

# Baltic Newsletter

## Legal News at Your Glance

Winter Edition, 2007

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

*We hope that the Baltic Newsletter will contribute in helping the foreign investors to get up-to-date understanding of the legal environment in the dynamically growing Baltic region.*

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## EUROPEAN UNION LAW

### *Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax*

The Directive aims to clarify and restructure the provisions of previous VAT related Directives such as Directive 67/227/EEC and Directive 77/388/EEC by incorporating the provision into one and clearly understandable legal document.

Although the Directive does not, in principle, bring about material changes in the existing VAT legislation, it clarifies and harmonizes multiple issues such as clarification of the terms of “taxable transaction” and “place of supply”, harmonization of the rules governing deductions, fixing the minimum standard rate of VAT of 15% in the Community, and exclusion of Åland Islands and Channel Islands from the scope of the Directive, etc.

The Directive came into force on 1 January 2007 and Member States are granted time period until 1 January 2008 in order to bring their concerning legislations in line with the contents of the Directive.

The previous Directive 67/227/EEC and Directive 77/388/EEC are repealed; however this does not affect the obligations of the Member States concerning the implementation of those Directives.

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

### *Directive 2006/123/EC of 12 December 2006 on services in the internal market*

The Directive seeks to remove barriers to the freedom of establishment for service providers in Member States and barriers to the free movement of services between Member States, as well as maintaining high quality of services.

For the above aim, the Directive demands Member States to simplify procedures regulating access to a service activity, to ensure a possibility to fulfill concerning formalities by electronic means, to restrict authorizations required for access to a service activity, etc.

The Directive does not deal the liberalization of services of general economic interest, reserved to public or private entities, nor with the privatization of public entities providing services.

With reference to quality of services, Member States are required to ensure that service providers disclose sufficient information on both the service provider and the service. Member States may ensure that service providers whose service present a direct and particular risk to the health or safety of the recipient, or to the financial security of the recipient, subscribe to professional liability insurance or provide other sufficient guarantee.

The Directive came into force on 28 December 2006, and Member States are required to bring their concerning laws and regulations in line with the Directive before 28 December 2009.

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## LEGAL UPDATES IN THE BALTIC REGION

### Administrative offences law

#### LATVIA

#### *Legal entities to be punishable for violations of bookkeeping rules*

Cabinet of Ministers has considered and handed over to the Latvian Parliament (Saeima) for enactment a draft law on amendments to Administrative Offences Code. The draft law provides that legal entities besides their

management officers are also punishable for the violations of bookkeeping rules, rules concerning the statistical information and submission of annual statements laid down by the legislation in effect.

Currently the competent public authorities may impose a fine of LVL 100-150 (approximately EUR 140-210) for the violations of bookkeeping rules. The draft law provides that private individuals (management board members) may be fined for the aforementioned violations in the amount of LVL 150 (approximately EUR 210) and legal entities may be subject to additional penalty in the amount of LVL 150 - 300 (approximately EUR 210 - 421).

For failure to submit to the competent state authorities annual statements, tax returns, statistical statements and information specified by the legislation in force private individuals may be fined in the amount of LVL 100 - 250 (approximately EUR 140-351) and legal entities - in the amount of LVL 150 – 500 (approximately EUR 210 – 701).

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## Commercial law

### ESTONIA

#### *Establishment of a private limited company in two working days*

The Estonian Parliament (Riigikogu) has adopted several amendments to the Commercial Code and concerning Acts. The amendments came into force on 1 January 2007.

The most important amendment is certainly the introduction of expedited procedure. Upon expedited procedure one can establish a private limited company, general partnership or limited partnership, or register itself as an individual engaged in business in two working days. The term of two working days is the maximum length

established by the amendments. In practice the Commercial Register is able to enter requested changes within two hours as of the receipt of the request.

The expedited procedure does not apply to establishment of a public limited company or commercial association which may only be founded pursuant to the general procedure. Nevertheless, the length of the general procedure was also diminished from fifteen calendar days to five working days.

Regardless of the above, certain Commercial Register related amendments such as appointment and recall of members of the corporate bodies, increase and decrease of share capital and amendments to the Articles of Association may be carried out pursuant to the expedited procedure by all companies (i.e. including public limited company and commercial association). In case of expedited procedure an application for the entry in the Commercial Register is submitted through internet without mediation of a notary public as it has been until the amendments.

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

### LITHUANIA

#### *New Ruling of the Supreme Court of the Republic of Lithuania on questions related to conclusion and evaluation of preliminary agreements*

The plenary session of judges of the Supreme Court of the Republic of Lithuania on 6 November has passed a ruling where the provisions of law, regulating the process of conclusion and evaluating of preliminary agreements as well as other questions, were analysed in detail.

The Court pointed out that the preliminary agreement might be defined as the agreement between the parties regarding other agreement which might be entered into in the future and

distinguished the following features of such agreement: (1) definite agreement between the parties to enter into another – principal – agreement in the future; (2) agreement between the parties regarding the subject and consideration of essential provisions of the principal agreement to be concluded in future; (3) time limit within which the principal agreement has to be concluded; (4) this agreement is formalized in a written form.

The Court also observed the elements which would help to qualify an agreement as the principal or preliminary one. The Court specified that a preliminary agreement differs from the principal one in content; the subject of an obligation emerging from a preliminary agreement is activities of people whereby it is sought to enter into the principal agreement whereas the subject of an obligation emerging from the principal agreement is activities which have significance of value (for instance, provision of services), or activities of transfer of the value to another party (for instance, an item is exchanged, donated).

The Court noted that it is not prohibited for the parties to transfer to each other money based on the preliminary agreement, notwithstanding that according to the Civil Code neither of the parties acquires interest under the preliminary agreement and therefore the relation of payment-reckoning does not emerge. Transfer of money under the preliminary agreement might be considered as advance payment, or this amount of money might be transferred for the purpose that the seller could arrange preliminary works.

One more distinctive feature of the preliminary agreement is that it is not possible to require to perform an agreement in kind (to transfer an item, to provide services, etc). In case of breach of preliminary agreement the aggrieved party may claim to reimburse its damages (direct, as well as indirect).

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## Consumer Protection Law

### LATVIA

#### *Unfair B2C commercial practices to be prohibited*

In order to facilitate observance of consumers' interests a draft of Law on Commercial Practices prohibiting unfair business-to-consumer (B2C) commercial practices has been prepared and handed over for the inter-institutional reconciliation. The draft law is intended to implement the Unfair Commercial Practices Directive (Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005).

According to the draft law a commercial practice is unfair, if (a) it is contrary to the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behaviour of the average consumer to whom it is addressed or whom it reaches, or (b) it materially distorts or is likely to materially distort the economic behaviour of the average member of the group when a commercial practice is directed to a particular group of consumers. Furthermore, commercial practice is especially unfair, if it is misleading or aggressive within the meaning of the draft law.

According to the draft law, Consumer Rights Protection Centre and State Pharmacy Inspectorate shall be the responsible institutions for control of compliance with the requirements of the Law on Commercial Practices.

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## LATVIA

### *New Regulation concerning combined travelling services enacted*

Cabinet of Ministers has enacted regulations concerning preparation and provision of combined traveling services, which specifies the rights and obligations of combined traveling services' providers and their clients, regulates the information to be disclosed to the clients and establishes an order for the payment of security guarantee of sums paid by the clients.

Combined traveling services are prepared and provided by touring operators or services' providers offering combined traveling services on their own or through travel agencies.

With the enactment of the aforementioned regulations, the previous Cabinet of Ministers regulations "Provisions on combined traveling services" ceased to be effective as from January 27, 2007.

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## Criminal law

### ESTONIA

#### *Significant changes to the criminal liability of companies' management*

The Estonian Parliament has passed several amendments to the Penal Code and concerning Acts that will enter into force on 15 March 2007. The amendments change criminal liability for breaching requirements in several fields of business activities such as copyright, occupational health and safety, public procurement and competition, etc.

However, we consider as of the most interesting that by which currently effective and generally described criminal offences such as misuse of official position and negligence related to office are repealed and substituted with the new and

concretely worded criminal offense – misuse of confidence. Members of the management board of a company may also be held criminally liable for a failure to organize and maintain accounts of the company.

Another significant change is the fact that the threshold of fraudulent miscalculation of tax (including both the tax payable by a taxpayer and the tax returned or compensated to the taxpayer) upon which a fraudulent miscalculation of tax is considered as being criminal offense is substantially reduced. The current amount of the threshold is 500,000 kroons (approximately 32,000 euros), whereas the new amount of the threshold will be equal to a more than hundred times minimum monthly wage. The hundred times minimum monthly wage is currently 360,000 kroons (approximately 23,000 euros).

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

## Financial law

### ESTONIA

#### *Changes to the Investments Funds Act*

One of the main aims of the changes is to create a legal environment for establishing and operating a risk capital fund as a separate type of investment fund. A risk capital fund is investment fund whose assets are invested in more risk related securities and whose shares or units are offered only to investors who are capable to accept these risks (e.g. qualified investors, persons with sufficient knowledge on investing in securities and persons with substantial assets). A risk capital fund and its management company are subject to fewer limitations on establishing and operating as compare to other types of investments funds.

The changes also specify other issues relating to investment funds, e.g. right to business name of different types of investment funds, definition of real estate investment fund, etc.

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## LITHUANIA

### New Business Accounting Standard has been approved

On 18 December 2006 the 37<sup>th</sup> business standard "Investments into the objects of the agreement on joint activity (partnership)" (hereinafter – Standard) has been approved by the order of the Director of the Institute of Accounting of the Republic of Lithuania. The aim of this Standard is to establish the order of accounting of investments into the objects of the agreement on joint activity (partnership) and its representation in financial accountability.

This Standard shall be applicable when drawing the financial accountability for the accounting periods starting on 1 January 2007 and later. It may also be applicable when drawing the financial accountability for the year 2006.

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## Intellectual property law

### LATVIA

#### *Intellectual property laws amended*

In order to implement Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the enforcement of intellectual property rights the Latvian Parliament (Saeima) has enacted amendments to the Copyright Law, Industrial Design Law and Law on Trademarks and Indications of Geographic Origin.

The aforementioned amendments clarify the remedies available in case of infringements of copyrights, industrial designs, trademarks and indications of geographic origin, in particular, the said amendments provide rights to obtain court injunctions intended to prevent imminent infringements of copyrights, industrial designs, trademarks and indications of geographic origin

and rights to obtain compensation for non-material damage resulting from such infringements. Furthermore, the methods of calculation of compensation for material and non-material damages resulting from the infringements of copyrights, industrial designs, trademarks and indications of geographic origin are clarified by the amended statutory instrument.

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## Labour law

### ESTONIA

#### *New Employees' Representative Act*

The new Act that became effective as of 1 February 2007 was adopted in order to harmonize Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing general framework for informing and consulting employees in the European Community, and implement ideology of ILO Workers' Representatives Convention. As compared to the previous Act, the new one introduces several changes of which the most important is the employer's information and consulting obligation. The employer is required to inform the employees' representative of and consult with the latter in any issues relating to the organization of work and staff, as well as planned decisions which may result in significant changes in employment relations, including termination of employment contracts.

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### LITHUANIA

#### *The Law regarding the Involvement of Employees in Decision Making in the European Cooperative Society*

The Law of the Republic of Lithuania regarding the Involvement of Employees in Decision Making in the European Cooperative Society (hereinafter – the Law) has been adopted while

implementing the requirements of the Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the Involvement of Employees (hereinafter – the Directive).

The purpose of the Law is to regulate involvement of employees in decision making in the European Cooperative Society. This Law is aimed at establishing special provisions regarding the involvement of employees in decision making process, which would ensure, that the establishment of European Cooperative Society would not entail the disappearance or reduction of employees involvement in decision making existing within the entities, natural persons, or their legal bodies participating in the establishment of the European Cooperative Society.

The Law is applied to the European Cooperative Societies, established according to the Law of the Republic of Lithuania on European Cooperative Societies, as well as to the legal entities, associated legal bodies, subsidiaries and their legal bodies participating in the establishment.

Basics of involvement of employees in decision making in the European Cooperative Societies are established by the Law: the principle of cooperation, the right to information, protection and guarantees of rights of employees' representatives. Moreover, organization of negotiations is regulated – initiation of negotiations, creation of a special negotiating body, its composition, competence, order of meetings and results of negotiations.

The Law provides for the standard rules, which regulate the composition of the body representative of the employees in the European Cooperative Society, standard provisions on information and consultation, as well as on participation of employees in the European Cooperative Societies.

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## Pharmacy law

### LITHUANIA

#### *Licensing rules of pharmaceutical activity*

The Government of the Republic of Lithuania on 30 November 2006 has passed the ruling „Concerning the approval of licensing rules of pharmaceutical activity, description of the requirements for a qualified person, responsible for production and (or) import, and forms of pharmaceutical activity licences“ (hereinafter – the Order).

The Order approved the licensing rules of pharmaceutical activity, description of requirements for a qualified person, responsible for production and (or) import, as well as forms of pharmaceutical activity licences.

Previously effective licensing rules provided for 8 types of licences being issued to legal entities. Currently effective licensing rules define 5 types of licences: licences of production, wholesale distribution, pharmacy activity, production pharmacy activity and management of pharmaceutical waste, except for removal.

The certificates on settlement of accounts with the funds and state budget from the Board of the State Social Security Fund and State Tax Inspectorate are no longer required when submitting the documents for obtaining a licence. The documents proving the possession of the premises are not required also.

The State Medicines Control Agency under the Ministry of Health upon submission by the licence holder of the application in the form prescribed by the Minister of Health and of the original of the present licence changes such licences on pharmaceutical activity issued to the legal entities before the current ruling with the licences of the new form.

Noteworthy, application for obtaining the licence for pharmaceutical activity of the old form are no longer valid, and a new form of application for obtaining the licence has been approved on 13 December 2006 by the order of the Minister of Health of the Republic of Lithuania No V-1053 "Regarding to approval of the forms of applications for the licences of pharmaceutical activity" (State Gazette, 2006, No 138-5285).

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## Public law

### ESTONIA

#### *New Electrical Safety Act adopted*

The new Act will become effective as of 20 July 2007 and replace the currently effective act with the same name. The new regulation is necessary mostly due to the need to harmonize Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to the electromagnetic compatibility and repealing Directive 89/336/EEC, and Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 on the harmonization of the laws of Member States relating to the electrical equipment designed for use within certain voltage limits.

The new Act clearly stipulates the principle of mutual acknowledgement of electrical equipment by which electrical equipment may be placed on the Estonian market if it is legally manufactured in a Member State of the European Economic Area or if it is legally manufactured or put on the market in a Member State of the European Economic Area or in Turkey.

The Act also provides for several new definitions such as electromagnetic environment, authorized representative of the manufacturer and usage plan. Additionally, the new Act

clarifies terms and requirements of the current Act.

For further information please contact Tambet Toomela at [tambet.toomela@otsco.ee](mailto:tambet.toomela@otsco.ee)

### LITHUANIA

#### *New Ruling of the Constitutional Court of the Republic of Lithuania on citizenship matters*

Constitutional Court of the Republic of Lithuania on 13 November heard a case on constitutionality of the provisions of the Law on Citizenship of the Republic of Lithuania and Law on Implementation of the Law on Citizenship of the Republic of Lithuania. The Court has ruled that twenty three provisions of the abovementioned laws contradict the Constitution. The legal regulation established by the Law on Citizenship was evaluated by the Court as very confusing, inconsistent and controversial and the Court indicated that the law shall be amended substantially.

The Constitutional Court by its ruling has stated that following provisions contradict to Paragraph 2 of Article 12 of the Constitution: provisions, inter alia establishing that citizens of the republic of Lithuania also are those persons who are citizens of any other state, as well as those provisions that do not establish requirement to renounce citizenship of another state when exercising one's right to citizenship of the Republic of Lithuania (or seeking to recover citizenship). Moreover, provisions on possibility to grant citizenship of the Republic of Lithuania by way of exception based on public interest or promotion of the Republic of Lithuania while representing it also are not in compliance with the constitutional provisions.

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## Tax law

### ESTONIA

#### *Two Double Tax Conventions ratified*

Estonian Parliament (Riigikogu) has ratified Conventions for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital with Luxembourg and Greece.

The Convention between Estonia and Luxembourg will be effective as of 1 January 2008. The Convention between Estonia and Greece, in order to become effective, must be additionally ratified by Greece.

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### LATVIA

#### *Electricity Tax introduced*

The Latvian Parliament (Saeima) has enacted Electricity Tax Law which introduces an electricity tax in accordance with the requirements of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity and its amending acts.

Starting from 1 January 2007 producers, distributors and sellers of electricity supplying electricity to the end-users, as well as autonomous producers of electricity (except those producing electricity for self-consumption and meeting all the requirements listed in the Electricity Tax Law) are responsible for paying electricity tax for supply of electricity according to applicable tax rate which starting from 1 January 2007 is set LVL 0,35/MWH, from 1 January 2008 - LVL 0,45/MWH, from 1 January 2009 - LVL 0,55/MWH, from 1 January 1 2010 - LVL 0,71/MWH. Tax rate of LVL 0/MWH (i.e. no tax) shall be applied to electricity volume supplied to commercial entities for rendering street lighting services.

Electricity used by households, for transportation of goods and for public transport purposes, as well as electricity produced from renewable energy resources (biomass, sunlight, wind energy), electricity produced by hydroelectric power stations and cogeneration power stations in conformity with the efficiency requirements for production of electricity in cogeneration process laid down by the legislation in force is exempted from the application of the electricity tax.

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### LATVIA

#### *Personal Income Tax rate decreased in respect to commercial income*

The Latvian Parliament (Saeima) enacted amendments to the Personal Income Tax Law, according to which starting from taxation year 2008 income of private individuals derived from the commercial activities shall be taxed at a flat rate of 15%. Currently the income of private individuals derived from commercial activities is taxed at a rate of 25%. It should be noted however that salary paid within employment relations would still be taxed at 25% also in 2008 since the new reduction primarily applies to sole traders and self-employed persons.

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### LATVIA

#### *Corporate Income Tax Law amended*

On 1 January 2007 amendments of Corporate Income Tax Law came into force, by placing an obligation on holders of securities accounts to withhold Corporate Income Tax from the dividends paid by commercial companies to non-resident public joint stock companies. Nevertheless, dividends paid by the commercial companies registered within European Union (EU) and European Economic Area (EEA) will not be taxed. This rule applies also to the

dividends calculated for the taxation period starting in 2006.

Income derived from the sale of public securities in circulation in the regulated markets of the member states of EU and EEA, as well as investment certificates of investment funds registered within EU and EEA will not be taxed.

Legal provisions concerning the transfer of losses within companies group in the member states of EU and EEA, as well as the transfer of losses on the occasion of reorganization of individual companies are now clarified by the amended law. Similarly, the conditions for depreciation of capital assets are specified and provisions concerning the prohibition of application of tax rebates to donations are introduced.

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## OTHER NEWS

### Law Office Ots & Co

Starting from December 2006 until March 2007, attorneys of the Law Office Ots & Co. in cooperation with Estonian Business School, the largest private university in Estonia, have been carried and will carry out legal training program of 80 academic lectures addressed to high and middle level managers.

As of 19 December 2006 the team of Law Office Ots & Co., is increased by a new member, legal assistant Anastasia Puusepp. Before joining the Law Office, Anastasia worked in an office of the notary public. Anastasia is specialized in real estate and company law.

In January 2007 Maivi Ots and Randu Riiberg, partners, and Annika Raidmaa, legal assistant, published article in the Estonian Business Magazine. The article addressed amendments to the Commercial Code.

On 31 January 2007 Maivi Ots and Randu Riiberg, partners of the Law Office, gave lectures to auditors of the Estonian Auditing Board. The subjects concerned included auditor's liability and invalidity of transactions.

On 22 February 2007 Maivi Ots, partner carried out commercial and corporate related training to lawyers and other concerned employees of Hansapank, the largest commercial bank in the Baltic States.

## Baltmane & Bitans Law Office

We are pleased to announce that **Ginta Sniedzite**, lawyer, has joined Baltmane & Bitans Law Office. Ginta has extensive experience in the field of customs law and public law. She was formerly employed by Latvian State Revenue Service. Ginta practices in the fields of tax law, contract law, tort law and legal theory. She also studies towards PhD degree in law in the University of Latvia. Ginta has recently published an article with daily business newspaper "Dienas Bizness" monthly enclosure "SALDO": *"Is judge entitled to alter the existing judicature"* (SALDO, February 2007).

Another competent specialist acceding to Baltmane & Bitans Law Office is **Edijs Poga**, lawyer. Edijs has gained considerable experience in the fields of EU law, real estate law, contract law, litigation & arbitration. Formerly he was a lawyer at law office "B2B". As a member of International University Audentes moot court team Edijs participated in the New York's regional round of 2005 European Law Moot Court Competition held in NYU School of Law. Edijs will primarily support the EU law, commercial contracts and real estate practices in the firm.

We are pleased to announce that **Inese Kalnaja-Zelca**, lawyer, has joined Latvian Group of International Association for the

Protection of Intellectual Property. Inese is a trade mark and design attorney, registered with Latvian Patent Office and Office for Harmonization in Internal Market.

## Law Firm Saladžius & Partners

Assistant to attorney-at-law Audrius Biguzas on 22-23 November participated in the conference *Public Private Partnership in the Baltics and Europe. Alternative means of financing public energy and infrastructure projects* which was held in Vilnius.

Assistant to attorney-at-law Jevgenija Kovaliova participated in the international conference *Intellectual property law in the pharmaceutical industry*, which was held on 15-16 December in Warsaw, where she had lectures on parallel import of medicines, supplementary protection certificates of medicine products, marketing in pharmaceutical sector, etc.

Assistant to attorney-at-law Andrius Mamontovas together with the students of Mykolas Romeris university will participate in the annually held Philip C. Jessup International Law Moot Court Competition, which is the most prestigious competition of such type.

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

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