

Project REMOR on Recovery of Maintenance Obligations

The project is concerned with the internationalization of economic life, social and individual life of natural and legal persons calls for a high level of cooperation in civil judicial matter. As part of the project activities, the following questionnaire on maintenance obligations has been answered as to the state of law and practice in Latvia. The answers are submitted by Peter Gjørtler, Docent at the Riga Graduate School of Law, in collaboration with Dana Rone, practicing lawyer.

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1 National law on “maintenance obligation” (civil and private international law)

1.1 Substance

Please provide the Coordinator with all national legislation (both substantive and procedural), soft law measures (i.e. recommendations, draft of legislative measures) and case-law, which may be relevant to the development of the Remor project’s objectives and connected to the proposal of the Regulation on “maintenance obligation”. Please note that all documents need to be duly translated in English and submitted on word-pdf-htm format, so that they can be up-loaded on the web-site.

Regarding private international law, please note that, in addition to the relevant discipline on competent Authority, applicable law, recognition and execution of decisions, it is necessary to specify whether your Country has ratified international (multilateral or bilateral) treaties on maintenance obligations and/or on any other topic related to maintenance obligations and, if so, please provide the Main Partner with all relevant legislation. Please specify also if your Country has entered any reservation.

1.2 Answer

The issue of “maintenance obligation” in the Republic of Latvia is governed by several legal enactments, a list and short description of which is set out in the following sections.

1.2.1 Laws

1.2.1.1 Civil Law

The First part on Family Law ¹ regulates *inter alia* the most of family law issues, maintenance obligations. Below follows the main sections from the Civil Law regarding maintenance obligations among children, parents, spouses, and grandparents.

“77. A marriage shall not be dissolved if and insofar as the custody of children born in the marriage, maintenance for the children, the division of common property or relevant claims have not been resolved prior to the dissolution of the marriage and are not raised together with the request for the dissolution of the marriage.

¹ Adopted on January 28, 1937. Renewed on September 1, 1993. With amendments adopted on June 15, 1994; June 11, 1998; December 12, 2002, October 11, 2004, March 10, 2005. English version texts of all legislative enactments mentioned in this Research are available, both, at the web page of the Ministry for Children and Family Affairs of the Republic of Latvia (www.bm.gov.lv) and the Maintenance Guarantee Fund (www.ugf.gov.lv) unless stated otherwise.

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80. In dissolving a marriage or after the dissolution of a marriage, a former spouse may claim means from the other former spouse commensurate with his or her financial state if the latter by his or her actions has promoted the break down of the marriage and the means are necessary to ensure or maintain the previous level of welfare.

81. The duty to ensure the previous level of welfare or maintenance of the former spouse terminates when the same amount of time has passed subsequent to the dissolution of the marriage or the declaration of the annulment of the marriage as the duration of the relevant dissolved marriage or cohabitation in the marriage, which has been declared annulled. In cases where the common child of the former spouses has in this period not reached the age of majority and he or she is under the custody of a former spouse, who has the right to claim means, such duty shall continue until the child reaches the age of majority.

The duty to ensure the previous level of welfare or maintenance of the former spouse ceases if:

- 1) the former spouse has entered into a new marriage;
- 2) the income of the former spouse ensures the previous level of welfare or maintenance;
- 3) the former spouse avoids obtaining means for maintenance through his or her own work; and
- 4) there are other circumstances, which testify that the need to obtain means from the former spouse has disappeared.

177. Until reaching age of majority (Section 219), a child is under the custody of his or her parents.

Custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal and property relations.

Care for a child means his or her care, supervision and the right to determine his or her place of residence.

Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).

Supervision of the child means care for the safety of the child and the prevention of endangerment from third persons.

By the right to determine the place of residence of the child is understood the choice of the geographic place of residence and choice of dwelling.

Care for the property of the child means care for the maintenance and utilisation of the

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property of the child by preserving and increasing it.

179. Parents, commensurate to their financial state, have a duty to maintain the child. Such duty lies upon the father and the mother until the time the child is able to provide for itself.

The duty to provide for the maintenance of the child shall not terminate if the child does not live together with one of the parents or with both parents.

If children have their own property, but that owned by their parents do not suffice to cover the expenditures necessary for the maintenance of the children, then these expenditures may be covered from the income derived from the property of the children; if such income does not suffice, then part of the property of the children may be used, but only with the permission of the Orphan's court.

If the parents are absent or they are not able to maintain the child, this duty shall lie in equal shares upon the grandparents. If the financial state of the grandparents is unequal, a court may specify for them the maintenance duty commensurate with the financial state of each.

The minimal amount of maintenance, which is the duty of each of the parents to ensure for the child irrespective of his or her financial state, shall be determined by the Cabinet taking into account the State specified cost of living and the age of the child.

If a dispute has arisen regarding means of maintenance for the child, a court shall on the basis of a petition from the plaintiff without delay take a decision regarding the amount the defendant shall temporarily until the adjudication of the dispute cover the expenditures necessary for the maintenance of the child. The amount of temporary means of maintenance for the child may not be less than the minimal amount of means of maintenance of the child specified by the Cabinet.

183. While children receive maintenance from their parents, they shall do work in and about the home of their parents without the right to require any remuneration for this unless it has been specifically promised to them.

188. The duty to maintain parents and, in cases of necessity, also grandparents, lies upon all of the children equally.

If the respective financial state of the children is unequal, a court may determine their duty of maintenance commensurately to the financial state of each child.

A child may be released from the duty to maintain parents if it is determined that the parents without good reason have avoided the fulfilment of the duties of parents.

Grandchildren shall maintain each of the grandparents if the spouse of the latter and children cannot do so.”

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1.2.1.2 Law on Maintenance Guarantee Fund

This law² ensures the implementation of the right of a child to social security by establishing the Maintenance Guarantee Fund for the disbursement of minimum child support.

1.2.1.3 Law on Protection of the Rights of the Child

This law³ has provisions regarding maintenance obligation that are set out below:

“Section 10. Rights of the Child to Wholesome Living Conditions

- (1) A child has the right to such living conditions and benevolent social environment as will ensure his or her full physical and intellectual development. Every child shall receive adequate nourishment, clothing and housing.
- (2) A child with physical or mental disabilities also has the right to everything that is necessary for the satisfaction of his or her special needs.
- (3) A child has a right to a permanent place of residence.

Section 36. Care of a Child in a Foster Family

- (1) The Orphan’s Court in conformity with Cabinet regulations shall confer foster family status, provide for the training of the respective family and for the entering into of a child care agreement with the family.
- (2) The local government shall assist foster families in the upbringing of children and shall ensure the necessary social services. A foster family has the right to receive funds for the maintenance of the child. The amount of such funds may not be less than the amount, which, on the basis of Section 179, Paragraph five of The Civil Law has been specified by the Cabinet.
- (3) The legal relationship of a child and a foster family shall be regulated by Cabinet regulations.

Section 65.³ Competence of the Administration of the Maintenance Guarantee Fund

The Administration of the Maintenance Guarantee Fund shall:

- 1) according to the procedures specified in the Maintenance Guarantee Fund Law, ensure the rights of the child to social security by paying out maintenance from the Maintenance Guarantee Fund; and

² Adopted on June 29, 2004.

³ Adopted on June 19, 1998.

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2) according to the procedures specified by the Cabinet, issue information from the Maintenance Guarantee Fund applicant and debtor register.

Section 66. Competence of Local Governments in Regard to Protection of the Rights of the Child

(1) Parish and city local governments shall analyse the situation in the field of observance of the rights of the child, and shall formulate and realise a protection programme for the rights of the child in the administrative territory of the city or the parish.

(2) In conformity with the law, the local government:

1) shall provide assistance and support to families in which there are children, guaranteeing shelter, warmth and clothing, and nutrition appropriate to his or her age and state of health, for each child residing in the local government territory;

2) shall ensure extra-familial care for those children, who for a time or permanently are without their own family, or who for their own best interests may not be left in their own family. [..]”

1.2.1.4 Civil Procedure Law

This is the main procedural law⁴ regulating jurisdiction and judicial procedure of Latvian courts, which covers maintenance cases as well. Below is set out the main sections from the Civil Procedure Law regarding maintenance obligations.

“Section 43. Exceptions from General Provisions Regarding Court Costs

(1) The following persons shall be exempt from payment of court costs to the State: [..]

.....

3) plaintiffs – in claims regarding recovery of support payments;

Section 235.¹ Statement of Claim regarding Dissolution of Marriage

In addition to the information provided for in Section 128 of this Law, the statement of claim shall specify the following:

1) since when the parties live separately;

2) whether the other spouse agrees to the dissolution of marriage; and

⁴ Adopted on October 14, 1998; with several amendments, especially regarding maintenance – amendments adopted on September 7, 2006. English version text available at the web page of the Translation and Terminology Centre (www.ttc.lv , more precise: <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=50&l=EN>)

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3) whether the parties have agreed regarding the custody of children, the procedures for exercising the access rights of the other parent, the means of support and division of the property acquired during marriage or are submitting relevant claims.

Section 238. Prohibition to Separate Claims and Temporary Decisions in Separate Disputes

(1) In a matter regarding dissolution or annulment of marriage claims arising from family legal relationships shall be adjudged concurrently. Such claims shall be disputes regarding:

- 1) determining of custody;
- 2) exercising of access rights;
- 3) means of support for children;
- 4) means for the provision of the previous welfare level or support of the spouse;
- 5) joint family home and household or personal articles; and
- 6) division of the property of spouses (also if it affects third persons).

(2) At the request of a party the court may take a decision which temporarily, until the decision regarding dissolution or annulment of marriage is rendered, specifies the procedures for child care, the procedures for exercising access rights, means of support for children, prohibition to taking the child out of the State, means for the provision of the previous welfare level or support of the spouse, procedures for utilisation of the joint home of the spouses or instructs one of the parties to issue to the other party household and personal articles. [...]"

1.2.2 Cabinet of Ministers Regulations

1.2.2.1 Cabinet of Ministers Regulation No. 348

This regulation concerns the Minimum Amount of the Means of Support for a Child⁵.

It prescribes the amount of the means of support which each of a child's parents is liable to provide for his or her child irrespective of his or her financial circumstances⁶.

1.2.2.2 Cabinet of Ministers Regulation No. 612

This regulation concerns procedures by which the Administration of the Maintenance Guarantee Fund shall Review an Application regarding Disbursement of Maintenance and Documents Attached thereto, as well as shall Disburse Maintenance⁷.

⁵ Adopted on July 1, 2003.

⁶ On January 31, 2008 this minimum amount is LVL 40 (for one child until age of 7) and LVL 48 (for one child between ages of 7 – 18).

⁷ Adopted on July 20, 2004.

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It prescribes the procedures by which the administration of the Maintenance Guarantee Fund shall review an application regarding the disbursement of maintenance and the documents attached thereto, as well as shall disburse maintenance.

1.2.2.3 Cabinet of Ministers Regulation No. 613

This regulation concerns procedures for the Registration of Persons to whom Means of Support have been Disbursed from the Guarantee Fund of Means of Support, and Debtors⁸.

It prescribes the procedures for the registration of persons to whom means of support have been disbursed from the guarantee fund of means of support, and debtors.

1.2.2.4 Cabinet of Ministers Regulation No. 614

This regulation concerns the Maintenance Guarantee Fund Administration”⁹.

It defines rights and obligations of the Maintenance Guarantee Fund.

1.2.2.5 Cabinet of Ministers Regulation No. 617

This regulation concerns the Application for the Disbursement of Means of Support and the Documents to be Attached to the Application¹⁰.

It prescribes an example sample of the application for the disbursement of means of support and the documents to be attached to the application.

1.2.3 Soft law

Soft law instruments include the following documents.

1.2.3.1 Maintenance Sums from the Maintenance Guarantee Fund

This document concerns the Order of Calculation and Cancellation of Legal Percentage from Maintenance Sums Paid out by the Maintenance Guarantee Fund¹¹.

⁸ Adopted on July 20, 2004.

⁹ Adopted on July 20, 2004.

¹⁰ Adopted on July 20, 2004.

¹¹ Adopted on June 30, 2006. – Available only in Latvian on www.ugf.gov.lv

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This document constitutes an instruction of the Maintenance Guarantee Fund.

1.2.3.2 Child support, divorce and annulment of marriage

This document concerns court practice in deciding civil cases on determination of parentage, approval or revocation of adoption, child support, divorce and annulment of marriage¹².

The document is adopted Civil Cases Department of the Senate of the Supreme Court of Latvia summarises the case law in maintenance cases.

1.2.3.3 Application of law standards in property relations of spouses

This document is adopted by the Civil Cases Department of the Senate of the Supreme Court of Latvia¹³.

The document summarises the case law in property relations of spouses, slightly touching maintenance cases.

1.2.3.4 On application of standards of family law

This documents is adopted by the Civil Cases Department of the Senate of the Supreme Court of Latvia¹⁴.

The document summarises the case law in family law, slightly touching maintenance cases.

1.2.4 EU and International Law

Latvia has joined or is subject to the following documents, which directly relate to maintenance obligation. It should be mentioned, that there are further international documents related to maintenance obligations which however go beyond the present report.

¹² Adopted on September 28, 2004. Especially part 1. Available only in Latvian at the web page of the Supreme Court: <http://www.at.gov.lv/index.php?a=21&v=en>

¹³ Adopted on November, 2007. Available only in Latvian at the web page of the Supreme Court: <http://www.at.gov.lv/index.php?a=21&v=en>

¹⁴ Adopted on November, 2007. See especially Clauses 1 – 9 of the First Part. Available only in Latvian at the web page of the Supreme Court: <http://www.at.gov.lv/index.php?a=21&v=en>

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1.2.4.1 EU instruments

Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000; ¹⁵

1.2.4.2 International instruments

The following instruments should be noted in relation to the issue of recovery of maintenance obligations in Latvia:

- UN Children’s Rights Declaration; ¹⁶
- UN Children’s Rights Convention; ¹⁷
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; ¹⁸

2 **What is the “meaning” of maintenance / alimentary /assistance obligation in Your country?**

2.1 Substance

It is necessary to understand what is the concept that “maintenance” and “maintenance obligation” underlie according to your domestic law. In particular, we wish to know if in your Country there are different legal terms for maintenance, alimentary and assistance obligations (or, on the contrary, if “maintenance” obligation covers all kinds and extent of this type of obligation).

Please provide the Main Partner with all information useful to define these concepts. Please specify also whether the concept of maintenance obligation used in your Country is different from the one used by the Court of Justice of the European Communities in its case-law (see in particular C-120/79; C-220/95) and, if so, to what extent.

¹⁵ Adopted on November 27, 2003. – Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:338:0001:0029:EN:PDF>

¹⁶ Adopted on November 20, 1959. In force in Latvia since March 24, 1992.

¹⁷ Adopted on November 20, 1989. In force in Latvia since May 14, 1992.

¹⁸ Adopted on October 19, 1996. In force in Latvia since April 1, 2004.

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2.2 Answer

Regarding the obligation to provide maintenance to a child a term “uzturlīdzekļi” (maintenance) is used. This term is not explicitly defined. Nevertheless from Section 177, part 4 of the Civil Law it can be understood that maintenance means:

“Ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).”

Regarding the obligation to provide maintenance to ex-spouse a term “līdzekļi” (means) is used. This term is not defined very strictly, either. Nevertheless from Section 80 of the Civil Law it can be understood that this term means all possible means, usually financial (money), to reach the same welfare level, which the claimant had during marriage, or to provide the claimant with aliment (in Latvian – “uzturs”). The term “aliment” is rather vague and can have a similar meaning as “maintenance” (in Latvian – “uzturlīdzekļi”).

Regarding the obligation to provide maintenance to parents a verb “apgādāt” (maintain) is used. This verb is not defined very strictly, either. Nevertheless from the common sense of the Civil Law it can be understood that such maintenance can have a similar meaning as “maintenance” in Section 177.

3 Which is the competent authority to apply to?

3.1 Substance

Please indicate which courts/administrative bodies within your system have jurisdiction to consider applications on maintenance obligations. Please specify:

- (i) *whether the competent Authority is a judicial or an administrative body;*
- (ii) *whether the competent Authority has a specific competence on problems regarding marriage-separation-divorce and or minors;*
- (iii) *what kind of measures the competent Authority may apply;*
- (iv) *whether legal aid is required for this sort of proceeding and, if so, on what conditions;*
- (v) *what procedures and measures exist for the enforcement of the judicial and or administrative orders.*

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3.2 Answer

Disputes regarding maintenance issues are reviewed by the courts of Latvia. An application has to be submitted to the 1st instance court (city or district court). The claimant can choose where to submit such application – at the claimant’s or at the respondent’s place of residence. The judgment of 1st instance court can be appealed to the regional court. The regional court judgment can be appealed further to the Supreme Court. All courts are judicial bodies and they can review any dispute related to maintenance, family and divorce. The court can issue a legally binding judgment or decision, which must be executed.

Minor disputes regarding maintenance to a child can also be reviewed by the Orphan’s court (in Latvian – bāriņtiesa), which is an administrative body regulated by the Law on Orphan’s court.¹⁹ Although the headline of the law contains the term “orphan”, the law and the court is in substance dedicated to children and family, not orphans, matters. Though, a decision of Orphan’s court is not binding for the parties in maintenance cases.²⁰ It can be used only as an advisory document. The Orphan’s court is obliged to protect child’s personal and material interests.²¹ The Orphan’s court can issue decisions, which can be appealed in administrative procedure – to the administrative district court, further – to the administrative regional court and to the Supreme court. These courts can also issue legally binding judgments or decisions, which must be executed.

Legal aid in judicial or administrative procedure is not a must, but advisable, because courts and administrative bodies refer to law and use legal arguments, which is more familiar for professional lawyers. Legal aid can be received by lawyers (advocates or other representatives). The agreement (financial conditions included) about receipt of legal aid is a mutual understanding between the client and the particular lawyer. Charge free legal assistance can be received from the Legal Assistance Administration of the Ministry of Justice,²² if the person is poor or indigent.

¹⁹ Adopted on June 22, 2006.

²⁰ In other family matter cases Orphan’s court decisions are binding.

²¹ Section 17 of the Law.

²² www.jpa.gov.lv

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All judicial and administrative orders can be enforced by assistance of sworn court executors. Their activities are regulated by the Court Executor's Law²³ and by the Civil Procedure Law²⁴ (Sections 538 – 635).

4 Who is entitled to receive maintenance and who is obliged to provide maintenance?

4.1 Substance

It is therefore important to know the persons to whom the Regulation shall apply. As pointed out in the Green Paper of the Commission on maintenance obligations, the types of relationship that can generate a maintenance obligation between two people vary from one State to another, since sometimes only parents and their children or spouses or ex spouses are concerned, whereas elsewhere the family circle is broader, extending even to living together persons and “civil (or registered) partnership”.

Please indicate:

- (i) who is entitled to receive maintenance and who is obliged to provide maintenance under domestic law;*
- (ii) up to what age and under which condition a child may benefit of a maintenance allowance;*
- (iii) if your Country has adopted (or is going to adopt) specific legislation on “registered partnership”.*

Moreover, the recovery of maintenance is sometimes handled by public agencies, acting on behalf of the creditor or subrogated to the creditor's rights. Please indicate whether under your domestic law public bodies/agencies may take an action for the recovery of maintenance obligation. Please provide also any relevant legislation, case-law, soft law on this specific topic.

4.2 Answer

A child has rights to receive maintenance from both parents, regardless are these parents married or not. A father is a person, whose name is written in the birth certificate of the child. It is possible that there is no father's name in the birth certificate. In this case only a mother has rights to maintain the child.

²³ Adopted on October 24, 2002.

²⁴ See footnote 4 above.

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A child can receive maintenance until he/she can take care of himself/herself, which in any case is not before 18 years. If the child continues to study further and cannot study and work at the same time, then parents have to maintain the child until studies are finished. The court practice shows that this age does not exceed 24 years. If, on the contrary, the child gets married until age of 18, the maintenance obligation does not continue after the moment of marriage.

Rights to claim maintenance can arise any time – not only within process of marriage divorce. Even if claimant has informed the court that disputes regarding maintenance do not exist, the claim about maintenance can be brought any time later when such disputes have arose.²⁵ Even if the parties have concluded a peaceful settlement about amount of maintenance, which is approved in the court, the claimant can later submit another claim to the court and to demand more maintenance.²⁶

If parents of a child has concluded an agreement about maintenance payment to their child, but one of the parents do not fulfil obligations, the claim can be brought to the court about fulfilment of the agreement, based on Section 1587 of the Civil Law²⁷ (and not based on Section 179 of the Civil Law, which, nevertheless, is not contrary).

Section 1587 of the Civil Law states:

“**1587.** A contract legally entered into shall impose on a contracting party a duty to perform that which was promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, shall give the right to one party to withdraw from the contract, even if the other party is compensated for losses.”

If the debtor does not pay maintenance, the amount of which is stated in peaceful settlement, which is approved in the court, such maintenance can be demanded with assistance of the sworn court executor. This is because a peaceful settlement document, which is approved in the court, has to be executed just like the other decisions and judgments of the court.

The following Sections of the Civil Procedure Law approve it:

²⁵ See footnote 14 above, Clause 2.

²⁶ Ibid, Clause 3.

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“Section 228. Court Decision regarding Confirmation of a Settlement

[...] (3) A settlement confirmed by a court decision shall be executed in accordance with the provisions regarding execution of court judgments.

Section 539. Adjudications of Courts and Other Institutions, which must be Executed

(1) In accordance with the procedures specified for the execution of court judgments by this Law, the following court adjudications, court decisions by judges or other institution adjudications shall be executed:

[...] 4) court decisions regarding approval of settlements;

Section 540. Execution Documents

Execution documents are:

1) writs of execution which are issued on the basis of court judgments or decisions by a court or a judge in civil matters and in matters which arise out of legal administrative relations and criminal matters, court decisions regarding approval of settlements, permanent arbitration court awards, decisions by a labour disputes commission and adjudications of foreign courts and foreign arbitration courts;”

If parents are not able to maintain a child, such obligation can be transferred to grandparents (Part 4 of Section 179 of the Civil Law).

“179. If the parents are absent or they are not able to maintain the child, this duty shall lie in equal shares upon the grandparents. If the financial state of the grandparents is unequal, a court may specify for them the maintenance duty commensurate with the financial state of each.”

A parent has rights to receive means from the child, when parent cannot any more maintain him-/herself. In this case a child can have an excuse and can escape from maintenance of parents, if he/she can prove that particular parent didn't take care about the child when minor. An obligation to maintain parents is not bound by any age of parents. This is more up to capability of parents to maintain themselves.

If child cannot maintain his/her parent, this obligation is transferred to grand-child (Section 188 of the Civil Law):

²⁷ Ibid, Clause 4 and the judgment of the Supreme Court of Latvia as of October 24, 2007 No. SKC-729.

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“188. The duty to maintain parents and, in cases of necessity, also grandparents, lies upon all of the children equally.

If the respective financial state of the children is unequal, a court may determine their duty of maintenance commensurately to the financial state of each child.

A child may be released from the duty to maintain parents if it is determined that the parents without good reason have avoided the fulfilment of the duties of parents.

Grandchildren shall maintain each of the grandparents if the spouse of the latter and children cannot do so.”

An ex-spouse has rights to receive means from the other ex-spouse, if the latter has behaved so as to ruin the marriage. The ex-spouse has to maintain the other ex-spouse the same length of time how long was their marriage, if only the poorer spouse does not get married sooner or does not get wealthier.²⁸

Latvia is not planning to introduce legislative enactments about registered partnership or the single gender marriages. Therefore this issue does not legally affect the maintenance issue.

Recovery of maintenance is handled by the Maintenance Guarantee Fund of the Ministry of Justice, but they are only partially acting on behalf of person, who is entitled to receive maintenance.²⁹

5 What are the legal criteria by which maintenance obligations determinations are made?

5.1 Substance

In particular it is necessary to know

- *how maintenance obligations may be fulfilled (i.e. directly, by giving to the beneficiary a determined amount of money or indirectly, as for example by paying costs and/or expenses for services used by the beneficiary);*
- *whether there is a difference in the legal status of mothers and fathers in providing maintenance obligations towards their child and/or children; - what determinations are made as regard maintenance obligations towards children in case of joint custody;*

²⁸ See citations of the Civil Law Sections 80 – 81 above in the 1st answer.

²⁹ See attachment No. 1 to these answers - Maintenance Guarantee Fund Law.

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- *whether legislation and/or case law provide criteria for the assessment of maintenance obligation (like length of marriage, financial capacity of spouses, etc.), and, in the affirmative, it is important to know them, in order to make a comparative analysis;*
- *whether in case of breach of obligations arising from the marriage, the right of maintenance might be reduced and/or limited and/or eliminated; - whether domestic legislation provides automatic adjournment of maintenance obligation taking into account the changes in the costs of living and or other criteria.*

Please provide all necessary documents and information at this regard.

5.2 Answer

Latvian legal enactments or court practice do not specify how maintenance shall be received. Usually it is done by means of monetary transfers to recipient's bank account. At the same time the parties can be creative and invent other means of maintenance, for example, purchase of insurance policy, payments in life assurance bank account, payments for school events, purchase of clothes and food, providing of living place, etc.

Mothers and fathers have completely the same legal status in providing maintenance towards their child. In practice children stay more at their mothers and fathers are obliged to provide them with maintenance.

In case of joint custody if disputes arise, the judge takes into account investment into maintenance of both parents. No legal precision exists in this case.

Legal enactments do not provide for certain criteria for the assessment of maintenance obligation. Financial capacity is decisive. Nevertheless practicing lawyers are rather creative and pays court's attention to all possible features of wealth of the opposite party. To show responsible parent's wealth the following factors are taken into account: monthly salary, credit and leasing obligations, owned real estate, owned movable – registered property, owned shares and stocks, positions into company boards and councils, activity in social and political life, bank account statements, other proves about level of life (frequency of foreign trips, family relations, obligations towards other children).

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Monthly income is not the only criteria, which shows wealth of the respondent.³⁰ The wealth shall be evaluated very broadly. If the claimant wants to receive higher maintenance than minimum, the claimant has to prove circumstances why the claim is of such amount. An amount of necessary maintenance, real possibilities of both parties have to be proved. Usually a calculation is attached, in which needs and expenses are shown. This obligation arises from the following norms:

- Points 5 and 6, Part 2 of Section 128 of the Civil Procedure Law:
“Section 128. Statement of Claim
(2) There shall be set out in a statement of claim: [...] 5) the facts on which the plaintiff bases his or her claim, and evidence, which corroborates such facts; 6) the law on which the claim is based;”
- Part 1 of Section 93 of the Civil Procedure Law:
“Section 93. Duty Regarding Proof and Submission of Evidence
(1) Each party shall prove the facts upon which they base their claims or objections. Plaintiffs shall prove that their claims are well-founded. Defendants shall prove that their objections are well-founded. [...]”

If the parties can mutually agree about the maintenance obligation and its amount, their decision is not approved by the court. If, however, the maintenance obligation is heard by the court, the court states amount of maintenance. The stated amount of maintenance payment can be changed only by another decision of the court. This amount does not change automatically, unless the decision explicitly states that such automatic changes are required.

6 Is it possible to recover the arrears?

6.1 Substance

The question of arrears, that is to say the recovery of maintenance awarded by a court but not actually paid, arises in a number of cases. As expressly pointed out in the Green Paper, difficulties can arise in particular if the law of the country where the judgment is to be enforced provides that the judgment awarding maintenance can be enforced, after exequatur, only for future payments, or permits the recovery of arrears only in respect of a limited period.

³⁰ See footnote 14 above, Clause 9.

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Regarding this it would be interesting to know

- (i) *whether under domestic law arrears may be awarded and*
- (ii) *with specific reference to the enforcement of decisions ordering the payment of arrears, whether limitation rules are regarded as procedural or substantial.*

6.2 Answer

It is possible to recover arrears, if maintenance payment is explicitly stated either in a mutual agreement or in a court decision. Recovery is possible if the last reminder about necessity to pay is sent within 10 years.

Civil Law, Section 1895 states:

“**1895.** All obligation rights which have not been expressly exempted from the impact of prescription and the use of which is not by law subject to shorter terms, shall terminate if the party entitled to them does not use them within a ten year time period.”

If instead of the parent, who is unable to pay or who does not fulfil obligation to pay maintenance, the Maintenance Guarantee Fund pays maintenance, then the Fund recovers arrears. If the Fund pays only the minimum maintenance, but the particular parent is obliged to pay higher maintenance, then the entitled parent can recover a difference between the higher sum and the one actually paid.

7 Are the parties (debtor and creditor-beneficiary) free to fix the amount and/or to determine how or who have to pay maintenance?

7.1 Substance

Please explain whether under domestic law the party entitled to receive maintenance and the party obliged to provide maintenance are free to determine the amount of the payment/obligation and how to pay (i.e. directly, by paying an amount of money to the beneficiary and/or indirectly, by paying for example some specific costs and/or expenses) or whether they have to follow specific criteria and limits indicated by legislation, which has an imperative character.

7.2 Answer

Under Latvian law the party entitled to receive maintenance and the party obliged to provide maintenance are free to determine the amount of the payment/obligation and how to pay. Such peaceful agreement can exist orally or can be fixed in written and even approved by

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the sworn notary. If, however, an obligation to pay maintenance is stated by judgment of the court, the court can not determine lower maintenance as stated in the law,³¹ regardless the income or lack of income, insolvency, invalidity, etc. or the debtor. The way of payment is not defined and can be very diverse.

If the amount of maintenance is changed by the court, the court has to settle the issue about annulment of previous executory writ in the same judgment. This has to be done to avoid diversities between the previous and new executory writ.³²

8 Is it possible to dispose of maintenance obligation (assignability, negotiability, leviability, seizurability)?

8.1 Substance

Please give all necessary information on actions and remedies that may be taken in case the maintenance debtor does not pay, in order to force him/her to pay (like seizure orders, salary attachment order, etc.) Please specify whether third parties may recover their credits on maintenance credits.

8.2 Answer

The Civil Procedure Law,³³ Labour Law³⁴ and the Court Executor's Law³⁵ regulate execution of the judgments, maintenance cases included. Sworn court executors on the basis of executive documents demand fulfilment of judgments. If the debtor does not fulfil the judgment voluntarily, the court executor may claim resources to be recovered from all possible assets and property of the debtor: salary, movable and immovable property, etc.

The Civil Procedure Law states:

“Section 557. Compulsory Execution Measures

Compulsory execution measures are:

- 1) recovery directed against the movable property of a debtor, including the property in the possession of other persons and intangible property, by sale thereof;

³¹ See footnote 6 above.

³² See footnote 14, Clause 1.

³³ See footnote 4 above.

³⁴ Adopted on June 20, 2001.

³⁵ See footnote 23 above.

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- 2) recovery directed against money due to the debtor from other persons (remuneration for work, payments equivalent thereto, other income of the debtor, deposits in credit institutions);
- 3) recovery directed against the immovable property of the debtor, by sale thereof;
- 4) transfer of the property adjudged by the court to the judgment creditor and performance of activities imposed by a court judgment;
- 5) eviction of persons and removing of property specified in the judgment from premises;
- 6) placing in possession; and
- 7) other measures as set out in a judgment.”

Maintenance payments can be received from work remuneration. If maintenance shall be paid to minors, completely all work remuneration can be used for this purpose.

Part 3 of the Section 80 of the Labour Law provides:

“Section 80. Restrictions on Deductions Made from Work Remuneration

- (1) The total amount of all deductions may not exceed 20 per cent, while in special cases provided for by the Civil Law, 50 per cent of the monthly work remuneration payable to the employee. In any case, the minimum monthly salary shall be maintained for the employee.
- (2) The restrictions specified in Paragraph one of this Section shall not apply to the recovery of means of support for the maintenance of minor children.
- (3) If the deductible amount is insufficient to satisfy all claims, the sequence specified by the Civil Law for the satisfaction of several claims shall be complied with.
- (4) It is prohibited to make deductions from severance pay, compensation for expenses of an employee and other amounts payable to an employee against whom attachment proceedings in accordance with the Civil Law may not be brought.”

If the court executor comes to the conclusion that it is impossible to fulfil the judgment by the debtor, then with such a written conclusion the creditor can apply to the Maintenance Guarantee Fund and ask maintenance payments from this Fund. The Fund pays out only the minimum sum stated in legislative enactments.³⁶

In the amount the Fund has paid to the creditor the Fund receives rights to demand payment from the debtor. If, in other case, the court has stated rights for the creditor to receive, for example, LVL 100 per month, but the Maintenance Guarantee Fund pays out LVL 40, then the creditor maintains the right to demand the difference from the debtor, namely, LVL 60.

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An obligation to pay maintenance is of personal character. There is no case law on this matter regarding is it possible to transfer rights to claim to transfer obligation to pay maintenance.

9 In which cases, according to domestic law, the beneficiary may lose his right to maintenance?

9.1 Substance

It is important to know whether under domestic law and/or case law the beneficiary of maintenance obligation may lose his right of maintenance and, in the affirmative, in which cases. Furthermore, we wish to know whether the ex-spouse may lose his/her right in case he/she starts to live with a new partner. Please provide all necessary documents and information to this regard.

9.2 Answer

The child loses rights to receive maintenance:

- 1) when reaches the age of 18 or can maintain himself/herself (accordingly, which happens later),
- 2) when gets married before age of 18.³⁷

The ex-spouse loses rights to receive maintenance:

- 1) when term of time of divorced life in comparison with term of time in marriage expires;
- 2) when the creditor becomes able to maintain himself/herself;
- 3) when the creditor gets married again (non-marital cohabitation is not taken into account).³⁸

A parent loses rights to receive maintenance when he/she is able to maintain him-/herself or if another spouse can provide maintenance.³⁹

³⁶ See footnote 6 above.

³⁷ See Civil Law citations in the 1st answer.

³⁸ See Civil Law Sections 80 – 81 above.

³⁹ See Civil Law Section 188 (4) above.

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10 Maintenance/alimentary obligations and private international law matters
(applicable law, competent judge, recognition and enforcement of
judgements/decisions)

10.1 Substance

It is necessary to know the relevant legislation on private international law matters. Please indicate:

- (i) *in which cases the law of your Country is applicable (i.e. indicate the conflict of law rules that determine the law applicable to the settlement of an international dispute);*
- (ii) *which law is to be applied when your Country law is not applicable;*
- (iii) *in which cases your judges are competent to take decisions on maintenance obligations;*
- (iv) *what conditions need to be satisfied for the recognition and execution of a foreign decision/judgment;*
- (v) *whether a foreign decision/judgment establishing right and duty of maintenance between partners living together or “registered partners” may be recognized and enforced or not.*

Please provide all necessary documents and information to this regard.

10.2 Answer

The following sections of Latvian Civil Law, Introductory Part, determine the main norms of collision, which in the most cases protects application of Latvian law:

“11. If a marriage is entered into in Latvia, the right to marry, the formalities of entering into marriage and the effect of marriage shall be determined in accordance with Latvian law.

Similarly, the right of a citizen of Latvia to marry in a foreign state shall be determined in accordance with Latvian law. In that case, the law of the state, where the marriage is entered into, shall determine the formalities of entering into marriage.

12. Dissolution of marriage and the declaration of a marriage as annulled, if done in a Latvian court, shall be adjudged in accordance with Latvian law, without regard to the nationality of the spouses. In this respect, an exception may be allowed to the provisions of Section 3, in the sense that the relations of the spouses before they become subject to Latvian law, may also be adjudged in accordance with Latvian law.

A dissolution or declaration as annulled of a marriage of citizens of Latvia, done in a foreign state, shall also be recognised in Latvia, except in a case where the grounds submitted as the basis therefore do not conform to Latvian law and are in conflict with the social or moral standards of Latvia.

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13. Personal and property relations of spouses shall be determined in accordance with Latvian law, if the place of residence of the spouses is in Latvia. If property of the spouses is located in Latvia they, in respect of such property, shall be subject to Latvian law notwithstanding that they themselves do not have a place of residence in Latvia.

14. Legal relations, which are associated with the paternity of a child and the dispute thereof shall be adjudged in accordance with Latvian law, if the place of residence of the mother of the child at the time of the birth of the child was in Latvia.

Latvian law is also applicable where a dispute regarding the paternity of a child arises in Latvia.

15. Legal relations between parents and children shall be subject to Latvian law if the specified place of residence of the child is Latvia.

In respect of such property as is located in Latvia, parents and children are subject to Latvian law also when the specified place of residence of the child is not in Latvia.”

It is necessary to note that Latvia observes EU Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000,⁴⁰ and Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,⁴¹ which states jurisdiction and judgment recognition norms in maintenance and other family law cases.

11 Attachment: Maintenance Guarantee Fund Law

Section 1

The following terms are used in this Law:

- 1) child – a minor who has a personal identity number assigned in the Republic of Latvia;
- 2) submitter – a natural person who takes care of a child and who has submitted a submission regarding the disbursement of child support to the Administration of the Maintenance Guarantee Fund;
- 3) debtor – a parent who has been obligated to pay child support to his or her child by a court adjudication and who does not fulfil the court adjudication, or is fulfilling it, but does not

⁴⁰ Adopted on November 27, 2003.

⁴¹ Adopted on December 22, 2000.

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provide the minimum amount of child support which the Cabinet has determined on the basis of Section 179, Paragraph five of the Civil Law; and

4) child support – the expenses of supporting a child, which each parent has the responsibility to provide to his or her child irrespective of his or her financial condition, and the minimum amount of which the Cabinet has determined in accordance with Section 179, Paragraph five of the Civil Law.

Section 2

The purpose of this Law is to ensure the implementation of the right of a child to social security by establishing the Maintenance Guarantee Fund for the disbursement of minimum child support.

Section 3

(1) The Maintenance Guarantee Fund (hereinafter – the Fund) is the amount of resources provided for in the State budget for ensuring a child with child support, if the execution of a court adjudication regarding the recovery of child support in accordance with the procedures prescribed in the Civil Procedure Law is recognised as impossible, or a debtor fulfils a court adjudication regarding the recovery of child support, but does not ensure such minimum amount of child support, which has been determined by the Cabinet on the basis of Section 179, Paragraph five of the Civil Law.

(2) The holder of the resources of the Fund shall be the Administration of the Maintenance Guarantee Fund (hereinafter – the Fund Administration).

(3) The Fund Administration is a direct administrative authority which is subject to the control of the Ministry for Children and Family Affairs (hereinafter – the Ministry).

Section 4

The Fund Administration shall perform the following tasks:

1) attract, accumulate and disburse the resources of the Fund in accordance with the purpose indicated in Section 3, Paragraph one of this Law;

2) appropriately and efficiently manage the resources of the Fund, as well as ensure the control of the utilisation thereof; and

3) register persons to whom child support has been disbursed from the Fund, and debtors in accordance with the procedures specified by the Cabinet.

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Section 5

(1) The Fund Administration has the right:

- 1) to receive financing from the State budget;
- 2) to receive donations and gifts; and
- 3) to request and obtain information free of charge which is necessary for the implementation of the purpose of the Fund from State and local government institutions and authorities, as well as from private persons.

(2) The Fund Administration has a duty:

- 1) to assume the place of an enforcer of a debt without a special court decision in a child support case in the part regarding the recovery of disbursed child support from a debtor in accordance with the procedures specified in Section 8 of this Law;
- 2) to recover, on an uncontested basis, child support disbursed by the Fund and the interest set by Law for unduly paid amounts of child support, from a submitter who has provided false information (in order to receive child support); and
- 3) to receive, without a particular adjudication, the interest set by Law for amounts of child support disbursed from the Fund and not recovered from a debtor.

Section 6

(1) The financial means for the attainment of the purpose referred to in Section 3, Paragraph one of this Law and the Fund Administration shall be provided for in the Law on the State Budget for the current year as separate programmes (sub-programmes).

(2) Resources of the Fund shall be comprised of:

- 1) a State budget grant from general revenue;
- 2) the resources recovered from a debtor, but in the case provided for in Section 5, Paragraph two, Clause 2 of this Law – from a submitter; and
- 3) gifts, donations and foreign financial aid.

(3) At the end of the year, the surplus of the resources referred to in Paragraph two, Clauses 2 and 3 of this Section shall remain in the Fund and shall be used in the following year, if the surplus does not exceed the amount of resources actually received during the year.

(4) Resources of the Fund Administration shall be comprised of:

- 1) a State budget grant from general revenue; and
- 2) gifts, donations and foreign financial aid.

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(5) Resources of the Fund and the Fund Administration shall be stored in the Treasury.

Section 7

(1) A director, who is appointed to and removed from office by the Minister for Children and Family Affairs, shall manage the Fund Administration.

(2) The director of the Fund Administration shall:

1) manage and organise the operations of the Fund Administration and ensure the continuity of the operations of the Fund Administration, determine the competence and responsibility of the employees of the Fund;

2) establish structural units of the Fund Administration;

3) determine the staff list of employees of the Fund Administration;

4) be responsible for the establishment and operation of the management decision examination system;

5) take decisions regarding the disbursement of child support and the suspension and termination of disbursement, as well as take a decision and issue an execution order regarding the recovery of support, which the Fund has unduly paid, from a submitter in the case provided for in Section 5, Paragraph two, Clause 2 of this Law;

6) take a decision to reimburse resources wrongly transferred to the Fund;

7) represent the Fund Administration without special authorisation;

8) be responsible for the fulfilment of the tasks of the Fund Administration;

9) be responsible for rational utilisation of the resources of the Fund;

10) be responsible for the lawfulness of the activities of the Fund Administration; and

11) ensure that an annual public report regarding the activities of the Fund Administration and a report regarding the implementation of the purpose of the Fund are drafted and published.

(3) The director of the Fund Administration may have a deputy.

Section 8

(1) Child support from the resources of the Fund shall be disbursed after an examination of a submission of a submitter, if he or she provides care for a child who has been assigned child support in accordance with a court judgement or, in the case specified in Section 179, Paragraph one of the Civil Law, with a court decision, and one of the conditions referred to in Section 3, Paragraph one of this Law has set in.

(2) If the execution of a court adjudication regarding the recovery of child support has been

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recognised as impossible in accordance with the procedures specified in the Civil Procedure Law, or if a debtor fulfils a court adjudication regarding the recovery of child support in an amount that is less than the amount specified in Section 179, Paragraph five of the Civil Law, the Fund Administration shall, on the basis of a written submission of a submitter and the documents attached thereto, disburse child support to the submitter from the resources of the Fund for each child in an amount determined by the Cabinet on the basis of Section 179, Paragraph five of the Civil Law, but not more than the amount specified in the court adjudication.

(3) The Fund Administration shall announce to a debtor a decision regarding the disbursement of child support within seven days after the decision has been taken. The debtor has a duty to inform the bailiff, under the management of whom the relevant execution matter regarding the recovery of child support belongs, regarding the child support payments made to the Fund, beginning with the day when a decision regarding the disbursement of child support has been taken.

(4) If the place of residence of a debtor is unknown, an announcement regarding the initiation of the disbursement of child support shall be published in the newspaper “Latvijas Vēstnesis” [the official Gazette of the Government of Latvia].

(5) A bailiff has a duty to inform the Fund Administration regarding recovered child support, if it ensures the minimum amount of child support determined by the Cabinet on the basis of Section 179, Paragraph five of the Civil Law.

(6) The Cabinet shall determine a sample submission and the documents to be attached to a submission.

(7) The amount of child support to be disbursed to a submitter shall be calculated counting from the day when a submission was submitted to the Fund Administration. The Cabinet shall prescribe the procedures according to which the Fund Administration shall examine a submission and the documents attached thereto as well as according to which the Fund Administration shall disburse child support.

Section 9

(1) The Fund Administration shall suspend the disbursement of child support, if at least one of the following conditions has set in:

1) a submitter has refused to receive child support from the Fund by submitting a written submission to the Fund Administration;

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2) a submitter has been deprived of the right to provide support or care; or

3) a submitter has died.

(2) In the case referred to in Paragraph one, Clause 2 of this Section, the relevant Orphan's court (parish court) shall send a certified copy of adjudication in a registered letter to the Fund Administration within three working days after the taking of a decision or the receiving of the court adjudication .

(3) The Fund Administration shall resume the disbursement of child support, if a submitter , whose right to provide child care or child support have been renewed, submits to the Fund Administration the documents referred to in Section 8, Paragraph two of this Law. In this case, the amount of child support to be disbursed shall be calculated as of the day the submission was submitted.

Section 10

(1) The Fund Administration shall terminate the disbursement of child support, if at least one of the following conditions has set in:

1) a child for whom child support is disbursed from the Fund, has reached legal age;

2) the legal grounds for the disbursement of child support have ceased;

3) a child for whom child support is disbursed from the Fund, has died; or

4) a debtor has died.

(2) In the cases referred to in Paragraph one of this Section, a submitter shall lose the right to receive child support.

Section 11

(1) A decision of the Fund Administration regarding the disbursement of child support or the suspension or termination of the disbursement of child support, shall be announced to the bailiff under the management of whom the relevant execution matter regarding a recovery of child support belongs.

(2) From the day of the receipt of a decision, the Fund Administration shall become an enforcer of a debt in a case of a recovery of child support in the amount and interest set by law (Section 5, Paragraph two, Clause 3) of the sum disbursed to the enforcer of the debt (the submitter).

(3) A claim of the Fund Administration regarding a recovery of disbursed child support from a debtor shall not have a limitation period.

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Section 12

(1) Decisions taken by the director of the Fund Administration in accordance with this Law may be appealed by submitting a submission to the State Secretary of the Ministry in accordance with the procedures prescribed in the Administrative Procedure Law. A decision of the State Secretary of the Ministry may be appealed to a court in accordance with the procedures prescribed specified in the Administrative Procedure Law.

(2) The submission of a submission to the State Secretary of the Ministry or the submission of an application to a court shall not suspend the execution of a decision taken by the director of the Fund Administration, except in the case, where it is suspended with a written decision of the person examining the submission or application.

Transitional Provisions

1. The Cabinet shall issue the Regulations which are provided for in Section 4, Paragraph three and Section 8, Paragraphs six and eight of this Law by 31 July 2004.

2. The Ministry shall administer the resources of the 2004 Budget sub-programme 01.04.00 “Establishment of the Maintenance Fund” until the establishment of the Fund Administration, ensuring the disbursement of child support in accordance with the procedures specified in this Law and ensuring the establishment of the Fund Administration.

3. Disbursement of child support shall be initiated on 1 August 2004.

This Law shall come into force on 1 July 2004.

This Law has been adopted by the Saeima on 17 June 2004.

Acting for the President,

The Chairperson of the Saeima I. Ūdre

Rīga, 29 June 2004

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