



SORAINEN

EUROPEAN LAW FIRM OF THE YEAR
Awarded by The Lawyer

FINTECH CARD

Lithuania – Central European Hub for FinTech

Effective 1 December 2016



1. Enhanced Focus on FinTech

Lithuania, with its regulatory and infrastructure advantages compared to other EU Member States, is stepping up efforts to become a central European hub for FinTech companies, especially for companies active in the payment and electronic money sectors. Due to recent political changes in Europe, mainly related to Brexit, and increasing interest by FinTech companies from third countries in starting operations in the EU, Lithuania is launching a major review of its regulatory framework for FinTech businesses.

On 17 July 2016, the Ministry of Finance affirmed that state institutions would focus more closely on new FinTech and FinTech sector development in Lithuania. According to a press release from the Ministry of Finance, rapid FinTech development worldwide determines the need for more efficient use of Lithuania's potential in this area.

With the ambition to become the next FinTech destination in Europe, Lithuania aims to attract FinTech businesses and startups from London and third countries, such as Israel, Russia, Ukraine and Belarus.

2. Existing Advantages

Major advantages include, eg:

- 1) The Bank of Lithuania has introduced the possibility for payment and electronic money institutions to join the SEPA payment infrastructure and enabled customers to have their personal national codes for IBAN accounts. Accounts opened with payment and electronic money institutions for payments in euro are becoming equivalent to conventional commercial bank accounts. Lithuania is the first country in Europe to create such an infrastructure for payment and electronic money institutions. In comparison, the UK will introduce such a possibility only within the next 2 years.
- 2) From 1 January 2017, it will be possible to establish a specialised bank in Lithuania. A specialised bank can engage in financial services as a standard bank, except provision of investment services. Like a standard bank, a specialised bank can passport its licence to other Member States. In addition, the capital adequacy requirement for a specialised bank is five times lower and amounts to one million euros. This regime could be used for payment and electronic money institutions which are considering expanding the scope of their services and increasing security for their customers.
- 3) The Bank of Lithuania as the financial supervisory authority in Lithuania can issue a licence to payment and electronic money institutions within three months. This time limit in practice is five to nine months shorter than in other EU Member States. Further, the licensing procedure can be done in English.

- 4) To ensure that financial institutions could easily expand worldwide, Lithuania has changed the regulation on remote client identity verification methods. The newly established methods for remote identification will be based on transmission of videos and/or photographs. The new identification methods must ensure live and direct video-streaming when identifying the client.
- 5) The Bank of Lithuania is also committed not to impose sanctions on enterprises during the first year of supervision. This means that it is using a carrot instead of a stick: developing innovation and exploring unknown territory increase the risk of error, so that the principle of cooperation rather than punishment applies.
- 6) Lithuania was ranked first in last year's global competitiveness study in terms of meeting the needs of businesses in the area of communication technologies. Lithuania leads the EU in broadband speeds and fibre-optic internet penetration, which is expected to increase from the current 72% to 85% by 2020.

3. Upcoming Regulatory Changes

By the end of 2016, a working group established by the Ministry of Finance should provide a list of tasks, including required regulatory changes, to enhance the focus on the FinTech sector. The tasks proposed should be implemented within 1 year. Regulatory changes will be shaped so as to help FinTech companies grow and scale up even faster.

Meanwhile, two new initiatives should be launched in Lithuania very soon:

- 1) Pre-approval initiative: financial institutions authorised in another EU Member State will be able to provide the Bank of Lithuania with the documents they used for applying for authorisation and the regulator will provide pre-approval to start establishing a legal entity and respective operations in Lithuania on the basis that the Bank of Lithuania considers authorisation in Lithuania will be granted. Pre-approval will be issued within 1-2 weeks after submitting the necessary documents to the Bank of Lithuania.
- 2) Regulatory sandbox initiative: the possibility to test a business idea in a real environment without obtaining authorisation.

CROWDFUNDING IN LITHUANIA

In November 2016 the Lithuanian Parliament adopted the Law on Crowdfunding. The new law will regulate debt and equity based crowdfunding platforms, including marketplace lending platforms engaged in assignment of claim rights deriving from credit agreements. The regulatory regime has been adopted in order to help organise easier ways for companies to attract funding through loans or in other monetary form; and issuance of financial instruments. For example, Lithuanian private limited liability companies are finally allowed to issue bonds and offer them publicly, including distributing them through crowdfunding platforms.

Key features of the draft Law on Crowdfunding:

- 1) Investors will be able to freely invest in crowdfunding projects without limitation. Investors will have to do an appropriateness test. If the results of the test are negative, the operator must provide a warning/disclaimer and then the investor can start investing.
- 2) The owner of a crowdfunding project wishing to raise from EUR 100,000 to EUR 5,000,000 over a 12-month period must prepare an information document under the Law on Companies. This information document must be approved by the crowdfunding platform operator before a crowdfunding campaign is launched. The owner of a crowdfunding project that seeks to raise EUR 5,000,000 or more over a 12-month period should issue securities in line with the requirements for a securities prospectus.
- 3) The secondary market for a crowdfunding platform is qualified as a multilateral trading facility. This falls under regulation by the Law on the Market in Financial Instruments, which implements the Markets in Financial Instruments Directive (MiFID) (additional regulation under a separate regime).
- 4) Only legal entities (ie public limited liability companies and private limited liability companies) will be allowed to act as crowdfunding platform operators. Prior to starting their activities, operators must be included in the Public List of Crowdfunding Platform Operators managed by the Bank of Lithuania. Operators included in the list will be considered to be financial advisory firms under the Law on the Market in Financial Instruments (in other words, a financial advisory firm is a firm that enjoys exemption from Article 3 of the MiFID). According to the Law on the Market in Financial Instruments, a financial advisory firm may provide execution-only services (ie reception and transmission of orders) and offer investment recommendations. The draft law specifically determines that an operator who wishes to provide investment services other than execution-only services and investment services must be licensed under the Law on the Market in Financial Instruments as an investment firm.
- 5) The capital requirement for the operator amounts to EUR 40,000. However, own capital cannot be less than the larger of the following amounts: EUR 40,000 or the need for own capital, which must be at least 0.2% of the amount of outstanding funds financed through the crowdfunding platform and not repaid to investors.
- 6) Other requirements for crowdfunding platform operators, eg: risk management, information to be disclosed to investors, investment agreement, management repute requirements.

PEER-TO-PEER LENDING IN LITHUANIA

Peer-to-peer consumer lending in Lithuania falls under regulation of consumer credit. Lithuania has already established legal requirements for this alternative form of finance. Regulation of peer-to-peer platforms entered into force as of 1 February 2016.

Under the Law on Consumer Credit, the main requirements for a peer-to-peer lending platform operator are:

- 1) The authorised capital of an operator should be at least EUR 40,000. An operator must prepare and approve a business continuity plan setting measures and procedures to ensure that peer-to-peer lending platform activities are carried out continuously and without interruption, as well as ensuring the smooth functioning of consumer credit contract administration and continuous implementation of contractual obligations in case of unforeseen circumstances.
- 2) An operator must publish certain information about itself and the lending process on its website as well as disclosing certain information to the lender prior to concluding a loan agreement.
- 3) Legal persons cannot be lenders on peer-to-peer lending platforms and each lender may lend to a particular borrower up to EUR 500 for any 12-month period.
- 4) A platform operator may calculate its commission fee only from repayments already made by the borrower to the lender.
- 5) Borrowers are subject to creditworthiness assessment, which must be done in accordance with the Law on Consumer Credit.



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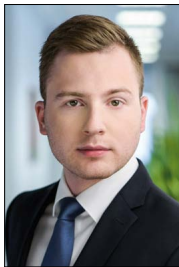
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