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LEGAL UPDATE
THE BALTIC STATES

June 2005
No. 36

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EUROPEAN UNION

To be prepared for a dawn raid

Dawn raids are already common knowledge in most EU Member states. Nevertheless, some have already been carried out by national competition authorities in Estonia. Moreover, in the middle of June 2005 the first dawn raids also took place in Latvia.

Competition authorities investigating different types of suspected antitrust violations, especially cartels, will need to act swiftly and in a coordinated manner. Often it will be an investigation launched in several different companies simultaneously, without prior warning, at the start of the business day - these are known as "dawn raids". The powers of competition authorities in dawn raids differ somewhat from jurisdiction to jurisdiction, but the main framework is roughly the same – they may inspect and seal premises (sometimes including private homes), seize documents, demand explanations from employees and management. Usually such action requires a court warrant to be obtained in advance.

No company will be pleased at the prospect of competition investigators analysing its accounting, correspondence, and commercial documents. Moreover, sometimes these investigations could be unfounded. Parallel behaviour of several companies, which is caused simply by an intelligent response to the competitor's moves and has nothing to do with secret collusion, can also be suspected as cartel activity. Therefore any company concerned with its operations will be well advised to be prepared for a dawn raid in advance. This is so in particular because dawn raids are sudden and unexpected – they leave little room for a director to think what to do, when the investigators are in the company lobby.

The first step is to have dawn raid guidelines that tell employees at different levels and positions what to do and how to behave in the event of a dawn raid investigation. They also give a concentrated overview of the investigators' powers, the important steps the company must take to ensure that those powers are not abused and the investigators' rights are not exceeded. After a company has distributed and conveyed the guidelines to its management and employees, their effectiveness can be checked by staging a dawn raid on the site, simulating real life conditions. Although not immediately apparent, these preparatory steps can have a crucial impact when the real inspectors come knocking on your company's door.

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For other EU law matters of current interest, please see the article **"New windows of cross-border opportunities for limited liability companies in the EU"** written by Risto Agur on page 6.

ESTONIA

EMPLOYMENT LAW

Net salary agreements prohibited

Under the Wages Act (*palgaseadus*) amendment that came into force 05.06.2005, employment contracts must specify the employee's gross salary from which the employer withholds taxes specified by law. These would include personal income tax, and payments of health and pension insurance. The amendment aims to avoid employers' gain from any decrease of personal income tax rate or increase of basic exemption. We recommend all employers check their employment contracts and replace net salary agreements with gross salary agreements.

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LAW OF OBLIGATIONS

Several claims due before 01.07.2002 will expire on 01.07.2005.

In result of the 3rd anniversary of the last major reform of the Estonian civil law,

claims due before 01.07.2002, will expire on 01.07.2005. These claims include, e.g., simple debts, and compensation for damage.

Once a claim has expired (i.e., the limitation period for a particular category of claim has passed), the limitation period can be used to justify refusal to perform obligations or to accept liability. This also applies to your obligations – if the limitation period has passed, you are entitled to refuse to perform the obligations on the basis of lapse of limitation period.

A limitation period cannot be restored but may be suspended upon filing a lawsuit, conducting negotiations, *force majeure* and several other circumstances provided by law. All entrepreneurs should urgently review all claims due before 01.07.2002 and decide whether filing a lawsuit is practical or not.

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TAX LAW

Exemption of inbound dividends from Estonian income tax

New amendments to the Income Tax Act (*tulumaksuseadus*) are applicable as of 01.01.2005 retroactively. Under the Estonian corporate income tax (CIT) system, no dividend earned from a foreign shareholding (i.e. inbound dividend) has been for an Estonian company (EstCo). However, until 01.01.2005 an EstCo receiving a distribution of profits (incl. inbound dividend) from another EstCo incurred liability to Estonian CIT. This effectively increased the overall tax burden on inbound dividend (if distributed to EstCo shareholders) to the Estonian CIT rate of 24/76, even if the inbound dividend was originally subject to a lower tax rate.

According to amendments effective from 01.01.2005, an EstCo need not pay Estonian CIT on a distribution of dividends from another EstCo to the extent (i.e., in the amount) that such inbound dividend was taxed or subject to withholding, whether abroad or in Estonia. However, this exemption applies only if an EstCo distributes dividends to a holder of at least 20% of its shares. The practical result is that by these amendments Estonia will now apply the exemption method for the distribution of dividends instead of the previous credit method. This will allow a shareholder of an EstCo (whether an Estonian or foreign natural or legal person) to receive inbound dividends taxed at a lower tax rate than that effective in Estonia. The exemption also applies to inbound dividends from low-tax territories on the condition that the inbound dividend has effectively been taxed or withheld by at least a minimal amount. With these amendments, Estonia has become an even more attractive jurisdiction for international tax planning purposes.

The amendments will significantly decrease the overall tax burden of Estonian companies that receive dividends from abroad and that distribute dividends further to their shareholders with a minimum 20 % shareholding.

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Mandatory employer registration in Estonia

Amendments to the Taxation Act (*maksukorralduse seadus*) that enter into force on 01.07.2005 provide for mandatory registration of non-residents as employers in Estonia in case such employer has employees (except delegated employees) in Estonia. In previous years, non-residents have concluded employment agreements with Estonian residents without registering as employers in Estonia. Although the interpretation of current law by the Estonian tax authorities has been that registration as an employer is mandatory, tax laws have been ambiguous and allowed very different interpretations. Now, registration as employer becomes mandatory. Mere registration as an employer need not in itself amount to permanent establishment, but may be an argument for permanent establishment in Estonia.

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TRADE LAW

New requirements for tobacco products handling

The new Tobacco Act (*tubakaseadus*) entered into force on 05.06.2005. The new Act is based, *inter alia*, on EU Directive 2001/37/EC of 05.06.2001 on the manufacture, presentation, and sale of tobacco products.

The new Tobacco Act clarifies and establishes new special requirements for tobacco products handling. For example, undertakings manufacturing or importing tobacco products in or to Estonia are required to inform the Ministry of Social Affairs of the ingredients of the tobacco products they handle. The new Tobacco Act prohibits marking tobacco products with texts, names, trademarks, images, or signs that create an impression that a certain tobacco product is less addictive or less harmful to health than other tobacco products. Consequently, the words like "*light*", "*mild*", "*ultra light*", "*super light*" must be removed from cigarette packets.

The new Act also establishes sponsorship restrictions. These prohibit providing material support in any manner to any person or activity not related to tobacco handling if the aim of such activity is to promote the sale of specific tobacco products or the consumption of tobacco products. Sponsorship is allowed only for charity purposes if the granting of support is not associated with the promotion of a respective tobacco product trademark or the sale or consumption of tobacco products.

In addition to the sponsorship restrictions, the new Act prohibits promotional acti-vities of tobacco products, with the main aim prohibiting so-called consumer games targeted at increasing the consumption of tobacco products. The tobacco products promotion prohibition does not extend to the use of a trademark identical to the trademark of a tobacco product when applied to other goods (e.g. perfume or footwear) bearing a trademark (e.g. *Camel, Davidoff*). Promotion through consumer games of such products is still allowed.

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Registration obligation established for accommodation establishments

The Parliament adopted amendments to the Tourism Act (*turismiseadus*) on 13.04.2005, renewing the regulation of establishments providing accommodation (e.g. hotels, hostels, B&B etc). The Act enters into force on 01.11.2005.

The primary aim of amending the regulation on accommodation establishments was to harmonise the provisions regulating the granting of the right to operate as an accommodation establishment and the provisions regulating the operation of accommodation establishments.

The new Act abolishes the earlier recognition procedure and certificates on paper, which is replaced by electronic registration of accommodation establishments in the Register of Economic Activities. The current procedure for obtaining a permit to operate as an accommodation establishment involves applying to the local government for recognition and recognition is granted by an administrative act. However, under the new Act an application to operate as an accommodation establishment must be presented to the city government or the rural municipality government. No administrative act will be issued concerning the right to operate; instead, the data on the undertaking will be entered into the register.

The Act also enables an accommodation establishment to register for only a certain period (e.g. operation during the skiing season). In this case, the period of operation sought must be specified in the registration application. Registration is therefore not considered valid for periods other than those specified.

The registration application must be submitted to the city government or the rural municipality government for the

location of the accommodation establishment. A separate entry must be made for each accommodation establishment. The state fee (EEK 300) must be paid prior to submitting the registration application. Undertakings entered in the register are required to confirm their registration annually by 15.04 if more than three months have passed from the registration of the accommodation establishment or an amendment of the registration on the initiative of the undertaking. Failure to confirm registration of an accommodation establishment may lead to registration being suspended.

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Charging consumers a separate fee for cash payment for goods or services is unlawful

The Administrative Law Chamber of the National Court on 04.05.2005 delivered its decision in the case of Radiolinja Eesti AS vs. Consumer Protection Board (3-3-1-15-05). The Supreme Court decided whether it is lawful to charge consumers a separate fee for the use of a method of payment, when they want to pay for goods or services in cash. The Supreme Court found that in order to resolve this issue, it is also important to answer the question whether payment for goods or services in cash should be allowed at all. The court took the position that on the basis of the Money Act, a seller is obliged to allow a buyer to pay for goods or services in cash.

The Supreme Court also stated that all the expenses related to the sale of goods, including expenses related to the method of payment used by the buyer, must be reflected in the sale price. A charge added to the cost of the service amounts to a fee for an additional benefit related to the service. However, a separate fee for the payment method used when paying for the same service cannot be regarded as generating an additional benefit. Based on this position, the Supreme Court decided that it is unlawful to charge a separate fee for the payment method used when paying for goods or services.

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Selection of relevant acts and amendments adopted 01.05.2005-31.05.2005

- Amendments to the State Fees Act and the Law of Ship Flag and Registers of Ships Act (in force as of 01.07.2005)
- Amendments to the Environmental Monitoring Act (in force as of 05.06.2005)
- Amendments to the Aviation Act and the State Fees Act

LATVIA

FINANCIAL LAW

Amendments to the Commercial Pledge Law come into force

On 25.05.2005, the Financial Security Law (*Finanšu nodrošinājuma likums*) came into force. It provides for a new type of security for financial obligations (i.e., where the subject of the obligation consists of financial instruments or cash)) (see Baltic Legal Update, May 2005). Financial instruments or cash on an account may now serve as financial collateral. At the same time, amendments to the Commercial Pledge Law (*Komercķīlas likums*) have come into force. Under the amendments, cash may no longer be the subject of a commercial pledge. The Law already previously stipulated that a commercial pledge may also not be established over financial instruments.

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INSURANCE LAW

Regulations on amount and procedure for calculating insurance indemnity for non-material loss

The Cabinet of Ministers' Regulations on amount and procedure for calculating insurance indemnity in compulsory civil liability insurance of motor vehicle owners for non-material personal loss (*Noteikumi par apdrošināšanas atlīdzības apmēru un tās aprēķināšanas kārtību sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātajā apdrošināšanā par personai nodarītajiem nemateriālajiem zaudējumiem*) has entered in force from 01.05.2005.

The regulations establish the amount of insurance indemnity, and the procedure for calculating the indemnity for non-material loss caused to a person in a road accident. This relates to pain and moral suffering arising from bodily injury, maiming or disabling of a victim, arising from death of support, dependant or spouse of a victim or due to the fact that support, dependant or spouse of a victim has become a disabled person in group 1.

The regulations establish the amount of insurance indemnity, cases when the insurer or the Motor Insurers' Bureau pays the indemnity or does not pay for the above damages, as well as principles for calculating the amount of the indemnity and the documents necessary to obtain the indemnity.

Licensing regulations for real estate valuations

The Cabinet of Ministers' Licensing Regulations for Real Estate Valuations (*Licencēšanas noteikumi nekustamā īpašuma tirgus vērtības noteikšanai*) have been prepared.

The draft regulations provide for a licence real estate valuations, which will be issued by the Licensing Committee of the State Land Service. The licence will be available for issue to merchants registered in EU Member States. It will entitle the licence holder to establish the market value of real estate. The licence will be issued for a period of not less than 1 year and not more than 5 years. On first issue, the licence period will be one year.

Applying for a licence will involve submitting documents stipulated in the regulations, including copy civil liability insurance contract for professional activity.

Upon beginning licensed activity, property valuers will have to insure against civil liability arising from professional activity appropriate to the risks related to establishing the market value of real estate.

The regulations are scheduled to come into force by the end of this year.

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IT LAW

Amendments to the Electronic Communication Law come into force

Amendments adopted by the Saeima on 12.05.2005, published in *Latvijas Vestnesis* No. 82 (3240) on 25.05.2005, come into force on 08.06.2005.

The amendments to the Electronic Communication Law (*Elektronisko sakaru likums*) require an electronic communication business at the request of competent officials and at its own expense to install, maintain, expand and modify conversation and data transmission interception points. Thus, the amendments clarify the previous wording of the Law by exactly stipulating at whose expense interception points should be set up and maintained. The amendments to the Law also introduce the concept of a data transmission network of national significance. This is defined as a private electronic communication network, which is maintained by the State Information Network Agency with a view to transmitting protected information necessary to fulfil state governance functions. More detailed regulation of data transmission networks of national significance will be included in Cabinet of Ministers' regulations to follow. The amendments also provide for extension of deadlines set in transitional provisions. These relate to development of Cabinet of Ministers' regulations supplementing the Law, as well as stipulating that only one holder of the ".lv" domain of the highest level will be selected.

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TAX LAW

Implementation of savings directive
The Latvian Parliament has taken several steps to implement Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. The general purpose of the steps is to prevent individuals resident in the EU from keeping savings in low-tax or no-tax jurisdictions or other EU countries "out of the reach" of the tax authorities of the EU Member State where they reside. The result would be that they are taxed in their country of residence. Prevention in most cases takes place by means of exchange of information between the tax authorities of the "paying" and "recipient" countries.

First, as of 1 July 2005 amendments to the Taxes and Duties Act enter into force. These deal with interest payments made in Latvia to beneficial owners who are individuals resident for tax purposes in another Member State with the underlying purpose of making such interest subject to effective taxation in accordance with the laws of the latter Member State. In particular, the amendments impose detailed obligations on the Latvian payer to gather information on the recipient of interest (i.e., the beneficial owner) and reporting it to the Latvian tax authorities. This will be forwarded to the tax authorities of the recipient's country of residence. The amendments also define such terms as *savings income, beneficial owner, paying agent, competent institution*, and others as required by the Directive.

Second, Latvia has entered into various agreements on the taxation of savings income and the automatic exchange of information regarding savings income in the form of interest payments. These are with Guernsey, the Isle of Man, Jersey, the Netherlands Antilles, etc. Generally, the new tax may be applied to interest earned on deposits held in banks or investment funds located in these jurisdictions - if no exchange of information occurs. The rate of tax would be 15% for the first three years, later - 20% and 35%. However, the withholding tax may not be applied where these jurisdictions have concluded an agreement with Latvia. This is because the payer of income (e.g., a bank) informs the authorities of that jurisdiction, which then forwards the information to the Latvian tax authorities. The information to be disclosed in most cases includes:

(a) the identity and residence of the beneficial owner of the income;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim – giving rise to the interest;

(d) information concerning the interest payment.

The European Community has concluded similar agreements with Andorra, Liechtenstein, Monaco, San Marino, and Switzerland.

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Selection of relevant acts and amendments adopted 01.05.2005-31.05.2005

- Amendments to the Law On the Insolvency of Undertakings and Companies (in force as of 15.06.2005);
- Amendments to the Law On the Annual Accounts of Undertakings (in force as of 24.06.2005);
- Amendments to the Law On Consolidated Annual Accounts (in force as of 24.06.2005);
- Amendments to the Law On the Prevention of Laundering of Proceeds Derived from Criminal Activity (in force as of 24.06.2005).

LITHUANIA

EMPLOYMENT LAW

Labour code more consistent with EU acquis
On 12.05.2005 the Parliament adopted a Law on Amending and Supplementing the Labour Code (*Darbo kodekso pakeitimo įstatymas*). The law aims to implement EC provisions on the establishment of the European Works Council and the general framework for informing and consulting employees in the European Community, as well as at changing overtime regulation and etc. Under the amendments an employer, having reached the agreement with the representatives of the employees, establishes the rules for time recording for employees, who fully or partly manage their time at their own discretion, due to the nature of their work. The amendments also establish that the employer must provide employees or their representatives with certain information free of charge and is liable for its accuracy. Moreover, employees or their representatives who have signed an obligation not to disclose commercial or professional secrets, have the right to access such of this confidential information if it is needed for execution of their duties. However, the employer may refuse to grant access to this information in writing where disclosure could prejudice the company or its activities. Such a decision is subject to court appeal. The law also establishes that overtime work for up to 180 hours per year may be permitted in cases provided by collective agreement.

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Posted employees will receive equal treatment
On 12.05.2005 the Parliament adopted the Law on Guarantees for Posted Employees (*Garantijų komandiruotiems darbuotojams įstatymas*). The law aims to ensure guarantees for employees posted to work in another Member State of the EU or EEA, as well as for employees, posted to work in Lithuania. The law provides that whatever the law applicable to the employment contract or employment relationship, posted employees must be guaranteed terms and conditions of employment covering the following matters which, in the country where the work is carried out, are laid down:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- equality of treatment between men and women and other provisions on non-discrimination.

The law also establishes that undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State of EU or EEA.

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European Companies will guarantee involvement of employees
On 12.05.2005 the Parliament adopted a Law on Involvement of Employees in European Companies (*Įstatymas dėl darbuotojų dalyvavimo priimant sprendimus Europos bendrovėse*). The law applies to European Companies having their registered office in Lithuania and to European Companies under establishment that are to have their registered office in Lithuania. In order to secure the involvement of employees, a Works Council in the European Company must be established or other procedure for informing, consulting, and involving employees must be put in place under the present law. The law provides that the central management is responsible for creating the conditions and means necessary for the formation and functioning of the European Works Council.

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TAX LAW

Long awaited abolishment of double taxation with Russia

On 05.05.2005 the Convention on Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (*Lietuvos Respublikos Vyriausybės ir Rusijos Federacijos Vyriausybės sutartis "Dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo"*) came into force. It had been signed by the Lithuanian and Russian Governments already on 29.06.1999. The convention is based on the OECD Model Tax Convention and is aimed at ensuring avoidance of double taxation of income earned or capital possessed by residents of the contracting states respectively. Further, the convention is targeted at preventing fiscal evasion and avoiding tax discrimination.

Under the general rule established by the convention, the profits of a resident company of one state will be taxable only in that state, except where the company concerned:

(a) carries on business in the other state through a permanent establishment situated there, or

(b) receives income explicitly regulated by the convention, such as dividends, interest, and royalties.

The convention also regulates taxation of income in the areas of employment, directors' fees, artists and sportsmen, pensions, government, service, and students.

The entry into force of the convention had been pending ratification by the Russian Parliament, which took place only this year. The convention applies as from 01.01.2006.

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Announcing of the data on company's bankruptcy and restructuring

On 10.05.2005 the Minister of Economy issued Order No. 4-194 on the approval of the regulations for submitting and announcing data on company's bankruptcy process and regulations for submitting and announcing data on company's restructuring procedure (*Dėl duomenų apie įmonės bankroto procesą pateikimo ir skelbimo taisyklių ir duomenų apie įmonės restruktūrizavimo procesą pateikimo ir skelbimo taisyklių patvirtinim*). The Order establishes that documents, reports, and other corporate information related to bankruptcy proceedings are to be provided to the court, as well as to the Department of Statistics and the Commercial Register as prescribed by the Law on Enterprise Bankruptcy and other legal acts. The creditors, company owners, authorised representatives of shareholders (holders of member shares) are to be provided with information on the progress of company's bankruptcy proceedings as established by the meeting of creditors. With regard to restructuring, the Order establishes that information, documents, reports on implementing the restructuring plan and other data pertaining to the inquiry into restructuring are to be submitted to the courts, as well as to the corporate bodies, creditors and other persons related to the restructuring of the company as prescribed by the Law on Restructuring of Enterprises and other legal acts.

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Selection of relevant acts and amendments adopted between 01.05.2005-31.05.2005

- The Director of the Institute of Accounting issued Order No. VAS-3 regarding amendment to the 8th Business Accounting Standard "Equity" (in force as of 06.05.2005);
- The Head of the State Tax Inspectorate issued Order No. V-58 amending the Forms of Annual Income Tax Returns and the Regulations for Filling Thereof (in force as of 06.05.2005).

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

NEWS IN SORAINEN LAW OFFICES

Recent deals

Successful exit from private placement

Our Tallinn office assisted a local investor in exiting from subscription to the private placement of a technology company. The case involved an advice on whether replacement of the intended management constitutes a ground for exit by the investor. The case was led by partner Toomas Prangli.

Successful recovery of goods and debts

Tallinn office represented a large wholesale company of watches and clocks in litigation against two related large retailers, who denied having received the goods and refused payment. During litigation the goods were successfully arrested at the defendants' stores. In addition, the defendants' accounts were frozen. As a result, a settlement was reached and confirmed by the court. The case was handled by senior associate Carri Ginter.

European Constitution

Senior associate Carri Ginter from Tallinn office was involved in a project of the Estonian State Chancellery in introducing the new EU Constitution to the public.

HSH Nordbank AG Copenhagen branch

A team from our Vilnius office, led by partner Kestutis Adamonis, advised the Copenhagen branch of HSH Nordbank AG on banking market issues in Lithuania: granting of loans to natural and legal persons, mortgages of real estate, issuing mortgage bonds and mortgage credits.

Advice on 40 MEUR shopping centre sale project

Sorainen Law Offices has assisted Danish real estate developer TK Development in sale of one of the largest shopping centres in Riga. The shopping centre was sold to Meinl European Land, the listed Austrian real estate company, for EUR 40 million. The Riga office has represented the Danish company during acquisition of the real estate, development and sale processes. The Sorainen team was lead by two partners of the Riga office – Girts Ruda and Gints Vilgerts. „This is the first true commercial development project in Latvia, where the Scandinavian based developer acquired, developed and sold the centre to a large insti-tutional investor in CEE countries", Girts Ruda explains.

Articles

You may read articles written by lawyers of Sorainen Law Offices by visiting our website www.sorainen.com.

Seminars

Over 100 participants attend Real Estate and Construction seminar

In Riga on 20 May 2005 Sorainen Law Offices organised a Baltic Business Law Seminar on Real Estate and Construction.

The seminar brought together experts and practitioners from Europe, the Baltic and Nordic countries, who

discussed the possibilities and experiences in the real estate and construction field, its risks and management, achievements and failures in the Baltic market.

Interest was strong, with the 115 participants highly evaluating the event.

The seminar was organised together with SEB Unibanka and Baltic Property Trust Asset Management, and in cooperation with CMS Cameron McKenna and Merks SIA.

Seminar on dispute resolution was a success
On 19 May 2005 Sorainen Law Offices held the Baltic Business Law Seminar on Dispute Resolution. The aim of the seminar was to deal with the particularities and procedures of solving disputes, various aspects of international arbitration, arbitration agreements in international contracts and related legal challenges. Issues explored during the seminar included damages claims against the state for violation of EC law, shareholder disputes and other aspects of dispute settlement. Invited speakers were from Freshfields Bruckhaus Deringer, Hammarstrom Puhakka Partners, Kilpatrick Stockton, Delphi & Co as well as speakers from Sorainen Law Offices.

Seminar on Real Estate issues in Latvia: opportunities and threats
Girts Ruda and Lelde Lavina from the Riga office gave a lecture at a seminar of the Danish Chamber of Commerce in Latvia, on the theme "Real Estate Issues in Latvia".

Other news

Support for the moot team of the University of Latvia Faculty of Law
The Riga office supported the team's participation in the international law student moot court competition in European Union law, which took place in Bratislava. Teams came from Universities from Central and Eastern European countries. The University of Latvia Law Faculty team won the team from Warsaw University in the final, to become the winner of the competition. The team was trained by Riga office associate Rudolfs Engelis, who is also a lecturer at the Faculty of Law and a former participant in this competition.

New windows of cross-border opportunities for limited liability companies in the EU

A directive proposal for cross-border transfer of companies' registered offices (the Transfer Directive) is expected shortly from the European Commission. The planned Transfer Directive would enable both private and public limited companies to transfer their registered office from the Member State where they are registered to another Member State (so-called corporate redomiciliation).

According to the Commission consultation paper, a company transferring its registered office would be registered in the host Member State and would acquire a legal identity there, while at the same time being removed from the register in its home Member State and giving up its legal identity there. If necessary, companies would have to adapt their structures and assets in order to meet the substantive and formal conditions required for registration in the host Member State. However, they would not be obliged to go through liquidation proceedings in their home Member State or to create a new company in the host Member State.

Despite the fact that this Transfer Directive is currently at a proposal stage only, some company law specialists are of the opinion that it should in theory already at this stage be possible to transfer companies' registered offices from one Member State to another. This view is based on mainly the following three grounds:

- The underlying freedom of establishment principle in the Treaty Establishing the European Community.
- Several rulings of the Court of Justice (*Inspire Art, Überseering, Centros* and *Segers*).
- The Commission's Action Plan on Modernising Company Law.

This may be true today, but the European Court of Justice explicitly held in its 1988 Daily Mail judgement that there are problems in transferring the registered office of a company from one Member State to another which are not resolved by the rules concerning the right of establishment, and these must be dealt with by future legislation, which has not been adopted. These include, e.g., the conflict of national laws, protecting the rights of minority shareholders and creditors, employee participation, and tax issues. At this stage, these unresolved questions are likely to make transferring company registered offices generally very difficult in practice.

Nevertheless, most recent public consultations have highlighted a pressing need for Community law clearly regulating corporate redomiciliation. This is why it is likely that the Transfer Directive proposal will surface quite shortly. After adoption, it is only a matter of time until corporate redomiciliation can become a reality and a competitive advantage, for which entrepreneurs should start preparing for already now.

When contemplating corporate redomiciliation, the Baltic States are an attractive option to consider when looking for a business environment within the EU with great economic potential and favourable investment regime. The opportunity for corporate redomiciliation to the Baltics may be of particular interest to Nordic SMEs and family businesses, who can, by shifting their corporate and personal tax residence to the Baltics, also reduce corporate and personal income tax.

Alternatively, those small and medium size businesses that already have companies in the Baltics, yet that remain too small to incorporate as a European Company (SE), may soon also opt to execute a cross-border merger. In this way, the company surviving the merger (the acquiring or new company) would be located in one of the Baltic States, whereas the acquired companies would cease to exist without liquidation proceedings. The directive on cross-border mergers of companies with share capital to allow this is likely to be adopted even sooner than the Transfer Directive.

Based on the above, it is safe to say that there are several new windows of cross-border opportunities for limited liability companies in the EU on the horizon, designed to have a favourable impact on employment and competitiveness by allowing companies to relocate to those Member States with more attractive tax and other regulatory environments, or for other reasons. It is just up to the entrepreneurs to take advantage of these once they become a reality hopefully in the very near future.

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Please be informed that
on 8 September 2005,
Sorainen Law Offices in Tallinn
will be organising **a 10th anniversary seminar** on current **M&A and corporate practises**, including surveys on the very latest trends in cross-border mergers and M&A financing matters.

Additional information will be soon available on our webpage www.sorainen.com