

# Baltic Newsletter

## Legal News at Your Glance

Spring 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 fifth 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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## EUROPEAN UNION LAW

### *Abolition of border control at internal borders of the European Union as of 13 October 2006*

On 15 March 2006 the European Parliament and the Council issued the Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

The Regulation establishes new rules for crossing by persons of both external and internal borders of the European Union.

The most important amendment the Regulation provides for relates to the abolishment of border control at internal borders between the Member States of the European Union. As the Regulation becomes effective starting from 13 October 2006, it means that as of the referred date there are no border checks on persons, irrespective of their nationality.

The persons enjoying the above freedom are the Union citizens (i.e. citizens of a Member State of the European Union), and third country nationals who are members of the family of a Union citizen, as well as third country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

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

### *EU Policy on Prices and Taxes of Cigarettes*

The European Commission has expressed its concerns regarding the policy of several Member States in determining the minimum retail prices for cigarettes in their statutory acts. This was done in order to pursue their health

protection policies. Currently the Commission has initiated violation procedures against these Member States.

It is claimed that the Member States have wrongly interpreted and applied the European Council Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco. The Directive permits producers and importers of tobacco products, but not the states to set the minimum retail prices. In case minimum retail prices are determined by the state, Community legislation is breached, the competition is disturbed, and the profit volumes of producers are unjustly limited. In addition, centralized retail prices are not necessary in order to improve health protection, as the same aim can be reached by increase of excise tax and other applicable taxes and duties.

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### *Simplification of the formation, maintenance and alteration of companies' capital*

The European Parliament has agreed to the proposal of the European Commission concerning the simplification of the formation, maintenance and alteration of companies' capital. The purpose of the proposal for a Directive amending the Second Company Law Directive (77/91/EEC) aims at facilitating capital related measures taken in public limited liability companies. Should amendments be adopted it would be easier to adjust the size of share capital and ownership structure, thus enabling companies to react more promptly to market developments while maintaining safeguard offered for shareholders and creditors.

Upon the implementation of the proposed amendments and subject to the existence of the conditions foreseen in the Directive, the member states would be authorised to eliminate the requirement for the valuation by the experts of

the in kind contributions to the share capital (e.g. in the cases when the assets being contributed have recently been subject to the independent expert valuation, when transferable securities are being contributed, etc). On the proposal of the Commission the obligatory limitation for the companies to acquire its own shares will be eliminated. Instead of the applicable at the moment limit of 10% of the subscribed capital, the company will be able to acquire its own shares up to the limits of distributable reserves even if the latter amount to more than 10 % of the subscribed capital.

It is also intended to simplify the rules on “financial assistance”. Under the current general prohibition a company may not advance funds, nor make loans, nor provide security, with a view to the acquisition of company's shares by a third party. This prohibition will be changed by authorizing the member states in certain circumstances to permit the limited liability companies to provide such financial assistance, which cannot exceed the limit of distributable reserves, same as in the case of the acquisition of own shares. Should amendments to the Directive be approved, some other rules related to companies' capital, which must be currently followed by the companies, would also be simplified.

It should be noted that the EU Second Company Law Directive is applicable only for public limited liability companies with share capital. Despite that, a number of EU members (including Lithuania) also apply provisions of the Second Directive to the private limited liability companies. Hopefully, when the proposals mentioned above are approved, the rules of the Directive, simplifying measures on share capital will be relaxed for both the public limited liability and private stock companies.

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## *Mergers and Acquisitions in financial sector*

On the 19<sup>th</sup> of April 2006, the European Commission closed the public consultation on legal acts regulating the process of approval by the supervisory authorities of the shareholding transactions in the banking, insurance and securities sectors.

The applicable EU legal acts provide for the opportunity of member states to establish the right of supervisory authorities to block proposed share transactions, if they consider that the transaction may impair the company, which shares are being transferred. In Commission's opinion, the current regulation puts obstacles in the way of solid cross-border integration of member states in the financial sector, therefore, in the process of ongoing review of the legal regulation in this field, the stakeholders were asked to express their views on the opportunity to improve the existing EU legal acts.

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## *More Stringent EU Requirements to Healthy Products*

The European Parliament has resolved to introduce common and more stringent requirements with respect to the labeling of food products with the “low fat level” and similar indications signaling about the healthy characteristics of the respective product.

Currently the European Council is required to resolve on the issue within a 4-month term, but the Regulation should become effective 20 days after its publication on the Official Journal. It is also foreseen that the food products with the current labeling will be permitted on the market for 3 years after entry into force of the Regulation. However, the products, the brand and trade name of which makes reference to the product's impact on health and weight, will

be permitted on marked for 15 years after entry into force.

The European Commission is expected to elaborate description for each category of food products, specifying the characteristic contents of salt, sugar and fat therein. Thus it will be permitted to specify that the product is with a low fat level only in case the permissible salt and sugar level will correspond to the above description.

Finally, the Regulation will introduce a new common registry of permitted indications on the products. Thus the producers will be able to use any indication without undergoing registry procedures. Furthermore, in order to use an indication not registered with the registry, the producer would have to obtain permit for usage of a new indication. It is estimated that such permit would be obtained within 5 months, but in case of baby food and food for lowering the risk of certain deceases – within 7 months. Similar initiatives on common and more stringent requirements are elaborated also with respect to the vitamins, minerals and food additives in the food products.

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### ***Public Discussions on Simplified EU Directive on Construction Products***

The European Council Directive 89/106/EEC on Construction Products provides for complex administrative procedures with respect to the construction products circulation on single market. It requires adding of technical specifications to construction products produced by any producer. In addition, individual Member States have introduced additional requirements for placing of respective products on their markets.

Considering the above, it is the current position of the Commission that too much of unnecessary burden is placed on the producers

of construction products, leading to substantial hindrances to the free movement of goods within the single market. Therefore the Commission has now opened public discussions on simplification of the Directive, by making it more effective and user friendly. The main focus of the discussion is placed on the possibilities to lessen the administrative costs, especially of small and medium size enterprises, as well as to make the drafting and usage of technical specifications more flexible.

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## **LEGAL UPDATES IN THE BALTIC REGION**

### **Commercial Law**

#### **LATVIA**

##### ***Commercial Act Amended***

Recently amendments were made to the Commercial Act of Latvia, in order to eliminate several minor hindrances which were established in its practical application. However, the most important changes are related to the regulation on auditors of the companies.

The Commercial Act no longer requires for mandatory appointment and registration of the company's auditor with the Commercial Registry. It is actually stated, that in general the companies are not required to appoint and register auditors.

At the same time due attention should be paid to the drafting and filing of the audited annual accounts. It is currently required, that audited annual accounts should be filed only in the following circumstances: (1) if it is required by another statutory act; (2) in case the company's articles of association provide for preparation of audited annual accounts; or (3) in case the

general meeting of the company has resolved on preparation of audited annual accounts.

For instance, mandatory preparation of audited annual accounts is required by the Corporate Annual Accounts Act for the companies, which correspond to at least two of the following criteria: (1) total sum of balance sheet at least at the amount of 100'000 LVL, (2) annual net turnover at least 200'000 LVL; and (3) average number of employees during the accounting period is 25 or above.

It should be noted, that in case audited annual report should be prepared due to the above statutory requirements, the annual report should be verified by a sworn auditor or a company of sworn auditors. However, the company is entitled to choose whether to engage a sworn auditor or not, in case audited annual report should be prepared due to the requirements of the company's articles of association or resolution of the general meeting.

Finally it should be pointed out, that previously the re-election of the company's auditor was required on an annual basis. Now it is stated that, in case it is so resolved by the company to appoint the auditor, the appointment should be valid for an unlimited period of time, until the general meeting resolves on appointment of another auditor.

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## LITHUANIA

### *The draft Law on European Cooperative Societies*

This draft law prescribes, that the Law on European Cooperative Societies of the Republic of Lithuania regulates the incorporation, management, restructuring and transfer of the registered office of legal persons, which have the legal form of European cooperative society. The legal norms of the Republic of Lithuania regulating the activity of cooperatives and stock

companies, to the extent it is allowed by the EC Council Regulation No. 1435/2003/EC dated 22 July 2003 concerning the Statute of European Cooperative Society (SCE) and as far as it is not otherwise regulated in this regulation, in the abovementioned draft law and other laws regulating the activity of European cooperative societies, shall be applied mutatis mutandis to the European cooperative societies whose registered office is in the Republic of Lithuania.

After this law and other statutory regulations required for this purpose are adopted, it will be possible to incorporate one more legal entity operating in the dimension of European Union - European cooperative society. Meanwhile it is possible to incorporate European Economic Interest Groupings and European Companies.

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## Educational law

### ESTONIA

#### *Rules of assessment and academic recognition of foreign documents certifying the education*

On 6 April 2005 the Government of the Republic established rules for assessment and academic recognition of foreign documents certifying education, as well as rules for use of foreign or transnational qualification in Estonia. The Regulation fills a large gap because until its establishment, there was no rules on the issues as to which state or other authority, on the basis of which requirements and how should appraise or recognize foreign documents certifying education. Under the Regulation, the assessment of foreign documents is generally carried out by the Estonian Center of ENIC/NARIC, whereas the decision on recognition of foreign documents is made by the educational institution with which the applicant is making his or her studies, or by his or her employer.

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## Immigration law

### ESTONIA

#### *Amendments to the Aliens Act*

The Estonian parliament passed the Law on Amendments to the Aliens Act and Concerning Acts. The amendments are due to the need to bring the Aliens Act in line with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents and Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. The amendments provide for the concept of a long-term resident permit which replaces that of the permanent resident permit. The amendments establish additional and stricter requirements for the grant of long-term resident permit. Under the new rules for obtaining long-term resident permit the applicant must, *inter alia*, have been resided in Estonia at least during five years directly before applying for the permit, and must have fulfilled the integration requirement (i.e. the applicant must be proficient in the Estonian at least at the level established by the Language Act).

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### LATVIA

#### *Immigration Act Amended*

Several substantial amendments have recently been made to the Immigration Act of Latvia mainly in order to harmonize its regulation with the requirements of the European Council Directive 2003/109/EC on the status of the third-country nationals who are long-term residents.

Among other innovations, it is now clearly stated in the Act that no work permit in Latvia is required for the individual, who has received

residence permit of the long-term resident of the European Communities in Latvia.

Furthermore, the application term for permanent residence permit has now been reduced in the following situation: foreigners (non-EU Member States nationals) who have resided in Latvia on the basis of the temporary residence permit for no less than five years are now permitted to apply for a permanent residence permit. Previously the required residence term on the basis of a temporary residence permit was 10 years.

At the same time, it is no longer possible for the individual to apply for a 5-year temporary residence permit, in case he or she has invested no less than 600'000 LVL (approximately 860'000 EUR) into the share capital of the company registered in Latvia.

Moreover, currently the regulation for representation of foreigners at court in matters related to the both residence issues and classified information, is clarified to more detail. Provided that the defense lawyer of the foreigner does not have permit for accessing classified information, the court should appoint another attorney at law having such permit for representation of the foreigner's interests.

However, in case the foreigner is not satisfied with such appointed attorney at law, the court is entitled to review the classified information without the presence of the foreigner and his representative. Besides, as the court is not permitted to disclose the classified information also in its ruling, it should only specify therein that it has reviewed and evaluated the classified information.

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## LATVIA

### *Residence Declaration Act Amended*

The residence declaration procedures have now been improved. Previously physical presence of the individual was required at the residence declaration office, in order to personally submit the declaration form.

The procedures have now been improved so, that submission of the declaration via mail or electronic mail is permitted. The submission to the office should include the information on the individual's name, surname, personal identity code, to-be-declared place of residence, former place of residence and legal justification to reside in the to-be-declared place of residence, as well as the passport number or number of any other identification document valid in Latvia.

After having received the individual's submission, the office is obliged to fill in the residence declaration form and to send it back by mail to the individual for signing. At the end, the individual should sign the filled-in form and return it by mail to the office. Thus the recently introduced procedures allow for saving of individual's time and effort.

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## LITHUANIA

### *Draft law on amendments to the Law on the Status of Aliens*

It is proposed by this draft law to change the notion of the family members of European Union citizens by broadening it and including persons who are financially supported by the citizens of the EU or who have to stay with the citizens of EU for other reasons. It should be noted that according to this draft law the directives of EU, regulating the family reunification, the status of citizens of third countries or questions concerning status of stateless persons, are implemented.

According to this project it is proposed to strengthen the liability of the persons who abuse the possibility to acquire permit to live in the Republic of Lithuania by making a fictitious marriage. Also, it is proposed to add provision in the law that the citizen of EU loses permit to live in the Republic of Lithuania, if he/she gets another permission to live in another country of the EU; the permit is also cancelled if the alien lives outside the EU member state for more than 12 consecutive months.

*For further information please contact Ruta Radzeviciute at [ruta.radzeviciute@splegal.lt](mailto:ruta.radzeviciute@splegal.lt)*

## LITHUANIA

### *New Instructions concerning permanent residence of aliens*

These instructions regulate the examination of foreigner's request to grant or change the permit for permanent residence in the Republic of Lithuania, the assessment of making fictitious marriage and awarding of decisions to grant permit for permanent residence in Lithuania.

The instructions provide that any person individually or through the representative presents an application form to grant permit for permanent residence in the Republic of Lithuania. The legal act provides also the list of documents to support the application. The period of such application examination is six months.

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## Information Technology law

### LITHUANIA

#### *The draft law on Information Society Services*

The draft law indicates that the provider of services of information society may be natural or legal person, including the branch or

representative office of the foreign company and these services may be provided without any consent of the public administration institution, unless other laws provide for otherwise. The draft law also provides for the main concepts such as e-commerce, the services of information society, commercial information, etc. The services of information society are defined as the services provided usually for remuneration by electronic means upon the individual request of the receiver of the services of information society.

The Law will provide the possibilities of developing services based on modern technologies and e-business.

For further information please contact Beatrice Laužikaite at [beatrice.lauzikaite@splegal.lt](mailto:beatrice.lauzikaite@splegal.lt)

## International law

### ESTONIA

#### *New Social Security Agreement between Estonia and Finland*

The Estonian Parliament ratified the Social Security Agreement between Estonia and Finland. The Agreement establishes rules for a grant of Finnish old-age pension, widow's pension, child's pension or incapacity for work pension to persons who have settled to Estonia. The Agreement also annuls the most part of the previous Social Security Agreement between Estonia and Finland entered into in 1996. For the entry into force the new Social Security Agreement between Estonia and Finland must be further ratified by the Finnish Parliament.

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## Labour law

### LITHUANIA

#### *New wording of the Order of Issuance of Permit to Work for foreigners*

In a new wording of the abovementioned order the list of people, to whom the declaration shall not be applied is extended. This list includes the citizens and their family members of the member states of the European Free Trade Association, which have the same right of free movement as the citizens of the member states of European Union. Besides, the list of people who do not need to obtain the permission to work was extended, by including the coaches; the permanent residents of the member state of European Union, who while having the permit to work and live temporarily have worked and lived in the Republic of Lithuania for 1 year and who want to work according to the employment contract; the representatives of charity organisations from abroad.

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## Property law

### ESTONIA

#### *Ban on transfer of structures as movables starting from 1 March 2006*

On 1 March 2006 an amendment to the Law of Property Application Act came into force. The amendment establishes general ban on transfer of a structure (either building or construction) as a movable, i.e. without registering the land under the structure in the land register. This means that after the 1<sup>st</sup> of March 2006 a structure built on the land which is not registered in the land register cannot be sold, granted or bartered. The only exceptions from the ban are cases where the structure is sold in the bankruptcy, expropriation or execution proceedings, or the title of ownership to the structures passes over as a result of universal succession or by a will or succession contract. The ban neither applies to utility networks or constructions. Until the above date the transfer of a building as a movable was allowed. This was due to the fact that the large part of the land was not registered in the land register and could

not, therefore, be object of any transactions. However, by now a greater part of the land is registered in the land register and may be sold, granted or bartered. The legislator also tries by the ban to speed the registration of the land in the land register.

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## Public law

### LITHUANIA

#### *Law Concerning Amendment to the Article 125 of the Constitution of the Republic of Lithuania*

The section 2 to the article 125 of the Constitution of the Republic of Lithuania prescribing that only the Bank of Lithuania shall be entitled to issue currency, shall be revoked by this law. Such correction of the provisions of the Constitution of the Republic of Lithuania was necessary in pursuance of preparation for the adoption of the euro. It should be noted that this law has entered into force on 26 May 2006.

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## Tax law

### ESTONIA

#### *Signing of Double Tax Convention between Estonia and Greece*

On 4 April 2006 the representatives of Estonia and Greece signed the Double Tax Convention between Estonia and Greece for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital. As usual the Convention is based on the OECD model. For the entry into force the Convention must be ratified by parliaments of both Estonia and Greece.

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

### LITHUANIA

#### *The international treaty came into force*

On 14 April 2006 the Treaty Regarding the Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Income and Capital executed between the Government of the Republic of Lithuania and Grand Duchy of Luxembourg, signed on 22 November 2004 in Brussels and ratified by the Republic of Lithuania on 12 May 2005 by the law No. X-191, entered into force. The provisions of this international treaty shall be applied to:

- a) withholding taxes - in respect of income received on 1 January 2007 and afterwards;
- b) the other income and capital taxes - for levying taxes for any fiscal year, starting on 1 January 2007 or afterwards.

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## OTHER NEWS

### Law Office Ots & Co

On 18 March 2006 the 9<sup>th</sup> Estonian Moot Court Competition took place in the Supreme Court of Estonia. Tambet Toomela, Assistant to the Attorney-at-Law and Chairman of the Estonian Moot Court Union was one of the main organizers of the competition, whereas Toomas Pikamäe, Attorney-at-Law served in the honorable court panel. This year's case focused on environmental law, especially on issues relating to the use of water and Natura 2000 regulations.

Starting from 7 April 2006 the team of Law Office Ots & Co., is increased by a new member, legal assistant Jekaterina Shkurd. Before working with the Law Office, Jekaterina worked with Law Office Kaasik & Ko. Jekaterina is specialized in company law and bankruptcy law.

On 26-28 April 2006, attorneys of Law Office Ots & Co. delivered lectures in Estonian Business School, the largest private university in Estonia. As in the last year the lectures were held within the Executive MBA program covering thereby completely the legal part of the program. The subjects included general principles of civil law, conclusion of contracts, company law, employment law and tax law.

Rando Maisvee, formerly Assistant to the Attorney-at-Law, successfully passed the exam of Attorney-at-Law and is as of 9 May 2006 Attorney-at-Law of the Estonian Bar Association.

## Baltmane & Bitans Law Office

We are very pleased to announce that attorney at law Maris Vainovskis has been promoted as partner of Baltmane & Bitans Law Office.

Agris Bitans, partner, was elected President of Latvian National Group of International Association for the Protection of Intellectual Property (AIPPI). AIPPI is the world's leading non-government organization for research into, and formulation of policy for, the law relating to the protection of intellectual property. AIPPI unites practitioners, academics and owners of intellectual property.

Maris Vainovskis, partner, and Dace Cirule, associate, were invited to publish their in-depth international study on the innovative regulation of the presumptions of fact and law incorporated in the Criminal Procedure Act of Latvia. The publication was prepared at the request of the Latvian Bar Association for the purposes of its distribution to all attorneys at law attending the Annual General Meeting of the Latvian Bar.

The lawyers of Baltmane & Bitans Law Office have recently published the following articles:

- *The Role of Non-Pecuniary (Moral) Damages is expected to Grow.* Agris Bitans, partner; published in *Dienas Bizness / Saldo*, April 2006, No 7(34);
- *What Should Be Considered when Appealing Resolution of Local Municipality to Administrative Court?* Agris Bitans, partner, Ilze Kramina, legal assistant, and Maris Logins, legal assistant; published in *Dienas Bizness / Saldo*, May 2006, No 8(35).

## Law Firm Saladžius & Partners

Law Firm Saladžius & Partners together with the daily newspaper "Verslo Žinios" prepared a manual of contracts in which the managing partner Jonas Saladžius, the associated partner Aušrys Šliavas and the assistant to Attorney-at-law Andrius Mamontovas arranged the section on service and commercial contracts.

The Senate of Mykolas Romeris University awarded the assistant to Attorney-at-law Andrius Bambalas with the memorial scholarship of professor Mykolas Romeris for his active participation in social practice and brilliant study results.

Partner Maksimas Sveljevas and lawyer Audrius Biguzas published an article "Need for Non-Disclosure Agreements Keeps Growing" in *AmCham Magazine*, the publication of the American Chamber of Commerce in Lithuania.

Lawyer Jovita Matijošute has recently published an article "Bank Account Abroad: between the Internal Revenue Service and Foreign Bank" in the daily newspaper "Verslo žinios".

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