# M&A AND PRIVATE EQUITY
## SORAINEN LEGAL UPDATE
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## RECENT DEALS

**Merger of Lithuanian energy companies through formation of LEO LT**

Sorainen Vilnius office advised the Lithuanian Government and its financial adviser HSBC Bank plc in relation to formation of LEO LT, AB which resulted in consolidation of the Lithuanian electricity energy sector. The transaction was concluded based on the Law on Nuclear Power Plant adopted by the Lithuanian Parliament and was completed on 27 May 2008. LEO LT, AB was created as a holding company to which the Lithuanian Government contributed majority shareholdings in AB Lietuvos energija (Lithuanian Energy) and AB Rytu skirstomieji tinklai (Eastern Distribution Network), while private company NDX energija contributed majority shareholding in AB VST (Western Distribution Network). With the total value of over 2.3 BEUR, this is the largest M&A transaction in Lithuania and the Baltics to date. Our advice in this complex transaction included drafting and negotiating the documentation for formation of LEO LT, AB and the shareholders agreement. Sorainen team in this project was led by partner Laimonas Skibarka and senior associate Algirdas Peksys.

**Acquisition of Sagmel by Bayer HealthCare Pharmaceuticals**

Sorainen Vilnius and Minsk offices in cooperation with Clifford Chance advised Bayer HealthCare Pharmaceuticals (Consumer Care Division) – one of the largest marketers of over-the-counter medications and nutritional supplements in the world, in acquisition of Sagmel Inc (OTC Business and related assets) – USA pharmaceutical company, involved in the development, manufacture, 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 2007. The advice also involved establishment of a subsidiary and accreditation of a second representative office in Belarus. The client was advised by partners Maksim Salahub, Vasili Valazhynets and associate Tatsiana Klimovich from Minks office and partner Laimonas Skibarka and seniour associate Liudas Ramanauskas from Vilnius office.

**Atria acquisitions in Estonia**

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

**Sale of ABC King**

Sorainen 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 shoe business of ABC Saare OU was supplemented to the sale. The transaction was cleared by Estonian and Latvian competition authorities. Sorainen team was led by partner Toomas Prangli and senior associate Stefano Grace.

**Billerud Skog aquired Lithuanian operator of pulpwood**

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

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

Sorainen offices in Tallinn, Riga and Vilnius 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 associate Viljar Kahari in our Tallinn office, senior associate Rudolfs Engelis in our Riga office, and senior associate Agne Jonaityte in our Vilnius office.

**Acquisition of Belarus construction company by Hudson Capital**

Sorainen Minsk team led by partner Kiryl

Apanasevich advised Hudson Capital - a US-based international development and investment company in acquisition of a construction company in Gomel, Belarus licensed to operate as contractor general in Belarus and Russia and entitled to develop a residential block in Minsk. Value of target's development portfolio amounts to approximately 20 MEUR.

**A-Inspection acquisitions in Estonia**
Sorainen was involved in advising A-Katsastus Oy, the leading private company in the vehicle inspection sector in Northern Europe, in the acquisition of two vehicle inspection stations in Estonia. One of the stations is located in Rakvere and the other in Maardu. This is the first step for A-Katsastus Oy to enter the Estonian vehicle inspection market. Sorainen team included partner Toomas Prangli and senior associates Paul Kunnap and Piret Lappert.

## ESTONIA

**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/ECthe amendments, the offeror makes a takeover bid if they have 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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**Effects of amendments to the Income Tax Act on Mergers and SPVs in Estonia**
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 on is not yet clear.

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.

However, tax-free repatriation of profit through liquidating a company, widely used in Estonia, will be taxed under the above amendments. Under the current regime, liquidation proceeds are taxed only if paid out to a non-resident and the company is 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.

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. However, as liquidation can take eight to nine months other tax solutions available for repatriation of profits that do not require liquidation of SPVs or other subsidiaries before 1 January 2009 should be considered.

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## LATVIA

**Cross-Border Merger Directive implemented also in Latvia**
In the last M&A and Private Equity legal update we gave an overview of implementation of the Cross-Boarder Merger Directive in Estonia and Lithuania. On 28 May 2008 amendments to Latvian Commercial Law, which implement provisions of the Directive 2005/56/EC on Cross-Border Mergers also in Latvia. The same amendments introduce new provisions in relation to the share capital increase procedures and issues of reorganization.

With the amendments a simplified cross-border merger procedure with regard to the limited liability companies registered in Latvia and other Member States of the European Union, Iceland, Norway and Lichtenstein, concurrently ensuring protection of the shareholders and creditors of the companies involved in the cross-border merger has been achieved. The amendments of the Commercial Law introduce also requirements of Directive 2007/63/EC as regards the requirement of an independent expert’s report on the occasion of merger or division of public limited liability companies.

Moreover, when reorganizing a company, rights that acquiring company grants to the supervisory and management institutions and the controller of the merged, divided or transformed company must be indicated in the reorganization agreement. Election of the auditor for review of the reorganization agreement does not have to be approved by the Company Register of the Republic of Latvia any more.

Apart from the above-mentioned, the amendments also provide more precise definitions of the evaluation of investment in kind and execution of a shareholders’ register in case of alienation of shares. The public limited liability companies now have an option to make the share capital increase procedure more flexible. In such case an authorization to a management board of the company for the period up to five years shall be included in the articles of association. According to such authorization the share capital then may be increased by a certain amount provided in the articles of association, but not exceeding 30% of the company’s share capital at the moment of the authorization’s coming into force, and by receiving a prior consent of the supervisory board.

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**Concentration control thresholds changed in Latvia**
In April 2008 the Latvian Parliament passed amendments to the Competition Law.

The amendments provide that in order for a concentration to be subject to control by the Competition Council the combined turnover of the parties should be at least 25 MLVL (ca 36 MEUR). Accordingly, there is no longer a requirement to submit a notification on concentration in case of high market shares, where the turnover of the parties is insignificant.

Amendments provide for new concentration control thresholds and amend the notification procedures.

Furthermore, as of 16 April 2008 the Law on Competition provides for two types of notifications to be submitted: full notification and short notification. Prior to the adoption of the amendments any notification had to include an important volume of data regarding the markets, on which the merger participants were active. Accordingly, even if the parties did not act on the same markets a thorough and lengthy analysis was to be undertaken.

The amended law now provides for the possibility to submit a short form of notification where:

- the concentration participants are not active on the same relevant markets or on the vertically related markets; or
- the combined market share of the parties in any relevant market does not exceed 15%

The new procedure will foster the merger procedure, as it will substantially simplify the notification process. Where the full notification has to be submitted the procedure may take up to 4 months, while the new, simplified procedure will take the maximum of 3 months.

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## LITHUANIA

**Amendments to Law on Companies – benefited and missed opportunities**
On 1 July 2008 the amendments to the Law on Companies came into effect. In particular, the amendments relaxed the procedure of reduction of company’s share capital. Before 1 July 2008, the decision to reduce the share capital for the purpose of paying out the company’s funds to the shareholders could be adopted only in case the company’s balance sheet did not reflect any long-term liabilities. Such a restriction effectively prohibited any reduction of the share capital in case the company was financed by the banks or have contracts with financial leasing companies.

Current amendments abolished such a restriction.

Amendments to the Law on Companies also facilitate procedure of making of non-cash contributions to the share capital of the companies. This novelty has already been discussed in our previous release published in March.

Unfortunately, Lithuania opted not to ease financial assistance restrictions. Even more, the amendments further tighten financial assistance rules. Under the current amendments the company is prohibited from not only directly but also indirectly grant advance funds, make loans, or provide securities if such actions are aimed at enabling other persons to acquire shares in that company.


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**Participation of employees in cross-border mergers**

With some delay, involvement of employees in the cross-border mergers has been regulated in Lithuania by adopting the special law on 17 June, 2008. With coming into effect after promulgation, the law will provide the protection of employees in the cross-border merger similar to that granted by laws to the employees of SE and SCE. Noteworthy, the law establishes certain criteria when the merging companies must follow specific provisions of employee participation right. For example, the average number of employees in at least one of the merging companies must exceed 500 during the last six months prior to publication of the merger terms.


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**Lithuanian Supreme Court declares the notice of shareholders' pre-emption rights in private limited companies not binding for the offeror**

The Lithuanian Supreme Court further clarifies uncertainties related to shareholders' pre-emption rights in private companies as established in Article 47 of the Law on Companies. In V.S. vs. UAB City Service, A.B. and others (Lithuanian Supreme Court Decision No. 3K-3-276/2008 dated 9 May 2008) the Supreme Court assessed the nature of the notice served to the shareholder on the execution of his pre-emption right in respect of the company's shares offered for sale. The Supreme Court stated that such notice is a part of the mandatory procedure on the sale of shares in the companies established by laws and therefore is not made voluntarily. Accordingly, such notice is triggered by the mandatory requirements and not by the good will of the seller and, therefore, may not be treated as an offer which is binding under contract law. Effectively that means that the shareholder which intends to transfer the shares and which informs other shareholders of the company on their pre-emption right to acquire the shares under transfer, still have a possibility to refuse to sale the shares and to suspend the transaction even in case where the other shareholders have decided to exercise their pre-emption rights.


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## BELARUS

**Privatisation plans of the Belarusian government**

According to the Decree of the President dated 14 April 2008, privatisation will be carried on the basis of privatisation plans approved by the Council of Ministers. The plan of privatisation of state-owned companies for the period of 2008-2010, and the list of joint-stock companies which shares held by the government will be offered for sale during the next 3 years are expected to be adopted by the middle of July.

Currently there is a list of the companies, which shares government plans to sale by way of auction/tender in 2008 and the list of government-owned enterprises, planned for privatisation in 2008.

The first list includes 74 companies, in particular, carpet weaving factories Kovry Bresta (Brest) and Kovry Vitebska (Vitebsk), shoe making company Krasny Oktyabr, knitting factories Alesya (Minsk) and Kupalinka (Soligorsk), bookshop Belkniga (Minsk), and confectionary plant Krasny Moziryanin (Gomel region). It is also necessary to single out Bellegpromproekt (construction, designing and planning, engineering services), Pleschenitsles (wood processing and production of saw-timbers), Polimer (production of plastic packing goods, processing of plastic), and Belenergosvyaz (construction and telecommunications). There is no particular schedule of sale of government-owned companies mentioned in the list. Investors interested in purchasing shares of the particular company should apply to the State-Owned Property Committee of Belarus. The shares of that particular company would be offered at the auction by the order of the President.


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**Abolishment of restrictions in circulation of shares of public companies**

The moratorium on transfer of shares in public companies created in the course of privatisation, has been gradually reversed. The moratorium which actually froze up the largest sector of the Belarusian stock market has been in existence since 1998. It applied to the transactions with shares purchased in the process of the so-called voucher privatisation.

According to the Decree of the President dated 14 April 2008 from 1 June 2008 moratorium was abolished with regard to the shares of the public companies without government capital and companies with the government share in their capital equal to 75% and more. From 1 January, 2009 the moratorium will be lifted with regard to the public companies in which the government holds 50% of the shares and more. During these two stages, restrictions will still remain effective for the public companies which ensure functioning of strategic sectors of economy. From 1 January 2011 restrictions will be completely removed. Stock of the public companies created in the course of privatisation will be sold at the public auctions. According to the decree, the government also waives its pre-emption right to acquire shares in the capital of commercial companies created in the course of privatization.


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# NEWS IN SORAINEN

**Mergermarket ranks again 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 1H of year 2008. The Sorainen M&A Team ranked in No. 10 by deal volume in league tables of legal advisers in M&A transactions within the whole CEE. Sorainen is also the only Baltic law firm ranked so highly by Mergermarket.

**Sorainen launches office in Minsk**
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 who has opened an office in Belarus. The office is headed by partner Maksim Salahub. Sorainen Minsk office is fully integrated with Sorainen's other offices and is ready to provide professional advice to clients in business law matters. The office is specialising in advising on mergers and acquisitions, property, finance, banking, tax and other business law matters. Minsk office has already advised several major European companies entering the Belarusian market.

## Employees

The members of Minsk office M&A team:
**Maksim Salahub** (Mr) is the managing partner of Sorainen's Minsk office. He heads the M&A and Banking & Finance practices of the Minsk office. Mr Salahub has significant experience in rendering legal support on 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 with regard to their ventures in Belarus. In his practice, he has dealt with a number of international financial institutions, transnational corporations, and prominent foreign investors venturing in Belarus. Mr Salahub has passed a number of traineeships at European offices of international law firms. His practical experience in combination with his international academic background allows him to service and organize most complex M&A projects. Mr Salahub has been awarded the qualification to render legal services by the Ministry of Justice of the Republic of Belarus.

**Kiryl Apanasevich** (Mr) is a partner at the Sorainen Minsk office, heading Real Estate&Construction practice. Mr Apanasevich also provides legal support to clients in numerous complex M&A transactions and asset deals, and advises on legal aspects of financing investment projects. His vast academic background in law and business administration enables him to find non-trivial, business-oriented solutions for clients in most complicated cases. Mr Apanasevich has been awarded the qualification to render legal services by the Ministry of Justice of the Republic of Belarus.

**Tatsiana Klimovich** (Ms) is an associate at the Sorainen Minsk office. She advises clients and provides legal support with regard to establishment of subsidiaries and joint ventures in Belarus.

**Ann Valchok** (Ms) is an associate at Sorainen Minsk office. She is experienced in the matters connected with establishing subsidiaries and joint ventures, mergers and acquisitions, transformation of companies, liquidation. She also participated in preparation of comprehensive publications on legal regulation of mergers and acquisitions in Belarus.

**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 M&A team, Risto primary focus will be distressed debt and insolvency buyouts.

## Seminars

**Presenting Baltic legal and tax environment at international private equity conference**
On 12 June 2008 partner Laimonas Skibarka delivered presentation at the international private equity conference "Buyouts and Venture Capital in the Baltic Region" (12-13 June 2008, Riga, Latvia). Laimonas Skibarka covered the topic "Utilising the Baltic Legal and Tax Environment to Your Advantage", which included overview of the regulatory framework for private equity and venture capital in the Baltics, structuring private equity investments in the Baltics, tax environment for private equity investments and managing of cross-border transactions.

## Other

**Trends in the Baltic M&A market**
In April 2008 the leader of Sorainen Baltic and Belarus M&A team, partner Toomas Prangli, gave an interview to online business news portal Baltic Business News explaining the current status of Baltic M&A market and its future trends. The interview can be read on www.sorainen.com under News room.

Sorainen Tallinn office in cooperation with Äripäev 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, Estonia.

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

Sorainen Tallinn office in cooperation with Swedish Trade Council invites you to seminar

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

to take place in World Trade Centre,
Stockholm on 30 September.

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