I. General questions

1. Can a financial market participant engage in activities related to virtual assets?

The Position of the Bank of Lithuania on virtual assets and initial coin offering[1] states that financial market participants (FMPs) under supervision may be engaged in activities or provide services related to virtual assets only in two cases defined in the Position (subparagraphs 2.2 and 2.3 of section I of the Position):

1) third-party services related to virtual assets are integrated into an environment managed by the FMP. Among other things, it should be taken into account whether the environment managed by the FMP is intended for the performance of the key activities of the FMP rather than promotion or maintenance of third-party services;

2) the account information service provided by the FMP is integrated into an environment managed by third parties whose key activities are related to virtual assets.

An FMP should ensure separation of financial service activities from activities related to virtual assets, and ensure proper and not misleading communication about the nature of the services that it provides. An FMP should ensure that, in an environment under its management (its website, mobile application, platform, ATM, client email, etc.) or an environment managed by third parties where the FMP provides financial services, information (links) provided by the FMP for internal and external communication does not create the conditions for misleading customers or create an impression that the FMP provides services associated with virtual assets and/or such services are supervised and subject to the same security or service standards as those applicable to financial services. The position also states that an FMP may provide services to customers engaged in activities associated with virtual assets. When providing services, an FMP must ensure that the requirements of legal acts implementing prevention of money laundering (ML) and terrorist financing (TF) are complied with and respective measures for the ML/TF risk management are taken.

2. The Position of the Bank of Lithuania states that financial market participants cannot provide services associated with virtual assets, yet in certain cases companies wishing to use blockchain technology must purchase a small part of virtual assets. Does the current position of the Bank of Lithuania imply that companies cannot use a public blockchain technology?

Holding of virtual assets for the purposes of using the technology is not considered to be virtual assets-related activities or services. FMPs may hold a small quantity of virtual assets for the purposes of using blockchain technology in their activities; nevertheless, provision of services to customers should be expressly separated from virtual assets.

3. Financial market participants see possibilities for placement of security tokens via crowdfunding platforms running in Lithuania. Can crowdfunding platforms make equity ICOs?

An equity ICO can be made via crowdfunding platforms. In cases where security tokens are issued (granting the right of ownership, management of the company or granting other rights to shareholders, such as the right to receive part of the company's profit in the form of, for example, dividends, providing for payment of interest or redemption of tokens, etc.) through a crowdfunding platform, the requirements for such activity provided in the Republic of Lithuania Law on Crowdfunding and the Republic of Lithuania Law on Securities shall apply (see *II. Questions concerning the issue of security tokens*).

[1] https://www.lb.lt/uploads/documents/docs/21410_afc0daafce702d949014d46ea0a97550.docx

4. Can an operator administrating a crowdfunding platform launch a project to raise funds in virtual assets?

A crowdfunding platform operator is an FMP under supervision of the Bank of Lithuania; therefore, activities associated with virtual assets (virtual assets-related operations, exchange of virtual assets) are incompatible with financial services provided by the crowdfunding platform operator. If the operator would like to engage in virtual assets-related business, it should legally separate the latter activities from financial service activities and raise funds using third-party services.

5. A company does not provide financial services but it has an online platform which it plans to use for trading in virtual assets. Does such company need to acquire a licence?

Sale of virtual assets or entering into other transactions concerning virtual assets, where such activities do not have features of financial services, would not be considered FMP activities; accordingly, such activities are not regulated by legal acts. Nevertheless, in cases where such company acts as an intermediary in relation to transactions with virtual assets which have features of financial instruments (e.g. virtual assets-related contracts for differences), the company's activities shall be considered to be provision of investment services and thus be subject to the requirements set forth in the Republic of Lithuania Law on Markets in Financial Instruments (the duty to obtain a financial brokerage firm licence, comply with the requirements set for such activities, etc.).

6. A company which is not providing financial services intends to issue virtual asset tokens as a form of donation. Residents purchasing tokens will help to raise the company's capital and develop its activities. The holders of tokens will not acquire any financial instruments and the purchased tokens will only serve as a confirmation of the persons' involvement in the donation process without granting any additional rights, i.e. the company will not undertake to repay to the holders of the tokens the value of their donation, the holders of tokens will not be entitled to participate in the company's management process, receive part of its profit, interest or other financial remuneration. Would such activities be subject to any special legal regulation?

If a company raised funds as donation and tokens granted no ownership or other shareholder rights to their holders, the requirements of legal acts regulating the financial market would not be applicable unless other relevant conditions exist. Nevertheless, if tokens are to be used for establishment of an FMP, legislative requirements for capital would apply (see Question 10).

7. Can a company providing financial or insurance services accept payment for services in virtual assets?

As this company would be an FMP under supervision of the Bank of Lithuania, it would not be in a position to directly accept payments in virtual assets. FMPs are not allowed to receive payments in virtual assets for goods or services. In order to receive such payments, the company should use third-party services.

8. Can a financial market participant allow customers to use third-party services in its managed environment where it provides financial services, i.e. pay in virtual assets, exchange virtual assets into traditional currencies, or invest in virtual assets?

Although activities associated with virtual assets could be carried out by third parties, an FMP should ensure that financial service activities are clearly separated from activities associated with virtual assets. The FMP should not link its financial services with the virtual assets-related services provided by third parties, use its name in relation to the activities related to virtual assets, or create an impression that it provides services associated with virtual assets.

As specified in subparagraph 2.2 of section I of the Position, in cases where third-party services related to virtual assets are integrated into an environment managed by an FMP, such services must be risk-limited. Providers of services associated with virtual assets must take mitigating measures, such as customer identification of no lower level than that applied by the FMP, limited movement of virtual assets, virtual assets coverage with real assets, etc. Limited movement of virtual assets means that, in an environment managed by the FMP, third-party activities related to virtual assets are only possible in a closed environment managed by the FMP, without allowing users to transfer their virtual assets to or from the environment managed by the FMP.

9. A person intends to open a payment account in an electronic money institution for the settlement of transactions in virtual assets. Can simplified due diligence be carried out in respect of such customer, as provided for in the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing (in cases where a limit of EUR 1,000 or an equivalent amount in foreign currency is imposed on the total amount transacted in a calendar year and in cases where an amount of EUR 500, or an equivalent amount in foreign currency, or more is redeemed in cash in that same calendar year upon the electronic money holder's request)?

According to Article 15 of the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing, simplified customer due diligence may be carried out where lower risk of money laundering and/or terrorist financing is identified based on the risk assessment and management procedures established by financial institutions or other obliged entities, and other terms and conditions set forth in this Article are met. Activities associated with virtual assets, including trade in virtual assets, pose higher money laundering and/or terrorist financing risk; therefore, measures intended for simplified due diligence would not suffice.

10. A company that does not provide financial services is planning to use the funds raised through an ICO to form the capital of a licensed financial market participant. Is this possible?

The answer depends on the requirements for the capital of an FMP set forth in legal acts. Let's say that the funds raised through ICO are intended to be used for the formation of a bank's capital. During the authorisation process, the following aspects would be taken into account: 1) whether the bank being established holds the minimum capital required by the Republic of Lithuania Law on Banks; 2) whether there are no reasonable grounds to suspect that, in order to acquire a qualifying holding of the bank's capital, money laundering or terrorist financing activities, as defined in the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing, are being or were carried out or attempted, or that the proposed acquisition could increase the risk thereof; 3) whether, after the issue of a licence, the bank being established will be able to satisfy the capital adequacy ratios established in Regulation (EU) No 575/2013. The founders of the bank must be able to identify and disclose all purchasers of tokens irrespective of the amount of the purchase and whether the placement of tokens is of the donation or equity type, and establish how the purchasers of tokens acquired the invested funds. As placement of tokens is considered to be a particularly risky and unreliable instrument for raising capital, the bank should prove that it is also prepared to rely on other sources to satisfy the capital adequacy requirements for the entire period of activity. The capital formed by means of placement of tokens would be particularly closely assessed and could be an obstacle for the issuance of a banking licence. Please note that, having been granted authorisation from the Bank of Lithuania, a bank or another FMP that is already established would not be able to issue virtual asset tokens.

11. A company is planning to issue virtual asset tokens that would grant their holders the right to participate in the management of the company and receive dividends. Would legal acts regulating the financial market be applicable to such activities of the company? If yes, what legal acts would apply?

It is likely that, in this case, tokens would be deemed to be equivalent to securities; therefore, the provisions of the Republic of Lithuania Law on Securities would apply (see *II. Questions concerning the issue of security tokens*). This means that before starting a placement of tokens in Lithuania, the company should draw up and publish a prospectus approved by the Bank of Lithuania (except for the exemptions set out in the law, e.g. if the total value of the sales of all securities offered by the company in Member States is up to EUR 5 million per year, if securities are offered only to professional investors, etc.). In case of planning secondary circulation of tokens, it should be carried out in accordance with the procedure set out in the Republic of Lithuania Law on Markets in Financial Instruments. If the company is an FMP under supervision of the Bank of Lithuania and provides financial services (e.g. insurance company, bank, electronic money institution, etc.), it could place such tokens only after separating its financial services from activities associated with virtual assets.

12. Can a financial brokerage firm act as an intermediary in the placement of virtual asset tokens through a trading platform that it administers?

A financial brokerage firm is an FMP whose activities are under supervision of the Bank of Lithuania; therefore, it cannot engage in activities related to virtual assets. The latter activities are incompatible with investment services provided by a financial brokerage firm. Should, nevertheless, a financial brokerage firm decide to engage in intermediation in the placement of virtual assets, it should expressly separate such activities from its main services. The FMP should ensure that third-party services related to virtual assets and provided in an environment under its management (its website, mobile application, platform, ATM, client email, etc.) are risk-limited (e.g. customer identification of no lower level than that applied by the FMP, limited movement of virtual assets, virtual assets coverage with real assets, or application of other mitigating measures). A financial brokerage firm may act as an intermediary in the placement of security tokens (see *II. Questions concerning the issue of security tokens*).

13. Can an electronic money institution issue electronic money using blockchain technology?

Yes, electronic money can be issued using blockchain technology, but compliance with the requirements provided for in the Republic of Lithuania Law on Electronic Money and Electronic Money Institutions should be ensured. Furthermore, the model of activities carried out must meet the requirements of the Position.

14. Can a licensed management company set up an investment fund for investment in virtual assets?

According to the Position of the Bank of Lithuania, FMPs should not participate in activities or provide services associated with virtual assets. Activities or services associated with virtual assets include setting up of funds intended for investment in virtual assets, with the exception of funds for professional investors. The company may set up an investment fund for professional investors that would invest in virtual assets; in doing so it must ensure compliance with the requirements laid down in legal acts regulating the activities of such entities and the requirements set forth in the Position of the Bank of Lithuania.

15. Is a company providing financial services alongside with third-party services related to virtual assets required to inform its customers that such activities are not supervised and risky?

An FMP must ensure that, in an environment under its management or in an environment managed third parties, information provided by the FMP for internal and external communication is not misleading and

does not create an impression that the FMP provides services associated with virtual assets and/or that such services are supervised and subject to the same security or service standards as those applicable to financial services. An FMP must ensure that in an environment under its management users of financial services are acquainted with the risks that may arise when using such services in a clear, comprehensive and unambiguous manner. Customers must confirm that they understand the risks related to virtual assets on a regular basis, not only when they start using third-party services. An FMP must ensure that the customer clearly understands that both supervised and unsupervised financial services related to virtual assets are provided in the same environment, as well as the difference between these services

II. Questions concerning the issue of security tokens

1. What document must be drawn up when planning an initial coin offering (hereinafter – ICO) for security tokens?

The requirements for a public offering of securities are established in the Republic of Lithuania Law on Securities[2]. Therefore, security tokens may be publicly offered in the Republic of Lithuania only after their issuer draws up a prospectus on the securities and submits it to the Bank of Lithuania for approval and, having received approval, makes the prospectus publically available. The duty to draw up, approve and publish a prospectus shall not be applicable if the total sales value of all offered security tokens in Member States is up to EUR 5,000,000 during a period of 12 months. The duty to draw up a prospectus shall not be applicable to higher value issues if at least one of the exceptions provided for in Article 5 of the Republic of Lithuania Law on Securities exists. Other exceptions set out in Section Two of the Republic of Lithuania Law on Securities may also be applicable.

If a company is planning an issue, the value of which is above EUR 100,000, but below EUR 5,000,000 per 12 months, investors must be furnished with a reference document drawn up in accordance with the Description of the Requirements for Drafting a Reference Document Mandatory for Public Placement of Medium-Sized Issues and Cases Where Such Document Is Not Required approved by Resolution No 03-107 of the Board of the Bank of Lithuania of 28 July 2016[3].

Drafting of a document for an issue, the value of which is below EUR 100,000, is not mandatory.

2. Can a whitepaper document drawn up by the issuer of tokens be recognised as the prospectus or reference document?

No. Special documents must be drawn up.

The prospectus is drawn up strictly in accordance with Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements[4], Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004[5], and the Rules

[2] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/11ef1d803cfb11e68f278e2f1841c088?positionInSearchResults=0&searchModelUUID=295af906-0fa5-4726-bc2e-b9f939487ee2
[3] https://www.e-tar.lt/portal/lt/legalAct/76f39781557c11e6b72ff16034f7f796
[4] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:02004R0809-20130828
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0301

for Drawing Up and Approval of a Prospectus on Securities and Publication of Information approved by Resolution No 03-106 of the Board of the Bank of Lithuania of 28 July 2016[6].

The content of the reference document is specified in the Description of the Requirements for Drafting a Reference Document Mandatory for Public Placement of Medium-Sized Issues and Cases Where Such Document Is Not Required approved by Resolution No 03-107 of the Board of the Bank of Lithuania of 28 July 2016.

3. What legal act requires authorisation of other EU Member States if our ICO is made according to the laws of the Republic of Lithuania and the EU Directive?

Offering of securities in the European Union is regulated by Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Prospectus Directive). The provisions of the Directive have been transposed into the Republic of Lithuania Law on Securities. When submitting a prospectus for approval, the Member States in which the security tokens will be placed shall be indicated. Having approved the prospectus, the Bank of Lithuania notifies the national supervisory authority of a respective Member State by forwarding the approved prospectus according to the established procedure.

It should be noted that the aforementioned Prospectus Directive allowed Member States to (individually) choose and transpose into their legal acts the EU requirements for drawing up a prospectus applicable to issues with a value between EUR 100,000 and EUR 5,000,000. Therefore, unlike in Lithuania, the EU requirement for drawing up a prospectus for issues of lower value may be established in other EU Member States. Hence, before planning to offer security tokens in other Member States, one should find out the requirements for drawing up a prospectus applicable in those Member States. Furthermore, we recommend making sure that the offering of security tokens will not trespass the limits of the EU and the requirements of non-EU Member States applicable to the public offering of securities will not be breached.

4. What legal acts obligate to obtain authorisation for public offering of securities or security tokens in non-EU Member States after drawing up a prospectus of the issue?

Approval of the prospectus by the Bank of Lithuania or the supervisory authority of another Member State grants the right to make a public offering of security tokens only in EU Member States. How public offering in non-EU Member States is treated/defined and what requirements are established for the offering of securities in those countries should be determined before the offering. Similarly, for example, a company established in Russia or Brazil, even if its prospectus was approved by a respective financial supervisory authority, cannot freely offer securities in the EU (due to applicable requirements for recognition of the prospectus, financial accounting, etc.). It may offer freely only up to EUR 100,000 in tokens across the EU.

5. If a company conducting ICOs that is registered in Lithuania, carries out activities according to the laws of the Republic of Lithuania, has drawn up respective documents and has received necessary authorisation, publicly offers securities through a server in Lithuania, can, for example, a citizen of Germany who visits the company's website and reads about the offering in English purchase the company's securities? In this case, the company did not carry out an advertising campaign in the territory of Germany, did not encourage German citizens to become investors, etc. Do such activities violate any laws?

The answer to this question is not simple and unambiguous. Generally, if a potential investor finds the information themselves, applies with a request to purchase securities (or security tokens) on their own

[6] https://www.e-tar.lt/portal/lt/legalAct/4713e291557c11e6b72ff16034f7f796

initiative and the conditions of issue do not prohibit this, the investor can purchase them. However, if the conditions of issue provide for placement only in particular Member States, following the provisions of Article 6(3) of Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, information provided on the websites of the issuer or financial intermediary or at the point of sale should not target residents of other countries. Measures for avoiding doing so could include, for example, an insertion of a disclaimer as to who are the addressees of the offering or a requirement to indicate the citizenship, place of residence of the person intending to purchase the securities, etc.

Thus, in case of unauthorised publication of information by media outlets of another country, it is recommended to have specific arguments/proof that the offering was not targeted at Germany, for example, that the website is not multilingual and also available in German, the countries in which the offering is made are listed, only the languages of the countries in which the offering is made can be chosen, before submitting an application, the investor must confirm that they are a citizen of one of the countries in which the offering is made, no agreements/contracts on advertising in Germany are available, advertising contracts expressly state that advertising is only possible in the listed countries, etc.

6. Why are so strict restrictions on placement/offering applicable in the EU territory although technical possibilities allow this?

Offering of securities is strictly regulated in order to protect investors – this is the case in all counties, only existing regulation may differ. Furthermore, a distinction between two things should be made: a public offering (primary market) and admission to trading on exchange (secondary market). In order to place securities publicly, a prospectus is required; in order to admit to trading on a regulated market (exchange), a prospectus is also required. But after admission of securities to listing on a stock exchange, they are (theoretically) accessible to any investor in the world (it only has to find a suitable financial broker (financial brokerage firm or bank). For example, if securities are placed only among Lithuanian citizens, they are not prohibited from selling those securities to citizens of Germany, France or the US in the secondary market; thus, the secondary market of securities is easily accessible to everyone. Furthermore, it should be noted that in case of secondary turnover in an unregulated market, the duty to draw up a prospectus also arises if the offer in the secondary market meets the conditions of the public offering when a prospectus is required (Article 2(62) of the Republic of Lithuania Law on Securities[7]).

7. Can a private limited liability company place security tokens publicly?

Private limited liability companies may publicly place security tokens if the tokens have the features of bonds rather than shares. Article 2(4) of the Republic of Lithuania Law on Companies[8] stipulates that shares of a private limited liability company cannot be placed and traded publicly.

Where a startup does not have authorised capital required for the establishment of a private limited liability company and, according to the requirements of the Republic of Lithuania Law on Companies, cannot place shares publicly, it is possible to raise funds necessary for the establishment of the aforementioned company and formation of its authorised capital in the form of credit; the possibilities for creditors to become shareholders and the conditions for becoming shareholders should be provided in the contracts concluded

[7] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/11ef1d803cfb11e68f278e2f1841c088?jfwid=rivwzvpvg
[8] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2af0c0d049b811e68f45bcf65e0a17ee?jfwid=rivwzvpvg

with the creditors. Please note that once creditors become shareholders, public trade in the security tokens of a private limited liability company having features of shares is not possible.

8. What securities accounting requirements would apply to an issue of security tokens by a public or private limited liability company?

For the issue of security tokens, the same principles of securities accounting as those applicable to usual securities would apply. These principles are set out in the Republic of Lithuania Law on Companies[9].

Security tokens (shares/bonds) which are publicly (not publicly) placed by a public limited liability company are subject to the same principles of securities accounting as those applicable to shares/bonds, i.e. two-tier accounting should be maintained: a public limited liability company should open a common securities account with a central depository (hereinafter – Nasdaq CSD) and conclude a contract on the management of personal securities accounts of shareholders with a financial broker (financial brokerage firm or a respective bank branch). Detailed requirements are laid down in the Republic of Lithuania Law on Markets in Financial Instruments and the rules detailing the law.

Requirements for the accounting of security tokens of a private limited liability company depend on the type of offering of security tokens, i.e. whether it is public or not. Publicly placed security tokens (only bonds) of a private limited liability company are subject to the same securities accounting requirements as those set for the accounting of securities of a public limited liability company. Accounting of not publicly placed security tokens may be carried out in accordance with the provisions of Article 41(3) of the Republic of Lithuania Law on Companies.

9. Is record-keeping of security tokens in the Central Depository possible?

Yes. Nasdaq CSD allows accounting security tokens as securities, assigning them an ISIN code.

10. Is it possible to single out groups of investors during an ICO by providing them exceptional conditions for the acquisition of security tokens?

Yes. The provisions of Article 17(2) of the Republic of Lithuania Law on Securities provide for a possibility to divide investors into groups during primary trading in securities, establishing different conditions of offering for the groups of investors (for example, subscription price, priority of subscription) provided that equal conditions of offering are ensured to all persons within the same group. Taking this into account, a group of priority investors could also be distinguished when offering security tokens, however criteria for investors within such group must be clear, specific, well-founded and set out in the issue document (reference document, prospectus, whitepaper document, etc.) in advance.

Nonetheless, equal rights to information must be ensured for all investors, irrespective of whether they are divided into groups or not. All key information related to an offering of tokens and the issuer of the tokens must be disclosed in the issue document published by the issuer of security tokens and accessible by all investors free of charge, while information provided in the advertisement must correspond to the information provided in the issue document. Even where drawing up a prospectus or a reference document is not necessary, when providing important information for potential investors it must be disclosed to all persons on equal terms (Article 12 of the Republic of Lithuania Law on Securities).

11. Can dividends be paid out to the holders of tokens in virtual assets?

[9] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2af0c0d049b811e68f45bcf65e0a17ee?jfwid=rivwzvpvg

A company issuing tokens with features of equity securities should establish the rights attached to such tokens in its Articles of Association. If security tokens grant the right to receive part of the issuer's profit, i.e. dividends, the dividends must be paid in cash (Article 60 of the Republic of Lithuania Law on Companies).

12. We are planning to conduct a private/not public placement of security tokens and would provide information only to identified investors (e.g. funds, business angels, crypto whales – mostly by email). What placement of security tokens would be considered to be not public placement?

The Republic of Lithuania Law on Securities contains only the definition of a public offering of securities. Public offering of securities is deemed to be a communication to persons in any form and by any means offering securities and presenting information on the terms of such offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe to the securities being offered (Article 2(62) of the Republic of Lithuania Law on Securities)[10]. Meanwhile, Article 2(4) of the Republic of Lithuania Law on Companies stipulates that if shares offered by a private limited liability company or an offering thereof meets at least one of the conditions set out in the Republic of Lithuania Law on Securities where, when securities are publicly offered and admitted to trading in a regulated market, publication of a prospectus is not required, such offering of shares to the shareholders, employees or creditors of such private limited liability company, professional investors meeting the criteria established in the Republic of Lithuania Law on Markets in Financial Instruments and informed investors meeting the criteria established in the Republic of Lithuania Law on Collective Investment Undertakings Intended for Informed Investors shall not be considered public offering of securities[11].

13. Which financial brokers in Lithuania already manage accounting of security tokens?

We cannot currently provide such information.

[10] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/11ef1d803cfb11e68f278e2f1841c088?jfwid=rivwzvpvg
[11] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2af0c0d049b811e68f45bcf65e0a17ee?jfwid=rivwzvpvg