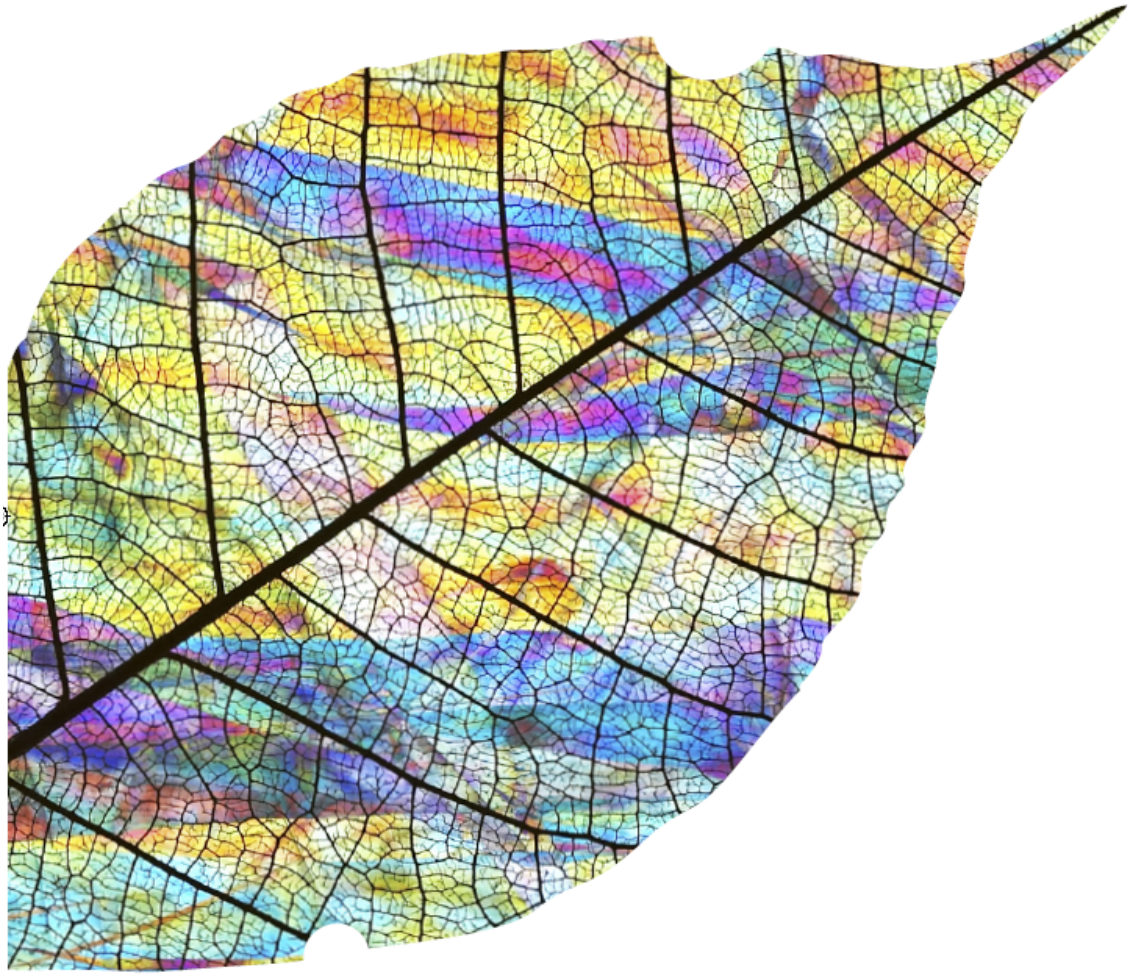
World Universities Comparative Law Project
Legal rating of Lithuania

carried out by Vilnius University

A production of the Allen & Overy Global Law Intelligence Unit



June, 2015

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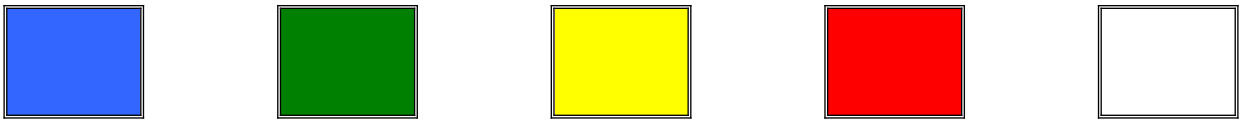

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Lithuania was carried out by students at the Vilnius University.

The member of the Faculty of Law at the Vilnius University who assisted the students was:

Tomas Kontautas, lecturer at the Faculty of Law at the Vilnius University as well as a partner and head of the Banking & Finance Team and the Insurance Team in the law firm SORAINEN.

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

Vilma Mačerauskienė Head of Capital Markets Policy Department of the Ministry of Finance of the Republic of Lithuania;

Rūta Merkevičiūtė Legal Officer of Financial Services and Markets Supervision Department of Supervision Service of the Bank of Lithuania;

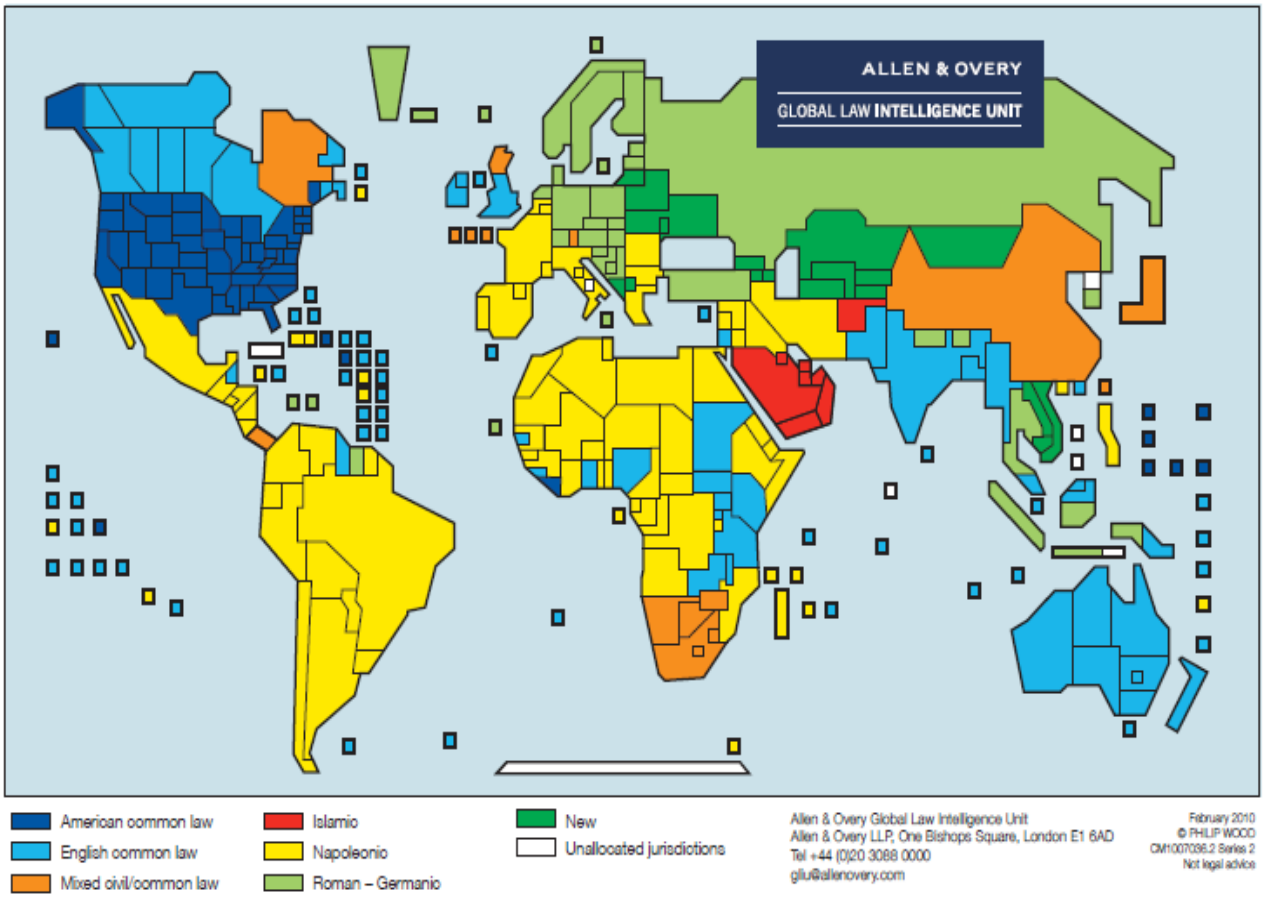
Žygimantas Stankevičius Head of Legal Department at DNB bank;

Vilmantas Martišius Head of Legal Department at bank "Nordea".

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Lithuania with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

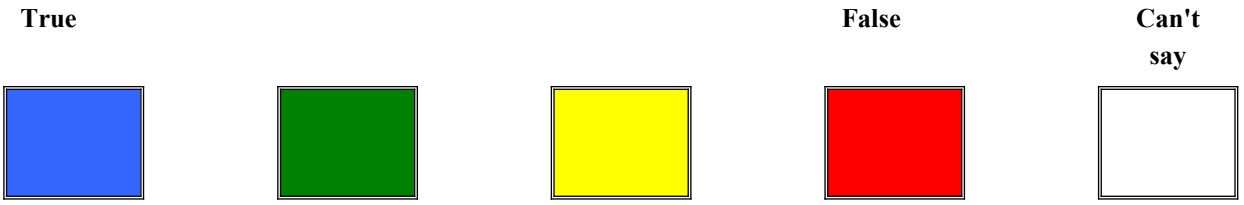
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Vilnius University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Vilnius University, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, i.e. the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Lithuania. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So, one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, i.e. what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, e.g. that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, i.e. on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Lithuania, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
			X	

Comment:

There are several legal concepts that may appear similar and have the same effect as set-off of mutual claims in the event of insolvency: 1) set-off; 2) tax set-off; 3) settlement netting; 4) close-out netting.

Several legal acts lay out the framework of insolvency regulation. The main legal act regulating bankruptcy proceedings of enterprises is the Law on Enterprise Bankruptcy (LEB). Another key act that regulates the restructuring of enterprises is the Law on Restructuring of Enterprises (LoRE). The Civil Code (the CC) regulates bankruptcy and restructuring proceedings to the extent that these proceedings are not regulated by LEB and LoRE.

LEB, Article 10(7)(3) constitutes that after the decision of the court to start the bankruptcy proceedings, it is prohibited to execute any financial obligations which were not settled before the initiation of the bankruptcy case with the exception of offsetting of the same type of counterclaims when such offsetting is possible on the basis of the provisions defined under tax laws for tax overpayment (difference) offsetting.

1) General set-off regime

Article 6.140 of the CC states that after a debtor has proved to be insolvent, the claims of the creditors may be used for a set-off even though they are not due, unless otherwise provided for by the laws. As a result, Article 6.140 of CC may seem to provide the possibility of set-off for the insolvent debtor, if there are no other exceptions provided by the laws. However, it should be emphasized that this article of the CC should not be interpreted as allowing the set-off mutual debts after the formal initiation of bankruptcy proceedings (the decision of the court to institute bankruptcy proceedings), since the courts of Lithuania are consistent and not allow the set-off the claims of the creditors after the decision to commence bankruptcy proceedings

is rendered. The effect of Article 6.140 is restricted to limited instances when there is no decision to institute bankruptcy by the court. As a result, it is not forbidden for the creditors to set-off claims prior to the formal initiation of the bankruptcy proceedings.[1]

In case of restructuring, Article 8(3) of LoRE, states, that from the date of coming into effect of the court ruling to initiate the enterprise restructuring proceedings to the date of adoption of the court ruling to approve the restructuring plan, recovery under writs of execution and set-off of claims shall be suspended.

2) Tax set-off

Article 87(5) of the Law on Tax Administration details the tax set-off. According to the case law, tax set-off may be executed without the request of the tax payer.[2]

3) Settlement (payment) netting

Settlement netting is a multilateral system where each settling participant settles its own multilateral net settlement position (typically by means of a single payment or receipt).

Also, settlement netting may be a contractual clause which obligates a party in advance to pay the net payable sum without waiting for payment from the other party.

In Lithuanian law, bankruptcy proceedings do not restrict or modify rights and obligations of members of the payment system under the Law on Settlement Finality in Payment and Securities Settlement Systems (the LSFPSSS) Articles 7(5), 8(4) and 9(1). The LSFPSSS implements Directive 98/26/EC which overrides insolvency laws across EU.

4) Close-out netting

Even though close-out netting is not the same concept as set-off, the former has almost the same effect (to cancel each other out). Close-out netting is a process that involves the acceleration of the time of performance of obligations to the time of default; the conversion of non-cash obligations into debts according to the market value (i.e. loss and profit) and netting of all transactions. Close-out netting is triggered in the event of default specified in the contract (financial arrangement). In contrast, set-off is a one-off action when mutual debts are balanced.

The Law on Financial Collateral Arrangements (LoFCA) regulates financial collateral arrangements, close-out nettings and peculiarities of their implementation. LoFCA implements Directive 2002/47/EC (Financial Collateral Directive). Article 12(1) of LoFCA states that the close-out netting provision is valid and can take effect notwithstanding the commencement or continuation of winding-up proceedings or reorganization measures or any encumbrance on the collateral.

According to Articles 9-15 of LoFCA, on the basis of the financial collateral arrangement, the creditor has the right, in case of an event of the enforced execution when the debtor does not fulfil its liabilities safeguarded by the collateral (financial deposit), to satisfy its demand from the collateral (financial deposit) or its value having the priority over other creditors. The creditor is free to sell or take over the financial instruments or to cover by their value the related financial liabilities; in case of money – to offset, or otherwise cover the related financial liabilities; to sell or take over credit claims or to cover by their value the related financial liabilities. However, parties to the financial collateral agreement have to agree under what conditions (events) the holder of the financial deposit shall have the right to sell the collateral on the unilateral basis.

In case of the enforced execution event, the obligation of the deposit holder to return the financial deposit to the deposit provider, as it is provided under the financial collateral arrangement with the transfer of ownership right ceases to exist.

[1] The Supreme Court of Lithuania, 7 June 2004, ruling in the civil case *Algirdas Savickas* v. *AB "Panevžio statybos trestas"*, (case No. 3K-3-358/2004).
[2] The Supreme Court of Lithuania, 6 June 2013, ruling in the civil case *BUAB "Linetrans"* v. *Kaunas County State Tax Inspectorate*, (case No. 3K-3-315/2013).

Moreover, under Article 11 of LoFCA, the receiver of the deposit has the right to control and use the deposit provided as financial collateral without the transfer of the ownership rights, under the terms foreseen in the collateral arrangement.

According to the case law,[3] financial deposit is considered to cover money and financial instruments on the basis of financial collateral arrangement ensuring the execution of the related financial liabilities. Nevertheless, not all money can be provided as financial collateral – only those funds that are available in deposit accounts in any currency or any other returnable moneys such as money market deposits. Cash cannot be the object of the financial collateral agreement. If the agreement is without the transfer of the ownership right, the parties to the financial collateral arrangement are obliged to agree clearly and without any ambiguities that such agreement is concluded on the basis of LoFCA, and that the deposit holder may have its unilateral right to sell the deposit under the terms and conditions defined under such agreement even without the existence of the enforced execution event.

Taking into account the aforementioned provisions of LoFCA and LEB, it is clear that the restriction set in the Article 10(7)(3) of LEB, cannot be applied to the close-out netting. Any creditor who is a party to the financial collateral arrangement under LoFCA regime has priority against other creditors of the insolvent company, as the former ones are entitled to satisfy their claims earlier than other creditors and they are not limited by the general insolvency regime that sets procedures for satisfying of the needs of the creditors as established under LEB. These 'LoFCA' creditors are exempt from consideration of the interests of other creditors. As the Constitutional Court of Lithuania ruled, the purpose of LoFCA is to regulate the financial economic activity so that it would serve the general welfare of the nation and maintain the security, stability, and credibility of the financial system as well as the effective functioning of this system, to reduce the systemic risk in the financial sector, and thus to ensure not only the protection of the interests of certain creditors, but also the interests of the entire society to have a stable and reliable financial system.[4]

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

[3] The Supreme Court of Lithuania, 10 July 2009, ruling in the civil case *BUAB „Varta"* v. *AB DnB NORD* (case No. 3K-3-291/2009).
[4] The Constitutional Court of the Republic of Lithuania, 24 May 2013, decision in the case No. 135/2010, point 4.2.

Q2 In Lithuania, the law offers a security interest which is highly protective of the secured creditor.

True		False	Can't say
	X		

Comment:

According to Lithuanian law, security arrangements over collaterals are created by mortgage or pledge contracts. Under Articles 4.174 and 4.200 of the Civil Code (the CC), a pledge or mortgage can be used to secure any property obligations. Furthermore, security over the overall assets of an entity is allowed under Article 4.177(1) of the CC.

Mortgage (CC Articles 4.170-4.197)

The principal type of security granted over immovable property is a mortgage. The objects of a mortgage may be individual immovable items not withdrawn from civil circulation and eligible for a public auction, including future obligations. Article 4.186(4) of the CC provides for security agent structure in cases where multiple creditors are represented by one representative and in this case only he should be referred in Mortgage Register as a representative of the creditors.

Pledge (CC Articles 4.198- 4.228)

In Lithuania a pledge may be taken on moveable property (it may be items that will come into the pledgor's ownership in the future) or real rights securing the discharge of an existing or future debt obligation when the object of the pledge is transferred to the creditor, third person, or remains with the pledgor.

Costs of set up

As it is stated in Articles 4.185(4) and 4.209(2) of the CC a notary public is responsible not only for the certification of such (pledges/mortgages) contracts but also for their registration with the Mortgage Register using an electronic registration system. The fee to notary public depends on the value of the mortgaged/pledged property. In case of the mortgage of a company as a whole – the fee depends on the value of the company.

Secured creditors' position in insolvency

Under Lithuanian law, insolvency has limited effect on enforcement of the security. In case of bankruptcy, mortgage/pledge enforcement against the entity in bankruptcy is subject to procedural rules of the bankruptcy – enforcement of mortgage/pledge is delayed until fixing creditor's claims and implementing formalities of public auction procedure. In bankruptcy procedures part of the proceeds from the sale of collateral, in certain situations have to be diverted to cover administrative expenses of the bankruptcy procedures.

As it is constituted under Article 754(1) of the Civil Procedure Code (CPC) and under Article 34 of the Law on Enterprise Bankruptcy (LEB) claims secured by the mortgage have priority over preferential and unsecured claims in bankruptcy proceedings. Although the data in the Mortgage Register is publicly available and offers guidance to creditors, it may be challenged and is therefore not final. If a property is mortgaged to several persons, priority is determined according to the moment of submission of the mortgage bond (rather than registration). If a property is mortgaged to several persons, priority of the registered pledges is determined according to the moment of submission of the application to the Mortgage Register.

Claims secured by the pledge have priority over preferential and unsecured claims in bankruptcy proceedings and according to LEB Article 36 in bankruptcy proceedings the expenses of the bankruptcy administrator are compensated prior to all other creditors.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Lithuania has a universal trust for all assets.

True		X	False	Can't say

Comment:

Lithuania does not belong to common law system, therefore there is no legislation on trusts, nor is Lithuania a signatory to the Hague Convention on the Law Applicable to Trusts and their Recognition.

On the other hand, if two distinguishing features of trusts, namely, the duality of ownership of trust assets and equity would be set aside, then the function of universal trusts under the Lithuanian law is exercised via the concept of the right of trust of property. Under Articles 4.106(1) and 4.107 of the Civil Code (hereinafter – the CC), the right of trust of property (which is a right in rem) is the right of the trustee to possess, use and dispose of property in the order and under conditions defined by the trustor. The right of trust may originate from the law, administrative act, contract, will, or court judgment. Under Article 6.953, which defines property trust agreements, the trustee possesses, use and disposes of the assigned property in the interests of the trustor or its designated person (the beneficiary).

As well as universal trusts, the right of trust includes the ability to partition and shield assets from the trustee, multiple beneficiaries, and the trustee's creditors. Therefore, the right of trust appears to be similar to universal trust, however, it should be emphasized that the CC does not recognize partition of ownership and the trustor remains the sole owner of the assigned property. Also, the right of trust is not a legal relationship, as it is the case in the common law system.

Consequently, if the concept of "trust" is interpreted more broadly, then to some extent there are plenty of instances under Lithuanian laws when the property is held and managed for the benefit of others and the parties are bound by the fiduciary relationship: when managing companies of pension or investment funds dispose of property owned by investors; when intermediary of public trading (custodian) holds client's securities; placement of funds in the deposit accounts of the court/notary/attorney; maybe even when the Competition Council appoints a trustee to oversee implementation of structural remedies.

Lastly, Lithuanian legislation does not permit creation of real estate investment trusts or similar entities. On the other hand, it might be argued that the same function is undertaken by specialized real estate investment funds (which are governed under Law on Collective Investment Undertakings).

In conclusion, the design of the right of trust in Lithuania allows to exercise primary functions of trusts.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, e.g. shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, e.g. carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, e.g. Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Lithuania the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True		False	Can't say
		X			

Comment:

There are certain cases for the liability of directors in the case of insolvency of the company.

Firstly, the director may be liable under Civil Law. According to Article 2.87 of the Civil Code (the CC), any member of legal person's managing body have to avoid a situation where his personal interests are or may be contrary to the interests of the legal person. What is more, member of a managing body of the legal person is obligated not confuse the property of the legal person he manages with his own property. Also, it is forbidden to use the property or the information, which he obtains in the capacity of a member of legal person's body, for his personal gain or third person's gain without consent from other members of the legal person. Thus, if the director does not implement these duties, then he must redress all damage incurred except as otherwise provided by law, incorporation documents, or an agreement. Moreover, according to Article 6.263 of the CC, member of a managing body has to abide by general obligation not to cause damage to another person by his actions (active actions or refrainment from acting). If a person does not abide by this rule, then non – contractual (tort) liability arises. Due to this reason, any damage caused to other person must be fully compensated by the liable person. For instance established by the law, non-pecuniary damage must also be fully compensated by the liable person.

Secondly, a director may be liable under Administrative Law. After the insolvency documents have been delivered to the enterprise, the head of the enterprise has to furnish to the court the lists of creditors and debtors of the enterprise, indicating essential information, such as amounts of liabilities and debts, the time limits for the settlement, a set of financial statements for the previous financial year. Where the director fails to furnish to the court the aforementioned documents without a valid excuse, a court or a judge may impose a fine on the director of up to EUR 3 4500 (according to Article 9 of the Enterprise Bankruptcy Law).

Because of the rule that directors must file for insolvency when the company is insolvent the director or any other person having the right to adopt a respective decision in the enterprise must compensate for damage incurred by the creditors due to the enterprise missing the deadline for filing with the court of a petition for the initiation of bankruptcy proceedings (according to Article 8 of the Enterprise Bankruptcy Law). Therefore, the director may be liable under Article 50^6 of the Code of Administrative Offences. The fine is set from EUR 17 250 to EUR 3 4500. What is more, the court may restrict the former director from holding the position of the director or membership of a board of directors for a period from three to five years for the following grounds: not filling a petition for the initiation of bankruptcy proceedings, not transferring the assets and/or documents upon the entry into force of the ruling to initiate bankruptcy proceedings, avoiding to furnish all the information which is necessary for the bankruptcy proceedings or has otherwise hindered the proceedings (according to Article 10 of the Enterprise Bankruptcy Law).

Thirdly, the director may cause criminal liability according to Article 209 of the Criminal Code. A person who brings an undertaking to bankruptcy by deliberate mismanagement and thereby incurs major property damage to creditors is punished by imprisonment for a term of up to three years.

On the other hand, case law highlights that aforementioned articles are almost dead letter and are barely used. One of the reasons is difficult enforcement, especially during preliminary investigation.

To sum up, there are lots of legal provisions regulating the liability of directors in the case of insolvency of the company; however, there are not many precedents where directors were held accountable.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Lithuania permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
		X		

Comment:

Companies are prohibited from buying up their own shares. Companies are prohibited from paying funds in advance directly or indirectly, providing loans or ensuring the fulfilment of duties for natural or legal persons, if the underlying goal is to facilitate buying up their own shares. However, there are a few exceptions:

1) The company seeks to alleviate acquisition of company's shares for its own employees. Also, it applies to employees of a parent company or subsidiary company with an exception when these employees are members of the governing body;

2) According to the conditions specified by the Law on Financial Institutions. Under Article 45^2 of the Company Law, a financial institution is entitled to buy up its own shares only if 1) the legal form of that institution is a corporation or private limited company and these actions are assigned for services of that financial institution, or 2) the legal form of financial institution is the corporation and it matches the criterions which are established in the Directive 2012/30/EU.

3) Under Article 54 of the Company Law, the company could buy up its own shares by itself or by person who acts in the interests of the company. Also, the company must ensure equal opportunities for transmitting shares for all shareholders.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An

example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, e.g. 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Lithuania is open and has few restrictions.

True			False	Can't say
			X	

Comment:

Regulation of public takeovers (applicable only regarding acquisitions of listed companies) in Lithuania is based on the Law on Securities (hereinafter – the LoS) that implements the Directive 2004/25/EC of the European Parliament and of the Council, therefore it is similar to that of other Member States and it contains numerous restrictions. The regime recognises an obligation to make a mandatory bid when a buyer is acquiring control of a listed company (Article 31 of the LoS). It also allows making a voluntary bid (Article 31(7) of the LoS).

Control is defined as a number of shares that in connection with the holding held by the buyer or by other persons acting in concert entitles buyer to more than ⅓ of votes at the general meeting of shareholders of an offeree company. In that case the buyer, must either: i) transfer securities exceeding this threshold, or ii) announce a mandatory takeover bid to buy up the remaining shares granting the voting rights of the offeree company and the securities confirming the right to acquire securities granting the voting rights (Article 31(1) of the LoS).

A mandatory bid when acquiring control means an obligation to set a fair price and to pay the same price and conditions to all shareholders within the respective share classes. This mandatory bid has to be made in a so-called offer document containing all relevant information. Moreover, a target company has to restrain from actions that would impair execution of the bid (Articles 33-35 of the LoS).

Article 37 of the LoS provides for a squeeze-out when a holder of equity securities of an issuer, when acting independently or in concert with other persons and having acquired not less than 95 per cent of the capital carrying voting rights and not less than 95 per cent 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 the voting shares owned by them, i.e. in this case, minority shareholders are obliged to sell their shares.

Under Article 23 of the LoS, person who has acquired 5, 10, 15, 20, 25, 30, 50, 75 and 95 per cent of votes at the general meeting of shareholders of an issuer must immediately inform the Bank of Lithuania and the issuer about the total amount of votes. This obligation is also binding where the specified limits are exceeded in the descending or the ascending order. If a person fails to fulfil the mentioned obligation to notify within an established period of time, he does not, for the period until the proper disclosure of the data concerned, have the right to hold at the issuer's general meetings of shareholders more votes than the last threshold of which he has duly notified.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Lithuania, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
	X			

Comment:

It is believed that in Lithuania Heads of terms (HOT) constitutes a part of the pre-contractual relationship, however, the regulation and the case law does not give a straightforward answer because this legal concept is not among those frequently used.

HOT may exist in different forms: as protocol of intention, negotiation protocol, draft agreements etc.

When the dispute arises, it is important to decide whether such pre-contractual agreements are binding.

Generally, conclusion of HOT means that the parties are considering signing the contract in the future and, although it means serious intent, it does not formally bind the parties. In the course of pre-contractual relationships, parties must conduct themselves in accordance with good faith (Article 6.163 of the Civil Code (the CC)). Parties are free to negotiate and not liable for failure to reach an agreement (according to Article 6.163 of the CC).

In Lithuanian law, HOT is not equal to the Lithuanian concept of a preliminary contract according to the Article 6.165 of the CC, because a preliminary contract is an agreement between the parties by which they obligate themselves to conclude another – principal – contract in the future under the conditions negotiated in the agreement. And the preliminary contract must be made in writing. The preliminary contract which fails to meet the required conditions of its form is regarded as null and void.

Parties are usually not bound by HOT, if their conduct does not express mutual intention declared under HOT. However, the court may find pre-contractual agreements as preliminary contracts, in which case such agreements will have legal force.

To sum up, parties are not bound by heads of terms, except if they expressly state (for example in writing) before signing contract that the terms are "subject to contract" (i.e. the contract that will be concluded in the future). That written agreement should be recognized as binding in court after the subsequent conclusion of the contract.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Lithuania, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True		False	Can't say
	X		

Comment:

According to Article 6.217 of the Civil Code (the CC), a party may dissolve the contract if there is a failure of the other party to perform the obligation properly and it is considered to be essential violation of the contract. Therefore, the party can terminate the contract unilaterally only if there is an essential violation. The CC provides examples on what might be essential violation: the aggrieved party substantially did not get what he has entitled to expect under the contract; if taking into consideration the nature of the contract, strict compliance with the conditions of the obligation is of essential importance; whether the non-performance is made of malice present or of great imprudence. Contract may be dissolved on other grounds only as a result of the judicial proceedings.

It is important to emphasize that according to Article 6.217(5) of the CC it is possible to dissolve a contract unilaterally under the terms indicated in the contract. Also, when the parties choose on what grounds they may not be bound by it is encouraged to take notice of the examples given by the CC on what would possibly be regarded as essential violation of the contract.

However, according to the Supreme Court of the Republic of Lithuania, if the parties have agreed that the violation of the certain condition of the contract is sufficient ground to terminate the contract unilaterally. In such case, there is no requirement for the parties to agree that the violation of the contract has to be

essential.[5] It needs to be emphasized that such agreement regarding the terms of unilateral termination must not infringe imperative legal norms.

To sum up, according to the CC, there are two grounds regarding unilateral termination of contract: one is when the law allows such termination and the second is contractual. However, the possibility to terminate the contract unilaterally means that the court has a right to examine such condition and if it is in breach with the general principles of law (Article 1.5 of the CC), public order (Article 1.81 of the CC) or imperative legal norms (Article 6.157 of the CC), the court should not apply such condition of unilateral termination formally, but follow the principles mentioned above.[6] According to this reasoning, the courts can limit the principle of freedom of the contract and declare such unilateral termination as unlawful.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Lithuania, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True		False	Can't say
	X		

Comment:

Principle of freedom of contract allows for parties to freely enter into contracts and determine their mutual rights and duties at their own discretion and also agreeing between parties of contract about civil liability (according to Article 6.156 of the Civil Code (the CC)). This principle, to our modest knowledge, underlines why in Lithuanian courts an agreement/contractual clause which excludes liability is upheld.

Lithuanian law establishes that the conditions of a contract which limit or exclude a party's liability for non-performance of an obligation, or which permit to effectuate performance in a substantially different manner from what the other party reasonably expected, are not valid if such conditions, taking in regard the nature of the contract and other circumstances, are unfair (according to Article 6.211 of the Civil Code). However, if the exclusion of liability clauses are clear then fairness should not be considered if it is a contract between sophisticated companies (excluding instances of fraud).

There are some cases when parties have no freedom to limit their contractual liability, for example: an agreement of the parties upon exclusion of civil liability for damages caused by intentional fault or gross negligence of the debtor. The mandatory legal norms establishing civil liability, as well as the form or amount thereof, cannot be modified by an agreement of the parties (under Article 6.252 of the CC). Nevertheless, default legal rules leaves freedom for parties to determine the conditions which are the most

[5] The Supreme Court of Lithuania, 3 January 2014, ruling in the civil case *BIGBANK AS branch v. A. P. R.* (case No. 3K-3-114/2014).
[6] The Supreme Court of Lithuania, 20 March 2015, ruling in the civil case UAB *„Girobusas“ v. Kaunas city Municipal Administration* (case No. 3K-3-143-690/2015).

acceptable. Naturally, the conditions, which are agreed, not necessarily have to be equally favourable for both parties of the contract; however, the agreement must be achieved in common with both of the parties.[7]

Case law highlights that it is up to the court to decide if exclusions of liability under commercial contract are upheld considering the classic rules of interpretation of contracts and the principle of freedom of contract. Moreover, case law reveals that court decides in every case individually if exclusion of liability in commercial contract is valid and enforceable considering mandatory rules of law.[8]

However, scholars mention that exclusions of liability are not as popular as limitation of civil liability. Limitation of civil liability is more easily accepted and the validity of limitation of liability is rarely questioned as a valid legal instrument. Some of us hold conviction that in the event when exclusion of liability or limitation of civil liability comes under judicial review then the courts usually decide in favour for the limitation and not for exclusions of liability.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.6

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

[7] The Supreme Court of Lithuania, 19 December 2012, ruling in the civil case *"Beskus" v. UAB "G4S Lietuva"* (case No. 3K-3-564/2012).
[8] The Supreme Court of Lithuania, 4 July 2012, ruling in the civil case *UAB "Kita kryptis" v. UAB "Sfeka"* (case No. 3K-3-327/2012).

Q10 The Lithuanian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Lithuanian public policy and mandatory statutes.

True			False	Can't say
X				

Comment:

According to Lithuania's Civil Code Article 1.37, contractual obligations are governed by the law agreed by the parties. Such agreement of the parties may be expressed in the form of separate terms of the concluded contractor it may be determined in accordance with the factual circumstances of the case. The law of the state designated by the agreement of the contracting parties may be applied to the whole contract or only part or parts thereof.

It is also need to be mentioned that the choice of the law applicable to contract as made by the agreement of the parties is subject to application of mandatory legal norms of the Republic of Lithuania or those of any other state that cannot be changed or declined by the agreement of the parties (i.e. despite the choice of the parties) e.g. consumer contracts are governed by the law of the state of the consumer.

Since there is no case law proving to the contrary, it is believed that the same reasoning applies to domestic contracts when both parties are Lithuanian subjects, i.e. under Article 1.37(3) of the CC, Lithuanian subjects are entitled to opt for foreign law in their contract, even though it does not substitute primacy of Lithuanian mandatory norms or those of any other state. However, such choice of law which substitutes Lithuanian law is infeasible if the jurisdiction is allocated to the Lithuanian courts, thus obliging the parties to prove the content/substance of the applicable law (Article 1.12(2) of the CC). Also, the parties have to take into account that the courts usually are not experts in application of foreign law and might deviate from the case law of that foreign law in question, which in turn explains why there are only few viable options for the parties to the contract: opt for arbitration clause/combination of choice of court clause and choice of law clause/only choice of court clause/domestic rules.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Lithuanian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True		False	Can't say
	X		

Comment:

Lithuanian courts respect the choice of jurisdiction. The choice of jurisdiction is established under both national and EU law, therefore the courts are obliged to obey this principle. According to Article 788 of the Code of Civil Procedure and Article 25 of the Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Lithuanian courts reject jurisdiction and yield to the jurisdiction of a court *identified in the contract* if a claim is based on a contract that contains an exclusive jurisdiction clause.

According to the Supreme Court of Lithuania, a jurisdiction clause/agreement on jurisdiction is an autonomous procedural agreement. The parties to the contract may conclude a prorogation agreement that a particular court or courts of a particular state are to have jurisdiction to settle any disputes arising from the contract. Alternatively, the parties may conclude a derogation agreement that a particular court or courts of particular states shall not have jurisdiction to settle any dispute arising from the contract. [9]

The court only considers the choice of jurisdiction on request if one of the parties requests, meaning, that the court does not decline jurisdiction on its own initiative. The latter rule has an exception the courts uphold an exclusive jurisdiction clause only if it does not fall under exclusive jurisdiction of Lithuanian courts.

The choice of jurisdiction is not upheld when the law provides for the exclusive jurisdiction of the Lithuanian courts, for example disputes related to real estate, incorporation, bankruptcy, validity of entries in public registers.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Lithuania, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Lithuanian courts.

[9] The Supreme Court of Lithuania, 16 March 2010, ruling in the civil case *OOO "Baltko" v. UAB "Plungės kooperatinė prekyba", SA "BRED banque populaire", AKB "Elektronika"* (case No. 3K-3-102/2010).

True			False	Can't say
	X			

Comment:

Lithuania is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

According to Article 11 of the Law on Commercial Arbitration (CA), the court receiving a claim, the subject matter of which is subject to arbitration agreement made by the parties according to the provisions of Article 10 of the CA, at the request of a party, refuses to accept it. If the fact of arbitration agreement proves to exist after the claim has been accepted by the court, matter on which arbitration agreement is made is left in abstention.

According to Article 10 of the CA, the arbitration agreement shall be concluded in writing and shall be considered to be concluded if:

1) executed as a joint document signed by the parties;
2) concluded in an exchange of documents (which can be transferred electronically ensuring information in the documents is kept entire and authentic) or other documents which provide a record of the agreement;
3) concluded using electronic devices, if it is ensured that information is kept entire and authentic and is still accessible for further use;
4) concluded in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by another;
5) there is other written evidence confirming that the parties have concluded an arbitration agreement.

The reference in a contract concluded by the parties to a document containing an arbitral clause is held to be arbitration agreement if it complies with conditions mentioned above.

Some disputes cannot be submitted to arbitration (Article 12 of the CA):

1) Arbitration cannot solve disputes which have to be solved in administrative proceeding and disputes which are set to be solved by the Constitutional Court of Republic of Lithuania. Disputes arising from family legal relations and disputes arising from patents, trademarks cannot be submitted to arbitration. Disputes arising from employment relations cannot be submitted to arbitration except if the arbitration agreement is made after the disputes have arisen.
2) Disputes, the party to which is a state or municipal enterprise, as well as a state or municipal institution or organisation may not be submitted to arbitration unless an advance consent to such agreement has been given by the founder of such enterprise, institution or organisation.
3) The Government of the Republic of Lithuania or its authorised public authority may, in accordance with the regular procedure, enter into an arbitration agreement concerning disputes arising from commercial contracts to which the Government or its authorised public authority is a party.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Lithuania, class actions where the class is bound if they do not opt out are generally not allowed.

True		False		Can't say
X				

Comment:

Class actions were introduced on January 1st, 2015, thus only the future holds what would be the view of the courts on this legal instrument. Article 441^1 of the Code of Civil Procedure (hereinafter – the CCP)constitutes that a class action should be based on equivalent or similar factual circumstances and may be filed when a group of claimants seek a similar remedy for the equivalent or similar substantive rights or interests. It is equally possible to submit a claim via class action against a group of defendants. Therefore, the court has to consider the demands made in the class action and pass a judgment on the facts common to all members of the class (Article 441^9 of the CCP).

Lithuania adopted the opt-in model for class actions meaning that the persons wishing to be part of the class action have to express their will directly to be involved in the procedure (Article $441^3(2)(1)$ of the CCP). In addition, under Article 261^1, each member of the class is able to make individual property demands related to the grounds for class action in class action proceedings.

According to Article 441^2, disputes are subject to a special procedure before they can constitute a basis for a class action. A representative of the class must inform the defendant that the class intends to take the dispute to the court and file a class action by delivering a written statement of claim to the defendant. This statement should stipulate common demands of class members and a warning about the possible class action if such demands are not met within the time limit laid by the representative of the class in that statement (which may not be shorter than 30 days).

Other indicators

Other indicators not covered by this survey include contingent costs; loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Lithuania nationals and local corporations are entitled to own land absolutely.

True		False	Can't say
	X		

Comment:

In Lithuania, there are minor restrictions to own land for nationals and local corporations. Because of that, almost absolute ownership of land is available in Lithuania. According to Article 4.37 of the Civil Code (the CC), ownership right is the right to manage, possess, use and dispose of an object of ownership right at one's volition, without violating the laws and the rights and interests of other persons. There is also a possibility to pass the entire object of ownership rights or a part thereof to another person, or only specific rights such as aforementioned (right to manage, possess, use and dispose).

The subject-matter object of ownership right may be things and other property. Things may be movable or immovable. In this case, land is considered to be an immovable thing, which means that the right of ownership of land is, of course, possible. This ownership is not temporary.

Also, according to Article 4.39 of the CC, right to ownership may be limited on three grounds: by the will of the owner, by law, or by court judgement. Article 23 of the Constitution of the Republic of Lithuania states that property rights are inviolable, but it also states that property may be taken over exclusively for the needs of society according to the procedure established by law and justly compensated for.

According to Article 4.101 of the CC, if a land parcel is claimed for public needs belongs to a person as his ownership and has construction works on it, such person is entitled to be recompensed for the land parcel, as well as for construction works which are being built or already built thereon belonging to such person as his property, as well as plants thereon, in money at market prices. So, even though the right to ownership of land is absolute, however there are some restrictions (by the will of the owner, by law or by court judgement).

It also needs to be mentioned that there are some restrictions to own agricultural land: a person or associated persons (with a very broad definition) are able to acquire and own a total of up to 500 hectares of agricultural land.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, e.g. Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Lithuania is registered in a land register which records most major interests in land, e.g. ownership, mortgages and longer-term leases.

True		False	Can't

				say
X				

Comment:

According to the existing legislation the State Land Cadastre and Register (SLCR) is assigned as a managing keeper of the Real Property Register (RPR). The Ministry of Agriculture and the Ministry of Environment supervise the activity of the SLCR.

The Real Property Register system as it is stipulated under Article 1(2) of the RPR – ensures legal status of objects of the real property and rights attached to them and presents data about anyone who manages registered objects and how.

Under Article 1(2) of the SLCR, the Real Property Cadastre system describes objects of the real property – parcels, construction works and premises. It should help to clarify – where the object of the real property is and what quantitative of its characteristics.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Lithuania, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
		X		

Comment:

As mentioned before, in Lithuania, ownership right is the right to manage, possess, use and dispose of an object of ownership right at one's volition, without violating the laws and the rights and interests of other persons. This also applies where there is a will of an owner to change the use of land or to develop the land.

The possibility to change the use of land is provided to land owners, public land trustees or statutory cases at the request of other subjects.

From January 20th 2014, regulation regarding the control of development and change of the use of land became lighter in Lithuania. From now on, land managers will benefit from a shorter process, because a person who wants to change the primary use of the land will not be obliged to prepare a territorial planning document. However, the decision of the authority is required in order to receive the permission to change the use of land. It should also be mentioned, that the same simplified order of a replacement of primary land use and (or) method in non-urbanized territories will be similar – the decision will be made by the director of municipal administration and territorial planning documents will not be needed.

An application to change the use of land should just consist of landowner's name, surname or legal entity's name and residence, cadastral number and address, current and desirable primary land use and (or) method.

The primary land use and (or) method, as well as the land parcel, has to be registered in the Real Property Register.

The decision to change the primary use of land is taken within 10 working days.

It is important to emphasize, that the change of the use of land may lead to different and higher taxes of the land.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Lithuania, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
			X	

Comment:

At present, Employment Law in Lithuania is under major review. Under current legislation in force, it is quite easy to hire an employee in Lithuania. Basically there are not many restrictions and even if there are some, those restrictions on recruitment may be imposed only by laws (Article 97 of the Labour Code (the LC)). In Lithuania, the minimum wage is EUR 300.

According to Article 129 of the LC, an employer may terminate an indefinite-term employment contract with an employee only for valid reasons by giving him notice. The dismissal of an employee from work without any fault on the part of the employee concerned is allowed if the employee cannot, with his consent, be transferred to another work. It has to be mentioned that only those circumstances, which are related to the qualification, professional skills or conduct of an employee, are recognised as valid grounds for dismissal. An employment contract may also be terminated for instance on economic, technological grounds or due to the restructuring of the workplace. An employer is entitled to terminate an employment contract by giving written notice to the employee two months in advance.

It also needs to be mentioned that the Supreme Court of the Republic of Lithuania allows non-compete agreements between employee and employer, where the employee agrees not to use information learned during employment in subsequent business efforts for a set period of time. Accordingly, compensation is needed for all the period of time which is set in the agreement.

An employment contract may not be terminated with a pregnant woman from the day on which her employer receives a medical certificate confirming pregnancy, and for another month after maternity leave.

Employment contracts with employees raising a child (children) under three years of age may not be terminated without any fault on the part of the employee concerned (Article 129 of the LC).

Employees, who have lost their capacity for work as a result of injury at work or occupational disease, are entitled to their position and duties until they recover their capacity for work or a disability is established.

Employees, who are elected to represent other employees in trade-union related activities, are protected from dismissal from work under Article 129 of the LC without the prior consent of the concerned trade-union body during the period for which they have been elected.

Maximum hours:

According to Article 144 of the LCC, working time may not exceed 40 hours per week. A daily work period must not exceed 8 working hours. Exceptions may be established by laws, Government resolutions and collective agreements. Maximum working time, including overtime, must not exceed 48 hours per 7 days.

Minimum holidays:

According to Article 156 the minimum annual leave is a period of 28 calendar days.

Maternity rights:

Under Article 179, women are entitled to maternity leave: 70 calendar days before the childbirth and 56 calendar days after the childbirth (in the event of complicated childbirth or birth of two or more children – 70 calendar days).

According to Article 179[1] of the LCC men are entitled to paternity leave – for the period from the date of the birth of a child until the child is one month old.

Article 180 of the LCC constitutes that parental leave until the child reaches three years of age is granted, at the choice of the family, to the mother (adoptive mother), father (adoptive father), grandmother, grandfather or any other relative who are actually raising the child, also to the employee who has been recognized the guardian of the child. The leave may be taken as a single period or be distributed in portions. Employees entitled to this leave may take it in turns.

Severance costs:

Upon the termination of the employment contract under Article 129 of the LCC, the dismissed employee is paid a severance pay in the amount of his average monthly wage taking into account the continuous length of service of the employee concerned at that workplace (Article 140 of the LCC).

Environmental restrictions

Q18 In Lithuania the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment:

Lithuania has strict rules governing the environment and liability for clean-up.

The Law on Environmental protection (LEP) recognizes that damage to environment is caused where there is a direct or indirect adverse effect (Article 32 which deals with Environmental Damage and Restoration of the State of the Environment):

1) on the favourable conservation status of species or habitats under maintenance or aimed at preservation, also the status of biodiversity, forests, landscape and protected areas;

2) on the ecological, chemical, microbial and/or quantitative condition of surface and ground water and/or ecological capacity (potential) as defined in the Law of the Republic of Lithuania on Water;

3) on land, that is, land contamination, when contaminants are introduced on, in or under land (into the underground);

4) on other elements of the environment (functions thereof), when requirements of environmental protection are violated.

Users of natural resources as well as undertakings must take all the measures necessary to prevent environmental damage, damage to human health and life, property and interests of other persons, and persons guilty of causing damage must restore the state of environment, where possible, to baseline condition as it was prior to the causing of damage to environment, and compensate for all the losses. The baseline condition is determined on the basis of the information available on the best state of the environment.

Article 32(2) of the LEP which deals with Compensation for Costs states that the entire cost of preventive and/or remedial measures shall be borne by an economic entity which has caused environmental damage or an imminent threat thereof, also in the case when the appropriate measures have been implemented by the institutions authorised by municipality or the State (on their own account or with the help of third parties).

Also, the Criminal Code Chapter XXXVIII dealing with Crimes and Misdemeanours against the Environment and Human Health sets 7 articles dealing with hardcore crimes to environment: Article 270 Violation of the Regulations Governing Environmental Protection or the Use of Natural Resources; Article 270(1) Illicit Trade in the Substances Depleting the Ozone Layer; Art 270(2) Illegal Transport of Wastes through Border of Republic of Lithuania; Article 271 Destruction or Devastation of Protected Areas or Protected Natural Objects; Article 272 Illegal Hunting or Fishing or Other Use of Wild Fauna Resources; Article273 Unauthorised Forest Logging or Destruction of Marshes; Article 274 Unlawful Picking, Destruction, Handling or Other Possession of Protected Wild Flora, Fungi or Parts Thereof.

Sanctions imposed for natural persons in there articles are fine, arrest, imprisonment for a term of up to six years; sanctions imposed for legal entities are fine, restriction of operation of the legal entity, liquidation of the legal entity.

Also it must be mentioned that Constitutional Court of the Republic of Lithuania in its September 29th 2003 judgment stated that "In all cases the harm (damage) inflicted on the natural environment has to be compensated irrespective of the fact whether any methods of compensation of the harm (damage) caused to the natural environment has been established. In case of a dispute, the amount of the harm (damage) may be established according to the judicial procedure."

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Lithuania foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment:

Under Article 5 of the Investment Law (IL), foreign and domestic private entities have the right to establish, acquire, and dispose of interests in business enterprises. Lithuanian laws protect rights and legal interests of both domestic and foreign investors. The Law on Investments describes the basic principles defining the

treatment of foreign investments in Lithuania. Foreign investors have the same rights and obligations relating to commercial activities as local investors. They have the right to transfer profit (income) owned as private property without any restrictions after paying taxes. Generally, foreign investors have free access to all sectors of the economy.

Exchange controls

Q20 In Lithuania, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
X				

Comment:

Currently there are no foreign exchange controls in Lithuania.

Alien ownership of land

Q21 In Lithuania, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
	X			

Comment:

Ownership:

In the Republic of Lithuania foreign entities may acquire ownership of land, internal waters and forests according to a dedicated constitutional law (according to Article 47 of the Constitution).

The foreign entities may acquire ownership of land of agricultural purposes without any permission as Lithuanian citizens up to 10 hectares (under Article 2 of the Provisional Law on the Acquisition of Agricultural Land). However, this permission does not include all countries of the world. This right is granted only to the citizens from the countries of European Union, NATO and OECD (Organisation for Economic Co-operation and Development). If particular piece of land is bigger than 10 hectares, then legal aliens have to get the permission which is granted on condition that they are Lithuanian nationals or residents.

Leasehold:

There are no any limits for leasehold of land for foreigners according to Articles 4.165 – 4.169, 6.545-6.566 of the Civil Code. Foreigners have the same rights as Lithuanian citizens and no permissions are required.

What is more, there are no limits for leasehold of state - owned land for foreigners (according to the Provisional law on Acquisition of Agricultural Land and the Rules of Leasehold of State - owned Agricultural Land).

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Lithuania, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment:

Investment disputes between foreign investors and Lithuania are resolved by way of mutual agreement of the parties, by the courts of Lithuania or alternative dispute resolution methods. In the event of an investment dispute, foreign investors have the right to refer directly to the International Centre for Settlement of Investment Disputes. Moreover, the principle of equal treatment is enshrined in the Lithuanian Law on Investment and other relevant legislation. This principle means that the laws of Lithuania protect the rights and lawful interests of both local and foreign investors equally. Principle of equality can be found in all legislation and when applying law there is no differentiation based on being local or foreigner.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Lithuania are not considered materially greater than in other comparable countries.

True			False	Can't say
X				

Comment:

The Lithuanian court system is similar to those of other European states that are considered to have a civil law system. In short, the civil judiciary is comprised of three instances (three levels of civil courts). Firstly, civil law proceedings commence in the courts of first instance. Secondly, the judgment of the court of first instance may be appealed before the appellate courts in the second instance and afterwards in the third instance (before the cassation court), nevertheless the appeal or the cassation is not heard automatically and the complaint may not be admitted by the court. Therefore, the cost and time of litigation varies depending on a plethora of factors (for instance, the case itself, the parties involved, judges who hear the case). However, the average duration of civil proceedings before courts of first instance may take from 6 months to several years. In total, the courts of first instance heard 84 987 related to law of obligations (majority of

commercial litigation involves law of obligations). Also, there were less than 1 percent of cases where proceedings took more than a year.[10]

Usually, the appeal and the cassation proceedings take 6 months because no new evidence is allowed.

According to one survey, it is estimated that on average it takes 460 days to litigate a case which is an average result when compared to other European Union Member States.[11]

The costs of civil proceedings consist of the filing fee and other costs, for instance payments to court appointed experts. The losing party has to pay another party for the costs incurred. If the claim is partly satisfied, then the costs are divided proportionally. However, the winning party usually bears expenses for legal representation and consultation, time consumed by litigation and sometimes reputational costs. Also, parties to the dispute may be entitled to the Legal Aid provided by the State.

According to one survey, it is estimated that on average it costs around 10 %of the claim disputed to litigate in the courts of Lithuania which is also an average of the EU.[12]

[10]According to Annual reportof National Courts Administration, p. 28, 30. Accessed June 3, 2015. http://www.teismai.lt/dokumentai/teismu%20ataskaita_2013_galutine.pdf

[11]The Cost of Non ADR: Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation by ADRCenter in Rome, Italy, p. 47, 49. Accessed June 3, 2015.http://www.adrcenter.com/jamsinternational/civil-justice/Survey_Data_Report.pdf

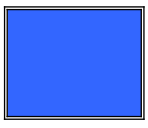
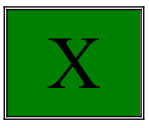
[12] The Cost of Non ADR: Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation by ADR Center in Rome, Italy, p. 49. Accessed June 3, 2015.http://www.adrcenter.com/jamsinternational/civil-justice/Survey_Data_Report.pdf

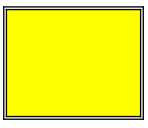
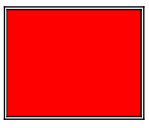
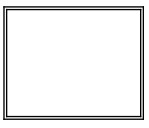
Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**

Commentary and suggestions for change

During the span of our project, there were significant legislative changes that resulted in the adoption of new legal norms. Also new draft proposals emerged and started to circulate in the media. It is evident at least to participants of this project that the legal system of Lithuania is dynamic.

New legal norms were adopted regarding class actions, compensation for legal costs and others. Also, in Lithuanian media, legal circles and other layers of society there is an intense debate over the proposed *New social model* which includes a draft for a new Labour code that will bring substantial changes to the Employment law. Most notable amendments include alleviation of the existing dismissal procedure that could be considered as controversial but it also can be viewed as one more attractive reason to set up business in Lithuania. At present, Lithuania ranks 124th in *Doing Business index* in terms of labour market regulation.

Concerning Employment law, it must be noted, that if Lithuania wants to attract more businesses and investments, there must be made substantive changes in Employment law which are proposed in the new draft of Labour code. We fully endorse, e.g. that the notification periods should be decreased from 2 to a term of 1 month. Also, severance pay in case of dismissal on the initiative of the employer should be decreased from 1-6 monthly wages depending on seniority to 1 monthly wage. Also, we should give employers additional grounds to dismiss workers on the basis of weak performance but adhering to the notice period and regulations on severance pay. If Lithuania implements these and other amendments in the field of Employment law, Lithuania will become even more business-friendly jurisdiction.

As a general conclusion we would like to emphasize that the legal regulation in Lithuania recognises generally accepted principles of commercial, finance and other areas of law that concerns inward investments. The principle of equal protection is enshrined in the laws of Lithuania and it protects the rights and lawful interests of both local and foreign investors. According to the *World Bank's Doing Business 2014* report, Lithuania ranks 17th among the world's most business-friendly countries. Lithuania's strengths are evident in the fields of registration of property, starting a business, and trading across borders. Also, it is worth reminding that Lithuania enjoys the benefits of being a member of the European Union which means that both local and foreign businesses that choose to enter the Lithuanian market, can apply for the support from the EU Structural Funds.

Being on the verge of these legal shifts, the content and conclusions of the Lithuanian Legal rating are naturally subject to change in the future.

Profiles

The survey was carried out by the following students:

Vaiva Blažytė

Vaiva Blažytė is a final year student at Vilnius University integrated study programme of Law. She specialises in Tax & Finance Law. During her studies she tried various internship programmes beginning from adviser position at Vilnius University Law Clinic, legal internship at Financial Crime Investigation Service, as well as international Erasmus internship in Malta, Valletta at Iuris Malta Advocates as an adviser at Financial and Corporate department. She believes that travelling and experiencing different cultures as well as leaving your comfort zone is the ultimate way to become more open-minded and stronger person, that is why she spent a semester studying in England through the Erasmus programme at University of East Anglia and afterwards studying at Charlotte School of Law's (USA) Summer programme. Appreciating all the opportunities that was given and taken by the study years at Vilnius University she is hoping to become not only a good specialist at her major field but also a person who encourages others to try and take as much as they can.

Vaiva can be reached via *vaivabl@gmail.com*

Karina Gavrilenko

She is currently in the 4th year of Law studies at Vilnius University Faculty of Law, successfully fulfilling her main fields of interests - Tax and Financial law, Commercial Law, Environmental Law, Human Rights.

She has gained work experience at Kaunas Regional Court as a senior specialist. In addition, she is looking forward to her internship at Embassy of the Republic of Lithuania to Ireland. Furthermore, she always expresses her interest in participating in Faculty's activities such as conferences, seminars with foreign professors (she took part in series of seminars with professor John Miller "American Business Law"). Also she is a member of ELSA (European Law Students Association).

Karina can be reached at *karinagav@gmail.com*

Vilius Benušis

Vilius is a 4th year student studying law at Vilnius University Faculty of Law. He has chosen commercial law as his area of specialization. His fields of interest are private law, business litigation, banking and finance, arbitration, international private law and others.

Vilius has participated in Salzburg summer law school of European private law in 2014. At the end of 2014, he attended international student seminar in Lodz, where he presented the paper on the topic of social and economic rights.

Vilius also participates in various seminars and conferences at his University as well as in other places. He is looking forward to gaining more experience by taking part in internships abroad.

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Manvydas Borusas

Manvydas is in his 5th and last year of studies. He specializes in International and EU law and is currently writing his master thesis. In 2014 he participated in student exchange program and studied one semester in Ghent University, Belgium. During the same semester he also presented his research on Preliminary Decision Proceedings after Article 267 TFEU and International Arbitration in International conference "On our way to a European Arbitration?", in Hague. This year he took part in the Eversheds Saladžius "School of

Legal Excellence" and was considered to be the most successful graduate. He is also a board member of Student Association in the Faculty of Law.

Manvydas can be reached at *Manvydas@borusas.lt*

Jonas Šalna

Jonas Šalna is a final year student studying International and European Union Law at Vilnius University Faculty of Law. His fields of academic interests are Competition Law, European Union Law, International Private Law and International Relations.

Jonas has gained experience in both private and public sectors. He has represented Vilnius University in national and international venues. Jonas eagerly participates in moot courts, seminars, conferences at his University and beyond.

He aspires to become a successful legal professional.

Jonas can be contacted via email: *jonas@salna.org*

The faculty members managing the survey

Tomas Kontautas is a partner and head of the Banking & Finance Team and the Insurance Team (in the Baltic States and Belarus), which include the Banking, Project Finance and PPP, Capital Markets, Financial Services & Regulation and Investment Funds, Structures & Pensions Practices. He has been practising law since 1997.

Tomas in his practice has advised many banks, finance institutions and insurance companies in finance law, insurance law and tax law issues. During his professional career, Tomas has been a lawyer with one of the leading law firms in Lithuania, deputy chairman of the Insurance Supervisory Commission and deputy head of the Legal Division of the State Insurance Supervisory Authority.

Tomas is a recommended practitioner by many directories: The Legal 500 for banking and finance law, IFLR 1000 in the area of banking and finance, Chambers Europe for banking and finance, PLC Which lawyer? and many others.

Tomas was involved in drafting laws and regulations in Lithuania (he is the author of the 2003 Insurance Law and draft Insurance Law 2011) and the EU (in 2004 he was a member of the Pillar II working group and the Solvency II project at the Committee of European Insurance and Occupational Pensions Supervisors; and during Lithuanian EU Presidency has contributed to MiFID2, CSDR, AMLD and Omnibus II initiatives as the expert of the Ministry of Finance of the Republic of Lithuania).

Tomas lectures financial services law at Vilnius University and is often invited to give lectures at foreign universities. His book Insurance Contract Law was the first on the topic in Lithuanian legal history.

Vilnius University Faculty of Law

Vilnius University Faculty of Law was established in 1641 by King of Poland and Grand Duke of Lithuania Wladyslaw IV Vasa. The initiative to teach law in Lithuania came from the Chancellor of Grand Duchy of Lithuania Kazimieras Leonas Sapiega. Studies in Faculty of Law continued here for almost two hundred years and prominent European scholars of the time were preparing the governing class of the state. In 1832 Vilnius University was closed by Nikolaj I, Emperor of Russia. In 1919 Vilnius University was re-established. The Faculty of Law was closed again in 1942 but after two years it resumed its activity and performs it to this day.

Presently, Vilnius University Faculty of Law is an august legal institution in Lithuania. It offers rigorous, demanding and profound studies of Law, led by renowned professors and lecturers who are leaders in their fields and most respected members of contemporary Lithuanian society. It is Alma Mater for most Lithuanian judges, attorneys, legal scholars.

Usually, students study for five years pursuing Master's. After the fourth year students have to choose one specialization from these: Tax and Financial Law, Commercial Law, Criminal Law, International and European Union Law, Jurisprudence, Labour Law. Specializations provide opportunity to develop knowledge of particular field and upgrade practical skills in a specific field. Graduates of Faculty of Law are highly valued in the legal jobs market.

Moreover, there are lots of opportunities to go to study abroad and to get international experience. Also, there are a lot of students from other countries who come to study not only as Erasmus students but also to pursue Master's degree.

Faculty’s forte is its members who are dedicated to help students and guide them to academic success. The students are always welcome to express their views, discuss with colleagues and astonish professors because development of critical thinking is one of the main goals during the studies in Faculty of Law.

Finally, students can take part in activities of student organizations such as ELSA (European Law Students Association). Also, Faculty’s Alumni have an immense role in the community of the Faculty as organizers of seminars, meetings and other educational activities in concert with Faculty's professors and lecturers.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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