SORAINEN

ESTONIA LATVIA LITHUANIA BELARUS

M&A AND PRIVATE EQUITY

TRANSACTION GUIDE 2012

BALTICS AND BELARUS

GENERAL OVERVIEW

Introduction to M&A and private equity developments in the Baltics and Belarus

Estonia, Latvia, Lithuania and Belarus cover an area of more than 380,000 km^2 with a combined population of more than 16 million people.

According to Eurostat[1], after the steep economic downturn, negative growth was slowing down in the Baltic States in 2010, with Estonia returning to a positive gross domestic product (GDP) growth rate of up to 3.1%. Estonia was followed by Lithuania, which reached a GDP growth rate of up to 1.3%, while in Latvia continuing negative growth reached a level of -0.3%. The positive news is that in January 2011 Estonia joined the Eurozone and continued to lead growth in the Baltics with a GDP growth rate reaching 7.9% in 2011. Latvia and Lithuania are also heading for recovery and reached a GDP growth rate of 5.5% and 5.9% respectively in 2011, which exceeded all expectations. GDP should continue to increase in 2012 as well with estimated growth in Estonia, Latvia and Lithuania respectively reaching 1.2%, 2.1% and 2.3%, thus reaching a combined level of approx EUR 70 billion (for all three Baltic States). Recent economic statistics allow the conclusion that the Baltic economies finally emerged from severe recession in 2009. Rising external demand, boosted mainly by favourable economic conditions in Europe's major economies, had a positive impact on economic indicators in the Baltic region. As a result, transaction activity in the region appears to be reviving.

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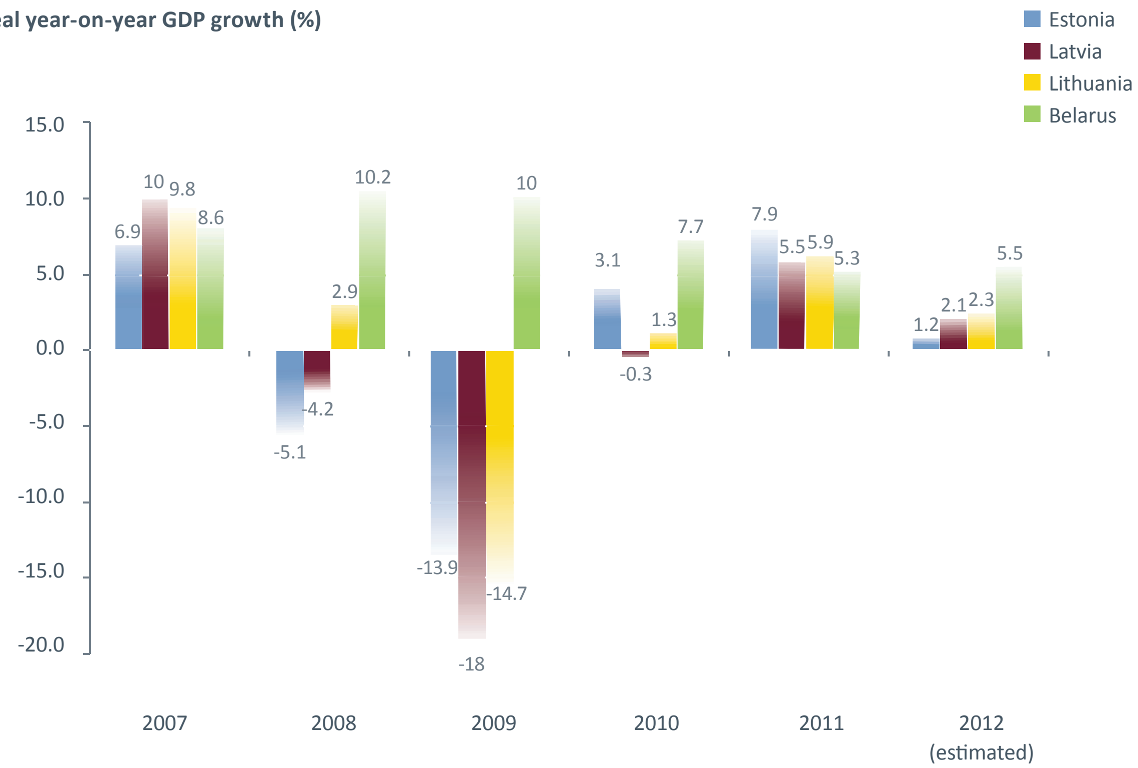
1 http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home

According to the National Statistics Committee, Belarus GDP was approx EUR 30.7 billion in 2007, while the figure peaked in 2008 to approx EUR 42.2 billion and demonstrated 10.2% growth. In 2009, Belarus suffered an abrupt decline of 0.2% in GDP growth, while in 2010 and 2011 growth returned to levels of 7.7% and 5.3%, respectively.

Real year-on-year GDP growth (%)



Source: http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home

Historical and analytical perspective in the Baltics

Mergers & acquisitions (M&A) emerged in the Baltic States in the early 1990s with privatisation of state-owned businesses. Since that time the Baltic M&A market has developed considerably to its current state where legislation as well as practice is comparable to other developed markets. Foreign investors can engage in business in the Baltic States with relative ease by establishing branches or local companies, although establishment procedures differ in each country. In addition, repatriation of profits is possible from all three countries. According to the World Bank's 2012 Ease of Doing Business Index, Latvia and Lithuania rank second and fourth, respectively, among East European and Central Asian jurisdictions, and Estonia ranks 15th among Organisation for Economic Co-operation and Development (OECD) high income countries. As members of the European Union (EU), all three Baltic States are also members of the World Trade Organisation and have ratified most international economic treaties. As of 2010, Estonia is also a member of the OECD. Additional funds for investment in the region have been provided by institutions such as the International Monetary Fund, the European Bank for Reconstruction and Development, the European Investment Fund and EU Structural Funds. With positive signs of stabilisation, anticipated growth and news of Estonia having joined the Eurozone, there are signs of increased activity in the Baltic M&A market with several large deals already closed in 2011 and 2012.

SORAINEN is happy to note that its lawyers have participated in the majority of the biggest M&A deals in the Baltic States. Below is a table listing the TOP 10 BALTIC DEALS[2] for the period January 2006 to April 2012.

No.	Deal	Deal value (EUR million)	SORAINEN's role
1	Formation of **LEO LT** (the Lithuania-based holding company) through merger of interests in Lithuanian electricity companies **Lietuvos energija**, **VST** and **RST**	2,155	Adviser to HSBC and the Lithuanian Government
2	Sale by **Yukos International UK** and the **Lithuanian Government** of a 84.36% stake in **Mažeikių Nafta** (the listed Lithuania-based oil refinery) to **PKN Orlen**	1,476	Adviser to the buyer
3	Sale of **BITĖ Group** (the Lithuania-based telecommunications company) by **TDC**	450	Adviser to short-listed bidder
4	Sale of **Sanitas** (the Lithuania-based pharmaceutical company) to **Valeant Pharmaceuticals International**	361	Adviser to short-listed bidder
5	Acquisition by **Coopernic Alliance** (a European alliance of independent retailers, consisting of REWE Group, E. Leclerc, Coop, Conad and Colruyt) of an 80% stake in Palink (the Lithuania-based food retailer) from **Citigroup Venture Capital International** and **Baltisches Haus**	300	Adviser to the buyers
6	Sale by the **Lithuanian Government** of a 9.88% stake in **Mažeikių Nafta** to **PKN Orlen**	210	Adviser to the buyer
7	Sale of **Fortum Energiaratkaisut** and **Fortum Termest**, the heat, steam and cooling business for the SME and services sector in Finland and Estonia, by **Fortum** to **EQT Infrastructure Fund**	200	Adviser to the seller
8	Merger of **Trakcja Polska** (Poland-based rail transport infrastructure) with **Tiltra Group** (Lithuanian transport infrastructure company)	196	-
9	Acquisition by **ICA** (the Swedish food retailer) of a 50% stake in joint venture **Rimi Baltic** (a major pan-Baltic food retailer) from **Ruokakesko**	190	-
10	Acquisition by the **Estonian Government** of a 66% stake in **Eesti Raudtee** (the Estonian state railway) from **Baltic Rail Services** (BRS)	150	Adviser to one of the parties in relation to completing the transaction

The Baltic region, with its beneficial tax system among other factors, is attractive to foreign investors. Historically, strategic investors, especially those from the Nordic countries, have been the most active investors in the three Baltic States. However, investment trends have started to change recently in two respects. Firstly, private equity funds and venture capitalists are becoming more active in the Baltic countries. Secondly, certain changes have occurred in the direction of investments. In Lithuania, for example, from 2008 investors from Poland outrivaled Nordic investors, which were historically the biggest and most active in the country. For instance, Polish investors completed four of the five largest acquisitions of Lithuanian companies in 2010.

In general, the private equity industry in the Baltics, though rather young and still developing, appears to be recovering following trends across Europe. The JEREMIE (Joint European Resources for Micro to Medium Enterprises) initiative in Lithuania and Latvia has recently resulted in creation of six new venture capital funds which, together with other private equity players, are expected to reenergise M&A activities in the region. The three Baltic governments together with the European Investment Fund also plan to establish the Baltic Innovation Fund, a EUR 100 million specialist fund of funds investing in Baltic private equity, venture capital and mezzanine funds. This is expected to raise at least another EUR 100 million of private capital (thus a total of EUR 200 million dedicated to the Baltic States). The investment period of the Baltic Innovation Fund is expected to start from the beginning of 2013.

[2] The table lists the largest announced deals (according to value) closed during the period 1 January 2006 to 1 April 2012, and covers national and pan-Baltic acquisition deals where the target relates to Estonia, Latvia or Lithuania. Multi-national deals where Estonia, Latvia or Lithuania formed only part of the deal, as well as public offer deals, were not included. Source: www.mergermarket.com

M&A deals usually involve a high value and a high level of risk, so it is vital to keep in mind both the legal framework and market developments that impact each transaction. Thus, it is important to seek advice from respective local financial, legal and business advisors when contemplating entering, expanding or otherwise investing in the Baltic markets.

Overview of the regulatory framework in the Baltics

After joining the EU on 1 May 2004, Estonia, Latvia and Lithuania quickly transposed all principal European Community (EC) legislation into national law, including M&A related legislation, such as the Takeover Directive, the Second Company Law Directive, Directive 2006/68/EC amending the Second Company Law Directive, and the Cross-Border Mergers Directive. The Baltic States have also liberalised investment policies, freely allowing foreign investments without burdensome restrictions.

While EC legislation applies in all three Baltic States, it is important to note that each jurisdiction has its own distinct legal system and laws applicable to M&A activities. The considerably modern legal systems of the Baltic States have certain peculiarities, eg the unique tax system and liberal labour laws in Estonia and the employee-protective labour laws in Lithuania.

The following chapters provide an overview of some of the main legal issues to consider when conducting M&A transactions in the Baltics. Because of its generality, the information in this brochure may not apply in all situations and should not be acted upon without specific legal advice based on the particular circumstances.

M&A and private equity perspectives in Belarus

After its independence in 1991, Belarus slowly adopted market-economy reforms. Privatisation processes in 1991-1994 did not result in transfer of economy-building vehicles into private ownership. In 1994-1997, the state kept financial and operational control over the most valuable areas of business by holding majority stakes in the share capital of GDP generating enterprises. In 1997-2000, the state's right to intervene in the management of private enterprise was expanded significantly by introduction of the "golden share rule" (fully abolished only in 2008) and moratorium on trading shares in ex-privatised public companies (fully abolished in 2011). A few banks, which had been privatised after independence, were renationalised. Along with the financial and economic crisis in 1998-1999 these processes obstructed development of M&A and private equity until the mid-2000s.

Economic output revived in the mid-2000s thanks to the world boom in oil prices. Being able to export refined oil products at market prices produced from Russian crude oil purchased at a steep discount, Belarus was able to accumulate certain financial reserves. Significant government support and financial aid to state-controlled enterprises that produce the bulk of national GDP supported positive and sustainable market development and GDP growth during 2006-2009 and mitigated the sharp effect of the global financial crisis to the Belarus national economy. Gradual positive changes in the legal and business environment, such as simplification of establishment procedures and the taxation system, abolition of the "golden share rule" and of the moratorium on sale of shares in public companies, announcements of privatisation plans, the introduction of investment incentives and a moratorium on inspections, stimulated Belarusian M&A market in 2008-2010.

In 2011, a financial crisis began, triggered by government directed salary hikes unsupported by commensurate productivity increases. The crisis was compounded by an increased cost in Russian energy inputs and an overvalued Belarusian rouble, eventually leading to a near three-fold devaluation of the Belarusian rouble in 2011. Due to the economic situation, M&A activity significantly decreased in the first half of 2011. In July, the ongoing currency crisis pushed Belarus to activate and implement privatisation plans. Thus the main M&A transactions took place in the second half of 2011. Shares of 38 reorganised state enterprises were successfully sold to Belarusian and Russian investors.

Further development of the M&A market in Belarus will be significantly influenced by development of integration between the Russian Federation, Belarus and Kazakhstan. Currently a Customs Union of these countries is in force; by the end of 2016, the plan is to enter into the next phase of integration, contemplating creation of a Single Economic Area.

Due to its good geographic position on the crossroads from the EU to Russia, Belarus is attractive to foreign investors. Historically, strategic investors from Russia have been the most active investors. In 2005-2010, there was a certain trend for diversification of foreign investments to Belarus. Alongside traditional investment flows from strong EU market players, such as Germany, Austria, Poland and the Baltics, investors from the Nordic countries, the Middle East and China expanded significantly in the market, especially during the global financial crisis. Since 2011, a marked high level of acquisition of state-owned companies and property is one of the most distinctive features of M&A transactions in Belarus.

Since establishing its office in Minsk in 2008 SORAINEN has been involved in advising on many significant M&A transactions in Belarus[3].

No.	Deal	Deal value (EUR million)	SORAINEN's role
1	Acquisition by **Gazprom** of a 50% stake in **Beltransgaz** (the Belarus-based gas supplier and pipeline operator) from the **Government of Belarus**	1,888	-
2	Acquisition by **Turkcell Iletisim Hizmetleri** (a listed Turkey-based telecommunications firm) of a 80% stake in **Belarus Telecommunications Network (BeST)** (the Belarus-based telecommunication company) from the **Government of Belarus**	321	-
3	Acquisition by Sberbank (a listed Russia-based state savings bank) of a 93.27% stake in **BPS-Bank (Belpromstroibank)** (the state-owned Belarus-based bank operating mainly in the construction sector) from the **Government of Belarus**	191	-
4	Acquisition by **VTB Bank (Vneshtorgbank (VTB))** (a listed Russian commercial bank) of a 50% stake plus one share in **Slavneftebank** (the Belarus-based bank)	19	-
5	Acquisition by **Delta Bank** (a Ukrainian commercial bank) of **Atom-Bank** (a Belarus-based commercial bank)	15	-
6	Acquisition by **HMS Group** (a listed Russia-based company engaged in research, development, production, and sale of pumps and oil and gas equipment to the oil and gas, power and water industries) of a 57% stake in **Bobruysk Machine Building Plant** (the Belarus-based manufacturer of centrifugal pumps)	6.7	-
7	Acquisition by **Unilever** of **Ingman Ice Cream**, including its subsidiary in Belarus	N/A	Adviser to the buyer
8	Acquisition by **Heineken** (a listed Netherlands-based company operating as a brewer and distributor of beverages) of a 51% stake in **Rechitsa** brewery (a Belarus-based brewer)	6.3	Adviser to the buyer
9	Acquisition by **Baltic Beverages Holding** (member of the Carlsberg Group) of a majority stake (67%) from minority shareholders in **Brewery Alivaria** (one of the biggest breweries in Belarus)	N/A	Adviser to the buyer
10	Acquisition by **International Finance Corporation (IFC)** of a 19.99% stake in **Belarusky Narodny Bank** (a commercial bank controlled by the **Bank of Georgia**)	5.9	Adviser to the buyer
11	Merger of Belarusian operations of **Danone** and **Unimilk**, fresh dairy product businesses in the CIS in a 57.5:42.5 joint venture	N/A	Adviser of Unimilk
12	Acquisition by **Bayer HealthCare** (a German healthcare company and a subsidiary of Bayer, the listed German pharmaceuticals and chemicals group) of the distribution business of competitor **Sagmel** in Belarus and the Baltics	N/A	Adviser to the buyer

[3] The table lists the largest announced deals (according to value) closed during the period 1 January 2006 to 1 April 2012, and covers Belarusian acquisition deals. Source: www.mergermarket.com

TYPES OF ACQUISITION

In practice, M&A transactions are rarely implemented by way of merger in the Baltic States due to complex regulations and time-consuming procedures necessary to achieve a merger. Thus, acquisitions are typically carried out by way of share or asset deals.

The main types of M&A transaction include the following:

Type of acquisition	Description
Acquisition of shares	Shares in public or private limited companies are purchased by the buyer from the shareholder(s) of those companies.
Acquisition of assets (business) as a going concern	An economic unit (business consisting of assets, rights and liabilities) or a part of it which is an organisational whole is transferred to the buyer by the target company.
Merger	One company is absorbed by another company or two or more companies merge to form a new company.
Demerger/Spin-off	A company ceases to exist and two or more new entities are created, or a company is divided into two or more parts to be transferred to existing companies.

A number of variations may implement a specific type of business acquisition, including:

- directed share issue;
- management buyout (MBO)/leveraged buyout (LBO);
- acquisition of strategic assets;
- takeover of a significant stake of shares in capital markets; and
- joint venture.

The choice of acquisition type and its exact variation depends on numerous factors, such as the intentions and structure of the parties, taxation, legal restrictions, payment and financing terms and business risks. Prior to starting an acquisition, it is highly recommended to structure the acquisition scheme with your financial, legal and business advisors.

- *In Belarus, private companies in the form of unitary enterprises (established by a single shareholder) may be acquired only as a result of an asset deal (transfer of enterprise as an asset complex) or merger (transformation of the company as a result of additional contributions to the share capital). The statutory fund of a unitary enterprise may not be divided into shares and therefore share deals are not possible there.*

Share vs asset transactions

	Acquisition of shares	Acquisition of assets
Seller	Shareholder(s) of the target company.	Target company.
Purchase object	Shares.	Assets and goodwill.
Ability to pick and choose assets	Purchase of shares generally does not affect the assets of the target company. In order to avoid purchase of certain assets of the business, the target company needs to transfer those assets out.	The parties are generally free to pick and choose assets to be acquired.
Ability to pick and choose liabilities	Purchase of shares does not generally affect the liabilities of the target company.	All liabilities related to the assets (business) are considered transferred to the buyer (unless creditors consent otherwise).[3]
Form	Generally simple written form.[1]	Generally simple written form.[2]
Transfer of title	In the case of registered shares a securities transaction should be carried out. In the case of non-registered shares under the agreement between seller and buyer.	The parties may freely agree on the title transfer date. In the case of registered assets, entries should be applied for in the relevant registers.

- *[1] In Estonia, shares which are not registered in the Central Registry of Securities must be transferred by notarised agreement.*
- *[2] In Estonia, the form of agreement for acquisition of assets depends on whether the transfer of a particular asset requires notarisation, eg for registration of transfer of immovables.*
- *In Lithuania, the form of asset transfer agreement depends on the transferred property (eg transfer of immovables usually requires a notarised agreement). The Civil Code sets a complex procedure of sale-purchase of an enterprise, which also involves a notarised agreement.*
- *[3] In Latvia and Belarus, in the case of a business transfer as an organisational unit, the ability to freely pick assets might not always be possible.*

- *In Latvia, the management board is obliged to disclose the name of the ultimate beneficial owner of the shareholder of the company to the Enterprise Register of the Republic of Latvia, provided that the shareholder holds at least 25% and is not an individual or a legal person established under legal acts of a Member State.*
- *In Belarus, the form of asset transfer agreement depends on the transferred property (eg for a transfer of immovables, the agreement requires state registration).*
- *A business as a going concern may be transferred as an asset complex, which is subject to appraisal by a professional appraiser and registration with the real estate register. Validity of transfer of title to an asset complex, as well as a relevant transfer agreement require registration with the real estate register. The agreement should be executed in writing and supplemented with an act of inventory taking, balance sheet, auditor's report on composition and value of the asset complex, as well as a list of all liabilities, with details of all creditors, the nature and amount of their claims and the terms within which their claims are effective.*
- *The form of share deals depends on the legal form of the company:*
  - *in a limited liability company share transfer deals as a rule do not require notarial form, unless (a) the articles of association do not provide otherwise; (b) a valid and effective constituent agreement is made in notarial form;*
  - *in closed joint-stock companies share deals require registration with a professional participant of the securities market (registration is a precondition of the share transfer);*
  - *in open joint-stock companies (not only listed) share transfers can be executed only at the stock exchange.*

Main steps and legal documents

Every acquisition usually goes through three main stages. Acquisition starts with preliminary negotiations followed by a due diligence performed by the buyer (and in some cases by the seller), and, if the first two stages are satisfactory to the buyer, results in the signing of a share purchase agreement or an asset transfer agreement depending on the transaction structure.

Legal documentation

The main legal documents and steps of a typical M&A transaction in the Baltic States and Belarus can be described as follows:

Letter of Intent	Drawn up at an early stage of negotiations. Includes the main points of the agreement and serves as the basis for proceeding with the transaction. Typically includes an exclusivity clause to exclude negotiations with other potential buyers and a strong confidentiality clause to protect information disclosed during the due diligence and negotiations.
Legal due diligence (LDD)	Assessment of the target company being sold from a legal point of view. Financial due diligence is also often conducted by the buyer simultaneously with a LDD. Some acquisition processes also include tax, environmental, technical and other types of due diligence.
Transaction documents: ▪ share purchase or asset transfer agreement; ▪ shareholders agreement; ▪ articles of association.	Transfer of ownership either of the shares or assets (business) being sold. Regulation of further relations between the parties.
Regulatory approvals and notifications	Merger control and other regulatory filings are generally carried out prior to closing and are included as conditions precedent in the transaction documents. Stock exchange and other regulatory notifications regarding changes in shareholdings or control for certain listed or regulated companies are generally made shortly after completion of the transaction, if not otherwise required beforehand.
Post-completion actions	In order to transfer ownership or change other company data, filings are made as needed with the commercial, real estate or other registers.

- *Non-binding Letters of Intent are generally regulated by the rules applicable to pre-contractual negotiations under which the negotiations must be carried out in good faith. However, these rules do not foresee an obligation on the parties to conclude an agreement.*
- *In Belarus, to be enforceable any pre-contractual arrangements with regard to shares or assets should be in line with mandatory rules of laws applicable to relevant contractual obligations, including the form of documents.*

As a general rule, the parties must follow certain pre-contractual obligations during preliminary negotiations. Those obligations are aimed at maintaining fair business conduct and protecting business secrets. The goal is to enable disclosure of as much information as possible on the target company to the potential buyer while protecting the business secrets of the target company should negotiations fail. Primary obligations include the following:

- disclosure of information;
- maintenance of confidentiality of information;
- negotiating in good faith.

- *In Latvia and Belarus, no statutory confidentiality obligation exists.*

Due diligence

To reduce the risks of an unpleasant surprise, market practice is to conduct a LDD review of the target company prior to closing the acquisition. In addition to share transactions, this is also relevant in asset transactions where all liabilities related to the assets (business) may transfer to the buyer automatically (depending on jurisdiction).

A vendor due diligence (VDD) of the company is also sometimes performed by the seller. This aims at providing the seller with a better picture of what it is selling and to facilitate the sale of the company to third parties. If presented to potential buyers, the VDD report may serve as a reliable source of information and provide potential buyers with a fair and adequate view of the company on sale.

The VDD also serves to identify potential liability areas for the vendor and its management (the "know-what-you-sell" principle), thus increasing their bargaining power in relation to the buyer who conducts its own LDD, and often speeds up the negotiation process. Indemnities for damages in relation to any defects in the VDD report might be recoverable when a buyer is intended to rely upon the VDD report directly without conducting its own due diligence of the target company.

Several provisions in the law may require the management of the buyer to conduct at least a limited due diligence on the target business or company. According to these general principles, members of the managing body must perform their obligations diligently, and act in the most economically purposeful manner, ie in the best interests of the company. Lithuanian court practice even suggests that a reasonable and prudent buyer should perform due diligence of a company before acquiring it. Thus, it is highly recommended that the board of the buyer conduct a due diligence review of the target company to ensure it meets its fiduciary duties.

Warranties and indemnities

Issues related to representations and warranties are in general regulated by law.

Statutory warranties require the object of a sale to comply with certain requirements, depending on the object sold, with regard to:

- quality;
- quantity;
- agreed features, or fitness for the object's purpose.

Statutory warranties mainly protect the buyer against defects of a purchased item and are formulated in general terms, ie the purchased item does not meet the agreed quantity or quality or does not have the agreed features and, absent an agreement concerning the latter, it is not fit for the purpose for which the buyer intended to acquire the item and of which the seller was or should have been aware at the time of entering into the agreement.

Thus, the parties should expressly agree on the particular qualities and features that the target company or business should correspond to. Indeed, a major part of the acquisition agreement usually consists of representations and warranties by the seller in favour of the buyer concerning among others the following:

- shares and corporate standing (in the case of share transfer);
- business;
- financial statements;
- assets;
- employees;
- relations with authorities;
- disputes and litigation;
- intellectual property rights;
- IT solutions;
- other matters relevant to a particular type of business the company is involved with (eg compliance with personal data protection rules in insurance companies, environmental issues in manufacturing companies).

Breach of a representation or warranty is generally considered a breach of contract, entitling the buyer to remedies available under the law (eg specific performance, damages, price reduction, withdrawal from the agreement, late payment interest) and set forth in the acquisition agreement. The extent of statutory warranties and the remedies provided by law are typically not sufficient for the parties to a business acquisition agreement, and therefore should be accounted for in the transaction documents.

- *According to court practice in Lithuania and complex interpretation of laws in Belarus, statutory quality warranties apply to the shares as an object but not to the company acquired.*

It is recommended that the parties design and adjust remedies for their own specific purposes, eg by limiting use of some remedies, defining possible losses, defining principles for calculating liquidated damages, prescribing contractual penalties, prescribing limitation periods, limiting the liability of the parties. Furthermore, it is typically important for the buyer to obtain specific indemnities from the seller for tax, environmental or employment issues, among others. Indemnities provide an added recourse for the buyer to claim compensation directly from the seller or the target company for third party claims covered.

Key features of share transactions

Pre-emptive rights

As a rule applicability of pre-emptive rights on transfer of shares is regulated differently for public and private limited companies. This is due to their different nature. In general, private limited companies are meant for a “closed” circle of shareholders, while public limited companies are meant to attract a larger number of shareholders and capital from outside. Regulation on pre-emptive rights in limited liability companies supports this basic distinction.

In the case of private limited companies, the pre-emptive right of other shareholders upon transfer of shares is provided by law. However, it is generally possible to deviate to a certain extent from this requirement in the articles of association.

- *In Lithuania, this rule applies only to sale of shares. Therefore, pre-emptive rights do not apply in the case of a swap (trade) agreement and other transactions on share disposals.*
- *In Latvia, for transactions on share disposals other than sale (eg donation, barter) consent by the shareholders’ meeting is necessary.*

- *In Latvia, no pre-emptive rights apply to newly issued shares if these are issued with a special purpose (eg exchange of newly issued shares for convertible debentures, for issuing employee shares).*
- *In Latvia, in the case of issuance of convertible debentures, the shareholders of the company have pre-emptive rights to acquire those debentures.*
- *In Estonia, the pre-emptive right can be removed by the articles of association or substituted with a requirement that transfer of shares is subject to other preconditions such as consent of the other shareholders, management board or other bodies. If the pre-emptive right applies it applies only to transfer of shares for cash or other consideration (ie sale). Therefore, pre-emptive rights generally do not apply in the case of gifts or transfer of shares to the share capital of another company as a non-cash contribution.*
- *In Belarus, this rule applies only to sale and exchange of shares. Unless otherwise provided in the company articles of association, the pre-emptive right does not usually apply in the case of transfer of shares to the share capital of the company as a non-cash contribution.*

In the case of public limited companies, the presumption is reversed. The law does not provide for a pre-emptive right on transfer of shares, but the articles of association may so provide. Thus, it is left to the shareholders to decide whether they wish to control entry to the shareholders circle.

In general, the term for exercising pre-emptive rights varies between one and two months.

- *In Estonia, the pre-emptive right applies only in the case of transfer of shares to third persons.*
- *In Lithuania and Belarus, restricting transfer of shares in public limited companies by introducing a pre-emptive right is prohibited (In Lithuania, it may be agreed between the shareholders but this is not valid with regard to third parties).*
- *In the case of private limited companies a statutory right of pre-emption exists from which one can deviate only in exceptional cases.*
- *In Belarus, the local municipal authorities have a statutory pre-emptive right to purchase the shares of private and public companies processing agricultural products or referred by law as strategic.*
- *In Belarus, the pre-emptive right applies upon transfer of shares to other shareholders and third parties. Upon waiver of that right by the shareholders the company itself may acquire the shares (in all private companies) or offer them to non-shareholders (in closed joint-stock companies).*
- *In Belarus, gifts are either forbidden as such (for example, gifts between legal entities or gifts of shares in public companies) or significantly restricted (gifts by foreigners are treated as foreign donations subject to special fiscal treatment conditions; in closed joint-stock companies shares may be gifted only by individuals to relatives or to the Republic of Belarus).*

- *In addition to the statutory right of pre-emption, parties often agree to establish contractual pre-emptive rights, tag-along and drag-along rights.*
- *In Belarus, there is no available court practice measuring enforceability of contractual pre-emptive rights, such as tag- and drag-along rights. Based on complex interpretation of laws, the tag-along right can be established in limited and additional liability companies. The drag-along right would likely be unenforceable.*

SUMMARY OF APPLICABILITY OF STATUTORY PRE-EMPTIVE RIGHT					
		Lithuania	**Latvia**	**Estonia**	**Belarus**
Transfer of shares in:	**public company**	Not applicable	Not applic able	Not applicable	Not applicable[4]
	private company	Applicable	Applicable	Applicable[5]	Applicable
Transfer of shares by:	**sale (for cash contribution)**	Applicable	Applicable	Applicable	Applicable
	swap (trade)	Not applicable	Not applicable	Applicable	Applicable
	reorganisation (merger, demerger) of shareholder	Not applicable	Not applicable	Not applicable	Not applicable
	non-cash contribution to the share capital of another company	Not applicable	Not applicable	Not applicable	Not applicable
	gift	Not applicable	Not applicable	Not applicable	Not applicable, if allowed
	forced sale (through enforcement procedure)	Not applicable	Not applicable	Not applicable, if sold at public auction	Not applicable[6]
Transfer of shares to:	**other shareholders**	Applicable	Applicable	Not applicable	Applicable
	third parties	Applicable	Applicable	Applicable	Applicable
Acquisition of shares on share capital increase:	**by monetary contributions:**	Applicable	Applicable	Applicable	Not applicable[7]
	by contributions in kind:	Applicable	Applicable	Applicable	Not applicable[8]
	from company funds:	Applicable	Applicable	Applicable	Not applicable[9]

4 Except for statutory right of municipal authorities to shares in certain companies.
5 While provided by default in law, the right can be removed by the articles of association.
6 In limited liability companies the shareholders by mutual consent are entitled to pay the value of the share in question to creditors before the share is offered for forced sale.
7 In limited liability companies increase of the share capital by some (not all) shareholders or by a non-shareholder should be approved unanimously by all shareholders. In closed joint-stock companies participation of non-shareholders in the share capital increase is usually restricted.
8 See above.
9 In this case all additional shares are distributed between the shareholders in proportion to their initial shareholding.

Key features of asset transactions

Purchase of a business as a going concern

Acquisition of a business as a going concern can be achieved through acquisition of all or part of the assets of the target company without acquiring the underlying legal entity. The legal entity, eg, a limited liability company, remains behind and its shares are not transferred. The attraction of an asset deal is that the parties can usually choose which assets are transferred and which remain with the seller. However, on transfer of the assets of a company, the obligations connected to the assets sold are generally also transferred to the buyer. Thus, buyer and seller are jointly and severally liable for obligations related to the business transferred which were created before the transfer took place. Agreements between buyer and seller that deviate from this rule are valid towards third parties only after the third party has so agreed in writing.

- *In Lithuania, regulation of sale of business establishes a specific mechanism aimed at protecting interests of creditors.*
- *In Belarus, a business as a going concern may be transferred as an asset complex or piece-by-piece transfer. The asset complex includes all property and liabilities of the company according to the inventory and valuation report, submitted for registration of the asset complex with the real estate register. Therefore the seller may not pick which assets and liabilities are to be transferred within the asset complex. In the case of piece-by-piece transfer specific extensive requirements established by law with regard to sale of the asset complex do not apply, even if a substantial part of company assets is transferred.*
- *In the case of a unitary enterprise (a private company with one shareholder), transfer of its asset complex results in transfer of the company to the buyer.*

Transfer of contracts and permits

While generally the consent of a creditor is needed for assignment of a contract, consent is not expressly required in the case of transfer of an enterprise. However, the purchaser must immediately notify creditors about acquisition of obligations and the seller must immediately notify debtors about transfer of claims.

Permits or licences held by the seller may only be transferred to the purchaser on acquisition of the underlying assets if the right of transfer is established by the permit or licence itself or is otherwise permitted by law.

- *In Latvia, the law provides very little guidance with respect to business transfers so that regulation on transfer of agreements is not entirely clear. As a practical matter SORAINEN recommends concluding separate novation agreements with respect to third party agreements most valuable to the business, to provide additional certainty with respect to these transfers.*
- *In Estonia and Belarus, permits and licences held by the seller are not usually automatically transferred to the purchaser in the case of transfer of business as a going concern. Although sometimes permits and licences can be transferred, often the purchaser needs to apply for new permits and licences. It should be noted that relatively few areas of business require such permits and licences. The only exception to this rule is transfer of the asset complex of a unitary enterprise, which is followed by transfer of the company to the new owner.*

- *In Belarus, transfer of contracts as such is not provided by law. Under the Civil Code, substitution of the parties to a contract is usually made either via agreement on cession of rights or via agreement on assignment of debt.*
- *In the case of sale of an asset complex, creditors with respect to the obligations included in the composition of the enterprise (asset complex) should be notified of the sale in writing prior to transfer and can claim early settlement. Seller and buyer bear joint liability with regard to debts included in composition of the asset complex and transferred to the purchaser without the creditor's consent.*
- *In a piece-by-piece acquisition of assets, general rules concerning consents/notification of the parties apply; ie by default, cession of rights does not require consent of the debtor if not otherwise provided by the agreement between the parties; assignment of debt by a debtor requires consent of the creditor. Failure to comply with these requirements may result in the transfer being invalid.*

Transfer of employees

Employment agreements are considered transferred to a new employer on transfer of all or part of an enterprise, provided that the same or similar activities are continued. Note that transfer of a business does not serve as a basis for terminating employment agreements. The same applies to collective agreements.

- *In Lithuania and Belarus, regulation is different. National legislation does not expressly provide for transfer of employees on sale of business. Thus in practice transfer of employees should be agreed between the current and new employers separately and consents for the transfer of any individual employee have to be obtained from each employee.*

- *In Latvia, amending a collective agreement within one year of acquisition by a new employer is prohibited if the amendments would harm employee interests.*

- *In Belarus, in the case of transfer of the asset complex of a unitary enterprise, employees should be notified of the transfer and have the right to early termination of employment contracts with payment of compensation for termination.*

Although employment agreements are transferred automatically, it is important to note that employment laws prescribe certain information and consultation obligations of the current and new employers towards employees. The seller and the buyer of a business should submit the relevant information in writing to employee representatives (or employees directly if no employee representatives exist) at least one month before transferring the business (in Latvia, the buyer must report at least one month before transferring the business and the seller must report at least one month before the transfer starts affecting employees' employment terms or working conditions). If the seller or the buyer intends to implement changes affecting employees, a consultation procedure should be followed.

REGULATORY REQUIREMENTS

Approvals, notifications and restrictions

In addition to concentration control discussed below, acquisition may require approval by, or notification of, other public authorities.

For example, acquisitions of shares in banks, investment companies, fund management companies, pension funds and insurance companies may require consent from the local financial supervision authority.

Typically, consent from a supervisory authority must be applied for if the buyer intends to acquire a qualified holding in the company or intends to increase its qualified holding so that the proportion of the share capital or votes in the company exceeds certain legal thresholds.

Persons intending to engage in certain regulated activities, such as activities in the insurance, financial services and energy sectors, should apply for the necessary operating licences.

Competition law

Competition law rules aim to protect, maintain and develop free, honest and equal competition in the best interests of consumers.

As of 1 May 2004, all the EU competition rules apply in the Baltic States and prevail over national legislation that may contradict them.

The EU competition rules apply on a mandatory basis whenever a specific agreement, decision or practice may affect trade between Member States. Therefore, not only the EU, but also national competition authorities are responsible for enforcing EU competition rules.

In Belarus, national competition rules apply. However, in the light of development of the integration and creation of a Single Economic Area with the Russian Federation and Kazakhstan by 2016, the plan is to develop supranational competition regulations and create a supranational competition authority.

Merger control in the Baltics

Transactions recognised as mergers under competition laws include the following:

- mergers of two or more market participants with the aim of establishing a single entity;
- incorporation of one market participant into another;
- arrangements where a market participant gains a decisive influence over another market participant, or where a person already enjoying a decisive influence over one market participant acquires a decisive influence over another.

A joint venture between several market participants can be seen as either an agreement between those undertakings or as a merger. Under longstanding EU law and practice the latter option will prevail if the joint venture performs economic activity independently on a lasting basis and creates permanent structural changes in its "parent undertakings".

The respective competition board may impose restrictions or conditions on clearance of a merger in order to prevent creation or strengthening of a dominant position or to achieve some improvement in competition. For example, the competition authority may order divestment if this appears to be necessary.

The objective of merger control is to prevent creation or strengthening of a dominant position, or reduction of competition in the relevant market, and to enable competition in the local Baltic economies. However, even in cases when a dominant position of an enterprise is established or strengthened as a result of a merger, the competition authority will assess efficiencies yielded by the merger, for instance, an offer of new services to consumers.

Merger control notification thresholds

The intended concentration (whether concerning acquisition of shares or assets) must be notified to the respective competition board if the aggregate turnover of the undertakings participating in the concentration is higher than the applicable thresholds.

- *In Estonia, the notification threshold is triggered if the aggregate Estonian turnover of the parties to a concentration exceeds approx EUR 6.4 million for the financial year preceding concentration and the Estonian aggregate turnover of each of at least two parties to the concentration exceeds approx EUR 1.9 million for the financial year preceding concentration.*

- *In Latvia, the notification threshold is triggered if the aggregate turnover of the parties to the concentration exceeds LVL 25 million (approx EUR 35.4 million) for the financial year preceding the concentration or if the combined market share of the parties to the concentration in the relevant market exceeds 40%. Notwithstanding that either one of the above criteria is met, the merger is exempted from the notification obligation if the turnover of one of two undertakings in the merger has not exceeded LVL 1.5 million (approx EUR 2. million) in Latvia for the financial year preceding the concentration.*
- *In Lithuania, the notification threshold is triggered if the combined aggregate income of the parties to the concentration exceeds LTL 50 million (approx EUR 14.5 million) for the financial year preceding concentration and the aggregate income of each of at least two undertakings concerned exceeds LTL 5 million (approx EUR 1.4 million) for the financial year preceding concentration.*

Generally, the net turnover of a market participant is the income from activities, sale of goods and supply of services of the respective market participants in the territory in question during the previous financial year, less any applicable sales and other discounts, as well as value added tax and other taxes directly related to turnover.

If the thresholds are met, only a few exceptions apply when a concentration notice does not have to be filed.

Notification

The notification must be filed before the transaction is completed. In practice, the notification is filed after signing the purchase agreement but before closing the transaction (ie before change of control occurs). If change of control takes place without prior approval from the competition board the transaction will be considered illegal and the parties can also be fined for each day of delay in filing the notification. In Estonia, there are no specific fines per day, but failure to notify can lead to criminal sanctions.

The concentration is generally approved within 45 days as of filing the full notification if the concentration participants do not receive a decision of the competition authority stipulating conditional approval, prohibition of the concentration or a decision to proceed with a second phase investigation. In Estonia, the competition authorities have 30 days to complete the first phase review, which itself may end only with consent or initiation of second phase review.

The second phase can generally last up to three months. The concentration is considered approved if the second phase investigation does not result in a decision stipulating conditional approval or prohibition of the concentration. In Estonia, the second phase can last four months and it is only in this phase that the competition authorities can mandate conditions for approval or prohibit the concentration.

Generally, the parties will include competition authority clearance as a condition precedent to closing the transaction. In addition, the parties will often include a long-stop date by which one or both parties may decide not to proceed with the transaction without penalty if competition clearance is not received.

Merger control in Belarus

In contrast to the EU, Belarusian merger control regulations require business entities to apply for merger clearance before a transaction is put into effect. Transactions subject to control by Belarusian competition authorities include the following:

- establishment, reorganisation or liquidation of market participants;
- arrangements where a market participant gains a decisive influence over another market participant, or where a person already enjoying a decisive influence over one market participant acquires a decisive influence over another.

The objective of merger control is to prevent creation or strengthening of a dominant position, or reduction of competition in the relevant market. However, even in cases when a dominant position of a company is established or strengthened as a result of a merger, the competition authority will assess efficiencies yielded by the merger such as an offer of new services to consumers. The competition authority may impose restrictions or conditions on clearance of a merger in order to prevent creation or strengthening of a dominant position or to achieve some improvement in competition (for example, force reorganisation of the company).

The Agreement on Unified Principles and Rules of Competition (one of trilateral treaties between Belarus, Russia and Kazakhstan within the frame of Customs Union) established the "rule of effective control over economic concentration" with a quite broad definition of "economic concentration" which includes, *inter alia*, transactions that may influence competition within a particular market of the country of the Customs Union. According to Article 5 of the Treaty each country must ensure effective control over economic concentrations within own jurisdiction. Belarusian national legislation lacks a concept of economic concentration, although in practice the antimonopoly authority often refers to an economic concentration when clarifying particular antimonopoly issues. From this standpoint filing an inquiry with the Belarusian competition authority (pre-notification) is recommended for any acquisition that falls under the described definition.

Merger control thresholds

An intended acquisition must receive preliminary approval of the Belarusian competition authorities in the following cases:

(1) if the buyer acquires the shares of a target which operates in the same market, provided that the buyer's activity covers more than 30% of that market;

(2) if the buyer acquires at least 25% shares or the right to influence decisions of the target holding a dominant position in any market in Belarus;

(3) if the buyer acquires control over a Belarusian target and can feasibly determine the conditions of carrying out business activity of the target or perform the functions of the managing body. Under Belarusian competition law this purpose can be achieved if the following conditions are met:

- the intended transaction relates to acquisition of rights to use and/or dispose of at least 20% of shares or stock in the share capital of the legal entity;
- the transaction is based on one of the following agreements: contract of sale, contract of trust management, joint cooperation agreement, or commission agreement; and
- the book value of the target's assets for the latest reporting date exceeds 100,000 basic units (approx EUR 940,000), or the amount of proceeds from sales for the previous financial year exceeds 200,000 basic units (approx EUR 1.9 million).

Additionally, merger approval is required in certain (qualified) cases of corporate reorganisation, incorporation or liquidation.

The wording of Belarusian antimonopoly laws leaves it open to debate whether transactions between foreign companies that do not have a corporate presence in Belarus require merger clearance there if the merger has an impact on the relevant Belarusian goods market.

Application for approval

Application must be filed before the transaction is signed. In practice, application is filed after preliminary approval of the purchase agreement but before signing.

Obtaining preliminary consent from the Belarusian competition authority requires a significant number of documents and commercially sensitive information must be prepared (for example, information on the bidder and target groups, their market share).

Approval is generally issued within 30 days as of filing full application. The competition authority may request additional investigation of transaction-related documents (up to one month).

Generally, the parties will include competition authority clearance as a condition precedent to signing the transaction. In addition, the parties will often include a long-stop date by which if competition clearance is not received then one or both parties may decide not to proceed with the transaction without penalty.

Non-competition, non-solicitation and similar undertakings

Generally, non-competition and non-solicitation agreements are enforceable. However, careful attention should be paid to ensuring that the terms of these agreements are reasonably drawn and do not unduly restrict trade. In Estonia, the competition authorities rely directly on the Commission Notice on restrictions directly related and necessary for concentrations (2005/C 56/03) when assessing the validity of these agreements.

Typically, covering the general geographic scope of the target company's business in a non-competition agreement is acceptable provided the term of prohibition is reasonable. However, expanding the geographical scope too broadly may be seen as placing a restriction on competition. Similar analysis is applied to non-solicitation and other similar agreements as a test of whether such agreements hinder competition. Thus, these agreements should be carefully considered and should avoid unduly restricting competition or granting one party sufficient control so that it obtains a dominant position in the relevant market.

- *In Belarus, there is a high risk of recognition of non-competition and non-solicitation agreements as contradicting competition laws and therefore unenforceable.*

KEY ISSUES IN PRIVATE EQUITY TRANSACTIONS

- *Significant regulatory reform of the private equity industry in Lithuania was proposed in 2010-2011. The proposed reform is generally aimed at liberalising the private equity industry through creating a more competitive, more favourable regulatory and tax environment for one of the activities of private equity market players – collective investment undertakings intended for informed investors (CIUIIs) – and bringing it into line with best international practice in this particular field. Proposals include empowering collective investment undertakings to act through a wider range of corporate forms (including an investment fund managed by a management company or an investment company established in the form of a public company, private limited liability company or partnership). Management companies will enjoy reduced capital requirements for setting up, as well as simplified regulation for, investment portfolio diversification. Ongoing discussions over optimising the tax regime include the following proposals: (a) establishing a "full exemption" regime for collective investment undertakings (ie investment gains would only be taxed if distributed to investors); and (b) exempting from taxation in Lithuania gains/dividends received by foreign investors from collective investment undertakings: these gains/dividends would be taxed only in the investor's country of residence.*
- *One objective of the changes is to promote foreign private equity investments in Lithuania and to increase Lithuania's attractiveness as a promising jurisdiction for private equity funds. These legislative proposals have received a number of annotations from governmental institutions and therefore their consideration in the Lithuanian Parliament has not started yet.*

Financial assistance

Generally, a public limited liability company may not advance funds, make loans, or provide security with a view to acquisition of its shares by a third party. This prohibition applies broadly to both public and private limited liability companies in the Baltic States.

- *Latvian law does not explicitly apply the financial assistance prohibition to private limited liability companies (SIA company form).*
- *In Belarus, no special finance assistance rules exist.*

Management incentives

Typically, stock option plans are not common in the Baltic States due to less than favourable tax treatment. However, in certain cases management are still granted stock options as an incentive and to help align their interests with those of shareholders. The tax implications of such plans should be carefully considered in advance to ensure that they are carried out in the most beneficial and efficient manner for the management and the company.

Exit scenarios

It is common for private equity funds to regulate certain exit scenarios in the transaction documentation, especially when the aim is to exit through an initial public offering (IPO) or trade sale. It is common to seek a tag along clause to give the investor an option to exit together with the other selling parties (typically in proportion to their shareholdings) or to request a drag along clause to ensure that if a trade sale is conducted the buyer can acquire the entire company.

Furthermore, it is also common to regulate deadlock provisions for joint ventures to ensure that where the shareholders are unable to agree on certain matters they have ways of resolving the dispute. Given the varying strengths of the parties, the specific types of deadlock clause should be carefully considered together with an advisor to ensure that the most effective measure is adopted.

- *Few companies choose to exit through IPOs in the Baltics and Belarus due to the small market and transaction size. Therefore, seeking an exit by way of an IPO is not feasible in most cases.*
- *In Belarus, in limited and additional liability companies a statutory right to exit exists. For exit the shareholder does not need approval of the other shareholders. In the case of exit a shareholder is entitled to part of the company's net assets as at the date of exit proportional to its share in the share capital.*

CAPITAL MARKETS KEY ISSUES RELATED TO ACQUISITION OF SHARES IN PUBLICLY TRADED ENTITIES

Acquisition of shares in listed companies

In the case of merger or acquisition of shares in a company listed on a local stock exchange, certain notification and disclosure requirements under local law and stock exchange rules apply.

As a guiding principle, listed companies should notify the stock exchange about all relevant changes in their activities which may influence their share price or seek exemption from this requirement from their supervision authority if this information would otherwise be harmful to the company or its shareholders (eg, disclosure of trade secrets). For example, proposed merger, dissolution or transformation of a listed company, proposed co-operation projects, establishment of a joint venture, a decision to acquire a holding in other companies, transactions with fixed assets which are beyond the scope of day to day business activity or changes in the management likely to impact the price of the company's shares and which therefore should be disclosed.

Notification requirements

Each jurisdiction requires disclosure of transactions whereby shareholdings in companies listed on the regulated market are increased above or fall below certain thresholds as follows:

- In Estonia, if a person either directly or indirectly, whether individually or together with persons acting in concert, holds or acquires shares admitted to trading on the regulated market the holding of which reaches, exceeds or decreases below 5%, 10%, 15%, 20%, 25%, or 50% or one-third or two-thirds of the total number of votes in the company's general meeting of shareholders, they must notify the company regarding the number of votes held promptly but in any event not later than within four trading days.
- In Latvia, if a person either directly or indirectly, whether individually or together with persons acting in concert, holds or acquires shares admitted to trading on the regulated market and the holding of which reaches, exceeds or decreases below 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75%, 90%, 95% of the total number of votes in the company's general meeting of shareholders they must notify the Latvian Financial and Capital Market Commission as well as the company regarding the proportion of votes held as soon as possible but in any event not later than within four trading days.
- In Lithuania, if a person either directly or indirectly, whether individually or together with persons acting in concert, holds or acquires shares admitted to trading on the regulated market and the holding of which reaches, exceeds or decreases below 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% and 95% of the total number of votes in the company's general meeting of shareholders, they must notify the Bank of Lithuania as well as the company regarding the proportion of votes held as soon as possible but in any event not later than within four trading days.
- In Belarus, a person who acquires a portion of 5% of the voting shares of one issuer must notify the Belarusian Department of Securities, the Belarusian Currency and Stock Exchange (BCSE) as well as the company about that acquisition. The same rule applies to acquisition of any additional 5% portion of voting shares. The director and members of the board must disclose information about any transaction with a target's shares to the Belarusian Department of Securities, BCSE and the target itself within five working days after completion of the transaction.

Listed companies generally need not disclose information on the process of negotiations, provided the issuer guarantees that the other party in negotiations keeps the information received from the issuer confidential. Confidentiality is typically achieved through binding non-disclosure agreements. It should be noted that the issuer should disclose all information related to the negotiations that may have an impact on the share price immediately after the negotiating parties have entered into an agreement on material terms of the transaction.

Insider trading rules

An insider of a publicly listed company is subject to restrictions on certain types of trades and during certain disclosure periods under local stock exchange rules and securities market regulations. If a party acquiring or selling shares is an insider of a public company, then careful attention should be paid to these rules.

Mandatory takeover bids

Persons who directly or indirectly gain dominant influence or control over a company listed on a local stock exchange either alone or acting in concert with other persons must make a takeover bid for all shares of the target issuer.

The following chart provides a summary of the key mandatory and voluntary takeover bid provisions in Estonia, Latvia, Lithuania and Belarus:

		Bid threshold	Supervisory authority notification	Acceptance period
Estonia	**Voluntary**	None.	None.	28-42 calendar days.
	Mandatory	Ownership or control over 50% of votes in general meeting, or control over supervisory or management board.	Takeover bid must be made within 20 calendar days as of reaching the threshold and it is required to make a prior notification.	
Latvia	**Voluntary**	None. The person is entitled to make a voluntary takeover bid if it intends to acquire at least 10% of all votes at the general meeting.	Within ten business days from the decision of the offeror.	Not less than 30 calendar days and not longer than 70 calendar days.
	Mandatory	50% or over of all votes at the general meeting.		
Lithuania	**Voluntary**	None.	None.	Not less than 14 calendar days and not longer than 70 calendar days.
	Mandatory	Over 1/3 of all votes at the general meeting.	Within four trading days after exceeding the threshold.	
Belarus	**Voluntary**	None.	None.	No longer than three months after placement of the offer at the stock exchange.
	Mandatory	50% or over of all voting shares, or when offer made by the target or board members, auditors of the company or other insiders or due to commercial (contractual) relations with the company (including brokers of the target), regardless of the percentage acquired, even for acquisitions of as low as 1% of the shares.	Mandatory offer should be published in the mass media. Text of published offer is submitted for approval to supervising authority within three days before placement of the approved offer at the stock exchange.	

The Takeover Directive (2004/25/EC) has been fully transposed in all three Baltic States providing convergence with requirements in other European countries. The Takeover Directive does not create a harmonised single set of takeover rules throughout the EU, as Member States may opt out of the provisions regarding defensive measures available to targets under Article 9 and whether or not to apply the breakthrough rule under Article 11.

For example, under Article 9(2) of the Takeover Directive the board must obtain prior authorisation at the shareholders' general meeting before taking any action (other than seeking alternative bids) which might result in frustration of the bid. Article 9(3) concerns the capacity of the shareholders meeting to approve or confirm any decision which is not part of the normal course of company business and implementation of which may result in frustration of the bid. None of the three Baltic States have opted out of implementing these measures and therefore these obligations apply to targets during public takeover bids in Estonia, Latvia and Lithuania.

Furthermore, under Article 11 of the Takeover Directive the breakthrough rule provides for suspension of certain voting right restrictions and share transfer provisions arising from articles of association or contractual arrangements entered into after adoption of the Takeover Directive on 21 April 2004. These provisions are suspended for the duration of the takeover bid acceptance period and only with respect to accepting the offeror's bid. In addition, if following the takeover bid an offeror obtains the relevant number of shares required under national law to amend the target's articles of association then any restrictions on share transfer or voting rights mentioned above and any extraordinary rights regarding board member appointment or removal will cease to exist as of convening the first general shareholders' meeting of the target. As the Baltics have not opted out of these provisions, these obligations and rules apply to targets during public takeover bids in Estonia, Latvia and Lithuania.

- *In Belarus, any offer addressed to an indefinite range of potential sellers must be made public by placing the offer text in a mass media publication or by placing the relevant request in the Belarusian Electronic Quotation System (BEQAS) operated by the BCSE. Voluntary public offers must contain information on the number of the company's shares the bidder intends to purchase. Mandatory public offers must contain information that the bidder intends to purchase all shares which it does not own, without any limitations for any single shareholder. The scope of the information included in the offer is exhaustive.*
- *A single bidder cannot withdraw (cancel) a placed offer until expiry of the term for sale of the shares suggested by the bidder. During this period the same bidder cannot place any different offers in BEQAS with regard to the shares of the same company. Other bidders can place their offers in BEQAS regardless of the existence of competing bids. No special requirements apply to placement of competing bids, which are subject to the same regulations as primary ones. The only difference may be in calculation of the purchase price for quoted shares of the company.*

Public to private

Squeeze-outs and sell-outs

A buyer that acquires 95% of the shares and votes in a target company may generally seek to acquire the remaining shares from the minority shareholders provided that a fair price is offered for the shares during the squeeze-out. In Estonia, squeeze-out is available only in the case of public limited companies (a type of company with increased share capital requirements, but not necessarily listed). The majority shareholder can propose a squeeze-out at 90% shareholding, but 95% of the votes are required to pass the motion.

The price cannot be lower than the highest price per share paid by the buyer during a mandatory or voluntary takeover bid. In Estonia, the price must correspond to the market value of the shares.

Similar to the squeeze-out provision above, if the buyer acquires 90% in Latvia (or 95% in Lithuania) of the shares and votes in a target company, the remaining minority shareholders may generally seek to sell their remaining shares to the buyer provided that a fair price is sought for the shares during the squeeze-out. Estonia has no sell-out provisions.

- *Squeeze-out is neither provided nor directly prohibited by Belarusian law. Provisions on squeeze-out may be incorporated in a company's articles of association, although their enforceability is questionable. SORAINEN lawyers are not aware about any court practice regarding enforceability of squeeze-out. Based on complex analysis of effective laws, one can suppose that such provisions may be treated as waiver of rights of minority shareholders and would thus be void.*

- *Instead, shareholders are entitled to demand that the company sell out their shares. Sell-out rights are triggered by the shareholders voting against (or failing to participate in the general meeting where the decision was taken) the following decisions:*
    - *reorganisation of the company;*
    - *amendments to the target's articles of association which limit their rights;*
    - *conclusion of a large scale transaction (involving disposal of property comprising at least 20% of the company's balance net assets value).*

Delisting

In the event of delisting a company, the obligation to make a mandatory takeover bid generally arises. Furthermore, local stock exchange rules apply with respect to fair treatment of the minority shareholders of the target company.

- *In Estonia and Belarus, there is no express requirement to make a mandatory takeover bid in the event of delisting. However, delisting is regulated by the stock exchange rules and the Tallinn Stock Exchange may deny the delisting application if it decides that delisting will harm minority shareholders.*

TAXATION[10]

In Estonia, there is no annual corporate tax on income or profits. However, a tax of 21/79 applies to distribution of dividends and other similar payments, as well as certain costs. There are no thin capitalisation rules and no taxes incurred on market level interests, therefore acquisition finance is usually structured to a great extent as debt.

In Latvia, there is a 15% flat tax on profits. There are no withholdings on dividend payments to EU residents and a 10% withholding tax on dividends applies to most residents outside of the EU.

In Lithuania, there is a 15% flat tax on profits. There is no withholding tax on dividends paid to foreign residents owning at least 10% shares for twelve months. Otherwise, 15% withholding tax applies.

In Belarus, the general rate of tax on profits is 18%. Dividends paid to both Belarusian residents and non-residents are taxed at a 12% rate. Capital gains from sale of shares in Belarus companies are taxed at the rate of 9% (if the receiver of income is a Belarusian company) and at the rate of 12% (if the receiver of income is a non-resident). Lower tax rates, as well as exemption from taxation, may be provided by double tax treaties on avoidance of double taxation.

Advanced binding tax rulings are available in Estonia for a fee and in Latvia without a fee. Advanced binding tax rulings do not apply in Belarus.

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[10] Updated as of 1 January 2012.

- *In Latvia, the following thin capitalisation rules apply: debt-to-equity ratio of 4:1 or 1.2 times short-term interest rate as provided by the Central Statistical Bureau – the less favourable of the two criteria applies.*
- *In Lithuania, the following thin capitalisation rules apply: debt-to-equity ratio 4:1. If the ratio is exceeded, then interest exceeding fair market rate is not deductible.*
- *In Belarus, thin capitalisation rules are to be introduced from 1 January 2013.*

SORAINEN M&A AND PRIVATE EQUITY TEAM

Mergers & Acquisitions Practice overview

Mergers & Acquisitions (M&A) is a key SORAINEN practice. The firm deploys a truly integrated regional M&A Practice and thus offers optimal capacity to advise on regional M&A deals involving two or more of the Baltic States and Belarus, substantially reducing the time, energy and resources necessary to structure and manage regional M&A projects.

M&A transactions require involvement of the most experienced M&A lawyers to assist in efficiently managing complex and intensive projects: from preparing adequate documentation and holding tactical negotiations to ensuring smooth deal closing. SORAINEN specialists in competition, regulatory, finance, real estate and tax work with the firm's M&A lawyers to provide full servicing in M&A projects. The SORAINEN M&A Practice has an extensive track record in domestic and cross-border M&A transactions in various industries and in advising private equity funds on M&A deals.

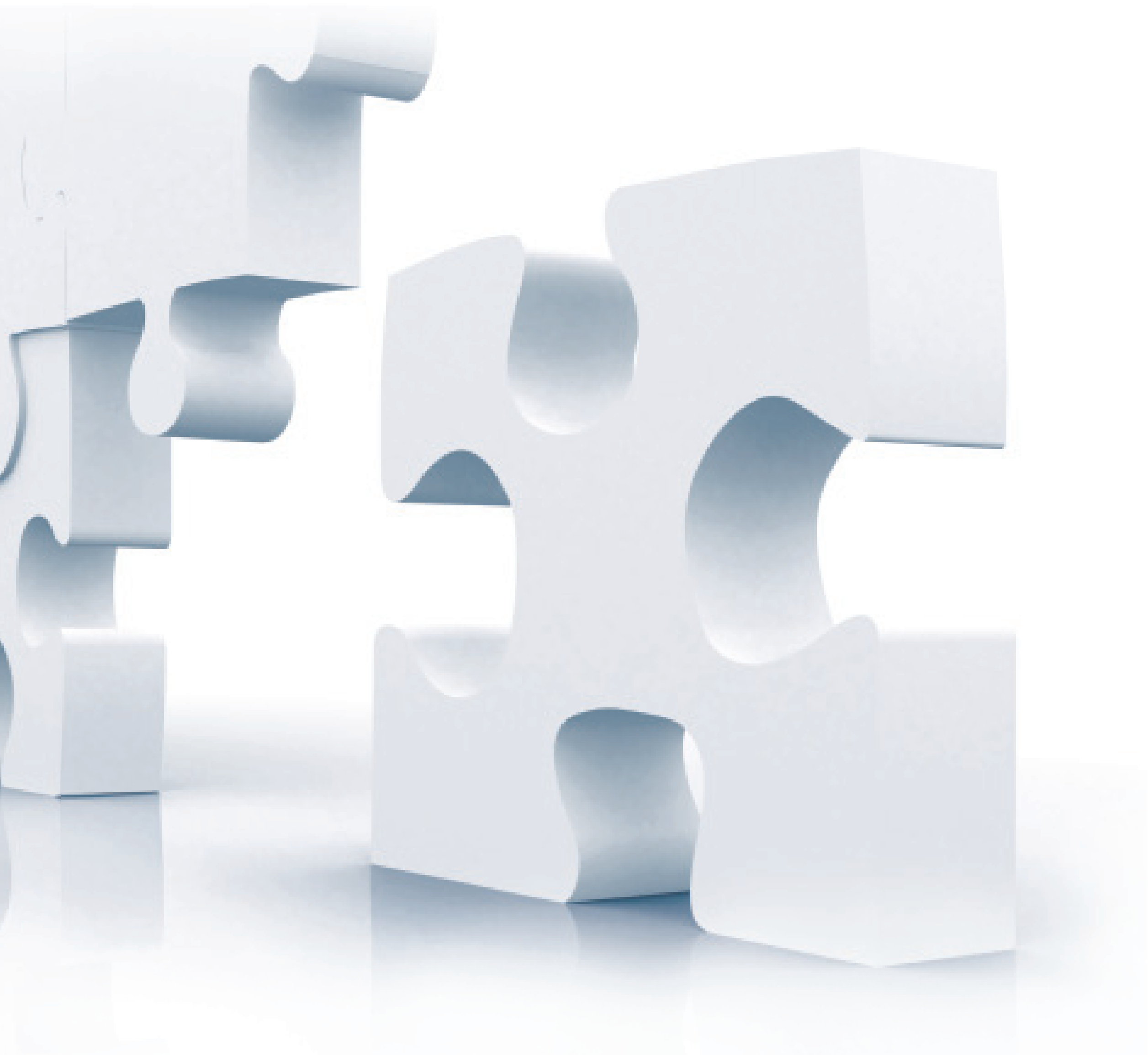
SORAINEN is recommended for its M&A Practice by international directories such as *IFLR1000*, *The Legal 500*, *PLC Which lawyer?*, *Chambers Global* and *Chambers Europe*.

Private Equity Practice overview

As part of the only truly integrated regional law firm, the SORAINEN Private Equity Practice of over 20 lawyers has the best capacity to advise on regional transactions in the Baltics and Belarus. This substantially reduces the time, energy and other resources required for structuring and managing regional projects.

The SORAINEN Private Equity Practice advises private equity houses and investors on fund formation, transactions, portfolio management, investment reducing, exits and other activities in the Baltic States and Belarus. With in-depth knowledge of the private equity industry, SORAINEN lawyers provide tailored and efficient advice to the firm's private equity clients.

SORAINEN is recommended for its Private Equity Practice by international directories such as *International Financial Law Review*, *The Legal 500*, *PLC Which lawyer?* and *Chambers Europe*.



Mergers & Acquisitions transaction experience

The firm is constantly involved in major M&A transactions in the Baltic States and Belarus. According to statistics from *Mergermarket* and other leading international M&A intelligence services, SORAINEN has the largest experience in major M&A transactions in the Baltics and Belarus. Below are some of the larger transactions.

Hitachi Strategic investment in the Visaginas nuclear power plant project in Lithuania, the largest ever investment project in the Baltics Legal Adviser	**Fortum Power and Heat Oy** Sale of its Estonian subsidiary Fortum Elekter to Imatran Seudun Sähkö Legal Adviser	**Bitė Lietuva** Acquisition of Eurocom, one of the largest mobile virtual network operators in Lithuania, operating through the Bitė network since 2003 Buyer’s Legal Adviser	**Fortum** Divestment of Fortum Energiaratkaisut and Fortum Termest **approx EUR 200 million** Legal Adviser
Citycon Acquisition of three major shopping centres – Rocca al Mare, Magistral, Kristiine – in Tallinn and Mandarinas Shopping Centre in Lithuania **EUR 196 million** Buyer’s Legal Adviser	**Eesti Energia** Sale of a leading Estonian telecommunications company Televõrgu to Tele2 Eesti **EUR 25 million** Legal Adviser	**Unilever** Acquisition of Ingman Ice Cream Buyer’s Legal Adviser	**Elektroskandia** Cross-border merger of Baltic operations into an Estonian company with branches in Latvia and Lithuania Legal Adviser
Rautakirja Sale of UAB Forum Cinemas Home Entertainment and SIA Forum Cinemas Home Entertainment, movie rental (and sales) business in Lithuania and Latvia, to the local management Legal Adviser	**Event Hotel Group** Acquisition of approx 26,000 m^2 Radisson Blu hotel and office building in Tallinn, Estonia Buyer’s Legal Adviser	**Signature Investment Group (SIG)** Acquisition of Korona, operator of the largest (approx 20,000 m^2) retail trade centre in Grodno, Belarus Buyer’s Legal Adviser	**Sanoma** Sale of retail chain R-Kioski in Finland, Estonia and Lithuania and press distribution operations in Estonia and Lithuania to Reitan Servicehandel **EUR 130 million** Legal Adviser

Private Equity transaction experience

SORAINEN is constantly involved in all types of private equity transactions in various industries. Over the past several years, the firm has advised a number of regional and international private equity players on many major deals in the region, some of which are highlighted below.

Orion Asset Management	**Primekss**	**EBRD**	**Estonian Development Fund**
Structuring and establishing ORION AGROLAND VALUE FUND I, investment fund in Lithuania focusing exclusively on agricultural land	Obtaining an investment from BaltCap	Investment stage of a financial package for a pharmaceutical company active in CIS	Restructuring and recapitalisation of private equity fund owned by the Republic of Estonia
	EUR 1.4 million	**EUR 20 million**	**EUR 26 million**
Legal Adviser	Legal Adviser	Legal Adviser	Legal Adviser
NCH Group	**BaltCap**	**Marguerite Fund**	**Lords LB Asset Management**
Three-stage share capital increase in agricultural company	Investment in software development company Clusterpoint	Offering its shares to professional investors in Lithuania	Forming and raising Lords LB Baltic Fund I, the first major fund formed in Lithuania
approx EUR 9.25 million	**EUR 1 million**		
Legal Adviser	Legal Adviser	Legal Adviser	Legal Adviser
Baltcom	**Estonian Development Fund**	**Litorina IV**	**Atlant Capital S.A.**
Attraction of long-term loan facilities in cooperation with SEB banka for business development	Investment in SelfDiagnostics	Acquisition of a 70% stake in Sveba Dahlen Group	Acquisition of an immovable property in Latvia, joint venture agreement with a partner in Latvia
EUR 28 million	**EUR 300,000**		
Legal Adviser	Legal Adviser	Legal Adviser	Legal Adviser

Awards and recognitions

SORAINEN was awarded as the best Baltic M&A legal advisor by *The Financial Times & Mergermarket* at the European M&A Awards in December 2008 for advising on the largest number of M&A (including private equity) transactions and for the largest total value in the Baltics.

SORAINEN is an active member of local associations which aim to develop the private equity and venture capital industry in the Baltics. SORAINEN was part of the initiative group founding the Estonian Private Equity and Venture Capital Association and is now an associate member. In Latvia SORAINEN is a member of the Latvian Private Equity and Venture Capital Association, and in Lithuania – a member of the Lithuanian Venture Capital Association.

SORAINEN has also been named "Baltic Law Firm of the Year" three times at the *International Financial Law Review* European Awards 2009, 2010 and 2012. SORAINEN received these awards for advising on the most complex and innovative international transactions in the areas of M&A, debt, equity and capital markets, project financing and restructuring.

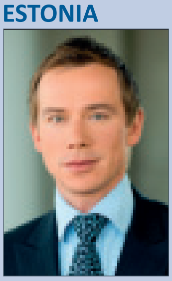
At the initiative of SORAINEN, the five largest Baltic law firms and alliances made the first Baltic M&A Deal Points Study in 2009, the first of its kind in the region. In 2011, the second Baltic M&A Deal Points Study was carried out. In 2010, a similar study based on Baltic experience was organised in Belarus together with five local leading law firms – the first Belarusian M&A Deal Point Study and also the first of its kind in the CIS countries.

M&A and Private Equity Team contacts

The regional head of the SORAINEN M&A and Private Equity Team is **Toomas Prangli**, whose contacts appear below.

Local heads of the SORAINEN M&A and Private Equity Team are:

ESTONIA



Toomas Prangli
toomas.prangli@sorainen.com

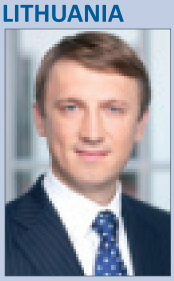
Pärnu mnt 15
10141 Tallinn
ph +372 6 400 900
fax +372 6 400 901
estonia@sorainen.com

LATVIA

Pekka Poulakka
pekka.puolakka@sorainen.com

Kr. Valdemāra iela 21
LV-1010 Riga
ph +371 67 365 000
fax +371 67 365 001
latvia@sorainen.com

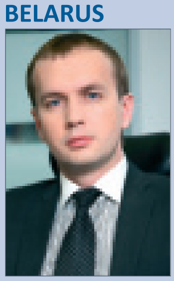
LITHUANIA



Laimonas Skibarka
laimonas.skibarka@sorainen.com

Jogailos 4
LT-01116 Vilnius
ph +370 52 685 040
fax +370 52 685 041
lithuania@sorainen.com

BELARUS



Kiryl Apanasevich
kiryl.apanasevich@soraine.com

ul Nemiga 40
220004 Minsk
ph +375 17 306 2102
fax +375 17 306 2079
belarus@sorainen.com

Please note that the SORAINEN Baltic M&A and Private Equity Transaction Guide is compiled for general information only, free of any obligation and free of legal responsibility and liability. It was prepared on the basis of information publicly available on 1 July 2012. The Baltic M&A and Private Equity Transaction Guide does not cover laws or reflect all changes in legislation, nor are the explanations provided exhaustive. Therefore, we recommend that you contact SORAINEN or your legal adviser for further information.

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