

The International Comparative Legal Guide to:

# Securitisation 2006

A practical insight to cross-border Securitisation Law



Published by Global Legal Group with contributions from:

Aluko & Oyeboade  
Arendt & Medernach  
Arias & Muñoz  
Attorneys at Law Foigt & Partners/Regija Borenien  
Baker & McKenzie  
Borislav Boyanov & Co.  
Brzobohatý Brož & Honsa  
Bugge, Arentz-Hansen & Rasmussen  
Caspí & Co.  
Chapman Tripp  
Cleary Gottlieb Steen & Hamilton LLP  
Dillon Eustace

Dorda Brugger Jordis  
Eiger Capital Limited  
Freshfields Bruckhaus Deringer  
Kim & Chang  
Lejins, Torgans & Partners  
Lenz & Staehelin  
Loyens & Loeff N.V.  
Luiga Mody Hääl Borenien  
Macchi di Cellere Gangemi  
Mayer, Brown, Rowe & Maw LLP  
Mourant du Feu & Jeune

Nishimura & Partners  
Pachiu & Associates  
Philippi, Yrarrazaval, Pulido & Brunner  
Porobija & Porobija  
Roschier Holmberg, Attorneys Ltd.  
Šelih & Partners  
Slaughter and May  
Stikeman Elliott LLP  
Tods Murray LLP  
Valko & Partners  
Wardynski & Partners  
Wilmington Trust

# Lithuania



Tomas Rymeikis



Eugenijus Filonovas

Attorneys at Law Foigt & Partners/Regija Borenus

## 1 Choice of Law

**1.1** If the seller and the debtors are resident in your country, and the transactions giving rise to the receivables and the payment of the receivables take place in your country, can the seller and the debtor choose a different country's law to govern the receivable contract and the receivables?

Under the Civil Code of the Republic of Lithuania, which incorporated the Convention on the law applicable to contractual obligations opened for signature in Rome, the parties are free to choose which country's law shall govern their contract. This provision applies even where both parties are residents of Lithuania and the fulfilment and obligations under the contract will take place in Lithuania. However, the choice of the law applicable to a contract as made by the agreement of the parties may not be enough grounds for refusing to apply the 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. Mandatory provisions of laws of the Republic of Lithuania or those of any other State most closely related to a dispute shall be applicable regardless of the fact that another foreign law has been agreed upon by the parties. In deciding on these issues, the court shall take into consideration the nature of these provisions, their purpose and the consequences of their application or non-application. There are various exceptions to these rules governing the choice of law. The Civil Code of the Republic of Lithuania imperatively states that a contract of insurance shall be governed by the law of the State where the domicile or the place of business of the insurer is located; a contract of insurance in respect of an immovable thing shall be governed by the law of the State in the territory in which the thing is located. Contracts concluded in a stock exchange or auction shall be governed by the law of the State in which the stock exchange or auction is located.

**1.2** If your country's law governs the receivables, and the seller sells the receivables to a purchaser in another country, can the seller and the purchaser choose the law of the purchaser's country or a third country to govern their sale agreement? Conversely, if another country's law governs the receivables, and the seller is resident in your country, are there circumstances where it would be beneficial to choose the law of your country to govern the sale agreement?

The parties to a contract with respect to the sale of receivables are free to choose which country's law shall govern their contract. However the mandatory legal provisions governing the receivables will be applicable. This applies whether or not the purchaser and the seller are in different countries and whether or not the parties choose the law of a jurisdiction in which one of them is located.

Even if the parties choose Lithuanian law to govern their contract, the mandatory legal norms governing the receivables will be applicable. It is only possible to determine whether the choice of Lithuanian law to govern the sale of receivables would be beneficial the parties after due examination of the circumstances in each case.

**1.3** In either of the cases described in question 1.2 above, will your country's laws apply to determine (i) whether the sale of receivables is effective as between the seller and the purchaser; (ii) whether the sale is perfected; (iii) whether the sale is a true sale; and/or (iv) whether the sale is effective and enforceable against the debtors?

(i) The choice of Lithuanian law in respect of a contract of sale of receivables is possible subject to the mandatory provisions of the laws of the country which governs the receivable contract, in the same way that the choice of the law of another country is subject to Lithuanian mandatory provisions.

(ii/iv) The choice of law for an agreement to sell receivables applies only to determine the rights and responsibilities as between the seller and the purchaser - the rights and obligations between the purchaser and the underlying debtors will be governed by the law of the receivables.

(iii) In order to make sure that a sale of receivables is a true sale, the sale contract must be enforceable under the law governing that contract (see paragraph (i) above).

The sale must not be invalidated by the mandatory rules of insolvency laws, and the contract itself must have been effective to transfer the receivables under the law governing the receivables.

- (iv) According to the provisions of the Civil Code of the Republic of Lithuania, the choice of law made by the parties in the assignment of a claim may not be applied against the debtor without his consent to the application of the chosen law. This means that provisions on the choice of law which put the creditor into a more favourable position with respect to the debtor shall be unenforceable without prior consent from the debtor.

## 2 Receivable Contracts

**2.1 In order to create an enforceable debt obligation of the debtor to the seller, (a) is it necessary that the sales of goods or services are evidenced by a formal receivable contract; (b) are invoices alone sufficient; and (c) can a receivable "contract" be deemed to exist as a result of historic relationships?**

- (a) In order to create an enforceable debt obligation of the debtor to the seller, it is not always necessary that the sale of goods or services be evidenced by a formal receivable contract, as the laws in some of the cases provide for the possibility of concluding so-called oral contracts. However, in order to create an enforceable debt obligation, which according to law should emerge from a written contract or a contract confirmed by the notary, the form of such contracts should correspond to the form foreseen in the laws. A contract which is not in compliance with the form prescribed by the law, shall be considered null and void only in cases where the law so explicitly provides. In other cases of incompliance, the contract shall not be automatically considered null and void and the respective party shall be entitled to prove existence of such contract by measures provided by law.

Where, in accordance with the law or agreement of the parties, a contract must be formed in a simple written form, it may be made either by drawing up one document signed by the parties, or by means of the parties exchanging written communication, telegrams, telephone messages, facsimile communication or any other information transmitted over communication terminal equipment, providing that the protection of the text is guaranteed and the signature of the sending party can be identified. A contract may be formed by the acceptance of an order to be carried out. Amendments and supplements of a contract must be made in the form in which the contract had to be made, except in cases where otherwise is established by law or by the contract. If the parties have agreed to adopt a specified form for a contract under conclusion, the contract shall be deemed concluded only where it conforms to this agreed form, even though pursuant to the laws such form is not mandatory for contracts of that concrete class.

- (b) The invoice alone, which is signed by both parties, is not sufficient to prove contractual relations between the parties and might be considered only as one type of

evidence of such contractual relationship.

- (c) The receivable "contract" may be deemed to exist as a result of a historic relationship. However, in the case of a dispute, the party which claims that the obligation exists as result of a historical relationship will be obligated to prove it.

**2.2 Can the seller sell a receivable (a) without the debtor's consent if the receivable contract does not prohibit assignment and does not expressly permit assignment; (b) without the debtor's consent even if the receivable contract expressly prohibits assignment; or (c) without being liable to the debtor for breach of contract even if the receivable contract expressly prohibits assignment?**

As a general rule, a creditor may without the consent of the debtor assign to another person all or part of the claim, provided that the transfer does not contradict the law or the contract, or that the claim is not related to the person of the creditor. The assignment of the claim may not infringe upon the rights of the debtor and render his obligation more onerous.

- (a) If a receivable contract does not prohibit assignment or transfer, the creditor can sell the receivable without the consent of the debtor, provided it does not fall into one of a few exceptional categories. These categories include contracts where assignment is imperatively prohibited by legal norms, and are such as:
- (i) the assignment of a claim against which recourse cannot be taken is prohibited;
  - (ii) judges, public prosecutors and advocates cannot become assignees of claims in respect of which litigation has arisen in the court within the jurisdiction of which they exercise their functions; and
  - (iii) it is prohibited to assign a claim which is inseparably related to the person of the creditor (claim for maintenance, claim for compensation of damage caused by impairment of health or loss of life).

In addition, in the event that the person of the creditor is of essential importance to the debtor, the creditor shall be prohibited from assigning the claim without the consent of the debtor.

A commercial contract will not generally fall within one of these exceptional categories. However, the fact of the assignment of the receivables may be invoked against third persons and the debtor from the moment when the debtor acquiesced to it, or received a copy of the document confirming the fact of the assignment of the receivables, or any other evidence of the fact of the assignment of the receivables.

- (b) If the receivable contract expressly prohibits assignment, the seller cannot assign the receivable contract without the debtor's consent. If the seller sells a receivable without the debtor's consent, assignment of the receivable contract will be ineffective against the debtor. However, the assignment agreement will be valid between the assignor and the assignee and the ineffectiveness of the assignment will generally place the assignor in breach of it.
- (c) If the receivable contract expressly prohibits assignment, the seller will be liable for the breach of

the contract. Therefore, an assignment agreement will be valid between the assignor and the assignee, and assignor will be also liable to the assignee for the invalidity of the sale of receivables.

### 2.3 Do your country's laws (a) limit rates of interest on consumer credit, loans or other kinds of receivables; or (b) provide a statutory right to interest on late payments?

- (a) Consumer credit loans are regulated by the Civil Code of the Republic of Lithuania and the Law on Consumer Protection. There is no specific maximum interest rate set out in law, but the loan will be voidable if it constitutes "unfair contractual terms". The test is applied considering the facts and circumstances at the time the loan is taken out.
- (b) Lithuanian laws provide a statutory right to interest on late payment. According to the Civil Code of Republic of Lithuania, if a debtor fails to meet his/her monetary obligation when it falls due, he/she shall be bound to pay an interest at the rate of 5% per annum upon the sum of money subject to the non-performed obligation unless any other rate of interest has been established by law or by contract. Where both parties are businessmen or private legal entities, an interest rate of 6% per annum shall be payable for a delay in payment. The debtor shall also be bound to pay the above-mentioned interest on the sum adjudged to the creditor for the period from the moment of the commencement of the case in the court until the final execution of the judgement.

### 2.4 Where the receivables contract has been entered into with the government or a government agency are there different requirements and laws that apply to the sale of receivables?

In general, there are no different requirement and laws that apply to the contract in relation to sale of receivables if such receivable contract has been entered into with the government or a government agency.

## 3 Asset Sales

### 3.1 In your country what is necessary generally in order for a seller to sell accounts receivable to a purchaser?

A sale of receivables by assignment requires an agreement between the assignor and the assignee. Formation of a contract upon assignment of receivables shall be subject to the same formalities as prescribed for the principal obligation (if the principal obligation contract was concluded in writing, a contract upon assignment of receivables should be concluded in writing as well). An agreement for the assignment of future receivables will take effect without any further action as an assignment of the receivables as they come into existence. The assignment will take effect if certain procedural requirements are fulfilled: (a) the assignment is concluded in a form prescribed in the principal contract; (b) all documents or their copies, confirming the debt obligations, including

additional obligations, are transferred to the purchaser of the receivables; and (c) notice is given to the debtor. The assignee will be able to sue the debtor in its own name without joining the assignor as a separate party. An assignment is perfected by giving notice to the debtor, if the above-mentioned procedures are fulfilled. The notice does not have to be in a specific form, nor need it come directly from the assignor. The consequences of giving notice, and not giving notice, are discussed under question 3.2 below.

A receivable may also be sold by novation. Novation requires the agreement of all parties. The parties by their agreement substitute the existing obligation with a new obligation, with different a subject matter or different kind of performance.

### 3.2 What is required for the sale of accounts receivable to be perfected against any later purchasers of the same accounts receivable from the seller?

If the debtor is not acquainted with the fact of the assignment of the accounts receivable, the fact of the assignment of the accounts receivable may not be invoked against third persons and the debtor. Therefore the debtor has the right to perform the obligation in favour of the assignor and such performance of the obligation by the debtor shall be deemed to be right. If the debtor is not acquainted with the fact of the assignment of the accounts receivable and the accounts receivable have been assigned several times, the performance of the obligation in favour of any subsequent creditor also shall be deemed to be right. In order to avoid the said situations, the sale of the accounts receivable should be perfected. An assignment is perfected by giving notice to the debtor. The notice does not have to be in a specific form, nor need it come directly from the assignor.

### 3.3 What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

A promissory note is assigned by transferring it via endorsement (the entry of the holder of the mortgage bond by which the mortgage bond is transferred to another person).

Mortgage loans may be transferred by assignment, as with any other loan. However, a mortgage is assigned by being transferred by endorsement (the entry of the holder of the mortgage bond by which the mortgage bond is transferred to another person), and transfer of the accompanying mortgage will require registration with Registry of Hypothec.

Consumer loans may be transferred by assignment, as with any other loan. However the assignment of the consumer loan may be disputed by the consumer, if the consumer loan is assigned without the consumer's consent, where such transfer may reduce the guarantees for the consumer.

3.4 Must the seller or the purchaser notify debtors of the sale of receivables and/or obtain the consent of debtors to the sale in order for the sale to be effective against the debtors, that is (i) to allow the purchaser to enforce the debts directly against the debtors; (ii) to prevent the debtor and the seller from amending the receivable contract without the purchaser's consent; (iii) to prevent the debtor from setting off receivables against any obligations of the seller to the debtor; or (iv) to require the debtors to pay the purchaser rather than the seller?

A debtor must be notified of an assignment before the receivable can be enforceable against it by the purchaser. Until the debtor receives a notice, the debtor may validly discharge its debt by paying the seller, the debtor and the seller may amend the underlying agreement and the debtor may raise as defences against the purchaser all the defences which it could have raised against the seller, including set-off. The purchaser will only be able to sue the debtor in its own name if it has given notice and the assignment otherwise fulfils the criteria for an assignment pursuant to the Civil Code of the Republic of Lithuania.

Priority between competing assignments is determined by the order in which due notice of the assignments is given to the debtor, not the order of entry into the agreements themselves. Therefore, a notified assignment is valid in terms of its priority over any other assignment of which notice is given to the debtor later on. In the case of a dispute over the pretension to a right of claim, the debtor shall have the right to refuse payment to any concrete creditor and perform the obligation by depositing a sum into the depository account of a notary office, bank or any other credit institution. In the instances where the debtor pays the debt being aware of the dispute, he shall be performing this at his own risk.

3.5 Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., debtor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics?

The sale document of the receivables should contain information about the sold receivables, which enables estimation of the sold receivables and the debtor (debtor's name, the agreement number, invoice date, etc.). There are no other requirements in relation to specific information. However, the seller should be bound to hand over to the new creditor the documentary evidence pertaining to the sold receivables and the accessory rights, including the right to receive interest. If such documents remain of importance to the seller, the new creditor shall only be entitled to copies thereof which are confirmed within the established order.

## 4 True Sale

4.1 In general, what is necessary for a sale of receivables to be a true sale? Among other things, to what extent may the seller retain credit risk, interest rate risk, or control of collections on receivables?

A sale of receivables is considered a true sale if it fulfils the

following conditions:

- the contract on sale of receivables is concluded in same form as a principal contract;
- all documents or their copies, confirming the debt obligations, including additional obligations, are transferred to the purchaser of the receivables; and
- the debtor is notified of the sale of the receivables.

The sale is considered a true sale if it is not characterised as sham transaction. A transaction may be held to be a sham if the written document does not properly reflect the actual agreement between the parties. If the sale is held to be a sham transaction, the rights and obligations of the parties will be estimated based on the actual agreement between the parties.

The assignor (previous creditor) shall be liable towards the assignee (new creditor) for the invalidity of the assigned claim, although he shall not be liable for the debtor's non-performance of the obligation arising from this claim, except in the cases when the assignor gives a surety to the assignee for the debtor. When the right to claim is assigned gratuitously, it shall be deemed that the assignor affirms that the right to claim exists, and is owned by him even if such affirmation is not provided for by the contract (statutory guarantee), with the exception of cases where the assignee acquired the right to claim at his own risk, or at the time of the assignment, and he knew or should have known of the uncertain nature of the claim. Where the claim is assigned onerously, the assignor shall only be liable for the insolvency of the debtor that existed at the time of the assignment, and only to the extent of the amount which he received for that assignment.

4.2 Can there be a true sale of receivables that do not yet exist (as in a "future flow" securitisation), so that a single sale on a certain date results in the purchaser automatically being the owner of the "sold" receivables immediately when they come into existence?

Under Lithuanian law, it is possible to conclude an agreement for the assignment of receivables that do not exist yet. This agreement will operate to assign the receivables as soon as they come into existence, i.e. the sale will be contingent. The requirements in order to perfect the assignment are the same as those for the assignment of already existing receivables, including the notice to the debtor. If the assignment is perfected and the seller does not have any other obligations in order to earn the receivables, the receivables will be transferred to the purchaser automatically as they arise.

## 5 Security Interests

5.1 What is necessary for the purchaser to grant a security interest in accounts receivable under the laws of your country and for the security interest to be perfected?

A security interest may be granted by simple contract between the purchaser and the security provider. However there are additional requirements for the perfection of the different means of security interests. If fulfilment of the obligations on the sale of receivables is secured by the

mortgage or pledge, the mortgage or pledge bonds should be registered in the Register of Hypothec to become effective.

**5.2 What additional or different requirements apply to security interests in or connected to promissory notes, mortgage loans, consumer loans or marketable debt securities?**

The following additional requirements apply to the granting of security interests in:

- (a) a promissory note - the security endorsement;
- (b) mortgage loans. A mortgage is an accessory right under Lithuanian law and therefore shall be passed to the purchaser automatically with the receivables which it secures. Therefore there are no additional requirements for the security interests of a mortgage loan. However, the mortgage is assigned by transferring the mortgage bond and executing endorsement (the entry of the holder of the mortgage bond by which the mortgage bond is transferred to another person). In addition, due transfer of the accompanying mortgage will require registration with the Registry of Hypothec;
- (c) consumer loans - none; and
- (d) marketable debt securities - none.

**5.3 If the purchaser grants a security interest in the receivables under the laws of the purchaser's country or a third country, and that security interest is valid and perfected under the laws of that other country, will it be treated as valid and perfected in your country?**

The parties to an agreement are in general free to choose which system of law shall govern it, and this law shall determine the contractual rights between them. However, the law governing the security interest determines the rights and obligations which exist between a purchaser and the underlying debtor. Thus, the effect of granting security over a receivable, the application of rules of priority to that security and the requirements to perfect that security against the underlying debtor will be determined by the law governing the security interest.

## 6 Insolvency Laws

**6.1 If after the sale of receivables the seller becomes subject to an insolvency proceeding, will your country's insolvency laws prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the receivables ("automatic stay")? Does the answer to this question (or the questions below) depend on whether the sale is a true sale?**

If the sale of receivables is not yet completed and the sale is not a true sale, there will be an automatic stay subject to prior written notice to the purchaser after starting the bankruptcy case, and thereafter the purchaser will be not able to collect, transfer or exercise any other rights over the receivables, thus becoming an ordinary creditor of the seller in the bankruptcy proceedings.

If the sale is a true sale, the purchaser will be able to collect,

transfer or exercise any other rights over the receivables.

**6.2 If there is no automatic stay, could the insolvency official prohibit exercise of rights by the purchaser by means of injunction, stay order or other action?**

Any asset can be included in the bankruptcy estate by its mere listing by the bankruptcy administrator. Following this, no one else may deal with such asset until a court decides whether it belongs to the bankruptcy estate.

**6.3 Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?**

This is not possible under Lithuanian law.

**6.4 Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the insolvency proceeding?**

After the court's decision to institute bankruptcy proceedings becomes effective and the administrator of the bankruptcy is appointed, the administrator of the bankruptcy has an obligation to examine the contracts of the enterprise in bankruptcy which were entered into within at least 36 months before the institution of bankruptcy proceedings, and bring actions for the invalidation of those contracts which are contrary to the objectives of the enterprise's activities and/or which could have led to the inability of the enterprise to settle with creditors. Therefore, if the assignment of the receivables is recognised as contrary to the objectives of the enterprise's activities and/or could have led to the inability of the enterprise to settle with creditors, the assignment of the receivables may be recognised as invalid by the court's decision.

**6.5 What is the effect of the initiation of insolvency proceedings on any future sales of receivables or on receivables that have been assigned but have not yet come into existence?**

After the court's decision to institute bankruptcy proceedings becomes effective, the company is not entitled to fulfil any of its obligations. Therefore, the seller is not entitled to conclude any agreements on the future sales of receivables. If the receivables have been assigned but have not yet come into existence and the sale of the receivables is a true sale, the sale of receivables is valid and the purchaser is entitled to collect the receivables. However, if the receivables have been assigned but have not yet come into existence and the sale of the receivables was not a true sale, the insolvency officials will be entitled to recognise them as the seller's receivables. In this case the purchaser will be entitled to claim from the seller as the creditor.

## 7 Special Purpose Entities

- 7.1 Does your country have laws specifically providing for establishment of special purpose entities for securitisation? If so, then what does the law provide as to (a) requirements for establishment of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?**

There are no laws specifically providing for establishment of special purpose entities for securitisation.

- 7.2 If an agreement with a special purpose entity provides that the other parties will not take legal action against it or that they will not commence an insolvency proceeding against it, is that provision valid and enforceable?**

The Code of the Civil Procedure of Republic of Lithuania foresees that refusal of the right to plead to the court is invalid. Therefore the provisions of an agreement which foresees the restriction or limitation of the right to take legal action or commence an insolvency proceeding against a special purpose entity would be considered as invalid.

- 7.3 To what extent will a limitation on the liabilities of the special purpose entity (limited, for example, to available funds) be valid and enforceable?**

There are no exceptions with respect to the liability of special purpose entities. Such entity will be liable for its obligations towards all its assets.

- 7.4 If the organisational documents or agreements of a special purpose entity provide that the directors or managers will not commence an insolvency proceeding involving the entity unless required under applicable law, is that provision valid and enforceable?**

There is no clear answer as to whether a restriction or limitation in the articles of association of a company on the liability of the manager to bring insolvency proceedings may be invalidated or considered unenforceable. On the one hand, there is a right established in bankruptcy laws of the manager to institute a bankruptcy case, but it is not stated as an obligation to do so. On the other hand, the manager has a general duty of care towards the entity as such. Therefore, such provision in the articles of association might be considered to be in breach of the duties of the manager.

## 8 Regulatory Issues

- 8.1 Does your country have laws restricting the use or dissemination of data about or provided by debtors? If so, do these laws apply only to consumer debtors or also to enterprises?**

The Law on Legal Protection of Personal Data controls the processing of information on individuals. This Law regulates relations arising in the course of the processing of personal data by automatic means, and during the processing

of personal data by other than automatic means in filing systems. Data includes information kept on automatic systems (e.g. a computer) or in an organised filing system. The Law does not cover information on corporations.

Data controllers must comply with a set of principles that restrict the processing and keeping of personal data. The most basic principle is that the processing of personal data must be fair and lawful.

Data controllers have the right to process and disclose the data to third parties which have a legitimate interest in the data, as well as the personal identification number of data subjects who have failed to fulfil in a timely and proper manner their financial and/or property obligations (hereinafter “debtors”) for the purposes of evaluation of their creditworthiness and debt management, provided that all the data protection requirements set out in this Law and other legal Acts are duly complied with. The data controller may disclose the debtors’ personal data if conditions foreseen in the Law are fulfilled.

- 8.2 If the debtors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your country? Briefly, what is required?**

For a mere receivable assignment, there should not be any specific consumer protection law requirements. However, as is mentioned above, the consumer has the right to dispute those provisions of the agreement which are considered as unfair. The assignment of the consumer loan may be disputed by the consumer if the consumer loan is assigned without the consumer’s consent, where such transfer may reduce the guarantees for the consumer.

- 8.3 Assuming that the purchaser does no other business in your country, will its purchase and ownership or its collection and enforcement of receivables result in it being required to qualify to do business or to obtain any licence or it being subject to regulation as a financial institution in your country?**

The purchaser will not be required to qualify to do business in the Republic of Lithuania. The acquisition of the receivables and their collection and enforcement do not require a financial institution licence. The issue of the establishment of a permanent residence or any other entity for such purposes and tax-related matters, and respective registration with tax authorities in relation to such activity, should be examined in each case.

- 8.4 Does your country have laws restricting the exchange of your country’s currency for other currencies or the making of payments in your country’s currency to persons outside the country?**

There is no restriction on the exchange of Lithuanian currency for other currencies or on the making of payments in Lithuanian currency to persons outside the country.

## 9 Taxation

**9.1 Will any part of payments on receivables by the debtors to the seller or the purchaser be subject to withholding taxes in your country? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?**

In general, if the purchaser is not a resident of Lithuania, payment on receivables is not subject to Lithuanian withholding taxes. However, the debtor may be required to withhold taxes from a payment on receivables to the seller or purchaser depending on the nature of the receivables, i.e. whether receivables bear interest and where the seller or purchaser is located.

The interest on receivables is subject to Lithuanian withholding taxes payable by the debtor. If the debtor, who is a resident of Lithuania, pays interest to a seller or purchaser who resides outside Lithuania, the interest shall be subject to Lithuanian withholding taxes. However, Lithuanian debtors may benefit from 0% withholding taxes on interest payments to Latvian entities due to exceptions provided in the Treaty between the Republic of Lithuania and the Republic of Latvia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

**9.2 Does your country require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?**

There are no any requirements that a specific accounting policy be adopted for tax purposes by the seller or purchaser in the context of securitisation.

**9.3 Does your country impose stamp duty or other documentary taxes on sales of receivables?**

The Republic of Lithuania does not impose stamp duty or other documentary taxes on sales of receivables.

**9.4 Does your country impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?**

In general, such taxes are imposed; however:

- (i) the sale of receivables will not be subject to VAT; and
- (ii) in the case of servicing the receivables, if the purchaser is not a resident of the Republic of Lithuania and the place of the provision of services is not the Republic of Lithuania, then Lithuanian VAT regulations shall not be applicable.

**9.5 If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims against the purchaser or on the receivables or collections for the unpaid tax?**

Assuming that the underlying supply of goods or services that gave rise to receivables was not exempt for VAT purposes, the supplier of goods or services is required to account for the VAT to the tax authority. The tax authority would not be able to make claims against the purchaser for the unpaid tax, unless there are special circumstances concerning the seller's ability to pay VAT, in which case the tax authorities are entitled to require the purchaser to pay value added tax.

The tax authority would not be able to make claims against the receivables or collections for the unpaid tax.

**9.6 Assuming that the purchaser conducts no other business in your country, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the debtors, make it liable to tax in your country?**

See the answer under question 9.5 above. If the purchaser is a resident of Lithuania, it will be taxed in the same manner as any Lithuanian operating company. No other regime is applied.

**Tomas Rymeikis**

Attorneys at Law Foigt & Partners/Regija Borenius  
Jasinskio 16A  
01112 Vilnius  
Lithuania

Tel: +370 5 2514306  
Fax: +370 5 2608327  
Email: [t.rymeikis@regija.lt](mailto:t.rymeikis@regija.lt)  
URL: [www.regija.lt](http://www.regija.lt)

Partner Attorney at law Tomas Rymeikis leads the M&A and corporate practice group at Regija Borenius and specialises in the capital markets and banking & finance areas of law. In addition, he has vast experience in handling international M&A and securitisation transactions that involve Lithuania. During his private practice Tomas Rymeikis led the team of Regija Borenius experts in a number of M&A deals and various investment projects.

Next to private practice, Tomas Rymeikis is furthering his legal education through doctoral legal studies at Mykolas Romeris University, where he has written and published scientific articles on the accounting of securities with stock brokerage firms and the transfer of ownership title to securities. At the same time he lectures on civil and commercial law at the University and actively participates in a social life while being a member of the boards of a few chambers of commerce.

**Eugenijus Filonovas**

Attorneys at Law Foigt & Partners/Regija Borenius  
Jasinskio 16A  
01112 Vilnius  
Lithuania

Tel: +370 5 2649555  
Fax: +370 5 2608327  
Email: [e.filonovas@regija.lt](mailto:e.filonovas@regija.lt)  
URL: [www.regija.lt](http://www.regija.lt)

Eugenijus Filonovas is associate lawyer at Attorneys at Law Foigt & Partners/Regija Borenius. He specialises in company law, labour law, contract law, as well as intellectual property (trademarks). He has much experience in litigation. Eugenijus Filonovas was legal counselor to of one of the State-owned financial companies, which is involved in the credit guarantee business. He was in charge of drafting legal Acts concerning the activity of companies involved into the credit guarantee business. Eugenijus Filonovas was admitted to the Lithuanian Bar in 2004.

**REGIJA BORENIUS**

Established in 1993, Attorneys at Law Foigt & Partners/Regija Borenius is one of the most experienced law firms in the competitive Lithuanian legal services market. It is a full service business law firm with 20 Lithuanian lawyers. Our main focus is a comprehensive selection of legal services related to all aspects of civil law, with specific emphasis on various commercial relations.

The law firm's greatest strength lies in its Company Law and M&A, Real Estate and Construction, Environmental, Dispute Resolution as well as Intellectual Property practices. However, the range of services covers the entire realm of business law.

Responding to the ever-growing Baltic and European market demands, Regija Borenius formed in 2004 a strategic partnership with the Fenno-Baltic group of law firms, with one of the leading law firms in Finland, Attorneys at law Borenius & Kemppinen Ltd., also with offices in Latvia (Liepa, Skopina /Borenius) and Estonia (Luiga Mody Hääl Borenius), providing high quality legal services throughout the Baltic region, Finland and beyond.