

Baltic Newsletter

Legal News at Your Glance

Spring edition, 2005

We are proud to present you the Baltic Newsletter on behalf of Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania). In this newsletter you will find the most recent business law related updates on legal issues in the Baltic region generally and every State in particular. You will receive the Baltic Newsletter quarterly and each edition will include the overview of the EU business law as well as legal updates in the Baltic region. We will also introduce you with the internal news about our Law Firms in the Baltics.

We hope that the Baltic Newsletter will contribute in helping the foreign investors to get up-to-date understanding of the legal environment in the dynamically growing Baltic region.

*In this issue: • **EU:** Commission recommendation on the role of non-executive directors and the committees of the supervisory board • **Estonia:** New insurance activities act • **Latvia:** Prohibited cartel agreements • **Lithuania:** Simplified registration of taxpayers*

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EUROPEAN UNION LAW

Commission Recommendation on the role of non-executive directors and the committees of the (supervisory) board

On 15 February 2005 Commission adopted a recommendation to encourage the Member States to implement national legal acts on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. According to the recommendation the two key responsibilities of the (supervisory) board are to ensure that the financial reports and other related information disseminated by the company presents an accurate and complete picture of the company's position and to monitor the procedures established for the evaluation and management of risks. This recommendation is intended to strengthen the supervision of the management bodies in order to ensure protection of interests of shareholders and to improve the confidence in financial markets.

The Recommendation also describes the qualification requirements for the directors, formation of the board committees (nomination, remuneration, audit), evaluation of their activities and other management-related issues.

For further information please contact Rimtis Puišys at rimtis.puisys@lt.pwc.com

LEGAL UPDATES IN THE BALTIC REGION

Advertising

LATVIA

Amendments to the Law "On Restriction of Realization, Advertising and Use of Tobacco Products"

In March 2005 Latvian parliament has adopted amendments to the Law "On Restriction of Realization, Advertising and Use of Tobacco Products". The new law extends the scope of smoking restrictions, e.g., among others, it restricts smoking in educational institutions and health care institutions. The law also entitles municipalities to prohibit or further restrict smoking in public territories such as parks, places for swimming etc.

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Corporate law

ESTONIA

Amendment to the requirement relating to the place of residence of the management board members

On 7 January 2005 Estonia repealed the requirement that at least one-half of the members of the management board of a private limited company, a public limited company, a non-profit association or commercial association must be residents of Estonia. Starting from that date at least one-half of the members of the management board of the referred companies must be residents of Estonia, another Member State of the European Economic Area or Switzerland. The amendment was introduced because otherwise the current wording would have been in conflict with the freedom of establishment as set forth in the Treaty establishing the European Community. Attention should be paid to the fact that as the requirement concerns the minimum amount of board members only the result of the amendment is that all board members may be residents of another Member State of the European Economic Area. Referring to European Economic Area, it includes all Member States of European Union, as well as Norway, Iceland and Lichtenstein.

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Act on the Involvement of Employees in the Activity of a Community-scale Undertaking, a Community-scale Group of Undertakings and European Company On 11 February 2005 the Act on the Involvement of Employees in the Activity of a Community-scale Undertaking, a Community-scale Group of Undertakings and European Company entered into force. The adoption was related to the obligation to implement the Council Directive 94/95/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The Act applies to Community-scale undertakings, Community-scale groups of undertakings and European Companies by setting forth the conditions how the employees must be involved in the management and consulted with. It is noteworthy that the Act shall not apply to any company other than those specified above.

For further information please contact Rando Maisvee at rando.maisvee@otsco.ee

LATVIA

European Company Act Adopted

Latvian Parliament has adopted the European Company Act. The new law governs the issues related to the operation of the European Company not regulated by the Council Regulation 2001/2157/EC of 8 October 2001 on the Statute for a European Company. The law regulates the rules of formation and operation of the European Company, the involvement of employees in the decision making process, as well as the rules of information and consultation of employees.

For further information please contact Maris Vainovskis at maris.vainovskis@baltmanebitans.com

Commercial Code Reform Completed in Latvia

As of January 2005, the Commercial Code reform is completed in Latvia. The 3rd January 2005 was the last date when a company could submit its application for the re-registration with the Commercial Register. According to the information of the electronic database "Lursoft" almost 23,000 companies have not been re-registered with the Commercial Register within the prescribed period, and these companies will be liquidated.

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LITHUANIA

Amendments to the Regulation on the Legal Entity Register

As of 23 February 2005 the Resolution of the Government of the Republic of Lithuania, regarding the amendments to the Regulations of the Register of Legal Entities of the Republic of Lithuania, came into force. The amendments to the afore-mentioned Regulations are aimed at implementing the EU legal acts regarding the status of European Company and European Economic Interest Grouping. These amendments are related to submission and registration of documents and data regarding setting up, transferring the registered office and conversion of the European Companies and European Economic Interests Groupings. It should be noted that the European Company could only be established in Lithuania after the law, implementing the Directive on supplementing the Statute for a European Company with regard to the involvement of employees, has been adopted, which is expected within the next several months.

Other amendments to the Regulations of the Register of Legal Entities are related to the submission of documents to the Register of Legal Entities (the copies of documents are admitted instead of originals as well as an extract of minutes of the meeting of participants or of another organ of a legal entity instead of the minutes).

For further information please contact Rimtis Puišys at rimtis.puissys@lt.pwc.com

Competition law

LATVIA

Prohibited Cartel Agreement Established in Latvia

On 20 December 2004, Latvian Competition Council has established the existence of prohibited agreement among several producers of chicken eggs in 2002 and 2003. It was determined that in 2002 and 2003 producers of chicken eggs have participated in several meetings where information on selling prices was shared, as well as agreed on the terms of price calculation. Although it was recognized that the producers can vary the sales price according to the growing market demand, nevertheless the results of economic analyses in the given case did not justify the rise of prices. Having regard to the practice of the European Court of Justice, the Competition Council held that any direct or indirect contacts among competitors, the effect or purpose of which is the coordination of market behavior is prohibited.

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LITHUANIA

Amendments to explanations of the Competition Council regarding establishment of a dominant position

The resolution of the Competition Council of 3 February 2005 is aimed at explaining the rules for establishing how significant restriction to the competition is determined in cases of market concentration. The establishment of restriction is important as the market concentration might create or strengthen the dominant position of one undertaking. A dominant position caused by a concentration is one of the reasons to imply that the competition in a respective market will be restricted. Upon establishment whether a competition restriction will be significant, the Competition Council considers the following factors: whether the participants of the

concentration hold large shares of the market, whether they are close competitors, etc. The Competition Council also considers all the reasonable explanations of concentration participants regarding the effects of concentration that are beneficiary to the consumers.

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New wording of requirements and conditions for agreements that are not considered as infringing a Law on Competition

The Law on Competition regulates competition-restricting activities of undertakings and, among other provisions, prohibits competition-restricting agreements between undertakings. The latter embrace such agreements, whereby the parties directly or indirectly establish prices or other conditions of sale of certain goods, also agreements for sharing the product market on a territorial basis, according to the groups of buyers, suppliers or in any other way, agreements whereby the parties undertake to apply discriminating conditions for individual undertakings, thereby placing them at a competitive disadvantage. The Law on Competition establishes an obligation to the Council of Competition of the Republic of Lithuania to set requirements and conditions for agreements of minor importance, to which the above-mentioned regulations are not applicable.

According to the Resolution of 9 December 2004 of the Council of Competition, horizontal or mixed agreements involving undertakings possessing up to 10 percent of any relevant market shares or vertical arrangements involving undertakings each being in a possession of up to 15 percent of the relevant market shares are to be considered as agreements of minor importance. Nevertheless, the above-mentioned agreements may still be qualified as restricting competition, irrespective of the market shares possessed (e.g. agreements to fix prices on goods or other conditions of sale or purchase etc.).

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Insurance law

ESTONIA

New Insurance Activities Act

On 1 January 2005 the new Insurance Activities Act came into force. The adoption of the new act was due to the need to comply with pertaining European Union directives. The new Insurance Activities Act governs all issues relating to insurance activities and insurance brokerage, as well as supervision thereof. Among issues, the new act provides for, are requirements for an insurance company (including a license for insurance activities, the size of share capital and net assets, conditions relating to management board), insurance brokerage (including permission for activities) and cross-border insurance activities.

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LATVIA

Rules for Insurance and Reinsurance Intermediaries

The new Insurance and Reinsurance Intermediaries' Operations Act has been passed. The law lays down the rules on the order of registration, operation and supervision of insurance and reinsurance intermediaries. In accordance with the law the insurance intermediary services may be carried out by insurance agents, brokers and tied insurance agents, whereas the reinsurance mediation can only be performed by insurance brokers. The law requires the insurance agents and brokers to register with a special register maintained by the Financial and Capital Market Commission. The insurance companies will have a duty to maintain a register of the associated insurance agents. The law also enacts the principle that registered insurance and reinsurance intermediaries are allowed to provide services in the EU.

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LITHUANIA

Insurance Law Amended

As from 8 February 2005 the amendment to the Insurance law is effective. The provisions of the Law, as amended, release the subordinate insurance intermediaries from the obligation to insure their civil liability. This relieve can be enjoyed only if the intermediary has concluded a professional civil liability insurance contract with a parent

company or its affiliate. It is noteworthy, that such parent company or its affiliate has to be properly insured and has to conclude an agreement with an intermediary whereby it undertakes an obligation to indemnify fully for any damage arising due to a failure to perform or to perform properly, on behalf of the subordinate insurance intermediary, of his/her professional duties.

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Intellectual property

LATVIA

Protection of Intellectual property rights to be strengthened in Latvia

Ministry of Justice is planning to implement Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights by the end of 2005. The objective of the directive is to ensure high, equivalent and homogenous level of protection of intellectual property rights as well as to facilitate the enforcement of those rights within the EU. The directive provides for various measures, some of which will also be applicable to the intermediaries assisting other parties in infringing the intellectual property rights.

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Litigation

LATVIA

New Rules for the Courts of Arbitration

In March 2005, new amendments to the Latvian Civil Procedure Code entered into effect. As of 1 April 2005, permanent courts of arbitration are required to be registered with the special register maintained by the Companies Register. The existing arbitration courts will be allowed to register until 15 August 2005. After 30 September 2005, the dispute resolution will not be allowed at the arbitration courts that have failed the registration. The amendments also lay down the new rules concerning the choice of name and competence of the courts of arbitration.

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Securities Market

ESTONIA

Amendments to Securities Market Act

On 18 March 2005 amendments to the Securities Market Act as well as other acts came into force. The purpose of amendments is to provide for more concrete rules for the public emission of securities, investment firms (including requirements for obtaining activities permits, acquisition of a qualifying holding in an investment firm, as well as establishment by the investment firm of a branch in a foreign country) and transactions, which are related to inside information. The amendments include sixty-six new misdemeanors relating to the breach of securities market related obligations.

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LITHUANIA

New provisions of the Law on Securities Market came into force

As of 1 January 2005 amendments to the Law on Securities Market entered into force. These amendments provide for an obligatory sale and redemption of shares of a company. According to these amendments, if a shareholder or a group of shareholders have acquired shares, which carry not less than 95% of votes, they have a right to demand the rest of the shareholders to sell their shares. Each shareholder of a company may demand that another shareholder or a group of shareholders of the same company who acquired shares, which carry not less than 95% of votes, should buy his/ her shares. A person or a group of persons have to inform a company and the Lithuanian Securities Commission if they have acquired shares, which carry not less than 95% of votes at a general meeting of shareholders. The Lithuanian Securities Commission announces about such purchase of shares in the Official Gazette.

It must be noted that the above-mentioned provisions are only applied to the sale and redemption of shares of companies of which shares are on the official or current list of securities market.

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Telecommunications

ESTONIA

New Electronic Communications Act

On 1 January 2005 the Electronic Communications Act became effective. Similarly to the adoption of the Insurance Activities Act, the adoption of the Electronic Communications Act was related with the obligation to meet the requirements of European Union directives. The Electronic Communications Act regulates all kind of electronic communication services (including internet, radio, ordinary and mobile telephone, as well as cable TV). The purpose of the act is to set forth concrete rules concerning the business activities, competition and consumer protection in the field of electronic communications business.

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Operating legal entities do not have to submit the data or documents upon the change of the data and documents to the Register of Taxpayers if this data or documents have been already properly submitted to the Register of Legal Entities (e.g. a change of a registered address or a Head of a company, etc.).

Registration of a legal entity with the Register of Taxpayers is terminated on the basis of notification by the Register of Legal Entities that legal entity is reorganized or liquidated.

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Taxation

ESTONIA

Double Tax Convention between Estonia and Turkey

On 19 January 2005 the Estonian parliament ratified the double tax convention between Estonia and Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The double tax convention is based on the OECD model convention, and it shall be applied after the Turkey has completed all necessary steps for its implementation.

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LITHUANIA

Simplified registration of taxpayers and their data

Amendments to the Regulations of Register of Taxpayers came into force as of 1 December 2004. These amendments simplify registration of new and operating taxpayers and submission of registration data and documents to the register. A taxpayer is exempted from an obligation to submit the same data and documents to two Registers (Register of Legal Entities and Register of Taxpayers).

OTHER NEWS

Law Office Ots & Co

On 22 February 2005, Law Office Ots & Co and PricewaterhouseCoopers Advisors organized a joint training "Information Day for Executive Officers" for top level managers of companies'.

On 17-19 March 2005, attorneys of Law Office Ots & Co. delivered lectures in the Estonian Business School within the Executive MBA program covering thereby completely the legal part of the program. The topics treated included general principles of civil law, conclusion of contracts, commercial law and labour law.

On 15 March 2005, the partner of the law office Maivi Ots was appointed for the committee of company law in the Council of the Bars and Law Societies of Europe (CCBE) as the representative of the Estonian Bar Association.

On 6 April 2005 the team of Law Office Ots & Co. was increased by a new colleague Tambet Toomela who is specialized in the property law issues.

In 2005, Toomas Pikamäe and Rando Maisvee published several articles on different timely legal issues including the significance and disputing of detail plans, and relationships between a company and a member of the management board.

Baltmane & Bitans Law Office

On 5-7 April 2005, a conference of International Association for the Protection of Intellectual Property (AIPPI) was held in Riga. The AIPPI Baltic Conference "Intellectual Property in New Member States" was organized by the Latvian group of AIPPI in co-operation with the Patent Office and The Coalition for Intellectual Property Rights. European Patent Offices and Intellectual Property Rights organizations were among the guests of the conference.

Agris Bitans, partner of Baltmane & Bitans Law Office and member of AIPPI acted as moderator on such complex issues of intellectual property management as creation, protection and valuation.

In 2005, Ilze Baltmane, Maris Vainovskis, Dace Cirule and Maris Logins have made a number of publications on topical legal issues: labour law related to preventing employee from working for a competitor; commercial law matters, on splitting property and staff within reorganization process; current regulations of procuras under the Latvian commercial law.

The firm continues excelling in its key expertise. In 2004-2005, the firm has advised clients on substantial mergers and acquisition projects totalling in EUR 50 million, and in public procurement projects totalling in EUR 300 million.

Law Firm Saladžius & Partners

Managing Partner of the Law firm Jonas Saladžius has become a Board Member of the American Chamber of Commerce in Lithuania. Jonas was invited to join the Board on the Annual General Meeting of the American Chamber of Commerce, summoned on 10 February 2005. The same meeting congratulated the Law firm Saladžius & Partners on becoming a new Corporate Member of the American Chamber of Commerce.

The team of experts of the Law firm Saladžius & Partners has been expanded by recruiting two highly qualified legal specialists Alvydas Gineitis and Andrius Mamontovas. Alvydas has extensive practise in advising local and international clients in relation to commercial contracts. Andrius demonstrates profound knowledge of European Union law, and will be supporting the Law firm Saladžius & Partners in the field of EU Law.

The Associate Partner Rimtis Puišys has delivered a presentation on The Recent Developments of the EU company law at the monthly meeting of the Netherlands-Lithuanian Chamber of Commerce.