provisions of Section Two Chapter XII of this Book shall be applicable *mutatis mutandis* to the procedures of maintenance.

Article 3.237. Mutual maintenance of grandchildren and grandparents

1. Circumstances permitting, adult grandchildren shall maintain their grandparents not fit for work and in need of support.

2. Circumstances permitting, grandparents shall maintain their minor grandchildren deprived of parents or of their maintenance.

3. Provisions of Section Two Chapter XII of this Book shall be applicable *mutatis mutandis* to the procedures of maintenance.

PART VII – GUARDIANSHIP AND CURATORSHIP

CHAPTER XVII – GENERAL PROVISIONS

Article 3.238. Guardianship

1. Guardianship shall be established with the aim of exercising, protecting and defending the rights and interests of a legally incapable person.

2. Guardianship of a person subsumes guardianship of the person's property, but if necessary, an administrator may be designated to manage the person's property.

Article 3.239. Curatorship

1. Curatorship shall be established with the aim of protecting and defending the rights and interests of a person of limited active capacity.

2. Curatorship of a person subsumes curatorship of the person's property, but if necessary, an administrator may be designated to manage the person's property.

Article 3.240. Legal position of the guardian or curator

1. The guardian and the curator shall represent their wards under law and shall defend the rights and interests of legally incapable persons or persons of limited active capacity without any special authorisation.

2. The guardian shall be entitled to enter into all the necessary transactions in the interests and in behalf of the represented legally incapable ward.

3. The curator shall give consent for the ward of limited active capacity to enter into a transaction the ward would not be permitted to enter into independently and shall also help the ward of limited competence to exercise his or her other rights and duties as well as protect his or her interests against third parties.

Article 3.241. Institutions of guardianship and curatorship

1. Institutions of guardianship and curatorship are municipal or regional institutions concerned with the supervision and control of the actions of guardians and curators.

2. The functions of guardianship and curatorship in respect of the inmates of medical, educational or guardianship (curator) institutions who have been declared legally incapable or of limited active capacity by the court shall be performed by the respective medical educational or guardianship (curator) institution until a

permanent guardian or curator is appointed.

3. Institutions for the guardianship and curatorship of minors shall include the State institution for the protection of the child's rights and other institutions referred to as such in this Book.

Article 3.242. Designation of a guardian or a curator

1. Having declared a person legally incapable or of limited active capacity, the court shall designate the person's guardian or curator without delay.

2. The guardian or curator of a minor shall be designated in the procedure established by the rules of Chapter XVIII of this Book.

3. Only a legally capable natural person may be designated a guardian or a curator provided he or she gives a written consent to that effect. While designating a guardian or curator account must be taken of the person's moral and other qualities, his or her capability of performing the functions of a guardian or curator, relations with the ward, the guardian's or curator's preferences and other relevant circumstances.

4. The provisions of this Article shall not be applicable to cases where the guardian or curator of an legally incapable person or a person of limited active capacity is the medical, educational or guardianship (curatorship) institution in which the ward is placed.

Article 3.243. Performance of the duties of a guardian or a curator

1. A guardian who is the ward's parent or any other close relative shall perform his or her functions as a guardian without any remuneration. In other cases the guardian shall be entitled to recover necessary expenses related to his or her duties as a guardian against the assets of the incompetent person. The amount to be recovered and the procedure of recovery shall be established by the court on the application of the guardian.

2. A curator who is the parent or any other close relative of the person of limited active capacity shall perform these duties without any remuneration. In other cases the curator shall be entitled to recover necessary expenses related to his or her duties as a curator from the assets of the person of limited active capacity. The

amount to be recovered and the procedure of recovery shall be established by the court on the application of the curator.

3. This Article shall not be applicable to cases where the functions of guardianship or curatorship are performed by a medical, educational or guardianship/curatorship institution.

4. The guardians and curators of a minor must live together with the minor. After the ward attains the age of 16, the curator may live separately provided the State institution for the protection of the child's rights gives its consent.

5. Guardians and curators shall be obliged to notify the institution of guardianship/curatorship of a change in their residence place.

6. After the circumstances responsible for the declaration of the ward's legal incapability or limited active capacity disappear, the guardian or curator shall apply to the court for the cancellation of guardianship or curatorship. Institutions of guardianship and curatorship as well as prosecutors shall also have a right to apply to the court for the cancellation of guardianship or curatorship.

Article 3.244. Use of the assets and income of the legally incapable ward or the ward of limited active capacity

1. The guardian or the curator shall use the assets and the income generated by the assets of the legally incapable ward or the ward of limited active capacity exclusively in the interests of the legally incapable ward or the ward of limited active capacity.

2. Transactions exceeding five thousand Litass shall require a prior leave of the court.

3. A prior leave of the court shall be required in all cases where the guardian intends to sell, donate or alienate in any other way the immovable assets or property rights of the ward, to lease them, transfer for use without remuneration, charge or encumber in any way the rights to immovable property or property rights, or to make any other transaction which would cause a reduction in the ward's assets or the property rights of the ward would be assigned transferred or encumbered. These rules shall be applicable also in cases where the curator intends to give his or her consent for the ward of limited active capacity to enter into a similar transaction.

4. A guardian, curator or their close relatives may not enter into a transaction with the ward, except in cases where assets are donated or transferred to the ward for use without remuneration, provided the transaction is consistent with the interests of the ward.

Article 3.245. Administration of the assets owned by an legally incapable person or person of limited active capacity

1. In cases where an legally incapable person or a person of limited active capacity has movable or immovable property in need of constant care (an enterprise, land, facility, etc.), the court shall issue an order for the appointment of an administrator of the property. The administrator may be the guardian/curator or any other person. The administrator of the property shall be subject to the rules hereof on the limitation of the actions of the guardian or the curator.

2. The powers of the administrator shall come to an end with the end of the guardianship or curatorship, also on the issue of the court order relieving the administrator of the relevant functions.

Article 3.246. Relieving the guardian and curator of their duties

1. The court may relieve the guardian or curator of a minor of the duties of a guardian or curator if the minor is returned to his or her parents or adoptive parents.

2. The court may relieve the guardian or curator of a minor of his or her duties if he or she is unable to perform these duties due to his or her illness or the illness of his or her close relatives, his or her financial situation or other important reasons.

3. If the guardian or curator is negligent in his or her duties, fails to ensure the protection of the rights and interests of the ward, uses his or her rights for personal gain, the court may remove such a guardian or the curator. If the actions of the guardian or curator cause damage to the legally incapable person or the person of limited active capacity, the guardian or curator shall be obliged to make good the damage. Institutions of guardianship/curatorship shall have the right to apply to the court for the removal of the guardian or curator.

Article 3.247. End of guardianship curatorship

1. Guardianship and curatorship shall end when the court judgement declaring the person legally incapable or the end of the limitations of active capacity becomes *res judicata*.

2. When a minor attains the age of 14, his or her guardianship comes to an end, while the guardian of the minor becomes a curator without any additional judgement of the court.

3. Curatorship comes to an end when the minor attains the age of 18 or when the minor acquires full active capacity before the age of 18 in cases provided for by the law.

CHAPTER XVIII – GUARDIANSHIP AND CURATORSHIP OF MINORS

Article 3.248. The purpose and objectives of child guardianship/curatorship

1. The purpose of child guardianship/curatorship is to ensure the child's upbringing and care in an environment which would facilitate the child's growing up, development and progress.

2. Objectives of child guardianship/curatorship :

1) to appoint for the child a guardian whose duty it will be to take care of the child, bring him up, represent the child and protect his rights and legitimate interests;

2) to provide the child with living conditions which would be adequate for his age, state of health and development level;

3) to prepare the child for independent life in a family and in the society.

Article 3.249. Principles of establishing child guardianship/curatorship

1. The establishment of child guardianship/curatorship shall be governed by the following principles:

1) first consideration must be given to the interests of the child;

2) priority in becoming the child's guardians (curators) must be accorded to his close relatives, provided this is in the child's best interests;

3) the child's guardianship/curatorship in a family;

4) non-separation of siblings, except when this is contrary to the child's interests.

2. When child guardianship/curatorship is established or ended, or a guardian is appointed to a child capable of expressing his or her views, the child shall be provided an opportunity to be heard and to influence the decision making.

Article 3.250. Determination and registration of children in need of guardianship/curatorship

1. Employees of educational, health care, police and other institutions as well as any person in possession of any knowledge of minors deprived of parental care or of the necessity to protect a minor's rights and interests (cruel treatment of children by their parents, illness, death, departure or disappearance of the parents, failure of the parents to take back their children from educational or health care institutions, etc.) shall be obliged to notify immediately the State institution for the protection of the child's rights of the child's district of residence or their own district.

2. The State institution for the protection of the child's rights shall be responsible for the determination of children in need of guardianship/curatorship and their registration. The Institution shall place a child under temporary guardianship/curatorship within three days of the receipt of information about the child's need of guardianship/curatorship.

3. The heads and other officials of the institutions referred to in paragraph 1 of this Article shall be responsible under law for any misrepresentations, concealment of a child in need of guardianship/curatorship, creating obstacles for the establishment of guardianship/curatorship or any other violations of the rights and interests of the child.

Article 3.251. Establishment of guardianship and curatorship

1. Guardianship shall be established for children under the age of 14.

2. Curatorship shall be established for children older than 14.

Article 3.252. Kinds and forms of child guardianship/curatorship

1. Kinds of child guardianship/curatorship :

- 1) temporary guardianship/curatorship ;
- 2) permanent guardianship/curatorship .

2. Forms of child guardianship/curatorship :

- 1) family guardianship (curatorship);
- 2) social family guardianship/curatorship;
- 3) institutional guardianship/curatorship.

Article 3.253. Temporary child guardianship/curatorship

Temporary child guardianship (curatorship) means care for and upbringing of a child temporarily deprived of parental care, also representation and protection of the child's legitimate interests in the family, social family or institution. The purpose of temporary child guardianship (curatorship) is to return the child into the child's natural family.

Article 3.254. Fundamentals of placing a child under temporary child guardianship/curatorship

A child shall be placed under temporary child guardianship/curatorship if the child's:

- 1) parents or single parent are missing and attempts are made to trace them (pending the court judgement declaring them missing or dead);
- 2) parents or single parent are temporarily incapable of taking care of the child because of the parents' (the father's or the mother's) illness, arrest, imposed sentence, or due to other compelling reasons;
- 3) parents or single parent do not take care of the child, neglect him, do not look after him, do not bring him up properly, use physical or psychological violence thereby endangering the child's physical, mental, spiritual or moral development and safety (pending the court order separating the child from the parents).

Article 3.255. End of temporary child guardianship/curatorship

Temporary child guardianship (curatorship) shall end when the child:

- 1) is returned into his family;

- 2) attains majority or emancipation;
- 3) permanent guardianship/curatorship is established for him;
- 4) is adopted;
- 5) enters into a marriage.

Article 3.256. Permanent child guardianship/curatorship

Permanent child guardianship/curatorship shall be established for children deprived of parental care who, under the existing conditions, are unable to return into their natural family, and their care, upbringing, representation and protection of their rights and legitimate interests are entrusted to another family, social family or guardianship/curatorship institution.

Article 3.257. Placing a child under permanent guardianship/curatorship

A child shall be placed under permanent guardianship (curatorship) when:

- 1) both parents or single parent of the child are dead;
- 2) both parents of the child or his single parent have been declared missing or dead by a court judgement;
- 3) the child has been separated from the parents in accordance with the procedure established by law;
- 4) the child's parents or close relatives are not identified within a 3-month period after the child's birth;
- 5) both parents or the single parent of the child are declared legally incapable in accordance with the procedure established by law.

Article 3.258. End of permanent child guardianship/curatorship

Permanent child guardianship/curatorship shall end when the child:

- 1) attains majority or emancipation;
- 2) is returned to his or her parents;
- 3) is adopted;
- 4) enters into a marriage.

Article 3.259. A child's guardianship/curatorship in a family

1. Child guardianship (curatorship) in a family shall involve no more than 5 children placed under guardianship in the environment of a natural family (the total

number of children in the family including the parents' natural children may not exceed 5).

2. The total number of children may exceed the number specified in paragraph 1 hereof where that is due to keeping siblings together.

3. When appointing a guardian of the child, priority shall be given to the child's close relatives provided they have adequate living conditions and do not belong to the persons or the group of persons listed in Article 23 hereof.

Article 3.260. A child's guardianship in a social family

1. A child's guardianship/curatorship in a social family is the form of guardianship where a legal person (social family) has under its guardianship or curatorship 6 or more children (the total number of children in a social family including the parents' natural children may not exceed 12) in a family environment.

2. The total number of children may exceed the number specified in paragraph 1 hereof where that is due to keeping siblings together, or the total number of children may be less where one of the children under guardianship/curatorship is disabled.

3. Child guardianship/curatorship in a social family shall be established by the laws of the Republic of Lithuania, the Social Family Regulations approved by the Government or its authorised institution, and other legal acts.

4. The wage and other conditions of remuneration for work of the child's guardian/curator who has set up a social family shall be established based on the laws of the Republic of Lithuania, Government resolutions and other legal acts.

Article 3.261. Child guardianship/curatorship in public and non-governmental guardianship institutions

1. A child deprived of parental care shall be placed in a public or non-government child guardianship institution where there is no possibility of placing the child under guardianship/curatorship in a family or a social family.

2. Institutional child guardianship/curatorship shall be established by the laws and other legal acts of the Republic of Lithuania.

Article 3.262. Placing a child under temporary guardianship/curatorship

1. A child shall be placed under temporary guardianship/curatorship on the decision (ordinance) of the municipal board (the mayor) at the recommendation of the institution for the protection of the child's rights as of the day of the registration of the application with the regional (city) local government.

2. Temporary child guardianship/curatorship shall be organised in accordance with the Regulations of Temporary Child Guardianship/Curatorship approved by the Government of its authorised public institution.

Article 3.263. Placing a child under permanent guardianship/curatorship

A child shall be placed under permanent guardianship/curatorship on the basis of a court order taken at the application of the regional (city) institution for the protection of the child's rights or a public prosecutor.

Article 3.264. Designation of a child's guardian/curator

1. Where a child is placed under temporary guardianship/curatorship, the child's guardian/curator shall be appointed by the decision of the regional (city) municipal board (the mayor) on the recommendation of the institution for the protection of the child's rights of the respective region (city). Recommendations for the appointment of a guardian may be presented to the institution for the protection of the child's rights by public or non-government organisations related to the protection of the child's rights.

2. The decision (ordinance) of the regional (city) municipal board (the mayor) on the appointment of a guardian for the child's shall specify: the name of the institution which adopted the decision, the date of the decision, the kind of guardianship the child is placed under, the guardian of the child, the child under guardianship, the place of guardianship, the institution responsible for the protection of assets owned by the child, other important circumstances which affect the guardianship of the child and the establishment thereof.

3. Where a child is placed under permanent guardianship/curatorship, the guardian/curator of the child shall be ap-

pointed by the court order on the application of the institution for the protection of the child's rights of the region (city).

4. The guardianship/curatorship of the child shall be established taking into consideration the wish of the child's dead parents (adoptive parents) expressed in their will regarding the appointment of the child's guardian/curator provided it is in conformity with Article 3.269 hereof.

Article 3.265. Place of guardianship/curatorship

The place of guardianship/curatorship of the child may be:

- 1) the guardian's (curator's) place of residence;
- 2) the child's place of residence;
- 3) an institution of child guardianship.

Article 3.266. Organising child guardianship/curatorship

1. The institution for the protection of the child's rights of the region (city) shall be responsible for organising the placement of a child under guardianship/curatorship .

2. When organising the placement of a child under guardianship (curatorship), the regional (city) institution for the protection of the child's rights of the district (city) municipality shall co-operate with other local authorities and non-government institutions and organisations related to the protection of the child's rights.

3. The procedure for organising the guardianship/curatorship of a child pursuant to this Book hereof shall be established by the Regulations for the Organisation of Child Guardianship approved by the Government.

Article 3.267. Supervision of child guardianship/curatorship

1. The guardianship/curatorship of a child in a family, social family or institution shall be supervised by the regional (city) Child's Rights Protection Institution.

2. In supervising child guardianship/curatorship, the regional (city) Child's Rights Protection Institution shall co-operate with other institutions related to the protection of the child's rights.

Article 3.268. The procedure for the selection of the guardian/curator for a child

1. A child's guardian (curator) shall be selected by taking into consideration his or her personal qualities, state of health, abilities to function as a guardian/(curator) , relations with the child deprived of parental care, and the interests of the child.

2. The prospective guardian/curator of the child shall file the following documents with the regional (city) Child's Rights Protection Institution:

- 1) an application specifying the number of children he or she wishes to assume the guardianship and upbringing of, their age and the kind of guardianship;
- 2) a health certificate in the format established by the institution authorised by the Government;
- 3) the written consent of persons over 16 living together with the applicant.

Article 3.269. Persons which may not be appointed guardians (curators) of a child

The following persons may not be appointed guardians (curators) of a child:

- 1) a person under 21 unless it is a close relative who wishes to assume the guardianship of the child;
- 2) a person declared legally incapable or of limited active capacity ;
- 3) a person from whom the child has been separated;
- 4) former adoptive father (adoptive mother) if his (her) parental authority has been restricted because of the adoptive father's (adoptive mother's) failure to duly fulfil his (her) duties or if he (she) has been separated from the child;
- 5) if the person's authority as the child's guardian/curator has been terminated on the basis of paragraph 2 Article 3.246 hereof;
- 6) a person who has a record of convictions for wilful offences;
- 7) a person of 65 and over, except for a close relative if he or she wishes to assume temporary guardianship of a child under 10 years of age;
- 8) a person suffering from chronic alcoholism, drug addiction, mental or other diseases included in the list approved by the Government.

Article 3.270. Preparation for child guardianship/curatorship

The child guardian's (curator's) preparation for guardianship/curatorship shall be organised and co-ordinated by regional (city) Child's Rights Protection Institutions, other organisations and agencies with relevant work experience.

Article 3.271. Duties of a child's guardian/curator

A child's guardian/curator shall be obliged to:

- 1) ensure the child's physical and mental safety;
- 2) take care of the child's health and schooling;
- 3) educate the child;
- 4) decide issues related to the child's interests in co-operation with the interested central and local government institutions;
- 5) create no obstacles for the child's contact with his or her biological parents provided this is not detrimental to the child's interests;
- 6) maintain contact with the child's parents, inform the child's parents and close relatives, if they so request, about the child's development, health, studies and other important issues;
- 7) organise the child's leisure activities, taking into account the child's age, development level and inclinations;
- 8) prepare the child for independent life and work in the family, civic society and the State.

Article 3.272. The rights of a child's guardian/curator

1. A child's guardian/curator shall be the child's statutory representative and shall defend the child's rights and legitimate interests.

2. A child's guardian (curator) shall have the right to demand in court the return of the child from any person who keeps the child unlawfully.

Article 3.273. Liability of a child's guardian/curator

1. A child's guardian/curator shall be held liable under law for the damage inflicted by the child.

2. A child's guardian (curator) shall be held liable under law for failure to fulfil

his or her duties or their improper fulfilment

Article 3.274. Maintenance of a child ward

Maintenance of a child under guardianship in a family, social family or non-government guardianship institution shall be regulated by law.

Article 3.275. Management of the child ward's income

Funds intended for the maintenance of the child under guardianship shall be managed by the child's guardian/curator exclusively in the interests of the child in accordance with the rules of Book Four hereof on the regulation of asset administration.

Article 3.276. Relations between the child and the child's guardian (curator) in property

1. The child under guardianship shall acquire no property rights to the assets of his or her guardian/curator.

2. A child's guardian/curator shall acquire no property rights to the assets owned by the child under guardianship.

CHAPTER XIX – GUARDIANSHIP AND CURATORSHIP OF ADULT PERSONS

Article 3.277. Placing under guardianship or curatorship

1. An adult person declared legally incapable by the court shall be placed under guardianship by a court judgement.

2. An adult person declared by the court to be of limited active capacity shall be placed under curatorship .

Article 3.278. Monitoring of the guardian's or the curator's activities

1. Guardianship and curatorship institutions shall be obliged to monitor if the guardian/curator fulfils his or her duties properly.

2. The duties of the guardian/curator related to the administration of the ward's assets shall be established by the rules of Book Four hereof on the regulation of asset administration.

Article 3.279. Curatorship of a person of Full Active Capacity

1. At the request of a natural person of full active capacity incapable of exercising his or her rights or of performing his or her duties due to health reasons may be placed under curatorship.

2. The curator of a person of full active capacity shall be appointed by a court order at the request of the person of full active capacity or on the application of a guardianship/curatorship institution.

3. A curator may be appointed only with his or her written consent. The competent person and the curator shall conclude an agency agreement or an agreement on the management of assets in trust setting forth the rights and duties of the curator related to the management, use and disposal of the assets of the person of full active capacity.

4. Curatorship shall be cancelled by a court order at the request of the person of full active capacity.

5. In cases provided for in this Article, Article 3.244 hereof shall be applicable to the extent in which it is compatible with the agreement concluded between the curator and the person of full active capacity.

PART VIII – REGISTRATION OF CIVIL STATUS ACTS

CHAPTER XX – GENERAL PROVISIONS

Article 3.280. Agencies registering civil status acts and their competence

1. City and regional register offices shall register births, acknowledgements and determinations of paternity, divorces, adoptions, changes of names, surnames and nationality, and deaths.

2. In towns which do not have register offices the heads of local district councils (except for the local district of the municipality centre) shall have the right to register deaths.

3. Consular Offices of the Republic of Lithuania shall have the right to register the birth, marriage and death of the citizens of the Republic of Lithuania.

Article 3.281. Rules for the registration of civil status acts

Civil status acts shall be registered, restored, changed, supplemented and cor-

rected subject to the Regulations on Civil Registration approved by the Minister of Justice.

Article 3.282. Language of the records of civil status acts

The records of civil status acts shall be made in Lithuanian. The name, surname and place names shall be spelled in accordance with the rules of the Lithuanian language.

Article 3.283. Prohibition to make records of civil status acts for oneself and for one's relatives

It shall be prohibited to make records of civil status for oneself, one's spouse, parents, children, and siblings.

Article 3.284. Documents filed for the record of civil status

Making a record of a civil status act requires the presentation of identity documents and the acts to be registered in the register office.

Article 3.285. Making records of civil status acts

Each record of a civil status act shall be legible to the applicants, it shall be signed by the official making the record and stamped with the stamp of the institution registering civil status acts. Applicants for the registration of births, marriages, divorces, changes of names, surnames and nationality and deaths shall be issued respective certificates.

Article 3.286. Challenging and cancelling records of civil status acts

1. Records of civil status acts may be challenged only in court.

2. After the primary records are discovered, the restored records of civil status acts shall be destroyed by the decision of the head of the register office.

Article 3.287. Supervision of the legitimacy of records of civil status acts

The legitimacy of records of civil status acts made by register offices and local district authorities shall be supervised by the Ministry of Justice following the procedure established in its regulations.

Article 3.288. State fee for registration of civil status acts

Registration of civil status acts in register offices as well as correction and modification of the records of such acts shall be subject to a state fee in the procedure established by law.

CHAPTER XXI – REGISTRATION OF BIRTHS

Article 3.289. Registration of births

1. The birth of a child shall be registered with the register office of the child's residence place or one of the parents' residence place.

2. At the request of the parents of the child, the register office shall make the registration of the child's birth a solemn occasion.

Article 3.290. Notification of births

1. A birth shall be notified, orally or in writing, by the parents or one of the parents; if the parents are sick, dead or cannot do that for other reasons, the birth shall be notified by relatives, neighbours, the administration of the maternity home where the child was born or the state institution for the protection of the child's rights.

2. The birth of a foundling shall be registered on the application of the person who found the child or the state institution for the protection of the child's rights.

Article 3.291. Time limits for the registration of birth

1. The birth of a child shall be notified and registered within three months of the date of the child's birth; in cases of a stillborn baby – within three days from the time of its birth.

2. An application for the registration of a foundling shall be filed within three days of the moment when the child was found.

Article 3.292. Record of birth

1. The record of birth shall include the name, surname and nationality of the child as well as data on the child's parents in accordance with the rules set in Articles 3.139, 3.140, 3.166 and 3.167 hereof.

2. Where the paternity of the child has not been ascertained, data on the child's father shall not be entered.

3. The name and surname of a child whose parents are not known shall be recorded on the instructions of the state institution for the protection of the child's rights.

4. The registration of the child's birth shall be followed by the issuance of the birth certificate.

CHAPTER XXII – REGISTRATION OF THE ACKNOWLEDGEMENT AND DETERMINATION OF PATERNITY

Article 3.293. Registration of the acknowledgement of paternity

1. Acknowledgement of paternity shall be registered in the register office of the child's mother's residence on the basis of the applications of the child's mother and father for the confirmation of the acknowledgement of paternity. Where the paternity is acknowledged after the registration of the child's birth, the acknowledgement of paternity shall be registered in the register office where the child's birth was registered.

2. In cases provided for in paragraph 5 Article 3.140 and Article 3.144, the acknowledgement of paternity shall be registered on the presentation of the application for the confirmation of the acknowledgement of paternity approved by the court.

Article 3.294. Registration of paternity affiliation

Paternity affiliation shall be registered in the register office where the child's birth was registered on the basis of the court order on the determination of paternity.

Article 3.295. Data on the father in the record of the child's birth

On the basis of the application on the acknowledgement of paternity or the court order on the determination of paternity, the register office shall record data on the child's father in the record of the child's birth and shall issue a new birth certificate.

CHAPTER XXIII – REGISTRATION OF ADOPTIONS

Article 3.296. Place of registration of an adoption

Adoption shall be registered in the register office where the child's register was registered on the basis of the court order on adoption.

Article 3.297. Data in the birth record of an adopted child

1. Where on the basis of a court judgement the adopted child is given a new name or the surname of the adoptive parents, these data are changed accordingly in the child's birth record.

2. In the birth record of the adopted child the data on the child's parents shall be replaced by the data on the child's adoptive parents.

3. Where a child has been adopted only by a man or a woman, the data on the other parent of the child shall be deleted from the record and shall not be replaced by new data.

4. The change of data in the child's birth record shall be followed by the issuance of a new birth certificate.

CHAPTER XXIV – REGISTRATION OF MARRIAGES

Article 3.298. Place of registration of marriage

Marriages shall be registered in the register office of the residence of one of the spouses or their parents as well as in the consular posts of the Republic of Lithuania.

Article 3.299. Application for the registration of marriage

1. Future spouses shall file an application of a standard format with the registration office of the residence of one of them or, at their own discretion, of that of their parents.

2. In their application future spouses shall confirm that all the conditions for contracting a marriage set forth in Articles 3.12-3.17 have been complied with; each of them shall indicate the number of their previous marriages and the number of their children.

3. The application for the registration of marriage shall be cancelled if at least one of the applicants fail to appear to register the marriage at the set time or withdraws his or her application.

Article 3.300. Documents to be presented together with the application for the registration of marriage

1. Together with their application for the registration of marriage, the future spouses shall present their birth certificate and passport or any other identification document.

2. A divorcee shall also present his or her divorce certificate.

3. The application of foreign nationals for the registration of marriage shall be accompanied with a document issued by a competent authority of their State confirming that there are no obstacles for the marriage.

Article 3.301. Time of registration of marriage

1. The marriage shall be registered no sooner than after a month from the day of filing the application for the registration of marriage.

2. At the request of the future spouses and in the event of important reasons, the head of the register office shall have a right to permit the registration of the marriage earlier than a month after the day of filing the application.

Article 3.302. Public announcement of an application for the registration of marriage

1. The filing of an application for the registration of marriage shall be publicly announced in the register office no later than two weeks before the registration day.

2. The announcement shall indicate the names, surnames and birth dates of the future spouses and the date of the registration of the marriage.

Article 3.303. Registration of marriage

1. Marriages shall be registered in the presence of both the future spouses and two witnesses.

2. Before the registration of a marriage, the official of the register office shall be obliged to check once more if all the conditions set in Articles 3.12-3.17 for contracting a marriage have been fulfilled.

3. The making of the marriage record shall be followed by the issuance of a marriage certificate.

4. The fact of the registration of marriage shall be entered in the passports

or any other identity documents of the spouses by indicating the name, surname and birth date of the other spouse, the place and date of the registration of the marriage.

Article 3.304. Registration of religious marriages

1. Within ten days of the religious marriage the person authorised by the respective religious organisation shall be obliged to present to the local register office a notification of the religious marriage solemnised in the procedure set by the Church (confession).

2. Having received a notification of a religious marriage, the register office shall make a record of the marriage and issue a marriage certificate in accordance with the rules of paragraphs 2, 3 and 4 Article 3.303 hereof provided the requirements of Articles 3.12-3.17 hereof have been complied with. In such a case the marriage shall be considered to be contracted on the day of its registration in the procedure set by the Church.

3. If the registration of a marriage in the procedure set by the Church is not notified within the time limit set in paragraph 1 hereof, the marriage shall be held to have been contracted on the day when it was registered in the register office.

CHAPTER XXV – REGISTRATION OF DIVORCE

Article 3.305. Registration place of divorce

Divorce shall be registered in the register office of the district of the court that has rendered the divorce decision.

Article 3.306. Procedure for the registration of divorce

1. On receiving a court judgement on divorce, the register office shall make a record of divorce, issue divorce certificates to both the former spouses and make a record of divorce in their passports or any other identity document.

2. Having registered a divorce, the register office shall send a standard notification of the divorce to the register office that registered the marriage, while the latter shall make respective changes in its record of marriage registration.

CHAPTER XXVI – REGISTRATION OF THE CHANGE OF A NAME, SURNAME OR NATIONALITY

Article 3.307. Procedure for the registration of the change of a name, surname or nationality

The change of a name, surname or nationality shall be registered in the register office of the applicant's residence with the permission of the Ministry of Justice.

Article 3.308. Making changes in the records of civil status in respect of the change of a name, surname or nationality

If there is a permission of the Ministry of Justice to change a name, surname or nationality, the register office shall make the respective changes in the records of birth, marriage and divorce and shall issue a certificate on the change of the name, surname or nationality and new birth, marriage and divorce certificates.

CHAPTER XXVII – REGISTRATION OF DEATH

Article 3.309. Procedure for the registration of death

1. Death shall be registered in the offices or one of the offices referred to in Article 3.280 of the residence of the deceased on the basis of the medical certificate of death.

2. On the basis of a court decision on the assumption of death or on the determination of the fact of death, death shall be registered in the register office of the location of the court which has taken the decision.

Article 3.310. Notification of death

Death shall be registered upon the application of the relatives or neighbours of the deceased or of the owner of the home where the deceased person lived, as well as on the notification by the administration of the medical centre where the person died or the police commissariat.

Article 3.311. Time limit for the registration of death

Death shall be notified and registered within three days of the death or the time when the dead body was discovered.

Article 3.312. Death record

While registering death, the register office referred to in Article 3.280 hereof shall make a death record and issue a death certificate.

CHAPTER XXVIII – RESTORATION, SUPPLEMENTATION OR CORRECTION OF CIVIL STATUS RECORDS**Article 3.313. Procedure for the restoration, supplementation or correction of civil status records**

1. Civil status records shall be restored, supplemented or corrected by a register office provided the restoration, supplementation or correction has a justified reason and is not disputed by interested parties.

2. In case of a dispute between the interested parties, civil status records shall be restored, supplemented or corrected by a court decision.

CHAPTER XXIX – KEEPING CIVIL STATUS RECORDS AND DOCUMENTS ON THEIR CHANGES

The procedure for filing and keeping civil status records and documents on their changes shall be established by the Ministry of Justice in conjunction with the Archives Department of Lithuania.