SORAINEN LEGAL UPDATE

No 51 / August 2008

SORAINEN
www.sorainen.com

SORAINEN

Tallinn
Pärnu mnt. 15
10141 Tallinn, Estonia
tel +372 640 0900
fax +372 640 0901
e-mail sorainen@sorainen.ee

Riga
Kr. Valdemara iela 21
LV-1010 Riga, Latvia
tel +371 6 736 5000
fax +371 6 736 5001
e-mail sorainen@sorainen.lv

Vilnius
Jogailos g. 4
LT-01116 Vilnius, Lithuania
tel +370 5 268 5040
fax +370 5 268 5041
e-mail sorainen@sorainen.lt

Minsk
Pobediteley Ave. 23/3
220004 Minsk, Belarus
tel +375 17 306 2102
fax +375 17 306 2079
e-mail sorainen@sorainen.com

ESTONIA

ENVIRONMENT

Amendments to the Packaging Act and the Packaging Excise Duty Act

The Estonian Parliament has adopted amendments to the Packaging Act and the Packaging Excise Duty Act in order to clarify some ambiguities and to implement amended EU legislation (Directive 2004/12/EC; Directive 2005/20/EC; and Decision 2005/270/EC of the Commission). The general purpose of the amendments is to make recovery of packaging materials more efficient and to reduce the amount of packaging waste. Most of the amendments entered into force on 31 May 2008.

Some of the more significant amendments include clarifying the definitions of "packaging", "recovery organisation", and "placing of packaged goods on the market". The obligations of packaging undertakings and recovery organisations to collect and recover packaging and packaging waste were further detailed and expanded. The law sets the new obligation to accept returned packaging if the sales premises are 200 m^2 or above. Local governments and the Estonian Tax and Customs Board may now also carry out supervisory procedures over implementation of the Packaging Act. Packaging excise duty has been expanded and is now imposed not only on sales packaging but on all types of packaging that fall within the definition of "packaging" under the Packaging Act.

Several important amendments will enter into force on 1 January 2009. These include:

- new target recovery rates - on a yearly basis, 60% (currently 50%) of total packaging waste must be recovered and 55 - 80% (currently 25%) of total packaging waste has to be recycled;
- new obligations to recovery organisations - to facilitate collection of packaging which has not been assigned with a packaging deposit, a recovery organisation must ensure a certain density of packaging waste collection points in a given area;
- exemptions from excise duty are closely related to achieving the new target recovery rates.

■ Additional information:
Carry Plaks
e-mail: carry.plaks@sorainen.ee

SECURITIES AND CAPITAL MARKETS

Lessor may incur sale loss from sale of lease object

Judgments of the Estonian Supreme Court of 29 April and 17 June 2008 clarify how to determine the sale price of a lease object and who bears the resale price risk if the lessee returns the lease object to the lessor before the due date. This can happen, for example, under car leasing agreement, when a lessee does not want to use the car any further.

The Supreme Court regards as impermissible an agreement where a lessee with no influence over the sale process of a lease object bears the resale price risk alone.

The Supreme Court' s view is that upon premature return of a lease object, the market value of the object at the moment of return must be ascertained and the lessor must resell the object in the best and fastest manner possible. The sale period must be justified and reasonable, considering the nature of the lease object, and decrease in its value during the sale period. Likewise, the sale cost of the object must be justified.

The Supreme Court finds that if prompt sale of a lease object is impossible and the sale price differs from the value of the lease object determined at the moment of return by more than 10%, then the lessor must demonstrate the reason for a lower sale price. The residual value of the lease object upon premature return has to be taken into account when justifying the lower sale price, as well as the course and duration of the sale process.

The Supreme Court judgments do stipulate that the lessor always bears sale loss, but merely explain the burden of proof on the parties in determining the market value of a lease object.

Therefore, leasing contracts should set out in detail the procedure for determining the market value of a lease object upon premature return as well as the conditions for resale of a lease object and payment of compensation, which should be justified and reasonable.

■ Additional information:
Viljar Kahari
e-mail: viljar.kahari@sorainen.ee

Estonia
Revolution in corporate bankruptcies and reorganizations

Latvia
Fundamental changes in Commercial Law

Lithuania
Amendments to Company Law

Belarus
Amendments to Mortgage Law

Sorainen
Increase in activities in Belarusian M&A market

Save the dates for M&A conferences in Riga, Tallinn and Stockholm

COMPANY LAW

Estonian Supreme Court warns of consequences of compulsory dissolution proceedings

The Estonian Supreme Court in judgment of 28 April 2008 has confirmed that if the Commercial Register has initiated compulsory dissolution proceedings of a company then it is not possible for that company to resume its business operations. Estonian law allows companies that have voluntarily decided upon dissolution to resume business activities until commencement of distributing assets among the shareholders. The court clarified that this option is not available if the registrar has decided dissolve a company compulsory. As two of the grounds for the authorities to start compulsory dissolution proceedings are failure of a company to file annual reports or elect a new management board for two years, the court decision is an important reminder that the warnings of the registrar on deletion of a company from the Register should not be disregarded.

- Additional information:
  Risto Agur
  e-mail: risto.agur@sorainen.ee

Procedure for contributing securities into share capital simplified

From 15 April 2008, Estonian company law has been harmonized with the EU Capital Requirements Directive and its amending directive. The main benefit from the change in the law is to simplify the procedure for making non-monetary contributions to company share capital.

Under the new amendments, non-monetary contributions do not have to be appraised by experts or audited if the contribution is made in securities. These include all securities issued on the regulated market, except investment fund shares and derivative instruments. The price of the shares will be calculated based on the weighted average value of the traded securities during a period of three months before the non-monetary contribution.

If exercised, the right to contribute to the share capital of a company by securities will compel the company to fulfil additional transparency requirements. This means publishing a notice about the contribution in the official publication *Ametlikud teadaanded* or the Commercial Register.

- Additional information:
  Risto Agur
  e-mail: risto.agur@sorainen.ee

EMPLOYMENT LAW

Employment of non-EU nationals simplified

Amendments to the Aliens Act simplify the conditions for short-term employment of foreigners and for issuing residence permits for employment. In addition, the annual immigration quota is increased and can now be up to 0.1% of the permanent population of Estonia.

Employers can now apply to the Citizenship and Migration Board for registration for short-term employment on behalf of a foreigner whom they want to employ. The foreigner no longer needs to personally file an application with the Citizenship and Migration Board. However, in some cases the employer must pay the foreigner at least the Estonian annual average salary as indicated by Statistics Estonia, multiplied by a factor of 1.24.

In case of residence permits for employment, the employer has to seek employees to fill vacant positions by means of public competition and using the services of a state employment agency. The position has to be filled within three weeks (previously two months). If during this period the employer has failed to fill the vacant position by employing an Estonian citizen or a foreigner already residing in Estonia on the basis of a residence permit, the Labour Market Board will grant permission for filling the position by employing a foreigner.

The amendments mainly concern non-EU nationals. Free movement of workers within the EU overrides the above restrictions for EU nationals.

- Additional information:
  Toomas Prangli
  e-mail: toomas.prangli@sorainen.ee

RESTRUCTURING AND INSOLVENCY

Revolution in corporate bankruptcies and reorganizations

According to statistics and market research, a remarkable rise has occurred in the number of bankruptcies in Estonia in 2008. Based on statistics for the first four months of 2008, the number of bankruptcies shows a 78% growth rate against 2007 figures. This triggers an increasing need for corporate reorganizations.

As a revolutionary development in the Estonian corporate bankruptcy and reorganization regulation scene, on 30 June 2008 the Ministry of Justice sent the long-awaited draft Reorganizations Act (in Estonian: *saneerimisseadus*) for commentary by other government institutions and interest groups. The draft 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*. Once the new law is adopted and takes effect, it is likely to provide an avenue to a fresh start and new growth opportunities for debtors and creditors alike.

On the one hand, the new draft procedure is likely to be particularly appealing to corporate debtors. They will be able to buy time to work out their problems through the automatic stay of collection attempts against them, while still continuing to run their business. As a major development compared to current regulation, the draft 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 draft law is likely to be interesting for creditors, large and small, secured or unsecured, who are provided a clear non-bankruptcy means of maximising the amount they are able to collect from their corporate debtor. Problems that have prevented creditors from being actively involved in the reorganization of their debtors include:

- it has been too late or too expensive for the creditor to invest time and money in the reorganization, or
- the process has suffered 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 court-administered, so that more incentives should exist for creditors to be involved in the procedure.
At the same time, the new draft regulation 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 draft reorganization law will drag to the marketplace many more distressed companies of interest to turnaround investors.

- Additional information:
  Risto Agur
  e-mail: risto.agur@sorainen.ee

TAX

A surprise twist in the Sylvester tax dispute

For years, the Sylvester tax dispute has been shaping understanding of the limits of permissible tax optimization in Estonia. In 2002, a number of shareholders of AS Sylvester, a local forestry company, transferred their shares to holding companies under their control in preparation for selling the shares to Stora Enso. The share transfers to holding companies occurred at values considerably lower than the final share price paid by Stora Enso for the same shares. The tax authorities deemed the transfers to the holding companies as without economic purpose and an attempt to evade taxation of capital gains using the "substance over form" argument.

The Sylvester case and a couple of other similar cases in the same period were a surprise to many tax advisors, since Sylvester shareholders acted in accordance with market practices of the day and had received a non-binding comfort letter from the tax authorities approving the restructuring in advance. To add fuel to the fire, in early 2005 the tax authorities issued a press release declaring as tax evasion almost any pre-transaction structuring by private persons including non-monetary contributions to companies.

The tax authorities' reversal of previous policies triggered a number of court cases, and a significant shift in the perception of where the thin line between tax optimization (avoidance) and tax evasion may lie. However, it now seems the courts are finding the tax authorities' use of the tax evasion clause as too aggressive.

In June 2008, the Tallinn and Tartu Administrative Courts issued judgments on the Sylvester matter. Both courts found in favour of the shareholders. The Tallinn court reasoned that application of the tax evasion clause requires the tax board to prove the intent of the taxpayer to evade taxes. The court indicated that the advance advice sought by shareholders from the tax authorities was evidence of the shareholders' intent to comply with tax laws, so that the tax authorities' evidence of taxpayer evasive intent was lacking.

The Tartu court remarked that any kind of tax optimization cannot automatically be caught in the tax evasion clause as implied by the tax authorities, as that would effectively burden taxpayers with an obligation to seek out the least tax effective means of conducting their business. According to the Tartu court, the intent of the Estonian Income Tax Act is that tax is paid on business profits when such profits are no longer used in conducting business. Therefore, restructuring a shareholding prior to sale of shares to avoid paying tax on capital gains is permissible if the resulting untaxed capital gain is used for business.

The Tallinn court also refused to apply the tax evasion clause because it found the clause itself in breach of the legal certainty principle and thus unconstitutional. Unfortunately, in the ensuing constitutionality test, the National Court quashed the test on procedural grounds and refused to consider the issue in substance.

The judgments in the Sylvester case are not final. The tax authorities have indicated their intention to appeal the decisions and thus the case will not finally be resolved until next year at the earliest. Still, these failures raise hope that the Tax and Customs Board will need to review its aggressive stance.

■ Additional information:
Paul Kunnap
e-mail: paul.kunnap@sorainen.ee

LATVIA

ENVIRONMENT

Pre-registration of chemicals under the EU regulation on the Registration Evaluation Authorisation and Restriction of Chemicals (REACH) commences

On 1 June 2008 the pre-registration phase under the EU Regulation on the Registration Evaluation Authorisation and Restriction of Chemicals (REACH) commenced. REACH is mainly aimed at chemicals and the protection of human health and the environment, however the definition of a substance falling within the scope of REACH is very broad and covers many substances manufactured, imported or used in many industries.

The new regulation requires EU legal entities that operate with so called "phase-in" substances – chemicals listed on the European inventory with an EINECS number - to pre-register certain basic information in respect of the substances with the European Chemicals Agency (ECHA) until 1 December 2008. There is no fee for pre-registration and it is internet based process. Those who miss the pre-registration must stop manufacturing, importing, selling or supplying the substances from 1 December 2008 until a complete registration package has been submitted to the ECHA. Full registration involves the submission of a detailed technical dossier and likely will be cost and time consuming process.

The registration obligation applies to substances on their own or contained in mixtures if they are intended to be released during use. This may be an issue for anyone who imports into the EU solvents, inks, paints, adhesives. It is expected that there will be some difficult choices for many household and consumer products companies to decide whether they need to register and therefore pre-register. The pre-registration window is the right timing for the household and consumer products companies to determine which substances are present in their products, and at what volumes (at over 1 tonne/year per legal entity), speak to upstream suppliers and work out which legal entities are responsible for pre-registration and registration of relevant substances under REACH.

■ Additional information:
Lauma Berzina
e-mail: lauma.berzina@sorainen.lv

Possibility to receive guaranteed price for installed electric capacity

Under the amendments to the Electricity Market Law (adopted on 10 April 2008), from 1 January 2009 a producer of electricity can obtain the right to a guaranteed price for electric capacity insatlled in an electricity station if it complies with the following main criteria:

1. Electricity is generated in a co-generation station with electric capacity starting from 20 MW; or
2. Electricity is generated in biomass- or biogas-based electric stations with electric capacity over 1 MW.

The Government has until 1 January 2009 to lay down criteria for electricity producers to qualify for the right, as well as to lay down the procedure for execution of these rights, including determination of the price for installed capacity.

However, if an electricity producer may simultaneously apply for use of rights to sell generated electricity in the framework of mandatory procurement and for use of rights to a guaranteed price for electric capacity installed in an electric station, then the producer may use only one of the rights , of its own choice.

■ Additional information:
Laura Medvida
e-mail: laura.medvida@sorainen.lv

SECURITIES AND CAPITAL MARKETS

A new concept in regulation of the financial instruments market

On 23 June 2008, amendments to the Financial Instruments Market Law entered into force. Among other things, the amendments introduce a new "corporate governance" concept in regulation of the financial instruments market. Corporate governance are all measures for the purposes of reaching company goals and controlling company activities as well as for the purposes of assessing and managing risks related to company activities. Under the amendments, companies whose transferable securities are traded on the regulated market must prepare and publish a corporate governance report (included in the management report or as a separate part of the annual report). The corporate governance report should include (1) composition and description of activities of the managing bodies of the company; (2) references to the corporate governance recommendations that the company applies or material information regarding the corporate governance policy that the company applies in addition to the corporate governance recommendations; (3) information on where the corporate governance recommendations or corporate governance policy applied by the company are publicly accessible. If the company does not apply any corporate governance recommendations, the corporate governance report should justify it.

■ Additional information:
Girts Ruda
e-mail: girts.ruda@sorainen.lv

COMPANY LAW

Fundamental changes in Commercial Law

Fundamental changes have been made in Latvian Commercial Law from 28 May 2008. After the amendments, the Commercial Law more precisely defines the valuation of investment in kind, and execution of a shareholders' register in case of disposal of shares. The amendments also apply to the procedure for share capital increase, issues of reorganization, and finally provide a cross-border merger procedure.

All public limited liability companies must ensure that no later than 31 December 2009 their articles of association contain their fields of activity. While registered shares may be in paper form or dematerialised, the amendments provide that further

the bearer's shares may be only dematerialized. Public limited liability companies now have an option to make their share capital increase procedure more flexible. In such cases, authorization to the company management board for up to five years should be included in the articles of association. According to the authorization, the share capital may then be increased by a certain amount as provided in the articles of association, but in any event not exceeding 30% of the company's share capital at the moment of the authorization coming into force, and on prior consent of the supervisory board.

When reorganizing a company, rights that the acquiring company grants to supervisory and management institutions and the controller of a merged, divided, or transformed company must be indicated in the reorganization agreement. Election of auditors for review of a reorganization agreement no longer requires approval of the Latvian Company Register.

With implementation of the Cross-border Merger Directive (2005/56/EC), a simplified cross-border merger procedure has been achieved between limited liability companies registered in Latvia and other Member States of the European Union, Iceland, Norway, and Liechtenstein.

■ Additional information:
Zane Paeglite
e-mail: zane.paeglite@sorainen.lv

COMPETITION LAW

Changes in competition rules aim to limit freedom of action of retailers in relations with producers and suppliers

In April 2008, the Latvian parliament passed amendments to the competition law. The amend/ments introduce a number of important changes to the competition rules. However, the hottest debate was caused by a new provision that aims at limiting the freedom of action of retailers in their relations with producers and suppliers.

The new provisions put special responsibility on retailers, which, taking into account their buyer power and supplier dependence, have the capacity to impose unfair and unjustified terms and to hinder, restrict, or distort competition for a substantial time. These retailers will be considered as being in a dominant position in retail.

As of 1 October 2008, retailers in a dominant position in retail (i.e. qualifying for the above criteria) will be prohibited from imposing:

- return of goods (except for low-quality products, new products not known to consumers, and "sale" products);
- payments for the presence of goods at a retail sales point (except for new products not known to consumers);
- payments in exchange for entering into a contract (except for agreements with new suppliers);
- payments in exchange for delivery of goods to a new, yet-to-be-opened retail point of sale;
- long payment periods;
- sanctions for violation of transaction terms.

None of these payments and conditions will qualify as abuse of a dominant position in retail, provided that they are fair and justified. If retailers abuse their dominant position in retail they could face a fine of up to 2% of turnover.

■ Additional information:
Pekka Puolakka
e-mail: pekka.puolakka@sorainen.lv

INTELLECTUAL PROPERTY

New procedure for patent registration

New Cabinet of Ministers regulations in the shape of the Patent and Patent Application Regulations entered into force on 5 April 2008. The regulations lay down a new procedure for patent registration. The new patent registration procedure is described in detail in Baltic Legal Update No 48 issued in November 2007.

■ Additional information:
Agris Repss
e-mail: agris.repss@sorainen.lv

LITIGATION AND ARBITRATION

Bailiff will pay a visit later than previously

In the light of a recent judgment of the Latvian Constitutional Court (2 June 2008 judgment in the case No 2007-22-01), changes have been made to the Civil Procedure Law regarding the time when the judgment of an appellate court enters into force. Namely, the rule that an appellate court judgment enters into force as of the moment it is announced has been declared to be unconstitutional. Therefore, it will no longer be possible for a judgment of the appellate court to be enforced before the case is reviewed by the Supreme Court and, as a result, possibly returned to the appellate court for review.

If an appellate court judgment is appealed to the Supreme Court and the latter does not overturn it, the appellate court judgment enters into force either as of the moment when the Supreme Court decides that there are no grounds to initiate proceedings in the Supreme Court, or - if proceedings have been initiated - the cassation appeal is rejected as ungrounded.

In addition, the amendments take into account different issues concerning insolvency cases. The reason is experience obtained during the first six months after entry into force of the new insolvency law.

■ Additional information:
Edgars Briedis
e-mail: edgars.briedis@sorainen.lv

TAX

Amendments to the law "On Personal Income Tax"

The law has been amended regarding situations where a taxpayer has taxable income subject to two different tax rates, such as self-employed income at 15% and other income at 25%. In such cases, the amounts that can be claimed as eligible expenditure, the non-taxable minimum, and the corresponding allowances will be applied in proportion to the respective category of income. If in this situation one income category is less than the expenditure or allowances that can be claimed against it, then unclaimed excess expenditure and allowances can be applied to reduce the other category of income before tax is calculated.

Further, upon sale of an immovable property comprising land and buildings or constructions, the date of registration of the seller's ownership in the Land Book will be deemed to be the same as the date of registration of the seller's ownership of buildings and constructions.

Individuals who begin self-employed activities after 15 March of a tax year and elect to pay fixed income tax will be required to make prepayments of tax. In turn, individuals who begin self-employed activities after 15 November of a tax year will not be required to make prepayments of tax.

In declaring their annual income, individual taxpayers must also include details of exempt income earned during the year if in total this exceeds four times the annual monthly non-taxable income amount which currently amounts to LVL 3,840 (EUR 5,464). Some exempt income is excluded from this requirement.

Additionally, taxpayers will be allowed to pay liability indicated in their declaration over three months in three equal instalments only when tax liability exceeds LVL 450 (EUR 316). This also applies to payment of fixed income tax liability.

Amendments to the law on taxes and fees

Municipalities will from now on be allowed to charge a duty for maintaining and developing municipal infrastructure.

Further, privatised capital companies will be able to capitalise tax debt (including deletion of capitalised basic debt of tax and related penalties and overdue payments) both regarding land tax, as was already the case, and regarding the principlal summ of the debt of real estate tax.

New Value Added Tax Law under preparation

The Latvian Ministry of Finance has developed a draft of a new law on Value Added Tax. The draft law is being developed in order to specify effective current legal norms and to supplement them with the norms of the 6th Directive. The new law is expected to come into force by 1 January 2010.

New Cabinet of Ministers regulations in relation to natural resources tax

New Cabinet of Ministers Regulations No 450 and 446 have come into force. These regulate the procedure for payment, repayment, and exemption from natural resources tax on vehicles, as well

as the procedure for exemption from payment of natural resources tax for packing and throwaway dishes and tableware.

The new regulations contain no significant changes in comparison to the regulations formerly in force. The regulations mainly specify the norms applied before, as well as determining that in future all necessary information will have to be filed with the Latvian Environmental Protection Fund Administration, not the Ministry of the Environment. They also state that further exemption from payment of tax on vehicles will be applied for three, not for five years, as previously stated.

Convention between Latvia and Italy comes into force

On 16 June 2008, the Convention between the Latvian and Italian governments for Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, and for the Prevention of Fiscal Evasion came into force, along with its Protocol signed and ratified in 1997. Likewise, amendments to the convention and its protocol came into force on the same day. The amendments were made on the basis of an inter-governmnetal memorandum of 2005. The convention will apply from 1 January 2009.

"Ceilings" for social contributions cancelled

On 19 June 2008, the Saeima adopted amendments to the law on State Social Insurance. Together with several amendments to the law, it is expected to cancel the "ceilings" for obligatory and voluntary social insurance contributions, currently set at LVL 29,600 (EUR 42,117). The amendments state that such "ceilings" to contributions will be disapplied as from 1 January 2009 to 31 December 2013.

■ Additional information:
Janis Taukacs
e-mail: janis.taukacs@sorainen.lv

LITHUANIA

SECURITIES AND CAPITAL MARKETS

New rules for issuing, changing, and cancelling licenses for management and investment companies and new capital adequacy requirements for financial brokerage firms and management companies

The new wording of the rules regulates management company activities, as well as the procedure for issuing, changing, suspending, and cancelling licenses for investment companies with variable capital and closed-end type investment companies.

In particular, the list of documents to be filed with the Securities Committee for issue of a management company license has changed. If some required documents are missing, the applicant is instructed to provide all documents required by law.

The rules enable a management company that intends to provide additional services falling outside the scope of license, to refer to the Securities Committee. When supplementing a company business license, no new license is issued. Under the new wording of the rules, the Securities Committee has to give its decision within three months as of the date of filing all requisite documents and data, whether this be refusal of or supplement to the management company license.

Notably, the directors of a management company or investment company are subject to additional heavier qualification requirements.

Moreover, new capital adequacy requirements have been approved for financing brokerage firms and management companies.

Major amendments are requirements for initial capital of management companies. Henceforth, initial capital of companies operating under the Law on Collective Investment Undertakings must be at least an amount in Litas that corresponds to EUR 125,000, whereas the initial capital of a management company operating under the Law on Supplementary Voluntary Pension Scheme must be equivalent to at least an amount in Litas that corresponds to EUR 150,000. Both initial and authorised capital of management company managing pension funds where a portion of the state social security contribution is accumulated must be equivalent to at least an amount in Litas that corresponds to EUR 300,000.

Notably, if the value of assets held by a management company exceeds 250 MEUR the company is required to increase its capital by an amount not less than 0.02% of an amount exceeding 250 MEUR until the amount of the company's capital reaches 10 MEUR.

■ Additional information:
Algirdas Peksys
e-mail: algirdas.peksys@sorainen.lt

COMPANY LAW

Amendments to the Company Law

From 1 July 2008, the new wording of the Lithuanian Company Law came into force.

The amendments regulate peculiarities of payment for shares in kind when increasing a company's authorised capital.

To date, an increase in a company's authorised capital by in-kind contributions was subject to evaluation by an independent asset-valuer. However, the new wording of the Law establishes a new procedure, based on which a valuation report is not necessary, provided the shares are fully or partially paid up in transferable securities or money-market instruments. A report is also not necessary if the authorised capital is being paid up by an in-kind contribution, the value whereof has already been established by an independent asset-valuer, and if the valuation of the in-kind contribution has been made in the manner prescribed by legal acts regulating asset valuation. The value of the in-kind contribution must be established at least six months prior to the date of payment in kind.

Notably, the list of conditions for reducing a company's authorised capital is revised. The former wording of the Law provided that a company was not allowed to reduce its authorised capital if the financial accounts contained undistributed losses and long-term obligations. However, the new wording of the Law lays down that the requirement for long-term obligations does not apply if written consent is obtained from all creditors to which the company owes long-term obligations.

As to disputes regarding additional safeguards for discharge of obligations where the company reduces its authorised capital - these are settled in court.

The new wording of the Law enables a company to acquire its shares through a person acting on his own behalf in pursuing the interests of the company and using the company's funds. In acquiring its own shares, a company must ensure equal opportunities for all shareholders to acquire shares in the company.

■ Additional information:
Algirdas Peksys
e-mail: algirdas.peksys@sorainen.lt

EMPLOYMENT LAW

Amendments to the Labour Code

From 3 June 2008, new wording of the Lithuanian Labour Code came into force.

The new wording revises certain rights of employee representatives. Employee representatives are entitled to preserve the rights and interests of employees in cases where the employer decides to dismiss a group of employees, reorganize a company, institution or organisation as well as other decisions that might materially affect the legal status of employees. Moreover, employee representatives have the right to obtain information and consult with employers regarding current and future activities, the economic standing and employment-related issues of the company (structural subdivision), before decisions are made that might materially affect working organisation in the company and the legal status of employees.

In particular, before taking decisions on company reorganisation and other resolutions that might materially affect the working organisation of the company and the legal status of employees, the employer is required to notify employee representatives and to consult with them on the causes of such decisions and on the legal, economic, and social consequences for employees as well as on measures preventing or mitigating possible consequences. The new wording of the Code also allows for cases where no employee representatives exist in a company. In such a situation the employer is required to notify employees (directly, or at a general meeting of employees) in advance of decisions to be adopted, their dates and reasons, the legal, economic, and social consequences, and measures intended for employees.

The Labour Code is supplemented with a new article regulating resolution of collective disputes through mediation, thereby enabling coordination

of parties' interests and arrival at a mutual decision. The Code allows for a mediator to be selected from a list approved by the Minister of Social Security and Labour. If the parties fail to agree on a mediator, then a mediator is appointed by the Tripartite Council. It is underlined that an agreement reached through mediation has to be executed in writing. The agreement is binding on the parties to the dispute under its respective terms.

In addition, the Code introduces slight changes regu/lating declaration of a strike. Henceforth, a strike may be declared with the consent of more than one half of the company employees. To date, declaration of a strike required two-thirds of the company employees.

- Additional information:
  Viktorija Kapustinskaja
  e-mail: viktorija.kapustinskaja@sorainen.lt

TAX

Amendment to the Law on Corporate Income Tax

The *Seimas* of the Republic of Lithuania approved new wording of the Law on Corporate Income Tax, to become effective as from 1 January 2009.

The amendments lay down that when applying provisions on dividend tax exemption, Lithuanian and foreign entities receiving dividends controls for an uninterrupted period of at least 12 months at least 10% of all the voting shares (interest, member shares) in the Lithuanian legal person paying dividends except for the cases where the foreign entity receiving the dividends is registered or otherwise organised in target territories (offshore territories) This provision shall not apply where taxable profits of the Lithuanian entity paying the dividends are not taxed at a rate of 15 or 13% as specified in Article 5 of this Law, except for the cases where the Lithuanian entity paying the dividends is an undertaking situated in a free economic zone.

The corporate income tax amount withheld from a dividend paid to Lithuanian entities is set off against the amount of corporate tax due for the tax period by the Lithuanian entity receiving the dividend, rather than the Lithuanian entity paying the dividend, provided that the taxable corporate income of the Lithuanian entity paying the dividend is taxed at a rate of 15% or 13%.

Based on amendments to Article 35 (2) of the Law on Corporate Income Tax, dividends received by Lithuanian entities for shares, interest, or other rights possessed, or by permanent establishments for shares, interest, or other rights attributed by foreign entities registered or otherwise organised in an economic zone in Europe and the profit whereof is subject to profit or similar tax, are not subject to tax.

- Additional information:
  Dainius Zapereckas
  e-mail: dainius.zapereckas@sorainen.lt

BELARUS

ENVIRONMENT

Ecologically Dangerous Activity Regulated

Amendments to the Law on Environmental Protection, adopted on 21 December 2007, entered into effect on 1 July 2008. These amendments established terms for compensation of damage by legal entities and individuals carrying out ecologically dangerous activity. In case of causing damage, these persons must compensate in all cases, except for situations when damage was caused due to *force majeure*.

Besides, criteria for defining economic activity as ecologically dangerous were established by the Edict of the President No. 349 dated 24 June 2008, which came into force on 1 July 2008.

- Additional information:
  Kiryl Apanasevich
  e-mail: kiryl.apanasevich@sorainen.com

SECURITIES AND CAPITAL MARKETS

Amendments to mortgage laws

On 20 June 2008, the President of Belarus signed the long-awaited Law on Mortgages. The Law will provide for systematic regulation of mortgages (especially mortgages of residential real estate) and provide a legal basis for long-term mortgage lending.

Under the Law, loan, sale-purchase, lease, contractor's, other agreements, as well as trespass obligations may be secured by mortgage obligations under a credit facility. The main innovation introduced by the Law is a new type of security: a mortgage note. The mortgage note indicates the actual amount of the debt, the description and location of mortgaged real estate, and other material data. Mortgage notes are subject to state registration, as well as transfer of rights under mortgage notes.

The Law on Mortgages will enter into effect on 26 December 2008.

Furthermore, some changes regarding mortgages were introduced to the Civil Code of Belarus. Thus, under the new provisions mortgage of a land plot will be followed by simultaneous mortgage of buildings and constructions located thereon. Previously, mortgage of a land plot did not imply mortgage of such real property.

- Additional information:
  Maksim Salahub
  e-mail: maksim.salahub@sorainen.com

COMPANY LAW

Significant amendments to the Civil Code of Belarus

Amendments to the Civil Code of Belarus adopted on 20 June 2008 will enter into force on 1 January 2009.

Basic regulations on legal entities are amended. Previously, the location of a company was defined by the place of its state registration. Under the new Law, the legal address of a legal entity will be defined by the location of its executive body.

The Law also introduces significant changes in other areas of civil relations. In particular, changes occur in definition of entrepreneurial activity, the concept of a legal entity, and general provisions on agreements. In addition, the provisions on gifts, deposit accounts, mortgages, and forwarding are amended.

- Additional information:
  Vasili Valazhynets
  e-mail: vasili.valazhynets@sorainen.com

TAX

Taxation matters to be simplified between Belarus and Finland

On 29 April 2008 Belarus ratified the Agreement on Avoidance of Double Taxation and Prevention of Income Tax Evasion concluded with Finland. The Agreement aims at protection of Belarusian and Finnish citizens and legal entities against the risk of double taxation when the same income is taxable in two states. To this end, the Agreement establishes the procedure for paying taxes on profit, real estate, income and other taxes in the two jurisdictions.

The Agreement will become effective when Finland completes all procedures and formalities necessary for the Agreement to enter into effect.

- Additional information:
  Kiryl Apanasevich
  e-mail: kiryl.apanasevich@sorainen.com

Chief editor:
Girts Ruda, Latvia
phone +371 67 365 000
e-mail girts.ruda@sorainen.lv

NEWS IN SORAINEN

Recent deals

Advising global pharmaceutical concern in acquisition of Sagmel Inc
Vilnius and Minsk offices in cooperation with Clifford Chance advised Bayer HealthCare Pharmaceuticals (Consumer Care Division), a leading global marketer of over-the-counter (OTC) medications and nutritional supplements, in its acquisition of Sagmel Inc (OTC Business and related assets), a US pharmaceutical company involved in developing, manufacturing, and marketing of OTC drugs and nutritional supplements in the Baltics and Belarus. Bayer HealthCare has also acquired Sagmel in Russia, the Ukraine, Kazakhstan, and several Caucasian and Central Asian countries. The Sagmel portfolio delivered net sales of approximately 80 MEUR in 2007. The advice also involved establishing a subsidiary and accrediting a second representative office in Belarus. The client was advised by partners Maksim Salahub, Vasili Valazhynets, and associate Tatsiana Klimovich from Minsk office and partner Laimonas Skibarka and senior associate Liudas Ramanauskas from Vilnius office.

Atria acquisitions in Estonia
Tallinn office is acting as advisor to the Nordic food processing group Atria in its acquisition of two independent Estonian meat processing companies, AS Woro Kommerts and AS Vastse-Kuutse Lihatoostus. The companies are well-known manufacturers of a variety of high-quality meat products and consumer-packed meat. Transaction closing is subject to approval of the Estonian competition authorities. The Sorainen team in these transactions is led by partner Toomas Prangli and senior associate Paul Kunnap.

A-Inspections acquisitions in Estonia
Tallinn office advised A-Katsastus Oy (A-Inspection Ltd), the leading Finnish private company in the vehicle inspection sector in Northern Europe, in its acquisition of two vehicle inspection stations in Estonia. One station is located in Rakvere and the other in Maardu. This is the first step for A-Katsastus Oy in entering the Estonian vehicle inspection market. The Sorainen team included partner Toomas Prangli and senior associates Paul Kunnap and Piret Lappert.

Sale of ABC King
Tallinn office advised the sellers in the sale of 100% shares of AS ABC King, the shoe retailer operating shops in Estonia and Latvia, to Tallinna Kaubamaja group. The transaction is subject to approval of the Estonian and Latvian competition authorities. The Sorainen team was led by partner Toomas Prangli and senior associate Stefano Grace.

Assisting subsidiary of international hotel group
Tallinn office assisted a subsidiary of an internationally known group of high-class hotels in obtaining the necessary operating licenses in Estonia. The hotel opened is one of the largest hotels in Estonia, with 238 rooms and five kitchens. As the hotel comprises a variety of services and facilities, the client required operating licenses in many different areas such as catering, beauty and accommodation services, SPA, pool etc. Tallinn office advised the client in explaining the Estonian legal environment as well as in communicating with the authorities. The case was handled by corporate advisory team partner Karin Madisson and associate Anu Ahas-Saaron.

Establishing new Estonian commercial bank
Tallinn office assisted LHV, Lohmus, Haavel & Viisemann AS, a leading pan-Baltic investment firm, in establishing a new Estonian commercial bank, starting from preliminary start-up advice. Sorainen worked closely with the client throughout the process of applying for an operating permit to ensure a smooth foundation procedure. The case was handled by partners Reimo Hammerberg and Karin Madisson with associates Viljar Kahari and Anne Adamson.

Two ship arrests in Estonian waters
In the last six months, senior associate Carry Plaks and partner Carri Ginter have successfully arrested two ships that arrived in Estonian waters.
In December 2007, the arrest of a cruise ship worth about 6 MEUR that entered Estonian waters was achieved as a result of a carefully prepared plan. Arrest of the ship resulted in amicable settlement of the creditor's claim.
A tanker which had an outstanding maritime claim was arrested in May, when the vessel visited an Estonian port for one day only.
From the point of view of the Estonian civil law, this is noteworthy, since the arrest of ships as provisional legal protection has been applied on very few occasions.
Ship arrests have to be pursued through the courts, and a clear distinction should be made between requests for provisional legal protection regarding maritime claims, maritime liens, and debt claims. It is important to note that the seizure can be applied and enforced even in foreign disputes as Estonia has entered into several conventions that provide Estonian jurisdiction for arresting ships.

Drafting strategy on expropriation of real estate in Latvia
Riga office advised the Ministry of Transport of Latvia on voluntary and compulsory expropriation of real estate. Riga office prepared the research on current deficiencies in Latvian legal acts and analyzed experience of foreign countries as well as the latest case law of the Constitutional court of Latvia. The government aims to create a stable and effective system which would enable construction of large infrastructure objects and successfully attract financial resources from EU Structural Funds for infrastructure objects. Research was made by senior associate Lelde Lavina and partner Girts Ruda.

Advising in acquisition of owner and operator of pulpwood
Vilnius office advised the client, Billerud Skog AB, the Swedish-based supplier of fibre materials and biofuel, in its acquisition of 70% shares in Cebeco Mediena UAB, the Lithuanian-based owner and operator of pulpwood, for an undisclosed consideration. The acquisition will help Billerud in fulfilling its wood requirements and expanding its operation in the Baltic wood market. It will also help Billerud in terms of logistics, as the company is based in the port of Klaipeda, with its terminal warehousing and loading facilities. The client was advised by partner Laimonas Skibarka and associate Tadas Milasius.

Acquisition of a construction company in Belarus
Minsk team led by partner Kiryl Apanasevich advised Hudson Capital, a US-based international development and investment company, in its acquisition of a construction company in Gomel, licensed to operate as a general contractor in Belarus and Russia and with permission to develop a residential block in Minsk. The value of the target's development portfolio amounts to approximately 20 MEUR.

Advising in development of city airport and significant number of construction projects in Minsk
Minsk office advised OAO ITERA-Invest-Stroy in connection with the development project "Minsk City" which the company is currently carrying out in Minsk. Under this project, OAO ITERA-Invest-Stroy is developing the area of the present city airport Minsk-1, constructing a significant number of business centers, hotels, residential premises, entertainment and catering facilities, along with necessary infrastructure. Sorainen have also advised OAO ITERA-Invest-Story in connection with another development project, under which business and residential buildings will be erected in downtown Minsk. The estimated value of the two projects is 738 MUSD. Sorainen also carried out a legal due diligence of the client's subsidiaries in Belarus prior to their corporate restructuring needed in order to accommodate the needs of the projects. The client was advised by partners Kiryl Apanasevich, Maksim Salahub and Vasili Valazhynets, and associate Tatsiana Klimovich.

Assisting in investment to Belarus
Minsk office advised David Samuel Properties (*inter alia*, on financing matters) with regard to acquisition of a construction company holding permission to reconstruct one of the city markets in Bobruisk, Belarus, into a shopping complex.

Minsk office also provided legal advice in connection with acquisition by DS Properties of uncompleted real property objects in Brest for reconstruction into a hypermarket. The value of the reconstruction project amounts to approximately 5 MEUR. The client was advised by partners Kiryl Apanasevich and Maksim Salahub.

■ Employees

100 lawyers consulting our clients
We are pleased to announce that Sorainen has exceeded the amont of 100 lawyers for all four offices. In total Sorainen employs now more than 150 people. The 100th lawyer and 150th employee were apprised at Sorainen Summer Days. Both of them work in Sorainen newest office, Minsk.

Head of Pan Baltic-Belarus insurance team to be a partner at Sorainen Vilnius office
Recent development of Sorainen in the Baltics and Belarus is surmounted by one more solemn event – with effect from 1 July 2008 Attorney-at-Law **Dr Tomas Kontautas** became the fifth partner at Sorainen Vilnius office, which now employs nearly 40 lawyers.

Dr Kontautas has been working with Sorainen since 2006 leading the pan-Baltic and Belarusian Insurance team and Vilnius office Banking & Finance team. Tomas Kontautas studied at Vilnius University, the University of Hamburg, and Erasmus University Rotterdam, where he obtained a European Master's in Law and Economics (EMLE) degree. In 2006 he was awarded a doctor's degree in Social Sciences (Law) at Vilnius University. During his professional career Tomas Kontautas has been a lawyer with law firm Lideika, Petrauskas, Valiunas ir partneriai LAWIN, deputy chairman of the Insurance Supervisory Commission, and deputy head of the Legal Division of the State Insurance Supervisory Authority. He has also been actively involved in drafting insurance laws and regulations in Lithuania and the European Union.

Growth of Sorainen Vilnius team
Within the last two months the Sorainen team welcomed the arrival of associate **Laura Cereskaite**, who recently arrived from the Munich office of Clifford Chance, where she was assisting leading global companies in international M&A. Before joining Sorainen she also worked with several law firms in Lithuania. Laura Cereskaite has a Master of Law degree in Lithuania and has also studied European and German law in Germany. She specialises in litigation, arbitration, and trade law. In addition to Laura Cereskaite, the team was joined by legal assistants **Urte Cerniauskaite** and **Antanas Dzinga**.

A lawyer with comprehensive experience in the banking sector joins the Sorainen banking and finance team
Raivis Kirsons, who recently joined Sorainen Riga office as an associate, specialises in Financing & Securities. Before joining Sorainen, Mr Kirsons worked for seven years as a lawyer with leading banks in Latvia such as Nordea Bank Finland Plc (Latvia Branch), and SEB Banka. He has substantial experience in preparing legal documentation in regard to financing various projects and also in the field of financial instruments. He graduated from the RIMPAK Livonia Business Institute (LL.B. in International Law) and Swinburne University of Technologies in Australia (Master of International Business) as well as the Institute of International Affairs of the University of Latvia (LL.M in International Law).

One of our employees returned from his master studies
Risto Agur (Mr), senior associate and Attorney-at-Law working in Tallinn office has completed his LL.M. program in Securities and Financial Regulation at Georgetown University Law Center in Washington D.C., where he studied as a Fulbrigher. At Sorainen, Risto will focus on restructuring and insolvency matters.

In June, partner and Attorney–at-Law **Carri Cinter** completed Swedish Institute Management Programme, executive management training for emerging leaders. The aim of the programme was to build up a robust international network of emerging leaders who can strengthen relations and business ties between the participating countries and Sweden. Carri Ginter is a member of the Swedish Institute Network. In Sorainen, he leads the Tallinn office dispute resolution team.

■ Other

Sorainen litigation specialists contribute to substantial overview of electronic evidence published by high-profile law publisher in London
Partner Agris Repss and associate Ilze Znotina from Sorainen Riga office contributed to the book "International Electronic Evidence" published by the British Institute of International and Comparative Law in June 2008. The book provides an outline of the substantive law of evidence, admissibility, disclosure and procedural requirements in respect of digital evidence. Our lawyers prepared an insight into these topics in a chapter on Latvia. The book is one of the very few publications providing a comprehensive analysis of the laws of various jurisdictions on admissibility, disclosure, and procedural requirements in respect of digital evidence.

Mergermarket again ranks Sorainen among top 10 M&A law firms in CEE
Mergermarket, a leading mergers and acquisitions (M&A) intelligence company, has published league tables of legal advisers in M&A transactions worldwide for the first half of 2008. The Sorainen M&A Team ranked at No. 10 by deal volume in league tables of legal advisers in M&A transactions. Within the whole CEE region, Sorainen is also the only Baltic law firm ranked so highly by Mergermarket.

Senior Associate **Stefano Grace** delivered a presentation at the "NASDAQ OMX - New Opportunities for State-owned and Private Companies" conference organized by the Tallinn Stock Exchange in Tallinn to an audience of managers of Estonian companies, members of Estonian parliament and press. Stefano Grace's presentation "U.S. Capital Markets: What can we learn from them?" emphasized the benefits of aligning interests of managers and employees with those of the stakeholders through share option plans and proposing changes to the current taxation and regulatory regime in Estonia to facilitate the wider use of such plans.

M&A seminar in cooperation with Aripaev in Tallinn
Sorainen Tallinn office in cooperation with Aripaev invites you to the seminar

"HOW TO EXPLOIT THE ECONOMIC ENVIRONMENT FOR YOUR BENEFIT IN M&A TRANSACTIONS"

to take place on 17 September 2008 at the Radisson SAS Hotel in Tallinn.

The seminar language will be Estonian. For more detailed information please visit www.aripaev.ee/seminar or our website www.sorainen.com or contact Ms Egle Loor (phone: +372 6 400 900 or e-mail: egle.loor@sorainen.ee).

Seminar on business opportunities in Belarus Sorainen Tallinn office in cooperation with the Swedish Trade Council invites you to the seminar

"ATTRACTIVE BUSINESS OPPORTUNITES IN OPENING BELARUS AND SLOWING DOWN BALTIC COUNTRIES"

to take place on 30 September 2008 at the World Trade Centre, Stockholm.

The seminar language will be English. For more detailed information please visit our website or contact Ms Egle Loor (phone: +372 6 400 900 or e-mail: egle.loor@sorainen.ee).