



## Tax and Legal Newsletter

May 2018

Audit and consulting company, Deloitte Lithuania, is glad to introduce you with Tax and Legal Newsletter. In this edition, you will be presented with the latest tax and legal news prepared by our Managers from Tax and Legal Department.

## Legal News

### Changes on authorisation process for e-money and payment institutions in Lithuania

In order to implement the PSD2 Directive and EBA Guidelines under PSD2 Directive, the Bank of Lithuania (Regulator) currently considers draft amendments to Rules for the Licensing of Electronic Money and Payment Institutions. The amendments, if adopted, will apply to both newly established and already operating e-money and payment institutions (EMI and PI).

The amendments will introduce new and additional reporting requirements for EMIs and PIs. Most significant amendments are briefly summarised below.

Firstly, the amendments establish shorter term for reporting and submitting information notices to the Regulator (5 working days instead of currently applicable 15 days).

Secondly, the amendments expand the list of information and documents to be reported to the Regulator, as described below:

1. Programme of operations shall enclose the following (new) documents:

- Draft contracts with third parties on provision of payment services;
- Description of the services to be provided, including information on the service providers, processing terms, diagram of flow of funds, and settlement arrangements.
- Draft framework payment service contract (applicable for PIs)
- Draft contract between the e-money issuer and the e-money holder.

2. Where the funds of e-money users' and/or payment service users' are secured by deposits in a separate account in a credit institution or through an investment in assets, the description of the safeguarding measures shall contain:

- Information on persons that have access to the safeguarding accounts, including their functions;
- Draft contract with the credit institution;
- A confirmation on availability of a collateral (insurance policy, guarantee or surety letter) issued by unrelated insurance company or credit institution.

3. The description of the governance arrangement and internal control mechanisms shall additionally contain:

- The accounting procedures;
- The group governance description.

4. The description of the internal control mechanisms shall include the following (new or adjusted) information:

## Get in touch:



**Kristine Jarve**

**Partner**

**Tax**

+370 5 255 3000

[kjarve@deloittece.com](mailto:kjarve@deloittece.com)



**Lina Minkė**

**Senior Manager**

**Tax**

+370 5 255 3000

[lminke@deloittece.com](mailto:lminke@deloittece.com)



**Gintautas Bartkus**

**Partner-in-Charge, Advocate**

**Deloitte Legal**

+370 5 255 3000

[gbartkus@deloittece.com](mailto:gbartkus@deloittece.com)



**Tomas Davidonis**

**Legal Partner, Advocate**

**Deloitte Legal**

+370 5 255 3000

[tdavidonis@deloittece.com](mailto:tdavidonis@deloittece.com)

- The information on a person in charge of the applicant's compliance with AML and counter-terrorism obligations, with supporting evidence on qualification and experience;
- Arrangements the applicant has or will put in place to ensure that staff, agents and distributors are appropriately trained;
- Draft agreements on outsourcing of functions to third persons;
- The information on a person in charge of information, IT and cyber-security management, preparation and implementation of security policies, procedures, standards and other supporting documents, as well as monitoring of implementation;
- A description of the process for filing, monitoring, tracking and restricting access to sensitive payment data;
- A description of the business continuity arrangements;
- Procedures for the reporting of incidents, including the internal and external communication;
- Guidelines applicable to the collection of the statistical data on performance, transactions and fraud.

New rules will come into force on 1 August 2018.

More information available [here](#).

### **The first EU regulations on virtual currency exchanges and wallets**

On April 19, the European Parliament adopted a legislative resolution approving a directive to amend the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing – also known as “AMLD IV”. In the approved text of the directive to amend AMLD IV, among others, virtual fiat currency exchange platforms and custodian wallet providers have a legal framework for the first time at European level. In addition, it expressly regulates remote and electronic client identification, thus facilitating the digitalization of customer on-boarding across Europe.

Key aspects of the crypto industry:

1. Partial regulation of virtual-fiat currency exchange platforms and custodian wallet providers:
  - Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to AML obligations and will have to adjust their business processes to meet their new regulatory obligations;
  - Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to registration formalities, but each Member State will determine the registration procedure and the obligations deriving from registered status;
  - Virtual currencies and custodian wallet providers have a legal definition which is technologically neutral and which provides clarity on how are crypto currencies defined in Europe.

2. Express EU legal provisions regarding remote and electronic client identification:
  - The approved text of the directive expressly mentions that the customer's identity may be verified by electronic identification means and relevant trust services, as defined in eIDAS Regulation, or on any other secure, remote or electronic identification process regulated, recognized, approved or accepted by the relevant national authorities;
  - The proposed changes bring more clarity on remote and electronic means accepted for client identification purposes and create necessary legal grounds for more conservative national authorities;
  - Notably, the text of the directive does not refer only to qualified trust services as a permitted client identification method. However, each entity under customer due diligence obligations will have to prove its specific AML risks are balanced by reference to the client identification method used.

In order to enter into force, the Council of the European Union has to approve the text of the directive as well. However, the Council is expected to approve it, as the two institutions have already agreed on the text of the directive during inter institutional negotiations. Once published in the Official Journal of the European Union, the directive will enter into force within 20 days. Member States have to transpose it into national law in 18 months as of its entry into force. We expect that the changes will be applicable starting with the end of 2019.

More information is available [here](#).

### **The General Data Protection Regulation came into force on 25th May**

On 25 May 2018, the General Data Protection Regulation came into force, which is expected to create a single set of data protection rules uniformly applicable across the whole Union. GDPR ensures harmonized, stronger and more coherent legal data protection framework in Europe. The GDPR is also changing compliance requirements in the area of privacy as data controllers and processors have new obligations, while data subjects have new rights. Therefore, companies must provide compliance data, utilize security tools, adapt and review existing policies. This involves implementing legal, technical and organizational measures, as well as analyzing data protection procedures, and potentially business models, for that purpose. Non-compliance may result in fines of up to 4 % of worldwide annual turnover.

More information is available [here](#).

### **New rules regarding data subjects' consent storage term adopted**

On 10 May 2018 Order of the Chief Archivist of Lithuania Regarding rules of the general documents storage term was approved. The Chief Archivist stated that consent on personal data processing shall be stored one year after the expiration of the period of storage of the personal data for which consent was given.

More information is available [here](#).

### **Lithuanian Parliament (Seimas) has adopted two innovative Laws on Payments and Insurance that have transposed EU directives PSD2 and IDD**

Lithuanian Parliament decided to promote more innovative and safer financial services and increased protection of insurance service customers by adopting two new Laws on Payments and Insurance. The Law on Insurance aims at supplying honest, fair and professional services by insurance distributors to insurance service customers under optimum conditions and serving their interests. A consumer will be granted a possibility of getting more comprehensible information and consultations of a better quality. The Seimas also adopted the Law on Payments, which aims at promoting innovation in payments, competition, Fintech development, as well as enhancing the payment security, strengthening consumer protection. The Law provides for new payment intermediation services, - a consumer through its intermediary will be able to initiate a payment order from his or her own account at any payment service supplier.

More information is available Daugiau informacijos rasite [here](#) ir [here](#).

### **New legislation will entitle the Bank of Lithuania to block websites illegally offering investment, insurance or financial services. This is particularly relevant where illegal ICOs are concerned**

The Parliament of the Republic of Lithuania has voted in favour of the amendment of the Law on the Bank of Lithuania. In accordance with the draft law, the Bank of Lithuania, having reasonable grounds to suspect that investment, insurance or other financial services are offered illegally on a particular website, will be entitled to instruct the hosting provider to remove and eliminate access to such information. The Bank of Lithuania will be entitled to provide such mandatory instructions to the hosting provider after receipt of a permission of the Regional Administrative Court of Vilnius Region (to be issued within 3 business days).

The draft law was signed by the President and it came into force on 1 June 2018.

More information is available [here](#).

### **Vilnius Regional Administrative Court restricted the right of three persons to occupy managerial positions in the public or private sector for four year**

The Competition Council referred to the Vilnius Administrative Court asking to impose sanctions on managers of the companies for their involvement in competition law breaches based on The Law on Competition, which stipulates that for the involvement in a prohibited agreement concluded between competitors or in the abuse of a dominant position, the manager of an undertaking may be restricted of the right to be the manager of a public and (or) private legal person, or a member of the collegial supervisory and (or) governing body of a public and (or) private legal person for a period of three to five years. On 1 May 2018 Vilnius Regional Administrative Court decision came into force. It restricted the right of three managers to occupy managerial positions in the public or private sector for four years. Decision, imposing personal liability on the cartel participants was the first such in the Lithuanian case.

More information is available [here](#).



#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see <http://www.deloitte.lt> for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax, consulting, financial advisory and legal services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 245,000 professionals are committed to making an impact that matters.

#### **Disclaimer**

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

© 2018 Deloitte Lithuania