

Baltic Newsletter

Legal News at Your Glance

Autumn, 2007

Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania) – affiliates of Eversheds International Limited - hereby present the edition of the Baltic Newsletter for the period of June, July and August of 2007. 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 of our Law firms. 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 sets out vision for improving patent system in Europe • Estonia: Tax Rates Continue Decrease • Latvia: Prohibition of abuse of 'significant influence' proposed • Lithuania: the concept of the Law on Labour Lease

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EUROPEAN UNION LAW

Eurotariff set to decrease roaming charges

The new EU Roaming Regulation became effective across all 27 Member States on June 30, 2007. The regulation, which will be effective for 3 years, provides for EU price caps in respect of mobile roaming charges. Among other matters, it requires mobile phone operators to offer consumers the Eurotariff at a maximum of EUR 0.49, excluding VAT, per minute for making calls within the EU and EUR 0.24, excluding VAT, per minute for receiving them, dropping to respectively EUR 0.46 and EUR 0.22 after 1 year and EUR 0.43 and EUR 0.19 after 2 years. It is expected that after 2010 there will be no further need for regulation of this matter.

According to the EU Commission, there are 147 million roaming users in Europe, 110 million of which are business users. The Eurotariff has been introduced in order to stop the application of excessive mobile roaming charges to consumers and businesses crossing European borders. The compliance with the new regulation will be monitored by regulatory authorities of the member states and the EU Commission.

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Commission sets out vision for improving patent system in Europe

On 3rd April 2007 the European Commission published a Communication for enhancing the patent system in Europe. The aim of the Communication is to resume discussion on the Community patent, to improve the existing litigation system, while also to discuss several

supporting measures for a well-functioning patent system.

Recent studies have shown, that the EU lags behind the US and Japan in terms of patent issuance. The European patent, which is applicable in 13 countries, is about 11 times more expensive than a US patent and 13 times more expensive than Japanese patent. The reason for such situation is a lack of truly competitive and attractive Community patent system. Statistics show that in the context of overall costs (translations, registration fees, etc.) the Community patent is far more attractive than models under the present system of European patents.

However, the establishment of Community patent is not enough for all practical problems to be appropriately addressed. Another step concerns the improvement of the existing system of EU patent litigation by establishing Community litigation. The Communication also addresses subjects such as the quality and costs of patents, support for small and medium enterprises (SMEs), knowledge transfer and enforcement issues, including alternative dispute resolution, patent litigation insurance and international aspects of enforcement.

The Commission proposes a few alternatives how to improve patent litigation by protecting the rights of patent holders and avoid unnecessary costs for all parties involved as well as lack of legal certainty, caused by multiple patent litigation in several countries on the same patent issue. One of the proposals is to establish – The European Patent Court. Also, it is proposed to require parties to engage in mediation, conciliation or arbitration prior to seeking judicial remedies. Therefore, the alternative dispute resolution (ADR) system could be established as well.

The Commission plans to issue a comprehensive Communication on Intellectual Property Rights in 2008.

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LEGAL UPDATES IN THE BALTIC REGION

LATVIA

European Court of Human Rights: Latvian courts have suppressed journalist's freedom of expression

On July 12, 2007 the European Court of Human Rights delivered its judgment in the case *a/s Diena and Ozoliņš v. Republic of Latvia*. The Court unanimously held that by adopting judgments against the applicants for the publication in 1998 of articles allegedly defaming Latvian Minister for Economic Affairs of that time Latvian courts have suppressed applicants' freedom of expression and therefore violated Article 10 of the European Convention on Human Rights.

In 1998 Mr. Ozoliņš, a journalist of the daily newspaper "Diena", had published several articles reflecting the course of privatization of the state company a/s Ventspils Nafta and accusing Latvian Minister for Economic Affairs of that time of having acted against interests of the state. The Minister started proceedings in the Latvian courts alleging that the said articles are defamatory and claiming their retraction, as well as compensation for non-material damages. The final judgment of Latvian courts in this case ordered the daily newspaper "Diena" to retract a part of the said articles, pay compensation to the Minister for defamation and pay the litigation costs.

Later Mr. Ozoliņš, a journalist of the daily newspaper "Diena", and the newspaper itself applied to the European Court of Human Rights complaining that by delivering the said

judgment Latvian courts had unjustifiably interfered with their rights to freedom of expression. The European Court of Human Rights held that despite the injurious and accusatory character of the said articles their content had not exceeded the boundaries of journalistic freedom.

It is not yet known whether Latvian government will request the referral of the case to the Grand Chamber pursuant to Article 43 of the European Convention on Human Rights. It is very much hoped that Latvian courts will change their approach correspondingly in order to avoid illegal suppressing of people's freedom of expression in future.

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Competition law

LATVIA

Proposal to introduce new definition of 'dominant position' and prohibition of abuse of 'significant influence' into Competition Law

On September 6, 2007 a proposal to introduce a new definition of 'dominant position' and prohibition of abuse of 'significant influence' into Competition Law was handed over to the committees of Latvian parliament (*Saeima*) for consideration. The proposal provides for exclusion of 40% market share criterion from the definition of 'dominant position', thereby allowing to establish the existence of dominant position also in cases where less than 40% of particular market is held by particular market participant(s) who can nevertheless impede effective competition in that market.

Since in practice products retailers which are not in a dominant position nevertheless may force on the suppliers of products unfair terms of business, the proposal also provides for

introduction into Competition Law of prohibition of abuse of 'significant influence'. 'Significant influence' is defined as an economic (commercial) position in a relevant products retail market of a market participant or several market participants if by conducting commercial activities solely or within the framework of concluded franchise agreements or agreements on horizontal cooperation the market share of such participant or the participants in Latvian market is at least 25 per cent, but which does not constitute dominant position. The proposal envisages the prohibition for every market participant having significant influence to abuse it by forcing directly or indirectly on other market participants unfair and discriminatory terms of business, for example, terms of payment. According to the proposal Latvian Competition Council will be entitled to impose fines for abuse of significant influence on the market participant in the amount of 5% from the total revenue in previous financial year.

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Contract law

ESTONIA

Buyer's right to claim damages in case contract for reservation of immovable property and preliminary sales contract are invalid due to violation of formal requirements

Real estate sellers and developers in Estonia are used to prepare and conclude unattested written contract documents which include agreement on the reservation of the immovable for the buyer as well as preliminary sales contract. Reservation contract obliges the seller to avoid transfer of an immovable for a certain term and the buyer to pay for reservation. Pursuant to preliminary sales contract, the seller is obliged to transfer immovable to the buyer.

According to Estonian laws, unattested written preliminary sales contract of the immovable is void. Real estate sellers and intermediaries usually do not inform buyers about this fact and buyers sign documents relying on the validity of both contracts. As a result, numerous disputes have arisen.

So far it has been a common belief that a buyer could not claim damages suffered from void preliminary sales contract from a seller or intermediary. Thus, the sellers tended to sell immovable to another buyer who makes a better offer. Legal effect of reservation contract has been unclear.

The Supreme Court has made a fundamental ruling to clarify this issue. Pursuant to the ruling, due to the invalidity of unattested written preliminary sales contract of the immovable, contract for reservation as accessory agreement for sales contract is also void. Therefore, the reservation contract shall be valid only in the case it is concluded in a separate contract document.

Nevertheless, according to the interpretation of the Supreme Court of the applicable law, since a professional seller prepares contract documents and is obliged to inform the other party about preparation of the transaction, the seller is obliged to compensate damages suffered by the buyer from relying on the validity of contracts. The damages correspond to expenses and damage arising from the failure of unsuccessful pre contractual negotiations.

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Construction law

LITHUANIA

Order of the Minister of the Environment of the Republic of Lithuania regarding

the Technical Regulation for Construction has been adopted

On 3 May 2007 the Technical Regulation for Construction, that specifies the provisions of the Law on Construction of the Republic of Lithuania (hereinafter – the „Regulation“), was approved by the Order of the Minister of Environment of the Republic of Lithuania.

The Regulation establishes forms and order of filling of the act on unauthorised construction, the act of suspension of construction works, the consent for continuing suspended construction works, the consent for organising conservation of the construction works, as well as the order of registration of facts of suspension of the construction works and unauthorised construction.

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Employment law

ESTONIA

Requirements for safety of workstation specified

On June 14 2007 the Government of Republic of Estonia passed a regulation on the Requirements for Occupational Health and Safety of Workstation to specify the requirements of Occupational Health and Safety Act.

Among other relevant requirements, an employer is obliged to provide with a workstation and space that would enable an employee to reposition, find appropriate working position and move freely while performing tasks. Premises must be provided with sufficient ventilation and lighting. Placement of desk and chair must ensure ergonomic working position. Working conditions, placement of rooms, furniture and

work equipment must not pose a health hazard or endanger.

The regulation shall apply to all fields of occupation, except building and construction, mineral extraction industry, fishing fleets, vehicles, arable and forest land of businesses.

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LATVIA

Minimal monthly salary increased to LVL 160, minimal hourly salary rate increased to LVL 0,962

The Cabinet of Ministers has adopted regulations increasing minimal monthly salary payable within the framework of normal working time and minimal hourly salary rate. Minimal monthly salary has been increased from LVL 120 (approx. EUR 171) to LVL 160 (approx. EUR 228) and minimal hourly salary rate has been increased from LVL 0,713 (approx. EUR 1,01) to LVL 0,962 (approx. EUR 1,37). The regulations also increase minimal hourly salary rate for teenagers and employees placed at special risks and who have 7 hours per day and 35 hours per week as their normal working time.

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LITHUANIA

The concept of the Law on Labour Lease has been announced

The concept of the Law on Labour Lease (hereinafter – the “Law”) has been approved by the order of the Government of the Republic of Lithuania on 6 June 2007. The Law must be adopted seeking to implement provisions of the 181st Convention on private placement agencies adopted by the International Labour Organisation.

Currently there is no legal act in the Republic

of Lithuania which would regulate labour lease relationship entirely. Some legal acts contain provisions related with the labour lease; however, these provisions regulate only some aspects of labour lease and do not ensure thorough and entire regulation of labour lease relationships. None of the legal acts provide for the definition of labour lease, indicate the nature of the relationship between the subjects of labour lease, establish rights and obligations of the parties to the labour lease relationship, moreover, neither of the legal acts indicate how the labour lease shall be formalized.

If adopted, the law on labour lease would fill in the gap in legal regulation – it will regulate terms and conditions of the labour lease relationships. A possibility to establish temporary placement entities and start their operation will become real.

The main purpose of the Law is to establish terms and conditions of the labour lease, to ensure proper protection of the rights of the temporary employees. The Law shall regulate licensing and supervision of the labour lease, conclusion, implementation and termination of the agreements on labour lease and temporary labour, peculiarities of the work of temporary employees, obligations of the labour leasing entity and of the user of temporary labour, dispute resolution and relating aspects.

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Pharma law

LITHUANIA

The Rules on Parallel Import of Medicinal Products were approved

The Law on Pharmacy of the Republic of Lithuania of 22 June 2006 provides, that the parallel import of a medicinal product means

the import into the Republic of Lithuania of the product marketing authorization for which was granted in another EEA Member State and, which is identical to the medicinal product already granted marketing authorisation in the Republic of Lithuania or sufficiently resembling it, where the import takes place outside the distribution network of the authorized distributor.

The Rules on Parallel Import of Medicinal Products, that have been approved, provide the requirement for registration of parallelly imported medicinal products and issuance of permits for parallel import, re-registration of parallelly imported medicinal products, change of the terms of the permit of parallel import, suspension of validity of the permit of parallel import, revocation of the suspension of validity, obligations of the permit for parallel import holder and the requirements for labeling of packages of medicinal products, package leaflet and repackaging.

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Public law

ESTONIA

Public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms

Estonia has ratified the amendment to the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Århus Convention). Pursuant to the amendment, early and effective information and public participation shall be provided prior to making decisions on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms (GMO-s).

As a consequence, members of the public with sufficient interest have the right to appeal to the court to challenge the legality of any decision, act or omissions of subject to deliberate release into the environment and placing on the market of GMO-s.

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LATVIA

Anti-inflation plan implemented

The Cabinet of Ministers has adopted anti-inflation plan which has already been implemented by changing and amending several laws.

Firstly, Consumer Rights Protection Law has been amended and it now provides that a credit institution must obtain a certificate issued by Latvian State Revenue Service or institution administrating taxes in other country on the official income of consumer before granting a credit to him/her. This is aimed at eradicating situations where for the purposes of assuring credit institutions of their financial capacities consumers show to the credit institutions their actual income which is higher than their official income in regard to which all the taxes have been paid. Amendments to the Administrative Offences Code provide for sanctions which may be imposed on credit institutions in case they grant credits to the consumers without obtaining a certificate on their official income beforehand. Amendments to Credit Institutions Law will ensure that a certificate on the official income of private individual possessed by Latvian State Revenue Service must also contain information on income derived from the deposits and investments in credit institutions. In order to encourage reasonable decisions of consumers in the sphere of crediting, Consumer Rights Protection Law now requires co-financing on the part of the consumers in the amount of

10% from the price of the products or services credited.

Secondly, amendments to Corporate Income Tax Law provide for taxation of income of all non-resident companies derived from the sale of real property notwithstanding the fact that such real property constitutes a part of the company's share capital or that such real property has been sold to other non-resident company. The Law has been amended with the provisions stating that the remuneration received for alienation of shares, stocks or other type of participation in Latvian company, foundation, fund or trust (if more than 50% from the value of their assets directly or indirectly consists of the real property located in Latvia) must also be considered to be remuneration for the alienation of the real property within the meaning of Corporate Income Tax Law and therefore taxable as such.

Thirdly, amendments to Individual Income Tax Law provide for taxation of income of private individuals derived from the sale of real property which has been in the ownership of private individuals for less than 60 months and which has been a place of residence of these private individuals for less than 12 months before the conclusion of alienation agreements. Previously income of private individuals derived from the sale of real property owned them for more than 36 months was exempted from taxation.

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LITHUANIA

The new law on natural gas became effective

On 20 March 2007 the Parliament of the Republic of Lithuania (the Seimas) adopted the law amending the law on natural gas (hereinafter – the "Law"), which became effective on 19 April 2007. The Law has been

prepared seeking to harmonize national legal acts regulating natural gas sector with the provisions of the Directive 2003/55/EC of the European Parliament and Council of 26 June 2003 concerning common rules for the internal market in natural gas and Council Directive 2004/67/EC of 26 April 2004 concerning measures of safeguard security of natural gas supply.

The aim of the Law is to establish common principles of organisation and operation of the natural gas sector, to regulate activities of the gas entities and their intercommunication and relation with the consumers when supplying, distributing, transferring, liquefying and storing natural gas.

Also, it is sought to establish conditions for promoting competition in the natural gas sector, to ensure the possibility for the eligible consumers to choose gas supplying entity, economic security of natural gas transmission, distribution, storage and supply as well as consumer protection.

It shall be noted, that in comparison with the previously effective natural gas law (State Gazette, 2000, No 89) the new Law requires the integrated gas entities to distinguish gas transmission, distribution and other activities from the gas supply activities. The activities are distinguished by establishing subsidiary or other company. However, gas transmission, liquefying, storage, distribution can be pursued in one gas entity. The requirement to establish separate subsidiary or other company in order to distinguish activities does not apply to those integrated gas entities, which supply gas to less than 100,000 consumers.

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Tax law

ESTONIA

Changes in income tax rates

The Parliament of Estonia has adopted amendments to change income tax rates. Pursuant to the current regulation, income tax rate is 22 per cent of taxable income for 2007, 21 per cent for 2008 and from 2009 on it shall be 20 per cent. According to amendments, income tax rate for 2010 will be 19 per cent and from 2011 on the rate will be 18 per cent of taxable income. The aim is to gradually lower income tax rate down to 18 per cent by 2011.

Due to the amendment, basic exemption for natural persons being residents of Estonia will increase as well. The present tax-exempt income is 24 000 kroons per year. In 2008 the basic exemption will be 27 000 kroons per year, in 2009 the figure will be 30 000 kroons per year and in 2010 - 33 000 kroons per year. From 2011 on tax-exempt income shall be 36 000 kroons per year.

Among other changes, a parent or other person, being the resident of Estonia, who maintains a child, is entitled to deduct additional basic exemption per each child under the age of 18.

The amendments will become effective as of 1 January 2008. As a result, the tax revenues of the state shall decrease.

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ESTONIA

Changes in excise duty rates and objects of taxation

On 14 June 2007 the Parliament of Estonia passed the act to Amend the Alcohol, Tobacco and Fuel Excise Duty Act.

With the new regulation, excise duty rates of alcohol, tobacco and fuel shall be increased as of 1 July 2008. Notably, excise duty rate of beer, intermediate product, other alcohol, fermented drinks and vine, with maximal alcohol content of 6 per cent shall be increased 20 per cent.

The aim is to bring alcohol excise duty rates into conformity with consumer price index and thus meet the EU price stability requirements for joining the euro zone, as well as to reduce the consumption of alcohol and tobacco products, which have negative impact on public health.

Furthermore, natural gas and electrical energy shall be charged with the excise duty as well. Taxable person is a network operator. The excise rate shall be 50 kroons per MWh for electric energy and 157 kroons per 1000 m³ for natural gas. This amendment will enter into force as of 1 January 2008.

The aim is to bring fuel and electric energy excise duty rates into conformity with the corresponding minimum rates required by the Energy Taxation Directive 2003/96/EC and to meet the principle of equal exploitation of fossil fuels due to ecologic tax reforms. Nevertheless, the prices of electric energy and central heating will probably rise, which might result in appreciation in other spheres as well.

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ESTONIA

Income tax levied on expenses and disbursements not related to enterprise

According to the Income Tax Act, expenses and disbursements not related to enterprise are levied with the income tax. The Supreme Court has analyzed the terms "expense

related to business", "disbursement related to business" and "loan related to business".

The Supreme Court found that expense is related to business and thus not taxable if a taxable person can prove that expense is necessary for starting, retaining or developing business activities.

Disbursements related to business include acquisition of property that is necessary for business activities, including acquisition of the corresponding right of claim, e.g. granting of loan.

As to loans, term and ability of recipient to repay the loan, interest rate, renewals of the term of repayment, i.e. deferred repayment, and increase of the amount of loan must be considered. Appropriate interest rate depends on the amount of loan, warranties, term of contract and is not required to correspond to statutory interest rate. In exceptional circumstances, even non-interest loans can be considered related to enterprise and therefore non-taxable, e.g. if lender benefits from loan through business projects or other indirect ways.

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Transport law

LATVIA

New law on public transport services entered into force

On July 15, 2007 a Public Transport Services Law entered into force. The aim of this law is to ensure safe and accessible public transport services (carriage of passengers in buses, trams, trolleys and trains) organized in the interests of the public by state and municipalities. This law will become applicable to providers of public transport services starting from January 1, 2008.

The new law determines the competence of the state and municipal institutions in the sphere of public transport, principles of organization of public transport services and sources of their financing. According to this law the compensations for the losses sustained by the carriers as a result of performance of public transport services must be allocated from the state and municipal resources in conformity with the Regulation 1191/69 and judgment of ECJ in the case C-280/00 *Altmark Trans GmbH*.

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Other news

News from Law Office Ots & Co

As of 1 August, after year and a half working at the European Court of Justice, Attorney-at-Law Maris Kuurberg continues her work at Law Office Ots & Co.

Anastasia Puusepp successfully passed the exam of Assistant to the Attorney-at-Law and is as of 4 September 2007 Senior Assistant to the Attorney-at-Law of the Estonian Bar Association.

As of 6 August the team of Law Office Ots & Co is increased by a new member, lawyer Maria Jotautas. Maria graduated the Faculty of Law in Tartu University in 2005 and obtained a Master's degree in 2007. Before joining the law office Maria was a legal adviser at Tartu students' legal bureau and then had a traineeship at the Law Office Aivar Pilv. Maria has specialised in commercial and contract law, property law and litigation.

Tambet Toomela, attorney, published in legal journal *Juridica* no 5/2007 the article "Termination Common Ownership through Division into Physical Shares".

News from Baltmane & Bitans Law Office

We are pleased to announce that Elīna Umbraško, a lawyer, has joined Baltmane & Bitans Law Office. Elīna has experience in the field of employment law, maritime law and contract law. She was formerly employed by the Ministry of Welfare of the Republic of Latvia, Labour Department. As a member of University of Latvia team Elīna participated in Willem C. Vis International Commercial Arbitration Moot held in 2006 and 2007.

Edijs Poga, a lawyer of Baltmane & Bitans Law Office, has been admitted to Pallas LL.M. Advanced European Business Law programme (academic year 2007/2008) with full scholarship. The Pallas programme has been ranked among the six best LL.M. degrees in Europe and the ten best in the world. It is organized by Pallas Consortium – consortium of 9 European universities, among which there are University of Barcelona, University of Bologna, University of Jean Moulin Lyon III and University of Essex. Next 12 months Edijs will spend in University of Essex, United Kingdom.

An interview with Agris Bitāns, a managing partner of Baltmane & Bitans Law Office, involving also discussion on hostile takeovers was published in a daily newspaper "Neatkarīgā Rīta Avīze" (Neatkarīgā Rīta Avīze, July 19, 2007). Another interview concerning legal environment for PPP (Private Public Partnership) projects in Latvia was published in a daily newspaper "Diena" (Diena, July 5, 2007).

We are proud to announce that Baltmane & Bitans Law Office was chosen in the public tender by Riga City Municipality for legal review and drafting of new municipal regulations on construction in Riga City.

Lawyers of Baltmane & Bitans Law Office have recently rendered legal service in relation to the major privatization deal involving privatization of Latvian state owned shares in major Latvian telecommunication companies. Our lawyers conducted legal due diligence of one of these companies and provided advise on the legal aspects of privatization transaction.

News from Law Firm Saladžius & Partners

Law firm Saladžius & Partners has become one of the main sponsors of the annual business leaders conference in Lithuania. Famous International and Lithuanian business advisers, speakers and artists will deliver the speeches and hold the discussions. The conference convenes the most prominent business leaders from Lithuania and is well know in the Baltic region. The Law firm Saladžius & Partners is sponsoring the conference of the top business leaders by bringing to it the architect of the idea of *London 2012 Olympic games* David Magliano. Moreover, the Law firm was invited to host the coffee break which is to be dedicated to London 2012 theme. David Magliano and Jonas Saladžius are expected to pass a couple of words opening the coffee break. Around 300-400 business leaders are expected to participate in the business leaders conference. The conference will take place on 20-21 September in Palanga.

The Law firm Saladžius & Partners sponsors various legal events in Lithuania. The new sponsorship project is the International Conference "15th and 10th Anniversaries of the Constitutions of Lithuania and Poland", organised by the Faculty of Law of Vilnius University on 27-28 September. The Conference is to take place in the Parliament (Seimas) of Lithuania and is to overview the process of constitutionality in two

neighbouring countries and the perspective in the context of European integration. The Event will be attended by the Deputy Chairman of the Lithuanian Parliament and the judges of the Constitutional Court of Lithuania. The speeches will be delivered by the representatives from Poland, Lithuania, Italy, Germany and Russia.

Two articles by associate Audrius Biguzas – *A possibility to terminate an Employment Agreement upon the agreement of the parties* and *The Code does not prohibit to work at home* appeared in the daily *Business News* respectively on 3 July and 7 August.

In September 2007 Maksimas Saveljevas, Partner of the Law firm Saladžius & Partners, participated at the 4th Mergers & Acquisitions International Lawyers Conference in Berlin, Germany. The conference covered various topics regarding mergers and acquisitions in the EU and focused in particular on the financing of mergers and acquisitions.

In September 2007 the Managing Partner Jonas Saladžius (acting as a Board Member of ACC) participated in a one-day workshop on best practices of American Chambers of Commerce (AmCham). The event was organised by the Embassy of the United States of America and American Chamber of Commerce in Lithuania. The goal of the workshop was to prompt a discussion on how the AmCham can be a more effective organisation and its influence on helping the business sector achieving its goals.

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