

Baltic Legal Newsletter

Legal News at Your Glance

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EVERSHEDS OTS & CO
Pärnu mnt 15, 3rd Floor
Tallinn 10141, Estonia
Tel.: +372 614 1990
Fax: +372 614 1999
www.eversheds.ee

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EVERSHEDS BITĀNS
TERBATAS Business Centre,
Lacplesa Street 20a,
3rd Floor, Riga, Latvia
Tel.: +371 67280102
Fax: +371 67504566
www.evershedsbitans.com

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EVERSHEDS SALADŽIUS
VICTORIA Tower,
J. Jasinskio 16B
Vilnius LT-01112, Lithuania
Tel.: + 370 5239 2391
Fax: + 370 5239 2390
www.evershedssaladzius.lt

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EUROPEAN UNION LAW

Treaty of Lisbon signed

On December 13, 2007, in the Jeronimo monastery in Lisbon, Portugal the Heads of State or Government of the 27 EU Member States signed the EU Reform Treaty or Treaty of Lisbon, as it is now called. In taking the European project forward, the Treaty of Lisbon replaces the EU Constitution, which was rejected by voters in a handful of key EU countries. The Treaty alters the legal framework of the Union through a series of amendments to the Treaty on European Union and the EC Treaty. Both of them will remain at the legal foundation of the Union, although the name of the EC Treaty will be changed to the Treaty on the Functioning of the European Union.

The Treaty of Lisbon will provide for more democratic and transparent Europe with an increased role for the European Parliament and national parliaments, possibility for one million citizens from a number of Member States to call on the Commission to bring forward new policy proposals and clearer delimitation between the competences of the Member States and the Union. The Treaty will make Europe more efficient with simplified working methods and clearer, fairer, and more transparent voting rules, streamlined and modern institutions, full-time President of the European Council and an improved ability to act in areas of major priority for today's Union and its citizens, such as areas of freedom, security and justice, energy policy, public health, civil protection and climate change. By promoting the Union's values, providing for legally binding Charter of Fundamental Rights, new solidarity mechanisms and ensuring better protection of European citizens, the Treaty will ensure a Europe of rights and values, freedom, solidarity and security. Finally, with new High Representative for the Union in Foreign Affairs and Security Policy and European External Action Service Europe's voice will be clearer in relations with its partners across the globe.

The Treaty of Lisbon retains most of the content of the rejected EU Constitution. According to Valéry Giscard d'Estaing, the former President of the Convention on the Future of Europe and the 'father' of the EU

Constitution, by agreeing on the Treaty, the European Council has agreed only 'cosmetic changes' to the rejected EU Constitution to avoid the risk of further referendums on ratification. Some commentators have not hesitated to express their opinion on the similarity between the EU Constitution and the Treaty by calling the latter a 'd'jà vu'!

In order for the Treaty to come into force, it will have to be ratified by all the 27 EU Member States in accordance with their constitutional requirements. Several Member States, including Bulgaria, Hungary, Slovenia, Malta, Romania and France, have already ratified the Treaty. Due to the fact that it is very difficult for 27 Member States to agree upon the changes in the legal framework of the Union, the experts predict that the Treaty, if it will enter into force, will last for a lengthy period of time.

For further information please contact Pāvēls Tjuševs at pavels.tjusevs@evershedsbitans.com

The European Court of Justice in the landmark case of SIA Laval un Partneri (C-341/05) condemns the collective action taken by the Swedish trade unions as incompatible with the rules of the EC Treaty and the provisions of the Posting of Workers Directive

During 2004 SIA Laval un Partneri, a Latvian construction company, posted several dozen of Latvian workers to Sweden for work on building sites operated by its Swedish subsidiary L&P Baltic Bygg AB, including a building site in Vaxholm, Sweden. A local branch of a Swedish building and public works trade union requested the Latvian company to sign a collective agreement in respect of the Vaxholm site containing the same conditions the Swedish construction companies are bound by and to guarantee to its workers posted to the Vaxholm site an hourly wage of SEK 145 (approx. EUR 16). Despite collective agreement (providing much lower wages for the posted workers than requested by the unions) concluded pursuant to Latvian law between SIA Laval un Partneri and Latvian building sector's trade union, the members of which were around 65% of the posted Latvian workers, and after the Latvian company finally refused to comply with the request of the Swedish trade union, the latter began blockading the Vaxholm building site. The Swedish electricians' trade union initiated sympathy action against the Latvian company shortly thereafter. As a result, the Latvian workers went back to Latvia and did not

return, the construction contract concluded between the town of Vaxholm and L&P Baltic Bygg AB was terminated, and L&P Baltic Bygg AB was declared bankrupt.

On December 7, 2004 SIA Laval un Partneri commenced proceedings before the Swedish Labour Court (Arbetsdomstolen) against the trade unions, seeking a declaration that both the blockading and the sympathy action were illegal and an order that such action should cease, as well as the compensation for the damages suffered as a result of such action. On April 29, 2005 the Swedish Labour Court decided to make a reference to the European Court of Justice for a preliminary ruling on compatibility of the action taken by the trade unions and application of a special provision of Swedish law known as the "Lex Britannia" with the rules of the EC Treaty on the freedom to provide services and the prohibition of discrimination on the grounds of nationality, and with the provisions of the Directive on the Posting of Workers (Directive 96/71/EC). On December 18, 2007 the Grand Chamber of the ECJ answered the questions asked by the Swedish Court. After holding the reference for a preliminary ruling admissible, the Court held that the blockading and the sympathy action taken by the trade unions against SIA Laval un Partneri for several reasons were not compatible with Article 49 EC and Article 3 of the Posting of Workers Directive. The application of the special provision of "Lex Britannia" was found to be discriminatory and also incompatible with the rules of the EC Treaty, in particular, Articles 49 EC and 50 EC.

Due to the fact that earlier opinion of Advocate General P. Mengozzi, delivered on May 23, 2007, favoured the position of the trade unions, the ruling of the Court took many legal commentators by surprise. Some trade unionists and politicians argue that the Court's ruling 'opens the door to wage dumping in the EU.' The Swedish Court must now decide on the outcome of the case in the light of the Court's ruling. The importance of this ruling is demonstrated by the fact that the observations to the Court were submitted not only by SIA Laval un Partneri and the trade unions, but also by the European Commission, EFTA Surveillance Authority, as well as the governments of Sweden, Belgium, Czech Republic, Denmark, Germany, Estonia, Ireland, Spain, France, Latvia, Lithuania, Austria, Poland, Finland, United Kingdom, Iceland and Norway.

For further information please contact Edijs Poga at edijs.poga@evershedsbitans.com

LEGAL UPDATES IN THE BALTIC REGION

Commercial Law

LATVIA

Amendments to the Act on the Latvian Register of Enterprises

The Parliament adopted a draft act "Amendments to the Act on the Republic of Latvia Register of Enterprises" at the second reading.

The amendments will ensure implementation of EU Directive 2003/58/EC requirements enabling electronic submission of documents to the Register of Enterprises, with the option to deliver data and documents to be disclosed to the public in electronic format.

The draft law also extends the competence of public notaries as regards company registration procedure. The aim is to ensure compliance with the principle of exclusivity and in particular to guarantee exclusive rights to a chosen firm name which would clearly and explicitly differ from other firm names already entered in the commercial register.

The amendments await adoption by the Parliament at the third reading before they can come into effect.

For further information please contact Māris Vainovskis at maris.vainovskis@evershedsbitans.com

LITHUANIA

The New Directive of the European Parliament and of the Council, Amending the 3rd and 6th Directives of Company law, has been adopted

In pursuance to simplify the regulation in the area of Company law, the Directive 2007/63/EC of the European Parliament and of the Council amending the Council Directives 78/855/EEC and 82/891/EEC, which provides the requirements for the merger or division of the company, has been adopted.

Upon implementation of the amendments by the member states, neither an examination of the draft terms of merger or division nor an expert report shall be required if all the shareholders and the holders of other

securities conferring the right to vote of each of the companies involved in the merger or division have so agreed.

The member states shall adopt the implementing measures by 31 December 2008.

For further information please contact Rintis Puišys at rintis.puisys@evershedssaladzius.lt

Public Law

ESTONIA

Changes in Income Tax Act

On 26 March 2008 the Parliament of Estonia passed the Act to Amend the Income Tax Act.

The new regulation is necessary mostly due to the need to harmonize the order of taxation of Estonian companies with Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

Corporate tax stays on the same level as it was since year 2000.

The most important changes:

- 1) Residential legal person and non residential legal person whose permanent place of business is in Estonia has to lodge income tax return once a year (not later than 1st July year after period of taxation);
- 2) residential legal person and non residential legal person whose permanent place of business is in Estonia has to pay regular advance (every calendar quarter) (decrease of the payment can be possible with the decision of tax authority);
- 3) starting from year 2009 withholding of income tax from license fee for non resident legal persons will end;
- 4) profit distribution and liquidation proceeds will be taxed (at the moment partial tax exemption possible).

For further information please contact Mr. Toomas Pikamäe at toomas.pikamae@eversheds.ee

ESTONIA

New Money Laundering and Terrorist Financing Prevention Act came into effect

On 19 December 2007 the Parliament of Estonia passed the Act which took effect on 28 January 2008 and replaced the previous Act. The new act was adopted in order to harmonize Estonian law with two directives, No. 2005/60/EC (Prevention of the use of the financial system for the purpose of money laundering and terrorist financing) of the European Parliament and of the Council of 26 October 2005 and 1889/2005/EC (Prevention of money laundering: controls of cash entering or leaving the Community) of the European Parliament and of the Council.

The purpose of the Act is to prevent the use of the financial system and economic room of Estonian Republic for the purpose of money laundering and terrorist financing.

The new Act is applied for: credit institutions, financial institutions, organizers of game of chance, persons, who are dealing with (including mediation) real estate, traders (if they are paid in sums more than 200 000 kroons or the same amount in other currency in cash), pawn shop holders, auditors and providers of bookkeeping services, providers of bookkeeping or tax advisory services, trust and company service providers. In some cases the Act is applied also for notaries, attorneys, bailiffs, trustees in bankruptcy and others who provide legal services.

The absolutely new claim of the Act is that every obligated person (except credit institution) has to report Financial Intelligence Unit of any transaction, where is paid 500 000 kroons or the same amount in other currency in cash. This notification obligation is applied for credit institution only if it acts like currency swapper.

Very important novation is also that all entrepreneurs providing financial services and are not under control of Financial Supervision Authority, are obligated to register in Register of Economic Activities.

For further information please contact Mr. Toomas Pikamäe at toomas.pikamae@eversheds.ee

Consumer Rights Protection

LATVIA

Adoption of Act on Unfair Commercial Practices

The Act on prohibition of unfair commercial practices entered into force on January 1, 2008. The aim of the act is to ensure protection of consumer economic interests by prohibiting unfair practices against consumers. The act transposes norms from Directive 2005/29/EC, which relates to unfair business commercial practices in the internal market.

The act expressly prohibits misleading commercial practices. That is, if information delivered is false or incomplete or may otherwise mislead the average consumer, it may influence a consumer to decide to carry out a transaction which he otherwise would not have made. This remains so even if the information is *de facto* right concerning the properties of goods or services, access to goods or services, price, consumer rights, or other information.

The act also prohibits aggressive commercial practice. This occurs when, taking an overall view, a practice includes insistent actions, constraint, use of physical force or disproportionate influence which may negatively influence the average consumer to decide to carry out a transaction which he otherwise would not have made.

The Act on prohibition of unfair commercial practice now prevails over the Advertisement Act.

For further information please contact Inese Kalnaja Zelca at inese.kalnaja-zelca@evershedsbitans.com

LITHUANIA

The Law on Prohibition of Unfair Business-to-Consumer Commercial Practices has been adopted

On 21 December 2007 Seimas has adopted The Law on Prohibition of Unfair Business-to-consumer Commercial Practices.

It is sought by this law to implement the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-consumer Commercial Practices in the Internal Market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and

2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

The law prohibits the unfair business-to-consumer commercial practices, defines the types and cases of unfair commercial practices, institutions responsible for supervision of implementation of this law and liability for violation of this law.

Moreover, the law introduces the concept of an average consumer. A consumer shall mean a natural person, who makes a decision to purchase, purchases and uses the product for satisfaction of the consumer's personal, family or household needs, not related to consumer's commercial or professional activities.

The National Consumer Rights Protection Authority is responsible for due implementation of this law, except for the provisions regarding the misleading and comparative advertising, implementation of which is ensured by the Competition Council of the Republic of Lithuania.

The law came into force as from 1 February 2008.

For further information please contact Andrius Mamontovas at andrius.mamontovas@eversheds saladzius.lt

LITHUANIA

The amendments to the Law on Advertising have been adopted

On 11 January 2008 Seimas has adopted *the Law amending and supplementing Articles 1, 2, 5, 6, 12, 17, 18, 22, 23, 24, 25 and the Annex of the Law on Advertising.*

The purpose of adoption of amendments is to harmonize the law with the provisions related to misleading and comparative advertising of *the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-consumer Commercial Practices in the Internal Market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.*

The law determines the criteria of advertising's comprehensiveness: it is indicated that information in the advertising is incomplete, when the substantial

information necessary to make a decision about the transaction is not supplied for the average consumer or when such information is supplied confusedly or untimely.

The concept of „ordinary consumer“ is substituted with the concept of „average consumer“. It is also indicated that when considering whether the advertising is misleading, the advertising is evaluated from the view of the average consumer.

The law came into force as from 1 February 2008.

For further information please contact Andrius Mamontovas at andrius.mamontovas@evershedssaladzius.lt

Law of Succession

ESTONIA

New Law of Succession Act adopted

On 17 January 2008 the Parliament of Estonia passed the Act which shall replace the existing Act. The new Act shall become effective as of 1st January 2009.

The main and most important change in comparison to the existing Act is changeover from estate receiving system to system of waiving.

According to the current Act, which is in effect till the end of the year 2008, after declaring the death of the person the notary will make an announcement in official gazette *Ametlikud Teadaanded*, after what successor has to submit an application in certain time limit to notary. If some successor doesn't read that kind of announcements and other successors will also keep quiet then if he/she will not submit an application, it will be considered that he/she has waived from estate.

According to the new Act it is supposed that successor wants to accept succession. If the successor does not express different wish it will be considered that he/she received the estate automatically. This change is important because it will prevent any abuse of succession between successors.

The second important change concerns management measures of the estate which are in the new Act written more clearly and specifically. Improved management measures will help to prevent the situation where the estate will be spent by some successor.

With adoption of the new Law of Succession Act the disharmony between the existing Act and other civil acts (mostly Law of Obligations Act and General Part of the Civil Code Act) will be eliminated.

For further information please contact Mr. Tarmo Repp at tarmo.repp@eversgeds.ee

Product Liability Law

LATVIA

Amendments to the Safety of Goods and Services Act

The purpose of this Act is to achieve production and circulation of goods and provision of services that is safe, non-harmful to human life, health and the property of a person, as well as non-harmful to the environment.

The amendments require a distributor to reimburse expert examination costs if goods fail to comply with safety requirements and if the producer or service provider is not registered in Latvia.

Moreover, a distributor who reimburses costs of expert examination to the supervision body has the right to reverse action against the producer or service provider.

Expenses must be reimbursed within five days from receiving the document verifying the expenses. If the relevant person refuses to cover the expenses, the market supervision body that organised the expert examination recovers them under procedures laid down by the Act.

For further information please contact Agris Bitāns at agris.bitans@evershedsbitans.com

Procedural Law

LATVIA

Latvian Supreme Court upholds restrictive doctrine of foreign state immunity

On December 12, 2007 the Civil Department of the Senate of the Supreme Court of Latvia (*Augstākās tiesas Senāta Civillietu departaments*), sitting as a full court, handed down its judgment in case SKC-237/2007, V.Č. v.

The Embassy of the Russian Federation in the Republic of Latvia, which concerned a claim by a Latvian citizen against the Russian Federation for recovery of damages resulting from non-fulfilment of obligations arising out of the lease of flat located in Riga, Latvia and owned by the plaintiff.

On the basis of rules of customary international law on state immunity, the Court held that the appellate court had erred in law in granting to the Russian state absolute immunity against the exercise of civil jurisdiction by Latvian courts in this case. Instead, according to the Court, in order to consider the possibility of applying the restrictive doctrine of foreign state immunity and exercise jurisdiction over this dispute, the appellate court should have examined the character of activities undertaken by the embassy in regard to the lease in question. In addition, the Court indicated that the appellate court should have examined whether, by raising legal arguments relating to the merits of the case, the Russian state in any event had waived its immunity. Consequently, the Court remitted the case to the appellate court.

According to customary international law, foreign state immunity constitutes a procedural bar which prevents the courts of one state from adjudicating on the liability of another, since *par in parem non habet imperium* ('an equal has no authority over an equal'). However, according to the restrictive doctrine of state immunity, foreign states are immune from jurisdiction relating to their 'public acts' (*acta jure imperii*), but are not immune from jurisdiction for their 'private acts' (*acta jure gestionis*). According to the Court, the lease in question is not in any way related to the exercise of public functions of the Russian state and is of a private law nature.

As rightly emphasized by legal commentators, the judgment of the Senate of Supreme Court is the first judgment of the Latvian courts containing a solid analysis of the scope and content of notions of foreign state immunity and diplomatic immunity, and thus is an important authority in this regard.

For further information please contact Edijs Poga at edijs.poga@evershedsbitans.com

Employment Law

LATVIA

Profession classifier to be supplemented with new codes and professions

The Welfare Ministry has delivered to the Cabinet of Ministers amendments to the rules governing the professions classifier. The code will include new professions such as medicine registration manager, pharmaceutical product specialist, Internet portal editor, public transport organizer, logistics employee, and others. The professions classifier is an outdated legislative enactment that fails to conform to modern business requirements. As a result, employers will welcome the amendments.

In total the amendments sum up proposals submitted to the Welfare ministry up to October 1, 2007.

At present, the classifier is divided into nine groups based on level of professional qualification (theoretical and practical background) containing more than 4000 professions. For more information about the classifier please visit:

<http://www.lm.gov.lv/?sadala=709>

For further information please contact Māris Logins at maris.logins@evershedsbitans.com or Elīna Umbraško at elina.umbrasko@evershedsbitans.com

ESTONIA

Supreme Court rules on the status of piecework pay

On 19 March 2008 the Supreme Court of Estonia made a judgment by which it took a position that if the worker works on the basis of piecework pay, it is not guaranteed that he/she could get also additional remuneration for working on holidays, night time etc.

Civil Chamber of the Supreme Court explains - it is reasonable that according to the system of piecework pay, parties of the contract of employment agree on standard of the work. On the basis of piecework pay is possible that according to agreement worker will do some specific work for a term. Is also possible that on the basis of the system of piecework pay parties agree on, that the worker is obligated to work on the basis of time-work but he/she will get paid according to the amount of work (not for the time) done. According to the last opportunity, if the

worker accepts to work over the term specified in the act or to work longer than it was agreed between parties earlier or to work on holidays, public holidays and at night time or at evening time, it is not the situation were the provisions of Working and Rest Time Act and Wages Act which regulate the overtime work or working on holidays, public holidays and at evening time and night time will be applied.

Civil Chamber further explains that aforementioned type of agreement for remuneration only according to the work done is not the condition of the contract of employment which is worse for a worker than provided in the act.

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

Energy Law

LITHUANIA

The Law Amending the Law on Heat Sector has been adopted

On 20 November 2007 Seimas has adopted a new wording of the *Law on Heat Sector*.

The law has been supplemented with new provisions regarding the notification of consumers about the services, provided by the heat suppliers, conditions of providing services, prices, etc. Moreover, heat suppliers shall have to inform domestic heat consumers directly about the upcoming price increase not later than one month prior to the price increase.

From now on the heat consumers (natural and legal persons) shall have an opportunity to choose and change the heating method and decide on the beginning and the end of the heating season, except for the offices defined by the municipal institutions for which the beginning and the end of the heating season shall be established by the decisions of the municipal institutions.

The law came into force as from 11 December 2007, except for the provisions, related to the obligation of the suppliers to execute all obligations of arrangement of hot water accounting in the building before setting the heat prices, which provisions will come into force as from 1 May 2008.

For further information please contact Maksimas Saveljevas at maksimas.saveljevas@evershedssaladzius.lt

Criminal Law

ESTONIA

Changes in Penal Code

On 21 February 2008 the Parliament of Estonia passed the Act to Amend the Penal Code. The amendments entered into force on 24 March 2008.

The new regulation is necessary mostly due to the need to harmonize Estonian Penal Code with Convention on Cybercrime - CETS No.: 185 and Council Framework Decision 2005/222/JHA on attacks against information systems.

The Penal Code's regulation concerning computer crimes is amended in case of computer-related fraud with the liability of legal person, which is also provided in aforementioned convention and framework decision. The second important amendment concerns the preparation of computer crimes. Now there is a liability foreseen for preparation of computer crimes concerning: data intervention, prevention of computer system process, spreading of computer viruses, computer-related fraud and illegal use of computer system.

In comparison with the previous regulation, concerning computer crimes in Penal Code, definitions like spyware and malware are added. In some cases terms of punishment for computer crimes were also increased. For example for data intervention: earlier - fine or up to one year imprisonment, now - fine or up to three years imprisonment.

For further information please contact Mr. Toomas Pikamae at toomas.pikamae@eversheds.ee

Insurance Law

LITHUANIA

The amendments to the Law on Sickness and Maternity Social Insurance have been adopted

On 4 December 2007 Seimas has adopted the Law amending and supplementing the Law on Sickness and Maternity Social Insurance, in order to ease the status of the families raising preteen children.

From now on the maternity (paternity) social insurance benefits for persons insured with

social insurance of maternity (paternity) shall be paid for 2 years (till now on it has been paid for 1 year). Until a child reaches the age of 1 year, a maternity (paternity) social insurance benefit shall be paid in the amount of 100 per cent of the compensatory salary, and as from the child reached the age of 1 year until a child reaches the age of 2 years – 85 percent of the compensatory salary.

If two or more children were born, the maternity (paternity) social insurance benefit shall be increased according to the number of children born at one time.

As from 1 January 2009 the maternity (paternity) social insurance benefits shall be calculated according to the income, received during 6 working months instead of 3 working months. The purpose of this is to prevent persons from unfairly getting bigger social insurance benefits, when it is agreed with the employer to increase insurable income.

For further information please contact Maksimas Saveljevas at maksimas.saveljevas@evershedssaladzius.lt

LITHUANIA

Law on Insurance has been amended

As from 10 December 2007 the Law amending and supplementing the Law on Insurance came into force.

The amendments and supplements has been adopted in order to implement the *Directive 2005/68/EC of the European Parliament and of the Council on Reinsurance* and to harmonize the provisions of the law with the obligations of Lithuania in the World Trade Organization in the area of insurance of maritime and aviation services.

The activities of re-insurance companies are regulated more detailed by establishing the rules on commencement and performance of re-insurance activity and criteria for re-insurance companies which they have to meet before engaging in re-insurance activities (they must have minimal guarantee fund, be controlled by persons of impeccable reputation, get a licence, etc.)

From now on in order to ensure reliable management of re-insurance company, the Insurance Commission will be able to evaluate eligibility of shareholders before granting a licence. The Insurance Supervisory Commission will also be able to refuse to issue a licence, if there is a close link

between the re-insurance company and other natural or legal persons.

The functioning re-insurance companies must rearrange their activity until 10 December 2008.

For further information please contact Rintis Puišys at rintis.puissys@evershedssaladzius.lt

Immigration Law

LATVIA

Parliament to decide on facilitated regime for non-Community citizens

A foreigner sent to Latvia by an employer under a service agreement no longer needs a work permit. This refers to third country citizens sent to Latvia who are legally working in one of the EU Member States, EEC states, or Switzerland.

For example, a Korean citizen legally residing and working in Lithuania sent by his employer to Latvia under a service agreement will no longer be required to obtain a work permit in Latvia.

This amendment was drafted by the Welfare Ministry and adopted by the Cabinet of Ministers. It requires further approval by the Parliament.

The amendments envisage implementation of additional regulations to ensure compliance with EU requirements in the field of free movement of services.

For further information please contact Pāvils Tjuševs at pavels.tjusevs@evershedsbitans.com

Copyright Law

LITHUANIA

The recommendations to collective administration of copyright and related rights of public performance and in the area of publication of musical works have been approved

On 25 October 2007 the Minister of Culture of the Republic of Lithuania has approved by his order *the Recommendations to Collective*

Administration of Copyright and Related Rights of Public Performance and in the Area of Publication of Musical Works.

The Recommendations are intended for the users of musical works, i.e. restaurants, music clubs, shopping malls, hotels, other trading or service companies and associations of collective administration of copyright and related rights, which represent the authors, producers of phonograms or performers.

The Recommendations introduce the suggestions, what should be taken into consideration when entering into copyright licencing agreements, agreements regarding remuneration, setting the rates and payment order of remuneration. The alternative disputes resolution methods are also introduced.

For further information please contact Rintis Puišys at rintis.puissys@evershedssaladzius.lt

Financial Services Law

LITHUANIA

The Law Amending the Law on Collective Investment Undertakings has been adopted

As from 1 March 2008 the new wording of *the Law on Collective Investment Undertakings* has come into force.

The aim of the adoption of the Law is to enable establishing the special collective investment undertakings (not only the trust/common funds or investment companies with variable capital, but also the closed-end investment companies and closed-end trust/common funds) by ensuring high level of protection of interests of the subjects, investing in the collective investment undertakings.

The amendments enable the Lithuanian investors (individual or institutional) to indirectly diversify the risk of their portfolio more efficiently and to increase the potential profit by investing through the collective investment undertakings of real estate or private capital collective investment undertakings to the markets of real estate or

others and by taking advantage of the profit of the markets mentioned.

For further information please contact Jonas Saladžius at jonas.saladzius@evershedssaladzius.lt

LITHUANIA

The Rules on Accounting of the Financial Instruments and Their Circulation has been amended

On 28 December 2007 the Lithuanian Securities Commission has approved a new wording of *The Rules on Accounting of Financial Instruments and their Circulation*.

The rules establish the order and conditions of opening, maintaining and closing of the financial instruments' accounts, transfer of book-entry financial instruments between the financial instruments' accounts, principles of financial instruments' accounting, levels of financial instruments' accounting, also determine obligations of financial instruments' account managers and the order of supervision of account managers.

The rules are applicable to accounting of financial instruments and their circulation, when carried out by the Central Securities Depository of Lithuania and account managers (in the securities' accounting system of two levels).

The new wording has come into force as from 6 January 2008.

For further information please contact Jonas Saladžius at jonas.saladzius@evershedssaladzius.lt

Tax Law

ESTONIA

Supreme Court ruling gives guidance in tax claims

On 28 January 2008 the Supreme Court of Estonia made a judgment in case of tax fraud accomplished by the Board member of the company, and explained on which legal basis and in which scope the damages claim of the state can be submitted against the Board member.

The Supreme Court explained that the tax arrears arisen due to the failure to submit tax

returns by the Board member of the company is not presumed as damages the state can demand from the Board member because the state has opportunity to collect the payment of tax arrears from taxpayer (company). If the state finds out (in tax or criminal procedure) concealment of tax claim and it can be collected from the taxpayer (with interest), means that the state has not suffered any damage.

At the same time there is an opportunity that the time between creation tax liability because of non performance of tax declaration and when the tax claim came out, the company is liquidated, company's solvency has decreased or the claim is expired. Then the state could be in worse situation when it would have been when the Board member of the company has had filed tax declarations correctly and in time. Then the claim, which could have been collected by the state in time, has lost his value totally or it has changed partly worthless. In that case cause-and-effect relationship can be observed between the Board member and damage caused to the state.

Worthless tax claim is loss of profit of the state. To identify the amount of loss of profit must be established that the claim of loss of profit could have been probably payable. To give such valuation the evidence which reflect proprietary situation of the creditor should be evaluated.

In consequence, with the non performance of tax declaration made by Board member of the company, the loss of profit of the state is depending also of change of the company's solvency between creation of tax liability and when the tax arrears came up.

For further information please contact Mr. Toomas Pikamae at toomas.pikamae@eversheds.ee

Accounting Law

LITHUANIA

Amendments in the business accounting standards

The Business Accounting Standard 13 "Intangible Assets" has been amended

On 20 November 2007, the Director of the Institute of Accounting of the Republic of Lithuania has approved by his order the amendments to the Business Accounting Standard 13 "Intangible Assets".

The Standard, applicable to the accounting for intangible assets, has been stated in a new wording.

The Business Accounting Standards are compulsory for the limited liability legal entities, which have chosen to handle accounting in pursuance of the Business Accounting Standards according to the requirements of the Law on Accounting of the Republic of Lithuania.

The Business Accounting Standard 14 "Business Mergers" has been amended

On 19 December 2007 the Director of the Institute of Accounting of the Republic of Lithuania has approved the new wording of Business Accounting Standard 14 "Business Mergers".

This business accounting standard is applicable to business mergers, when: (a) one company takes over the control of another company; (b) one company acquires the assets or their part or takes the undertakings or a part thereof of another company with intention to continue the activity of that company; (c) two or more companies are being reorganized by merging them together.

Except for the provisions on assessment of goodwill, this standard is not applicable for accounting of acquisition of investments in the associated companies or the companies, controlled according to the agreement on joint activities (partnership), because acquisition of such companies is not considered to be a business merger according to this standard.

The amendments came into force as from 4 January 2008.

For further information please contact Rintis Puišys at rintis.puissys@eversheds.saladzius.lt

Advertising Law

LITHUANIA

The amendments to the Law on Alcohol Control have come into force

As from 1 January 2008, the amendments made on 21 June 2007 to *the Law on Alcohol Control* have come into force.

Pursuing to control negative social appearances which relate to consumption of alcohol, it is established by the amendments that alcohol advertising shall be prohibited from 6 a.m. to 11 p.m. in the programs broadcasted by the broadcasters or re-

broadcasters registered in the Republic of Lithuania.

For violations of the law legal persons, branches and representative offices of foreign legal persons shall be imposed a fine from one thousand to ten thousand Lit, and for repeated non-compliance with the said requirements committed within five years from the imposition of the fine – from ten thousand to twenty thousand Lit.

For further information please contact Rintis Puišys at rintis.puisys@evershedssaladzius.lt

OTHER NEWS

Full membership with Eversheds International Limited law firm

We are pleased to inform you that all our three Baltic law offices have become full members of Eversheds International Limited, an international law firm, with its head office based in London, with 36 offices in major cities across Europe, Middle East and Asia.

We would also like to inform you that we have changed the names of our companies: from now on the law office Ots&Co will be called Eversheds Ots&Co, Baltmane & Bitans law office will be called "Eversheds Bitans" law office and "Saladzius & partners" law office will be called "Eversheds Saladzius".

News from Eversheds Ots & Co

As of February and March the team of Law Office Ots & Co., is increased by new members, lawyers Paloma Krõõt Tupay, Siim Tammer, Aleksandr Kostjukevits and Aldo Urm. Before joining the Law Office, Paloma Krõõt had a traineeship in the Country Court of Düsseldorf and worked in the law firm Kanzlei Färber Rechtsanwälte. Before joining the Law Office, Siim worked in law department of Ministry of Culture as a chief specialist and in bailiff's office of Terje Eipre as a lawyer. Before joining the Law Office, Aleksandr had a traineeship in the Law Office and Ministry of Justice and worked in the Country Court of Viru as a consultant. Before joining the Law Office, Aldo worked in AS CorpEstonia as a lawyer.

In March 2008, Maivi Ots, partner, published in "Eesti Päevaleht" the article "Due Diligence and business secrets".

In January and March 2008, Anastasia Puusepp, attorney, published in "Delovõje Vedomosti" two articles: "Lessees and accessory expenses" and "Sorting of waste is preferred".

News from Eversheds Bitāns

An article by partner Agris Bitāns was published in the 2006 Tort and Insurance Law Yearbook. Mr. Bitāns commented on amendments to the Latvian Civil Code concerning regulation of immaterial losses, which herald a new era of protection from non-pecuniary loss. The Tort and Insurance Law Yearbook is jointly edited by the European Centre of Tort and Insurance Law and the Research Unit for European Tort Law of the Austrian Academy of Sciences.

Ilze Kramiņa, associate, qualifies to the Latvian Bar Association. Ilze has been working in our Office since 2006. Ilze studied law in the Latvian University (B.A., 2005) and obtained LL.M from the Latvian University in 2006. Ilze specialises in public and administrative law, litigation and construction law.

Māris Vainovskis, partner, heads the Foreign Investor Council working group. The group is developing amendments to the Public Procurement Law and the Law on Procurement for the Needs of Utilities Providers. This is necessary to improve procurement procedures at legislative level for state and municipal needs. Taking into account the extensive foreign experience of its members, the Foreign Investor Council is eager to contribute constructively to this issue.

Ginta Sniedzīte, associate, commenced a doctoral studies programme in law at Parix X University Nanterre (academic year 2008/2009). The university is renowned in the fields of Law and Economics. At postgraduate level, the university offers strongly competitive programs (highly selective Masters in Law and Business) and partnerships with *the Grandes écoles* such as the École Polytechnique, or the ESSEC. Alumni include the current president of France, Nicolas Sarkozy.

Baltmane & Bitans Law Office offers training for Middle and Senior Management in cooperation with the School for Directors. The School for Directors is an exclusive professional improvement programme aimed at assisting middle and senior managers and shareholders in performing their direct functions, gaining and developing a future

vision for their businesses. Trainers at the School for Directors are partners A. Bitāns and M. Vainovskis, and associate I. Kramiņa.

News from Eversheds Saladžius

Jonas Saladžius, the Managing Partner, was invited to join the Lithuanian Business Delegation to London City. The Delegation was accompanying the President of Lithuania Valdas Adamkus to His Excellencies visit to the United Kingdom. The visit of the Mission was commenced with the official dinner event, participated by Baroness Thatcher, politicians and businessmen of the United Kingdom as well as the Lithuanian delegation. The discussion *Globalization and financial markets* was held on the second day of the visit. The discussion was hosted by the Lord Mayor of the City of London and the speeches were presented by the President and the Minister of Finance of Republic of Lithuania.

The Law Firm Eversheds Saladžius is proud to inform you that it has just completed the overview of the legal environment for Mergers & Acquisitions 2008 in Lithuania.

The research was ordered and published by London based publishing house the Global Legal Group Limited, issuer of *the International Comparative Legal Guide Series*, providing international comparative territorial legal surveys covering the key legal practice areas. *The Comparative Legal Guide to Mergers & Acquisitions 2008 Lithuania* focuses on basic rules governing M&A transactions, mechanics of acquisition, deal protection and other issues related to M&A in Lithuania. Should you wish to read the *Mergers & Acquisitions 2008 Lithuania Guide*, please visit homepage of Legal Group Limited: www.iclg.co.uk.

The Managing Partner Jonas Saladžius participated at the *36th Annual Meeting of Presidents of Bar Associations and Law Societies* in Vienna, Austria. As the Head of the Delegation of the Lithuanian Bar Association to CCBE (*Council of Bars and Law Societies of Europe*) he took part in the Council of CCBE meeting. Heads of the national bar associations from 32 countries participated at the event and discussed relevant EU legislation issues.

Eversheds Ots & Co (Estonia), Eversheds Bitāns (Latvia) and Eversheds Saladžius (Lithuania) are members of Eversheds International Limited. This newsletter contains the summary of business law related matters of current legal interest in the European Union, the Baltic region generally and every Baltic state in particular. It also contains the internal news of our law firms.

You will receive the Baltic Legal Newsletter quarterly. To unsubscribe, please send an email to: birojs@evershedsbitans.com

This newsletter is intended as general guidance and is not a substitute for detailed advice in specific circumstances.

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