

# Baltic Newsletter

## Legal News at Your Glance

Winter Edition, 2006

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*Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania) hereby present the fourth 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.*

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***In this issue:*** • ***EU: Improvement of Shareholders' Cross-border Rights*** • ***Estonia: Environmental Charges Act adopted*** • ***Latvia: Immigration Act amended*** • ***Lithuania: Labour Code supplemented***

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#### Law Office Ots & Co

Pärnu mnt 15, 3rd floor  
Tallinn 10141, Estonia  
Tel.: +372 614 1990  
Fax: +372 614 1999  
[www.otsco.ee](http://www.otsco.ee)

#### Baltmane & Bitans Law Office

TERBATAS Business Centre,  
Lacplesa Street 20<sup>a</sup>, 3st Floor, Riga, Latvia  
Tel.: +371 7280102  
Fax: +371 7504566  
[www.baltmanebitans.com](http://www.baltmanebitans.com)

#### Law Firm Saladžius & Partners

VICTORIA Tower, J. Jasinskio 16B  
Vilnius LT-01112, Lithuania  
Tel.: + 370 5239 2391  
Fax: + 370 5239 2390  
[www.splegal.lt](http://www.splegal.lt)

## EUROPEAN UNION LAW

### *Proposed Directive for Improvement of Shareholders' Cross-border Rights*

The European Commission has called for a new directive for protection of the shareholders' cross border rights. It should be noted, however, that this proposal refers only to joint stock companies listed on the EU stock exchanges.

Currently foreign shareholders face several obstacles in realization of their shareholder rights in public companies of other Member States. For instance, usage of voting rights may be impeded, access to information delayed; there are complex requirements for the distance voting, etc.

A certain set of minimum standards for improvement of shareholders' cross border rights is therefore proposed. Among other matters, the general meetings should be convened with at least a one-month prior notice. Besides, all information related to such meeting should be available electronically on the Internet at the same time. Moreover, the voting procedures should be improved. A choice among several distance voting options should be granted to foreign shareholders. Besides, voting results should be available electronically on the Internet. Finally, additional requirements on the blocking of shares and participation in the general meetings of authorized representatives are included in the Commission's proposal.

*For further information please contact Dace Cīrule at [dace.cirule@baltmanebitans.com](mailto:dace.cirule@baltmanebitans.com)*

### *Domicile Principle Suggested in Tax Calculation*

The European Commission has come up with a suggestion for facilitating of the development of small and medium enterprises (SMEs). It should

be noted, that currently it is not planned to change the criteria of the SMEs: *i.e* no more than 250 employees and no more than annual turnover of 50 million euros.

The cross – border development of the SMEs is often hindered by taxation related issues. Usually, SMEs are characteristic with their familiarity with the tax legislation of their registration state. However, when developing their cross-border branches, SMEs are required to become familiar with tax legislation of the respective state. At the same time, the conducted surveys identify that SMEs often pay large amounts in income tax and face high VAT related costs.

Therefore it is now suggested that the domicile principle is used in the tax calculation by SMEs. According to the suggestion, these companies should calculate their profits in accordance with the tax legislation of their registration state. Thus the familiarity with the domestic tax legislation would simplify the calculations for SME and its foreign branches. After the applicable profit of SME and its branches in other EU countries is calculated, each of the involved Member States would be entitled to require the SME and its branches to pay the applicable taxes at the rate set by the respective Member State.

This system is tended towards mutual recognition of tax legislation by the Member States. The Commission has suggested that this system could be introduced in Member States on a voluntary basis for a period of five years.

*For further information please contact Dace Cīrule at [dace.cirule@baltmanebitans.com](mailto:dace.cirule@baltmanebitans.com)*

# LEGAL UPDATES IN THE BALTIC REGION

## Commercial law

### ESTONIA

#### *Establishment of rules relating to Statute for a European Cooperative Society (SCE)*

On 14 December 2005 Estonian parliament passed the Act on the Application of the Regulation 1425/2003 on the Statute for a European Cooperative Society (SCE). The Act provides for the rules concerning establishment, corporate bodies, representation and termination of a SCE. Generally, the provisions of the Regulation are applied.

*For further information please contact Maivi Ots at [maivi.ots@otsco.ee](mailto:maivi.ots@otsco.ee)*

### LATVIA

#### *Act on Alienation of State and Municipal Property Amended*

Several amendments have been made to the Act on Alienation of State and Municipal Property. One of the key innovations is that state movable property can be transferred into the property of foreign or international organizations without proper remuneration. In each situation, Cabinet of Ministers shall resolve on such transfer of the movable property. In addition, Cabinet of Ministers is obliged to provide for the procedures for such transfer of property.

The law includes also amendments which shall take effect as of 1 January 2007. These amendments provide that the Act does not cover state or municipal land plots, which are envisaged for compensatory change of land plots with the owners of the land plots marked as micro restricted areas and nature conservation areas.

*For further reference please contact Kristine Stege at [kristine.stege@baltmanebitans.com](mailto:kristine.stege@baltmanebitans.com)*

## Data Protection law

### LATVIA

#### *Information Publicity Act*

The Information Publicity Act now contains a developed definition of commercial secret. It is stated that commercial secret shall mean information created or possessed by the merchant, the disclosure of which could affect its competitiveness. When filing such information with state authorities, merchant is entitled to indicate the information containing the commercial secret. At the same time, it is emphasized that information related to execution of the state authority functions cannot be regarded commercial secret.

It is also stated that a public institution should provide information at its own discretion or at the request of a private person. At their discretion, the institutions may publish information of general accessibility also on Internet. Finally, in case already published (in the Official Gazette "Latvian Herald") general accessibility information is required by a person, the institution may refer the person to the respective publication.

*For further reference please contact Agris Bitāns at [agris.bitans@baltmanebitans.com](mailto:agris.bitans@baltmanebitans.com)*

## Employment law

### ESTONIA

#### *Amendment to the Employment Contract Act*

The Estonian Employment Contract Act was amended in the way that the age of an employee is no longer basis for the termination

of an employment contract on the initiative by an employer. For the time being an employer may terminate an employment contract if the employee reaches the age of 65 years and is entitled to the full old-age pension. The amendment will become effective starting from 4 March 2006.

*For further information please contact Rando Maisvee at [rando.maisvee@otsco.ee](mailto:rando.maisvee@otsco.ee)*

## **LITHUANIA** *Supplement to the Labour Code*

On 20 December 2005 the Parliament of the Republic of Lithuania (Seimas) adopted the Law on Supplement to the Labour Code with the Article 162(1). As from now the rest days to be granted to employees under the terms of the Labour Code and coinciding with holidays shall be transferred to the next workday. It shall be noted, that the collective agreement may provide for other order of the transfer of rest days that coincide with holidays.

*For further information please contact Andrius Mamontovas at [andrius.mamontovas@splegal.lt](mailto:andrius.mamontovas@splegal.lt)*

## **LITHUANIA** *Amendments to the Law on Labour Councils*

On 17 November 2005 the Parliament of the Republic of Lithuania (Seimas) has adopted the law by which some provisions of the Law on Labour Councils were amended and supplemented.

Taking into consideration that under certain circumstances the Labour Code provides for the labour council's right to declare a strike, the Law on Labour Councils was supplemented accordingly. When representing the employees of the company the labour council has the right to declare a strike and conduct it, in case the company has no functioning trade union and if the staff meeting has not delegated the

functions of representation and protection of the employees to the trade union of the appropriate sector of economic activity.

*For further information please contact Maksimas Saveljevas at [maksimas.saveljevas@splegal.lt](mailto:maksimas.saveljevas@splegal.lt)*

## **Environmental Law**

### **ESTONIA** *The Environmental Charges Act became effective*

On 1 January 2006 the Environmental Charges Act came into force. The Act provides for the complete regulation relating to both pollution charges (a charge to be paid for the issue of pollutants or waste into the environment) and environmental fees (a charge to be paid for the use of natural resources, e.g. use of water or mineral resources, fishing, hunting). Until the entry into force of the Environmental Charges Act, the pollution charges were regulated in the Pollution Charge Act, whereas the environmental charges were dealt with in different special Acts (such as the Water Act, the Hunting Act etc). The Act stipulates the basis for calculation, order of payment and the usage purposes of environmental charges. One of the results of the Act is the increase of rates of environmental charges (i.e. both pollution charges and environmental fees).

*For further information please contact Toomas Pikamae at [toomas.pikamae@otsco.ee](mailto:toomas.pikamae@otsco.ee)*

### **ESTONIA** *The establishment of the Register of Products of Concern*

On 13 February 2006 the Regulation No 28 of the Government of the Republic concerning the establishment and the Statute of the Register of Products of Concern became effective. The creation of the register forms the final step in complete implementation by Estonia of the

Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles and the Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE). The Statute provides for the producer's obligation to register itself in the Register and to submit to the Register a report regarding the treatment of products of concern during the calendar year by the 1<sup>st</sup> of March of the following year at the latest.

*For further information please contact Toomas Pikamäe at [toomas.pikamae@otsco.ee](mailto:toomas.pikamae@otsco.ee)*

## Immigration law

### LATVIA

#### *Immigration Act Amended*

The Immigration Act has been amended substantially in order to harmonize its regulations with a number of the EU directives. Several substantial changes have been made to the statutory regulation on residence and work permits.

It is now stated that in general the work permit is necessary for a foreigner wishing to be employed on the basis of the employment contract or any other civil law contract. This requirement is now referred to both the Council and the Board of a company.

In addition, the term for which a temporary residence permit may be issued to a foreigner, has been increased. Now registered individual merchant or sole shareholder of a commercial company may apply for the said permit for a term of 5 years (instead of 1 year formerly), but in case of employment, a foreigner is permitted to apply for a 5-year permit (instead of a 4-year one). Moreover, Board and Council members are now entitled to apply to a 5-year permit

instead of a 4-year permit stipulated by the previous statutory regulation.

Finally, the amended Act now indicates, that procurists, administrators, liquidators, or authorized representatives of branches of foreign companies are permitted to apply for a terminated residence permit for a term of 5 years.

*For further reference please contact Māris Vainovskis at [maris.vainovskis@baltmanebitans.com](mailto:maris.vainovskis@baltmanebitans.com)*

## International law

### ESTONIA

#### *Social Security Agreement between Estonia and Canada*

The Estonian Parliament ratified the Social Security Agreement between Estonia and Canada. The Agreement provides for rules of mutual co-operation in social security issues such as pension and health insurance and covers residents of both countries. Nevertheless, for the entry into force, the Agreement must be ratified by Canada as well.

*For the further information please contact Toomas Pikamäe at [toomas.pikamae@otsco.ee](mailto:toomas.pikamae@otsco.ee)*

### LITHUANIA

#### *Convention between the Republic of Lithuania and the Republic of Estonia for the avoidance of double taxation and prevention of fiscal evasion*

The Convention between the Republic of Lithuania and the Republic of Estonia for the avoidance of double taxation and prevention of fiscal evasion was ratified by the Parliament of the Republic of Lithuania (Seimas) on 15 December 2005 and came into effect on 14 January 2006.

It should be noted, that this convention will replace the currently valid Convention between

the Republic of Lithuania and the Republic of Estonia for the avoidance of double taxation and prevention of fiscal evasion, due to the fact that the latter does not correspond to the amended tax system of the Republic of Estonia.

*For further information please contact Rimtis Puišys at [rimtis.puisys@splegal.lt](mailto:rimtis.puisys@splegal.lt)*

## Tax law

### ESTONIA

#### *Several changes to the Act on VAT*

The Act on VAT was amended substantially in order to make the Act in line with the concerning EC directives. The changes include, *inter alia*, definitions of terms “mediation service” and “tax storage”, specification of rules applicable to a non-resident entrepreneur and permanent establishment of non-resident entrepreneur, as well as rules concerning import of goods and intra-community transactions. The majority of amendments came into force as of 1 January 2006. However, certain amendments will become effective starting from 1 November 2006 and 1 January 2007.

*For further information please contact Toomas Pikamäe at [toomas.pikamae@otsco.ee](mailto:toomas.pikamae@otsco.ee)*

### LATVIA

#### *Draft Regulations on Exemption of Public Benefit Organizations from Real Estate Tax*

The Ministry of Finance has elaborated Draft Cabinet of Ministers Regulations on Exemption of Public Benefit Organizations from real estate tax. Such exemption is envisaged with respect to the buildings and constructions owned by such organizations.

The Draft regulations provide, that the following preconditions should be met in order to qualify for the tax exemption: (1) the buildings or constructions should be registered under the

name of the association or foundation, (2) the respective building or construction should not be used for pursuance of commercial activity, and (3) the association or foundation should possess the status of the public benefit organization.

The Draft Cabinet of Ministers regulations are elaborated in compliance with the recent amendments to the Real Estate Tax Act. The said Act required the Cabinet of Ministers to state criteria for the above stated tax exemption.

*For further information please contact Ilze Baltmane at [ilze.baltmane@baltmanebitans.com](mailto:ilze.baltmane@baltmanebitans.com)*

## OTHER NEWS

### Law Office Ots & Co

Starting from 1 January 2006 the team of Law Office Ots & Co. is increased by a new member, legal assistant, Tarmo Repp. Before joining the law office Tarmo worked as a lawyer in SEB Eesti Ühispank, the second largest commercial bank in Estonia, and has, therefore, remarkable working experience relating to financing transactions and warranties.

Randu Riiberg, formerly Assistant to the Attorney-at-Law, successfully passed the exam of Attorney-at-Law and is as of 10 January 2006 Attorney-at-Law of the Estonian Bar Association.

On 14 February 2006 Maivi Ots, partner, successfully defended her Master's thesis in University of Tartu and was conferred the degree of *Magister Juris*. The subject of Maivi's Master's thesis was "Liability of the members of the management bodies in relation to the creditors of the company".

Maivi Ots, partner, delivered lectures at the tax subjected seminar organized by the leading Estonian business newsletter "Äripäev" and at the training of the Estonian Accountants' Union on 6 February 2006 and 21 February 2006, respectively. The lecture presented at the seminar concerned the tax liability of the members of the management bodies of private legal entities, whereas that of the Estonian Accountants' Union related to the changes to the Estonian Commercial Code.

Maris Kuurberg, Attorney-at-Law, won scholarship for a five months' practical training at the European Court of Justice. Therefore, from 27 February 2006 until 27 July 2006 Maris will study issues of the EC law and especially

court proceedings of the European Court of Justice.

### Baltmane & Bitans Law Office

As a result of our practice growth, we have moved into new offices since early January 2006. Our new office is located at the Tērbatas Business Center at Lāčplēša Street 20a, 3<sup>rd</sup> floor, Riga, LV-1010, Latvia. Our other contact information has remained the same, including phone and fax numbers, and e-mail addresses.

We are pleased to announce that Ilze Kramiņa, legal assistant, has joined Baltmane & Bitans Law Office. Ilze has extensive experience in the administrative law, as formerly she was assistant to the Chairman of the Administrative Appellate Court. Ilze has work record in Riga District Court as well. She practices in the fields of administrative and commercial law.

The lawyers of Baltmane & Bitāns Law Office have recently published several articles. These include:

- *Termination of Employment Contract due to Amendments Suggested by Employer*. Izle Baltmane, partner, and Dace Cīrule, associate; published in *Dienas Bizness / Saldo*, December 2005, No 21(27);
- *Wider Development Perspectives for Air Traffic Industry of Latvia*. Dace Cīrule, associate; published in *Dienas Bizness / Saldo*, December 2005, No 21(27);
- *Local Municipalities Often Adopt Unlawful Resolutions*. Agris Bitāns, partner, and Ilze Kramiņa, legal assistant; published in *Dienas Bizness*, 24 January 2006.

Three representatives of our office were invited speakers at the Regional Conference on the recently adopted Criminal Procedure Act. On 9 December 2005 Agris Bitāns, partner, reported on the issues related to moral detriment and compensation thereof. Māris Vainovskis,

associate, and Dace Cīrule, associate, discussed the innovative regulation of the presumptions of fact and law incorporated in the new Criminal Procedure Act. The findings of their international research on the subject were also presented. The Conference was attended by audience exceeding 200 persons, including the Minister of Justice, justices from Constitutional Court, Supreme Court and other courts, key officers from Prosecutor General's Office, Latvian Bar Association and Police.

On 15 February 2006 the 64<sup>th</sup> Scientific Conference of the University of Latvia was held in Riga. Māris Vainovskis, associate, and Dace Cīrule, associate, were invited to share their expertise derived from their research on the presumptions of fact and law, which was conducted with an international dimension. The Conference was attended by audience exceeding 100 persons, among them by the Minister of Justice, Prosecutor General, Vice Chairman of the Supreme Court of Latvia and others.

## Law Firm Saladžius & Partners

The Law Firm Saladžius & Partners is proud to inform you that it has just completed the overview of the legal environment for Real Estate 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 Real Estate 2006 Lithuania* focuses on real estate rights, system of registration, financial, environmental and other issues related to real estate in Lithuania.

Should you wish to read the Real Estate 2006 Lithuania Guide, please visit homepage of the

Law Firm Saladžius & Partners [www.splegal.lt](http://www.splegal.lt) or Global Legal Group Limited homepage [www.iclg.co.uk](http://www.iclg.co.uk)

The team of legal experts of the Law Firm Saladžius & Partners has just been joined by three newcomers. This is the result of the great winter recruitment process that has started as before the Christmas and has just been finalised. The newly recruited lawyers are well distinguished for their social and professional activities. Jevgenija Kovaliova is the President of ILSA (International Law Students Association) and has gained great attainments in organising various conferences and seminars on international law. Laimonas Mačiulis is actively participating at the debates and holds numerous awards received at the significant student tournaments in Lithuanian and abroad. Audrius Biguzas has recently returned from his studies in Germany. Audrius possesses a profound knowledge of German civil law.

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

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