

***Lithuanian succession law:  
experience and perspectives***

The Perspectives of the  
Europeanization of the Law  
of Succession

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- Legal framework of Lithuanian succession law
- Main changes in succession law after adoption of the new Civil Code (the peculiarities of new regulation)
- Principal features of the main institutes of Lithuanian succession law: testament; intestate succession; forced heirship; acquisition of inheritance; certification of succession; liability of heirs; administration and partition of inheritance
- Perspectives of Lithuanian succession law

# Legal framework of Lithuanian succession law: historical aspects

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- Succession law regulation technique: the separate chapter in the Civil Code
- Old Civil Code (CC) was revised in 1994 however succession law was revised only grammatically
- Adoption of new CC (came into force in 1 July of 2001): Lithuanian civil law reform and revised succession law
- No changes in succession law after new CC

# Legal framework of Lithuanian succession law: Civil Code

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- Succession law is mainly designed in the fifth book of CC (CC 5.1-5.76)
- Related legal norms:
  - Conflict norms in succession field (CC 1.60-1.62)
  - Natural person capacity (the second book of CC)
  - Maintenance obligations in family law (the third book of CC)
  - Property administration (the fourth book of CC)
  - Termination of the obligations, the nature of obligation (the sixth book of CC)
  - Other laws

# **The peculiarities of new regulation of succession law**

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- More detail regulation: 35 articles v. 76 articles = twice as much
- Not many essential changes
- Changes also were influenced by changes of other civil law institutes

# The main changes in succession law after adoption of the new Civil Code: intestate succession

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- Regulation of degrees of descendant (devolution rules) was changed:
  - six degrees instead two (acc. old CC the first degree – children, spouses, bequeather's parents, grandchildren, the second degree – brothers and sisters and grandparents)
    - the position of bequeather's children was strengthened (only children belongs to the heir of the first degree)
    - surviving spouse was deleted from the first degree of the heirs and special status of surviving spouse was established
    - the list of relatives was expanded (uncles, aunts, cousins, great – grandparents)

## **The main changes in succession law after adoption of the new Civil Code: testate succession**

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- The private testaments were introduced in the succession law system
- New Testaments Register was established

# **The main changes in succession law after adoption of the new Civil Code: ways of acceptance of inheritance**

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- Ways of acceptance of inheritance was changed
- Old CC provided two ways for acceptance:
  - acceptance of inheritance after the actual start of property possession (factual acceptance)
  - acceptance of inheritance by filing application with a notary public
- New CC introduced new third way:  
acceptance of succession in accordance with an inventory



## **The main changes in succession law after adoption of the new Civil Code: term of acceptance of inheritance**

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- The time - limit of acceptance of inheritance was reduced: three (3) months instead six (6) since the day of the opening of succession

# The main changes in succession law after adoption of the new Civil Code: liability of heirs

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- Full liability of the heirs principle as a main principle instead limited liability of heirs principle was introduced
- The requirements for the presentation of creditors claims were changed:
  - three (3) months time-limit instead six (6) months was provided
  - the time-limit for presentation of creditors claims was resolatory, i.e. miss of this term meant the loss of right, now time –limit can be prolonged for the very important reasons (restoratory term)

# Principal features of Lithuanian succession law

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- *Universal Succession* – universal transition of bequeather's rights and obligation (inheritance is not a separate economic entity) – predominant concept in the continental law system countries
- Austrian type transfer – direct but deferred transfer
- *The party autonomy principle* prevails

# Principal features of Lithuanian succession law: testament (I)

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- Testament is only one possible way for the implementation of party autonomy aiming to bequeath the property (no other agreements are allowed)
- Testament - personal transaction (no authorization is allowed)
- By the way of testament the part or whole property can be bequeathed (contrarily Poland and Latvia allow to bequeath only the whole property by testament)

## **Principal features of Lithuanian succession law: testament (II)**

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- The notification about testaments shall be provided to the Register of Testaments
- The registration of testaments does not influence their validity
- Data of Testaments Register: data about testaments (attested, accepted for deposit or revoked testaments) and acceptance facts. The data are provided to the third persons only after the death of testator
- The official data show that the 30332 official testaments and only the 178 accepted for deposit private testaments were registered in 2008

# Principal features of Lithuanian succession law: testament (III)

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- Types of testaments: official and private
- *Official testament* - attested by the notary public or an official of the Consulate of the Republic of Lithuania (plus cases when the confirmation of testament is equaled to official wills)
- *Private testament* - i) written up in hand by the testator ii) indicating the first name and surname of the testator, the date (year, month, day) and place where the will was made, iii) expressing the true intent of the testator, iv) signed by the testator
- *Joint spouses testament* might be made exclusively as an official will and exclusively by spouses

# Principal features of Lithuanian succession law: testament (IV)

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- *Testamentary reservation (legacy)* – the right of the testator to obligate a heir to fulfil a certain obligation for the benefit of one or several persons, while these persons shall acquire the right to demand fulfilment of this obligation
- *Types of testamentary reservation* – i) a thing defined by its individual features, ii) claims resulting from obligations; iii) movable things defined as to specific features; iv) the obligation to allow another person for a certain period or for life use the immovable thing or its part, or to transfer the revenue, or a part thereof, derived from that property; v) the obligation of maintenance for somebody

# Principal features of Lithuanian succession law: testament (V)

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- Testator's right to bequeath his whole estate, its part, or an individual thing to the society for useful and charitable purposes
- Legal person can be established in executing the wish of the testator (it may be appointed as successor to such property)
- Court shall decide for a further use of property in cases: i) disappearance of the social need for which the estate was intended; ii) the property cannot be used for the purpose indicated in the will; iii) in absence of any related instructions from the testator



## **Principal features of Lithuanian succession law: intestate succession (I)**

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- Six degrees of descendants are established (there is no open list of heirs as it is in Poland)
- All heirs of one degree inherit in equal shares
- All children whether illegitimate or legitimate are equal
- The state is entitled to inherit in cases:
  - no successors
  - none of the successors accepts succession
  - the testator deprives all the heirs of the right to succession

## **Principal features of Lithuanian succession law: intestate succession (II)**

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- **Special rules for the surviving spouse:**
  - spouse is entitled to inherit alongside with the heirs (if any) of either the first or second degree of descent
  - the size of spouse share depends on the number of heirs in case he/she inherits with first degree: one fourth of the inheritance in case of existence of not more than three heirs and in equal shares - where there are more than three heirs
  - with the second degree heirs the spouse inherits a half of the inheritance
  - in case of absent of these heirs the spouses inherit the whole inheritable estate

# Principal features of Lithuanian succession law: mandatory share

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- The mandatory share rule - persons shall inherit irrespective of the content of the will a half of the share that each of them would have been entitled to by operation of law unless more is bequeathed by the will
- The right to mandatory share belongs to members of the family of testator: children, spouse, parents (not to all heirs) and they are considered as the heirs
- The mandatory share is based on the *solidarity of the family members* which obliges the member of the family to care about the welfare of family members
- The right to mandatory share depends only on the one material condition - necessity to be maintained

## **Principal features of Lithuanian succession law: acquisition of inheritance (I)**

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- The term of acceptance is three (3) months since the day of the opening of succession
- The acceptance is unilateral transaction (no acceptance according to the law)
- Acceptance of inheritance should be made by active actions of the heir (three ways are possible):
  - factual acceptance (court practice mostly related to this issue)
  - by filing application with a notary public
  - in accordance with an inventory
- No acceptance in silence (as it is in Poland)

## **Principal features of Lithuanian succession law: acquisition of inheritance (II)**

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- Factual acceptance of inheritance means that a heir fulfil the actions that can show that a heir endeavours to gain and dispose the descendants property as his ownership
- The fact of the implementation of the aforementioned actions is determined by: i) fact of actions; ii) nature of actions
- Fact of actions means that a heir actually take over the inheritance and start to posses this property (it depends also on the nature of property)
- Nature of actions means the active actions of a heir which can show that the a posses and dispose by property of the descendant as his ownership and a heir treats it like his/her own property

## Principal features of Lithuanian succession law: acquisition of inheritance (III)

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- Acceptance of succession in accordance with an inventory
  - application to the court
  - the compilation of the inventory shall be made by bailiff
  - court shall determine the time-limit for the compilation of property inventory
  - the term-limit may not exceed the period of one month
  - the time-limit may be extended for a period of not exceeding three months in cases: i) inherited estate is located in several places; ii) there is a considerable number of creditors of the bequeather

## **Principal features of Lithuanian succession law: certification of succession**

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- Might be issued not earlier after three months since the day of the opening of succession
- Is an official document formalizing the rights of the heir
- Proves the fact of the acceptance of inheritance
- Is the ground for registration of ownership right of immovable property
- Is the evidence of ownership right and other rights

# Principal features of Lithuanian succession law: liability of heirs (I)

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- The main principle – full liability principle (as in Latvia and Poland)
- The liability of all heirs is solidary
- After partition of the estate – the liability of the heirs it is not clearly defined and court practice is silent
- The ways to restrict liability: i) the acceptance with implementing inventory right, ii) determination of executor of the testament or administration
- In case of limited liability the heirs are liable for the debts of the deceased only *with the inherited property (cum viribus hereditatis)* but not to the extent of the value of the inherited property (*pro viribus hereditatis*) as it is in Latvia and in Poland



## **Principal features of Lithuanian succession law: liability of heirs (II)**

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- Convocation period for creditors – three (3) months since the day of the opening of succession
- The aim of this convocation is to provide to the heir information about creditors pretensions aiming that the heir could decide on the acceptance of inheritance and the way of acceptance
- The time-limit can be extended only in exceptional cases

# Principal features of Lithuanian succession law: administration of inheritance (I)

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- Administration of inheritance can be determined if:
  - the inherited estate is an private (personal) enterprise, a farmstead
  - the bequeather's debts might exceed the value of the inheritance
- The application can be provided by the successor, having accepted succession
- Two types of requests:
  - to appoint an administrator for the property of the succession
  - to appoint an administrator for the property of the succession and to decide on the issue of auction or a starting of bankruptcy proceedings

## **Principal features of Lithuanian succession law: administration of inheritance (II)**

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- The court shall appoint the administrator and determine his/her remuneration
- Administration is executed according to general rules regarding the administration of property
- No administration in case the cost of administration would exceed the value of inheritance
- The administrator has obligation to make inventory of the inherited property

## **Principal features of Lithuanian succession law: partition of inheritance**

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- The partition of estate might be executed according to the agreement of the heirs
- In case of disagreement – court is entitled to decide on the partition of the estate
- The priority is taken on the principle of the partition in kind, in the event it is not possible – the compensation shall be paid
- Inheritance may not be divided: i) until the birth of a testate or intestate successor; ii) if the testator has established by his will a time-limit during which the successors jointly possess the inherited estate

## **Perspectives of Lithuanian succession law: preconditions (I)**

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- Succession law is quite national law
- However for example the Lithuanian succession law has quite much generalities to the other countries succession law (Poland, Latvia)
- The some generalities of all national systems can be pointed

# Perspectives of Lithuanian succession law: preconditions (II)

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- There are no national factors which can lead to the changes of the succession law:
  - The most of practice has come from the practice implementing old CC (old traditions are alive)
  - No discussions about necessity to change the regulation of succession law
  - Some uncertainties are in legal norms regulating succession law however it is not possible to determine needed changes yet
  - Succession law - not very favourite topic for the scientists

## **Perspectives of Lithuanian succession law: preconditions (III)**

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However:

- Increased movement of persons in EU will cause the necessity to have at least unified conflicts rules of succession law in the level of EU
- Comparative approach has become more applicable and reformed national civil law institutes has influenced by traditions of other countries
- Cooperation of scientists step by step will reduce the divergences between the different law systems
- Discussion re unified rules and scientists work will change or at least will cause the national thinking

# Perspectives of Lithuanian succession law: perspectives

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- There are important preconditions that Lithuanian succession law will be influenced:
  - whether by new rules adopted at the European Union level
  - or at least the discussions in succession law will cause to some extent the practice of implementation of succession law legal norms



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***Thank YOU for YOUR  
attention***