This country-specific Q&A provides an overview of lending & secured laws and regulations applicable in Lithuania.

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1. Do foreign lenders require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

Except for granting consumer credits, as well as operating of a peer-to-peer lending platform or a crowdfunding platform, lending is not a regulated activity in Lithuania and foreign lenders do not require a licence or regulatory approval to grant a loan to a Lithuanian individual or company or to take security over assets located in Lithuania.

In Lithuania, consumer credits can be granted by credit institutions (banks and credit unions), peer-to-peer lending platforms, and other financial institutions having undergone authorisation process and included in the public list of consumer credit providers and, in case of also granting mortgaged-backed consumer credits, in the public list of lenders. Engagement in peer-to-peer lending platform and crowdfunding platform operator activity also requires entrance by the supervision authority in Lithuania on the relevant public lists.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

Generally, the parties to a lending agreement are free to agree upon the rate of interest, except for consumer credit agreements.

Lithuanian Law on Consumer Credit provides specific restrictions on overall cost of consumer credit which must be reasonable, i.e., (i) at any moment during a consumer credit agreement the percentage rate may not be over 75% and all other daily expenses (other than interest) included in the overall other cost of consumer credit may not be over 0.04 percent of the total amount of the consumer credit; or (ii) the overall cost of consumer credit (i.e., all expenses, including interest, commission fees and any other fees related to a consumer credit agreement payable by the consumer, except for notarial costs) may not be above the overall amount of the consumer credit. In the case of delay, lender may not calculate default interest for longer than 6 months.

Furthermore, Lithuanian courts by applying their inherent discretions, may refuse to award the whole amount of default interest if they found the default interest as excessively high to constitute usury.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

There are no specific laws or regulations that restrict loans being made or repaid in foreign currency.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction.

Yes, security can be taken over all of the above types of assets. Agreements on mortgage (in case of immovable assets, including aircraft which by operation of law are also considered as immovable assets) and pledge (in case of movable assets) must be governed by Lithuanian law (lex rei sitae), signed by the parties in front of a notary public and certified by the latter in Lithuania (validity precondition) and registered with the Mortgage Register of the Republic of Lithuania (precondition for enforceability against third parties).

5. Can a company that is incorporated in your jurisdiction grant security over its
future assets or for future obligations?

Lithuanian Civil Code allows creating security for the purpose of securing the performance of either a present or future debt obligation, as well as creating security over either present or future assets. In the latter case, however, it would be possible to create only a conditional security over future assets, meaning that such security would come into force only upon each relevant asset is created or built (e.g., factory under construction). In case of future obligation and/or future assets, Lithuanian Civil Code requires them to be described as specifically as possible (e.g., in case of wind farm under construction, it would be required in the description of such asset to indicate an address where the wind farm is to be built, as well as a construction document under which it is being built, etc.).

6. Can a single security agreement be used to take security over all of a company’s assets or are separate agreements required in relation to each type of asset?

Lithuanian Civil Code provides for a mortgage over the enterprise as property complex consisting of movable and immovable assets. Upon enforcement event, instead of taking over separate units of assets, the secured lender would be entitled to become an administrator of the enterprise. The administration of the enterprise would not mean management thereof; however, the secured lender’s instructions with respect to the company’s assets would be mandatory to the management bodies.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

Security over assets (i.e., mortgage over immovable assets and pledge over movable assets) would be subject to registration in the Lithuanian Mortgage Register. Under Lithuanian Civil Code, in order for the mortgage/pledge to be enforceable against third parties, it has to be registered. Registration will reflect the registered mortgage/pledge priority over any other not yet registered mortgages/pledges and any subsequently registered mortgages/pledges as well as all unsecured claims.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement?

Creation and perfection of the Lithuanian law governed security over assets would involve notary and registration fees, which would be (i) up to EUR 240 for an enterprise mortgage; (ii) up to EUR 120 multiplied by number of different movable assets subject to pledge; (iii) up to EUR 240 multiplied by number of different immovable assets subject to mortgage; plus, registry expenses (usually, these are around EUR 150 per one security instrument); and plus, VAT (21%; if applicable). As a general rule, all these expenses are covered by the borrower.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard?

Except for corporate benefit requirement and financial assistance prohibition, there are no other statutory limitations set for companies in Lithuania with respect to giving a security for another person. We leave aside, however, insolvency and other laws of general application affecting the enforcement of creditor’s rights.

For more details about corporate benefit requirement and financial assistance prohibition in Lithuania, please see our responses to questions 11 and 12 below.

11. Are there any issues that lenders should be aware of when requesting guarantees (for example, financial assistance or lack of corporate benefit)?

Upstream guarantees or guarantees of a sister company’s obligations might raise potential non-compliance with corporate benefit requirements for a
Lithuanian guarantor. This issue may lead to invalidity or unenforceability of the guarantee obligation of a Lithuanian guarantor. Please see this issue described in more detail below.

The principles of Lithuanian civil law and the corporate law require that each entity by entering into any transaction should have sufficient commercial benefit of such transaction. It is advisable that existence of such benefit is properly documented at the time of the transaction to mitigate any future attempts to challenge it (e.g., there should be a discussion of the corporate benefit of the Lithuanian guarantor in its corporate approval of the granting of security).

Apart from the restrictions of corporate benefit as set out above, lenders should also take the Lithuanian rules on financial assistance into account when requesting guarantees (please see below).

12. Are there any restrictions against providing security to support borrowings incurred for the purposes of acquiring shares: (i) of the company; (ii) of any company which directly/indirectly owns shares in the company; or (iii) in a related company?

Article 45 (2) of Lithuanian Law on Companies states that a company may not directly or indirectly advance funds, make a loan or grant security to individuals or corporate entities if this facilitates acquisition of its shares by the latter persons. This means that Lithuanian guarantor is not permitted to secure debt obligation if the purpose and utilisation of the relevant funds raised is to finance acquisition of that Lithuanian guarantor. The law does not indicate such rules apply to a situation whereby a Lithuanian company guarantees or secures borrowings to acquire shares in a parent or sister company; however, we may not exclude the possibility the court would rule such application.

13. Can lenders in a syndicate appoint a trustee or agent to (i) hold security on the syndicate’s behalf, (ii) enforce the syndicate’s rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

Despite efforts to regulate it, the security trusteeship is not fully recognized in Lithuania and generally a security over asset can only be given in favour of the particular secured creditors having the right to claim in their own right, rather than to the trustee or agent on behalf of a syndicate of lenders. An alternative route often used in such cases is the "parallel debt" or the concept of "joint creditorship"; though they are not clearly stipulated in Lithuanian legislation and have not been tested in Lithuanian courts yet. Accordingly, there are two options available in this respect, i.e.: (i) Option 1. Lithuanian law permits naming only the trustee or agent as the representative of the secured parties in the mortgage/pledge documentation at the time of its creation. At enforcement, the trustee or agent would need to name the lenders on whose behalf it is acting and collecting the enforcement proceeds. This is a less flexible option as long as the (re)distribution of enforcement proceeds and/or priorities stipulated in the arrangement between the lenders (e.g., intercreditor agreement) will not be directly enforceable within the formal enforcement process; (ii) Option 2. Securing trustee’s or agent’s joint and several creditor’s claim right in relation to the secured obligation, as long as such joint and several claim right of the trustee or agent is validly created. For the Lithuanian security purposes there will be one single obligation owed by the borrower to the trustee or agent, and the latter would have its own claim right with respect to the moneys lent/obligations owed to each lender. Upon collection of the enforcement proceeds by the trustee or agent, they could be distributed based on the stipulations of the arrangement between the lenders (e.g., intercreditor agreement). The difference from the first option is that the trustee or agent will act in its own right and not as a representative of the other lenders. Accordingly, there would be no possibility for the other lenders to be awarded independent rights in the enforcement process in Lithuania.

14. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

As mentioned in response to question 13 above, an alternative route often used is the creation of “parallel debt“ or invoking the concept of “joint creditorship“ under foreign law.

15. Does withholding tax arise on (i) payments of interest to domestic or foreign lenders, or (ii) the proceeds of enforcing security or claiming under a
guarantee?

Under Lithuanian Law on Corporate Income Tax, interest payments to the lenders from EEA countries and countries having treaties for the avoidance of double taxation with Lithuania are not subject to withholding tax. In other cases, interest payments to non-resident corporate lenders and non-resident lenders natural persons would be subject to withholding tax. Interest paid to domestic lenders are not subject to withholding tax but taxed as their income on an annual basis.

There is no explicit statutory provisions or established judiciary or administrative practice on the application or non-application of withholding tax in case of proceeds of enforcing security or claiming under a guarantee. If qualification under civil law is followed and payment made by the guarantor is an independent obligation, there should be no formal obligation to withhold for the security provider. However, this would not remove formal obligation of the lender (both foreign and domestic) to pay the tax due (if it is applicable under domestic law and the relevant double tax treaty).

16. If payments of interest to foreign lenders are generally subject to withholding tax, what is the standard rate and what is the minimum rate possible under double taxation treaties?

In cases where withholding applies, statutory rate for corporate lenders is 10 percent, natural persons – 15 percent. In case the lender cannot be identified by the borrower (e.g., listed bond issue), withholding tax at a rate of 15 percent must be applied. For the lenders natural persons (including non-residents), interest income attributes to the category of income subject to taxation at progressive scale: part of the total annual amount of the respective income categories (which includes interest), 120 average monthly salaries for the respective year (in 2021 – EUR162,324) is taxed at a rate of 20 percent. (unless respective tax treaty provides for a lower tax rate). If such progressive rate applies, non-resident lender natural person has an obligation to settle the tax due personally. Existence of a double tax treaty for corporate non-resident lenders reduces withholding tax rate to 0. For non-resident lenders natural persons some treaties also reduce the withholding rate to as low as 0 percent.

17. Are there any other tax issues that foreign lenders should be aware of when lending into your jurisdiction?

No, there are none.

18. Are there any tax incentives available for foreign lenders lending into your jurisdiction?

No tax applies on Lithuanian government bonds. Foreign lenders natural persons (on the same grounds as domestic ones) may use EUR 500 non-taxable amount, but only by personally submitting annual tax return on Lithuanian sourced income.

19. Is there a history in your jurisdiction of financing structures being challenged by tax authorities, and if so, can you give examples.

There are cases where intra-group financing (deductibility of interest expense) was challenged on the basis of Lithuanian thin capitalisation rules, transfer pricing regulations, nature of the use of the proceeds borrowed.

20. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

A Lithuanian court will recognise and give effect to choice of other laws to govern the agreement (including English law), except for any mandatory provisions of other jurisdictions, applicable EU law, overriding mandatory provisions of the jurisdiction in which the obligations out of the contract are performed, Lithuanian overriding mandatory provisions or Lithuanian public policy provisions that might override the foreign governing law and apply direct to the agreement.

21. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

Any judgment obtained in the courts of foreign jurisdiction would be generally recognized and
enforceable in Lithuania, in case there are no international treaty or agreement regulating such recognition and enforcement, in accordance with Article 810 of the Lithuanian Code of Civil Procedure. Should Lithuanian procedural rules apply, then according to Article 810 of the Lithuanian Code of Civil Procedure, recognition of a foreign court judgment might be refused under certain circumstances, i.e.: (i) the foreign court judgment is not yet in force; (ii) there is a non-compliance with exclusive jurisdiction of Lithuanian or foreign courts (as defined in the law of the Republic of Lithuania or international treaties); (iii) the party that was not participating during the foreign court procedure was not properly notified about the foreign case and had no possibility for representation; (iv) the foreign judgement is incompatible with a Lithuanian court judgement in a dispute between the same parties; (v) there is a contradiction to the constitutional public policy of the Republic of Lithuania; (vi) the foreign judgement relates to matters of legal capacity, legal representation, family, inheritance of the Lithuanian citizen and such judgement contradicts the private international law of the Republic of Lithuania. A final and conclusive judgment obtained from the court of a foreign jurisdiction would be recognized and enforced in Lithuania without further review of the substantive matters adjudicated thereby or the re-examination of the merits of the case.

Lithuania is a member of the New York Arbitration Convention. Accordingly, a final and conclusive arbitral award would be recognized and enforceable in the courts of Lithuania without re-trial or reexamination of the merits of the case subject to and in accordance with the provisions of Law of Commercial Arbitration of the Republic of Lithuania and the New York Arbitration Convention.

22. What (briefly) is the insolvency process in your jurisdiction?

Under the Lithuanian insolvency framework, the term “insolvency” can be used for two different procedures, i.e.: (a) bankruptcy meaning the state of a company where it cannot repay its debts owed to the creditors. After the bankruptcy procedure, the company is liquidated with no further possibility to continue its activities. The bankruptcy procedure can be either judicial or extrajudicial; or (b) restructuring which usually is chosen in situations where insolvency of the company is not severe or where there is no current insolvency problem yet but in the near future such problem is anticipated. The purpose of the restructuring procedure is to ensure the continuance of the company’s activities and to restore its solvency.

23. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

Generally, commencement of insolvency proceedings does not have adverse effect on a security interest over assets. Under Lithuanian insolvency law, secured creditors have priority to recover their debts from value of the insolvent borrower’s property given as security. It should be noted, however, that any security granted by the borrower at the moment the latter had financial difficulties may be subject to claw-back under Lithuanian insolvency law.

24. Please comment on transactions voidable upon insolvency.

After the court (or creditors’ meeting, in case of extrajudicial bankruptcy proceedings) decision to institute bankruptcy proceedings becomes effective, an insolvency administrator has an obligation to examine the transactions entered by the company under bankruptcy in the period of at least 36 months prior to the institution of the bankruptcy proceedings and must challenge those transactions that are contrary to the objectives of the company’s activities and/or which could have led to the inability of the company to settle with creditors.

If the court in which the bankruptcy is being heard establishes that the assets of the company were deliberately reduced to a state of insolvency and that, as a result, a creditor, shareholder or any other person suffered loss (fraudulent bankruptcy), the insolvency administrator has an obligation to review all contracts of the insolvent company concluded within at least the previous 60 months and bring an action against the counterparty for the invalidation of any contracts which are contrary to the objectives of the company activities and/or which could have induced its insolvency.

Transactions concluded by the company in bankruptcy may be challenged by both – the insolvency administrator and/or creditor(s) of the company in bankruptcy and found invalid on the general grounds of invalidity of transaction on the basis that it (i) contradicts the aims of the company; or (ii) unfairly breaches rights of other creditors of such company (actio Pauliana).

A general rule is that after declaring the transaction as voidable, the restitution is applied. However, in exceptional cases, the court may modify the mode of restitution or refuse restitution altogether where it would render undue and unfair aggravation for one party and,
accordingly, undue advantage to the other party. If, however, at the time of execution of the transaction one of the parties was a dishonest party (e.g., a party had financial difficulties which it concealed, or a party was aware of financial difficulties the counterparty was facing with), application of the restitution rendering undue and unfair aggravation to such dishonest party may not be contested by the latter and the restitution would still be applied.

25. Is set off recognised on insolvency?

After the court (or creditors’ meeting, in case of extrajudicial bankruptcy proceedings) decision to institute bankruptcy proceedings becomes effective as well as, in case of restructuring proceedings, between the institution of the restructuring proceedings until the approval of the restructuring plan, it will no longer be possible to set off debts against the receivables of the company in bankruptcy/restructuring, except for statutory netting (e.g., where such set off is permitted under the provisions of set off of tax overpayment (difference) provided for in tax legislation).

26. Can you comment generally on the success of foreign creditors in enforcing their security and successfully recovering their outstandings on insolvency?

Foreign and Lithuanian creditors should be treated equally and there should be no difference between local and foreign creditors as it relates to enforcing their security and successfully recovering their outstandings on insolvency.

27. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

There are no imminent reforms.

28. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

The Lithuanian lending market has traditionally been dominated by banks. However, when banks started to tighten funding conditions in 2018 and 2019, the need for alternative sources significantly increased. The survey of non-financial enterprises conducted by the Bank of Lithuania in H1 2019 indicates that 35% of micro-enterprises need alternative sources of financing (e.g., crowd funding, business angels, equity funds). The traditional banks still account for the vast majority of the lending provided to companies in Lithuania, but the alternative sources of funding provide borrowers with more options than previously.

29. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as (i) Brexit (ii) LIBOR transition and/or (iii) COVID 19

Most of the financings in Lithuania are EUR-denominated and thus the expiry of LIBOR is less relevant. Where applicable, LIBOR replacement will occur following pre-agreed order or, in case of absence of the latter, the parties will have to agree on order of transitioning to new reference rates. Most likely, such transition will be in line with the Loan Market Association (LMA) recommendations. In Lithuania Brexit and/or COVID 19 have no effect on drafting lending documentation.

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