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# Lithuanian Securities Regulation

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Lithuanian business law topics

MSTED

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2006



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## Lithuanian business law topics

### Contents

1. General Financial Markets Regulatory Framework .....	3
2. Lithuanian Securities Market .....	4
2.1. General .....	4
2.2. Legal Sources .....	5
2.3. Nature of Lithuanian Securities Market .....	5
2.3.1. Scope of Securities Regulation .....	5
2.3.1.1. Securities .....	5
2.3.1.2. Investment Services .....	6
2.3.2. The Securities Accounting System .....	7
2.3.2.1. Personal Securities Accounts – Lower Level .....	7
2.3.2.2. General Securities Accounts – Higher Level .....	7
2.4. Market Participants .....	8
2.4.1. Lithuanian Securities Commission .....	8
2.4.2. Lithuanian Central Securities Depository .....	8
2.4.3. Stock Exchanges .....	9
2.4.3.1. Vilnius Stock Exchange ('VSE') .....	9
2.4.3.2. Regulated Markets – VSE Securities Lists .....	9
2.4.3.3. Secondary Trading and Market Concentration .....	9
2.4.4. Clearing Bank .....	10
2.4.5. Intermediaries .....	10
2.4.5.1. Licensing .....	10
2.4.5.2. Single Passport .....	11
2.4.6. Issuers .....	12
2.4.6.1. Prospectus .....	12
2.4.6.2. Ongoing Disclosure Obligations .....	13
2.4.6.3. Reporting Material Events .....	13
2.4.6.4. Corporate Governance .....	13
2.4.7. Investors .....	14
2.4.7.1. Investor Liabilities Insurance .....	14
2.4.7.2. Disclosure of Qualified Holdings .....	14
2.4.7.3. Takeovers .....	15
2.4.7.4. Squeeze-outs and sell-outs .....	15

# Lithuanian Securities Regulation

## 1. General Financial Markets Regulatory Framework

Regulation of the Lithuanian financial markets started to evolve in the beginning of the 1990s. Since then, the regulation and supervision of Lithuanian financial markets has been arranged along institutional lines. Therefore, each major financial sector (banking, securities markets/services and insurance) is regulated by separate statutory acts and subordinate legislation, and supervised by three separate supervisory authorities: the central bank of Lithuania (the 'Bank of Lithuania'), the Securities Commission of Lithuania (the 'Securities Commission') and the Lithuanian Insurance Supervisory Commission (the 'Insurance Commission'). Accordingly, the Securities Commission, the Bank of Lithuania, and the Insurance Commission, with their cooperation and interaction being overseen by the Commission for Co-ordination of Regulation and Supervision of the Activities of Financial Institutions and Insurance Undertakings, regulate and supervise the financial markets of Lithuania.

Under the Financial Institutions Act, financial services include:

- (i) receipt of deposits or other repayable funds
- (ii) lending (including mortgage loans)
- (iii) financial lease (leasing)
- (iv) money transfers
- (v) issue of payment cards and other means of payment and/or carrying out operations therewith
- (vi) provision of financial assurances and financial guarantees
- (vii) execution of transactions with money market instruments (cheques, bills, deposit certificates, etc), foreign currency, financial futures

and options, instruments establishing currency exchange rate and interest rate, publicly traded securities and precious metals

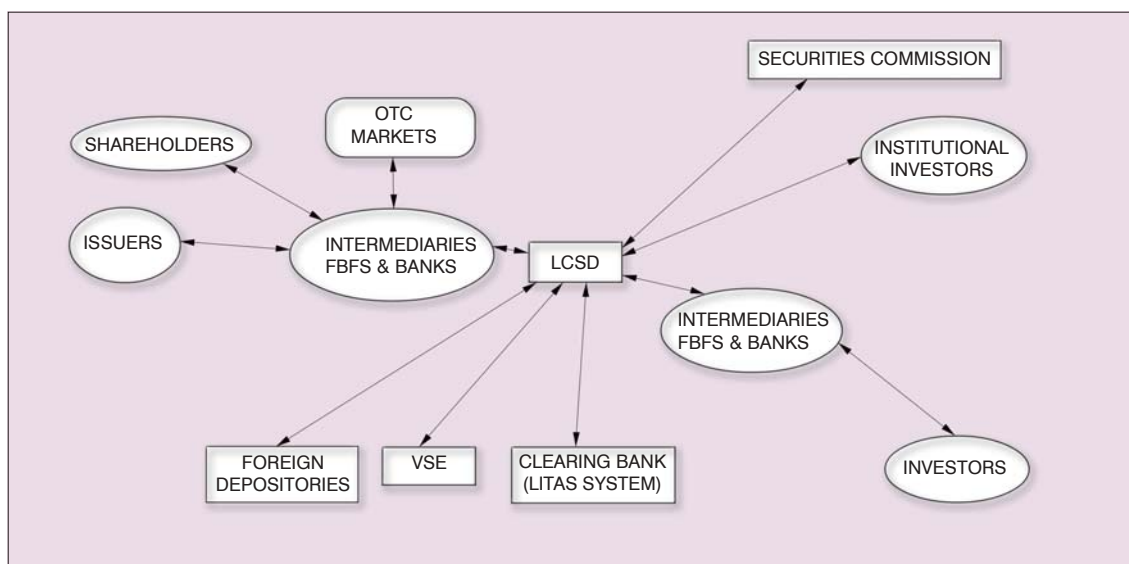
- (viii) investment services
- (ix) financial mediation (activities of an agent)
- (x) money administration
- (xi) provision of information and advice on issues relating to the granting and payment of credit
- (xii) safe custody services
- (xiii) currency exchange (in cash)
- (xiv) settlement of payments between credit institutions (clearing)
- (xv) storage and administration of monetary funds
- (xvi) provision of advice to undertakings on the capital structure, production strategy and related issues as well as advice and services related to the reorganisation, restructuring and acquisition of undertakings
- (xvii) provision of services related to securities issues
- (xviii) issue and administration of electronic money
- (xix) management of investment funds or investment companies with variable capital

Provision of certain of the above-listed financial services in Lithuania is subject to prior authorisation. Therefore, such services may only be provided in Lithuania by persons holding the appropriate licence issued by the competent Lithuanian supervisory authority or by the EEA licensed financial institutions, which exercise their right to *single passport* under the relevant EU financial services directives.

## 2. Lithuanian Securities Market

### 2.1. General

The chart below provides a simplified scheme of the infrastructure of Lithuanian securities markets.



The earliest attempts to regulate the Lithuanian capital markets were made in the early 1990s, while the first (and currently the only) stock exchange in Lithuania was established in 1993. The stock exchange and the Lithuanian Central Securities Depository (the 'LCSD') were controlled by the state, which held a majority of the shares through the Ministry of Finance of Lithuania and the Bank of Lithuania.

However, due, among other reasons, to the liberalisation of the Lithuanian economy, the privatisation

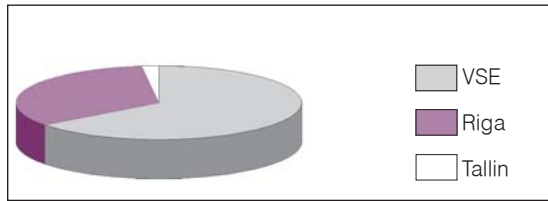
of the stock exchange and the LCSD, as well as Lithuania's accession to the EU, the pace of development of the Lithuanian capital markets has accelerated. Although the Vilnius Stock Exchange ('VSE') is currently still the only regulated secondary securities market in Lithuania, it is part of OMX Exchanges, which also operate exchanges in Copenhagen, Stockholm, Helsinki, Tallinn, and Riga. VSE's information indicates that such integration enables it to offer investors access to 80% of all securities trading in the Nordic and Baltic marketplace.

The chart below provides general data on the Lithuanian issuers, market capitalisation and intermediaries.

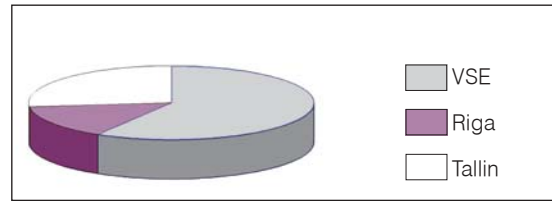
Lithuanian issuers admitted to the trading lists of VSE	43	
Lithuanian licensed intermediaries	FBCs ( <i>FM/s</i> )	Bank FB departments
	13	10
EEA licensed intermediaries passported to Lithuania after 1 May 2004	Branches	Services without branches
	2	203
Collective investments undertakings (CIU)	22	
Management companies of CIU	10	
Baltic Markets Capitalisation*	VSE	Baltic total
	approx. EUR 6,500 million	approx. EUR 11,012 million
Baltic debt securities list	approx. EUR 1,300 million	approx. EUR 2,000 million
Baltic free list	-	approx. EUR 411 million

\* Information provided for the month of February, 2006

The pie charts below show the comparative shares of Vilnius, Riga and Tallinn stock exchanges of the Baltic Markets Capitalisation.



General Baltic Markets Capitalisation in Equities Markets by each exchange (VSE, Riga, Tallinn)



General Baltic Markets Capitalisation in Debt Securities Market by each exchange (VSE, Riga, Tallinn)

## 2.2. Legal Sources

The main statutory act regulating capital markets in Lithuania is the Securities Market Act. The Lithuanian Civil Code and the Companies Act also include general provisions with respect to securities.

The Lithuanian capital markets are also subject to the secondary legislation laid down by the Securities Commission, the Lithuanian Central Securities Depository, and Vilnius Stock Exchange. The main sources of secondary rules include the following:

- Rules on the drawing up and approval of the prospectus and information disclosure.
- Rules on the issue of financial brokerage firm licences.
- Rules on direct transactions on the stock exchange.
- Rules on ongoing disclosure duties in respect of information about issuers and their securities.
- Rules on the reporting of material events of issuers.
- Rules on reporting the acquisition of qualified holdings.
- Trading Rules of VSE.

In the run-up to Lithuania's accession to the European Union, its laws became increasingly unified with the *acqui communautaire* of the securities markets. Moreover, due to the introduction of the second generation of securities markets directives and second level implementing measures, many changes were made to Lithuanian capital markets law last year. However, a number of national secondary measures, required to ensure the effective operation of the Lithuanian capital markets, are still lacking. Finally, in the light of the implementation of the Markets in Financial Instruments Directive, further changes in the Lithuanian investment services field are due to be made by the end of 2007.

## 2.3. Nature of Lithuanian Securities Market

### 2.3.1. Scope of Securities Regulation

#### 2.3.1.1. Securities

The scope of capital markets regulation is determined by the concept of the 'security'. An investor is defined in terms of the ownership of securities. Thus, a person who has acquired instruments other than securities within the meaning of the Securities Market Act may not necessarily be considered as an investor and is not afforded the relevant protection. The issue and the issuer are defined in the Securities Market Act with reference to the security and, consequently, such requirements as are customarily imposed on the issuer, including registration and the publication of a prospectus, as well as the ongoing duties of disclosure which apply to certain information, are not applicable where an issued instrument is not covered by the definition

of a security. Moreover, only instruments that are securities within the meaning of the Securities Market Act can be considered for admission and listing at VSE.

Likewise, intermediaries dealing solely in instruments other than securities will be excluded from the scope of the Lithuanian securities regulation, and, consequently, from the prior authorisation requirement and supervision by the Securities Commission.

Generally, in Lithuanian private law, the term 'security' has a very broad meaning. However, the definition of the security for the purposes of investor protection and capital market regulation and supervision is provided in the Securities Market Act. The latter fully includes in its regulatory scope only such securities which may be traded on the securities markets, in other words securities *stricto sensu*. The Securities Market Act applies, although to a different extent, to investment instruments.

Securities falling within the scope of Lithuanian capital markets regulation	
Securities stricto sensu	Investment instruments
<ul style="list-style-type: none"> <li>• Shares of public companies and depository receipts with respect to shares</li> <li>• Debt securities</li> <li>• Securities, which give the right to acquire the above securities by way of subscription or exchange, including those giving rise to a cash settlement</li> </ul>	<ul style="list-style-type: none"> <li>• Units in variable capital investment companies (ICVCs) and investment funds</li> <li>• Money market instruments (certificates of deposit, etc)</li> <li>• Financial futures contracts, including equivalent cash-settled instruments</li> <li>• Forward interest rate agreements</li> <li>• Interest rate, currency and equity swaps</li> <li>• Options to acquire or dispose of any securities or investment instruments, including equivalent cash-settled instruments and options on currency and on interest rates</li> </ul>

Notes and bills issued pursuant to the Bills of Exchange and Promissory Notes Act, cheques and other payment instruments listed in the Payments Act are expressly exempted from the regulatory regime of the Securities Market Act. In addition, the provisions of the Securities Market Act apply to securities issued by the EU Member States' governments and central banks, as well as to the debt securities of such international financial institutions as Lithuania is a member of and which have obtained the

permission of the Minister of Finance of Lithuania to place such securities. The same provisions also apply, to a limited extent, in respect of the debt securities of such other public international financial organisations as at least one EU Member State is a member. That is to say, only the rules applicable to intermediaries, Securities Commission and liability for contraventions, as well as certain requirements for the accounting of securities, apply in respect of the latter securities.

### 2.3.1.2. Investment Services

Under the Securities Market Act investment services include core and non-core investment services.

Core investment services	Non-core investment services
<ul style="list-style-type: none"> <li>• Receipt and transmission, on behalf of investors, of orders in relation to securities</li> <li>• Execution of orders to buy and orders to sell securities on behalf of investors</li> <li>• Execution of orders to buy and to sell securities on own account</li> <li>• Securities portfolio management in accordance with mandates given by clients</li> <li>• Placing and/or underwriting of securities issues</li> <li>• Safekeeping and administration of securities</li> <li>• Granting of credit or loans to an investor to allow him or her to carry out a transaction in securities, where the firm granting the credit or loan is involved in the transaction;</li> <li>• Investment advice</li> </ul>	<ul style="list-style-type: none"> <li>• Safe custody services</li> <li>• Advice to undertakings on capital structure, industrial strategy and related matters and advice on services relating to mergers and the acquisition of undertakings</li> <li>• Other services related to the placing of issues</li> </ul>

### 2.3.2. The Securities Accounting System

Dematerialised securities trading is an essential feature of the Lithuanian securities market. It emerged as a result of significant volumes and the pace of privatisation in Lithuania in the early 1990s, during which approximately 70% of state owned companies were privatised. During the initial phase of privatisation, Lithuanian nationals were granted investment vouchers to be used for the acquisition of state owned property. Due to the sheer number of vouchers issued, they were never printed; and therefore they existed only in book-entry form. Accordingly, the concept of dematerialised securities was implemented in the context of the emerging Lithuanian securities market in May 1993 through one of several of the first capital markets regulations. Under these regulations, all publicly issued securities had to be accounted in special securities accounts to be managed by the issuers or intermediaries. Subsequent capital markets legislation further developed the concept, while in the year 2000 the Civil Code for the first time expressly recognised dematerialised securities and included them in the regulatory regime of private law, under which the general rules on the safekeeping and administration of dematerialised securities are applied.

As a result of such legislative and regulatory initiatives, the system of dematerialised securities, existing only in book-entry form, was created. It consists of two levels of accounts and their operation, namely:

- The lower (intermediaries or specific) level, where intermediaries account particular securities owned by particular investors. Since 1998 the LCSD has also been entitled to open personal investors' accounts in cases provided for by the Securities Commission, which mainly relate to qualified financial institutions and large securities holdings (more than LTL 1 million at par).
- The higher (Central Depository, or general) level, where general securities accounts of account operators with the Central Securities Depository of Lithuania represent aggregate amounts of securities accounted by particular account operators.

#### 2.3.2.1. Personal Securities Accounts – Lower Level

Securities are recorded by way of entries in an investor's securities account (the 'personal securities account') maintained at the lower level. Typically, personal securities accounts are opened in the name of the owner of such securities. It is presumed that the owner of dematerialised shares is the person in whose name the personal securities account is opened.

There are two exceptions to this presumption:

- Cases in which, in accordance with the Securities Market Act and Securities Accounting Rules, personal securities accounts are opened in the name of a pledgee of securities.
- Cases in which client accounts of account operators registered in foreign countries are opened in the names of such account operators by indicating that they act as intermediaries.

Bookkeepers of personal securities accounts must comply with the requirement of using the double entry system, obligatory registration of all transactions, separate accounting of each securities issue, segregation of accounting, and transparency principles. They are not allowed to pool similar securities owned by different clients and/or by themselves. Securities must be segregated (each account identified), not only in terms of ownership but also by reference to the particular issue of securities in question. Consequently, for each investor, separate accounts must be opened with regard to different issuers and issues. Each issue must be accounted in a separate book. The securities of each client and of the intermediary must be recorded in a separate section of the book. As a result of these measures, it is presumed that the title to securities never passes to the account operators.

Pursuant to the Companies Act, only the securities of a public limited company, as opposed to securities issued by other types of private legal persons, may be offered publicly. Securities issued by public limited companies must be non-material and their ownership evidenced by records in private accounts of shareholders. Unless the investor has ordered otherwise in writing, the intermediary authorised by the issuer serves as the account operator for securities of all its shareholders or investors in its other securities.

An account operator maintaining a personal securities account is obliged, at the request of the shareholder, to issue a statement of the securities account. Such a statement is not the security, and is not transferable. The issuer is also entitled at any time to obtain the list of the owners of its securities by way of request addressed to the LCSD.

#### 2.3.2.2. General Securities Accounts – Higher Level

At the higher level are the accounts of account operators with the LCSD (the 'general securities accounts'). To ensure efficient functioning of the system and regulatory supervision of securities accounting, every account operator, before starting the operation of personal securities accounts, must have become a member of the LCSD. This subjects such a member to the authority of the LCSD.

The general account represents the aggregate number of securities accounted by a particular account operator for the benefit of investors. By means of this arrangement, the LCSD is able to control the correspondence of the total amount of dematerialised securities in circulation with the amount of those issued and registered.

Any transfer of dematerialised securities is performed by means of crediting and debiting the relevant securities accounts. Where the transfer is between investors who keep their securities accounts with different account operators, it must necessarily be

cleared through the LCSD since this involves making a debit entry on the transferor's account operator's general account with the LCSD, and a corresponding credit entry on the transferee's side. Each account operator, in turn, makes appropriate entries in his or her clients' accounts (credit on the transferee's account and debit on the transferor's).

Where the transfer is between the clients of the same account operator, it is possible in principle to avoid clearance through the LCSD, since, in this case, no change to the general account of the account operator is involved.

## 2.4. Market Participants

### 2.4.1. Lithuanian Securities Commission

The Securities Commission is the primary regulatory and supervisory authority with respect to securities and their markets.

The main functions of the Commission include:

- Adoption of regulations on authorisation and activities of intermediaries and stock exchanges and the issue and trading of securities
- Approval of the forms of prospectuses and other disclosure documents and determination of the procedure for the submission and publication of these documents
- Examination and approval of prospectuses
- Issue of official interpretations and recommendations on securities trading issues
- Authorisation of intermediaries and exchanges
- Supervision of intermediaries, stock exchanges and their members, and the LCSD
- Sanctioning for contravention of the Securities Market Act and other regulatory rules

The Commission is authorised to determine more detailed rules, rather than modify rules laid down in the legislation. However, the Commission is also authorised, in the circumstances specified in the Securities Market Act, to lay down general exceptions to certain rules prescribed in the Securities Market Act. For instance, it is entitled to exempt a person from the obligation to notify the acquisition or disposal of a qualified holding where the disclosure of such information would be seriously detrimental to the issuer, provided that such omission does not mislead investors.

In addition, the Securities Markets Act invests the Commission with the power to make arrangements with the appropriate foreign authorities for the pur-

pose of co-operation and exchange of confidential information, as well as with certain supervisory powers with regard to the branches of Lithuania-based investment firms.

### 2.4.2. Lithuanian Central Securities Depository

The Central Securities Depository of Lithuania is an inseparable part of the Lithuanian system of dematerialised securities and its markets. The LCSD is a public limited company, established by the Ministry of Finance, the Bank of Lithuania, and the VSE.

Only the state of the Republic of Lithuania, the Bank of Lithuania, credit institutions, financial brokerage companies, insurance companies, investment companies with variable capital and management companies of investment funds and pension funds, stock exchanges and central depositories authorised in Lithuania, another EU Member State or a country which has commenced official negotiations for EU accession may be shareholders of the LCSD.

The main functions of the LCSD include:

- Adoption of regulations on the bookkeeping and accounting of securities (to be approved by the Commission) and rules specifically regulating procedures provided for by the general securities accounting regulations
- Supervision of compliance with such rules and regulations by account operators
- Opening and operation of general securities accounts of the account operators and personal securities accounts of investors, issue of account statements to such account holders
- Ensuring timely clearing of the securities transactions between different account operators and controlling the circulation of registered securities

The regulations and orders of the LCSD in this area are mandatory for all account operators.

### 2.4.3. Stock Exchanges

A stock exchange is a specialised public limited company engaged in the provision of services aimed at concentration by organisational and technical facilities of the supply and demand of securities, thus enabling trading parties to conclude transactions in accordance with the trading rules. An entity may operate as a stock exchange only with prior authorisation from the Securities Commission.

Pursuant to the Securities Market Act, a stock exchange is obliged to:

- organise trade in securities, their listing, quotation, and secure and efficient transactions and settlements;
- promote fair trading in securities and prevent market manipulation and other unfair actions;
- publish unified information on listed securities and transactions; and
- ensure the protection of confidential information and carry out internal control.

Although a stock exchange is organised as an enterprise, it is an important securities regulator. The stock exchange adopts its trading rules, which are subject to the approval of the Commission. It may impose conditions for the listing of securities and suspend trade in some securities. The stock exchange may request disclosure by its members on their financial and commercial activities, and it has the power to verify members' compliance with the exchange regulations and apply sanctions where violations are found to have occurred.

#### 2.4.3.1. Vilnius Stock Exchange ('VSE')

Currently, VSE is the only stock exchange in Lithuania. It was established in 1993 under the name of National Stock Exchange of Lithuania. On 30 May 2005 the Vilnius Stock Exchange became a member of OMX group together with stock exchanges in Riga, Tallinn, Helsinki, Stockholm, and Copenhagen. VSE is connected regionally with the stock exchanges of Riga and Tallinn. The Vilnius, Riga, and Tallinn stock exchanges have formed a joint Baltic market to facilitate access and minimise investment barriers when operating in the Estonian, Latvian, and Lithuanian markets. The main features of the market are: a common Baltic list of securities; a common index of Estonian, Latvian and Lithuanian securities; a common trading system and access point for Estonia, Latvia, and Lithuania; common market information websites for all three states; and harmonised market practices and rules.

The common Baltic Securities market also enables investors to account their securities in the state of their choice. For instance, a Lithuanian investor may choose to have its securities purchased on the Tallinn

stock exchange and then have them accounted by a Lithuanian account operator and ultimately by the LCSD. Such transfers between the central depositories of Lithuania, Latvia and Estonia are enabled by virtue of the order gateways established between the three depositories.

Only members of the exchange may participate in trading on VSE. Membership rights are granted to licensed financial intermediaries upon the execution of an exchange membership agreement with VSE. A member of the exchange may commence trading on the exchange once it has complied with the conditions set forth in the VSE trading rules.

#### 2.4.3.2. Regulated Markets – VSE Securities Lists

Currently, there are four regulated markets operating in Lithuania. These are the Main List, the Current List, the Debt Securities List, and the Investment Units List. The Main List, the Current List, and the Debt Securities List are trading lists. The Investment Units List is not a trading list, and VSE does not organise trading in these securities. Each market may be divided into a number of sub-markets.

In addition, there is a trading list of unlisted securities, which is a remnant from the old provisions of the Securities Market Act and Companies Act. Under the old regulations, all securities of public limited companies had to be registered with the Securities Commission irrespective of whether or not they were being offered publicly and/or traded on the regulated markets, and included in this trading list. There were special rules that applied to transactions in such securities. However, by virtue of the latest amendments to the Securities Acts, made in 2005, securities are no longer admitted to this list; and only securities that are to be publicly offered and/or admitted to trading on a regulated market are required to be registered with the Securities Commission and can be traded on the VSE trading lists.

As a general rule, the securities of issuers registered in Lithuania have been traded on VSE lists (if at all), VSE being the only stock exchange in operation in Lithuania. However, it is possible that the securities of Lithuanian companies may be listed on other exchanges. For instance, AB Lietuvos Telekomas shares (GDRs) have been offered and are currently traded on the London Stock Exchange.

#### 2.4.3.3. Secondary Trading and Market Concentration

Sale and purchase transactions involving securities listed on any of the three regulated markets must be executed only on those markets: in other words, on the exchange. Non-sale transactions involving the securities listed on the three regulated markets, and transactions involving securities formerly listed on the unlisted securities trading list may be carried out

off-exchange but remain subject to the obligation to report to VSE. Finally, all transactions involving the securities of public limited companies, issues of which securities should not have been registered with the Securities Commission, and thus could not have been accepted onto one of the lists of VSE, and are accounted only by the securities accounts operators in the personal accounts, and the LCSD in the general and securities issue registration accounts, may be carried out off-exchange without the obligation to report.

Privatisation transactions relating to state or municipal owned securities appear to be exempt from the market concentration requirement.

Irrespective of the general principle of market concentration in Lithuania, in cases where parties to a transaction have privately agreed the terms of transfer of the securities, they are allowed to use a simplified procedure for the registration of a transaction with the exchange without deviating from the principle that the transaction be executed on the exchange ('direct transaction'). Under the current rules, direct transactions may be effected where intermediaries deliver matching sale and purchase orders on listed securities. Direct transactions are registered by VSE and are subject to transparency requirements: the price, volume, and other terms of the transaction must be published. The transaction is deemed carried out on VSE, and is also subject to its other rules.

#### 2.4.4. Clearing Bank

The payment system LITAS acts as a clearing bank for the settlement of transactions executed on the exchange. The main purposes of LITAS are, together with the securities settlement system operated by the LCSD, to ensure that the processing of payment instructions for securities transactions is carried out in accordance with the delivery versus payment principle, and to perform the functions of information exchange between system participants required for the operation of the LITAS system and the securities settlement system.

Only the Bank of Lithuania, the LCSD, banks holding banking licences issued by the Bank of Lithuania,

branches of foreign banks holding the relevant permission to operate issued by the Bank of Lithuania, licensed financial brokerage firms and Lithuanian registered clearing houses, institutions authorised to organise Government securities auctions, licensed central credit unions, passported EEA credit institutions, and other EEA financial or clearing institutions which have received specific permission from the Bank of Lithuania, may be participants in the LITAS system.

Currently, LITAS has 24 participants including the Bank of Lithuania – the owner and operator of the system.

#### 2.4.5. Intermediaries

In Lithuania, the provision of investment services is a licensed activity. Therefore, only the following persons may provide investment services:

- persons holding the relevant licence for a financial brokerage firm (in Lithuanian '*finansų maklerio įmonė*', *FMĮ*) issued by the Securities Commission;
- the financial brokerage departments of commercial banks licensed by the Bank of Lithuania, the general banking licence of which does not restrict their right to engage in the provision of investment services;
- EEA licensed financial brokerage firms passported to Lithuania under the single passport provisions of the Investment Services Directive.

In addition, investment services may be provided in Lithuania by certain persons exempted from the licensing requirements by the Securities Market Act.

##### 2.4.5.1. Licensing

The Securities Commission issues licences to provide investment services to:

- Private limited companies and public limited companies incorporated in Lithuania.
- Branches of investment firms licensed in non-EEA Member States.

The Securities Commission issues three types of licences distinguished according to different minimum own capital requirements and the type of investment services the holder of a licence is entitled to provide.

	Investment services provided	Minimum own initial capital
<b>Group A licence</b>	One, several or all investment services. However, it must at least either execute orders to buy and sell securities on its own account or place and underwrite securities issues	EUR 730,000
<b>Group B licence</b>	One, several or all investment services except trade in securities on its own account or underwriting of securities issues on a firm commitment basis	EUR 125,000
<b>Group C licence</b>	<ul style="list-style-type: none"> <li>• Receipt and transmission, on behalf of investors, of orders in relation to securities</li> <li>• Placing of securities issues without an underwriting obligation</li> <li>• Granting of credits or loans to an investor to enable him or her to carry out a transaction in securities, where the firm granting the credit or loan is involved in the transaction</li> <li>• Investment advice concerning securities</li> <li>• Management of securities portfolios in accordance with mandates given by clients, provided that execution of orders to buy and to sell securities and safekeeping and administration of securities is transferred to another brokerage firm</li> </ul>	EUR 50,000

In any event, a firm must hold a licence to provide at least one of the first five above listed core investment services. In addition to the core investment services which a financial brokerage firm is entitled to provide under its licence, it may also provide non-core investment services.

The investment portfolios of pension funds may be managed and disposed of by persons holding a specific licence to provide such services.

In order to obtain a licence, an undertaking must submit an application to the Securities Commission. It must simultaneously provide information on the legal person applying for a licence, its members, managers, activities and their development, its own initial capital, and other information as stipulated by the Securities Commission.

In cases where the undertaking which is making the application is a subsidiary, or a subsidiary of a parent company of a financial institution licensed in one of the EEA Member States, or the applicant is controlled by the same persons as an EEA licensed financial institution, the Securities Commission must consult the competent authority of the relevant Member State prior to granting a licence.

The Securities Commission makes a decision on whether to grant or refuse a licence, and notifies the applicant in writing, within six months of the submission of the application.

#### 2.4.5.2. Single Passport

Pursuant to the Securities Market Act, the requirement to be licensed by the Securities Commission does not apply to EEA licensed investment brokerage firms which provide financial services in Lithuania under the *single passport* provisions laid down in the In-

vestment Services Directive and implemented in Lithuanian law by the Securities Market Act.

A financial brokerage firm licensed in another EEA Member State may establish a branch in Lithuania provided that the foreign supervisory authority has communicated the company's plan of activities to the Securities Commission. The plan of activities must specify the services the incoming firm intends to provide, the intended structure of the branch, its address, and the full names of the branch managers. Upon receipt of the notification, the Securities Commission shall prepare for the supervision of the incoming firm and notify it of the general conditions with which it must comply. The branch may be established upon receipt of the Securities Commission's notification by the incoming brokerage firm, or upon the expiry of a period of two months from the date its home supervisory authority communicated to the Securities Commission about the incoming firm, without receipt of any communication. If an EEA licensed financial brokerage firm already has a branch in Lithuania, these notification requirements do not apply to the subsequent establishment of further branches in Lithuania. The incoming financial brokerage firm must notify the Securities Commission, one month in advance, of any changes in information relating to the firm.

Alternatively, a financial brokerage firm licensed in one of the EEA Member States may start to provide investment services in Lithuania without establishing a branch on the expiry of a period of one month from the date of communication, by the home supervisory authority, of its plan of activities to the Securities Commission. Any EEA licensed financial brokerage firms providing services in Lithuania without establishing a branch must notify the Securities Commission in advance of any changes in their plans of activities.

## 2.4.6. Issuers

Issuers are defined in the Securities Market Act as legal persons proposing to issue or issuing securities. Prior to the latest amendments of the Securities Market Act, on 23 June 2005, all securities issued by public limited companies, whether or not they were publicly offered or admitted to trading on a regulated market, had to be registered with the Securities Commission. Accordingly, all public limited companies fell within the scope of capital markets regulation and were subject to ongoing reporting requirements and other rules applicable to accountable issuers. Furthermore, the shareholders of all such companies were subject to the rules on tender offers and the requirement to report the acquisition of qualified holdings upon their meeting the relevant thresholds, prescribed by the Securities Market Act.

However, the latest amendment to the legislation revoked the provisions stipulating the mandatory registration of securities of all public limited companies. Currently, in line with the Prospectus Directive 2003/71/EC of 4 November 2003 and relevant second level implementing measures, only issuers which intend to offer their securities to the general public or have them admitted to trading on a regulated market must draw up a prospectus, have it approved by the Securities Commission and publish it before a public offer or admission to trading. Accordingly, under the current version of the Securities Market Act, 'accountable issuer' means an issuer whose prospectus of issued securities has been approved by the Securities Commission. In addition to being subject to various requirements applying to prospectuses, accountable issuers are also subject to ongoing reporting requirements. They are supervised by the Securities Commission, which has powers to penalise violations of capital markets laws by accountable issuers.

Pursuant to the Companies Act, securities issued by the public limited company must be non-material and accounted in their owner's personal securities accounts. The personal securities accounts of a public limited company must be operated by an intermediary. Accordingly, any issuer, irrespective of whether it is obliged to draw up the prospectus and have it approved by and registered with the Commission, must apply to the LCSD to have a securities issue registration account opened for the issue of its securities, and enter into an agreement with the intermediary with regard to the opening and operation of the personal securities accounts of the issuer's shareholders.

### 2.4.6.1. Prospectus

A prospectus is a document intended for investors and the general public. It includes key information on the issuer, and on those of its securities which are offered publicly or admitted to trading on a regulated market. The public offering of securities is defined as communication to persons in any form and

by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or to subscribe for these securities. The placing of securities through intermediaries is regarded as public offering of securities, provided that the features of public offering prescribed above are present. Addressing persons through trading on Lithuanian regulated markets is not regarded as public offering of securities.

The Securities Markets Act requires issuers to draw up a prospectus, have it approved by the Securities Commission, and to publish it, before the securities of the issuer with its registered office in Lithuania are going to be publicly offered and/or listed on the Lithuanian or on any other regulated market of the EU. The same requirements apply when foreign issuers intend to list their securities in the regulated markets of Lithuania. The same exceptions from the prospectus requirement are laid down in the Securities Market Act as are contained in Article 1(2)(a, b, c, d, f, h and j) of the Prospectus Directive.

Pursuant to the Securities Market Act, the prospectus must be published before the securities can be offered to the public or listed on the regulated market. Only prospectuses approved by the Securities Commission or the relevant competent authority of another EU Member State may be published. By and large, the exemptions from the requirement to publish the prospectus in cases of public offer or admission to trading correspond to the exemption list in Article 3 of the Prospectus Directive.

The prospectus must be prepared, presented to the Commission for approval and published by the issuer or the person seeking the admission of the securities to trading on the regulated market. These obligations must be carried out either by the issuer of the securities, or by the offeror, or by the person asking for the admission of the securities to the regulated market. Accordingly, the person initiating the public offering or admission to the regulated market of the securities should bear responsibility for compliance with all the formalities of the registration process. The ultimate responsibility for the information provided in the prospectus is borne by the issuer, the underwriter, the management, administrative and supervisory bodies of the issuer, as well as by the offeror or the person applying for the admission of the securities to the regulated market. Other persons may also be held liable for the information provided in the prospectus. The person responsible for the information provided in the prospectus must be clearly indicated in the prospectus.

In cases where the securities to be publicly offered were issued by an issuer whose securities have not been admitted to trading on the regulated market or publicly offered in the past, the Securities Commission must give its decision on whether to approve the prospectus within 20 business days of the date the prospectus was submitted to the Commission.

In all other cases, the Commission shall furnish the decision within ten business days. However, if the Commission does not take a decision within the specified terms, it shall be deemed that the prospectus has not been approved. After having passed the decision the Commission shall issue a certificate on the approval of the prospectus specifying, among other matters, that the approval does not constitute a recommendation by the Commission to investors.

#### 2.4.6.2. Ongoing Disclosure Obligations

An accountable issuer, and any other issuer whose securities are publicly offered or admitted to a regulated market in Lithuania, must provide to the Securities Commission, the operator of the regulated market on which its securities are traded, and the general public, annual prospectus reports and other regular reports, in accordance with the terms, content, and procedures prescribed by the Securities Commission. Issuers whose non-equity securities have a minimum nominal value of at least EUR 50,000 are exempted from the ongoing reporting obligation. In addition, the Securities Commission may exempt a person from an obligation to publish information if its disclosure would cause material harm to the issuer, provided that the non-publication of such information will not mislead investors.

Other regular reports may be produced on a quarterly or semi-annual basis. The obligation to submit such reports is established by the Securities Commission, taking into consideration the size of the accountable issuer, the volume of turnover of its securities, and their admission to trading on a regulated market.

The accountable issuer must provide each holder of its securities means of access to all regular reports drawn up in accordance with the Securities Market Act, free of charge. Copies of these reports must be provided to holders on request. A fee compensating copying costs may be charged.

#### 2.4.6.3. Reporting Material Events

Pursuant to the Company Act, a company's articles of association must specify the procedures for corporate announcements and the daily Lithuanian newspaper in which the events shall be published. Such events as the convening of the general meeting of shareholders, reduction of share capital, and the reorganisation or liquidation of the company must be so published.

In addition to the above publication requirements, which apply to all companies, an issuer whose prospectus has been vetted by the Commission, or any other issuer whose securities are listed on a Lithuanian regulated market, is obliged to promptly deliver an information notice on the occurrence of any material event to at least two Lithuanian information agencies or daily newspapers (as specified in the

annual report), the Securities Commission, and the regulated market on which its securities are listed. The issuer must also publish information on any material event on its website. Such an information notice must specify the nature of the event and provide a short description.

A 'material event' is understood as any event relating to the activities of the issuer of which the issuer is aware or must be aware, which may lead to substantial movements in the prices of its securities. The Securities Commission Rules on Reporting of Material Events provide a non-exhaustive list of events that, depending on the size of the issuer, type of its operations, whether its securities are traded on the regulated market, or other factors, may be considered as material events. In any event, it is the issuer who must decide whether the event is to be considered as material. Failure to notify a material event imposes administrative liability on the issuer. The Commission may impose a fine on the issuer of up to LTL 100,000 (approximately EUR 30,000). In addition, the Securities Commission may require the issuer to approve or deny public information that may have significant effect on the price of the issuer's securities.

Where the issuer's securities are listed on the regulated markets, each material event must be reported within 24 hours. In other cases the notification period is extended up to five business days.

The duty is mitigated by an exemption, which the issuer may claim in cases where publication of the information may cause it financial damage. In such cases, the issuer must forward information only to the Securities Commission, marked confidential, together with the reasons why the information should remain confidential until the date specified by the issuer. However, the Securities Commission may require disclosure of information on a material event prior to the expiration of the confidentiality term specified by the issuer if (i) the basis for non-disclosure of information no longer exists; or (ii) information has been disclosed to persons who should not be aware of it.

#### 2.4.6.4. Corporate Governance

On 23 April 2004 the board of VSE approved the Corporate Governance Code. The code lays down the minimum standards of corporate governance aimed at the protection of shareholders' interests, ensuring adequate balance and distribution of functions between corporate bodies of listed companies, as well as adequate disclosure of corporate information. The provisions of the Corporate Governance Code are intended to apply to companies listed on VSE, though all other companies are encouraged to comply with the good governance principles it sets forth. The provisions of the code are not mandatory. The English text of the VSE Corporate Governance Code may be accessed at

<http://www.lt.omxgroup.com/?id=1246>.

## 2.4.7. Investors

An investor is defined in the Securities Market Act as a person holding securities by the right of ownership or intending to acquire securities. The latest amendments to the Securities Market Act introduced the concept of professional investor. In line with the second generation of securities market directives, professional investors and common investors are afforded different levels of protection.

### 2.4.7.1. Investor Liabilities Insurance

The Deposit and Investor Liabilities Insurance Act lays down the procedure for insurance of liabilities of commercial banks, broker undertakings, and the investment funds or management undertakings of investment companies with variable capital, as well as for branches, subsidiaries of foreign broker undertakings and management undertakings to their investors, and the level of insurance compensations. Only Lithuanian-based credit institutions and investment firms, branches of foreign credit institutions and investment firms belonging to no deposit/investor compensation scheme in their home country, or belonging to a scheme which does not offer protection equivalent to that prescribed by this Act, must belong to the compensation scheme provided in the Act. The beneficiaries of the insurance are the clients of the insured.

Insurance cover for liabilities to investors include liabilities under obligations to the investors to return the securities irrespective of their denomination, or to repay money in Litas or foreign currency – US dollars, euros or the national currency of the relevant EU Member State. Insurance cover may not be provided for debt securities/deposit certificates issued by the same insurer or in respect of liabilities arising out of its own acceptances and promissory notes and in respect of deposits of, or liabilities to, the Bank of Lithuania and other financial institutions.

The insurance cover is equal to the liabilities of a bank or an undertaking to the investor on the date of the insured event, but may not in any event exceed LTL 50,000 (approximately EUR 15,000) until 1 January 2007, LTL 60,000 (approximately EUR 17,500) until 1 January 2008 and 20,000 euros from 1 January 2008. In cases where a foreign institution belongs to a scheme which does not offer protection equivalent to that prescribed in the Act, supplementary insurance is required. Supplementary insurance cover is equal to the difference between the liabilities to the investor and the amount payable to the investor under the legislation of a foreign state; however, the insurance sum may not be in excess of the sums specified above.

The insurance compensation to the investors is up to 100 percent of the deposit/liabilities to the investor but no more than LTL 10,000 (approximately EUR 3,000) until 1 January 2008 and a maximum of 20,000 euros from 1 January 2008.

### 2.4.7.2. Disclosure of Qualified Holdings

Any person who, acting alone or in concert with others, acquires shares in a company granting more than 1/20, 1/10, 1/5, 1/3 1/2, 2/3, 3/4 or 19/20 of the votes in that company must, within seven days of crossing each such threshold upwards or downwards, inform the Securities Commission and the issuer of the total amount of his or her votes and provide information on securities entitling him or her to vote and/or hold securities of the issuer in the future (such as convertible bonds and convertible preference shares). The party acquiring/disposing of the shareholding must also notify VSE of the transaction if the securities in question are listed on the Official or Current List of VSE. Both parties must notify the Securities Commission and the issuer of the transaction (transferee, on acquisition; transferor, on disposal). If the threshold triggering the reporting requirement is crossed by acquiring or disposing of depositary receipts, the obligation to report applies to the holders of such depositary receipts. The Securities Market Act lists the shareholdings to be included in the calculation of the qualified holding.

The exemptions from the requirement to report the acquisition/disposal of the qualified holding are as follows:

- If the person or entity acquiring or disposing of a major holding is a member of a group of undertakings required to draw up consolidated accounts, that person or entity is exempt from the obligation to make the declaration of acquisition or disposal of a qualified holding, if it is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.
- The Commission may exempt intermediaries from the obligation to notify the issuer and the Commission of the acquisition or disposal of a qualified holding, insofar as the securities are disposed of within 30 days of their acquisition and insofar as the voting rights carried by such securities are not exercised.
- The Commission may exempt a person from the obligation to notify of the acquisition or disposal of a qualified holding where the disclosure of such information would be seriously detrimental to the issuer, provided that such omission would not mislead the investors.

The obligation to notify acquisition of qualified shareholding arises on the date on which the person finds out about the acquisition or disposal of a corresponding number of votes or, depending on the circumstances, is supposed to find that out. Notification must be made in accordance with the notification procedure prescribed in the Commission Rules. After the Securities Commission has received such information on acquisition or disposal of major holdings, it must disclose it to the public within nine

days. Such disclosure is effected by publishing the relevant information in the *Official Gazette* of Lithuania and on the website of the Commission. VSE also publishes such information through its information system.

#### 2.4.7.3. Takeovers

There are two types of tender offers under Lithuanian securities laws: voluntary and mandatory. Under the Securities Market Act, if a person, acting independently or in concert with other persons, acquires more than 40 percent of the votes at the general meeting of shareholders of the accountable issuer incorporated in Lithuania, he or she must within 30 days:

- dispose of the securities exceeding the threshold, or
- submit a mandatory tender offer to buy the remaining voting securities and securities granting the right to acquire voting securities of the issuer.

The Securities Commission is entitled to provide a general exemption from an obligation to launch mandatory tender offer if that launching requirement would be unfair, unreasonable, or contrary to market interests.

The mandatory tender offer price may not be less than the highest price of the securities that the offeror has acquired over the last 12 months before exceeding the 40 percent threshold. Notwithstanding this rule, each shareholder of an issuer is entitled to claim in court the increase of the mandatory tender offer price up to the fair price of such securities. Furthermore, if the offeror acquires additional securities at a price higher than the price of the offer within one year following the implementation of the tender offer, in cases both of mandatory and voluntary tender offers, it is obliged to pay the balance to the persons who have accepted the offer. The consid-

eration for the shares acquired under the mandatory tender offer must be paid in cash.

From the point at which the 40 percent threshold is exceeded, that person is deprived of all votes at the general shareholders meeting of the target, until the takeover offer is registered with the Securities Commission or such person transfers a certain amount of such securities, so that the number of votes is reduced to below the 40 percent threshold.

As of the moment the management bodies of a target become aware of an offer, they must refrain from any measures aimed at frustrating it until the expiration of the offer.

#### 2.4.7.4. Squeeze-outs and sell-outs

A shareholder of an issuer the shares whereof have been admitted to the Official or the Current List of a Stock Exchange registered in the Republic of Lithuania, acting independently or in concert with other persons and having acquired shares representing not less than 95 percent of the total votes at the general meeting of shareholders of the issuer has a right to require that all the remaining shareholders of the issuer sell their voting shares (*Minority Squeeze-out*). Where a shareholder acting independently or in concert with other persons is obliged to submit a mandatory tender offer, the minority squeeze out right may be exercised only after they have complied with the mandatory tender offer requirements. The majority shareholder exercising the minority squeeze out right must offer a fair price to the selling minority shareholders for their shares. The consideration for the bought up shares should be paid in cash.

Likewise, the minority shareholders of an issuer whose shares are admitted to the Official or the Current trading list of a Stock Exchange registered in Lithuania are entitled to require that the shareholder who has acquired shares entitling it to not less than 95 percent of all votes in the general meeting of shareholders of the issuer, buys up their voting shares.

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This briefing constitutes a general guide only. It is not intended to contain legal advice: this should be sought as appropriate in relation to the particular matter in hand. If you would like further information on the issues outlined in this briefing, please contact Bernotas & Dominas Glimstedt: tel: +370 5 2690 700, fax: +370 5 2690 701, [vilnius@glimstedt.lt](mailto:vilnius@glimstedt.lt)

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