

ENCYCLOPEDIA OF INTERNATIONAL COMMERCIAL LITIGATION

Edited by Sir Anthony Colman

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Edited by the Honorable Sir Anthony Colman and featuring contributions and commentary from more than 60 leading authorities from across the globe, the Encyclopedia of International Commercial Litigation provides instant access to virtually everything you'll need to pinpoint the proper forum in which to litigate, avoid key legal obstacles, and use the laws and procedures of each jurisdiction to your best advantage. The title includes detailed explorations of matters relevant to all commercial transactions, including choice of law, international jurisdictions, international contracts, and the recognition and enforcement of foreign judgments and awards.

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CONTENTS

VOLUME 2

HONG KONG

Author iii

Part A—General Section 1

(1) Structure of the Courts	1
(2) The Judiciary	3
(3) The Legal Profession	4
(4) Sources of Law	6
(5) Jurisdiction of the Courts	6
(6) General Description of Procedure of a Typical Commercial Claim	8
(7) More Specific Description of Reception of Evidence at the Trial	23
(8) Extent to Which the Courts Have Regard to Previous Decisions, Whether Regarded As Binding, Persuasive or Irrelevant	24
(9) Conserva tory Jurisdiction	24
(10) Availability of Judgments for Interest on Debt or Damages	27
(11) Availability of Orders for Costs	28
(12) Execution and Enforcement of Domestic Judgments and Orders	29
(13) Germaine Jurisdictions	34
(14) Appeal	35
(15) Time Limitation	35

Part B—Particular Claims 39

(1) Claims for Breach of Contract for the Sale of Goods	39
(2) Claims for Title to or Damage to Goods	40
(3) Claims to Enforce a Corporate Share-Sale Transaction	41
(4) Claims to an Interest In a Bank Deposit	42
(5) Claim for Recovery of Charter Hire and Damages Under a Charterparty	43
(6) Arrest of Ships	44
(7) Enforcement of Foreign Judgments	51
(8) Enforcement of Arbitration Awards (Foreign and Domestic)	54

HUNGARY

Authors iii

Part A—General Section

Introduction	1
(1) The Structure of the Courts	1
(2) Jurisdiction of the Courts	6
(3) The Legal Profession	12

(4)	Judiciary	20
(5)	Litigation Procedure	21
(6)	First Instance Proceedings: Commencement of an Action	30
(7)	The Trial	33
(8)	Evidence	40
(9)	Court Decisions	50
(10)	Remedies	54
Part B—Particular Claims		59
(1)	Introduction	59
(2)	Enforcement of Foreign Arbitration Awards	60
(3)	Other Special Considerations	60
INDIA		
Author		i
Part A—General Section		1
(1)	Introduction	1
(2)	Structure of Courts	2
(3)	The Judiciary	6
(4)	The Legal Profession	6
(5)	Fees and Charges	7
(6)	Jurisdiction of the Courts	7
(7)	A Typical Commercial Action	7
(8)	Evidence from Overseas Witnesses	12
(9)	Previous Decisions	13
(10)	Conservatory Jurisdiction	14
(11)	Availability of Judgments for Interest on Debts or Damages	15
(12)	Availability of Orders for Costs	16
(13)	Enforcement of Domestic Judgments and Orders	17
(14)	Foreign Exchange and Judgments	17
(15)	Appeals	21
Part B—Particular Claims		23
(1)	Actions for Breach of Contract, Negligence and Determination of Property Rights	23
(2)	Claims for Rights in Mineral Concession in the Jurisdiction	26
(3)	Claims for Title to or Damage to Goods	27
(4)	Claims for Moneys Due under Insurance/Reinsurance Contracts	27
(5)	Claims to Enforce Corporate Share Sale Transactions	28
(6)	Claims for the Enforcement of Copyright and Trade-marks	28
(7)	Claims to an Interest in a Bank Deposit	31
(8)	Claims for Recovery of Charter Hire or Damages under a Charter-party	31
(9)	Claims for Amounts Due under a Joint Trading Venture Agreement	31
(10)	Arrest of Ships	31
(11)	Enforcement of Foreign Judgments	32
(12)	Enforcement of Domestic Arbitration Awards	34

INDONESIA

Authors iii

Part A—Introduction 1

The Constitution 3

- (1) The Court System 4
- (2) Legal Profession 7
- (3) Jurisdiction 8
- (4) Arbitration 10
- (5) Procedure in Commercial Litigation 12
- (6) Evidence 16
- (7) Judgment 17
- (8) Order to Pay and Costs 18
- (9) Recourses against Judgments 18
- (10) Execution 21

IRELAND

Authors iii

Part A—General Section 1

- (1) Structure of the Courts 1
- (2) Judiciary 3
- (3) The Legal Profession 4
- (4) Jurisdiction of the Courts Generally 6
- (5) General Description of Procedure of a Typical Commercial Claim 8
- (6) Reception of Evidence at the Trial 15
- (7) Extent to which the Courts Have Regard to the Previous Decisions 16
- (8) Conservatory Jurisdiction Generally 16
- (9) Availability of Judgments for Interest on Debts or Damages 17
- (10) Availability of Orders for Costs 17
- (11) Enforcement of Domestic Judgments and Orders 18
- (12) Germane Jurisdictions 18
- (13) Appeal 18
- (14) Time Limitation 19

Part B—Particular Claims 20.1

- (1) Claims for Breach of Contract for Sale of Goods 20.1
- (2) Claims for Rights in Mineral Concession in the Jurisdiction 22
- (3) Claims for Title to or Damage to Goods in the Jurisdiction in Question 22
- (4) Claims for Monies Due under Insurance/Reinsurance Contracts 23
- (5) Claims to Enforce Corporate Share-Sale Transactions 23
- (6) Claims to Enforce Copyright/Trademark 23
- (7) Claims to an Interest in a Bank Deposit 23
- (8) Claims for Recovery of Charter Hire/Damages under a Charterparty 23
- (9) Claims for Amounts Due under a Joint Venture Trading Agreement 24
- (10) Arrest of Ships 24
- (11) Enforcement of Foreign Judgments 24
- (12) Enforcement of Foreign/Domestic Arbitration Awards 25

ISRAEL

Author iii

Introduction 1

Part A—General Section 3

(1) Structure of the Courts	3
(2) The Judiciary	8
(3) The Legal Profession	9
(4) Jurisdiction	11
(5) Procedure	16
(6) Reception of Evidence at the Trial	26
(7) Previous Decisions	28
(8) Conservatory Jurisdiction	28
(9) Availability of Judgements for Interest on Debts or Damages	30
(10) Orders for Costs	30
(11) Enforcement of Domestic Judgements and Orders	31
(12) Germane Jurisdiction	34
(13) Appeals	34
(14) Time Limitation	35

Part B—Particular Claims 39

(1) Claims for Breach of Contract for Sale of Goods	39
(2) Claims for Rights in Mineral Concession	39
(3) Claims for Title to or Damage to Goods in the Jurisdiction	39
(4) Claims for Moneys Due under Insurance Contracts	40
(5) Claim to Enforce Corporate Share-Sale Transaction	40
(6) Claim to Enforce Copyright/Trademark	40
(7) Claims to an Interest in a Bank Deposit	41
(8) Claim for Recovery of Charter Hire/Damages under a Charter Party	41
(9) Claims for Amounts Due under a Joint Trading Venture Agreement	41
(10) Arrest of Ships	41
(11) Enforcement of Foreign Judgments	42
(12) Enforcement of Foreign/Domestic Arbitration Awards	46

ITALY

Authors iii

Part A—General Section 1

(1) Structure of the Italian Courts	1
(2) The Judiciary	4
(3) The Legal Profession	5
(4) Jurisdiction of the Italian Courts in General	10
(5) Procedure Before a ‘Tribunale’ (Court of First Instance)	15
(6) Reception of Evidence By the Court	33
(7) Weight of Judicial Precedent	35

(8)	Conservatory Jurisdiction	36
(9)	Judgments for Interest On Debts and Damages	39
(10)	Orders for Costs	40
(11)	Enforcement of Domestic Judgments and Orders	40
(12)	Germaine Jurisdiction	42
(13)	Appeals	42

Part B—Particular Claims 49

(1)	Claims for Breach of Contract for Sale of Goods	49
(2)	Recognition of Foreign Judgments and Arbitration Awards	53
(3)	Claim for Title to Or Damage to Goods in the Jurisdiction in Question	57
(4)	Claims for Moneys Due Under Insurance/Reinsurance Contracts	60
(5)	Claim to Enforce Corporate Share-Sale Transaction	60
(6)	Claim to Enforce Copyright/Trademark	60
(7)	Claims to an Interest in a Bank Deposit	63
(8)	Claim for Recovery of Charter Hire/Damages Under a Charterparty	63
(9)	Claims for Amounts Due Under a Joint Trading Venture Agreement	63
(10)	Arrest of Ships	64
(11)	Mineral Concessions	65

JAPAN

Author	iii
--------	-----

Part A—General Section 1

(1)	Structure of the Courts	1
(2)	The Role of Judicial Precedent	4
(4)	Alternative Means of Dispute Settlement	10
(5)	Court Procedure	12
(6)	Special Procedures	27

Part B—Particular Claims 29

(2)	Problems Related to Cross-Border Disputes	29
-----	---	----

JERSEY

Authors	iii
---------	-----

Part A—General Section 1

(1)	Structure of the Courts	1
(2)	The Judiciary	3
(3)	The Legal Profession	4
(4)	Jurisdiction of the Royal Court over Foreign Defendants	6
(5)	Pre-Trial Procedure	9
(6)	Trial Procedures	17
(7)	Conservatory Jurisdiction	22

Part B—Particular Claims 27

(1)	Claims for Breach of Contract for Sale of Goods	27
-----	---	----

(2)	Claim for Title to or Damage to Goods within the Jurisdiction	27
(3)	Claims for Monies Due under Insurance/Reinsurance Contracts	27
(4)	Claim to Enforce a Corporate Share Sale Transaction	27
(5)	Claim to Enforce Copyright/Trademark	27
(6)	Claims to an Interest in a Bank Deposit	28
(7)	Claims for Recovery of Charter Hire/ Damages under a Charterparty	28
(8)	Claims for Amounts Due under a Joint Trading Venture Agreement	28
(9)	Enforcement of Foreign Judgments	28
(10)	Enforcement of Foreign/Domestic Arbitration Awards	31

JORDAN

Authors	iii
---------	-----

Part A—General Section 1

(1)	Structure of the Courts	1
(2)	The Judiciary	2
(3)	The Legal Profession	3

Part B—Specific Sections 9

(1)	Claims for breach of contract for sale of goods. Ordinary claim	9
(2)	Claim for title to or damage to goods in the jurisdiction in question.	9
(3)	Claims for monies due under insurance/reinsurance contracts.	9
(4)	Claim to enforce corporate share-sale transaction.	9
(5)	Claim to enforce copyright/trademark.	9
(6)	Basis of the Claim	10
(7)	Claims for interest in a bank deposit case;	12
(8)	Claims for amounts due under a joint trading venture agreement.	12
(9)	Enforcement of foreign judgments/foreign arbitration awards.	12
(10)	Enforcement of local judgments/local arbitration awards	13

KAZAKHSTAN

Authors	iii
---------	-----

Part A—General Section 1

(1)	Introduction	1
(2)	Structure of the Courts	2
(3)	The Judiciary	2
(4)	The Legal Profession	3
(5)	Jurisdiction	4
(6)	Procedure in Commercial Litigation	5
(7)	Evidence	9
(8)	Judgment	10
(9)	Costs	11
(10)	Recourse against Judgments	11
(11)	Arbitration and Mediation	13
(12)	Recognition and Enforcement of Domestic and Foreign Judgments	15

Part B—Particular Claims	15
(1) Claims for Breach of Contract for Sale of Goods	15
(2) Claim for Rights in Mineral Concession in the Jurisdiction	16
(3) Claim for Title to or Damage to Goods	16
(4) Claims for Monies Due under Insurance/Reinsurance Contracts	17
(5) Claim to Enforce Corporate Share Sale Transaction	17
(6) Claim to Enforce Copyright/Trademark	17
(7) Claims to an Interest in a Bank Deposit	17
(8) Claim for Recovery of Charter Hire/Damages under a Charterparty	18
(9) Claims for Amounts Due under a Joint Trading Venture Agreement	18
(10) Arrest of Ships	18
(11) Enforcement of Foreign Judgments	19
(12) Enforcement of Foreign/Domestic Arbitration Awards	19
REPUBLIC OF KOREA	
Author	iii
Introduction	1
Part A—General Section	3
(1) Structure of the Courts	3
(2) Judiciary	6
(3) Legal Profession	7
(4) Jurisdiction	9
(5) Institution of Litigation	14
(6) Pre-Trial Procedure	17
(7) Hearings	18
(8) Evidence	22
(9) Conclusion of Litigation	27
(10) Appeal	31
(11) Enforcement	34
(12) Provisional Attachment and Provisional Disposition	35
Part B—Particular Claims	37
Note	37
(1) Arrest of Ships	37
(2) Enforcement of Foreign Judgments	40
(3) Enforcement of Domestic/Foreign Arbitration Awards	44
(4) Actions Recognized under the Corporate Section of the Korean Commercial Act	47
(5) Securities Class Action	51
(6) Short-Swing Profit Recovery Action	53
(7) Value Added Tax Refund Litigation	53
Part C—Conciliation	55
(1) Overview	55
(2) Merits of Conciliation	55
(3) Request for Conciliation Proceedings	56

(4) Conciliation Procedures	57
(5) Conclusion of Conciliation	58

KUWAIT

Author	i
Introductory Note on the Effect of Recent Events on Kuwait	1

Part A—General Section 1

(1) Structure of the Courts	1
(2) Jurisdiction of Kuwaiti Courts	3
(3) Court Procedure and Initiation of Litigation	3
(4) The Judiciary	7
(5) The Legal Profession	9
(6) Procedure in a Typical Commercial Claim in Kuwait	12
(7) Reception of Evidence in Court	15
(8) Conservatory Jurisdiction	16
(9) Court Judgments and Orders	19
(10) Appeals	21
(11) Binding Effect of Previous Court Decisions	23
	25

Part B—Particular Claims

(1) Procedure for Specific Types of Claims	25
(2) Appropriate Court for Claim and Method of Initiation of Claim	25
(3) Third Party Proceedings	26
(4) Pre-Trial Definition of Issues Counterclaims Procedure	26
(5) Pre-Trial Conservatory Remedies	27
(6) Pre-Trial Hearing, Summary Judgment, Orders Obtainable, Enforcement	27
(7) Pre-Trial Discovery/Depositions-Procedures	27
(8) Other Pre-Trial Procedures	27
(9) Trial Dates	28
(10) Preparation of Evidence	28
(11) Conduct of Trial, Judgment, Damages, Costs	31
(12) Appeals	31
(13) Enforcement Within the Jurisdiction	31
(14) Arrest of Vessels	31
(15) Enforcement of Foreign Judgments	32
(16) Enforcement of Arbitration Awards	33
(17) Limitation Period for Claims	34

LATVIA

Authors	iii
---------	-----

Part A—General Section 1

(1) Structure of the Courts	1
(2) Courts' Jurisdiction	1
(3) The Judiciary	2
(4) The Legal Profession	3
(5) Jurisdiction of the Courts Generally by Reference to the Connection between the Claim and the Country in Question	3

(6)	General Description of Procedure of a Typical Commercial Claim	4
(7)	Specific Description of Reception of Evidence at the Trial	7
(8)	Extent to Which the Courts Have Regard to Previous Decisions	8
(9)	Conservatory Jurisdiction	9
(10)	Availability of Orders for Costs	10
(11)	Enforcement of Domestic Judgments and Orders	11
(12)	Appeal Process	11
(13)	Time Limitation	14

Part B—Specific Sections 15

(1)	Claims for Breach of Contract for Sale of Goods	15
(2)	Claim for Rights in Mineral Concession in the Jurisdiction	16
(3)	Claim for Title to or Damage to Goods in the Jurisdiction in Question	16
(4)	Claims for Monies Due under Insurance/Reinsurance Contracts	17
(5)	Claim to Enforce Corporate Share-Sale Transaction	17
(6)	Claim to Enforce Copyright/Trademark	17
(7)	Claims to an Interest in a Bank Deposit	18
(8)	Claim for Recovery of Charter Hire/Damages under a Charter Party	18
(9)	Claims for Amounts Due under a Joint Trading Venture Agreement	18
(10)	Arrest of Ships	18
(11)	Enforcement of Foreign Judgments	18
(12)	Enforcement of Foreign/Domestic Arbitration Awards	19

LITHUANIA

Author	iii
--------	-----

Part A—General Section 1

(1)	The Structure of the Courts	1
(2)	The Judiciary	3
(3)	The Legal Profession	4
(4)	Jurisdiction of the Lithuanian Courts in Relation to Foreign Defendants	6
(5)	General Description of Procedure Applicable for a Typical Commercial Claim	9
(6)	More Specific Description of Reception of Evidence at the Trial, in Particular, Evidence from Overseas Witnesses	17
(7)	Extent to Which the Courts Have Regard to Previous Decisions, Whether Regarded as Binding, Persuasive or Irrelevant	19
(8)	Conservatory Jurisdiction Generally	20
(9)	Availability of Judgments for Interest on Debt or Damages	21
(10)	Availability of Orders for Costs	22
(11)	Enforcement of Domestic Judgments and Orders	22
(12)	Appeals	23
(13)	Time Limitation-Prescription	24

Part B—Certain Types of Claims 27

(1)	Claims for Breach of Contract on Sale of Goods	27
(2)	Claims for Rights in Mineral Concessions in the Jurisdiction	27
(3)	Claims for Title to or Damage to Goods in the Jurisdiction in Question	28
(4)	Claims for Monies Due under Insurance/Reinsurance Contracts	28
(5)	Claims to Enforce Corporate Share-Sale Transactions	28
(6)	Claims to Enforce Copyright/Trademark	30

(7)	Claims to an Interest in a Bank Deposit	31
(8)	Claims for Recovery of Charter Hire/Damages under a Charterparty	34
(9)	Claims for Amounts Due under a Joint Venture Agreement	34
(10)	Arrest of Ships	35
(11)	Enforcement of Foreign Judgments	36
(12)	Enforcement of Foreign/Domestic Arbitration Awards	37

LUXEMBOURG

Author	iii
--------	-----

Part A—General Section 1

General Introduction	1
----------------------	---

(1)	Structure of the Courts	2
(2)	The Judiciary	6
(3)	The Legal Profession	7
(4)	International Jurisdiction	10
(5)	General Description of Procedure	11
(6)	Reception of Evidence	18
(7)	Previous Decisions	24
(8)	Conservatory Jurisdiction	25
(9)	Availability of Judgments for Interest on Debts or Damages	27
(10)	Availability of Orders for Costs	27
(11)	Enforcement of Domestic Judgments and Orders	28
(12)	Germane Jurisdiction	29
(13)	Appeal	29
(14)	Time Limitation	30
(15)	Mediation	30

Part B—Particular Claims and Special Procedures 33

(1)	Claims for Breach of Contract for Sale of Goods	33
(2)	Claim for Rights in Mineral Concession	41
(3)	Claim for Title to or Damage to Goods	41
(4)	Claims for Monies Due under Insurance/Reinsurance Contracts	41
(5)	Claim to Enforce Corporate Share-Sale Transaction	42
(6)	Claim to Enforce Intellectual Property Rights	42
(7)	Claims to an Interest in a Bank Deposit	43
(8)	Claim for Recovery of Charter Hire and/or Damages under a Charterparty	43
(9)	Claims for Amounts Due under a Joint Trading Venture Agreement	43
(10)	Arrest of Ships	44
(11)	Enforcement of Foreign Judgments	44
(12)	Enforcement of Arbitration Awards	46

MALAYSIA

Authors	iii
---------	-----

Part A—General Section 1

(1)	The Malaysian System of Government	1
(2)	The Malaysian Court System	2

(3) The Judiciary	4
(4) The Law of Precedent	7
(5) The Legal Profession	8
(6) Legal Fees	9
(7) General Court Procedures	9
Part B—Particular Claims	29
(1) Breach of Contract, Tort (Negligence) and Determination of Property Rights	29
(2) Trademarks	31
(3) Copyright	32
(4) Arrest of Ships	33
(5) Land Charges	35
(6) Enforcement of Arbitration Awards	36
(7) International Arbitration Awards	37
(8) Mediation	38
THE NETHERLANDS	
Authors	iii
Part A—General Section	1
Introduction	1
(1) Structure of the Courts	2
(2) The Judiciary	5
(3) The Legal Profession	6
(4) Jurisdiction	7
(5) The Basic Action and the Injunction	11
(6) The Reception of Evidence At the Trial	21
(7) Previous Decisions of the Courts	24
(8) Conservatory Jurisdiction: Freezing the Respondent’S Assets	25
(9) Availability of Judgments for Interest On Debts Or Damages	27
(10) Orders for Costs	28
(11) Enforcement of Domestic Judgments and Orders	28
(12) Germane Jurisdictions	29
(13) Opposition, Appeal and Cassation	29
Part B—Particular Claims	33
(1) General	33
(2) Claim for Breach of Contract for Sale of Goods	33
(3) Administrative Litigation	39
(4) Claim for Rights in Mineral Concession	40
(5) Claim for Title to Or Damage to Goods	40
(7) Claim to Enforce Corporate Share-Sale Transaction	41
(8) Claim to Enforce Copyright/Trademark	41
(9) Claim to Interest in a Bank Deposit	41
(10) Claim for Recovery of Charter Hire/Damages Under a Charterparty	41
(11) Claims for Amounts Due Under a Joint Trading Venture Agreement	41
(12) Arrest of Ships	42
(13) Enforcement of Foreign Judgments	43
(14) Enforcement of Domestic/Foreign Arbitration Awards	45

NORWAY

Authors iii

Part A—General Section 1

(1) Introduction	1
(2) Structure of the Courts	1
(3) The Legal Profession	4
(4) Jurisdiction of the Courts	5
(5) General Description of Procedure of a Typical Commercial Claim	6
(6) More Specific Description of Reception of Evidence at the Trial	10
(7) Extent to Which the Courts have Regard to Previous Decisions	12
(8) Conservatory Jurisdiction	12
(9) Interest	13
(10) Orders for Costs	13
(11) Enforcement of Domestic Judgments and Orders	14
(12) Germaine Jurisdictions	14
(13) Appeal	14
(14) Time Limitation	15

Part B—Specific Sections 17

(1) Claims for Breach of Contract for Sale of Goods	17
(2) Claims for Rights in Mineral Concession in the Jurisdiction	17
(3) Claims for Title to or Damage to Goods	18
(4) Claims for Monies Due Under Insurance/Reinsurance Contracts	18
(5) Claims to Enforce Corporate Share-Sale Transaction	19
(6) Claim to Enforce Copyright/Trademark	19
(7) Claims to An Interest in a Bank Deposit	20
(8) Claim for Recovery of Charter Hire/Damages Under a Charter-Party	21
(9) Claims for Amounts Due Under a Joint Trading Venture Agreement	21
(10) Arrest of Ships	21
(11) Enforcement of Foreign Judgments	22
(12) Enforcement of Foreign/Domestic Arbitration Awards	22

PAKISTAN

Authors i

Part A—General Section 1

(1) Introduction	1
(2) Sources of Law	1
(3) Judicial System	2
(4) Courts of General Jurisdiction	4
(5) Criminal Courts	4
(6) The Legal Profession	4
(7) Commercial Litigation	6
(8) Procedure for Suits	8
(9) Foreign Judgments	10
(10) Institution of Suit	12
(11) Recognized Agents	13
(12) Pleadings	14

(13)	Discovery and Inspection	20
(14)	Calling Witnesses	23
(15)	Execution	26
(16)	Appeals	30
(17)	Other Remedies Against Orders	31
(18)	Interlocutory, Conservatory, Supplemental and Incidental Proceedings	32
(19)	Commissions for Evidence and Local Investigations	36
(20)	Suits' Valuation and Court Fee	37
(21)	Stamp Duty	38
(22)	Limitation	38
(23)	Evidence	39
Part B—Particular Claims and Special Procedures		43
(1)	Suits Based on Contracts, Sale of Goods, Actionable Wrongs etc	43
(2)	Claims in Winding up of Companies	43
(3)	Intellectual Property	44
(4)	Trademarks	44
(5)	Patents and Designs	45
(6)	Designs	45
(7)	Copyright	46
(8)	Summary Procedure for Suits Based on Negotiable Instrument	47
(9)	Insurance	47
(10)	Admiralty Jurisdiction	48
(11)	Commercial Arbitration	51
(12)	International Arbitration	55

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Lithuania

PART A—GENERAL SECTION

(1) THE STRUCTURE OF THE COURTS

(a) Introduction

A1.1 The court system and procedure described in this book refers to the whole territory of Lithuania, without excluding any specific part of its territory.

A1.2 The Lithuanian unified court system consists of general competence courts and administrative competence courts. Courts of general competence hear and try civil cases, including commercial claims, criminal cases, and in certain cases administrative cases. Courts of administrative competence are specialized courts that hear and try disputes arising out of administrative relations. There are no other types of specialized courts in Lithuania at the moment (e.g. admiralty court, etc.).

A1.3 Apart from the general competence courts and administrative competence courts, there is the Constitutional Court of the Republic of Lithuania which ensures the supremacy of the Constitution within the legal system as well as constitutional justice by deciding whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution, and whether the acts adopted by the President or the Government of the Republic of Lithuania are in compliance with the Constitution and laws.

A1.4 Lithuanian courts of general competence are organized in a three-instances court system, consisting of district courts (in Lithuanian ‘*apylinkės teismai*’), which are the courts of first instance, regional courts (in Lithuanian, ‘*apygardos teismai*’), which can act as courts of first instance or appellate courts, the Lithuanian Court of Appeals (in Lithuanian, *Lietuvos apeliacinis teismas*), which is the appellate court, and the Lithuanian Supreme Court (in Lithuanian, ‘*Lietuvos Aukščiausiasis Teismas*’), which is the court of cassation.

(b) District Courts

A1.5 District courts are the courts of first instance intended for hearing any commercial claims, which include cases arising out of trade, commerce, competition, corporate relations, insurance, carriage of goods, banking, property, labour relations. There are forty-nine district courts in Lithuania.

(c) Regional Courts

A1.6 Regional courts, as first instance courts, hear and try the following civil cases:

- (a) civil cases, the claim amount whereof exceeds LTL 150,000 (approximately EUR 43,443) except family and labour cases, as well as cases related to non-pecuniary damage;
- (b) regarding non-property rights of the author;
- (c) civil claims arising out of public tender;
- (d) regarding bankruptcy and restructuring;
- (e) civil cases, the party of which is a foreign state;
- (f) regarding claims related to forced sale of shares;
- (g) regarding claims related to the compensation of pecuniary or non-pecuniary damages, caused by violation of the rights of patients;
- (h) other civil cases attributed to the competence of regional courts by the Code of Civil Procedure of the Republic of Lithuania.

A1.7 The Code of Civil Procedure of the Republic of Lithuania establishes special jurisdiction of Vilnius Regional Court which, as a first instance court, is competent to hear and try the following civil cases:

- (a) regarding disputes arising out of patents;
- (b) regarding disputes arising out of trademarks;
- (c) other civil cases attributed to the competence of Vilnius Regional Court by the Code of Civil Procedure.

A1.8 Regional courts, as appellate instance, try cases pertaining to the decisions, orders, rulings, judgments adopted by district courts. There are 5 regional courts in Lithuania.

(d) Court of Appeals

A1.9 Lithuanian Court of Appeals acts as an appellate instance and deals with the following cases:

- (a) regarding the decisions, orders, rulings, judgments adopted by regional courts;
- (b) regarding the requests to recognize and enforce judgments of a foreign state and international courts, and foreign arbitral awards in Lithuania.

(e) Supreme Court

A1.10 The Lithuanian Supreme Court is the only court of cassation instance which reviews the effective judgments, rulings, orders of the courts of general competence. The Lithuanian Supreme Court is also responsible for the formation of uniform judicial practice of the courts of general competence by interpreting and applying laws and other legal acts.

(2) THE JUDICIARY

A2.1 The requirements in the Republic of Lithuania for the candidates to the judges differ according to the court to which they apply.

A2.2 The post of a district court judge may be filled by a national of the Republic of Lithuania of high moral character, having a university degree in law – the academic title of Bachelor and Law or Master of Law or the lawyer’s professional academic title (one-stage university education in law) meeting the requirements established by law required for security clearance procedure or work permit or right of access to or exchange in classified information, who submits a health certificate, has a record of at least five years of work in the legal profession and has passed the examination for candidates. A person having a degree of a Doctor or a Habil. Doctor of Social Sciences (Law), also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from the candidate examination. Legal education obtained abroad shall be recognized in accordance with the procedure established by the Government.

A2.3 A judge entered in the register of persons seeking judicial promotion, of at least five years standing as a judge of a district court as well as a person having a degree of a Doctor or a Habil. Doctor of Social Sciences (Law) and standing as a university lecturer in law for at least five years who has submitted a health certificate may be appointed a judge of a regional court or regional administrative court.

A2.4 A judge entered in the register of persons seeking judicial promotion, of at least four years standing as a judge of a regional administrative court or a regional court as well as a person having a degree of a Doctor or a Habil. Doctor of Social Sciences (Law) and standing as a university professor of law for at least eight years who has submitted a health certificate may be appointed a judge of the Supreme Administrative Court or the Court of Appeals. A judge of the Court of Appeals may be appointed a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed a judge of the Court of Appeals without regard to his record of work at the Court of Appeals or at the Supreme Administrative Court.

A2.5 A judicial office of the Supreme Court may be filled by:

- (a) a judge of a regional administrative court, a judge of a regional court with a record of at least eight years of work as a judge;
- (b) a judge of the Supreme Administrative Court and a judge of the Court of Appeals with a record of at least five years of work as a judge in any of these courts;
- (c) a person having a Doctor or Habil. Doctor of Social Sciences (Law) degree and a record of at least 10 years of work as a university Professor of Law who has submitted a health certificate.

(3) THE LEGAL PROFESSION

A3.1 There are attorneys-at-law (*advokatai*), lawyers (*teisininkai*), notaries (*notarai*) and bailiffs (*antstoliai*) in Lithuania.

A3.2 According to the laws, a person is recognized as an attorney-at-law if she/he:

- (a) is a citizen of the Republic of Lithuania or of a Member State of the European Union;
- (b) has a Masters degree of Law (including Bachelor of Law) or a professional qualification degree of a lawyer (one-stage university legal education);
- (c) has a record of at least five years of work in the legal profession or has a record of at least two years of work as an associate of attorney-at-law. Experience of work in legal profession is calculated as of the moment a person is granted a Bachelor or Masters of Law or a professional qualification degree of a lawyer (one-stage university legal education) and undertakes legal work;
- (d) is of high moral character;
- (e) is fluent in the official language of the state;
- (f) has passed the attorney-at-law qualification examination;
- (g) does not have impairments of health preventing him/her from performing duties of an attorney-at-law. The procedure for checking the health of applicants and attorneys-at-law is determined by the Ministry of Health Care and the Ministry of Justice of the Republic of Lithuania.

A person having a Doctor or Habil. Doctor's of Social Sciences (Law) degree or a record of at least 7 years of work as a judge is exempted from an obligation to pass the attorney qualification examination.

A3.3 In Lithuania there is no strict partition of legal professions as is in the English legal system. In practice, legal services are provided also by in-house lawyers, who are responsible for the entire realm of legal matters in state institutions and private entities. More frequently, in private entities, lawyers are employed under the employment agreement. Usually the interests of state institutions in the courts are represented by in-house lawyers, though most frequently through the power of attorney.

A3.4 The type of work of attorneys-at-law is very diverse. Some of them practice individually, or join law offices, or professional partnerships.

A3.5 According to Lithuanian laws, there is no difference in fee regulation, based upon criteria such as whether the client is from overseas or domestic. The client and the attorney-at-law should sign an agreement on the provision of legal services. Attorneys-at-law are paid an agreed fee by the clients for legal services rendered under the agreement. In civil cases an attorney's-at-law fee may be agreed in such a manner that its amount depend on the result of the case, if this is in line with the statutory principles of the attorney's-at-law activity. In establishing the amount of fee payable to the attorney-at-law for legal services provided, a due regard is to be paid to the complexity of the case, qualification, experience and financial standing of the client and other significant circumstances. An attorney-at-law is entitled to pay stamp duty, state duties and other payments relating to provision of legal services, on behalf of a client and using the latter's funds. The funds that are temporarily held in custody by the attorney-at-law and belonging to a client are to be accounted separately and kept in deposit accounts of the advocate. It

is not allowed to enforce from the funds kept in such accounts according to lawyers' obligations. Three issues are regulated by the Bar Association.

A3.6 The Lithuanian Bar Association has adopted a decision concerning the procedure for issuance and use of invoices, which state that the legal services agreement is to be provided with an accurate record of legal services supplied, the number of hours billed, billing criteria, concerning exact rates and total amount.

A3.7 In case of a dispute between an attorney-at-law and a client regarding legal services, the client has the right to refer to the Lithuanian Bar Association or court. The disputes between lawyers and clients regarding legal services are handled in the Lithuanian Bar Association or later by the disciplinary body formed by the latter. Such disputes are to be dealt with following the procedure established by the Lithuanian Bar Association, approved by the Ministry of Justice of the Republic of Lithuania. The Lithuanian Bar association, or the body formed by the latter, has the right to adopt recommendatory decisions. If a client applies to the court, the general procedure established in the Code of Civil Procedure is applied.

A3.8 The notary is a person authorized by the State, performing the functions set out in the Law on Notary Offices, ensuring that there are no illegal transactions and documents in civil legal relations. Notaries shall be appointed and dismissed by the Minister of Justice of the Republic of Lithuania. Notaries shall perform the following notarial acts:

- (a) attestation of transactions;
- (b) issue of inheritance certificates;
- (c) issue of certificates of title to a share of the matrimonial property;
- (d) authentication of copies and extracts from documents;
- (e) certification of the signature on the deeds;
- (f) certification of veracity of the translation of an instrument from one language into another;
- (g) attestation of the fact that a natural person is alive and resides in a certain location;
- (h) acceptance for safe custody of wills equivalent to official wills as well as personal wills;
- (i) attestation of the time of delivery of certain deeds;
- (j) delivery of depositions by natural and legal persons to other natural and legal persons;
- (k) acceptance for deposit of money;
- (l) acceptance of ships' protests;
- (m) protests of bills and cheques;
- (n) entry of execution clauses in the protested and non-protestable bills and cheques;
- (o) entry of execution clauses for debt collection under the claim of mortgage (pledge) creditor;
- (p) drawing up or certification of documents in respect of the authenticity of information transferred to the register of legal persons and confirmation that a legal person may be registered because the obligations under law or the transaction of incorporation have been fulfilled and the circumstances provided in laws and the documents of incorporation have arisen;
- (q) certification of conformity of the documents of incorporation to the requirements provided by law;
- (r) performance of other notarial acts provided by law.

A3.9 It shall be recognized that the facts presented in the notarized documents have been established and provide conclusive evidence until these documents or parts thereof are recognized as not valid according to the procedure established by law.

A3.10 A bailiff is a person authorized by the State, empowered by it to perform the functions of enforcement of writs of execution, to make material ascertainties on factual circumstances, to serve proceedings and carry out any other functions provided by law. Bailiffs shall be appointed and dismissed by the Minister of Justice, according to the procedure specified by the Law on Bailiffs. The Minister of Justice shall determine the number of bailiffs and shall assign to them the territories of their jurisdiction, according to the procedure laid down in the Law on Bailiffs. A bailiff must carry out his professional duties in good faith, maintain confidentiality in respect to the circumstances of a person's private life, protect commercial secrets and any other statutory secrets that come to his knowledge in the course of his duties. In enforcing writs of execution, the bailiff must use all lawful remedies to protect adequately the interests of the plaintiff, without violating the rights and lawful interests of other parties to the enforcement procedure.

A3.11 Bailiff must enforce judicial decisions prescribed by law that are executory, make material ascertainties upon assignments of the court, deliver written documents to natural and legal persons by the court order and perform any other duties prescribed by law. Bailiffs may provide, under the procedure established by law, the following services:

- (a) to keep/administer property during the process of execution;
- (b) to make material ascertainties, deliver written documents to natural and legal persons in the Republic of Lithuania without court order;
- (c) to provide legal assistance other than representation in courts and in relations with third parties;
- (d) to sell pledged movable property as collateral in auction;
- (e) to act as an agent in the performance of property obligations.

(4) JURISDICTION OF THE LITHUANIAN COURTS IN RELATION TO FOREIGN DEFENDANTS

A4.1 It is convenient to divide this subject into (a) international jurisdiction according to Lithuanian procedural rules, (b) international jurisdiction according to international bilateral agreements, (c) international jurisdiction according to international multilateral agreements, and (d) international jurisdiction according to the European Union law.

(a) International Jurisdiction According to National (Lithuanian) Procedural Rules

A4.2 the Code of Civil Procedure establishes the following rules regarding international jurisdiction:

- (1) Lithuanian court must check, on its own initiative, that is *ex officio* whether the case at issue falls under the competence of Lithuanian courts. If while lodging a claim the case falls under the competence of Lithuanian courts, such competence

remains intact, even if the defendant who at the time of initiating a case had a domicile in Lithuania, but having initiated the case, leaves to reside abroad;

- (2) A case falls under the competence of Lithuanian courts if a defendant while initiating a case has a *domicile* in Lithuania or resides in Lithuania, or at the time of lodging a claim is in Lithuania. A natural person is deemed to be *domiciled* in the Republic of Lithuania when he establishes and maintains on his own will his only or principal residence with the intention to make it a seat of his personal, social and economic interests. This intention, *inter alia*, may manifest itself by person's actual presence on the territory of the Republic of Lithuania as well as the establishment of personal or business relations between him and persons of the Republic of Lithuania or by some other criteria. A natural person may have only one *domicile*;
- (3) If a person does not have domicile in Lithuania and, in fact, does not reside in Lithuania, the case falls under the competence of Lithuanian courts if the defendant has assets or property rights in Lithuania, or the last known residence place is in Lithuania;
- (4) The case falls under the competence of Lithuanian courts if the subject matter of a dispute is an object located in Lithuania, or the subject matter of a dispute is obligation which arose or has to be discharged in Lithuania;
- (5) The case falls under the competence of Lithuanian courts if parties to the dispute have agreed on the competence of Lithuanian courts.

A4.3 According to the Code of Civil Procedure, Lithuanian courts have exclusive competence over disputes arising out of property rights related to the immovable property which is located in Lithuania.

A4.4 The Code of Civil Procedure provides for the following instances when cases do not fall within the competence of Lithuanian courts:

- (1) commercial cases when disputing parties have agreed that their dispute will be resolved not by Lithuanian courts, if one of the parties before the commencement of the case hearing in essence declares that the dispute does not fall within the competence of the Lithuanian courts. However, this rule does not apply when the dispute falls under the exclusive competence of Lithuanian courts;
- (2) cases when respondents are persons, to whom diplomatic immunity applies, or their family members, except for the disputes related to immovable property located in Lithuania, disputes arising out of commercial relations.

Cases when respondents are civil servants, performing consular functions on behalf of another state, or foreigners – administrative or technical staff of foreign state embassies or consular offices, or other persons whose status is equated to the above mentioned persons by international treaties, laws or international customs, if a claim lodged against them relates to the performance of their official functions, except for instances when a claim related to the compensation for damage inflicted by a motor vehicle is lodged against these persons.

(b) International Jurisdiction According to International Bilateral Agreements

A4.5 When a party to the dispute is a legal or natural person of a foreign state with which Lithuania has concluded a bilateral agreement on legal assistance, the competence of Lithuanian courts have to be established according to the rules of such a bilateral

agreement. Lithuania has concluded bilateral agreements on legal assistance regarding civil, criminal, family cases with Armenia, Azerbaijan, China, the USA, Uzbekistan, Kazakhstan, the Ukraine, Moldova, Poland, Estonia, Latvia, Belarus, Russia and Republic of Turkey.

Bilateral agreements on legal assistance to which Lithuania is a party, establish a general principle *actor sequitur forum rei*, according to which the case falls under the competence of the court of the state in which respondent has residence place or seat. However, some of the above mentioned bilateral agreements establish exception from the general principle of *actor sequitur forum rei*.

A4.6 According to the Agreement between Lithuania and Ukraine Regarding Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases of 7 July 1993, effective as from 20 November 1994, civil cases are subject to the competence of the courts of the state in which territory the respondent has residence place, unless otherwise established by this Agreement. Claims against legal persons are subject to the competence of the courts of the state in which territory is located governing body of that legal person or its representative office of branch (Article 21.1).

A4.7 According to the Agreement Between Lithuania and the Russian Federation Regarding Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases of 21 July 1992, effective as from 21 January 1995, disputes arising out of legal relations pertaining to tort liability are subject to the competence of the courts of the state in which territory the deed took place or appeared other circumstance which was a legal basis to claim damage. However, the aggrieved party may also lodge the above mentioned claim in the court of the state in which the respondent has residence (Article 40.3).

(c) International Jurisdiction According to International Multilateral Agreements

A4.8 Lithuania has entered into some international multilateral agreements that set international jurisdiction. According to the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded on 19 May 1956, in legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

- (1) the defendant is ordinary resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made; or
- (2) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

A4.9 According to the International Convention on civil liability for oil pollution damage (1992), where an incident has caused pollution damage in the territory, including the territorial sea of one or more States Parties, or preventive measures have been taken to prevent or minimize pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the ship owner, insurer or other person providing security for the ship owner's liability may be brought only in the courts of any such States Parties.

A4.10 Other important international multilateral treaties, setting international jurisdiction are:

- (1) Convention for the Unification of Certain Rules Relating to International Carriage by Air, (Warsaw, 1929);
- (2) United Nations Convention on International Multimodal Transport of Goods (Geneva, 1980);
- (3) UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995);
- (4) Hague Conference PIL Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (Hague, 1965);
- (5) Convention on the Law Governing Transfer of Title in International Sales of Goods (1958).

(d) International Jurisdiction According to the European Union Law

A4.11 Council regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters of 22 December 2000 (called the ‘Brussels I Regulation’), is applicable to Lithuania. According to Council regulation (EC) No 44/2001 of 22 December 2000, persons domiciled in a Member State will, whatever their nationality, be sued in the courts of that Member State. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State. The regulation is not applicable when there is an international bilateral agreement on legal assistance concluded with a foreign country, which is not a Member State.

A4.12 Other European Union legal acts are also applicable in Lithuania:

- (1) Regulation 1347/2000 of 29 May 2000 (called the ‘Brussels II Regulation’) which came into effect on 1 March 2001, setting out the rules for jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. This regulation has been replaced by the Regulation 2201/2003 (‘the new Brussels II Regulation’ or the ‘Brussels II bis’) for cases arising on or after 1 March 2005.
- (2) European Union Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
- (3) Regulation EC 4/2009 ‘On jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations’.

(5) GENERAL DESCRIPTION OF PROCEDURE APPLICABLE FOR A TYPICAL COMMERCIAL CLAIM

(a) Commencement of a Claim

A5.1 The Lithuanian Code of Civil Procedure establishes the requirements for the content and the form of procedural documents provided by persons participating in the

process. It is established that procedural documents must be provided to the court in written form and must contain the following information:

- (a) the title of the court to which the procedural document is addressed;
- (b) the procedural status of persons participating in the process, their name, surname, personal code (if one is evident), address, and in case if persons participating in the process or one of them is a legal entity – company name, registered address, account number and details of the credit institution. Persons requesting that procedural documents be delivered through telecommunications terminal equipment, should indicate the address of telecommunications terminal equipment;
- (c) the nature and the subject of the procedural document;
- (d) circumstances which support the subject of the procedural document and evidentiary material, supporting those circumstances;
- (e) annexes to the procedural documents;
- (f) the signature of a person submitting the procedural document and the date of concluding such document.

A5.2 It must be noted that in case the procedural document is submitted to the court by the representative, the procedural document must contain information about the representative's name, surname, address. Furthermore, a document, which indicates rights and obligations of the representative, must be attached.

A5.3 The Lithuanian Code of Civil Procedure indicates that procedural documents, which are also considered as preparatory documents, must include:

- (a) requests, proposals and demands, which will be provided during the verbal hearing;
- (b) evaluation of evidentiary material and demands, provided by other party;
- (c) evidentiary material, on which the party bases its demands or replications. If the party is unable to provide the evidentiary material, it must indicate the reason for such inability and formulate a request to the court to sue out such material, indicating the location of such material and circumstances, that can justify it.

A5.4 The Lithuanian Code of Civil Procedure sets forth that the parties must provide originals of procedural documents. Furthermore, the party must provide as many copies of procedural documents so that opposing party and third parties get one copy. The number of annexes to the procedural documents should be the same as the number of procedural documents. All procedural documents and annexes thereto must be provided in Lithuanian language.

A5.5 The Lithuania Code of Civil Procedure establishes the following additional requirements for the content of a Claim:

- (a) the amount of a claim, in case the claim must be valued;
- (b) circumstances on which the plaintiff bases his claim (actual basis of the claim);
- (c) evidentiary material, justifying circumstances, provided by the plaintiff, witnesses' addresses and location of other evidentiary material;
- (d) plaintiff's demand (subject of the claim);
- (e) plaintiff's position regarding the default judgment, in case the counterclaim or preparatory document is not provided;

- (f) information as to whether the case is going to be led through the attorney at law, also his name, surname and the address of the working place;
- (g) position of the claimant regarding the possibility to conclude an amicable settlement agreement, if he would wish to conclude it.

The plaintiff must also attach documents which prove that stamp-duty is paid.

A5.6 The plaintiff has the right to join several interdependent demands into a single claim.

A5.7 If the claim does not qualify with the above mentioned content and form requirements, the plaintiff must eliminate defects within the period set by the court, which cannot be shorter than 7 days. It must be noted that the court must pass the ruling regarding the acceptance of a claim within 10 days from the registration of the claim in the court. In case the claim includes requests to appoint interim protective measures, the question regarding the acceptance of the case must be solved immediately, but not later than after 3 days.

A5.8 The Lithuanian Code of Civil Procedure establishes that the plaintiff has the right to withdraw his claim until the court has sent the copy to the defendant. Later, the plaintiff may withdraw his claim only with defendant's consent.

A5.9 According to the Lithuanian Code of Civil Procedure the plaintiff has the right to declare to the court in written or oral form that he waves his claim at any stage of the process. It is noteworthy that the defendant has the right to admit the claim. The parties may end the case by concluding an amicable settlement agreement at any stage of the process.

A5.10 The Lithuanian Code of Civil Procedure establishes the plaintiff's right to change the subject or the basis of his claim. The plaintiff has this right until the court passes the ruling to appoint a hearing of the case. In order to change the subject or the basis of the claim, the plaintiff must submit a written application, corresponding to the requirements of every procedural document. The change of the subject or the basis of the claim in later stages is possible only if:

- (a) the necessity of such change arose later; or
- (b) there is a consent of the opposing party; or
- (c) the court agrees that it will not protract the process.

A5.11 According to the Lithuanian Code of Civil Procedure, the court, together with a copy of the claim, must send notice regarding the submission of replies to the claim to the defendant and third parties. In the notice the court must set the term, not shorter than 14 days, but not longer than 30 days, for the submission of replies to the claim. In exceptional cases, taking into consideration the request of the defendant or the third party or the complexity of the case, the court has the right to prolong this term up to 60 days. The reply to the claim must comply with requirements set for procedural documents and additionally must include:

- (a) agreement or disagreement to the commenced claim;
- (b) motives of disagreement;
- (c) evidentiary material, on which the motives of disagreement are based;

- (d) defendant's opinion regarding the default decision, in case the plaintiff fails to provide preparatory documents;
- (e) information as to whether the case is going to be led through the attorney at law, also his name, surname and the address of the working place;
- (f) position of the claimant regarding the possibility to conclude an amicable settlement agreement, if he would wish to conclude it.

A5.12 The court has the right to refuse to accept evidentiary material and motives that could have been provided in the reply to the claim, if it is considered that later submission would protract the adoption of decision. Furthermore, if the defendant fails to submit the reply to the claim during the appointed period, in case there is plaintiff's request, the court has the right to adopt the default decision.

A5.13 The Lithuanian Code of Civil Procedure establishes the defendant's right to submit a counterclaim to the plaintiff, so that it would be heard together with the claim until the court passes a ruling to appoint a hearing of the case. Later submission of a counterclaim is possible only if one of the conditions, mentioned in section 5.10, is met. The court can only accept the counterclaim, if:

- (a) the objective of the counterclaim is to include the demand of the initial claim;
- (b) in case the counterclaim is satisfied, it would be impossible to satisfy the initial claim in full or in part;
- (c) there is mutual connection between the claim and the counterclaim, therefore hearing them together will be more expedient.

The submission of a counterclaim must adhere to the same rules as for the submission of a claim.

(b) Preparation for Hearing in the Court and Pre-trial Hearings

A5.14 The main objectives of the process stage – preparation for hearings in court – are the following:

- (a) to guarantee that the parties' claims and replications be finally formulated;
- (b) to guarantee that the parties have indicated all circumstances and evidentiary material on which they base certain claims and replications;
- (c) after achieving the first two objectives to secure that the case was solved already in the first hearing.

A5.15 According to the Lithuanian Code of Civil Procedure, for the hearing in court, the court is supposed to prepare in a single pre-trial (preparatory) hearing. In exceptional cases, or when the court supposes that a peace treaty can be concluded, the court has the right during the pre-trial hearing to fix the date of the second pre-trial hearing, which must be held not later than after 30 days from the ruling to award the pre-trial hearing.

A5.16 The Lithuanian Code of Civil Procedure establishes that after accepting the claim, the court, in case of necessity, specifies parties' obligations to proceed with proving, sends copies of the claim and its annexes to the defendant and the third parties, sets the term to submit reply to the claim, sets the place, date and time of the pre-trial hearing and informs persons, participating in the process, about it or defines that preparation for the hearing in the court will proceed in preparatory documents' way.

A5.17 According to the Lithuanian Code of Civil Procedure, there are two possible pre-trial (preparatory) procedures:

- (a) preparation for hearing in the court in preparatory documents' way;
- (b) preparation for hearing in the court in the preparatory (pre-trial) hearing.

The second procedure is used when the court supposes that it is possible to conclude amicable settlement agreement, if the law obligates the court to take necessary measures to reconcile parties or if this helps to prepare for the hearing in the court faster and more properly. The court must solve the question regarding the awarding of the preparatory hearing not later than after 14 days from receiving defendant's and the third parties' replies to the claim or the expiry of the term designated for submission of those replies. The preparatory hearing must be held not later than after 30 days from the adoption of the ruling to award preparatory hearing. The first procedure, mentioned above, is used if both parties are represented by the attorneys at law or attorneys' at law assistants. During preparation for hearing in the court not more than two preparatory documents (not including the claim and the reply to the claim) can be submitted. The plaintiff must submit a reply (response to the pleas and arguments raised in the defence), and the defendant – rejoinder (response to the pleas and arguments put forward in the reply). The term set for submission of preparatory documents cannot be longer than 14 days from the delivery of preparatory documents. The judge during the preparation for hearing in court also performs other procedural actions, necessary to prepare the case properly for hearing in the court, e.g. sues out evidentiary material.

A5.18 The Lithuanian Code of Civil Procedure establishes that the court, after identifying the subject-matter of the dispute, during the pre-trial hearing must offer the parties to reach the settlement acceptable to both parties in a way of mutual surrender and to conclude an amicable settlement agreement. Furthermore, the court must take measures to conciliate the parties.

A5.19 If the parties fail to conclude the amicable settlement agreement, the court, taking into consideration the opinions of persons participating in the trial, and having prepared the case for hearing in the court, designates the location, time of the hearing and informs the persons, participating in the process to that effect.

A5.20 The court, in case during the pre-trial hearing it appears that additional actions to prepare for the hearing in the court are not necessary, having the consent of the parties, has the right to start the verbal hearing promptly after the pre-trial hearing, without passing a ruling regarding the court hearing.

A5.21 There are certain procedures which, according to the Lithuanian Code of Civil Procedure, can be performed before or after the submission of the claim, consequently they can be performed in the pre-trial stage. First of all the court, referring to the request of the persons participating in the process, or other concerned persons, may impose interim protective measures, when there is a risk that without imposing the same the enforcement of the judgment might become problematic or impossible. Furthermore, persons, who have reasons to fear that in the future it might become difficult or even impossible to provide their needed evidence, might request the court to secure evidence.

(c) Pre-trial Discovery

A5.22 The Lithuanian Code of Civil Procedure indicates that during the preparation for court hearing the parties and the third persons must provide all the available proofs and explanations, significant for the case, and finally formulate their demands and replications to the presented demands. It must be noted that, according to the Lithuanian Code of Civil Procedure, the court has the right to refuse to accept evidentiary material, if it could have been provided previously and later provision would protract the process.

(d) Other Pre-trial Exchange of Evidence, Such as Experts' Reports

A5.23 The Lithuanian Code of Civil Procedure establishes that the right to appoint an expert in order to have expert's report as the form of evidence is granted solely to the court. Experts' reports prepared on the initiative of a party are considered as an ordinary written evidence and therefore, as it was mentioned above, must be attached to the preparatory documents.

(e) Pre-trial Investigatory Procedures

A5.24 According to the Lithuanian Code of Civil Procedure, when the court adjudicates to decide the case in the court hearing, it must indicate which evidence is requested on the court's initiative, when such right is granted to the court under this Code. Furthermore, the Code establishes that the parties and other persons participating in the process, must provide evidence and the court has the right to collect evidence only when this Code or other laws establish such court's right. Under the Lithuanian Code of Civil Procedure, the court has the right to collect evidence on its initiative only in certain category cases, i.e. cases arising from employment, family cases and cases of extraordinary legal proceedings.

A5.25 As it was mentioned in section 5.21, the court has the right to appoint experts even before the trial starts as the form of securing evidence, but only under the request of a person, who fears that the provision of the needed evidence might obstruct in the future.

(f) Fixing of Trial Dates

A5.26 The Lithuanian Code of Civil Procedure establishes that the trial date is fixed in the pre-trial stage by the court ruling to delegate the case for the court hearing. The hearing must start on the fixed date.

A5.27 The Lithuanian Code of Civil Procedure does not establish the terms for preparation for the court hearings, except for employment cases (preparation cannot last more than 30 days from the receipt of a claim) and cases regarding the violations with respect to objects' possession or public procurement issues (preparation cannot last longer than for 30 days). It is only established that the court has an obligation to procure that the civil case was solved during the shortest possible period, the hearing of the case was not protracted, to seek that the case was solved during a single court hearing.

A5.28 According to our knowledge, there is no statistical information as to the duration intended for the pre-trial procedures, especially when there are two slightly different pre-trial procedures.

It must be noted that according to the statistical information on the resolution of civil cases in the first instance courts during 2012 provided in the website of the National Courts' Administration (<http://www.teismai.lt>), the most common duration of a civil case was up to 6 months (92% of the cases). It must be added that the above-mentioned source does not provide the information about the duration of separate stages of the case. Moreover, the duration of the process depends on the certain category of the case.

A5.29 As a general rule, the form of the trial that is conducted in Lithuania is verbal. Under Lithuanian law there is a preliminary hearing of the court before hearing of the case on the merits. It can either be verbal or written. During the preliminary hearing the court sets the circumstances that have to be proven by the parties or other questions that have to be examined. It is necessary to arrange all the facts during the preliminary hearing so that the case would be concluded during the first hearing. The process is more adversarial in Lithuania. It is the duty of the court to ensure that the process would progress, but the parties also have the duty to try to make the process go smoothly and effectively. If both parties are represented by attorneys, a presumption is applied that both parties are well informed of the process and the preliminary hearing can be heard in the form of preliminary documents. In the verbal process, both parties and all the persons participating in the process are summoned. There are cases set by the Code of Civil Procedure, when it is strictly indicated that the case must be heard at the hearing of the court and it is forbidden to ask for a written process. The verbal process means that explanations of the parties, conclusions of witnesses are heard in the court hearing. However, there is an exception when the parties are conversant with the evidence; there is no need to read all the documentation twice over.

A5.30 The Code of Civil Procedure of the Republic of Lithuania establishes the legal institute of the minutes of the court hearing. It is stated that every hearing of the first instance should be recorded. The minutes of the court hearing are regulated very precisely. The record should reveal the date, place, time of the beginning and the end of the hearing, as well as the court, the judge and all the database of the persons participating in the trial, summary of all the evidence and legal submissions supplied to the court are to be registered. The secretary of the hearing must write and sign the record. The law specifies the investigation mechanism of notes, concerning trial record. The right to submit the notes, concerning the trial record, have persons, participating in the trial within three days after the trial record is signed. The parties have a right to receive a transcript of the trial record in the Republic of Lithuania.

A5.31 The evidence in the Republic of Lithuania are as follows:

- (a) Legal submissions of parties and third parties. Legal submissions can be made just after a party or third party has taken an oath. That can be made either in oral, or in written form. Nevertheless, the doctrine of commercial litigation and the law of the Republic of Lithuania states that such evidence must be studied very carefully, because the parties are interested in the decision. Though, they are most aware of the circumstances of the case and can help the court to realize the exact situation.
- (b) Statements of witnesses. Every person who is aware of any conditions regarding the case may stand as a witness. The witness has to take the oath before giving the statements and they are not exchanged in advance in Lithuania. A witness is not allowed to participate in the hearing till it is time to militate. Afterwards he has a right to leave or to remain in the hearing. A person can be exempt from the interrogation if it could mean witnessing against himself or his close relatives.

- (c) Written proof. All the material objects that provide evidence of significant information regarding the case are considered the written proof. The doctrine supports the idea that the source of the written proof is very important and is a criterion for distinguishing the written proof from the other written documents as evidences, i.e. e.g. from the legal submissions of parties or third parties. It should be mentioned that the subject-matter of the written proof does not have to depend on its author's procedural status. Such documents commonly exist before the trial is started.
- (d) Physical evidence. The material things that place the specific information concerning the case are supposed to be physical evidence. Such evidence must be brought to the court by the persons participating in the hearing, or if that is not possible, can be sued out by the court.
- (e) Evidence survey report. If it is impossible for the court to ascertain concrete written proof or physical evidence, i.e. they cannot be submitted to the court because of the objective circumstances, the court has a right to adopt a decision to survey the evidence in their residence.
- (f) Expert findings and other disclosure. They are needed when specific science knowledge is necessary for the establishment of facts concerning the case. The party, who requires the expert finding must indicate the reasons, motivations for its necessity and is asked the point of the questions to be answered under the expert finding. The decision to award the examination can be adopted only by the court. The evidence for expert examination is received in written form. The Code of Civil Procedure of the Republic of Lithuania states the full-dress mechanism for the appointment of a specific expert.

A5.32 The circumstances that do not require to be proven:

- (a) circumstances admitted by laws as being publicly known;
- (b) prejudicial facts established by the same parties in other civil or administrative case;
- (c) presumed by the laws and incontrovertible according to the general procedure;
- (d) circumstances which are substantiated by the facts admitted by the parties.

A5.33 The most important rule for the evaluation of evidence is stated in the Code of Civil Procedure of the Republic of Lithuania. The court evaluates, by operation of the law, the proofs of the case according to its internal assurance substantiated by the objective and versatile consideration of the circumstances argued during the proceedings.

A5.34 According to the general rule, any proof has no preconceived power to the court.

A5.35 If the damages are to be assessed; only the court has a right to assess and adjudge them. The plaintiff is supposed to prove the amount of damages. Sometimes even an expert is appointed for the evaluation of damages but, nevertheless, the final decision, as has been mentioned, is made by the judge.

(6) MORE SPECIFIC DESCRIPTION OF RECEPTION OF EVIDENCE AT THE TRIAL, IN PARTICULAR, EVIDENCE FROM OVERSEAS WITNESSES

A6.1 If there is no bilateral treaty signed between Lithuania and a foreign country and the country is not a member of the Convention On the Taking of Evidence Abroad in Civil or Commercial Matters, concluded 18 March 1970, then the requests for taking evidence from overseas witnesses can be pursued by diplomatic channels in accordance with the principal of mutuality between the countries. In such a situation the Civil Procedure Code is applicable. The Code states that if a Lithuanian citizen, who has to be investigated, is in a foreign country, then the court has to apply to the specific diplomatic agency or consulate. If a non-Lithuanian citizen, who has to be investigated, is in a foreign country, then the court via the Ministry of Justice has to apply to the court or other competent institution of the foreign country. Lithuanian courts also pursue assignments of foreign courts to investigate persons residing in Lithuania. Persons are being investigated under the laws of Lithuania under general rule, but it is possible to investigate the person under the laws of foreign country if it is not in conflict with the public order of Lithuania.

A6.2 The Convention On the Taking of Evidence Abroad in Civil or Commercial Matters states the possibility for countries to set other rules of reception of evidence from overseas witnesses. According to this provision, despite the fact that the countries are members of the Convention, bilateral treaties will be applicable. Most of the bilateral international treaties set that the procedural law of the executive country will be applicable, unless the countries agree to apply specific rules. Most of the bilateral international treaties stipulate that investigation of overseas witnesses can be executed by a diplomatic or consular institution, provided that no compulsion is applied.

A6.3 In case there is no bilateral international treaty, the country is not a Member State of the European Union and both countries are members of the Convention, then the Convention On Taking of Evidence Abroad in Civil or Commercial Matters is applied. The Convention is also applied regarding overseas witnesses. According to the Convention in civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence from an overseas witness. A Lithuanian court has to apply to the Ministry of Justice (Central Authority) and present the request in a specific form. The Ministry of Justice then transfers the request to the Central Authority of the foreign country. The judicial authority, which executes the Letter of Request, applies its own law as to the methods and procedures to be followed. In the execution of the Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse giving the evidence:

- (a) under the law of the State of execution; or
- (b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

A6.4 Under the Convention the diplomatic officers or consular agents can also investigate the overseas witnesses. A person duly appointed as a commissioner for the purpose can investigate overseas witnesses as well. The commissioner without compulsion takes

evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State, if a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case and the commissioner complies with the conditions which the competent authority has specified in the permission.

A6.5 In case the country is a Member State, then 28 May 2001 Regulation (EC) No 1206/2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters is applicable (except for Denmark). According to the Regulation, it is applied in civil or commercial matters, where a court in one Member State in accordance with its national legislation requests a competent court in another Member State to investigate the overseas witnesses or when it requests permission to investigate witnesses directly in another Member State. The direct investigation refers to a situation where a court wishes to investigate witnesses in another Member State without any court in the other State investigating on its behalf, either by a competent representative of the requesting court investigating witnesses in the territory of the other Member State or by means of teleconferences or videoconferences. A request to investigate witnesses with reference to this Regulation cannot be made unless the evidence is intended for use in judicial proceedings that are commenced or contemplated.

(a) Evidence from Experts

A6.6 When there is a need to establish facts, related to special knowledge in art, technology, medicine or other skills, an expert examination should be appointed. The expert examination cannot be appointed in order to explore legal matters, because this is the exceptional competence of the court. This rule is not applied when there is a need to consider the application of law of a foreign state. Evidence of foreign law is regarded to be there where a sphere of special knowledge is required and the judge may not have the necessary information. Though only the court can appoint the expert examination, it is always obligatory to consider the opinion of persons participating in the process. The procedural party initiating the expert examination has to indicate the exact questions to be presented to the expert. The court has to set the exact and precise list of questions to be asked after consideration of the offers of both sides. The ruling of the court to appoint an expert examination cannot be appealed.

A6.7 The experts can be employees of expert examination institutions, having a necessary education and qualification or other persons, having some special knowledge. The expert has to be independent and self-determined. The expert has a right to notify the court that it is impossible to present a conclusion of expert examination in case:

- (a) the information presented to the expert is not comprehensive and it cannot be corrected;
- (b) the question does not fall under expert competence;
- (c) there are no scientific methods to examine the question.

A6.8 There are three kinds of expert findings that can be presented to the court:

- (a) categorical;
- (b) likely;
- (c) impossible to answer the questions.

A6.9 The expert is called to the hearing of the court to read the expert's findings. The conclusion of the expert is not binding to the court and is valued according to the inner conviction of the court. A court's refusal to follow the expert's conclusion must be reasoned in the court's judgment or ruling. It is necessary to follow the procedure of appointment of an expert examination, otherwise the expert's conclusion would not be regarded as a due evidence.

(b) Evidence of Foreign Law

A6.10 In cases when foreign law has to be applied, it is necessary to disclose the content and essence of the foreign law. It is necessary to determine whether evidence of the foreign law is a question of fact or a question of law.

A6.11 According to the Civil Code the evidence of foreign law is a question of both fact and law in Lithuania. In cases when foreign law is applicable because of an international treaty or because of law of conflicts, then evidence of foreign law is regarded as the question of law. Consequently, the court has to analyze and disclose the content and essence of applicable foreign law *ex officio*. The court on its behalf has to arrange which foreign laws are applicable, what is the practice of application of the particular law, precedents of the court in similar cases, etc. When foreign law is applicable under an initiative of the parties, then the evidence of foreign law is regarded as the question of fact. Consequently, the parties have to convince the court of the necessity of the application of the foreign law and to disclose the content and essence of the applicable foreign law. Considering the fact that the evidence of foreign law is a very specific factor, it might be difficult for the parties to obtain all the necessary information and documentation; the parties may request the court for legal assistance to disclose the content of foreign law.

A6.12 In that case, when there is a bilateral international agreement between Lithuania and the foreign country on legal assistance, the provisions of that agreement are applicable, because legal assistance involves the collection of evidence of foreign law.

On 14 April 1994 Lithuania signed the European Convention on Information of Foreign Law (1968) which is effective as from 17 November 1996. According to the convention the court may send a request for information on foreign law to the competent institution of a foreign country via the Ministry of Justice. The court may send the request on its behalf or by request of the parties. Furthermore, the court analyzing and explaining the foreign law may call experts – specialists of foreign law.

(7) EXTENT TO WHICH THE COURTS HAVE REGARD TO PREVIOUS DECISIONS, WHETHER REGARDED AS BINDING, PERSUASIVE OR IRRELEVANT

A7.1 The Lithuanian Supreme Court is responsible for the formation of uniform judicial practice of the courts of general competence by interpreting and applying laws and other legal acts. Therefore, courts by applying law should take into account the interpretation of the law application adopted by the rulings of the Lithuanian Supreme Court in cassation instance which have been announced in the established order. Deviation from the practice of interpreting and applying law adopted by the Lithuanian Supreme Court is a sufficient ground to revise the court's judgment in the cassation procedure.

A7.2 The courts of lower instance have to consider the judgment of the Lithuanian Supreme Court in a similar case. The interpretation of law, made by the Lithuanian Supreme Court is *ratio decidendi* (interpretation of law in the context of specific facts). That is why the courts of lower instance have to examine the merits and conclude whether the situations are similar enough to apply the precedent of the Lithuanian Supreme Court. Moreover, if the court of lower instance does not apply the precedent, it has to substantiate the rejection of the precedent; otherwise there is a cause to quash the judgment of the lower instance. Furthermore, if the Lithuanian Supreme Court quashed the judgment of the court of lower instance and remitted the case back to the court of a lower instance for *De Novo* hearing, then interpretation of law of the Lithuanian Supreme Court is binding and the court of lower instance cannot vary from the judgment of the Lithuanian Supreme Court.

(8) CONSERVATORY JURISDICTION GENERALLY

A8.1 The Civil Procedure Code establishes interim measures (of protection). By applying an interim protective measure, the plaintiff may obtain such interim protective measures as orders freezing the defendant's assets pending completion of the trial, or other types of measure established in the Civil Procedure Code. Persons participating in the process, and other concerned persons, can request for the application of an interim protective measure when there is a risk that execution of judgment may appear impossible or more complicated. The court upon its own initiative may apply the interim protective measure at its discretion, but only in order to protect the public interest. Interim protective measures can be applied at any stage of the proceedings or even when there is no claim at all. When there is no claim, the Court sets the term to lodge the claim, which cannot be longer than 14 days.

A8.2 There are many different types of interim protective measures:

- (a) seizure of immovable property;
- (b) record in the public register about prohibition of transfer of the property;
- (c) seizure of moveable property, bank accounts, pecuniary rights;
- (d) taking control of the defendant's belongings;
- (e) appointing of a receiver (to hold property);
- (f) prohibitive injunction on participation in transactions;
- (g) suspension of property sale;
- (h) obligation to execute actions, preventing from appearing or increasing of damages;
- (i) prohibitive injunction on departure from domicile;
- (j) prohibition for other persons to transfer property to the defendant or execute other obligations;
- (k) other.

A8.3 The court may apply several interim measures at the same time, but entirety should not exceed the amount of the claim. Prior to application of interim protective measures, the court may ask the plaintiff or other person, requesting the interim measure, for security for damages to the defendant in case she/he suffered losses because of the application of interim measures. The plaintiff can ensure coverage of the damages by obtaining a bank guarantee or by paying the amount required by the court to the court's deposit bank

account. The court may decide to inform the defendant concerning examination of injunction in case it is found it necessary by the court. If the court allows the defendant to be heard, it will set down a certain period of time within which the defendant can file a brief. In such a brief, the defendant could bring forward all arguments that support its position.

A8.4 If the court refuses to satisfy the claim, then interim protective measures are valid until the judgment of the court takes effect. If the court satisfies the claim, the interim protective measures are valid until the final execution of the judgment.

(9) AVAILABILITY OF JUDGMENTS FOR INTEREST ON DEBT OR DAMAGES

A9.1 Cases for interest on debt or damages are heard under common procedure described above, however, Civil Procedure Code determines the possibility of summary procedure: court order procedure and documentary procedure. These procedures can be applied to obtain judgments for interest on debt or damages as well as for other prima facie cases.

A9.2 According to the Civil Procedure Code the creditor has a right to apply to the court for receipt of the court order if the subject-matter of the claim is fiscal. The stamp duty for the court order is $\frac{1}{4}$ of the duty that should be paid for the claim under the common procedure. The court order could be submitted to the court in electronic form for which the stamp duty is decreased by 25%. The terms for the receipt of the court order are very short, i.e. the court should decide upon the adoption of resolution not later than on the following day from the day of its submission to the court. If court adopts the resolution the court order should be dispensed not later than on the following day. If, within fourteen days after the receipt of the notification of the adoption of the court order, the debtor does not submit the objection to the court, the court order is executed. Otherwise the creditor has to submit a claim under the common procedure rules. The forms of the procedural documents applied to the court order procedure are determined by the Minister of Justice of the Republic of Lithuania. In case the debtor acknowledges the court order partially, the court adopts a new court order in the extent acknowledged by the debtor. The other part can be solved by creditors' claim presentation.

A9.3 The other form of the summary process is documentary procedure. A claim can be heard under documentary procedure if the subject-matter of the claim is fiscal and the plaintiff asks to hear a case under documentary procedure. The stamp duty for the claim under this institute is $\frac{1}{2}$ of the duty that should be paid for the claim under the common procedure. The court adopts the tentative judgment not later than within 14 days after the claim in the court is adopted. The defendant is not informed about the process till the adoption of the tentative judgment. Afterwards, the defendant has a right to submit the objection within 20 days after the receipt of the tentative judgment. Otherwise the claim is executed. If the defendant submits the objection within 20 days and the plaintiff submits the response to the defendants' objection within 14 days after the receipt of the defendants' objection the court adopts resolution to decide the case under common procedure rules within 30 days after the day the court received the plaintiffs' response to the defendants' objection. If the plaintiff does not submit the response to the defendants' objection the court cannot adopt judgment by default.

(10) AVAILABILITY OF ORDERS FOR COSTS

A10.1 The Civil Procedure Code requires a plaintiff to pay a stamp-duty before the commencement of proceedings; therefore the civil process will not be affected until the receipt of the payment. The amount of the stamp-duty may vary depending on the amount of the claim but cannot exceed LTL 42,990 (approximately EUR 12,460). The claims concerning property disputes cannot be charged less than LTL 72 (approximately EUR 20), while the fixed stamp duty amount of LTL 143 (approximately EUR 41) is established for other claims. Furthermore, the amount of stamp-duty also varies according to the form of civil proceedings under which it is lodged. A claim under summary procedure, that is documentary procedure and court order, is equal to respectively $\frac{1}{2}$ and $\frac{1}{4}$ of the amount payable for the claim under ordinary court procedure. Appeal and cassation claims are also subject to stamp duty which is equal to the one paid before the commencement of the proceedings in the court of the first instance.

A10.2 The party that loses the case is ordered to cover the costs of the party that wins the case. If only a part of the claim is satisfied, the incurred costs will be awarded in proportion to the satisfied claim.

A10.3 Upon the request of a defendant, foreign plaintiffs must deposit a security for the court ensuring the compensation of possible costs to be incurred during litigation. This requirement is not applicable in cases when the plaintiff owns sufficient real property in Lithuania, when such security is forbidden by the international law and other legal rules, or when parties agreed on the jurisdiction of Lithuanian courts. The court before which the claim is lodged also decides the amount of the deposit, if so requested by the respondent.

A10.4 The costs incurred by the party for legal assistance provided by an attorney-at-law may be awarded by the court only by taking into account the recommendatory rates established by the Ministry of Justice and the Chairperson of the Lithuanian Bar Council. It is noteworthy that these recommendatory rates applied by the court are much below the rates established and applied in Lithuanian legal market.

(11) ENFORCEMENT OF DOMESTIC JUDGMENTS AND ORDERS

A11.1 Bailiffs are responsible for the enforcement of domestic judgments and orders in Lithuania. Court judgments, rulings, decision are enforced on the basis of writ of execution issued by the court. If the defendant does not comply with the requisition of a bailiff to implement the judgment of the court within the time period, which is usually 10 calendar days, set forth by the bailiff, the latter starts to enforce the judgment of the court constrainedly. The requisitions of a bailiff are binding upon the addressees. Bailiffs are subject to control exercised by a judge of a district court in the territory of which they are acting. Such district courts in which territory bailiffs work examine the claims lodged against the bailiff's actions. Claims lodged against bailiff actions are not subject to stamp duty.

A11.2 The law provides for a number of means of enforcement, including recovery from the assets, property or property rights, income of the defendant, seizure of documents evidencing the rights of the defendant, administration of the defendant's property and use

of the income gained, prohibition imposed upon other persons to transfer assets to the defendant or perform other obligations, seizure of the particular property and other.

A11.3 The writ of execution must be presented for execution within ten years after the court decision enters into force. All execution expenses are to be covered by the plaintiff and later recovered from the debtor. The remuneration paid to the bailiff depends on the efficiency of the decision execution. This encourages the bailiffs' initiative and more efficient work performance. A person that applies to the bailiff has to pay in advance the administrative expenses of the case. The amount of the expenses is differentiated according to the category of the case.

A11.4 Generally, the writ of execution is presented to a bailiff by the plaintiff or his representative. The Civil Procedure Code sets a time limit to start the enforcement of the writ of execution. The bailiff must start actions of enforcement within five days upon the receipt of the writ of execution.

A11.5 The documents that must be executed according to the Civil Procedure Code are:

- (a) decisions and judgments of national courts and arbitration concerning civil matters;
- (b) decisions and judgments in criminal cases as far as they are related to property disputes, or execution of penalties such as restrictions of the activities or liquidation of a legal entity;
- (c) and administrative cases, decisions made by administrative officers as far as they are related to commercial and property disputes;
- (d) amicable settlement agreements certified by the courts;
- (e) judgments and awards of foreign courts and arbitrations.

A11.6 The enforcement is deemed terminated upon full enforcement of the executive document.

(12) APPEALS

A12.1 An appeal falls within the competence of the Court of Appeal or of a regional court, depending on the court of the first instance hearing the case: if the case was decided by the district court the appeal falls within the competence of a regional court, if the judgment was adopted in a regional court, the case can be reviewed by appeal in the Court of Appeal.

A12.2 The general rules of civil procedure are applied to the appeal process as much as they do not contradict the rules regulating the appeal process (*lex speciali derogat legi generali*). The Civil Procedure Code establishes the following time-limits for lodging petition for appeal the frustrated party or other person participating in the trial can implement the right to appeal in thirty days after the judgment of the first instance has been decreed;

The above mentioned time-limit is not subversive and can be renewed under the ruling if the court adjudges the circumstances, due to which the time-limit was missed, substantial. Moreover, the institute of the appeal in the Republic of Lithuania acknowledges such across-the-board principles of civil procedure as *tantum devolutum quantum appellatum* (*the review by appeal is limited by the petition for Appeal*) *non reformatio in pejus* (*the court of appeal instance cannot deteriorate the appellant situation in comparison with the situation adopted by the court of the first instance*) and others. The appeal in Lithuania does not mean the hearing

of case *de novo*, otherwise the principle of *revisio prioris instantiae* (the court of appeal instance revises case only under the question of validity) is applied. The impossibility of claiming new arguments and evidence in appeals allows implementing the principle of a concentrated process.

A12.3 When the amount of the claim is less than LTL 5000.00 (approx. EUR 289.6) or when there are non-contentious proceedings, the review by appeal is heard by a single judge. In other cases, the appeal is heard by the Chamber of three judges. The appellate instance can pass the following judgments:

- (a) to leave the decision of the first instance court unchanged and dismiss the appeal;
- (b) to vacate the decision of the Court of First Instance (all or in part) and rule a new decision;
- (c) to amend the decision of the first instance court;
- (d) to vacate the decision of the Court of First Instance (all or in part) and remit the case to the Court of First Instance for a repeat trial, in case the court determines certain circumstances stipulated in the law;
- (e) to vacate the decision of the Court of First Instance (all or in part) and dismiss the case or leave the appeal untried, in case the court determines certain circumstances stipulated in the law.

(13) TIME LIMITATION-PRESCRIPTION

A13.1 Prescription is a time period established by laws during which a person can defend his violated right by bringing an action. General prescription comprises a period of ten years. In respect of specific types of claims, abridged prescription is established by the Civil Code and other laws of the Republic of Lithuania:

- (a) Abridged one-month prescription applies to claims arising from results of a tender.
- (b) Abridged three-month prescription applies in respect of claims for declaring voidable the decisions of the bodies of a legal person.
- (c) Abridged six-month prescription applies in respect of:
 - (1) claims arising from the exaction of forfeiture (default interest and fine);
 - (2) claims arising from the defects of the sold goods;
 - (3) claims arising from the relationships between communication enterprises and their clients regarding dispatches sent within the territory of Lithuania, or abridged one-month prescription when the dispatches were sent abroad.
- (d) Abridged one-year prescription is to be applied with respect to claims arising from the legal relationships of insurance.
- (e) Abridged three-year prescription is to be applied with respect to claims for the compensation of damage, including claims for the compensation of damage caused by defective production.
- (f) Abridged five-year prescription is to be applied with respect to claims for the recovery of interest and any other periodical payments.

- (g) Claims, arising from contracts for transportation of goods, passengers or baggage are to be prescribed in the abridged prescription established by the codes (laws) regulating separate types of transport.

A13.2 Any agreement of the parties with an intention to modify legal regulation of prescription, i.e. to modify the time-limit and the calculation thereof, is prohibited. Furthermore, it is stated that a claim to protect a violated right must be accepted by the court irrespective of the expiry of prescription and that the expiry of prescription is to be effected by the court exclusively if invoked by a party to the dispute. It is forbidden in the Republic of Lithuania to renounce the prescription in advance.

A13.3 Prescription starts its run from the day on which the right to bring an action may be enforced. The general rule states that the right to bring an action arises from the day on which a person becomes aware or should have become aware of the violation of his right. Nevertheless, special rules are established as well, e.g. where there is a time-limit established for the performance of an obligation, prescription of a claim arising from such obligation starts its run upon the expiry of the time-limit allotted for the performance of that obligation. Where a time-limit for the performance of an obligation is not established, prescription runs from the moment when a claim to perform the obligation is brought. Prescription of claims arising from regressive obligation starts its run from the moment when the principal obligation is performed. In the event of a continuous infringement, e.g. a person fails to perform the actions he is bound to perform, or performs the actions he has no right to perform, or does not discontinue a violation, prescription for actions brought upon activity or inactivity that occurred on a specific day starts its run from that every day. This regulation establishes the strict position of the Lithuanian legislator towards the offenders.

A13.4 The Law of the Republic of Lithuania acknowledges the institute of suspension of prescription. The Civil Code establishes the causative cases when suspension of prescription is applied. Prescription is to be suspended if:

- (a) an extraordinary event that cannot be prevented in certain circumstances (*force majeure*) hinders to bring an action;
- (b) the Government of the Republic of Lithuania establishes a postponement of the performance of obligations (moratorium);
- (c) the plaintiff or defendant serves in a unit of the armed forces of the Republic of Lithuania where martial law is imposed;
- (d) no guardian or curator is appointed to a legally incapable person or to a person whose legal active capacity is limited;
- (e) the parties to an obligation are spouses;
- (f) the parties to an obligation are a guardian and the person under guardianship, or a curator and the person under curatorship;
- (g) the effect of the law or any other legal act regulating relationships of the dispute is suspended.

However, the run of prescription can be suspended only if the indicated circumstances occurred or continued to exist during the last six months of the prescription; where the time-limit of the prescription does not exceed six months, the run of the prescription is suspended if the indicated circumstances occurred or continued to exist during the whole period of the time-limit of the prescription. Suspended prescription resumes its run from the day when the circumstance which conditioned such suspension ceases to exist. In that event, the

remaining part of the time-limit is prolonged by six months; if the time-limit of prescription is shorter than six months, it must be prolonged by the whole duration of the time-limit.

A13.5 Prescription is interrupted by bringing an action in accordance with the procedure established by laws or actions of a debtor by which the debtor acknowledges his obligation to the creditor. An interrupted time-limit of prescription may be resumed from the moment when the cause of such interruption ceases to exist. An interruption of prescription resulting from bringing an action may be resumed from the time when the judgment thereon acquires the authority of the final judgment (*res judicata*), provided that an identical claim can be forwarded from the disputed legal relationship. The period that expired before the interruption is not to be included into the new time-limit of prescription. According to the Law no interruption in the time-limit of prescription may occur where the suit is discontinued by the court due to the fault of the plaintiff. Refusal to accept the petition or its withdrawal by the plaintiff likewise has no effect of interrupting prescription.

A13.6 The expiry of a time-limit of prescription prior to the date of bringing an action before the court should serve as a valid ground for dismissal of the claim. However, if the court acknowledges the time-limit of prescription as expired due to important reasons, the infringed right must be protected and the expired time-limit restored. The provisions regulating suspension, interruption and restoration of prescription must likewise be applied in respect of abridged prescription. For the protection of a creditors' rights it is established that if a debtor performs his obligation after the expiry of the time-limit of prescription, the debtor has no right to claim for restitution even if at the time of the performance of his obligation he did not know that the time-limit of prescription had expired. The expiry of prescription with respect to the principal claim must have the same effect likewise on the accessory claims (penalty, pledge, suretyship, etc.), even though the prescription of the latter may not have expired.

A13.7 The following claims according to the laws of Lithuania are not prescribed:

- (a) claims arising from the violation of personal non-property rights, except in cases established by laws;
- (b) claims of depositors for repayment of their accounts deposited in a bank or any other credit institution;
- (c) claims regarding the compensation of pecuniary or non-pecuniary damage related to the crimes indicated in Article 95 Part 8 of the Criminal Code of the Republic of Lithuania;
- (d) other claims in cases established by other laws.

PART B—CERTAIN TYPES OF CLAIMS

(1) CLAIMS FOR BREACH OF CONTRACT ON SALE OF GOODS

B1.1 Actions are brought before the court based on defendants' place of residence, place of business or registered head office. The jurisdiction is regulated by the general rules, explained in section A1.5 and A1.7.

B1.2 The parties to the contract may agree in writing to alter the territorial jurisdiction in favour of another Court of First Instance, except for the claims involving rights *in rem* and use of real estate, cancellation of seizure imposed on immovable items. The jurisdiction for these claims is considered only based on the rule of *forum rei sitae*.

B1.3 The general limitation period in commercial matters is ten years. The general rule states that the right to bring an action arises from the day on which a person becomes aware or should have become aware of the violation of his right (section A13.3). Nevertheless abridged three-year prescription applies with respect to claims for the compensation of damage caused by defective production and abridged six-month prescription applies for the claims arising from shortage of sold goods.

B1.4 The court procedure in all three instances is governed by the general rules of the Code of Civil Procedure, explained in the general section.

(2) CLAIMS FOR RIGHTS IN MINERAL CONCESSIONS IN THE JURISDICTION

B2.1 Licenses for mineral concessions are granted by the Lithuanian Geological Survey under the Ministry of Environment with some exceptions established in the Underground Law. The laws of the Republic of Lithuania establish a complex and long procedure for the receipt of the license for a mineral concession. In some cases assessment of the impact of the proposed activity on the environment is involved. This assessment is conducted by the Lithuanian Geological Survey.

B2.2 If an applicant for a mineral concession is not satisfied with the Geological Surveys' assessment of the impact of the proposed activity on the environment or the final decision thereof, the applicant may file a complaint/petition to the pre-trial dispute resolution institution - Chief Administrative Disputes Commission, because according to the Law on Administrative Proceedings the complaints/petitions concerning administrative acts or acts (or omission) in the sphere of public administration, where one of the parties to the dispute is the central entity of state administration, may be filed with the Chief Administrative Disputes Commission. Afterwards the applicant can apply to the relevant administrative court if the decision of the Commission does not satisfy the applicant.

B2.3 The proceedings for mineral concessions are heard in accordance with the relevant provisions of the Law on Administrative Proceedings of the Republic of Lithuania. The disputes arising in relation to receipt of licenses for mineral concessions at the first instance are heard in Vilnius Regional Administrative Court. The appeal is within a competence of the Supreme Administrative Court.

B2.4 Most frequently after receipt of the license for mineral concession a contract between the Lithuanian Geological Survey and the natural or legal person is concluded. The disputes arising from the contract are heard in accordance with the general rules of the Code of Civil Procedure (section A5.1-A13.7).

(3) CLAIMS FOR TITLE TO OR DAMAGE TO GOODS IN THE JURISDICTION IN QUESTION

B3.1 The rules and exceptions concerning the territorial jurisdiction are discussed above (section B1.2).

B3.2 The procedure is governed by the general rules of the Code of Civil Procedure (section A5.1-A13.7).

B3.3 The limitation period is described in section B1.3.

(4) CLAIMS FOR MONIES DUE UNDER INSURANCE/REINSURANCE CONTRACTS

B4.1 Claims for monies under insurance/reinsurance contracts are heard in district courts in accordance with general rules if the claim amount does not exceed LTL 150,000 (approximately EUR 43,443). Therefore, the claims over LTL 150,000 are in jurisdiction of regional courts.

B4.2 Abridged one-year prescription applies with respect to claims for monies under insurance/reinsurance contracts.

B4.3 There is a pre-trial dispute resolution mechanism established by the Insurance Supervisory Commission of the Republic of Lithuania, which regulates dispute resolution between consumers and insurers. However, at first the consumer has to apply to the insurer. This is a mandatory condition prior to applying to the Insurance Supervisory Commission. The decision of the Insurance Supervisory Commission is recommendatory and the consumer can apply to the court if he is not satisfied with the decision or if the decision is not executed by the insurer in good will. This pre-trial dispute resolution is not mandatory and the consumer has a right to apply directly to the court, and practically this happens much more often due to the abridged one-year prescription for the claims for monies under insurance/reinsurance contracts. Moreover, there are requirements for the subject-matter of the dispute. The Insurance Supervisory Commission examines only the disputes regarding the relations under the insurance contract. Pre-trial procedure is adversary procedure and is not subject to any stamp-duties.

(5) CLAIMS TO ENFORCE CORPORATE SHARE-SALE TRANSACTIONS

B5.1 Members of a legal entity listed in paragraph B5.2 have the right to submit an application to the court requesting that shares of a legal person which are in possession of a legal persons' member whose actions contradict the goals of the legal persons' activities and where there are no grounds to expect any changes in the said actions, were sold to the

applying member of the legal person. The claim to enforce a corporate share-sale transaction should be filed with the regional court based on the location of the registered office of the legal person. The court must inform the legal person, the shares whereof have to be sold in the forced manner, about the claim and the subsequent decisions.

B5.2 The following members of a private legal person have the right to file an application for forced sale of shares:

- (a) one or several shareholders of a private company with a face value of shares of no less than 1/3 of the authorized capital;
- (b) one or several members of a partnership with the interest of no less than 1/3 of all interest of jointly owned assets.
- (c) one or several members of an agricultural or cooperative partnership with the interest of no less than 1/3 of all interest of jointly owned assets.

B5.3 A member of a legal person has no right to file an application for forced sale of shares if it is controlled by a legal person the shares whereof have to be sold in a forced manner.

B5.4 Upon receipt of the application the court hears the arguments of the parties in accordance with general rules established in the Code of Civil Procedure and adopts a judgment.

B5.5 A defendant has no right without plaintiffs' consent to sell or otherwise transfer the title to the shares, to pledge them or otherwise encumber the rights thereto as well as transfer or otherwise encumber the rights granted by the shares as of the day on which the court judgment becomes *res judicata*, except as otherwise decided by the court. The court enjoys the right to authorize the acts specified in this paragraph if a defendant fails to give his consent thereof. Furthermore, the court may, upon a plaintiff's request, prohibit a defendant to exercise his right to vote without the consent of the court or a plaintiff.

B5.6 Upon allowing the claim the court has to appoint experts to set the price of the shares. Experts begin their activities only after the court judgment becomes *res judicata*. Experts have to present a written report on the price of the shares to the court and the parties. After the experts' report on the price of the shares has been submitted, the court passes a judgment concerning setting of the price and appoints a person who will have to reimburse experts' work and other expenses. The court may decide that the legal person must reimburse the said expenses.

B5.7 After the court judgment on setting the price becomes effective, the defendant must within two weeks transfer the title to his shares to the plaintiff and the plaintiff will have the right to accept the shares and pay the established price. The price should be paid upon transfer of the title to the shares to the plaintiff. The transfer takes place in the registered office of the legal person the shares whereof are sold or in some other place agreed upon by the plaintiff and the defendant. Where a defendant fails to discharge his duty to transfer the title to his shares, the legal person must transfer the title to the shares in the defendant's name and issue documents confirming the owner's rights to the shares sold in the forced manner and declare respective defendant's documents invalid as well as make a public announcement thereof in the source prescribed by the legal acts. Upon receipt of the documents confirming the title to the shares, the plaintiff should pay the price into the deposit account of a notary, bank or other credit institution. In case there are several plaintiffs, the shares sold in forced manner should be allotted as proportionally as possible to the legal persons' shares held by the plaintiffs.

B5.8 Where members of a legal person listed in paragraph B5.2 fail to exercise their rights as members of the legal person properly due to the actions of another member of the legal person and where there is no reason to expect any positive changes in the future, the said members may file an action to the court requesting that the member of the legal person, whose actions obstruct proper exercise of their rights, purchased their shares.

B5.9 However, this institute is applied only if there are no other settlements among members of the legal person regarding resolution of dispute arising out of the members' actions that contradict the goals of the legal person.

(6) CLAIMS TO ENFORCE COPYRIGHT/ TRADEMARK

(a) Claims to Enforce Copyright

B6.1 Disputes relating to infringement of authors' property rights are decided in the first instance by district courts, other disputes relating to authors' personal non-property rights are handled by regional courts.

B6.2 The procedure is governed by the general rules of the Code of Civil Procedure (section A1.5 and A1.7) and *lex speciali* established in Law on Copyright and Related Rights of the Republic of Lithuania.

B6.3 The limitation period is described in sections A13.1-A13.7.

B6.4 The Law on Copyright and Related Rights of the Republic of Lithuania establishes that in urgent cases, with the presence of sufficient evidence about infringement of copyright, related rights or *sui generis* rights, the court may, in accordance with the procedure established by the Code of Civil Procedure, apply provisional measures necessary to preserve evidence, promptly prevent an infringement from occurring and enforce a final decision of the court, that is:

- (a) to order persons to terminate unlawful use of works or other objects of the rights protected under the Law;
- (b) to prohibit release into circulation of infringing copies of works or other objects of the rights protected under the Law;
- (c) to seize infringing copies of fixations of audiovisual works or phonograms, as well as technical devices and equipment used for the reproduction thereof, and appropriate documents;
- (d) to apply other measures set out by the Code of Civil Procedure of the Republic of Lithuania.

B6.5 The Council of Copyright and Related Rights of Lithuania is a public institution which among other aspects of competence at the request of collective administration associations, as well as users of copyright works and objects of related rights, settle disputes concerning use of copyright works or objects of related rights and concerning infringement of copyright and related rights. Therefore, it could be regarded as an institution of pre-trial dispute resolution. However, it is not mandatory and decisions of the Council do not prevent the parties from applying to the court according to the procedure prescribed by law.

B6.6 The Law on Copyright and Related Rights establishes that the collective administration associations on behalf of the owners of copyright or related rights they represent, and without their separate authorization, are entitled to file claims for recovery of remuneration from the users of copyright works or objects of related rights exploiting the mentioned copyright works or objects of related rights without a license of collective administration associations.

(b) Claims to Enforce Trademark

B6.7 Disputes relating to infringement of trademarks are handled by Vilnius Regional Court.

B6.8 The procedure is governed by the general rules of the Code of Civil Procedure (section A1.5 and A1.7) and *lex speciali* established in the Law on Trade Marks of the Republic of Lithuania.

B6.9 The limitation period is described in sections A13.1-A13.7.

B6.10 A dispute arising out of refusal of trademark registration can be solved in the State Patent Bureau – a pre-trial institution which is mandatory according to the interpretation of the law. The applicant or his representative have the right within three months from the day of dispatching the decision to refuse registration to submit to the State Patent Bureau a written request for a re-examination. An applicant or his representative opposing the decision adopted by the State Patent Bureau after the re-examination have the right within three months from the day of dispatching the decision to file to the Appeals Division of the State Patent Bureau a written appeal with a substantiated request for a review of the findings of the examination and a document certifying the payment of the set fee. Where the applicant or his representative objects to the decision of the Appeals Division, he has the right within six months from the date of adoption of the decision by the Appeals Division to appeal against the decision of the Appeals Division to Vilnius Regional Court.

B6.11 Within a period of three months following publication of a registered mark in the Official Bulletin of the State Patent Bureau, the interested parties may submit to the Appeals Division a reasoned written opposition to the registration of the mark on the grounds that it may not be registered under the Law on Trade Marks (absolute and relative invalidity grounds of trade mark). The proprietor of the mark against which the opposition is filed or a representative thereof must within three months from the date of dispatching the opposition file a motivated reply to the opposition. Failure to file a motivated reply to the opposition is considered a refusal to participate in the examination of the opposition and does not prevent the Appeals Division from examining the opposition in the absence of the proprietor of the mark against which the opposition has been filed or a representative thereof. The decision made by the Appeals Division may be appealed against to Vilnius Regional Court within six months from the day of adoption thereof. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

(7) CLAIMS TO AN INTEREST IN A BANK DEPOSIT

B7.1 According to the Civil Code of the Republic of Lithuania, by the bank deposit agreement, one party (a bank or any other credit institution) undertakes to accept from the

other party (depositor) or, having received the amount of money transferred to the other party (deposit), undertakes to return such deposit and pay the interest for it under the terms and procedure established in the agreement. When the depositor is a natural person, the bank deposit agreement is deemed a public contract.

B7.2 The right to accept deposits should be vested only in the banks or any other credit institutions having the permit (license) issued for such activity in the procedure prescribed by laws. If the deposit was accepted by the person not entitled to do so or if the deposit was accepted in violation of the operational rules of the banks, the depositor has the right to demand an immediate repayment of all the amounts he paid, the interest determined by laws and the damages to the extent not covered by the interest. Unless the law provides otherwise, the same legal consequences should also apply where:

- (a) the monetary funds are collected from the sale of shares or other securities the issue whereof is recognized as unlawful;
- (b) the monetary funds are collected from the issue of notes or other securities and their holders are not granted the right to receive the monetary funds upon first call.

B7.3 The bank deposit agreement should be made in writing. A written form of the agreement should be executed in the form of the depositor's book, deposit certificate or any other document issued by the bank or any other credit institution which complies with the operational rules of the banks or other credit institutions. If the written form is not observed, the bank deposit agreement should be null and void.

B7.4 The bank deposit agreement can be made establishing the obligation of the bank or any other credit institution to pay the deposit upon the first demand (demand deposit) or establishing the obligation of the bank or any other credit institution to pay the deposit after lapse of a certain term (fixed-term deposit). Nevertheless, the legal acts regulating the activities of the banks or any other credit institutions and the parties by agreement may also provide for other types of deposits. Notwithstanding the type of the deposit, the bank or any other credit institution shall pay the deposit in full or in part upon the first demand of the depositor. A provision of the agreement stipulating the depositor's waiver of the right to receive the deposit upon the first demand is considered null and void.

B7.5 In case the deposit is paid to the depositor prior to maturity of the term established in the agreement or prior to occurrence of other circumstances set forth therein (except for demand deposits), the interest should be paid in the amount corresponding to the interest applied to the demand deposits unless otherwise established in the agreement. In other cases, if the depositor does not demand payment of the fixed-term deposit upon expiry of its maturity or any other circumstances stipulated in the agreement occur, the agreement should be deemed renewed on the conditions of the demand deposit, unless otherwise established in the agreement.

B7.6 The bank or any other credit institution should pay to the depositor the interest in the amount established in the agreement. The amount of the interest can be differentiated by the type of the deposit. It is prohibited to set the amount of the interest based on the depositor's personal, official or other characteristics which are not related to the amount, type or term of the deposit. If the rate of the interest is not defined in the agreement, the bank or any other credit institution should pay an average interest rate which existed on the day of conclusion of the agreement in the place of conclusion thereof. Unless the agreement provides for otherwise, the bank or any other credit institution should be

entitled to unilaterally change the amount of the interest paid for the demand deposits. If the bank or any other credit institution reduces the amount of the interest, then the new interest rate begins to apply in respect of the deposits paid prior to notification of the depositors about the interest rate reduction only after lapse of one month from such notification, unless otherwise established in the agreement. The bank or any other credit institution have no right to unilaterally reduce the amount of the interest due for the fixed-term deposits or any other deposits, unless otherwise established in the agreement.

B7.7 Calculation of the interest on the deposits should be started from the day following the day of acceptance of the deposit and should be calculated until the day preceding the day when the deposit was paid or written off from the account on any other grounds. Unless the agreement provides for otherwise, the interest should be paid to the depositor upon his demand, after a quarter, in addition to the amount of the deposit. The deposit should be increased by the amount of the interest due and the interest should be calculated based on the increased amount. The deposit should be paid together with the interest accrued until that moment.

B7.8 The bank and any other credit institution must secure return of the deposits in the established procedure by compulsory insurance thereof, and in cases determined by laws -in other ways as well. When entering into the bank deposit agreement, the bank or any other credit institution must furnish to the depositor the information about guarantees for return of the deposit. If the bank or any other credit institution fails to perform its obligation to secure return of the deposit, as well as in case of loss or deteriorating of the guarantees, the depositor has the right to demand from the bank or any other credit institution immediate repayment of the deposit, payment of the interest and indemnity of the loss.

B7.9 The Civil Code of the Republic of Lithuania establishes a general rule that states: unless the agreement provides for otherwise, the bank deposit agreement should be documented in the form of the depositor's book. The depositor's book may be issued only in the name of the depositor. Therefore the general form of the bank deposit is a depositor's book. All operations in respect of the deposit should be performed only upon submission of the depositor's book. However, the other form of the bank deposit could be a deposit certificate. That is a security certifying the amount of the deposit and the depositor's rights to the deposit, as well as the interest due upon expiry of the term prescribed for the deposit. The deposit certificate may be issued only in the name of the depositor.

B7.10 The claims to an interest in a bank deposit against the bank and any other credit institution should be brought before district or regional courts if the claim amount whereof exceeds LTL 150,000 (approximately EUR 43,443) as described in sections A1.5 and A1.7.

B7.11 The procedure is governed by the general rules of the Code of Civil Procedure (section A5.1-A13.7).

B7.12 Abridged five-year time limitation applies with respect to claims to an interest in a bank deposit (section A13.1 (f)).

(8) CLAIMS FOR RECOVERY OF CHARTER HIRE/ DAMAGES UNDER A CHARTERPARTY

B8.1 According to the Maritime Shipping Law of the Republic of Lithuania the charterparty is defined as the agreement between a charterer and a manager of a ship whereby an entire ship, or its part, or certain cargo capacity is let to the charterer for remuneration. The agreement is executed by a document called charter and must be concluded in written form. The aforementioned relations are regulated by the laws of the state of the ship owner, if the parties have not agreed otherwise.

B8.2 The claims for recovery of charter hire (freight) and damages under a charterparty are heard under the general rules of the Civil Procedure Code of the Republic of Lithuania (section A5.1-A13.7).

(9) CLAIMS FOR AMOUNTS DUE UNDER A JOINT VENTURE AGREEMENT

B9.1 According to the Civil Code of the Republic of Lithuania by the agreement on joint venture (partnership) two or more persons (partners), co-operating on the basis of their property, work or knowledge, undertake to act jointly for a certain goal or certain activities which do not contravene the law. If the goal of the joint venture is not related to the seeking of profit, an agreement on joint activities is called an association agreement. The agreement on joint venture (partnership) should be made in writing, and in the cases prescribed by the law, in a form certified by a notary. If the requirements set for the form of the agreement are not met, the agreement is considered null and void.

B9.2 Everything a partner contributes to the joint venture – money, any other assets, professional or other knowledge, skills, reputation and business relations are deemed a contribution of a partner. It is presumed that contributions of partners are equal unless otherwise established in the agreement on joint venture. A contribution should be assessed in monetary terms subject to agreement of all partners.

B9.3 The property contributed by the partners, which was previously under their ownership, also the production received during joint venture, income and results, should be joint-partial ownership of all the partners, unless otherwise established in the law or the agreement on joint venture. If the contributed property previously was not under the ownership of a partner, and the partner uses such property on any other grounds, this property should be used for the interests of all the partners and should also be deemed the property which is jointly used by all the partners, unless otherwise established in the law. One of the partners appointed by joint agreement of all the partners should be in charge of the accounting of the joint property. The joint property should be used, possessed and disposed of by joint agreement of all the partners. In case of a dispute, at the request of any of the partners such procedure should be established by the court. The obligations of the partners related to maintenance of the joint property, and coverage of any other expenses, must be established in the agreement on joint activities.

B9.4 Distribution of joint expenses and joint damages, related to the joint venture, should be established in the agreement on joint venture. Absent such agreement, each partner should be liable for the joint expenses and joint damages in proportion to the amount of his

part of such expenses or damages. The agreement which fully releases one of the partners from coverage of joint expenses or joint losses is null and void.

B9.5 If an agreement on joint venture is not related to economic-commercial activities of the partners, each partner should be liable under joint contractual obligations to the extent of all his property in proportion to his part of such obligations. Under the joint non-contractual obligations the partners should be liable jointly and severally. If the agreement on joint venture is related to the economic-commercial activities of the partners, all the partners should be liable jointly and severally under the joint obligations, notwithstanding the grounds for originating of such obligations.

B9.6 The profit obtained from the joint venture should be distributed among the partners in proportion to the value of the contribution of each of them into the joint venture, unless otherwise established in the agreement. The agreement to exclude any of the partners while distributing the profit is null and void.

B9.7 Upon expiration of the agreement on joint venture, the things assigned for the joint use by all the partners should be gratuitously returned to the partners who have assigned them, unless otherwise agreed by the parties. From the moment of expiration of the agreement on joint venture, its participants should be jointly and severally liable against the third persons for outstanding joint obligations.

B9.8 If the agreement on joint venture is terminated upon refusal of one of the partners to be a participant of the agreement, or at the request of one of the partners, the person who is no longer a participant of the agreement on joint venture is liable against third persons under the obligations which appeared while he was a participant of the agreement on joint venture as if he was a partner.

B9.9 In case of a dispute, at the request of any of the partners the proceedings should be initiated by the court in accordance with the general rules of the Civil Procedure Code of the Republic of Lithuania (section A1.5-A13.7).

B9.10 For claims for amounts due under a joint venture agreement the general ten-year limitation is applicable (section A13.1).

(10) ARREST OF SHIPS

B10.1 As it was mentioned above in section A8.1-A8.4 the Civil Procedure Code of the Republic of Lithuania establishes non-final listing of the applicable interim measures (of protection). Arrest of ships could be taken as one of the interim measure (of protection) stated in the list, because ships are recognized as immovable property under laws of the Republic of Lithuania and seizure of immovable property is listed as one of the interim measures in the Republic of Lithuania.

B10.2 Interim measures (of protection) could be divided into two groups: interim measures *in personam* and interim measures *in rem*. Seizure of immovable property is considered an interim measure *in rem*, therefore, the *lex rei sitae* principle applies and the court can impose seizure of immovable property only if the immovable property is in the territory of the court jurisdiction. In other cases the plaintiff should call upon the application of seizure of immovable property to the court in the jurisdiction whereof the property is located at that moment, however, the case is heard in the court of another state.

B10.3 Furthermore, the Republic of Lithuania is a party to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 and it has been applied in Lithuania since 29 October 2002.

B10.4 The procedure for application of interim measures (of protection) is described in section A8.1-A8.4.

(11) ENFORCEMENT OF FOREIGN JUDGMENTS

B11.1 Enforcement of foreign judgments adopted by the court of a Member State is provided in accordance with the provisions of the Civil Procedure Code of the Republic of Lithuania harmonized with the provisions of:

- (a) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- (b) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;
- (c) Council Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

B11.2 Foreign judgment of non EU Member State can be enforced only if it is recognized by the Court of Appeals of the Republic of Lithuania. For recognition of a foreign judgment, a request must be submitted to the Court of Appeals. The judgment translation into Lithuanian, confirmation that the foreign judgment has already come into force and the evidence that the other parties have been properly informed about the case hearing must be submitted to the Court of Appeals either.

B11.3 The Civil Procedure Code of the Republic of Lithuania provides a list of the grounds based on which the foreign judgment cannot be recognized, however, the court *ex officio* examines only two of them - whether there was no infringement of the exclusive jurisdiction and whether the foreign judgment is not against public order of the Republic of Lithuania. In case the enforcement of foreign judgments is regulated under bilateral or multilateral treaties, the grounds for recognition of foreign judgments can vary and depend on the provisions of the exact treaty.

B11.4 The request to recognize a foreign judgment is handled by a chamber of three judges of the Court of Appeals. The ruling to recognize the foreign judgment comes into force on the date of its issuance, however, there is a possibility to lodge a casation claim to the Supreme Court of the Republic of Lithuania within one month from the date of the adoption of the ruling (to recognize the foreign judgment) if the party is not satisfied with it.

B11.5 The court examines issues of recognition and enforcement of a foreign judgment, but never the issues of legality and validity thereof.

B11.6 Enforcement of foreign judgments is provided for under the same rules as enforcement of national judgments (section A11.1-A11.6).

(12) ENFORCEMENT OF FOREIGN/DOMESTIC ARBITRATION AWARDS

B12.1 The procedure of enforcement of foreign arbitration awards is provided under the New York Convention (1958), the Civil Procedure Code of the Republic of Lithuania and the Law on Commercial Arbitration and practically the same applies to enforcement of foreign judgments as described in section B11.2-B11.6. It should be noted that new version of the Law on Commercial Arbitration of the Republic of Lithuania was adopted and came into force in June 2012.

B12.2 Enforcement of domestic arbitration awards is the same as described in section A11.1-A11.6 and corresponds with the provisions established in the Civil Procedure Code regarding enforcement of domestic court judgments/orders.

