

Baltic Newsletter

Legal News at Your Glance

Autumn Edition, 2005

Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania) hereby present the third edition of the Baltic Newsletter. 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: New Regulations on Regional Airports Development and Mobility*** • ***Estonia: Major Changes to Commercial Code*** • ***Latvia: Legal Entities Not Considered Consumers Anymore*** • ***Lithuania: National Euro Adoption Plan***

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EUROPEAN UNION LAW

New Regulations on Regional Airports Development and Mobility

In order to promote development of regional airports, as well as to facilitate opening of more regional routes in Europe, the European Commission has adopted new Regulations. In general, these Regulations deal with the terms and conditions for granting of state aid to airlines commencing new routes from regional airports; equal treatment of state and private airports; and elimination of possibility that aided airport could find itself in a more beneficial situation than a non-aided airport.

For instance, the state aid will be granted to cover (at the amount not exceeding 30% to 50%) additional costs related to the opening of a new route - marketing costs or expenses related to business operation commencement within the respective regional airport. In addition, the new route should become profitable afterwards; therefore the aid may be received only for 3 years, or 5 years at less beneficial and more remote areas.

Special attention is devoted to the financing of airports by states and to the investments into the airports' infrastructure. The European airports have become competitive to such extent, that the European Court of Justice has recognized them entrepreneurs. It has been emphasized that the airport infrastructure serves not only for the operation of the airport, but it may also serve as a tool for achievement of aims of regional economic development, territorial management and accessibility. Therefore the procedures for competition regulations application to airports are also specified in the Regulations.

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LEGAL UPDATES IN THE BALTIC REGION

Accountancy law

ESTONIA

Amendments to the Accounting Act

On 1 December 2005 amendments to the Accounting Act will enter into force. Under the amendments, a management report must provide for more detailed information regarding the company's activities. Amendments further specify the rules concerning drafting and contents of the annual accounts of a consolidation group.

For further information please contact Maivi Ots at maivi.ots@otsco.ee

LATVIA

Regulations on Mandatory Accountancy Standards

The Cabinet of Ministers has passed new Regulations on the Mandatory Applicable Accountancy Standards. These Regulations apply to all entities being subjected to the requirements of the Corporate Annual Reports Act or Consolidated Annual Reports Act.

The standards listed and referred to in the Regulations should be applied in order to approve and evaluate positions of the annual accounts or consolidated annual accounts, as well as to provide explanations thereon. The list of Latvian accountancy standards concerns drafting of financial reports, cash flow reports, reports on events after the balance sheet date, and long-term contracts, as well as reports on the change of accountancy policy, accountancy estimations and errors of previous periods.

For further information please contact Ilze Baltmane at ilze.baltmane@baltmanebitans.com

LITHUANIA

New business accountancy standard on interim financial statements

The 29th business accountancy standard on interim financial statements came into force on 30 September 2005. It specifies the order for drafting of the interim financial statements and the requirements for minimal information disclosure. The interim financial statements are the financial statements of a company for the period not exceeding company's financial year. The companies shall prepare the interim financial statements in accordance with the provisions of this business accountancy standard irrespective of whether the requirement for the preparation of the interim financial statements is provided by law or the company has decided to prepare it at its own initiative.

The discussed standard provides that the interim financial statements shall be drafted in accordance with the accountancy policy of the annual financial statement.

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

Commercial law

ESTONIA

Major changes to the Commercial Code

On 12 October 2005 the Estonian parliament adopted several major changes to the Commercial Code. The changes will become effective as of 1 January 2006 and relate, inter alia, to the liability of founders of a private or public limited company upon the establishment of the company, acquisition or taking as security by its own share(s) by a private or public limited company, calling a meeting of shareholders of a private or public limited company, as well as consequences if rules for the calling are substantially violated, cases where decisions of a private or public limited company are considered as null and void, payment of fee to a member of the management board and liability of

member of the management board, merger of companies etc.

Although the changes cover many issues (there are more than 330 changes in total to the current version of the Commercial Code), we would like to draw attention especially to the duties of a member of the management board of a private or public limited company upon its insolvency. If a company is insolvent and such situation is not temporary, member of the management board must promptly but not later than within twenty calendar days as of the day when the insolvency became evident submit bankruptcy application to a court. If a member of the management board fails to meet the above obligation, he or she may be punished under the Penal Code and required to compensate all damages incurred due to such failure.

For further information please contact Maivi Ots at maivi.ots@otsco.ee

LATVIA

Customers Rights Protection Act Amended

Several innovations have recently been introduced into the Customers Rights Protection Act. First of all, legal entities are no longer considered customers; therefore only private individuals are now protected under this Act as consumers. In addition, it is specified now that the concept of the service provider refers only to service providers rendering services within the scope of their commercial or professional activity.

At the same time, the statutory regulation on the requirements for compliance of goods and services to the contractual terms, as well as on the information rendering commitments concerning goods and services remains applicable to legal entities.

Finally, new regulation on the consumer protection in case of illegal use of their credit cards is introduced. Thus, customers are now entitled to request the respective credit institution to cancel the unlawful transaction or to re-pay the money.

Moreover, the burden of proof is shifted to the credit institutions, as they are required to prove that the particular transaction was verified with an identification code etc., as well as to prove that the customer had acted imprudently or maliciously. Finally, the credit institutions are declared liable for their maliciousness or imprudence when servicing credit cards.

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LATVIA

Regulations on Biofuel Adopted

New Cabinet of Ministers Regulations on biofuel are adopted. These Regulations mainly concern the quality requirements and compliance evaluation of biofuel, market supervision and procedures for informing of customers.

In general, the Regulations provide for a list of quality standards. Furthermore, the biofuel should be produced, mixed with oil products, remanufactured and imported into the Latvian market from the EU Member States in compliance with the requirements of the Excise Act and other regulations on excise goods. Moreover, the market supervision is carried out by the State Revenue Service, State Police and Consumers Rights Protection Bureau.

It is also prescribed that the wholesalers and retailers of biofuel are required to place informative signs at the containers of biofuel containing particular information. In addition, the retailers are required to inform customers that specially adapted internal combustion engines are required for cars to use biofuel.

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Construction law

LITHUANIA

Draft law to impose stricter sanctions for the violation of construction regulations has been presented

Article 4.103 of the Civil Code of the Republic of Lithuania regulates the legal civil consequences of violation of normative technical construction specifications. Currently valid wording of the said Article provides for a possibility to legalize wilfully erected constructions if the court delivers a judgment demanding a constructor to obtain a construction permit within the period set by the court. The objective of the proposed draft law is to eliminate the possibility to legalize wilful constructions, to prevent them and to guarantee control of construction process and quality of buildings. The draft law proposes the following legal civil consequences of wilful constructions which differ depending on the nature of unlawful constructions:

- if the building is being constructed or was constructed wilfully or in violation of essential building project requirements, this building shall be demolished following the judgment of the court;
- if, however, other than essential building project requirements are violated during construction, the court may oblige the constructor to modify building project or eliminate defects related to the project documentation or oblige the constructor to reconstruct the building in accordance with procedures established by the laws within the term set by the court.

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Employment law

LATVIA

Employment Act Amended

The Employment Act was recently amended to harmonize its regulation with the EU legislation requirements. First, the amendments define that

the informing of the employees' representatives denotes their rights to acquaint themselves with the respective issue by receiving the necessary information duly, timely and to the adequate extent. At the same time, the consulting with the employees' representatives means exchange of opinions with the employer in order to reach an agreement. In addition, the consultations should take place at the appropriate level, timely and in due course.

Second, the issue of employment contract term of Board members of capital companies has now been resolved. Before amendments were passed, the term of a limited term employment contract could not exceed 2 years. Currently the Employment Act states that the term of the limited term employment contracts should not exceed 2 years, unless different term is prescribed by other laws. Thus, as the Commercial Act of Latvia prescribes a 3-year long term of office for Board member, it is now possible to enter into 3-year limited term employment contracts with the Board members.

Finally, the heatedly disputed issue of the statutory basis for employment termination is now resolved. Employee's refusal to accept the amendments to the employment contract proposed by the employer may not *per se* serve as a separate statutory basis for employment termination. The employer is required to terminate employment only on the grounds listed in the Article 101 of the Employment Act, for example, due to the breach of work procedures, loss of confidence, redundancy etc.

For further information please contact Ilze Baltmane at ilze.baltmane@baltmanebitans.com

Environmental law

ESTONIA

Estonian Environmental Strategy until 2010

On 26 October 2005, the Estonian parliament adopted the decision "The Estonian Environmental

Strategy until 2010". Although the decision does not set forth obligations to any concrete state or local institutions, it states current problems in different sectors of environment and goals to be achieved. Moreover, from a legal point of view the decision is a law, which is adopted by the highest legislative body and has, therefore, the highest legal force. The decision may be used in order to interpret clauses of other laws and regulations (such as the Waste Act, the Packaging Act, etc).

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

Financial law

ESTONIA

Electronic Money Institutions Act

On 19 October 2005, the Electronic Money Institutions Act was adopted. The Act will become effective starting from 1 January 2006. The passing of the Electronic Money Institutions Act was due to the need to comply with the requirements of the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on taking up, pursuit of and prudential supervision of the business of electronic money institutions.

The Act provides for the definitions of electronic money and electronic money services, as well as that of the electronic money institution, rules applicable to provision of electronic money services (this includes need to hold a concerning license and to have a share capital of at least EUR 1,000,000), management, merger, division and dissolution of electronic money institution.

For further information please contact Randu Riiberg at randu.riiberg@otsco.ee.

ESTONIA

Changes to the Securities Market Act and Investment Funds Act

On 19 October 2005 changes to the Securities Market Act and Investment Funds Act were

adopted. Certain part of the changes became effective on 15 November 2005, whereas other part (e.g. new creditability criteria of investment funds) will enter into force as of 1 January 2006.

Again, changes to the Securities Market Act and Investments Funds Act were passed in order to fulfill requirements of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities, and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions.

Under the amendments, the definitions of offer of securities, public offer of securities and issue of securities were specified; new requirements on public offer prospectus were introduced (including possibility to carry out public offer in another state of European Economic Area). With reference to changes to Investment Funds Act, new creditability criteria and new report submission requirements shall be effective as of 1 January 2006.

For further information please contact Randu Riiberg at randu.riiberg@otsco.ee.

Insurance law

LITHUANIA

The rules on compulsory insurance activities carried out in Lithuania by the insurance companies of non – EU companies approved

On 20 September 2005 Insurance Supervisory Commission of the Republic of Lithuania approved the procedures following which the insurance companies of non - EU countries are entitled to pursue the activities of compulsory insurance, if the insurance coverage granted by the insurance company established under the laws of the Republic of Lithuania, a branch of the insurance company of a foreign country established in the Republic of Lithuania or a branch of the insurance

company of other EU member state is not recognized in that foreign country.

The procedures approved by the Insurance Supervisory Commission of the Republic of Lithuania prescribe that insurance companies of foreign countries, entitled to provide compulsory insurance coverage effective in foreign countries, may provide such services in the Republic of Lithuania through insurance intermediaries only and lay out the requirements for obtaining the right to carry out the insurance activities in Lithuania.

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International law

ESTONIA

Rules concerning the issue of apostille's in respect of Estonian public documents

The Government of the Republic established by the Regulation No 279 dated of 31 October 2005 rules on certification of Estonian public documents by the issue of apostille's. The regulation relates to Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents.

The Regulation determines authorities (e.g. the Ministry of Justice and the Ministry of Social Affairs) and documents in respect of which the authorities are entitled to issue apostille's; requirements on application for the issue of apostille, as well as deadlines for administering an application.

For further information please contact Annika Raidmaa at annika.raidmaa@otsco.ee.

IT law

LATVIA

Protected Service Act

The aim of the recently adopted Protected Service Act is to provide for statutory safeguard of service provider from unauthorized use of the said services for commercial purposes by third parties who exploit illegal IT systems.

The protected service (broadcasting, information society's services etc.) is a service provided on the limited access basis against payment, while the illegal system is a limited access system used without prior consent or individual permit of the protected service provider. Furthermore, the production, importation and installment for commercial purposes, as well as advertising of illegal systems are declared prohibited by the Act. Finally, the supervision over the abidance of the Act is carried out by the State Police, Customers Rights Protection Center, National Radio and Television Council and other competent institutions vested with the right to request explanations, provision of necessary permits, certificates or contracts, as well as to prepare protocols on administrative breaches.

For further information please contact Dace Cīrule at dace.cirule@baltmanebitans.com.

Media law

LATVIA

Mass Media Act Amended

The amended Mass Media Act now declares that in case untrue information is published on any natural person or legal entity, the respective person is entitled to request not only revocation of the published information, but also the apology (which was not regulated before). Regulation is now provided for publishing of the revocation of untrue information and the apology, as well as for the

requesting of untrue information revocation and apology at court.

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

Public law

LITHUANIA

The National Euro Adoption Plan and Public Information and Communication Strategy for the Adoption of the Euro Approved

The Government of the Republic of Lithuania approved the National Euro Adoption Plan and the Public Information and Communication Strategy for the Adoption of the Euro on 29 September 2005. The National Euro Adoption Plan lays down the main elements, timetable and order of the adoption of the euro (changeover from the litas to the euro). The goal of the Public Information and Communication Strategy for the Adoption of the Euro is to help the society to prepare for the adoption of the euro.

The Plan determines that the day of the adoption of the euro will be 1 January 2007. The euro becomes the only currency for payment as of this date, except for a period of 15 days during which payments will be allowed in litas as well as in euros.

It should be noted that after the adoption of the euro, the nominal value of the shares of the companies would have to be expressed in whole cents of euro. In addition, as from 1 January 2007 the accountancy of the companies will have to be maintained in euro. The financial statements for the year 2006 will be drafted in litas.

For further information please contact Beatričė Laužikaitė at beatrice.lauzikaitė@splegal.lt

Tax law

ESTONIA

Double Tax Conventions with Lithuania, Romania and Slovak Republic

Estonian parliament ratified three Conventions for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital. The conventions were signed with Lithuania, Romania and Slovak Republic. As Estonia has for its part performed all constitutional requirements necessary for the implementation of the Conventions, the entry into force of the Conventions depends now on how soon other Contracting States succeed to comply with their own constitutional requirements.

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

LITHUANIA

Double Tax Convention with Republic of Austria

The Convention between the Republic of Lithuania and the Republic of Austria for the avoidance of double taxation with respect to taxes on income and capital was ratified by the Seimas of the Republic of Lithuania on 13 October 2005. This is the thirty ninth convention of the Republic of Lithuania for the avoidance of double taxation with respect to taxes on income and capital.

For further information please contact Rimtis Puišys at rintis.puivys@splegal.lt

Case law

Competition law

LATVIA

Competition Council Resolution on “Slavish Imitation”

Within one of the competition law matters brought before the attention of the Competition Council, the

Council emphasized that the market participant (producer or distributor), who puts new goods on the market is responsible that the putting of a new good on the market does not violate legal interests of third parties. Moreover, the liability of the market participant shall not be affected by any agreements among third parties on development of such goods.

In addition, the Competition Council, in order to substantiate its legal reasoning, referred to the type of unfair competition called “*slavish imitation*”. The said term denotes unfair behavior, when a market participant imitates product of the competitor without investing any money and assets therein, and without any creation efforts, which would have secured fair competition.

The above mentioned breaches were established in the acts of the company, which, on a contractual basis, produced and marketed goods under the title, the usage of which was earlier prohibited by the Competition Council.

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

Pharmaceutical law

LITHUANIA

Constitutional Court rules on provisions of the Law on Pharmaceutical Activities

On 29 September 2005 the Constitutional Court of the Republic of Lithuania delivered a ruling on the compliance of the provisions of the Law on Pharmaceutical Activities regarding advertising of prescriptive medicine with the Constitution of the Republic of Lithuania.

The Constitutional Court ruled that the prohibition established by the Law on Pharmaceutical Activities to present via radio and television the information about medicines which is of not advertising character and which does not amount to advertising, the dissemination of which via radio and television would not create preconditions to

make harm to people's health, is in conflict with principle of proportionality established in the Constitution of the Republic of Lithuania.

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

Social Security law

LATVIA

Constitutional Court Judgment on Child Care Allowance

It was formerly guaranteed by the state, that a monthly child care allowance is paid to one of the parents until the child reaches the age of 1 year. However, it was prohibited to be employed and to receive the allowance simultaneously. A constitutional complaint in this regard was submitted to the Constitutional Court.

The Constitutional Court ruled that the right to the social protection system constitutes an integral part of the human rights. Although the restriction was intended to protect child's rights, these restrictions place too much of a burden on the individuals. Often a non-interrupted employment allows for retaining competitiveness at the employment market. Therefore, on the one hand, the disputed restrictions attained a short-term goal – protection of child's rights during the first year of his life. On the other hand, they do not provide for family protection after the one year period. Due to the said reasons, the Court ruled that the contested restrictions are incompatible with the constitutional guarantees, therefore part-time employment should be allowed to the individuals receiving monthly child care allowance.

For further information please contact Dace Cīrule at dace.cirule@baltmanebitans.com.

OTHER NEWS

Law Office Ots & Co

Maris Kuurberg, Attorney-at-Law participated in the Bancaja Euromediterranean Courses of International Law from 5 to 16 September 2005.

Raiko Lipstok passed successfully exam of Attorney-at-Law and is as of 4 October 2005 Attorney-at-Law of the Estonian Bar Association.

Tambet Toomela passed successfully entrance exams of the Estonian Bar Association and is starting from 15 November 2005 Assistant to Attorney-at-Law of the Estonian Bar Association. Additionally, as of 18 November 2005 Tambet is Chairman of the management board of the Estonian Moot Court Order.

Maivi Ots, partner, delivered presentation at high level Tax and Accounting Conference on 17 November 2005 in Tallinn. Further, Maivi Ots published article in Estonian Business Gazette, treated changes to the Commercial Code effective as of 1 January 2006, being the first one to introduce the changes.

Baltmane & Bitans Law Office

Along with the development of our services and the expansion of our practice **we are moving into new offices as of December 2005**. Our new office will be at Tērbatas Business Centre at 3rd floor, Lāčplēša street 20^a, Riga. Our telephone, fax numbers and e-mail addresses remain the same.

On Independence Day, 18 November, the Prime Minister of Latvia granted to Agris Bitāns, partner, special award of Cabinet of Ministers. The input and effort of Agris Bitāns into the elaboration of the widely used and highly estimated Civil Code commentaries were recognized by the Cabinet of Ministers. The awarding took place at a solemn

ceremony in the premises of the Cabinet of Ministers.

Journal *The European Lawyer* quoted Ilze Baltmane, partner, on the concerns of domestic lawyers with respect to their countries adopting the CCBE code of conduct. The requirements and standards of the domestic codes of conduct differ from those of the CCBE code; nevertheless open discussions thereon are not yet commenced.

The European Lawyer, July/August 2005, Issue 50, page 56.

On September 23, 2005 Agris Bitāns, partner, presented a report at the International Conference "Impartial Monitoring of Transactions. Role of Notary at Mortgage Crediting Procedure". The report was drafted in close co-operation with Kristīne Steģe, lawyer. The conference dealt with the aspects of the crediting transactions from the customer protection viewpoint. Representatives of Parliament, banks, real estate companies, as well as notaries took part in the Conference.

The article of Agris Bitāns, partner, was published at the European Tort Law 2004, publication of Tort and Insurance Law Yearbook issued by the European Centre of Tort and Insurance Law.

Law Firm Saladžius & Partners

The *IFLR1000 (International Financial Law Review)*, the international legal market's leading guide to the world top law firms advising on international corporate finance, distinguished the Managing Partner of the Law Firm Jonas Saladžius as "highly visible in the Lithuanian banking market".

The research, conducted by the Guide, nominated the Law Firm Saladžius & Partners as one of the most reputable law firms in Lithuania, saying that it "has made impressive inroads into the mergers & acquisitions market in Lithuania this year and (...) looks well placed to build on its efforts over the coming year". The Guide also specifies some of the major projects executed by the Law Firm during

the year 2005. More information relating to the rankings given to the Law Firm Saladžius & Partners by *IFLR1000* may be found at www.iflr1000.com

The Lithuanian Bar Association nominated Jonas Saladžius as a member of the Disciplinary Committee of the Lithuanian Bar Association. The Disciplinary Committee supervises the performance of professional duties of attorneys-at-law and compliance with the requirements of the Code of Professional Ethics for lawyers.

The European Lawyer, the reputed journal observing the law society and legal events in Europe, quoted the Managing Partner of the Law Firm Saladžius & Partners on the principals of 'freedom of establishment' affecting inward investments to Lithuania: "(...) *We encourage our clients to enjoy the benefits of four freedoms, and to take advantage of the integration into a larger internal market for trade and investment*". The same article distinguished the Law Firm Saladžius & Partners as one of the leading law firms in Lithuania, accentuating its expertise and rapid growth.

The European Lawyer, July/August 2005, Issue 50, pages 55-62.

This document is intended for informational purposes only and does not constitute legal advice.

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