

The Legal Capacity of Married Persons Act, No 9 of 2006 (Summary)

Introduction

The Legal Capacity of Married Persons Act 9 of 2006 came into effect on 6th December 2006. Before the commencement of this Act a woman was regarded as a minor in terms of Lesotho laws and therefore could not enter into any contracts without the consent of her husband.

In essence the Act repeals the marital power which a husband had over the person and property of his wife and confers equal powers on both spouses married in community of property. This means that the spouses now have an equal capacity to dispose of the assets of the joint estate, contract debts for which the joint estate is liable, and administer the joint estate.

The Act in Brief

The Act removes the following restrictions which the marital power placed on the legal capacity of the wife:

- Entering into a contract;
- Suing or being sued;
- Registering immovable property in her name;
- Acting as an executrix of a deceased's estate;
- Acting as a trustee of an estate;
- Acting as a director of a company;
- Binding herself as surety; and
- Performing any other act which was restricted by any law due to the marital power before the commencement of this Act.

Nedbank Lesotho Limited's Approach

The Legal Capacity of Married Persons Act requires that both spouses obtain consent of the other spouse when entering into any agreements concerning the joint estate. The Act does not however specify that the consent be written. As a responsible Bank, which always seeks to push beyond boundaries, Nedbank has gone a step further and requires that where a spouse approaches the Bank for a facility/loan which will affect the joint estate, written consent from the other spouse be submitted. This means that for a facility to be granted a spouse has to obtain a declaration form from the Bank, which form shall be signed by the other spouse before a facility is approved. Otherwise, a spouse applying for a facility may bring in a letter from the other spouse giving consent for application of a facility.