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Dear Readers,

I am pleased to announce that you are reading our 50th Legal Update - our newsletter about changes in the Baltic legal environment.

The very first issue came out 11 years ago, in March 1997, and looked at how mortgages, guarantees, and other securities worked in cases of debtor insolvency in Estonia. The theme was highly topical, so we received many requests for more, and regular, updates. Later, when Sorainen offices were established in Latvia and Lithuania (in 1997 and 1999), we naturally included news related to these countries, and thus it was that the Baltic Legal Update was born.

Today our Legal Update has around 10,000 subscribers. These include leading global financial institutions, multinational and Baltic companies, universities, ministries in the three Baltic States, and the Supreme Court of Justice in Estonia.

This spring is special for us, as it marks not only the 50th edition of Legal Update, but also our expansion of operations to Minsk, making ours the first leading regional law firm to open an office in Belarus. The Minsk office is fully integrated with our other offices.

As we step beyond the Baltics, we are also adjusting the title of our Legal Update to Sorainen Legal Update. Starting with this issue we will also focus on changes in the Belarusian legal environment.

We would like to thank you all for subscribing to our Legal Update and promise to develop it further. Your suggestions and comments are always appreciated.

Kind regards,

Aku Sorainen  
Managing Partner

LEGAL UPDATE

### ESTONIA BANKING

#### Restrictive measures for easy-credit companies

Amendments to the Money Laundering and Terrorist Financing Prevention Act introduce restrictive measures obligating all financing institutions that engage in easy-credit loans to personally identify their clients. This regulation is inspired by general public interest in reducing money laundering and preventing terrorist financing by harmonizing Estonian legislation with Directive 2005/60 of the European

Parliament and Council. The new obligation for financing institutions to identify the client upon first contact is both in line with and more restrictive than the Directive, providing a diligence measure similar to prescriptions for credit institutions. Significantly, this rule will not apply retroactively – existing commercial relationships can be maintained on their existing basis.

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### Estonia

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M&A law firm in Central  
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## SECURITIES & CAPITAL MARKETS

### Correction to definition of “Closed-End” funds in Estonia

While drafting a prospectus, members of the Sorainen Banking & Finance Team, senior associate Stefano Grace and partner Reimo Hammerberg, discovered a discrepancy between the definition of “closed-end” funds under the Estonian Investment Funds Act (in Estonian: *Investeerimisfondide seadus*) (the IFA) and the Prospectus Directive (2003/71/EC) and its implementing Regulation ((EC) No 809/2004). After discussions with the Estonian Financial Supervisory Authority (the FSA) and Ministry of Finance, the IFA and Estonian Securities Market Act (in Estonian: *Vaartpaberituru seadus*) (the SMA) were amended in March to bring the definition of “closed-end” funds under Estonian law in line with the *acquis communautaire*.

Prior to the amendments, under the IFA an investment fund was regarded as closed-end if its units were not redeemable within one month. Additionally, the SMA required that all public offerings of closed-end funds be made through drafting a prospectus under the Prospectus Regulation. However, under the Prospectus Directive funds redeemable out of the assets of an undertaking do not fall within the definition of closed-end funds. Further, the Prospectus Directive specifically states that it applies only to funds of the “closed-end type.” Thus, it was not possible to draft our prospectus in line with either Estonian law or the Prospectus Regulation. However, the recent amendments to the IFA and SMA now re-characterize these funds as open-end funds, allowing for a more simplified prospectus under Estonian law.

The Estonian FSA expressed gratitude to Sorainen’s Banking & Finance Team for its initiative taken in further developing fund regulations in Estonia.

### Investment funds may invest in alternative securities markets

Amendments to the Investment Funds Act, harmonising the Act with the UCITS Directive 1985/611/EEC, entered into force on 15 March 2008. Under the amendments, assets of a UCITS or any other public fund may be invested in securities that are freely transferable and comply with the minimal condition that they are traded on the regulated securities market of a state that is a contracting party to the European Economic Area Agreement or on any other regulated market recognised and regularly operated by that state and through which the public can acquire or transfer securities. The “other regulated market” defined in the Act mainly refers to alternative securities markets with fewer legislative restrictions on issuers and trading. Alternative markets are trading environments where securities can be traded in basically the same way as on stock exchanges, but where the requirements on issuers of securities are lower. One of the main goals of alternative markets is to enable smaller companies to access additional capital.

### Takeover bids can only be made if sufficient financial resources and means exist

Amendments to the Securities Market Act (SMA) that entered into force on 15 March 2008 resulted from the need to harmonise the procedure for takeover bids of investment firms with Directive 2004/25/EC. Under the amendments, the offeror makes a takeover bid if it has sufficient financial resources and means to carry out the takeover. The SMA previously required an offeror to make a takeover bid, except a mandatory takeover bid, if it had sufficient financial resources and means to carry out the takeover. Interpretation of this requirement gave rise to the opinion that in the event of a mandatory takeover bid, the offeror did not have to prove existence of the relevant financial resources. However, the offeror generally has to guarantee the existence of sufficient financial resources both in the event of voluntary and mandatory takeover bids.

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## COMPANY LAW

### Be careful with balance statements

The simple procedure of exchanging statements of holdings between companies, previously regarded as a formal accounting routine, has gained a more substantial and even claims-terminating function under a recent Estonian Supreme Court decision No 3-2-1-100-07 of 6 December 2007.

The Court ruled that a creditor may lose its right to claim recovery of a debt not recorded on a statement of holdings sent to the debtor. The decision elaborates on losing the right to fine for delay not recorded on a statement of holdings served over a substantial period. However, in light of the decision we predict that in disputes and litigation a defence based on “clear” (no claims) or partial (part of the claim recorded) statements of holdings gains speculative strength and thus will be used more often as a back-up. A useful tip to be taken from the Court’s reasoning is that management should critically review accounting procedures to ensure that every statement of holdings includes all claims against the receiver, together with additional claims (e.g., interest, contractual penalties) or clearly state that only the principal amount is recorded on the statement of holdings. As a minimum, we recommend supplementing the standard text of statements of holdings with the following paragraph, “Statements of holdings will not revoke the rights of the bearer arising from potential failure to settle payments, causing damage or violation of an obligation by the debtor”.

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## EMPLOYMENT LAW

### No additional pay due for piece-work

In a recent decision No 3-2-1-6-08 of 19 March 2008, Estonian Supreme Court clarified issues associated with payment for piece-work. The Court stated that parties to an employment contract may agree that remuneration will be paid by way of unit prices based on performance and not on working time.

In its decision, the Court emphasised that payment of salary for piece-work does not involve mandatory implementation of the Employment Contracts Act, Working and Rest Time Act, and Wages Act in respect of working overtime and on days off, public holidays, in the evenings, and at night. No additional remuneration need be paid for any of the above. This makes payment of remuneration for piece-work clearer for employers.

Under the decision, the parties should agree on the unit price applied in payment of wages so that it already includes possible additional remuneration for overtime and working on days off, public holidays, in the evenings, and at night. The employer and employee can also agree that the employee must work during agreed working hours, but remuneration will be paid according to the amount of completed work and not according to time worked. The parties may also agree that the employee completes a specific job by an agreed deadline. This places the focus on completing the job by the deadline and not on organizing working time.

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## COMPETITION LAW

### Estonian Supreme Court takes conservative approach as to when concentration takes place

On 7 December 2007 the Estonian Supreme Court ruled on when a concentration takes place within the meaning of the Estonian Competition Act. According to the Estonian Supreme Court decision No 3-1-1-84-07, the mere fact of signing an acquisition agreement cannot be regarded as grounds for submitting a concentration notification to the Estonian Competition Board. The Court found that even if the ownership of shares passes to the buyer upon signing a share purchase agreement, this does not yet give the buyer the right to exercise its shareholder’s rights and affect the activities of the company. According to the Estonian Commercial Code, a buyer can exercise its rights over the company after ownership of the shares has changed in the Estonian Central Register of Securities. Therefore the Court concluded that a concentration takes place only after the buyer has been registered in the Estonian Central Register of Securities as the owner of the shares of the acquired company.

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## TAX

**Implications of company taxation changes in the beginning of 2009**

The Parliament finally passed long-awaited amendments to the Income Tax Act in order to meet EU requirements arising from Directive 90/435/EEC (the so-called Parent-Subsidiary Directive).

The main feature of Estonian corporate income tax – deferral of tax liability until profit distribution – will not disappear. But the amendments are significant and the full extent of their impact is not yet clear. The main amendments are as follows:

1. Tax will be based not only on profit distribution in the form of dividends, but also on any other payments to shareholders that reduce equity: liquidation proceeds, disbursements made upon reduction of share capital and redemption of shares, which together with earlier such payments exceed shareholder contributions made to equity (“the tax base”). The tax base will still include fringe benefits, gifts, donations, reception costs, expenses and payments not associated with business and losses from transfer pricing.
2. The new taxation period will be one year instead of a calendar month. Until now, companies filed an income tax return and paid tax every month. But as from 01 January 2009 they will be required to do this once a year within six months of the end of the financial year, and the declaration must contain all components of the tax base. However, in respect of fringe benefits the calendar month will still remain the taxation period.
3. Income tax will not be withheld from dividends and license fees paid to non-residents. Until now, dividends paid to shareholders who held 15 % or more of all shares and license fees paid to shareholders who held 25 % or more of all shares were exempt from such withholdings. This also decreases the tax burden for shareholders in low tax-rate territories.
4. Resident companies must pay advance income tax payments twice a year in a total sum equalling 2/3 of income tax charged for the previous taxation period. The authorities may reduce the advance payment or release a company from its payment obligation. If final income tax liability is less than the sum of advance payments, the company may apply for a refund of overpaid tax.

Profit earned until 1 January 2009 but distributed after 31 January 2008 will be taxable on the basis of the new provisions.

The amendments have caused major discussion, because they can allegedly lead to double taxation and may not resolve possible conflict with the so-called Parent-Subsidiary Directive.

**Must profitable companies (especially SPVs) be liquidated by the beginning of 2009?**

Tax-free repatriation of profit through liquidating a company, widely used in Estonia, will be taxed under the above amendments. Until now,

liquidation proceeds were taxed only if paid out to a non-resident and the company was regarded as a so-called property company, except where liquidation proceeds were exempt from Estonian income tax under an agreement for prevention of double taxation.

The amendment does not tax the merger of an Estonian parent company with an Estonian subsidiary in order to move profit “up”. This means that the amendment will most impact Estonian companies that belong to non-residents. Liquidating these companies without expert tax planning will become considerably more expensive from 1 January 2009. Until now, the recommendation has been to liquidate such SPVs before 1 January 2009 so that profits can be repatriated as economically as possible. Such liquidation should start immediately, because liquidation takes about eight to nine months. However, other tax solutions for repatriation of profits do not require liquidation of SPVs or other subsidiaries before 1 January 2009 and can also be used after that date.

**100 kroons tax arrears no longer prevents participation in public procurement**

Amendments to the Public Procurement Act entered into force on 28 March 2008. These significantly restrict the options available to contracting authorities for eliminating companies from procurement. The amendments annul the right of contracting authorities to exclude from procurement companies which had tax arrears for more than 30 days within the last 12 months prior to filing the relevant certificate with the contracting authority. In the new regulation, this provision has been replaced with a condition that companies must have no outstanding tax or social insurance liabilities. The difference is that no tax arrears must exist when the company submits its tender and application to take part in procurement, or during the procurement process. Until now, the law did not allow a contracting authority to consider that tax arrears could be justified because a tax return had been amended or total arrears over 12 months were very small and had been paid by the time the company took part in the procurement. The contracting authority will retain the right to demand that companies produce a “no arrears” certificate either alone or with the documents evidencing their qualification.

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## LATVIA

## MERGERS &amp; ACQUISITIONS

**Implementing Cross-Border Merger Directive**

On 6 March 2008, the Parliament adopted amendments to the law “On the Enterprise Register of the Republic of Latvia” and on 24 April 2008 also amendments to the Commercial Law were adopted, thus implementing Directive 2005/56/EC of the European Parliament on cross-border mergers. As an alternative to the European Company (SE), the directive enables companies registered in different EU member states to merge and continue their activity as a “simple” company of the respective member state under national law. Member states should have implemented the Directive by 15 December 2007; however, the Latvian legislator had so far not complied with this duty.

The amendments to the law “On the Enterprise Register of the Republic of Latvia” provide a legal basis for the Enterprise Register to register a cross-border merger or, if the acquiring company is registered in another member state, to carry out a legality check of the merger and to issue a pre-merger certificate. The amendments to the Commercial Law provide a procedure for carrying out a cross-border merger.

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## REAL ESTATE &amp; CONSTRUCTION

**Amendments to laws and regulations in real estate and construction**

The beginning of 2008 saw several amendments to laws and regulations related to real estate and construction come into force. Amendments to Construction Law clarify the definition of builder as well as persons who need not have a builder's or architect's practising certificate. The amendments also enable part of a building - not only the whole building – to be put into use, thus allowing better planning of large projects consisting of more than one building.

On 2 February 2008 amendments to government Work Safety Regulations For Construction Works came into force. Under the amendments, building contractors have to ensure that a full list of persons employed at a construction site is available on site. Additionally, building contractors have to issue a special identity card to everyone employed at a construction site so that relevant state authorities can verify their employment status.

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## COMPANY LAW

**Some innovations and essential novelties in the Law on Advertising**

In addition to several clarifications and updates, the amendments to the Law on Advertising introduce a few innovations and essential novelties resulting from EU legislation (Regulation EC 2006/2004, Directive 2005/29/EC, Directive 2006/114/EC):

- the Law on Advertising is co-ordinated with the Law on Unfair Commercial Practice;
- to speed effective response to infringements, supervising authorities may now establish a temporary settlement;
- supervising authorities may now ask infringers for a written undertaking to eliminate an infringement;
- supervising authorities may now publish information on infringements;
- advertisement distributors who fail to respond to a request for information from the supervising authorities may be liable to penalties;
- the competence of supervising authorities is adjusted and clarified.

**Clearer legal provisions and adjusted penalties for advertising infringements**

In addition to these amendments to the Law on Advertising, the Latvian parliament has also adopted related amendments to the Administrative Infringement Code. These clarify legal provisions and adjust penalties for infringements in advertising. Additionally, they introduce penalties for non-submission of information or submission of false information to supervising authorities, as well as for non-fulfilment of decisions by the authorities.

The amendments to the Administrative Infringement Law also introduce penalties for unfair commercial practice – up to LVL 10,000 (ca. EUR 14,250) for legal persons and up to LVL 500 (ca. EUR 712) for natural persons.

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**Travelling eased between Belarus and Latvia**

From 1 March 2008, persons living in Latvia (citizens, non-citizens, and stateless persons living in Latvia) can receive Belarusian visas valid up to 180 days a year (90 days a half-year). Previously, a Belarusian visa was issued for a term only half as long.

The agreement eases travel for persons living in both Belarus and Latvia. The main advantage is cancellation of the registration requirement for Latvian inhabitants who stay in Belarus for more than 30 days from day of entry and who receive a migration card on entering Belarus.

Both states will issue repeat visas valid up to one year for businesses and representatives of businesses with regular business dealings in the other state. The visas will be issued on the basis of invitation, if the businesses and representatives have grounds to require a repeat visa and if they

have received a visa at least once within the previous calendar year.

Apart from businesses and representatives of businesses, repeat visas valid up to one year can be issued to members of official delegations, international freight and passenger drivers with vehicles registered in either country, and individuals taking part in scientific, cultural or arts events, subject to certain requirements in each case.

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## EMPLOYMENT LAW

**Planned amendments to Labour Law broadest since 2002**

The Latvian Ministry of Welfare in cooperation with the Employers' Confederation of Latvia, the Free Trade Union Confederation of Latvia, and the State Labour Inspectorate has prepared the most comprehensive amendments to the Labour Law since it came into effect in 2002. The amendments (approx 40) could be regarded as a compromise between the social partners. However, agreement could not be reached on some issues. The amendments are subject to review in the Latvian Parliament, so some changes may still be expected.

**The amendments are intended to have the following effects:**

- to soften the criteria for general agreements (branch level collective agreement) to be binding on all employers in the respective branch (i.e. not only on those employers who have entered into an agreement);
- to require job advertisements to indicate an employer or person on behalf of the employer who evaluates and selects applicants;
- to entitle employers to terminate an employment in cases of employee long-term illness;
- to further detail provisions on aggregated working time;
- to adjust the definition of "transfer of undertaking" to the court practice of the European Court of Justice;
- to oblige employers to keep copies of employment contracts in employees' workplace;
- to enable fixed term employment contracts with students of vocational or academic educational entities, providing the specifics of particular work are linked to preparing for activity in a certain profession or study area.

The Ministry of Welfare plans that the amendments will come into effect on 01 January 2009.

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## PUBLIC PROCUREMENT

**Public procurement procedures improved**

New Cabinet Regulations entered into force on 9 February 2008 aiming to enhance transparency in public procurement procedures for applicants to EU structural funds and to maximize competition among suppliers. The regulations also aim to simplify the practicalities of filing public procurement documentation.

The regulations concern every person receiving financing through EU structural funds, the state or municipalities, except for those deemed to be contracting authorities under the Law on Public Procurement or public service providers under the Law on Public Procurement for Public Service Providers.

The regulations increase the threshold for engaging in the public procurement procedure. For goods and services the threshold is LVL 50,000 (ca. EUR 71,500) (instead of LVL 5,000 (ca. EUR 7,140)) and for construction works LVL 120,000 (ca. EUR 171,430). Invitations for public procurement procedure and decisions are to be made available on the web page of the Procurement Monitoring Bureau.

No special requirements exist for procurement below the threshold, except for a requirement not to conclude agreements with related persons.

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## INSURANCE

**Amendments to Personal Data Protection Law**

The Latvian Parliament has adopted amendments to the Personal Data Protection Law to allow processing of sensitive personal data if processing concerns personal data necessary to protect the lawful rights and interests of natural or legal persons in insurance claim proceedings.

**Violation of Consumer Rights in CASCO insurance**

In order to recognize non-compliance of CASCO products provided by Latvian insurers in 2007, the Latvian Consumer Rights Protection Centre analysed their terms and conditions. Results of the research revealed such violations of consumer rights as unclear conditions, description of exceptions, principles of calculation of indemnity as current deficiencies in the Latvian insurance market.

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## TAX

**Tax and informative returns to be deliverable only in electronic form**

From 1 January 2010, all taxpayers, excluding natural persons who perform no economic activity, must deliver tax returns and informative declarations only in electronic form.

**Amended procedure for suspension or division of tax and penalty assessed as a result of tax audit**

Applications for division of tax and penalty assessed as a result of tax audit into terms or to suspend them for one year must now be filed no later than three days before payment deadline. If the sum to be divided exceeds LVL 5,000 (ca. EUR 7,140), the tax administration will also be allowed to require security on property owned by the taxpayer or a guarantee issued by a credit institution. Legal entities that prepare annual reports will have to attach additional documents.

**Changes to calculation of liability for tax violations**

From 4 March 2008, repeated violations of tax law provisions discovered during a tax audit attract a fine of 70 % of undeclared tax instead of 100 % as previously. The tax administration will also be entitled to fine offenders if the repeated violations are discovered during a tax audit in relation to the taxpayer's request for refund of tax overpaid.

Liability will also occur for ungrounded increase of tax amount which a taxpayer is entitled to refund from the budget.

Fine imposed to a taxpayer for:

- performance of unregistered economic activities;
- non-submission of tax declarations and other accounting documents within 30 days after the deadline;
- employing a person without conclusion of an employment, company, sharecropping or transportation agreement with that person, will be decreased down to 65 % if prior to the decrease a taxpayer pays into the budget an amount additionally calculated during audit together with a fine in the amount of 15 % of the tax debt.

**Tax calculations may refer to Council Directive 2006/112/EC**

From 28 February 2008, tax calculations for supply of goods or services when applying a 0% rate, or when the receiver of goods or services is responsible for payment of tax (subject to reverse charge) may refer to the respective article of Council Directive 2006/112/EC of 28 November 2006 or some other reference that indicates treatment applicable to goods or services supplied.

You can read more about this and other tax news in the latest Latvian Tax Newsflash available on the Sorainen webpage [www.sorainen.com](http://www.sorainen.com) under the Publications/Legal updates section.

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## LITHUANIA

## MERGERS &amp; ACQUISITIONS

**New Law on Cross-Border Mergers of Limited Liability Companies**

The Law on Cross-Border Mergers of Limited Liability Companies, effective as of 30 December 2007, regulates cross-border merger of companies with statutory legal forms of public company or private limited liability company. Significantly, the Law does not apply if at least one of the merging public or private companies is a management company or a collective investment undertaking, both operating under the Law on Collective Investment Undertakings, whose sole object is collective investment of capital raised from the public (through public distribution of units or shares) in securities and other liquid financial assets specified in the Law on Collective Investment Undertakings.

The Law defines the modes of cross-border mergers, e.g. when a company (companies) ceasing its (their) activities without being liquidated is (are) merged into another existing company, or when a company (companies) is (are) merged by formation of a new company. The Law allows merger of a company (companies) by acquisition into another operating company holding all the securities that form the statutory capital of the merged company (companies).

Additionally, the board of directors of each merging public or private company must draw up common terms of cross-border merger in the same terms for the companies concerned. Significantly, the statutes of the company resulting from the cross-border merger have to be drafted alongside the merger terms.

Merger terms have to be examined by an independent expert – an audit company – on the basis of a contract to be entered with each merging public or private company.

Finally, the Law sets forth the terms for merger and simplified merger, procedure for submitting merger report, adopting a merger decision, verifying the legitimacy of a merger, as well as merger closing and consequences.

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## ENVIRONMENTAL LAW

**Amendments to Law on Pollution Tax**  
Amendments to the Law on Pollution Tax aim at performing the plan of measures for implementing the programme (2006-2008) approved by the Lithuanian Government and enforcing Article 11.2 of the Law on Pollution Tax ("the Law") regarding setting tax rates two years prior to their coming into effect.

Recent amendments to the Law set out fixed tax rates for pollution from stationary sources of pollution. These will become effective from start of 2010. The new provisions also aim to encourage the "one-desk" principle, by which tax-return forms would be filed with one tax administrator, the State Tax Inspectorate, which would administrate payment of tax. The concept of taxpayer within the meaning of the Law will also encompass holders of authorisations for integrated prevention and control of pollution, since in future authorisation for use of natural resources will be gradually replaced with authorisations for integrated prevention and control of pollution.

The system of tax for pollution from mobile sources of pollution is intended for change later on, i.e. as soon as requirements for reduction of traffic pollution and car fleet renewal are analysed and evaluated. These are stipulated in relevant EU directives regulating vehicle taxation.

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## COMPETITION LAW

**Law Prohibiting Unfair Business-to-Consumer Commercial Practices adopted**

From 1 February 2008 the Law Prohibiting Unfair Business-to-Consumer Commercial Practices came into force. The Law aims to prohibit unfair business-to-consumer commercial practices, and establishes types and cases of unfair commercial practices, as well as institutions responsible for supervising compliance and penalties for infringements.

The Law defines misleading actions as providing misleading information or information which, even if factually correct, deceives or is likely to deceive the average consumer in relation to certain elements, and causes or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Further, the Law covers not only spreading misleading information but also misleading omissions that cause or are likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Significantly, the Law defines a practice to be regarded as aggressive if by harassment, coercion, including the use of physical force or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to a product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise. Unfair commercial practices will be monitored both by the Competition Council and the State Consumer Rights Protection Authority. Commercial operators may face fines ranging

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from LTL 1,000 (EUR 290) to LTL 120,000 (EUR 34,755) for unfair commercial practices where the infringements are committed under aggravating circumstances. The fine imposed may not exceed 3 % of the annual income of a commercial operator during the previous financial year.

Additionally, the Law regulates the procedure for examining applications (complaints) and the circle of entities which may refer complaints for resolution by the Competition Council and the State Consumer Rights Protection Authority.

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## BELARUS

### SECURITIES & CAPITAL MARKETS

#### **Moratorium on transfer of shares in public corporations to be lifted gradually**

Decree 7 adopted on 14 April 2008 provides for stage-by-stage removal of the moratorium on transfer of shares of Belarusian public corporations created in the course of privatization. The moratorium, which froze much of the Belarusian stock market, has been in existence since March 1998.

Under the Decree, from 1 June 2008 the moratorium will be abolished with regard to shares of public corporations without government capital and corporations with a government share in their capital of 75 % and over. From 1 January 2009 the moratorium will be lifted with regard to public corporations in which the government holds 50 % of the shares and over. During these two stages, restrictions will still remain effective for public corporations which ensure functioning of strategically important sectors of the economy.

From 1 January 2011, restrictions will be abolished completely.

Shares of public corporations created in the course of privatization will be sold at public auctions. Under the Decree, the government also waives its priority right to acquire shares in the capital of commercial companies created in the course of privatization.

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## PRIVATE EQUITY

#### **New incentives for foreign investment**

The Belarusian Government has approved a list of cities in which running a business will become especially attractive due to significant privileges granted to investors. These privileges include partial tax and customs duties, exemptions, free formation of prices, guarantees against negative changes in laws, and others.

The list includes cities with a population of less than 50,000, which leaves out only 21 cities. Considering that six free economic zones and the High Technology Park are functioning in the country, and especially that many industrial assets are concentrated in small cities, this novelty is seen as another significant incentive for foreign investors contemplating entry to the Belarusian market.

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## DISTRIBUTION & TRADE

#### **Foreign trade regulations improved and eased**

The long-existing Presidential Edict 7 of 4 January 2000, which significantly constrained foreign trade activity of companies doing business in Belarus, has been modified. New regulations were introduced by Edict 178 of 27 March 2008.

The Edict narrows the scope of foreign trade transactions requiring additional procedures related to currency exchange and customs control. The list of government authorities acting as currency control agents has been reduced to the State Control Committee, the State Customs Committee, and the National Bank. On the other hand, possibilities for offsets of debts under foreign trade transactions have been expanded.

Edict 178 comes into force within six months after official publication.

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## NEWS IN SORAINEN

### ■ Recent deals

#### **Assistance in largest Baltic mortgage finance acquisition**

Sorainen advised Allied Irish Bank (AIB), the largest Irish bank, in its acquisition of the mortgage finance business AmCredit in the Baltics from the Baltic-American Enterprise Fund. This was the largest mortgage finance acquisition in the Baltics in 2007 and Sorainen was involved in most stages of the transaction, including legal due diligence, structuring the transaction, and post-closing matters. The transaction included advice on solving complex finance law issues. Sorainen team was led by partners Eva Berlaus-Gulbe, Reimo Hammerberg, and senior associate Tomas Kontautas.

#### **Advising with the launch of the first registered public offering of a closed-end real estate fund in the Baltics**

Sorainen advised Eastern Europe Real Estate Investment Fund (EEREIF), a fund managed by Gild Real Estate, with the launch of the first registered public offering of a closed-end real estate fund in the Baltics. Our team advised EEREIF regarding all aspects of fund rules, drafted the public offering prospectus, and negotiated registration of the public offering with the Estonian Financial Supervisory Authority. Transaction advice was provided by partner Reimo Hammerberg, senior associate Stefano Grace, and associates Jane Eespol and Tadas Milasius.

#### **Acquisition finance of 170 MEUR to a leading energy and telecom company**

Sorainen acted as local counsel for AAC Capital Nebo Sub-LP in obtaining finance for its acquisition of Empower Oy, a major service provider in the energy, telecom, and industrial sector in Finland and the Baltic States. The finance package consisted of 110 MEUR Senior finance, 15 MEUR Mezzanine finance and 45 MEUR Shareholder finance. The case was handled by partner Reimo Hammerberg and senior associates Rudolfs Engelis and Agne Jonaityte.

#### **The largest land transaction in Estonia**

Estonian office has advised Emerging Europe Property Opportunities Fund LLP, a property investment fund, on purchase of some 70 ha of undeveloped industrial land near Muuga Port under a very tight deadline. Due to the excellent location of the real estate this may have been the most attractive land transaction in Estonia so far. The case was handled by partner Kaido Loor.

### Establishing management company and pension funds

Sorainen provided full legal advice on establishing and licensing Nordea Pensions Estonia AS, a pension fund in Estonia. Our advice covered incorporation of the management company, drafting internal management company rules, depositary agreement, investment management agreement, internal rules for NAV calculation, outsourcing agreements, fund rules, prospectuses, and other related documents. The case was handled by partners Reimo Hammerberg and Kaido Loor.

### Seesam acquires office on Vambola street

Sorainen advised Seesam Rahvusvaheline Kindlustuse AS on a legal due diligence and purchase of their office in the centre of Tallinn from their long-term landlord Estconde Invest OU. The case was handled by partner Kaido Loor and associate Anneliis Lett.

### A 270 MUSD credit facility to commercial aerospace support industry

Sorainen acted for HSH Nordbank, DVB Bank AG, and Merrill Lynch Credit Products LLC in taking security in Latvia over an aircraft in relation to a 270 MUSD warehouse credit facility to GA Telesis, LLC, a leading company in the commercial aerospace support industry. Our team was led by partner Girts Ruda with senior associates Renate Purvinska and Rudolfs Engelis.

### Advising Gjensidige Forsikring in acquisition of ADB RESO Europa

Sorainen is advising Gjensidige Forsikring, the largest Norwegian non-life insurer, in acquiring 100 % of the shares of Insurance Company ADB RESO Europa, a major non-life insurance company in Lithuania which also operates in Latvia. The project was led by senior associate Tomas Kontautas.

## ■ Employees

### Significant growth in the number of lawyers

Within the last quarter Sorainen team welcomed the arrival of 12 lawyers. Half of them joined Minsk office. Now Sorainen has more than 100 lawyers working in nine local and pan-Baltic – Belarus teams.

Minsk office now has 6 lawyers. **Maksim Salahub** is the managing partner of

Sorainen's Minsk office and a head of the M&A and Banking & Finance practices teams. He also advises clients in the field of foreign investments and contracts as he has significant experience in legal support for cross-border M&A transactions in the complex Belarusian legal environment, especially in due diligence of Belarusian enterprises, and providing a full array of legal advice to foreign investors on their ventures in Belarus.

Minsk office has two more partners - **Kirył Apanasevich** and **Vasili Valazhynets** who are heading local legal teams. Kiryl Apanasevich heads the Real Estate & Construction team and Vasili Valazhynets heads Corporate Advisory as well as Dispute Resolution teams.

Prior to joining Sorainen Mr Apanasevich practiced at one of the leading law firms in Belarus where he gained significant experience in advising clients on large-scale, country-wide development and construction projects, transactions on sale-purchase of office premises, industrial and other type of property. Mr Valazhynets has extensive experience of advising clients on merger of commercial companies and other complex business structures, transformation of companies in the ever-changing legal environment, and litigation of disputes between shareholders.

**Tatsiana Klimovich, Ann Valchok** and **Iryna Mitsianiova** are associates at the Sorainen Minsk office. Ms Klimovich has substantial experience of drafting documentation for litigation and dispute resolution procedures, liquidation of companies, and registration and protection of intellectual property rights. Ann Valchok is experienced in the matters connected with establishing subsidiaries and joint ventures, mergers and acquisitions, transformation of companies, and liquidation. Ms. Valchok is also involved in litigation procedures and drafting contracts. She has participated in preparation of comprehensive publications on legal regulation of real estate and construction and mergers and acquisitions in Belarus. Prior to joining Sorainen, she worked at Minsk office of a German law firm. Iryna Mitsianiova is assisting clients in a wide range of real estate transactions and advising in corporate law matters starting from formation of companies to more complex issues, such as share purchase and assets deals, mergers, restructuring, liquidation, and bankruptcy.

Banking & Finance Team has been joined by two new lawyers: senior associate **Gediminas Almantas** joined Vilnius

office and associate **Jane Eespold** arrived to Tallinn office. Mr Almantas has 7 years of legal practice at leading international banks and holds a Master's degree in Law from Vilnius University and LL.M. degree in European and International business law as well as World trade law from University of Berne. Jane Eespold has extensive knowledge of the Estonian banking sector. She has advised clients on issues of debt and secured financing, guarantees, residential lending, pledges of different types of property, amongst others.

Sorainen Real Estate & Construction Team was strengthened by arrivals of specialist counsel **Robertas Klovas** in Vilnius office and senior associate **Lauma Berzina** in Riga office. Robertas Klovas' practice covers different domains of private and public real estate law, notably real estate sales transactions, transfer and acquisition of property assets, construction contracts, real estate promotion operations, administrative authorizations, and environmental law. Previously he worked for 7 years as a Director of Legal and Personnel Department at the Ministry of Environment of the Republic of Lithuania. Robertas Klovas is studying Ph. D. of Social Sciences (which will be in property law) at the Vilnius University and additionally to his legal practice is lecturing law. Lauma Berzina previously was with Deloitte Latvia for over 7 years. She also gained experience in local trading and manufacturing companies. Ms Berzina has assisted Latvian companies and foreign investors on all aspects of buying, selling, letting, and managing real estate and real estate companies. In addition, she has broad experience in Latvian and private international law legislation and regulation in the field of M&A, private equity, and contracts.

Corporate Advisory and Tax Teams also has expanded when associates **Katrin Altmets** and **Dainius Zapereckas** joined Tallin and Vilnius offices respectively. Katrin Altmets before joining the Sorainen Tallinn office worked for 12 years with law firm Hedman Osborne Clarke. She has advised clients mainly in matters related to corporate law and employment law. Dainius Zapereckas previously worked for 5 years in the Lithuanian State Tax Inspectorate as legal adviser and as a head of audit division for short time. He has also worked for KMPG Baltics where he was senior tax adviser.

### **Partner Renata Berzanskiene elected to the Council of the Lithuanian Bar**

On 18 April 2008 Sorainen Vilnius office partner Renata Berzanskiene was elected from among advocates for a term of three years to Council of the Lithuanian Bar. Mrs Berzanskiene is the only attorney among major Lithuanian business law firms who has been elected to the managing body of the Lithuanian Bar Association.

## ■ Seminars

### **Private Equity conference in Riga in June**

Our Partner Laimonas Skibarka will speak at the "Buyouts and Venture Capital in the Baltics" conference, organised by Marcusevans conferences, to take place in Riga on 12 and 13 June 2008. He will speak on the topic "Utilising the Baltic legal and tax environment to your advantage".

### **Representing Lithuania in MIPIM**

Head of the Sorainen pan-Baltic Real Estate & Construction Team, Tomas Milasauskas, presented the Lithuanian legal environment in the high-profile MIPIM international real estate conference held on 14-17 March 2008 in Cannes. The conference was visited by 18,000 participants from 74 countries. Tomas Milasauskas was the only speaker from Lithuania delivering a presentation on legal aspects of the Lithuanian investment environment.

## ■ Other

### **Sorainen launches office in Minsk**

Sorainen opened an office in Minsk, capital of Belarus, on Wednesday 19 March 2008. Formerly operating in Tallinn, Riga, and Vilnius, the capital cities of the three Baltic States, Sorainen is now the first leading regional law firm in the European Union to open an office in Belarus. The newly opened Minsk office employs six lawyers and is already looking for new team members. The office is headed by Partner Maksim Salahub.

### **Mergermarket 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.

The Sorainen M&A Team ranked No. 6 by deal volume and No. 8 by deal value in league tables of legal advisers in M&A transactions within the whole CEE region in the 1Q of year 2008. Such an outstanding performance by a regional law firm is unprecedented because the larger Central and Eastern European markets are typically dominated by big international law firms. Sorainen is also the only Baltic law firm ranked so highly by Mergermarket.

### **Sorainen publishes Baltic real estate report with Ober-Haus and Deloitte**

Sorainen, Ober-Haus, and Deloitte published a thorough overview of the real estate markets of the Baltic States. The "Real Estate Market Report 2008", presented to the public on March 2008, analyses changes in the real estate markets in Tallinn, Riga, and Vilnius in 2007 and describes legal and tax-related issues of the commercial, industrial, and residential sectors. The report is available on our homepage [www.sorainen.com](http://www.sorainen.com) under the News Room section.

### **Sorainen supports law students**

Sorainen has supported law students, helping them to strengthen their legal knowledge and gain practical experience, since the establishment of its first office. On the 10th anniversary celebration of Riga Graduate School of Law, Sorainen presented its **100th book to the Riga Graduate School of Law library**. Since 2001 the firm has donated 100 books with a total value of more than EUR 21,000. This has helped the library to become one of the best law libraries in Eastern Europe. Vilnius office recently **supported law students' activity in Lithuania** by sponsoring the annual moot court competition on Banking and Finance Law organized by ELSA (the European Law Students' Association) and financing Vilnius University team's participation in the Annual Willem C. Vis International Commercial Arbitration Moot competition held in March 2008 in Vienna and Hannover. Furthermore, Sorainen has always kept its doors open to students. To this end, Sorainen is organising **an open doors day for law students**. The event took place on 25 April 2008 at the Tallinn office, where the history of the event goes back to the year 2005, and on 14 May 2008 at the Riga office. During the open doors events, Sorainen introduces students with the history, work environment and traditions of the firm and with possibilities to apply for traineeship or participate in Sorainen's Master's theses competition.