

COMMERCIAL LAW

No. 31

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The Baltic Business Law Seminar to be held in Vilnius

Sorainen Law Offices is pleased to welcome you to the  
**BALTIC BUSINESS LAW SEMINAR**  
on 7 October 2004

at Radisson SAS Astorija Hotel,  
Didžioji g. 35/2, Vilnius, Lithuania

The objective of the seminar is to overview the insights of the most recent and relevant business law issues in the Baltic countries for all businesses in the region. The seminar will be targeted towards accentuation of practical issues related to doing business in the Baltics in the fields of corporate law, mergers & acquisitions, taxation, intellectual property and the EU law.

The seminar is intended for the business managers, including CEOs, CFOs, accountants and consultants, as well as everyone who is and wishes to remain active in and updated on the Baltic business environment.

For more detailed information please visit our web page [www.sorainen.com](http://www.sorainen.com) or contact us via e-mail: [sorainen@sorainen.lt](mailto:sorainen@sorainen.lt)

EUROPEAN UNION

**European Company (Societas Europaea) provides a new opportunity for international corporations**

On 8 October 2004 the Council Regulation (EC) No 2157/2001 ("Regulation") on the statute for European company ("SE") enters into force.

The SE (known by its Latin name of 'Societas Europaea') will now become a reality some 30 years after it was first proposed. The SE will give companies operating in more than one Member State the possibility of being established as one single company under Community law and that way able to operate throughout the EU with one set of rules and a unified management and reporting system rather than all the different national laws of each Member State where they have subsidiaries. For companies active across the Internal Market, the SE might offer possibilities

of reduced administrative costs and a legal structure adapted to the Internal Market, and possibility for cross-border mergers.

According to the Regulation the legal form of the SE is a public limited-liability company with capital of the SE being divided into shares. The general principle on shareholders' liability in limited liability companies applies also to the SE, where no shareholder shall be liable for more than the amount he has subscribed for. The minimal share capital of the SE may not be less than EUR 120,000, but it may be more, since, as according to the Regulation, the laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SE with registered offices in that Member State.

Estonia

**New rules for employment contracts**

Latvia

**New instructions in the areas of customs law and tax application**

Lithuania

**Most obstacles to agricultural land purchases removed**

Sorainen Law Offices

**Sorainen Law Offices have been joined by the 50th lawyer**

## LEGAL UPDATE

The management of SE comprises a general meeting of shareholders and either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on how the structure is established in the statutes of a SE. The number of members of the supervisory, management and administrative organs or the rules for determining the same shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number for the said members. It should be noted that a legal person may also serve as a member of the supervisory organ, management organ and/or administrative organ, unless prohibited by the applicable laws of that Member State in which the SE has its registered office.

The application of the SE in practise might be rather complex since, according to the Regulation, a SE shall be governed, in addition to the Regulation and SE's statutes, by the provisions of Member States' laws on implementation of the SE and other laws that would apply to a public limited liability company formed in accordance with the law of the Member State in which the SE has its registered office. As the Regulation itself sets forth the framework for the SE and its regulation, the laws of each Member State applicable to public limited-liability companies in respective Member State are important as they are applied to the activities of SE.

It should be noted that rights of employees in respect of SE have also been taken into account as Council Directive 2001/86/EC applicable to SE lays down the principles as to how the involvement of employees in the affairs of SE shall be organised. More information regarding the SE shall be covered in the forthcoming issues of Baltic Legal Update.

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## ESTONIA

### COMPETITION LAW

**Changes in the Competition Act**  
On 28.06.2004 the Parliament amended the Competition Act and the Penal Code (*Konkurentsiseaduse ja Karistus-seadustiku muutmise seadus*). The changes entered into force on 01.08.2004.

Most of the amendments are related to Estonia's accession to the European Union. Since 01.08.2004, the *market* is not limited only by the territory of Estonia, as that could significantly distort the determination of market of certain goods. Similar to the EU competition rules, the significance of hard core restrictions is increased. The European Commission has found that the agreements, practice and decisions between small and medium-sized enterprises seldom affect the trade between member states. Thus, the thresholds of minor importance were changed and since 01.08.2004 the agreements with less than 15% significance in the market in case of vertical agreements and less than 10% in case of horizontal agreements are considered to be the agreements of minor importance.

Regulation regarding block exemptions was also amended, especially in respect of using the block exemptions. A new concept was added - collective domination. Previously, the Competition Act prohibited the abuse of a dominant position in the market by one undertaking alone, now the Competition Act prohibits also the abuse by several undertakings together.

From now on, in case of price determination by an undertaking with special or exclusive rights, justified expenses of the undertaking shall be taken into account. The need for this

kind of regulation issued from the problems encountered in practice, related to calculating the amount of expenses and the mandatory notification of these expenses to the Competition Board.

The concept of business secret was specified. Additional provisions regulating competence of the Competition Board to perform administrative proceedings were adopted. For negligent violation of competition laws, the respective necessary elements of misdemeanours were established.

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### EMPLOYMENT LAW

#### Employment contracts should be revised

On 22.04.2004 the Parliament amended the Employment Contracts Act (*Töölepingu seadus*), the amendments entered into force on 01.05.2004. At the same time, the new draft of Employment Contracts Act is pending in the Parliament.

Employment contracts made since 01.05.2004, should be executed in conformity with the amended Act. Employment contracts entered into prior

Before 01.05.2004	After 01.05.2004
1. work to be performed and level of its complexity, its official or professional title, and the qualification requirements	1. official or professional title or the qualification requirements and description of duties
2. working time	2. standard working time
3. wages	3. wage conditions
4. location of employment	4. location or area of employment
5. length of an employment contract for a specified term	5. length and grounds of employment contract for specified term
6. date of commencement of employment	6. date of concluding the employment contract and the date of commencement of employment
	7. length of annual and additional holiday, also grounds of additional holiday
	8. terms of advance notice of termination of employment contract or the terms of determination thereof
	10. data on parties (name, ID-code or registry code; place of residence or location)

to 01.05.2004, should be brought into conformity with the amendments latest by 01.01.2005 at the latest. If the draft Employment Contracts Act is adopted and takes effect on 01.01.2005 then there is no material reason to amend employment contracts made before 01.05.2004. As it is not clear that the draft Act takes effect on 01.01.2005, we suggest to make some preparations for amending the existing employment agreements.

From 01.05.2004 the mandatory provisions of the employment contract have changed as follows:

See the table on the previous page.

In connection with the review of the employment contracts, we remind our clients that internal work procedure rules ("Rules") are obligatory for the employers with at least five employees. Although this is not a new regulation, we have noticed that many Estonian companies still fail to duly adopt and coordinate the Rules. From the employer's point of view, it is recommended to regulate the work procedures more extensively in the Rules rather than in the employment contract, as the Rules can be amended unilaterally by the employer.

If you wish to supplement the employment contracts, please contact Sorainen Law Offices.

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## STATE LIABILITY

### Regulation for damages caused by the state has changed

To ensure conformity of the Estonian law with the European Union law, a new wording of the State Liability Act (Riigivastutuse seadus) was adopted (in force since 25.07.2004), amending compensation for damage caused by adopting legislation of general application or failure to issue such a legislation.

Since 25.07.2004 it is possible to claim compensation from public authority if the damage is caused by a substantial violation of obligations by public authority, if the regulation upon which the violated obligations are based on is directly applicable and the person filing the claim belongs to a specified group of persons (e.g. failure to transpose EU directives into Estonian law).

It should be noted that, so far, there is very little practice regarding the state liability.

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### No relevant acts were adopted or draft acts processed by the Parliament during 01.07.2004-31.08.2004.

## LATVIA

### PUBLIC PROCUREMENT

#### Procurement procedures are being simplified

The Cabinet of Ministers Regulations No. 603 On Procurement Procedures and the Order of their Application to Projects Financed by Contracting Authority (*Par iepirkuma procedūrām un to piemērošanas kārtību pasūtītāja finansētiem projektiem*) have been issued in accordance with Article 52 of the Law On Procurement for State or Local Government Needs (*Par iepirkumu valsts vai pašvaldību vajadzībām*).

The Regulations stipulate for a simplified procedure for granting a procurement contract selecting an offer at the lowest price. This procedure shall be applied in the events when the contracting authority in the understanding of the Law On Procurement for State or Local Government Needs does not effect procurement itself but finances a project (except for the construction projects specified in Article 5.1 of the Law On Procurement for State or Local Government Needs) and if within a project a procurement shall be effected, the value of which exceeds LVL 5,000. The simplified procedure shall be applied to:

1) legal or natural persons that receive support in accordance with the Business Support Control Law (*Komercedarbības atbalsta kontroles likumu*), i.e. any direct or mediated financial aid provided for business from state, local government funds or those of the European Union, which create or may create restrictions on competition;

2) natural or legal persons registered in the Republic of Latvia, that are recognised as beneficiaries of financing from the European Structural Fund or beneficiaries of grant financing.

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## TAX LAW

### The State Revenue Service continues to issue instructions in the areas of customs law and tax application:

- New legal act on division into deadlines or suspension of payment of customs debt

On 18.08.2004, the State Revenue Service Instruction No. 1263 On Division into Deadlines or Suspension of Payment of Customs Debt and Other Tax Debts Administered by Customs Authorities (*Par muitas iestāžu administrēto nodokļu parādu samaksas sadalīšanu termiņos vai atlikšanu*) came into effect.

The Instruction has been issued based on Section 24, Paragraph one, Clause 3 of the Law On Taxes and Fees (*Par nodokļiem un nodevām*) for the purposes of ensuring a unified procedure for division into deadlines or suspension of payment of customs debts and other tax debts administered by customs authorities.

The Instruction specifies 1) information which shall be disclosed by a taxpayer in an application for division into deadlines or suspension of a tax debt, 2) information which shall be verified by tax administration when examining such application of a taxpayer, 3) as well as the respective decision-making procedure for a tax administration and securing procedure, as well as supervision of implementation and consequences of a respective tax administration's decision.

In our opinion, the above provision of the law does not provide for a delegation to issue generally binding legislation, therefore, the normative nature or validity of such instructions in respect of businessmen is doubtful.

- New legal act on tax securities  
On 30.07.2004, the State Revenue Service Instruction No. 1137 On Application of Warranties of Customs Debt, Value Added Tax and Excise Tax Securities (*Par galvojumu muitas parāda, pievienotās vērtības nodokļa un akcīzes nodokļa nodrošinājumu piemērošanu*) came into effect.

The Instruction has been issued based on part seven Customs Debt, chapter one Guarantee (Warranty) for Covering Customs Debt of the Council Regulation (EEC) No 2913/92 as of 12.10.1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 of as 02.07.1993 laying down the provisions for the imple-

mentation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, Cabinet of Ministers 22.04.2004 Regulations No. 391 Establishing Security Amount for Value Added Tax, Procedure for its Submission, Application and Reduction (*Pievienotās vērtības nodokļa nodrošinājuma apjoma noteikšana, tā iesniegšanas, piemērošanas un samazināšanas kārtība*) and the Cabinet of Ministers 25.03.2004 Regulations No. 171 Regulations On Excise Tax Securities for Alcoholic Beverages, Tobacco Articles and Oil Products (*Noteikumi par akcīzes nodokļa nodrošinājumiem alkoholiskajiem dzērieniem, tabakas izstrādājumiem un naftas produktiem*).

In accordance with the Instruction the methodology guidelines establish:

- 1) amount of warranty for securing a customs debt, procedure for its submission, acceptance and application;
- 2) amount for security for VAT debt, procedure of submission, acceptance and application;
- 3) procedure for application of excise tax security if a temporary storage of goods or customs clearance of goods is applied to the goods subject to excise tax using the deferred tax payment.

The requirements set out in methodology guidelines shall not be applied to a warranty used for ensuring a transit. General warranty certificates, issued before 01.05.2004, continue in full force and effect, however, not later than until 31.12.2004.

• **New legal act on permit to declare goods electronically**

On 08.07.2004, the State Revenue Service Instruction No. 1084 On Permit to Declare Goods Electronically (*Par atļaujām deklarēt preces elektroniski*) came into effect.

The Instruction approves the methodology guidelines on submission of customs declaration electronically. In accordance with the Instruction a permit to declare goods electronically is granted to all the persons who meet the requirements for the methodology guidelines. The Instruction sets out the requirements for receiving a permit for electronic declaration, as well as the procedure for submission and examination of documents necessary for obtaining such permit.

• **New legal act on amending and cancelling of customs declarations**

On 30.07.2004, the State Revenue Service Instruction No. 1147 On Amending and Cancelling of Single Administrative Document (*Par vienotā*

*administratīvā dokumenta labošanu un anulēšanu*) came into effect.

In accordance with the Instruction based on the declarer's request a customs authority cancels an accepted declaration if the declarer proves that goods have been declared for the respective customs regime incorrectly or the circumstances have arisen due to which there is no reason to subject goods to the customs regime any longer for which they have been initially declared.

• **On 18.08.2004, the Convention between the Republic of Latvia and the Republic of Bulgaria On Prevention of Double Taxation and Non-Payment of Taxes in Respect of Income Taxes (*Par nodokļu dubultās uzlikšanas un nodokļu nemaksāšanas novēršanu attiecībā uz ienākuma nodokļiem*) came into effect.**

The Convention was ratified by Saeima on 20.05.2004, published in *Latvijas Vēstnesis* on 04.06.2004, No. 90 (3038) and signed in Sofia on 04.12.2003.

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• **New procedure for granting donations and receiving tax incentives**

On 17.06.2004, the Public Benefit Organisation Law (*Sabiedriskā labuma organizāciju likums*) was adopted, which will come into force on 01.10.2004.

Basically, this Law establishes a new procedure how unions, foundations and religious organisations may obtain permits to receive donations granting the tax rebates provided for by the Law to donors. At present, this is governed by the Cabinet of Ministers Regulations No. 315 adopted on 10.07.2001, according to which the Ministry of Finance grants annual permits to public and religious organisations to receive donations granting the tax rebates provided for by the Law to donors with the possibility to prolong the validity terms of permits later.

In accordance with the new law the unions and foundations, the purpose of which is the public benefit activity, as well as the religious organisations and their establishments that carry out the public benefit activity are granted a status of a public benefit organisation for an indefinite time by the Ministry of Finance (MoF) based on a decision taken by the Public Benefit Commission. The newspaper *Latvijas Vēstnesis* will publish all the decisions taken by the MoF on granting such status. From the next year, public benefit organisations will be entitled to the tax incentives

stipulated by laws, as well as will have other rights stipulated by the law, for example, to receive human aid consignments. But the persons who donate property or money to a public benefit organisation will be entitled to the tax incentives stipulated by laws as of 01.01.2005.

The new Law separates donation without compensation from the donation related to counter duty of a compensatory nature, i.e. sponsorship, and in the latter case a donation is not subject to tax incentives. The recipient of such donations will have to use its property and money only for the activity of a public benefit provided for by the statutes, constitution or bylaws. In case of the non-compliance with the Law the MoF is also entitled to cancel the status of a public benefit organisation.

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**DRAFT LEGISLATION**

**The Cabinet of Ministers Draft Regulations "On Distance Agreement On Provision of Financial Services" (*Noteikumi par distances līgumu par finanšu pakalpojuma sniegšanu*) was developed.**

The Cabinet of Ministers Draft Regulations will implement the requirements of the EU Directives 2002/65/EC concerning the distance marketing of consumer financial services. The Regulations will apply to all providers of financial services in Latvia (banks, insurers, etc.) that will provide crediting and other financial services to consumers under a distance agreement. One of the forms of a distance agreement is banking services offered to customers through internet banks. The Regulations list the information to be provided by service providers about themselves and the service. For example, a consumer shall be informed about all service fees and expenses, restrictions, as well as the right of refusal. The Regulations entitle consumers to unilaterally step back from an agreement within 14 or 30 days (the latter applies to life assurance and private pension transactions). It is planned that the Regulations may come into effect already in October 2004.

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### **The Cabinet of Ministers Draft Regulations On Support to Businesses (*Par atbalstu komercsabiedrībām*) was developed.**

The Cabinet of Ministers Draft Regulations include the conditions of state support programmes, on the basis of which the grant scheme administrator *Latvijas Investīciju un attīstības aģentūra* will evaluate a project submitted by a support applicant and take a decision (an administrative act) on granting support or refusal of a project application.

Support projects are to be approved by 31.12.2006 stipulating the use of financing by 01.07.2008. Any business that is a legal person registered with the Commercial Registry of the Republic of Latvia and the share capital of which has more than 75% of a private capital may apply for a support programme. A business has to prepare a project and manage it, it cannot act as a mediator. A business, in order to obtain support, has to prove that stable and sufficient financing is available to it to ensure the activities of the business during the whole period of project implementation. The Cabinet of Ministers Draft Regulations specify 4 support programmes:

1) for development of new products or technologies – maximum permissible amount of support for one project is LVL 150,000. Under this programme, such costs as additional labour costs, consultancy costs, additional material costs, costs of tools and equipment are covered;

2) for modernisation of business infrastructures – maximum permissible amount of support for one project is LVL 500,000 – 1,000,000;

3) for consultancy and participation of businesses in international exhibitions and trade missions - maximum permissible amount of support for one project is LVL 10,000;

4) for improvement of staff qualifications, retraining and further education - maximum permissible amount of support for one project is LVL 30,000.

None of the support programmes offer to cover business expenses at 100%. The support is granted in the amount of 35% to 80% (depending on a programme, as well as on a size of a business).

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### **Selection of relevant acts and amendments adopted 01.07-31.08.2004**

- Law On European Economic Interest Group (in force as of 21.07.2004)

- Cabinet of Ministers Regulations No. 728 On Latvian Accounting Standards to be Compulsorily Applied and the Procedure for Parliament of Cash Flow Statements and Statements of Movements in Shareholders' Funds (in force as of 28.08.2004)

- Financial and Capital Market Commission Council Decision No. 159 Regulations On Interest Rate Risk Management and Preparation of Interest Rate Risk Maturity Analysis (adopted on 16.07.2004)

### **Selection of relevant draft acts passed by the Parliament during 01.07.2004 – 31.08.2004**

- Amendments to the Cabinet of Ministers Regulations No. 150 Regulations On Registration of Taxpayers and Taxpayers' Structural Units with the State Revenue Service

- Amendments to the Cabinet of Ministers 27.02.2001 Regulations No. 88 On Import, Export and Distribution of Medicinal Products and Requirements for Opening and Operating Wholesale Stores of Medicinal Products

- Amendment to the Law On Value Added Tax

## LITHUANIA

### EMPLOYMENT AND SOCIAL SECURITY LAW

#### **Possibility to apply Lithuanian labour laws to labour relations between foreign employers and posted employees**

On 22.06.2004, the Parliament adopted the amendments to the Labour Code (*Darbo kodeksas*), which entered into effect on 01.07.2004. The amendments are aimed at harmonising the Labour Code with the EU legislation (Directive 96/71/EC of the European Parliament and of the Council as of 16.12.1996 concerning the posting of workers in the framework of the provision of services, Council Directive 96/34/EC as of 03.06.1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and Council Directive 97/81/EC as of 15.12.1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the

ETUC) and at ensuring the free movement of EU workforce.

The amendments extended the possibility of application of Lithuanian labour laws to labour relations between foreign employers and posted employees, which do not have the permanent place of residence in Lithuania. The amended Labour Code also provides for the possibility to stipulate in the collective agreements that the parties are not bound by the part-time work regulations provided by the legal acts. Further, according to the amendments, employees intending to take childcare leave before the child reaches the age of 3 years or to come back from this leave before the expiry of its term are obliged to give a 14 days' notice to the employer.

#### **Lithuania and the Netherlands have agreed on the issues related to payment of social security benefits to their residents**

On 01.08.2004, the Agreement between the Republic of Lithuania and the Kingdom of the Netherlands on the Export and Enforcement of Social Security Benefits entered into force. The Agreement is targeted at regulating the payment of the social security benefits to persons migrating between Lithuania and the Netherlands. The Agreement ensures the possibility for persons having acquired the right to social security payments in the Netherlands to receive them in Lithuania and vice versa.

#### **The burden of proof in case of sex discrimination claims has been placed on the employers**

On 13.07.2004, the Law on Equal Opportunities (*Vyrų ir moterų lygių galimybių įstatymas*) was supplemented. The supplements entered into force on 24.07.2004. The provision placing the burden of proof on the defendant in case of sex discrimination claims has been added to the Law. Consequently, in case the employee addresses the court or the Equal Opportunities Ombudsman with the sex discrimination claim or complaint, the employer has to prove that the principle of equal opportunities was not violated.

By the abovementioned supplements the Law was harmonised with the Council Directive 97/80/EC as of 15.12.1997 on the burden of proof in cases of discrimination based on sex.

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## ENERGY LAW

**The Lithuanian Parliament takes steps to ensure the more rapid liberalization of electricity market**

The Parliament adopted the Law amending the **Law on the Electricity** (*Elektros energetikos įstatymo pakeitimo įstatymas*) on 01.07.2004. The Law has been effective as of 10.07.2004. The Law establishes the principles regulating the generation, transmission, distribution and supply of electricity in Lithuania and formulates relations between the suppliers and consumers of electricity. Among others, the Law has been harmonised with the following EU legislation: Directive 2003/54/EC of the European Parliament and of the Council as of 26.06.2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC and Regulation (EC) No. 1228/2003 of the European Parliament and of the Council as of 26.06.2003 on conditions for access to the network for cross-border exchanges in electricity.

In order to secure the greater liberalization level, the Law stipulates that by 10.07.2004 the electricity consumers, except for the domestic consumers, have to become eligible consumers of electricity. Further, since 01.07.2007 the status of eligible consumers has to be granted to all consumers, including the domestic ones. An eligible consumer is free to choose the supplier of electricity.

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amendments to the Law was to reverse the provisions establishing unjustified restrictions for national natural and legal persons to purchase land of agricultural purpose and to dispose of it.

First, the requirement for companies and natural persons to engage in agricultural activities in order to purchase the agricultural land was abolished. Secondly, the Law does not anymore contain the requirement for persons having purchased agricultural land plot larger than 10 hectare to move to the county where the land plot is located within 1 year's period. Further, the provision requiring that banks and credit institutions, having acquired the agricultural land, sell such land or lease it for agricultural activities before the sale was reversed. Finally, the Law now provides for a much shorter list of persons holding priority right to purchase the private land plot of agriculture purpose. Currently only the co-owners of the land plot and the user of the land plot, who engages in agricultural activities and has used the land plot for the agricultural activities for not less than a year, have such priority right. Therefore, currently in order to sell the agricultural land plot the owner is not required to publish a notice in the local press. The only requirement is to notify the user of the land plot of the sale conditions of the land plot by registered mail and to notify the co-owners of the land plot of the sale conditions through the notary public.

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Furthermore, under Order No. 1K-290 of the Minister of Finance, Cyprus and Malta were included into the so-called "White List". It should be noted that both in Estonia and in Latvia the abovementioned countries are also included in the list. Thus, the subsidiaries of Lithuanian residents and resident companies registered in those countries will no longer be subject to the Lithuanian CFC regulation, unless those subsidiaries have been granted with special tax benefits in their home country. Further, dividends received by Lithuanian residents (natural persons) from companies registered in Malta or Cyprus will be taxed at 15%, instead of 33% tax applicable before the inclusion into the White List.

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**Selection of relevant acts and amendments adopted 01.07-31.08.2004**

- Amendments to the Law on Land Reform (in force as of 07.08.2004);
- Amendments to the Law on Insurance (in force as of 11.08.2004);
- Law on the Supplementary Supervision of Undertakings in a Financial Conglomerate (in force as of 11.08.2004);
- Amendments to the Law on VAT (in force as of 29.07.2004);
- Amendments to the Law on Land (in force as of 29.07.2004).

**Selection of relevant draft acts processed by the Parliament during 01.07.2004 – 31.08.2004**

- Amendments to the Law on Financial Institutions;
- Amendments to the Law on Lobbying Activities;
- Amendments to the Law on Investments;
- Amendments to the Law on Management of Environmental Noise.

Contributed by Lea Liigus, Katri-Helen Agur Estonia; Gita Rivdike, Latvia; Justina Gutauskaitė, Lithuania. Edited by Girts Ruda, Latvia.

## LAND LAW

**Most obstacles related to the purchase of agricultural land have been removed**

On 15.07.2004 the new version of the Law regulating the **purchase of agricultural land** (*Žemės ūkio paskirties žemės įsigijimo laikinojo įstatymo pakeitimo įstatymas*) was adopted. The amendments entered into force on 07.08.2004. The main aim of the

## TAX LAW

**Cyprus and Malta have been deleted from the list of offshore territories**

On 16.08.2004, the Minister of Finance, by the Order No. 1K-291, deleted Cyprus and Malta from the offshore territories (List of Target Territories or the so called "Black List").

**Change of the address of Sorainen Law Offices in Vilnius**

**We have a pleasure to announce the opening of our new Vilnius office location as of 20 September 2004:**

Business Centre 2000  
Jogailos g. 4, LT-01116 Vilnius, Lithuania

Please note that our contact numbers remain the same:

Tel.: +370-5 2685 040 E-mail: [sorainen@sorainen.lt](mailto:sorainen@sorainen.lt)

Fax: +370-5 2685 041

**We look forward to meeting you in our new premises!**

## NEWS IN SORAINEN LAW OFFICES

### ● Recent deals

#### **Corporate Finance in Energy Industry**

Riga office assisted the majority shareholder in the hydro power station company to buy-out the minority shareholder by attracting third party 100% financing for the transaction. The transaction was in particular complex considering the risk management in the energy sector, 100% financing by third party the buyer however retaining the ownership and finally the combination of warranties for supplied turbines with the purchase price. The transaction was led by partner Gints Vilgerts.

#### **New booklet on pledges**

Sorainen Law Offices has commenced a project under which it will provide assistance to the European Bank for Reconstruction and Development regarding development of a booklet on pledges in the Baltic States. A similar booklet has already been prepared in other countries of Eastern Europe, for example, in Slovakia. The purpose of such practical information is to help orientate oneself in the activities related to charges in general and commercial pledges in particular in any of the Baltic countries, thus promoting the development of pledges and the whole financial system. "A stable system of security and financial law has been operating in the Baltic States for already several years. The preparation of such booklet confirms the trust of an internationally recognised bank in the Baltic States and our legal systems," believes Girts Ruda, Attorney-at-Law from Sorainen Law Offices in Riga. It is expected that the first booklet on Latvia will be issued by the end of 2004, and it will be available also to clients of Sorainen Law Offices.

#### **Assistance in anti-money laundering case**

Sorainen Law Offices represented

the international financial company Travelex Global and Financial Services Ltd in the review of anti-money laundering procedures in the Baltic States. On behalf of Travelex, which has been established by a recent merger of such widely known companies as Thomas Cook Financial Global Services and Travelex Group, Sorainen Law Offices in Riga and Vilnius collected the information on the financial position and the procedures for the prevention of money laundering of the company's cooperation partners – the largest banks in the Baltic States. Girts Ruda, Attorney-at-Law in Riga office, emphasizes: „All activities directed to the restriction of money laundering are at present of a particular importance both to Travelex and any other financial institution taking into account both the latest tendencies in the world and the recent terrorist attacks in Russia and elsewhere in the world.”

#### **Advising in a major share sale-purchase transaction**

Renata Bernanskiene, partner at Sorainen Law Offices in Vilnius, advised the minority shareholder, the Kazickas family and Mr. V. Gruodis, in selling 10 per cent of the shares of the largest mobile operator in the Baltic States UAB Omnitel to TeliaSonera. The minor shareholders agreed to sell their shares for USD 63,5 million, inclusive of dividends, until closing. After this transaction TeliaSonera acquired the full shareholding in UAB Omnitel.

#### **Advising major UK investment firm for providing cross-border investment services in Estonia**

After Estonia became a member of the European Union investment firms of other member states can provide investment services in Estonia without establishing a branch in Estonia. Our team, led by partner Kaido Loor, advised major UK investment firm on questions concerning providing cross-border investment services in Estonia.

#### **Merger in IT and banking sector**

A major Finnish IT provider and one Estonian bank established a

joint venture. The aim of the merger is a response to growing international competition, but is also led from the idea of outsourcing activities not essential to competitive strategy of a credit institution. The transaction involved several jurisdictions, inter alia, multi filing issues as well as the filing to the European Commission were under consideration. The parties to the concentration regarding Estonia and multi filing were assisted by Tallinn office, notification regarding Lithuania was dealt by Vilnius office. The notification process was led by senior associates Evelin Parn-Lee and Raminta Karlonaite.

#### **One of the most experienced Lithuanian arbitrators works in our Vilnius Office**

Renata Bernanskiene, partner, is an arbitrator in Vilnius Court of Commercial Arbitration, specializing in civil, company and commercial law. In 2004, Renata has already dealt with four arbitration cases – three of them related to construction disputes and one concerning the damage caused by the failure of the parties to duly fulfill their contractual obligations. Renata has experience of arbitrating in the aforementioned arbitration institution for more than five years. She has the largest number of disputes solved in Vilnius Court of Commercial Arbitration (before the reorganization - Arbitration Court at the Association ICC - Lithuania) among all arbitrators.

#### ● Sorainen Law Offices have been joined by the 50th lawyer

As of 1st of October, Associate Mantas Petkevicius will join Sorainen Law Offices Vilnius office. After Mr. Petkevicius joining Sorainen Law Offices the number of lawyers has reached 50. In an earlier interview for the European Lawyer, managing partner Aku Sorainen has stated that we are expecting to expand to 50 lawyers by the end of 2004. The growth has exceeded our expectations due to client

increase and high quality services. Being the largest fully integrated Pan-Baltic law firm we are ready for future challenges.

## Articles

As of 1 July, Sorainen Law Offices has started a cooperation with the weekly newspaper **The Baltic Times** preparing the column **Taking Counsel**, providing answers to the urgent questions to readers in various areas of law.

Following articles have been published during July and August:

Newspaper The Baltic Times:

- Toomas Prangli: What should one consider when acquiring another business in the Baltics?
- Paul Kunnap: The Baltics – a new tax heaven?
- Anne Adamson: What should I do if my joint venture is deadlocked?
- Agris Repss: Where should I sue my Baltic debtor?
- Gints Vilgerts: Will all companies owned by foreigners be liquidated on 1st January 2005?
- Gints Vilgerts: Why do insurers refuse to pay?
- Agris Repss: How can I fight against late payments?
- Marius Urbelis: What should be noted when acquiring land in the Baltics?
- Mindaugas Lescius: Employment opportunities for EU citizens

Estonian business newspaper Äripäev:

- Karin Madisson: Distribution of dividends may be chosen.

Northamptonshire business magazine „Business Times“

- Rosa Rotko: Legal Briefing, Good opportunities - Estonia

Latvian business magazine Baltic Course:

- Dmitrijs Petrovs: What should be taken into account on purchase or sale of a business in the Baltic States?

Latvian business newspaper Dienas Bizness:

- Eva Berlaus-Gulbe: Threats of “nationalisation”.

The aforementioned articles can be found on our website [www.sorainen.com](http://www.sorainen.com)

## Seminars

On 2–3 September, Eva Berlaus-Gulbe, senior associate, participated in a Competition Law Seminar in Tallinn giving a presentation Rights of Defence in Competition Cases.

On 15 October, Gints Vilgerts, partner, will participate as speaker in the VIII annual international conference Insurance and Reinsurance in the Baltics 2004 presenting the material Court Practice of the Baltic States in Insurance.

On 25-26 October, Janis Taukars, Attorney at Law, will participate as a speaker in the 10th international conference Banking and Finance in the Baltics 2004 delivering the presentation Tax Disputes in the Baltic States.

## Membership in associations

As of 9 July Sorainen Law Offices in Riga has become a member of the Netherlands-Latvian Chamber of Commerce. On 4 November, a reception of the members of the Netherlands-Latvian Chamber of Commerce in the premises of Sorainen Law Offices in Riga will take place to introduce the members of the Chamber of Commerce with the activities of our law firm.

## Employees

Julija Jerneva and Martins Paporinskis, associates of the Riga office, as of September 2004 leave the office for one year to obtain a master's degree in Law. Julija will study at the College of Europe in Brugges (Belgium), but

Martins will go to the University of Oxford, Queen's College (England).



## What should be noted when acquiring land in the Baltics?

Marius Urbelis,  
Senior Associate, Attorney-at-Law  
Sorainen Law Offices, Vilnius

After accession of Estonia, Latvia and Lithuania to the European Union, the Baltic land market has become more liberalized than ever before. Foreign investors coming from the EU member states and other countries will have more investment possibilities in this market. However, certain restrictions on acquiring land in the Baltics still remain in effect today. In addition to “who” and “what” could be acquired, land purchasers should also know how to secure their rights, as “purchasers,” by purchasing land.

**City land.** As of 01.05.2004, the restrictions that were earlier applied against EU nationals and legal entities have been removed in Latvia and Lithuania. EU nationals and legal entities wishing to purchase city land no longer need to obtain prior permission from the respective municipality in Latvia and from the state or municipal institution in Lithuania. In Estonia some restrictions still remain, but only for the citizens of non-European Economic Area member states with respect to the land of borderline cities (e.g. Narva, Sillamäe, etc.).

**Agricultural and forestry land.** Starting from the accession date, all three Baltic countries have introduced a transitional period of seven years during which foreigners are still not allowed to purchase agricultural and forestry land. But certain exceptions to this temporary restriction apply. In Latvia EU nationals, in Estonia nationals of EEA member states and in Lithuania nationals of the EU, EEA, NATO and OECD member states may acquire agricultural and forestry land on the condition that they have permanently lived and farmed land there during the last three years. In Estonia this exception also applies to EEA legal entities whose branches have been registered in Estonia. In Lithuania this exception also applies to foreign legal entities and other foreign organizations that set up representative offices or branches in Lithuania. **Legal safeguards.** Legal safeguards for acquiring land are similar to all three Baltic countries. Before the purchase, the land purchaser should investigate publicly available information about any legal restrictions or encumbrances possibly applied to the land plot from

the real estate, mortgage and arrest registries in Lithuania, the land book in Latvia and the land registry in Estonia. It is worth nothing that a purchaser will acquire ownership title to the acquired land plot from the moment when such property is transferred to the purchaser's possession – that is, after signing a transfer-acceptance deed in Lithuania.

The land ownership title is considered to be transferred from the moment of registering the purchaser's ownership title with the land registry in Estonia and with the land book in Latvia. A land purchaser seeking to avoid possible disputes over the acquired land plot should immediately register the ownership title with the real estate register in Lithuania as well as in Latvia. Last but not least, it is required that a land purchase contract be approved by a notary in Lithuania and Estonia. Although in Latvia the approval of a land purchase contract is not mandatory, without the notary's certification of the specific application form the land purchaser will not be able to register the ownership title with the Land Book.

In conclusion, after accession to the EU the land market in all three Baltic countries has become not only more liberalized but also subject to more unified legal regulation. However, due to detailed regulations applied to land acquisition, the potential land purchasers should very carefully to investigate all legal and tax issues before concluding a land purchase contract. The miser pays twice.

## How Much is Latvian Goodwill?

Article is written by our cooperation partner Amadeus Group



Those who are ready to buy Latvian companies at a price that is higher than their tangible assets may encounter a bunch of problems.

The number of Latvian companies bought by foreign investors has been growing recently. In my opinion, these deals can be broken into two theoretical categories:

1) Purchases of companies whose successful business has been determined by a unique combination of factors which provides these companies with practically guaranteed sales. As a rule, such companies possess equipment/ technologies inherited from the times of the Soviet Union (which may have been modernized) for making products (goods/services) that are demanded in the Baltic region.

2) Purchases of companies that have to deal with middling competition (there has been no tough competition in most sectors so far, I believe), whose business therefore greatly depends on effectiveness of the corporate management system.

One will be on the safe side after a deal of the “first kind”, however, an investor who buys a business of the “second type” may have to perform a number of tasks that he/she did not even think of when concluding the deal. It means that an investor unaware of potential problems will not take this into account in negotiating for the amount of the deal. In practice, these potential problems may be structured as follows:

- **Overall condition of the corporate management system.** Very many managers at Latvian companies, even the ones that are very successful, have the so-called “industrial type of thinking”. It is also characteristic of the trade business, not only manufacturers. This results in a priority readiness to invest in tangible assets without an adequate development of such elements of corporate management as strategy, actual adoption of business processes and systematic development of human potential. For instance, a public opinion poll showed that a formalized strategy of development only exists in 50% of

actively developing companies, and a vast majority of executives believe that the development of their businesses is primarily hindered by such external factors as a **high competition (!)** and **lack of current assets**. Such inter-corporate resources as **own management competence or development of employees' competence** are undervalued. The priorities of investments in the company's development are set accordingly. As a result, companies have corporate management systems that are not adequate to the level of business development (taking into account, first of all, such parameters as turnover, market share and the number of staff). In accordance with the theory of organization development by Larry Greiner, companies are still unable to grow out of their "childhood period", into the "direct management" stage. Therefore companies remain fully "oriented toward personalities", which means a high potential risk for an investor who does not intend to assume the position of CEO and start organizing corporate management himself/herself in an "unfamiliar territory".

**Recommended: when planning to invest into companies that are in the "free competition" segment, insist that the corporate management system be audited as a precondition for talks about the price. Besides, we recommend to mind that, as a rule, companies dealing with business assessment first of all rely on assessment of financial instruments, which, as we have determined, does not produce an adequate picture.**

- **Owner's expectations** if he/she remains a co-owner of the company. Quite often, Latvian businessmen potentially perceive a foreign investor as a Santa Claus who will bring a bag of money. The company's owner is confident that the only thing necessary to the development of his/her business is money – after investor gives the money, the business will get in full swing. The owner is just not ready to accept that the investor may want to audit the quality of management and even propose that CEO be replaced (as a rule, most Latvian companies are run by their "founding fathers"). Very few seekers of foreign investments are ready for the "installation" of not only money but also business technologies, which means, in the first place, the need to change management habits of the owner of the business. **Recommended: find out what the potential co-owner expects, or else problems will be inevitable in implementing the investment program.**

- **«Tired brands».** Latvian consumer market has been developing rather fast in the past several years (an average + 25% a year). However, brands that simply grew along with the market control a considerable part of segments. There was practically no work going into the necessary maintenance and development of brands, proper positioning of brands, development of consumer loyalty, etc. The promotion measures were dominated by direct (not image) advertising and measures promoting sales in all (!) price segments. Besides, consumer culture in the active segment has been developing rapidly in the past three years. Based on the said factors, it can be stated that most leaders of the consumer market have not been professionally "attacked" so far. A good example would be the HoReCa segment and domination of «Lido» without any equally positioned rival. On the one hand, this gives a good opportunity for increasing the value of the acquired brand fast, but on the other hand, there is the risk that the market segment you acquired along with the brand may be taken over by a professional competitor. After Latvia's accession to the EU, such risks have become much more real.

**Recommended: when assessing companies, pay much attention to evaluation of the quality of positioning measures that are being carried out by the owner, do not just assess the size of the budget and the market share against the backdrop of Latvia's projected economic development.**

- **Underdeveloped market of employment agencies.** In case the investor needs to set up a corporate team or find executives, he/she will encounter a deficit of candidates who have the necessary management qualifications (this does not concern financial specialists as much). Our company has on several occasions not only built the management team as requested by the Client, but also organized an ensuing systematic step-by-step training for the new management team. Such a situation on the jobs market is caused by Latvian universities and colleges' insufficient attention to specifically training potential managers. This, in turn, also has an effect on the aforesaid fact that most companies are run by their owners. **Recommended: be prepared that finding adequate staff will take a long time, and that the people you employ may lack both the knowledge of even simple things that a manager has to know and the skill thereof.**

Having read this far, one might ask: How, after all, companies manage to take leading positions when there is such a state of "disorder"? What it boils down to is that the rapid economic development and somewhat "provincial" way of thinking have created the situation of "historically limited leadership". If a player occupies a considerable part of a segment on the market, it is automatically regarded as a very dangerous opponent, and new entrants on the market simply try to find a "niche free of monsters". In Russia, for instance, the situation is just the opposite; no major companies there are safe from being attacked by an "untraditional" player: for instance, an oil businessman may decide to invest in the retail business, he buys a professional team and a successful business is launched... In Latvia, however, there have been practically no such precedents.

**To sum up: When investing into a company, pay attention to usefulness of accents on assessment procedure that are not characteristic of the general practice elsewhere in the world, and, if necessary, either insist that the investments seeker cover these expenses, as a precondition for negotiations, or assume the job yourself after reaching agreement that the applicant will have to compensate part of the costs regardless of the result of the talks on purchase of the company. We have determined in our practice that this is perceived as a normal solution, provided that you reckon on the investments seeker's perplexity - what is the investor talking about? Despite all aforesaid "horrors", and partly thanks to them, the Latvian market is very interesting to professionals and those who approach it the right way can gain much more than in other countries with a more "traditional" development.**

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