



# e-Commerce 2014

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# Latvia

## Agris Repšs and Valts Nerets

Sorainen

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### General

- 1 How can the government's attitude and approach to internet issues best be described?

The government widely promotes e-commerce and advises companies to use it in their business, emphasising its importance as a new opportunity to develop business and to compete in the market. For example, the Ministry of Economics of Latvia, which is responsible for effective e-commerce policy development and its application, organises e-commerce seminars and other development activities.

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### Legislation

- 2 What legislation governs business on the internet?

Business on the internet is mainly governed by:

- the Civil Law;
- the Commercial Law;
- the Law on Information Society Services;
- the Electronic Documents Law; and
- the Electronic Communications Law.

Legislation applicable to commercial relations in general can be applied to business on the internet as well, for example:

- the Personal Data Protection Law;
- the Consumer Rights Protection Law;
- Regulations of the Cabinet of Ministers No. 207 – 'Regulations Regarding Distance Contracts';
- Regulations of the Cabinet of Ministers No. 1037 – 'Regulations regarding Distance Contracts for the Provision of Financial Services';
- the Copyright Law;
- the Advertising Law;
- the Electronic Mass Media Law; and
- the Unfair Commercial Practice Prohibition Law.

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### Regulatory bodies

- 3 Which regulatory bodies are responsible for the regulation of e-commerce and internet access tariffs and charges?

Under the Law on Information Society Services an internet service provider (ISP) is a provider of an internet service that ensures the transmission of information in an electronic communications network, access to an electronic communications network and the storage of information. The Public Utilities Commission provides registration of ISPs and other types of electronic communications companies and supervises the services provided by these companies (eg, the quality and tariffs of internet access provided by the ISP).

The Consumer Rights Protection Centre supervises e-commerce and e-business in relation to consumer rights (eg, the provision of

information regarding a service, the fulfilment of an agreement with the consumer, online marketing).

The Data State Inspectorate registers the personal data processing that is carried out in the e-commerce systems, supervises personal data processing, supervises sending of commercial communications and carries out other related tasks.

There are special laws that may apply depending on the type of business (eg, gambling, sale of specific products such as medical products, tobacco, etc).

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### Jurisdiction

- 4 What tests or rules are applied by the courts to determine the jurisdiction for internet-related transactions (or disputes) in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

For internet-related transactions or disputes the courts apply general rules applicable to all cross-border disputes. If a defendant is resident in, or provides goods or services from, an EU member state, Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) applies. The exception is Denmark, which is subject to the Brussels Convention of 27 November 1968.

In a contractual business-to-business conflict, in the absence of a contractual choice of law, the defendant can be brought before the court of his or her domicile or registered office or before the court of the place of performance of the obligation. In contractual business-to-consumer matters, in the absence of a valid contractual choice of law, the consumer can only be brought before the courts of his or her domicile; professionals can be brought either before the court of the consumer's domicile, or before the court of their own domicile or registered office. In matters relating to tort, delict or quasi-delict, the courts of the place where the harmful event occurred (or may occur) have jurisdiction.

For other countries, bilateral conventions can be applied. As a general rule, and subject to a number of exceptions, the courts of the defendant's domicile have jurisdiction.

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### Contracting on the internet

- 5 Is it possible to form and conclude contracts electronically? If so, how are contracts formed on the internet? Explain whether 'click wrap' contracts are enforceable, and if so, what requirements need to be met?

Yes, concluding contracts electronically is possible under Latvian law. The Civil Law provisions apply to all contractual relationships. A contract is defined as any mutual agreement between two or more persons on entering into, altering, or ending lawful relations. It includes a promise and its acceptance by a second party. Therefore a contract is considered to be concluded when there is an exchange

of promise and acceptance – most often, when a consumer clicks ‘order’ and the service provider accepts the order, or if the consumer clicks the ‘I agree’ button. If the law does not require a written form, a contract can be made on the internet and therefore ‘click-wrap’ contracts are enforceable as well. Moreover, if the law does require a written form for a particular kind of contract, and an electronic document has an electronic signature, it shall be considered signed by hand and in compliance with written form requirements.

- 6** Are there any particular laws that govern contracting on the internet? Do these distinguish between business-to-consumer and business-to-business contracts?

With regard to business-to-business contracts there are no specific laws governing these issues. The Civil Law and the Commercial Law provisions are applied to all contractual relationships. With regard to business-to-consumer contracts, the Consumer Rights Protection Law and regulations of the Cabinet of Ministers No. 207 ‘Regulations Regarding Distance Contracts’, and No. 1037 ‘Regulations regarding Distance Contracts for the Provision of Financial Services’ provide additional norms on legal equality and contract fairness.

- 7** How does the law recognise or define digital or e-signatures?

E-signatures are defined in the Electronic Documents Law which also specifies the necessary requirements that an e-signature should have in order to be secure and recognised by law. An e-signature is defined as electronic data that is attached to or logically associated with an electronic document, ensuring the authenticity of the electronic document and confirming the identity of the signatory. Contracts signed by e-signatures are valid under Latvian law.

The Electronic Documents law distinguishes ordinary and secure e-signatures. An ordinary e-signature is data attached to an electronic document, confirming the identity of the signatory and the authenticity of the document. A secure signature has more requirements such as a qualified certificate and the possibility to detect later changes in the signed document. Secure e-signatures ensure the identity of a signatory. An electronic document is considered to be signed by hand if it has a secure electronic signature, fulfilling written form requirements under the law for certain contracts.

- 8** Are there any data retention or software legacy requirements in relation to the formation of electronic contracts?

As there are no particular laws governing the formation of electronic contracts and thus the general law provisions apply, there are no specific requirements for the formation of electronic contracts.

## Security

- 9** What measures must be taken by companies or ISPs to guarantee the security of internet transactions?

An ISP is liable for the transmission and storage of information in an electronic communications network. The duty of ISPs or companies is to perform all technical and organisational measures in relation to the security of the network. The goal is protection of user data that would also include internet transactions. In the case of a threat to a specific electronic communications network, users have to be informed and accessible means of legal protection for the reduction of such risks should be provided. If there is a security incident that is defined as a harmful event or offence, as a result of which the integrity, availability or confidentiality of information technologies is endangered, the ISP must perform all activities necessary for the prevention. Concerning a security incident, the ISP may, upon its own initiative, inform the Information Technologies Security

Incidents Response Institution, which is the responsible authority for information technologies security. However, this is not a mandatory requirement.

If it is an electronic communications merchant that ensures and provides a public electronic communications network, then it should perform all relevant technical and organisational measures to ensure the integrity of this network. This includes ensuring continuity of supply of services, as well as drawing up an action plan for ensuring continuous operation of the electronic communications network, indicating therein the technical and organisational measures to appropriately manage the risks posed to security of the network and the provision of services. In addition, an electronic communications merchant must:

- ensure that personal data can be accessed only by authorised personnel and used for previously specified purposes;
- ensure that personal data is protected against accidental or unlawful destruction or accidental loss, and unauthorised or unlawful storage, processing, access or disclosure, and
- document the internal procedures for the investigation and prevention of the breach of personal data protection.

- 10** As regards encrypted communications, can any authorities require private keys to be made available? Are certification authorities permitted? Are they regulated and are there any laws as to their liability?

Latvian law is not specific on encrypted communications. However, there is a general duty for e-commerce merchants not to disclose information regarding users or subscribers without their permission. It applies also to information regarding the electronic communications services or value added services received by them. Exceptions are permitted when disclosure is necessary for investigations by the state authorities. Disclosure of such information is regulated by relevant procedural laws and is in general possible under specific procedures.

The same principle applies to ISPs regarding information that the user or subscriber transmits or that is transmitted in providing electronic communications services to users or subscribers. This is regulated in the Electronic Communications Law.

Certification authorities are permitted in Latvia under the Electronic Documents Law, which regulates the accreditation, duties and liabilities of trusted certification service providers. Under this law, a trusted certification service provider is liable for losses caused to a person who reasonably relied upon the qualified certificate in relation to compliance with requirements of law, security, and also for the losses that occurred to a person when revocation or suspension of operation of such certificate has not been registered.

## Domain names

- 11** What procedures are in place to regulate the licensing of domain names? Is it possible to register a country-specific domain name without being a resident in the country?

The right to use the domain name can be obtained by filling out and submitting domain name registration applications to the registry of domain names. The registry accepts direct registrations from the domain name holders as well as applicants, who may register a domain name via a registrar.

The registry reviews the application in one calendar day. It is possible to register a top-level ‘.lv’ domain without being a resident of Latvia.

The policy for acquisition of the right to use domain names under the top-level ‘.lv’ domain states that the domain name is not an object of the ownership right, and it is not a property of the domain name holder. It is only the right to use the domain name that is granted.

**12** Do domain names confer any additional rights (for instance in relation to trademarks or passing off) beyond the rights that naturally vest in the domain name?

Earlier domain name registration may serve as a ground for invalidation of a later trademark registration. A trademark registration may be declared invalid if the domain name has been used honestly prior to the date of filing of an application for the registration of the trademark in commercial activities in Latvia in connection with identical or similar goods or services for so long and in such amount that the use of the registered trademark may confuse consumers about the origin of the respective goods or services.

**13** Will ownership of a trademark assist in challenging a 'pirate' registration of a similar domain name?

Yes, a trademark owner is entitled to bring a claim to the court against an abusive registration of domain name, if the domain name contains a trademark in full or partially and is registered in bad faith or with no legitimate rights to the domain name.

There is no alternative dispute resolution option available in Latvia in relation to domain name disputes. Domain name disputes are resolved by the civil courts of general jurisdiction.

### Advertising

**14** What rules govern advertising on the internet?

First, general provisions are given in the Advertising Law, where advertising is defined as any form or any mode of announcement or endeavour associated with economic or professional activity intended to promote the popularity of or demand for goods or services. The main principles are that advertising should be in accordance with fair advertising and competition principles, which means that it should be lawful, truthful and objective. Moreover, all advertisements should be in accordance with ethical, humanitarian, morality, decency and propriety norms.

Moreover, the Law on Information Society Services provides additional requirements for commercial communications, stating that a recipient of such communication should be able to recognise that it is a commercial communication and identify the person on behalf of whom this information is distributed. Furthermore, the content of the offer and the conditions should be precisely formulated, as well as all discounts, bonuses, prizes and requirements for the receipt. Any advertisement regarding competitions, lotteries or games should be clearly definable with easily access to the terms of participation.

A service provider who has acquired e-mail addresses from recipients of previously provided services may use them for other commercial communications provided that:

- the commercial communications are sent for similar products or services of the service provider; and
- the recipient of this service has not objected initially to further use of their e-mail address.

It is important to note that the recipient of commercial communications should be given the possibility to refuse receiving further commercial communications. Failure to obey these provisions may result in serious fines as the sending of each prohibited commercial communication is a separate breach under the Law on Information Society Services.

**15** Are there any products or services that may not be advertised or types of content that are not permitted on the internet?

To advertise products or services on the internet, general rules on advertising must be applied. Therefore almost any products or services can be advertised as far as they are not contrary to religion, the

law or moral principles, or are not intended to circumvent the law (section 1415 of the Civil Law). However, there are exceptions with regard to several products (eg, tobacco and drugs). The advertisement of tobacco for consumers is prohibited. It is also prohibited to advertise medical products:

- that have not been registered according to relevant legal rules;
- that need a prescription;
- are illegal; or
- the purchase of which is fully or partially covered by the state.

Gambling advertising is prohibited outside of gambling venues. The advertising of pornographic materials is allowed only as far as it is not available to children. Laws related to advertising of alcoholic beverages, financial services, computer games and new car fuel consumption and carbon dioxide emissions foresee even stricter rules with regard to the contents of the advertisement.

Nevertheless, even if the product or service is allowed to be advertised, the following content in advertising is prohibited:

- discrimination against a person due to his or her race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances;
- exploitation of the effect created by fear or superstition;
- exploitation of the trust of a person and his or her lack of experience or knowledge;
- depicting, using or in any other way mentioning either a natural person (as a private person or as an official) or his or her property without the consent of this person;
- defaming, disparaging or ridiculing another person, or the activities, name (firm name), goods or services, or trademarks of another person;
- exploitation of the name, surname, name (firm name) or other identifying designation (including a trademark) of another person without the consent of the person;
- imitation of the advertising text, slogan, visual representation, audio or other special effects of another advertiser without the consent of the advertiser or to carry out any other forms of activities that may create confusion or mislead in regard to the advertiser and the advertised goods or services;
- expressing violence, hate speech and war propaganda;
- exploitation of the natural credulity or lack of experience of children, including directly inviting them to purchase products or including assertions, or visual or audio information, that could cause moral or physical harm to them or create feelings of inferiority and discrediting the authority of parents, guardians or teachers; and
- directing alcoholic beverage and tobacco advertising towards children or portraying them in dangerous situations.

### Financial services

**16** Is the advertising or selling of financial services products to consumers or to businesses via the internet regulated, and, if so, by whom and how?

The advertising of financial services products to consumers, including distance sales, is regulated by the Consumer Rights Protection Law and supervised by the Consumer Rights Protection Centre. However, certain financial services such as payment and e-money services are subject to industry-specific regulation and are supervised by the Financial and Capital Market Commission.

Companies advertising financial products should ensure that their advertisements are clear and fair and do not mislead customers. The information required must be provided to the consumer in a clear and comprehensible manner on paper or another appropriate durable medium before the contract can be concluded. The consumers must be informed by the service provider about, inter alia, the identity of the service provider, the subject matter and conditions

of the transaction and the right to withdraw from the agreement. Consumers have the right to cancel without incurring liability within a specified cooling-off period (eg, 14 days for consumer crediting contracts).

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### Defamation

**17** Are ISPs liable for content displayed on their sites?

An ISP is responsible for the transmission and storage of information in an electronic communications network. It is not, however, responsible for the transmitted information if the following conditions are met:

- it does not propose the transmission of information;
- it does not select the recipient of transmissible information; and
- it does not select or modify the transmissible information.

An ISP does not have a duty to supervise the information that the provider transmits or stores. It also does not have the duty to actively search for the facts and conditions that could indicate possible violations of the law. When an ISP has suspicions regarding those possible violations in the activities of a service recipient or information stored by him or her it has a duty to immediately inform supervisory bodies. In failing to do so, it may become liable for content displayed on their sites.

**18** Can an ISP shut down a web page containing defamatory material without court authorisation?

Yes, it can. According to the Law on Information Society Services an ISP ordinarily is not liable for transmitted or stored information; however, upon the knowledge of illegal activity or information it has a duty to act immediately and liquidate or deny access to such information. The duty to act also applies when requests of supervisory bodies that are not courts are received.

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### Intellectual property

**19** Can a website owner link to third-party websites without permission?

The Latvian law does not expressly regulate issues concerning the use of website links. The principles derived from other jurisdictions are applied. Accordingly, in Latvia a website owner is not liable for the content under a particular link. However, a copyright owner may request the website owner to delete the link, if it directs to illegal content (protected by copyright but not licensed).

**20** Can a website owner use third-party content on its website without permission from the third-party content provider?

A website owner should receive permission from a third-party content provider to use a third-party's content on its website. However, certain exceptions may apply. For example, the user does not need the permission of the content owner if a work is parodied or caricatured, or if use is made of a work that is publicly accessible or on display.

**21** Can a website owner exploit the software used for a website by licensing the software to third parties?

A general rule is that a licensee should receive permission from a licensor on any use of works. Hence, the rights to sub-license would depend on the terms of the particular licence.

**22** Are any liabilities incurred by links to third-party websites?

There is no specific liability for links to third-party websites. Intermediaries may incur civil liability, if they do not comply with

legitimate requests of a content owner. The content owner may claim damages as well as moral compensation. In addition, the Latvian Administrative Penalty Code provides a general fine for violation of copyright. The fine may amount to 5,000 lats for legal entities and 500 lats for individuals.

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### Data protection and privacy

**23** How does the law in your jurisdiction define 'personal data'?

The Personal Data Protection Law defines personal data as any information related to an identified or identifiable natural person. Personal data that indicates the race, ethnic origin, religious, philosophical or political convictions, or trade union membership of a person, or provides information as to the health or sexual life of a person, are defined as sensitive personal data.

**24** Does a website owner have to register with any controlling body to process personal data? May a website provider sell personal data about website users to third parties?

According to the Personal Data Protection Law, any person registered in Latvia or subject to Latvian law who carries out or wishes to commence carrying out personal data processing, and establishes systems for such data processing, must register the processing of personal data with the Data State Inspectorate. Moreover, personal data processing is permitted only when the law does not restrict it and at least one of the conditions set out in section 11 of the Personal Data Protection Law exists, for example:

- the data subject has given his or her consent;
- the personal data processing results from contractual obligations of the data subject or, taking into account a request from the data subject, the processing of data is necessary in order to enter into the relevant contract;
- the data processing is necessary to a data controller for the performance of his or her duties as specified by law;
- the data processing is necessary to protect vitally important interests of the data subject, including life and health;
- the data processing is necessary to ensure that the public interest is complied with, or to fulfil functions of public authority for whose performance the personal data have been transferred to a data controller or transmitted to a third person; and
- the data processing is necessary in order to, complying with the fundamental human rights and freedoms of the data subject, exercise lawful interests of the data controller or of such third person as the personal data has been disclosed to.

The key principle under the Personal Data Protection Law is that data processing should be done according to the consent received, taking into account the purpose of processing, the time period of processing and other criteria.

Selling website users' personal data to third parties is prohibited, unless the website user has explicitly granted his or her consent to such data processing and would be previously informed about the purpose and the receiver of such transmission.

**25** If a website owner is intending to profile its customer base to target advertising on its website, is this regulated in your jurisdiction? In particular, is there an opt-out or opt-in approach to the use of cookies or similar technologies?

Latvian law supports an opt-in approach. The Law on Information Society Services states that the storage of information received, including cookies or similar technologies, must be permitted. However, the consent of subscriber or user has to be received after he or she has received clear and comprehensive information regarding the purpose of intended storage and data processing. Before the

receipt of consent regarding the processing of location data, an electronic communications merchant has an obligation to inform the user or subscriber regarding the type of data to be processed, the purpose and time periods of the processing, as well as regarding the fact of whether the location data will be transferred to third persons for the provision of value added services.

**26** If an internet company's server is located outside the jurisdiction, are any legal problems created when transferring and processing personal data?

According to Latvian Law, personal data may be transferred to another state if that state ensures the same level of data protection as is in effect in Latvia. In practice, that means that there are no restrictions on data transfers inside the EU and the European Economic Area as well as in a few other countries – a list accepted by the European Commission and the Latvian Data State Inspectorate. Transfer to other jurisdictions is permissible if the data controller would perform supervision regarding the performance of the relevant protection measures in compliance with Latvian law and at least one of the following conditions is fulfilled:

- the express consent of the data subject for the transfer;
- the transfer of the data is necessary to fulfil an agreement between the data subject and the data controller, the transfer is needed for data subject's contractual obligations or the data subject has requested the transfer in order to enter into a contract;
- when there is a significant state or public interest, or the transfer is required for judicial proceedings;
- the transfer of the data is necessary to protect the life and health of the data subject; or
- if transferable, the data is public or has been accumulated in a publicly accessible register.

**27** Does your jurisdiction have data breach notification laws?

A data breach is regulated in the Electronic Communications Law and the Personal Data Protection Law. Notifications for data breaches are subject to a two-step approach. First, in the case of a breach of personal data protection, the electronic communications merchant must, without undue delay, notify the Data State Inspectorate regarding the circumstances and essence of the breach. Secondly, it should have notified the subject of the data protection breach beforehand, but if not, the Data State Inspectorate has the right to impose an obligation to inform the subscriber, user or data subject about the breach.

## Taxation

**28** Is the sale of online products subject to taxation?

Income from the sale of online products by a Latvian entity or by a foreign entity with a permanent establishment in Latvia is taxable with a 15 per cent corporate income tax. Furthermore, the sale of online products may be subject to 21 per cent Latvian VAT.

**29** What tax liabilities ensue from placing servers outside operators' home jurisdictions? Does the placing of servers within a jurisdiction by a company incorporated outside the jurisdiction expose that company to local taxes?

Placing a server in Latvia by a foreign company and carrying out an active trade through such server may lead to the foreign company having an obligation to register a permanent establishment in Latvia and being subject to Latvian taxation.

**30** When and where should companies register for VAT or other sales taxes? How are domestic internet sales taxed?

Foreign companies are obliged to register for VAT purposes in Latvia if they carry out transactions that are subject to Latvian VAT, regardless of the turnover. Latvian companies are obliged to register for VAT purposes if their sales subject to Latvian VAT exceed 35,000 lats in any 12-calendar month period.

Domestic internet sales (ie, sales by local companies or foreign companies with a permanent establishment in Latvia to Latvian customers) for taxation purposes are treated as any other supply of goods or services and are subject to Latvian corporate income tax and VAT.

**31** If an offshore company is used to supply goods over the internet, how will returns be treated for tax purposes? What transfer-pricing problems might arise from customers returning goods to an onshore retail outlet of an offshore company set up to supply the goods?

If an offshore company (ie, a company not established in Latvia and without a permanent establishment in Latvia) sells goods over the internet to Latvian customers (private persons) it should not be subject to Latvian taxation; however, this only applies below the distance sales threshold (24,000 lats in any 12-calendar month period). If it is attained, a foreign company must apply for the VAT register within 30 days. The mere fact that a foreign company is VAT registered and a local company is undersigned to take care of returns should not create a permanent establishment in Latvia for the foreign company. Transactions between the offshore company and the local company taking care of returns should be remunerated at an arm's-length price.

## Gambling

**32** Is it permissible to operate an online betting or gaming business from the jurisdiction?

Online betting and gaming in Latvia is governed by the Law on Lotteries and Gambling, according to which the operation of an online betting or gaming business is permissible in Latvia. An online betting or gaming business can be operated only by persons who have fulfilled the requirements set out in the Law on Lotteries and Gambling and who therefore have acquired the necessary licence.

**33** Are residents permitted to use online casinos and betting websites? Is any regulatory consent or age, credit or other verification required?

There are no obstacles preventing Latvian players from using online gambling services. In general, persons who are under 18 years of age are prohibited from participating in gaming. There are regulations of the Cabinet of Ministers that prescribe users' registration and identity verification process. Users are required to provide their full name and a personal code as well as a bank name and personal account number that will be used for online gambling. In three days the gaming organiser must verify the provided information and possible restrictions using all available databases.

## Outsourcing

**34** What are the key legal and tax issues relevant in considering the provision of services on an outsourced basis?

There is no specific regulation for the provision of services on an outsourced basis, thus the regulation of the Civil Law regarding the service or purchase agreements is applicable. Therefore, key legal issues with regard to the provision of services on an outsourced basis are those that arise with regard to any service or purchase agreement (eg, liability of the parties or performance). However, in e-commerce

**Update and trends**

Recently, amendments to the Latvian Personal Data Protection Law were submitted to parliament. If adopted, the amendments will narrow the scope of data processing activities to be registered with the Latvian Data State Inspectorate, specify the procedure for data transfer outside the EU and will redefine what information should be provided to data subjects by data controllers, as well as deal with a variety of other issues.

On 26 June 2013, amendments to the Civil Law that will implement Council Directive 2011/7/EU of 16 February 2011 on combating late payments in commercial transactions came into force.

it would be rather important to agree upon the applicable law and jurisdiction for dispute resolution, keeping in mind consumer rights. Also, issues regarding data security and protection and issues regarding intellectual property must be considered.

With regard to tax issues that need to be taken into account in case of the provision of services on an outsourced basis, to our understanding these are input VAT deductibility (ie, the purchaser of services being able to deduct input VAT), transfer pricing (in case services are outsourced to a related entity) and taxation of employees (ie, fringe benefits, income in kind, non-taxable income, etc).

- 35** What are the rights of employees who previously carried out services that have been outsourced? Is there any right to consultation or compensation, do the rules apply to all employees within the jurisdiction?

According to the Latvian Labour Law, which implements Council Directive 2001/23/EC of 12 March 2001, rights and duties of the transferor of an undertaking that arise from a legal employment relationship applicable at the moment of transfer of the undertaking devolve to the acquirer of the undertaking (ie, transferee) on the transfer date. The law does not contain any further guidance in this respect.

Both the transferor of an undertaking and the acquirer of an undertaking have a duty to inform their employees regarding the conditions and consequences of the transfer, as well as of the measures which will be taken with respect to employees. They have a duty, not later than three weeks in advance, to commence consultations with employee representatives in order to reach agreement on such measures and applicable procedures. The transfer is automatic; however, the employee can object to the transfer. In such case the employment relationship is likely to continue with his or her current employer.

In practice it means that all employees who can be identified as sufficiently closely attributed to the part of the business to be

transferred must be transferred to the acquirer of the business and their employment continues on the same terms and conditions. The relationship between the transferor and the transferee with respect to various obligations towards employees (eg, transfer of accruals in relation to unused holidays) are usually regulated by a transfer agreement. These rules apply to all employees in Latvia.

**Online publishing**

- 36** When would a website provider be liable for mistakes in information that it provides online? Can it avoid liability?

A website provider, like any producer or disseminator of public information, is liable for the information it provides online. Usually they are not liable for the publication of false information where they have indicated the source of information. In these cases, liability for the publication of false information falls upon those who were the first to publish such information. However, the Law on Electronic Mass Media states that if a disseminator of information is not sure about content trustworthiness as provided by the source, and if such information is contested, it must either take it down and officially recall it or provide an opportunity to respond.

Additionally, if a website provider is a person that exercises a regulated profession and provides commercial communication in regard to an information society service, the website provider has a duty to observe professional regulations, especially as regards independence, respect and professional honour, professional secrets and fairness towards clients and representatives of other professions.

- 37** If a website provider includes databases on its site, can it stop other people from using or reproducing data from those databases?

The Copyright Law of Latvia allows for lawful users of a publicly available database to extract or reuse, for any purposes, qualitatively or quantitatively non-essential parts of its content. Without the consent of the maker of a publicly available database, the lawful user may extract a substantial part of the contents only for educational and scientific research purposes, mandatorily indicating the source. It is also possible to extract or reuse a substantial part of the contents of a database for the purposes of state security, or for administrative or judicial proceedings.

The provisions that protect the interests of database owners include restrictions on the use of publicly available databases, limiting the use only to acts of normal exploitation. Depending on the nature of the infringement, the person who has illegally used the database will be held liable in accordance with Latvian law.



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**38** Are there marketing and advertising regulations affecting website providers?

There is no special regulation regarding website providers. For marketing and advertising issues website providers must follow general rules. Therefore, all rules that regulate permissible content on the internet are applicable and affect website providers. General restrictions are given in the Advertising Law and the Unfair Commercial Practice Prohibition Law, which prohibits practices that are deemed unfair.

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