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### Sorainen recognised as the Best Baltic Law Firm in two international awards

On 10 December 2008, Sorainen received the Baltic Legal Advisor of 2008 award from *The Financial Times* and *Mergermarket* at the European M&A Awards ceremony and on 23 January 2009, Sorainen received the Baltic Law Firm of the Year award in the international *PLC Which lawyer? Law Firm Awards* 2009. For more details about these awards please see "News in Sorainen" below.

Dear Readers,

We would like to use this occasion to thank our clients and business associates for their cooperation and trust in us, without which we would have not achieved these two prestigious international awards. Winning these awards is a great international recognition of our best efforts to service clients. We have been continuously advising on most of the major transactions in the Baltics, which earned us the award from *The Financial Times* and *Mergermarket*. However, it was perhaps even more pleasant and rewarding to receive the award from *PLC Which lawyer??.* This was based on votes by in-house counsel from international companies, i.e. our clients and cooperation partners. Sorainen continuously advises many international and Baltic companies – during the last year alone, we advised about 1,600 clients, and their evaluation is of prime importance for us.

We are happy to see that our clients and cooperation partners appreciate the advantages of Sorainen being the only fully integrated regional business law firm operating in the Baltic States and Belarus. These awards and your recognition combine to give us a strong incentive to improve further.

Yours sincerely,  
Sorainen

## ESTONIA

### EMPLOYMENT LAW

#### New Employment Contract Law enters into force on 1 July 2009

The new Employment Contract Act was passed in the *Riigikogu* on 17 December 2008 and enters into force on 1 July 2009. The act increases both flexibility of the employment relationship and securities for both parties. The act sets new provisions for employment contracts, for example, concluding, amending, terminating; rights and obligations of parties. Note: the new employment law does not require employment record books to be kept, and the role of labor inspector decreases.

The new act follows the principles of the law of obligations. In addition to the employment contract, the new act regulates individual employment relationships. It includes working and rest time, vacation, salary, and proprietary liability regulations, previously regulated in separate acts. The new law is flexible regarding working time and decreases employer expenses. The advance notice term of termination will stay related to seniority but notice time decreases by over half. The employer pays one month's salary on redundancy, with the remainder

paid by the unemployment fund (*Tootukassa*). Redundancy payment is not related to employee seniority.

The new employment law enhances regulation on employees' business secrets and prohibition of competition. The obligation to protect business secrets will stay for employees, while the employer need not pay compensation for keeping business secrets. If prohibition of competition stays in force after employment ends, the employer will have to pay compensation, monthly after termination of employment. Prohibition of competition can be set only for one year after termination.

Regulation of proprietary liability will change. The employee is liable for damaging employer's property if the employee wrongfully violates the obligation settled by employment contract (negligence, serious negligence, false intention). A separate proprietary liability contract is unnecessary. Compensation can be claimed both for direct damage and for loss of profit.

New restrictions will be imposed on terminating a fixed-term employment contract, to increase employee security. Employee security will also be increased by increase of employee insurance indemnity.

## Estonia

Revolution in corporate insolvency proceedings

## Latvia

Financial supervision during crisis

## Lithuania

Abolition of transfer of rest days on public holidays to next working day

## Belarus

New lease regulations

## Sorainen

*The Financial Times* award to Sorainen as the Best Baltic Law Firm

Sorainen recognised as the Best Baltic Law Firm of the Year in the *PLC Which lawyer? Law Firm Awards* 2009

### Unemployment insurance limits increased

The Estonian government has established limits on unemployment insurance in 2009. Employed persons will pay unemployment insurance 1% (formerly 0,6%) from gross wages and employers 0,5% (formerly 0,3%) from wages.

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## RESTRUCTURING AND INSOLVENCY

### Revolution in corporate insolvency proceedings

The Reorganizations Act was adopted on 4 December 2008 and entered into force on 26 December 2008 to avoid further bankruptcies and to give an alternative solution for distressed companies. The law establishes a completely new legal procedure enabling distressed companies on the verge of insolvency to reorganize themselves, restructure their debt, and apply other measures to regain financial health and restore profitability. The reorganization procedure is designed as an alternative to bankruptcy, similar to the US Chapter 11, the German *Insolvenzordnung*, and the Finnish *Saneerauslaki*.

On the one hand, the Reorganizations Act is likely to be particularly appealing to corporate debtors. The company retains control over its economic activity. In respect of the company: (i) penalties for delay will stop (NB! does not include interest); (ii) execution proceedings will stop and pending cases may be suspended. Therefore, the company will be able to buy time to work out its problems through the automatic stay of collection attempts against it, while still continuing to run its business so that good reputation and trust will not be as distorted among co-operation partners as would be the case with bankruptcy. As a major development, the new law will enable debtors to have the court enforce a reorganization plan that reduces the amount of claims or extends the repayment date, despite the objections of some creditors (the so-called cramdown). The debtor may file a cramdown application if: (i) less than half of the creditors have participated in voting the plan; or (ii) half of the creditors have voted in favour of the plan, but the plan has not gained 2/3 of the votes. The court will approve a cramdown if: (i) the reorganization will most likely be successful, (ii) the plan does not favour one creditor against another; and (iii) the debtor is an important employer.

On the other hand, the Reorganizations Act is likely to be interesting for creditors, large and small, secured or unsecured, who are provided a clear nonbankruptcy means of maximising the amount they are able to collect from their corporate debtor. At the same time, it significantly restricts debtor's rights ending its contracts and enforcement of securities. Problems that have prevented creditors from being actively involved in reorganizing their debtors include: it has been too late or too expensive for the creditor to invest time and money in reorganization;

no legal framework exists; or the process has suffered from lack of transparency. Now that the reorganization procedure may be initiated at pre-bankruptcy stage, the cost of reorganization advice is put on the debtor, while the process is statutorily fixed and administered by a reorganization adviser (who may be an attorney-at-law) and the court, so that more incentives should exist for creditors to be involved in the procedure. At the same time, the new law may be interesting for turnaround investors and venture capitalists whose business is acquiring debt or equity in troubled companies for a fraction of their face value, injecting new capital, improving management, and adding other value in order to restore the target's profitability. It is likely that the new reorganization law will drag to the marketplace many more distressed companies of interest to turnaround investors. Numbers of corporate debtors have already used this new procedure against their creditors (e.g. Q Vara against Danske Bank) who have started debt collection proceedings against them.

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## DISTRIBUTION AND TRADE

### Registration and specific rules for commercial lotteries

On 1 January 2009 the new Gambling Act entered into force. It establishes more specific and tighter rules for organising commercial lotteries. Importantly, the prize pool of a commercial lottery cannot exceed EUR 100,000 and registration of a commercial lottery is mandatory. If the prize pool of a commercial lottery is less than EUR 10,000 then most of the provisions of the Gambling Act do not apply. In that case no registration is necessary.

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## LITIGATION AND ARBITRATION

### Substantial amendments to civil procedure

More than 400 amendments to the Code of Civil Procedure and related acts entered into force 1 January 2009. Among other significant changes, state fees on filing a claim doubled. Delivery of documents to parties was significantly simplified emphasizing the central role of electronic delivery. This reform of the 2006 act aims to increase the efficiency of the procedure and to remove gaps that have been discovered in practice since its adoption.

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## TAX

### Amendments to tax laws

On 19 and 20 November and on 4 and 11 December, the Estonian Parliament passed amendments to tax laws.

### Amendments to the Income Tax Act that apply from 1 January 2009 are:

1. The income tax rate will not decrease and remains at 21% for year 2009.
2. Amendments passed in spring of 2008 that provided for advance payments of corporate income tax are abolished. Therefore, the main characteristic feature of Estonian corporate income tax – deferral of tax liability until profit distribution – will remain in force. However, taxation of liquidation proceeds and payments made on reduction of share capital have been changed. In 2008 these were taxed at the level of recipient of payments – the company making those payments did not have to pay income tax.

From 2009 those payments that exceed contributions are taxed at the level of the company making the payments (taxable proceeds). At the level of a shareholder who is a natural person, income tax is charged only on capital gains that are not taxed at company level.

3. Income tax is not charged on dividend payments in the amount of dividend received from an affiliated company in an EU member state if at least 10% of the affiliate's shares or votes belonged to the company at the time of receiving the dividend. This rate was previously 15%. The same applies to property taken out of a permanent establishment in Estonia.

4. Previously, an Estonian company paying dividends to a non-resident legal person had to withhold income tax in addition to customary income tax, if the recipient of the dividend had less than 15% of the share capital or votes in the Estonian company. From 1 January 2009 this withholding of income tax is abolished.

5. The income tax rate on payments made to non-residents (royalties, payments to artists and sportsman, services provided in Estonia) is decreased from 15% to 10%.

6. Companies no longer have to pay income tax on loans to natural persons associated with the company. If interest is lower than the minimum rate established by the Minister of Finance, the difference remains a fringe benefit and is thus taxable.

7. The maximum price of a fringe benefit for use of a passenger car is increased from EEK 2,000 to 4,000 (EUR 128 to 255).

### Amendments to the Value Added Act that apply from 1 January 2009 are:

1. The 'reduced VAT rate' is increased from 5% to 9% (books, medicinal products, periodic publications, accommodation) and to 18% for handling hazardous waste, funeral items and services, concerts, and some other services.
2. The tax office now has more flexibility in setting the taxable value of transactions between associated persons.
3. The transfer of an enterprise becomes VAT-free even if used for VAT-exempt supply. This is relevant for e.g. insurance companies and banks.

4. Transfer of securities giving the right to use or dispose of immovable property as an owner might be VAT-taxable as transfers of immovable property. This is relevant for building associations. It is also advisable to seek a preliminary ruling on the sale of shares of real estate SPVs until sufficient practice exists that selling such a shareholding is not subject to tax.

From 1 January 2010 the regulation on registration of multiple taxable persons as a single taxable person is changed. The principal change is that persons registered as a single taxable person act in transactions with third persons as one person in tax law terms. Until 2010, they act in their own name in tax law terms.

Amendments to the Taxation Act enable tax authorities to take enforcement action (e.g. to apply for a freeze on transfer of assets, to issue an order to freeze securities) even before a tax obligation is identified. These measures have to be approved by the administrative court beforehand.

Unemployment insurance premium rates increase from 1 July 2009 to 1% for an employee and to 0,5% for an employer.

From 1 January 2009, state fees increase.

On 1 January 2009, the double-taxation treaty with Azerbaijan came into force.

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## LATVIA

### CONSTRUCTION

#### Case law: administrative court on construction matters

The Latvian Supreme Court has recently ruled (Case No SKA-190) that consent of a third person for exceptions to the general rules on construction (e.g. distance from the building to a neighbour's land plot border) must be given clearly and directly for a specific construction issue, not for a construction plan (design) project in general. Third persons should provide consent exclusively for the exception, not for construction in general.

The court further ruled that a person must take into consideration that legal reliance in the process of construction may not protect the addressee of the construction permit from cancellation of the construction permit or construction works. This means that, even if a construction permit is not challenged within the term provided by law, the addressee should consider that construction works might be stopped and the addressee of the construction permit might be obligated to revise the construction plan (design).

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## BANKING

### Deposit guarantee amount increased

In order to minimise losses that persons might incur in case of compulsory liquidation or bankruptcy of any credit institution registered in Latvia, a branch of a foreign bank or savings-and-loans, the Parliament on 16 December 2008 amended the Savings Guarantee Act. The amendments, which entered into force on 18 December 2008, increase the state guarantee for each depositor to EUR 50,000 in case of unavailability of deposits. Similar steps were also taken by other Member States of the European Union under an agreement at EU level at the Economic and Financial Affairs Council (Ecofin) on 7 October 2008 in Luxembourg.

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## RESTRUCTURING AND INSOLVENCY

### Lifeboat for companies in trouble

In Latvia the Insolvency Law, which came into effect more than a year ago, introduced pre-insolvency reorganization or legal protection proceedings ("LPP"). The aim of these proceedings is to restore the solvency of companies with temporary solvency problems. This is achieved by postponing due dates or by temporarily decreasing payments to creditors. The best-known reorganisation regulation is Chapter 11 of the US Bankruptcy Code. In Estonia, similar proceedings were introduced at the end of last year and are viewed as a revolution in Estonian law. In Lithuania, the proceedings have been available for 7 years, but have not been widely used in practice.

Although during the current crisis more companies feel the need to apply for LPP, nevertheless in Latvia to date 16 companies have applied for LPP. Only 4 LPPs were initiated. This leads to preliminary conclusions on the main deficiencies of these proceedings. LPP plans developed so far are short, they lack detailed economic and financial analysis of the company's commercial activities, and in general terms copy the law. Thus the chances of gaining support from 2/3 of non-secured creditors and convincing the court of the viability of the company are barely possible.

Therefore, before applying for LPP, shareholders and management should evaluate the viability of their company not only from the emotional, but also from the practical perspective. In addition, they should be able to draw a sufficiently detailed and economically reasoned plan, as well as motivated to talk convincingly to creditors.

Due to problems discovered in practice, several draft laws are in the Parliament aimed at facilitating LPP. Under the amendments, the LPP Plan would have to gain support from non-secured creditors representing only 1/2 of all due claims, instead of 2/3 as is the case at present. The draft laws also envisage increasing maximum LPP duration from 1 to 2 years.

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## COMPETITION

### Competition Council to control advertising less than previously

On 1 January 2009 amendments to the Advertising Law and Competition Law came into force envisaging that the Competition Council will not control unfair advertising and misleading and comparative advertising, if such advertising does not have a substantial impact on competition in general. Injured market participants will be able to protect their interests by filing a civil claim with the court.

The amendments have been adopted in order to relieve public resources from case investigation and evidence-gathering in cases where there is no substantial harm to competition and the public interest. The legislator hopes that approaching the court will ensure more elaborate argumentation as claimants would perform a more detailed case analysis before raising a claim, would explain their arguments in more detail, and would consider possible litigation expenses.

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### Competition Council guidelines explain new Latvian Competition Law concept: "dominant position in the retail trade"

On 1 October 2008 amendments to the Competition Law entered into force prohibiting market participants from abusing a dominant position in the retail trade and thus restricting the possibility of distorting relations between retailers and suppliers, e.g. by unfair and unsubstantiated payments, unreasonably extended payment terms, and disproportionate sanctions.

To explain and clarify interpretation of the concepts (terminology) included in the amendments and to establish basic principles to be applied in assessing and proving possible violations, on 29 August 2008 the Competition Council issued guidelines for application of Article 13(2) of the Competition Law.

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## COMMERCIAL LAW

### New rules for commercial contracts and other amendments to Commercial Law

At the end of 2008 the Latvian Parliament passed Amendments to the Commercial Law setting general rules for commercial transactions as well as introducing special provisions for commercial purchase, commercial commission, expedition, commercial safekeeping, leasing, factoring, and franchise contracts. This part of the amendments enters into force as of 1 January 2010. Therefore, companies whose day to day business involves these types of contracts (e.g. leasing companies) should in due time evaluate the amendments to the law and adapt existing agreements to the new requirements.

The amendments also require that in relation to public limited liability companies, the following decisions must be passed at the shareholders meeting if not less than three quarters of shareholders present having voting rights have voted in favour of them, unless the articles of association provide for a greater majority: decisions on amending the articles of association, changing the share capital, issuing convertible bonds, reorganizing the company, concluding, amending or terminating a group contract, consenting to inclusion and termination or continuation of activities. This differs from the prior regulation, which prohibited the articles of association of public limited liability companies from setting majority requirements that diverge from the requirements of the Commercial Law. Thus, the amendments facilitate use of public limited liability companies as joint ventures and would justify review of majority provisions in the articles of association of existing joint venture companies.

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## PUBLIC PROCUREMENT

### How acceptable is price modification in procurement contracts?

Recently, interest in public procurement has become more intense. This also marks a substantial growth of conflicts in the field. Likewise, the institutions that monitor contracting authorities are applying tighter control as to financial obligations (procurement contracts among them). Therefore, parties to procurement contracts should know how acceptable modification of a procurement contract would be.

At times, fulfilling a contract between a contracting authority and a supplier following a public procurement procedure is impossible at the fixed price, because of changes in the market that create a disproportionate risk for the supplier. In this case two options are possible: to amend or to terminate the contract.

Terminating the contract involves two substantial minuses: public procurement is not accomplished, and incorporated contractual sanctions can be enforced.

Amending the contract is possible, if supported by an economic basis and if it complies with the aim of public procurement: free competition among suppliers, transparency, and equal treatment. Otherwise the amendment is not admissible without organizing a new procurement procedure.

If the current contract provides clear and accountable provisions for price modification, no specific problems should arise. However, if the contract does not so provide, the contracting authority is allowed to insist that a price modification that maintains an economic balance between the contracting authority and the supplier does not contradict the aim of public procurement regulations.

Although the contracting authority is responsible for conformity assessment of amendments to a procurement contract, inspections by controlling institutions regarding financial spending may still affect the other party to the contract. Therefore, our advice is: before initiating amendments, suppliers have to weigh the need, to prepare economic justification, and to communicate with the contracting authority in writing.

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## TAX

### Substantial amendments to tax laws

Starting from the last quarter of 2008, the tax laws of Latvia have seen many substantial amendments. For more detailed information please refer to Sorainen Tax News Flashes issued bi-weekly and the Tax Card at our website [www.sorainen.com](http://www.sorainen.com).

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## LITHUANIA

### COMPANY LAW

#### Changes in management board decision-making procedure

Ignoring disapproval from the Lithuanian government, the Parliament adopted amendments to the Law on Companies. These establish a new decision-making procedure for management boards. The amendments take effect on 1 July 2009. To make a management board decision effective, current legislation requires a simple majority of votes at the meeting of the management board, i.e. the number of votes in favour of a decision must exceed the number of votes against. After 1 July 2009, a decision of the management board will be considered adopted when at least the majority of actually elected members of the management board vote "for" the decision. This rule will multiply with the quorum requirement (2/3 of the management board members listed in the articles of association must participate in the meeting) which will stay in force. The amendments will entail an outbreak of amendments to articles of association of companies, which will have to mirror the provisions of the Law on Companies.

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## EMPLOYMENT LAW

### Abolition of transfer of rest days occurring on public holidays to the nearest following working day

On 19 December 2008 the Lithuanian Parliament adopted a Law Repealing Article 162<sup>1</sup> of the Labour Code of Lithuania. As a result, rest days which coincide with public holidays listed in the Labour Code will no longer be transferred to the nearest following working day. The amendments to the Code are intended to complement numerous legal instruments aimed at mitigating the effects of the economic crisis.

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## CONTRACT LAW

### The European Union Law, entitling not to apply the requirement to interpret the terms of a contract protecting the public interest of the consumer, entered into force

On 16 December 2008 the Lithuanian Parliament adopted a Law Amending and Supplementing Article 6.188 of the Civil Code of Lithuania. The amendment to the Code is aimed at properly harmonising Lithuanian legislation on unfair terms in consumer contracts with the requirements set in Council Directive 93/13/EEC ("the Directive"), as the EC Commission decided that the existing Civil Code provisions were not comprehensive.

The amendment to the Code establishes an exemption from the requirement laid down in Article 5 of the Directive according to which any written term of a consumer contract must be drafted in plain, intelligible language and where doubt exists about the meaning of a term, the interpretation most favourable to the consumer prevails. The requirement to interpret contractual terms in favour of the consumer will not apply in protection of the public interest of consumers where prohibition of the use of standard contractual terms is sought. In individual cases, the emphasis is on protecting the individual consumer against risks entailed by unclear terms, whereas in case of protecting the public interest of consumers the aim is to generally delete an unclear term from the contract.

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## PUBLIC PROCUREMENT

### Speedier public procurement system introduced

On 15 September 2008, amendments to the Law on Public Procurement entered into force. The amendments are aimed at developing a system to enable contracting authorities to conduct simplified and speedier public procurement procedures. As

from 15 September 2008, contracting authorities operating in the classical sector may establish forms of procurement and rules for procurement procedures themselves. Following entry into force of the new wording, termination of simplified procurement procedures does not require permission from the Public Procurement Office.

Considering the increase of value levels during recent years and offers of contracting authorities, the Law sets a slight increase on procurement of low value (previously procurement of this category included procurement by usual commercial practice). Low-value procurement is possible where the value of goods or services procured is lower than LTL 100,000 (~ EUR 28,962) and the amount payable for works carried out does not exceed LTL 500,000 (~ EUR 144,810).

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## TAX

### Corporate income tax

On 18 and 22 December 2008 the Lithuanian Parliament adopted four laws amending the Law on Corporate Income Tax ("the Law"). The essential novelty of the Law is the changed rate of corporate income tax. As from 2009, taxable profit and dividends of legal entities will be taxed at the rate of 20% (previously the rate was 15%). This rate also applies to income of foreign enterprises received other than through a permanent establishment situated in Lithuania, including e.g. income from sale, other transfer into ownership or lease of immovable property in Lithuania, income from activities and sports activities in Lithuania, and annual bonuses to supervisory board members.

Although the corporate income tax rate has increased, certain tax reliefs have also been provided for. The Law introduces the concept of an investment project. Taxable profit may be reduced by up to 50% for legal entities running investment projects, i.e. investing in fixed assets intended for production of new, additional products or provision of new, additional services or for increase of production (or service provision) capacity, or for introduction of a new production (or service provision) process, or for substantial change of an existing process (or part), as well as for introduction of technology protected by international invention patents.

The dividend exemption contained in the Law has been amended. Dividends are not subject to taxation if a shareholder holds at least 10% voting shares for at least 12 months. This exemption does not cover the total amount of dividends, if the taxable profit of a Lithuanian legal entity paying the dividends is taxed at the rate of 0% or if taxable profit is reduced as a result of an investment project or other reliefs.

### Value added tax

On 23 December 2008 the Law Amending the Law on Value Added Tax ("the Law on VAT") was adopted. Standard value added tax ("VAT") rate has been increased by one per cent and currently stands at 19%. This novelty is applied even in respect of contracts for supply of goods or provision of services concluded before adoption of the Law on VAT, i.e. supply/provision/import/acquisition of goods or services after 1 January 2009 based on earlier agreements will be taxed at the rate of 19% instead of 18%. Note, however, that the Law on VAT provides for further application of the hitherto applied reduced VAT rate to certain services (e.g. accommodation, events, subscription) where such services were ordered before 31 December 2008.

The Law on VAT removes almost all VAT reliefs. As from 1 January 2009, the reduced VAT rate previously applied to e.g. passenger transport, books, pharmaceuticals, tourist services, organic foodstuffs, no longer applies. The reduced rate of 9% will be applicable only to books and non-periodic information publications. Further, the reduced rate of 9% has been removed in respect of construction, insulation of residential houses funded by state and municipal budgets, as well as from soft credits granted by the State and resources of special funds of the State.

### Personal income tax

On 23 December 2008 the Law Amending and Supplementing the Law on Personal Income Tax ("the Law on PIT") was adopted. As from 1 January 2009, all income, except for income from dividends which is taxed at the rate of 20%, is subject to personal income tax at the rate of 15% (to 31 December 2008, rates of 15% and 24% applied).

The basic tax-exempt income allowance ("allowance") will apply to residents of Lithuania only with respect to income incidental to employment or quasi-employment, and the amount of the applicable allowance will be established taking into account the income of the resident, i.e., with increase of income the applicable allowance will be gradually reduced. No allowance will apply to income exceeding a certain amount. The annual allowance will not exceed LTL 5,640 (~ EUR 1,633), if the annual income of a resident does not exceed LTL 9,600 (~ EUR 2,780). If the annual income of a resident exceeds LTL 9,600 (~ EUR 2,780), the annual allowance applicable to the resident will be reduced.

Certain tax reliefs, including mortgage interest relief, have been removed. Provisions related to tax deductions have also been amended, e.g. the minimum period of ownership of property other than residential property after which the income received from the transfer of such property is qualified as a tax deduction has been extended from three years to ten years. The securities tax exemption has also been amended: in addition to the currently existing exemption conditions (shares are transferred into ownership not earlier than 366 days after their date of acquisition and the resident has not held more than 10% of the shares of the entity for three years), a condition has

been established according to which the resident alone or together with related persons may not have held more than 10% of the shares of the entity for three years.

### Compulsory health insurance

On 22 December 2008 the Law Amending and Supplementing the Law on Health Insurance ("the Law on HI") was adopted. As from 1 January 2009, a 3% rate of compulsory health insurance contributions payable by employers is established. Employees will have to pay compulsory health insurance contributions of 6% themselves. Compulsory health insurance contributions were previously included in compulsory social security contributions.

Individuals earning income on the basis of copyright agreements and those receiving income from sport or performing pay compulsory health insurance contributions of 6% of income and employers pay 3% compulsory health insurance contributions.

Natural persons engaged in individual activities pay compulsory health insurance contributions at the rate of 9% of taxable income earned during a calendar year from their individual activities subject to personal income tax.

As from 1 January 2009, residents of Lithuania pay compulsory health insurance contributions at the rate of 6% on other income (not specified in the Law) on which personal income tax is calculated (e.g., on income from sale of property). No compulsory health insurance contributions were paid on such income previously.

### State social security

On 18 and 19 December 2008, amendments related to laws on state social security were adopted. As from 1 January 2009, the former 30.98% rate of state social security contributions payable by employers is replaced by a new 27.7% rate. As before, employees pay 3% social security contributions from income (withheld by employers). In addition, those who previously did not pay or paid small social security contributions have been brought into the social security system. These include persons receiving income from sport, performing, or on the basis of copyright agreements. These individuals pay social security contributions on income received in the same way as on income incidental to employment, except for contributions payable during the transitional period.

Different rates of state social security contributions have been established for individual categories. In addition, in many cases a transitional period in respect of the newly-established rates of state social security contributions has been set.

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**BELARUS****REAL ESTATE****New lease regulations**

On 19 December 2008 a Decree of the President of the Republic of Belarus No 24 on Some Issues of Lease of Buildings and Isolated Premises was issued.

The Decree abolishes state registration of all agreements on lease (sublease) of real estate despite their terms and conditions. Previously, all such agreements made for a period equivalent to one year or over were subject to state registration with the National Cadastre Agency and were valid only from the date of registration. Registration itself was a time- and money-consuming procedure, which resulted in landlords often refusing to conclude long-term lease agreements.

Under Decree No 24 a lease agreement made after 19 December 2008 is effective from the date of signing by the parties. If the term is equivalent to or exceeds one year, the landlord should notify the local department of the National Cadastre Agency within 10 days after signing. Notification should contain information about the parties, location of the property, its area, and term of lease. This information should be included in the Unified Register of Real Estate, Rights Thereto and Transactions Therewith, and no state duty is payable.

Additionally, Decree No 24 established a minimum term for lease of buildings and premises equivalent to 3 years. Lease of buildings and premises for a shorter period is possible subject to the tenant's consent.

Decree No 24 entered into effect on 20 December 2008. It does not affect lease agreements made before 20 December 2008 until the end of their period of validity. Prolongation of agreements made before 19 December 2008 should be in line with Decree No 24.

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**BANKING****Devaluation of Belarusian ruble**

On 2 January 2009 the rate of the Belarusian ruble (BYR) to the US Dollar (USD) decreased by 20.5%. The decrease of the Belarusian ruble towards the Euro (EUR) constituted 20.3%. This steep devaluation was undertaken by the National Bank of Belarus on recommendation of the International Monetary Fund, as an anti-crisis measure.

**Bank deposits by individuals 100% secured by the state**

On 4 November 2008, Decree of the President of the Republic of Belarus No 22 of 4 November 2008 on Guarantees of Preservation of Funds of Natural Persons Placed in Accounts or Deposited in Banks of the Republic of Belarus was issued. Under the

Decree, repayment of deposits made with banks by individuals is fully guaranteed by the state. The Decree was published and entered into force on 6 November 2008.

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**SECURITIES AND CAPITAL MARKETS****Abolition of preferential terms for share acquisitions**

One of the proclaimed principles of privatization in Belarus is granting social guarantees to employees of privatized enterprises in the privatization process. Based on this principle, state-owned shares of companies established as a result of privatization should be sold to company employees at a preferential price. Further, employees may acquire shares in exchange for privatization vouchers "Imuschestvo" ("Property") which were distributed among the population of Belarus in the early nineties under a special procedure. Other Belarus citizens may also acquire shares in exchange for privatization vouchers.

Exceptions to the rule exist. State-owned shares in companies established as a result of privatization of certain enterprises may not be sold on preferential terms and may not be exchanged for privatization vouchers, as established by Edict of the President of the Republic of Belarus No 605 of 10 November 2008 on Certain Issues of Privatization of Republican Unitary Enterprises.

The Edict lists 151 such enterprises, operating primarily in pharmaceuticals, telecommunications, trade, heavy industry, and energy. The largest of these enterprises are Belorusskij Avtomobilnyj Zavod (BelAZ), Minskij Zavod Koljosnyh Tjagachej, Minskij Zavod Termoplast, Minskij Avtomobilnyj Zavod (MAZ).

**Approval of list of corporations still under moratorium on transfer of shares**

The Government of Belarus has approved a list of public corporations which ensure functioning of strategically important sectors of the economy and satisfaction of other government needs. This resolution clarifies issues related to lifting the moratorium on free circulation of shares acquired in the process of voucher privatization.

From 1 June 2008 began a gradual lifting of the moratorium on transfer of shares in public corporations created in the course of privatization. The moratorium, which actually froze much of the Belarusian stock market, has been in existence since 1998.

Under Decree No 7 adopted on 14 April 2008, from 1 June 2008 the moratorium was abolished with regard to shares of public corporations without government capital and corporations with a government share in their capital equal to 75% and over. From 1 January 2009 the moratorium was

lifted with regard to public corporations in which the government holds 50% of the shares and over. However, until 1 January 2011, restrictions will remain effective with regard to public corporations which ensure functioning of strategically important sectors of the economy. Until 15 December 2008 a list of these corporations had not been approved, so that transactions with shares gained during voucher privatization could not be executed.

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**DISTRIBUTION AND TRADE****Belarus National Bank forbids advance payments for imports**

On 11 November 2008 the National Bank adopted Resolution No 165 on Procedure for Payments under Import Agreements.

Under Resolution No 165, Belarusian residents can not make advance payments from accounts in Belarusian banks for import of goods, work, services, or transfer of intellectual property rights before their foreign counterparts fulfil obligations to supply goods, work, or services, or transfer intellectual property rights. Belarusian banks should refuse to transfer money if a transfer does not comply with Resolution No 165. Exemptions from the ban on advance payments may be granted to business entities by resolution of the National Bank, on approval of the Government.

Under a Letter of the National Bank No 31-14\15147 dated 18 November 2008, Resolution No 165 does not apply to payments under letters of credit.

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**TAX****Significant amendments to tax laws**

On 1 January 2009, significant amendments to certain Belarusian tax laws came into force. The measures evidence systematic steps taken by the authorities to simplify the taxation system and reduce the tax burden on legal entities and individuals.

The main novelty relates to Personal Income Tax ("PIT"). Previously, PIT was calculated according to a progressive rates scale starting from 9% and up to 30%. Beginning from January 2009, individuals pay PIT at a flat tax rate of 12%. Other rates apply to specific income. In particular, income in the form of dividends, income from business and private notary activities are taxed at 15%; income received from High Technologies Park residents under labour agreements, income of individual entrepreneurs who are residents at the High Technologies Park – 9%. Significant amendments were also introduced in

the Decree of the President on Simplified Taxation System ("STS"). Under the new provisions, criteria allowing companies to use STS were lowered. Additionally, tax rates under STS were reduced. New rates are as follows: 6% of revenues for companies which are VAT payers; 8% of revenues for companies which are not VAT payers; 15% for companies using markup as a tax base. As a result of these measures, about 4,000 companies become entitled to use STS in addition to existing STS users.

The Law on Real Estate Tax was also changed. The list of objects subject to taxation has been shortened. From January 2009, real estate tax is no longer imposed on fixed manufacturing assets (e.g. equipment, machine tools).

Further, beginning from 2009 the payment to the National Reserve Fund for the Support of Agricultural producers (turnover tax) has been reduced. At present, the turnover tax is levied at the rate of 1% of turnover from sale of goods and services. This measure considerably lessens the tax burden on legal entities.

Along with reduction of the tax burden, administrative taxation procedures were also improved. Thus, the obligation of taxpayers to submit "empty" tax returns or information on the absence of objects subject to taxation was abolished. Moreover, under the new regulations taxpayers may file tax returns electronically.

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## NEWS IN SORAINEN

### ■ Awards

#### **The Financial Times and Mergermarket award to Sorainen as the Best Baltic Law Firm**

In London on 10 December 2008, Sorainen received the "Baltic Legal Advisor of the Year 2008" award from *The Financial Times* and *Mergermarket*.

The annual European M&A Awards aim to recognise leading law firms and financial advisors in the M&A (mergers and acquisitions) field in Europe. This is the first time for *The Financial Times* and *Mergermarket* to select and award the best law firm in the Baltics.

The host of the award ceremony, BBC business news presenter Declan Curry announced that the award went to Sorainen – the leading Baltic law firm which advised on the largest number of transactions and for the largest total value in the Baltics. During 2007-2008 Sorainen advised on transactions with a total value of over EUR 3 billion.

*The Financial Times* and *Mergermarket* Awards are unique in utilising both statistical M&A transaction data and independent expert opinion to identify the winners of each award. Selection involves three stages designed to select the winner in the most objective, comprehensive, and equitable way. The judging panel includes senior representatives from *The Financial Times*, *The Banker*, *Mergermarket*, major private equity funds, and international law firms.

#### **Sorainen recognised as the Best Baltic Law Firm of the Year in the PLC Which Lawyer? Law Firm Awards 2009**

On 23 January 2009, Sorainen received the "Baltic Law Firm of the Year" award in the international *PLC Which Lawyer? Law Firm Awards 2009*. Although these awards have been presented since 2005, this is the first time that a selection has been made for an award of the best law firm in the Baltic countries.

The annual *PLC Which Lawyer? Law Firm Awards* aim to recognise the best law firms across the world with awards in regional, national, and international categories.

Award winners are selected by online voting, open to over 5,500 in-house counsel from international companies across the globe. Voters are free to pick their own winners or choose from nominees suggested by *PLC Which Lawyer?* researchers.

Award organizers explain that Sorainen was commended by the voters for having "good people in all three countries" and for being "well-organised, timely and reasonable".

#### **Sorainen Tallinn office receives the Melissa Wells Corporate Citizenship Award**

Sorainen Tallinn office has received the Melissa Wells Corporate Citizenship Award given by AmCham Estonia to acknowledge our outstanding community service and charitable contributions. We are committed to positively

contributing to society and our aim is to support young talented minds through different activities - supporting pupils to study abroad, encouraging young people to develop their professional skills, sponsoring organisations that aim to support and initiate positive changes in society and contribute to education and development.

Melissa Wells Corporate Citizenship Awards showcase businesses for demonstrating ethical leadership and corporate stewardship and for making a positive difference in society. The award takes into account company involvement in educational programs, corporate philanthropy, including service and product donations to the local community or volunteers.

### ■ Recent transactions

#### **Representing Latvian state in bailout of Parex banka**

Riga office team is representing State Joint Stock Company Latvijas Hipoteku un zemes banka (Mortgage and Land Bank) and its shareholder, the Latvian state, in the bailout of Parex banka. This is the first government bailout case in Latvia resulting from the current global financial crisis. The Investment Agreement signed with the majority shareholders of Parex banka, Mr Kargins and Mr Krasovickis, provides for purchase of a 84.83% stake in Parex banka shares by Mortgage and Land Bank for a symbolic price of two Latvian lats (approximately EUR 2.84). Subsequent government investment in the bank (loans, deposits) amounts to approximately EUR 1 billion; in addition, the state has guaranteed repayment of syndicated debt of Parex banka of EUR 775 million. We advised the client on the structure of the transaction, including advice on state aid and regulatory matters, drafted the Investment Agreement and all other transaction-related documents, and assisted the client in negotiating the Investment Agreement and closing the transaction. We are continuing to advise the client on various legal issues related to the shareholding in Parex banka. In this assignment Sorainen Riga office team is led by partners Agris Repss, Girts Ruda, and Eva Berlaus-Gulbe.

#### **Advising BNP Paribas on a USD 85 million transaction**

Sorainen acted as Estonian counsel to BNP Paribas in a USD 85 million credit facility for the acquisition of rolling stock. We advised the client as to the facilities agreement, holding the borrower's shares in trust, intercreditor and subordination agreements, rolling stock acquisition and lease agreements as well as financial collateral agreements for assignment of claims under these agreements, pledges over the rolling stock, securities and bank accounts and legal opinions, amongst others. The transaction was complicated by a range of legalities related to cross-border application and enforcement of property rights over rolling stock arising under Russian, Kazakh, and Estonian laws. Estonian law advice was given by partner Reimo Hammerberg and senior associate Risto Agur.

**Ship arrests continue**

In December 2008 Tallinn office Dispute Resolution Team managed to arrest 3 cargo ships in a single day. The ships were sailing under the flags of the Bahamas, Malta, and Saint Vincent and Grenadines. The ship arrests are evidence of the effectiveness of the Estonian judiciary, which is able to act overnight in an international legal environment. Sorainen Dispute Resolution Team has been actively involved in protecting client interests through arrests of properties and recently also arrested a cruise ship and an oil tanker. In addition, the release of a cruise ship was achieved, where the ship was arrested at the request of the Russian prosecutor. The arrest was lifted soon after filing an appeal claiming its illegality.

**Advising Manuli Rubber Industries Group**

Riga office advised the global leader in manufacturing steel reinforced hoses and metal fittings, starting from business set-up in Estonia, Latvia, and Lithuania to continuous support in various corporate matters after establishment, including preparation of documents for approval of annual reports and share capital increase as well as implementing share capital increases. The Sorainen team assisted the client in preparing all corporate documents related to changes in the Management Board of Latvian subsidiaries and also provided legal advice on employment law matters. The case was handled by partner Eva Berlaus-Gulbe and associate Zane Paeglite.

**Representing HSH Nordbank in multi-million construction financing**

Riga office acted as local counsel to the client in relation to a EUR 22.4 million syndicated loan agreement together with DnB NOR Banka for financing construction of TALLINK HOTEL with 261 rooms in the centre of Riga. We advised the client on related security agreements including mortgage and other agreements for the project. The client was advised by partner Girts Ruda and associate Raivis Kirsons.

**Assisting leading Finnish bank on financing issues in the Baltic States**

Sorainen provided assistance to Pohjola Pankki on debt financing and factoring services in Estonia, Latvia, and Lithuania. The report specially concentrated on matters of transfer of receivables, overdue interest, use of collection letters and internal reports. The client was advised by Riga office partner Girts Ruda and associate Raivis Kirsons.

**Assisting Ruukki on strategic acquisition in Lithuania**

Sorainen advised Ruukki Lietuva, part of the Rautaruukki group operating in 26 countries and engaged in supply of metal-based components to the construction and mechanical engineering industries, in acquiring 100% of shares in Gensina. Gensina specialises in design, production, sales, and installation of metal constructions and is an active player in the Lithuanian construction market. By investing in acquisition of Gensina, Ruukki has strengthened its position in the field of production and design of metal constructions in the Baltics as well as in enhancing its product supplier network

in the Baltic States. We performed legal due diligence of the target, drafted and negotiated the share purchase agreement and other transaction documentation. Our team was led by partner Laimonas Skibarka and senior associate Liudas Ramanauskas.

**Advising creditors regarding major restructuring in Lithuania**

Sorainen Vilnius office has been advising several major creditors of Ranga IV in relation to the restructuring proceedings of this company. Ranga IV is one of the largest construction companies in Lithuania and went into financial distress as a result of the declining real estate market. This is one of the largest restructuring cases in Lithuania during the last years. Though there have been a few restructuring cases since the enactment of the Law on Restructuring of Enterprises in 2001, currently many companies are considering the restructuring as a possible way to escape from bankruptcy.

**Advising Akropolis in reorganising company business structure**

Sorainen Vilnius office advised this major developer of shopping centres in the Lithuanian market in reorganizing the company's business structure, including separation of each shopping centre and other real estate projects into newly established companies. The client is advised by partner Kestutis Adamonis and senior associate Mantas Petkevicius.

**Disposal of Armila in Lithuania**

Vilnius office advised UAB Armila and its shareholders on disposal of a 92% shareholding in the company to Andrea-Noris Zahn (ANZAG), one of Germany's leading pharmaceutical wholesalers. With a market share of 13%, Armila is one of Lithuania's largest pharmaceutical wholesalers and in 2007 recorded sales of over EUR 62 million. This is one of the largest transactions in the pharmaceutical sector in Lithuania this year. Our team in the project was led by partner Laimonas Skibarka and senior associate Mantas Petkevicius.

**■ Employees****Head of Tallinn office Commercial Contracts Team Kaupo Lepasepp becomes a partner**

From 1 January 2009 Kaupo Lepasepp became the seventh partner of Sorainen Tallinn office, which now employs 35 lawyers as of 1 February.

Mr Lepasepp has been working with the firm since October 2006 and has built up and led the Commercial Contracts Team in Tallinn office for over 18 months; he is also a member of the Dispute Resolution Team. Kaupo Lepasepp graduated the Faculty of Law at Tartu University in Estonia and is a sworn attorney at the Estonian Bar. Mr Lepasepp has extensive work experience in trade, distribution, infrastructures, and real estate, as well as ADR and litigation in these practice areas and white-collar offences.

**Partner Renata Berzanskiene – the only representative from the Baltic States at the CCBE European Bar Leaders Summit**

Sorainen Vilnius office partner Renata Berzanskiene represented the Lithuanian Bar Association at the Council of Bars & Law Societies of Europe (CCBE) European Leaders Summit held on 28 November in Brussels. The Summit was attended by representatives from 21 EU countries and 5 observer countries. On 29 November Renata Berzanskiene attended a CCBE Plenary Session.

**■ Other****Sorainen's ISO certificate renewed**

After 3 years of being the only ISO certificated law firm in the Baltic States, Sorainen offices, following external audit, were recommended for continuing approval to Standard ISO 9001:2000 in November 2008. The audit was performed by Lloyd's assisted by law experts from Sweden. Managing partner Aku Sorainen notes that "auditors were really impressed about our QMS as such and even more impressed that it was so well implemented". He is also happy that after 6 years' work with the system our offices can be proud by being fully integrated and able to provide the same quality services in all offices, as already highly appreciated by clients.

**Sorainen among world's leading tax teams**

In the newly-issued Tax Directors Handbook 2009, Sorainen is recommended repeatedly as one of the leading tax law firms in the Baltic States. Having analysed the tax capabilities of law firms, the Tax Directors Handbook 2009 forms an essential guide to the world's premier tax law firms.

During the research, clients consistently mentioned a number of tax advisers that stand out in each jurisdiction. As a result, researchers have compiled a list of the leading 250 tax lawyers, as recommended by clients, to create the TDH250. Janis Taukacs, partner at Sorainen Riga office and head of the regional Tax Legal Team, is among the leading global tax lawyers.

To read the full guide, please visit the following website [www.taxdirectorshandbook.co.uk](http://www.taxdirectorshandbook.co.uk).