

Baltic Newsletter

Legal News at Your Glance

Summer Edition, 2007

Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania) – affiliates of Eversheds International Limited - hereby present the summer 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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Law Office Ots & Co

Pärnu mnt 15, 3rd floor
Tallinn 10141, Estonia
Tel.: +372 614 1990
Fax: +372 614 1999
www.otsco.ee

Baltmane & Bitans Law Office

TERBATAS Business Centre,
Lacplesa Street 20^a, 3st Floor, Riga, Latvia
Tel.: +371 67280102
Fax: +371 67504566
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

EUROPEAN UNION LAW

Paving the EU's way forward: 'Reform Treaty' not 'Constitution'

After two years of uncertainty, in the early hours of June 23, 2007, in a midsummer, EU leaders paved the EU's way forward by agreeing upon an outline of the 'EU Reform Treaty' laying down the new rules to govern the bloc of 27 states. The new treaty is intended to take place of the EU Constitution which was rejected by French and Dutch people in 2005, thereby signaling their doubts about creation of a European super-state.

The EU Reform Treaty is expected to be finalized until the end of 2007 in a special intergovernmental conference (IGC) which will start its work before the end of July, 2007. The EU Reform Treaty's ratification by the member states is expected to take place before the European Parliament elections in June, 2009.

Many political and legal commentators agree that in fact the new treaty preserves the impact of the EU Constitution for 95%, or even 99%. Nevertheless, unlike the EU Constitution, the EU Reform Treaty will co-exist with other treaties currently in force and will not replace them. Instead, it will change and amend them.

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

The Commission Directive laying down detailed rules for the implementation of certain provisions of the Directive 2004/109/EC has been adopted

The Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to

trading on a regulated market and amending Directive 2001/34/EC (hereinafter - the Directive 2004/109/EC) establishes the general principles for the harmonisation of transparency requirements in respect of the holding of voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights. Seeking to ensure uniform application of provisions of the abovementioned Directive the Commission on 8 March 2007 has adopted the Directive 2007/14/EC, laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (hereinafter - the Directive 2007/14/EC).

It is noteworthy, that rules established by the Directive 2007/14/EC supplement provisions of the Directive 2004/109/EC without expanding the scope of the requirements established by the latter. It establishes the requirements applicable to the condensed set of half-yearly financial statements, where that set is not prepared in accordance with international accounting standards, it also details definition of major related party transactions, determines circumstances in which notification of major holding has to be made either individually or collectively. The Directive 2007/14/EC establishes, what conditions shall be fulfilled by parent undertaking in order to be exempted from the obligation to aggregate major holdings with the shares held by its subsidiary management companies or investment firms. The minimum quality standards for the dissemination of regulated information are also established. Issuers should ensure that those minimum standards are met, whether by disseminating the regulated information themselves or by entrusting a third party to do so on their behalf.

The Directive 2007/14/EC also establishes certain requirements for the issuers of a third country. When these requirements are met it is deemed that the information provided by the issuer of a third country is equivalent to information provided under requirements of the Directive 2004/109/EC.

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

The Commission Directive implementing Directive 85/611/EEC as regards the clarification of certain definitions has been adopted

Considerable increase in the variety of financial instruments traded on financial markets has led to the demand to clearly determine whether certain categories of financial instruments are encompassed by the definitions provided in the Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (hereinafter - the Directive 85/611/EEC).

In order to ensure a uniform application of the Directive 85/611/EEC the Commission Directive 2007/16/EC implementing Council Directive 85/611/EEC as regards the clarification of certain definitions (hereinafter - the Directive 2007/16/EC) was adopted on 19 March 2007.

The Directive 2007/16/EC does not establish new obligations for competent authorities or market participants, as well as it does not establish exhaustive list of financial instruments. The Directive 2007/16/EC establishes basic criteria as an aid in assessing whether or not a class of financial instrument is covered by the various definitions.

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

LEGAL UPDATES IN THE BALTIC REGION

Constitutional law

ESTONIA

Law Concerning Amendment of the Constitution of the Republic of Estonia

Pursuant to the Act the preamble of the Constitution of the Republic of Estonia shall be changed and the clause for protecting the Estonian language shall be enacted. The amendment shall be enforced as of 21 July 2007.

Such correction was made in order to guarantee the preservation of the Estonian language. In the previous version only the clauses for preservation of the Estonian nation and culture were enacted. Therefore the initiators of the draft amendment believe that the matter so important must be written clearly in to the Constitution of the Republic of Estonia.

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

Contract law

LATVIA

Latvian Supreme Court: a preliminary agreement is enforceable

On April 11, 2007 civil department of Senate of Supreme Court of Latvia (*Augstākās tiesas Senāts*) handed down the judgment in a case *SKC-261, I. Sukasjans v. SIA BRT Group* involving a matter of enforceability of a preliminary agreement, pursuant to which the parties undertook to conclude a principal purchase agreement of real estate in the future.

After SIA BRT Group, the defendant, refused to conclude the principal purchase agreement due to the substantial increase of construction costs of the real estate in question, Mr Sukasjans, the plaintiff, filed an action against the defendant claiming, *inter alia*, enforcement of a preliminary agreement by obliging the defendant to conclude the principal purchase agreement prescribed by the preliminary agreement in question. Senate of Supreme Court upheld the judgment of Judicial Panel of Supreme Court, pursuant to which this plaintiff's claim was satisfied.

Some could accuse the judgment in this case being the product of defective legal reasoning. The judgment is contrary to the opinion of various legal commentators arguing that the enforceability of preliminary agreements is incompatible with the key principle of contract law – that of autonomy of the parties. Also the judgment seems to be contrary to existing case-law of the Supreme Court.

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

Corporate law

LATVIA

Registration of one owner Limited Liability Company and Individual Entrepreneur in 20 minutes

Within the framework of a pilot project of Latvian Ministry of Justice providing for one-stop-shop approach in registration and deleting of one owner Limited Liability Companies and Individual Entrepreneurs from the Commercial registry, Latvian Register of Enterprises now offers registration one owner Limited Liability Companies and Individual Entrepreneurs in the Commercial registry in 20 minutes.

A triple state duty must be paid for these expedited registrations, in particular, in case of registration of one owner Limited Liability Company, a triple state duty is LVL 300 and in case of registration of Individual Entrepreneur, a triple state duty is LVL 60. It is hoped that after August 2, 2007 the state duties for expedited registrations will be decreased.

For further information please contact Jānis Lagzdīņš at janis.lagzdins@baltmanebitans.com

Employment law

ESTONIA

Changes in Involvement of Employees in Activities of Community-scale Undertakings, Community-scale Groups of Undertakings and European Companies Act

Amongst other changes the name of the Act was also changed. The new name of the Act is Community-Scale Involvement of Employees Act.

The new Act that became effective as of 23 March 2007 was adopted in order to harmonize Directive 2003/72/EC of the European Parliament and of the Council of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Besides the new name, the Act enacts legal framework to the involvement of employees in the affairs of European Cooperative Society registered in Estonia (established under the Council regulation 1435/2003 on the Statute for a European Cooperative Society) and European Company registered in Estonia (established under the Council regulation 2157/2001 on the Statute for a European company).

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

EU law

LATVIA

Recognition of ECJ's jurisdiction pursuant to Article 35 of EU Treaty

On April 19, 2007 Latvian Parliament (Saeima) passed a Law on Recognition of Jurisdiction of European Court of Justice Pursuant to Article 35 of Treaty on European Union. According to it, Latvia accepts the jurisdiction of ECJ upon the reference from any Latvian court to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under Title VI of the EU Treaty on police and judicial cooperation in criminal matters and on the validity and interpretation of the measures implementing them. The aforementioned law entered into force on May 19, 2007.

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

Financial law

LITHUANIA

The new Law on Securities has been adopted

The Law on Securities of the Republic of Lithuania (hereinafter – the Law) has come into effect on 8 February 2007. The main purpose of the Law is ensuring the protection of the interests of investors and establishing the requirements for drafting, approving and publishing of a prospectus of securities, disclosure and keeping of the periodic and current information, procedures of submission and implementation of official offers, as well as establishing the rights and powers of the Lithuanian Securities Commission while implementing supervision functions assigned to it.

This Law was drafted seeking to transpose provisions of the Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. The Law was also drawn up transposing provisions of the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, and provisions of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The Law regulates issues of primary circulation of securities. It is noteworthy, that the following provisions of the Law on Securities Market, which is no longer valid as from 8 February 2007, were transposed to this Law: provisions concerning the public offer of the securities and admission to trading on a regulated market, provisions regarding the order of submission of official offers.

The Law is applicable to those legal entities, which are offering for issue or issuing its securities. The Law does not apply to those entities, which do not offer their shares publicly and do not offer them on a regulated market. The issuer of securities shall be considered those legal entities established within the Republic of Lithuania, which securities are admitted to trading on a regulated market of the Republic of Lithuania and (or) other member state of European Union, or those, which prospectus on securities has been approved by the Lithuanian Securities Commission. Other entities, which within the period from 1 January 2002 until 12 July 2005 have issued at least one security, shall be considered to be issuers of securities only in case when the

general meeting of shareholders of such entity has decided to publicly offer its securities within six months after this Law has come into effect.

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

LITHUANIA

The new Law on Markets in Financial Instruments has come into effect

The Law on Markets in Financial Instruments of the Republic of Lithuania (hereinafter – the Law) has come into effect on 8 February 2007. The aim of the Law is to transpose provisions of the Directive 2004/39/EC on markets in financial instruments into the national legislation of the Republic of Lithuania and ensure fair, open and efficient operation of the market in financial instruments, protection of the investors and restriction of the systemic risks.

It is noteworthy that after the Law has come into effect the Law on Securities Market of the Republic of Lithuania is no longer valid and its provisions, which regulated licensing of financial brokerage firms and their activities, rendering of the investment services, activities of the regulated markets, prohibition to abuse the market, accounting of the financial instruments and legal status of the Securities Commission of the Republic of Lithuania, have been transferred into the Law on Markets in Financial Instruments.

The Law regulates the provision of the investment services and secondary circulation of the financial instruments (including transferable securities, money-market instruments, derivative instruments for the transfer of credit risk, financial contracts for differences etc); licensing and activities of financial brokerage firms; organizational requirements applicable to financial brokerage firms and credit entities; requirements that shall be followed by financial brokerage firms

and credit entities while rendering investment services to the clients; rendering of investment services to professional clients; transparency requirements applicable to financial brokerage firms; activities of the regulated market; prohibition to abuse the market in financial instruments; accounting of financial instruments; supervising of the market in financial instruments and legal status of the Securities Commission; liability for the breach of the Law.

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

Public law

ESTONIA

Changes in Electrical Market Act

On 15 February 2007 the Parliament of Estonia passed the act to Amend the Electricity Market Act. The amendments generally entered into force as of 1 May 2007.

The new regulation is necessary mostly due to the need to harmonize Directive 2001/77/EC of the European Parliament and of the Council of 27 December 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2001 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.

The new regulation establishes new system to support the producers of the electricity from renewable energy sources and useful cogeneration based producers. In addition to purchase obligation that was effective before, the law enacts a new opportunity for the producers to apply for financial support. Producer can choose whether it uses the old purchase obligation or decides to sell the

energy and applies for financial support for the energy manufactured and given to the network. The producer can use one of the two support opportunities.

The Act also provides some more changes, including but not only, new definitions such as useful cogeneration based producers, specifies the definition of power station and clarifies terms and requirements of the current Act.

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

ESTONIA

New Personal Data Protection Act adopted

On 15 February 2007 the Parliament of Estonia passed the Act which shall replace the previous Act. The new Act shall become effective as of 1 May 2008.

The main goal of the Act is to correct the drawbacks of the previous Act that occurred on implementing it.

As a main rule, the personal data may be processed (collection, recording, storage, alteration, grant of access, forwarding, use etc.) only with the permission of the person. In the case of a dispute, a person is presumed not to have granted consent for the processing of personal data. Therefore the consent for the processing of personal data needs to be precise and informed indication of the wishes of a person.

Processing or forwarding the personal data to third persons without the consent of a person is permitted only on the conditions specified in the Act. For example, processing of personal data is permitted in case of the performance of a contract entered into with the person or ensuring performance of the contract or in case the person to whom the data will be forwarded processes personal data for performance of obligations prescribed by law.

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

ESTONIA

Changes in Customs Code

Changes in Customs Code may be divided into two: (a) caused because of the need to supplement the changes in the EU Customs regulations to the internal legislation and (b) caused because of the problems that have occurred in practice in a two year period while the Act has been implemented.

In accordance with the Regulation 1889/77/EC of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community and with the Amendment of the Customs Act, any natural person entering or leaving the European Union and carrying cash of a value of 10,000 euro or more has to declare that sum to the customs authorities. The Act provides the customs authorities with the right to control for cash. Penalty up to 6,000 kroons may be applicable in the event of failure to comply with the obligation to declare cash.

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

Real estate law

LITHUANIA

The request to register the ownership to the immovable property as of July 1 can be filed with the notary public

The Regulation of the Real Property Register has been changed by the order of the Government of Republic of Lithuania No 240 as of 27 February 2007. It was established that the written request to register with the Register of Real Estate the ownership to the immovable property can be submitted through the notary public, who has approved the transaction, by which the person has acquired

the ownership right to the immovable property as of the moment of approval of the transaction through the notary public, from the office of notary public by means of remote connection. Following this amendment the Head of the State enterprise Register Centre has passed a ruling "Regarding the request to register ownership rights to the immovable property and approval of the order of transfer of the documents, certifying the acquisition of ownership rights, to the territorial register and preparation of the order of storage of the documents of electronic nature in the notary's archive of electronic documents" (hereinafter - the Ruling").

The order of transfer of the documents, certifying the acquisition of ownership rights, to the territorial register (hereinafter - the Order) and the form of the request to register ownership rights to the immovable property have been approved by the Ruling. Though the Order should have been applied since 31 March 2007, its implementation is postponed until 1 July 2007 taking into consideration technical aspects of its implementation.

The order establishes that the notary public shall accept the request only in cases when the client does not request to register ownership rights to immovable property urgently and the fact of transfer of the immovable property to the acquirer is expressly indicated in the documents, except when such indication is not required.

For further information please contact Aušrys Šliavas at ausrys.sliavas@splegal.lt

LATVIA

State duties for registration of real estate ownership rights and mortgages in the Land Book considerably increased

On April 16, 2007 changes in Regulations of Cabinet of Ministers prescribing the state duties for the performance of notarial activities and registration of real estate

ownership rights and mortgages in the Land Book entered into force, considerably increasing the amounts of the state duties payable for the registration of real estate ownership rights and mortgages in the Land Book.

Now, in case it is the third, fourth etc. real estate to be registered on the purchaser's (natural person's) name in the Land book, registration of the real estate ownership change in the Land Book will cost 4% from the value of real estate. In case it is the third, fourth etc. real estate to be registered on the name of the gifted (natural person) in the Land book, registration of the real estate ownership change in the Land Book will cost 6% from the value of real estate. In case it is third, fourth etc. mortgage to be registered on the natural person's name in the Land Book and the borrower is a natural person, the registration of such mortgage will cost 3% from the sum of the credit agreement.

Raison d'être of these changes is the necessity to limit the number of speculative transactions involving the real estate, thereby stopping unjustified increase of real estate prices.

For further information please contact Ilze Kramiņa at ilze.kramina@baltmanebitans.com

Tax law

ESTONIA

Binding preliminary resolutions from Tax and Customs Board

The changes in Taxation Act have supplemented the Estonian tax law regulations with a preliminary resolution issued by the Tax and Customs Board. The preliminary resolution provides taxpayers with a binding assessment of how a future transaction or a series of transactions will be charged. The new regulation will become effective as of 01 January 2008.

The aim of preliminary resolution is to approve or disapprove the tax calculations a taxpayer has made in connection with a specific transaction, where the resolution will be binding to the Tax and Customs Board. A taxable person is entitled to presume that the information or interpretation of a legal act provided by the Tax and Customs Board is correct and binding.

The authors of the draft amendment act believe that the preliminary resolution issued by the Tax and Customs Board should give taxpayers greater assurance about taxation of their future transactions and therefore reduce tax-related disagreements and litigations.

The state fee charged for preliminary resolution is 12,000 kroons for legal persons and 3,000 kroons for natural persons.

In order to organise the register of taxable persons, the Amendment of the Taxation Act has also established the basis for deleting sole proprietors not involved in business activities from the register.

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

Other news

Affiliation with world's leading international law firm Eversheds

On May 3, 2007 leading international law firm Eversheds announced its affiliation with Saladžius & Partners, Ots & Co and Baltmane & Bitans. Many respectable guests – ambassadors, clients, partners, colleagues and friends – joined to congratulate the three law firms during the celebrations held in Vilnius on May 30, in Riga on May 31 and in Tallinn on June 1.

For Eversheds the signing of the affiliation agreement with the three law firms is another step towards the increased Eversheds' international capability, whereas for the three law firms it is a unique opportunity to work closely with one of the most reputable UK based international law firms. It also manifests the maturity of the three law firms and to a certain extent – Baltic legal systems.

Eversheds already had substantial experience of working with the firms on a number of projects for clients having interest or presence in the Baltic region. According to the Chairman of Eversheds Alan Jenkins, Eversheds is extending its reach in the directions, where the market of international clients is located.

Annual Baltic meeting held on May 25-26

On May 25-26, 2007 the annual Baltic meeting of Baltmane & Bitans Law Office, Law Office Ots & Co and Law Firm Saladžius & Partners took place in Palanga, Lithuania. This year the major issue for discussion was the affiliation with Eversheds International Limited. The law firms also had a technical seminar on corporate and commercial matters.

News from Law Office Ots & Co

As of April the team of Law Office Ots & Co., is increased by new members, attorney Doris Metsalu and lawyer Lauri Liivat. Before joining the Law Office, Doris worked in the Law Office Markus, Meidra, Missik. The main fields of practice of Doris are the labour law, commercial law and the law of obligations. Lauri worked at Hansapank as a lawyer and has previously worked as a tax consultant in KPMG. His principal areas of practice are commercial law, the law of obligations and tax law.

As of June Piret Põdra joined with the team as the secretary of Law Office Ots & Co.

The following articles have been published in a daily business newspaper "Äripäev" by the following persons:

- Toomas Pikamäe, partner of the law office, published on 15 March, 2007 the article "Abuse of professional status is not a crime any more";
- Tarmo Repp, attorney, published on 5 June, 2007 the article "Avoid under and over insurance";
- Tambet Toomela, attorney, published on 18 June, 2007 the article "The State worries foreign investors"

On 11 and 12 June, 2007 Toomas Pikamäe held a lecture about the tax laws organized by Estonian Lawyers Union.

Maivi Ots, managing partner of the law office, has held several lectures concerning commercial law.

News from Law Firm Saladžius & Partners

Associates Jevgenija Kovaliova and Audrius Biguzas participated in the annual *WTO Law 2006/2007 (World Trade Organisation) Moot Court competition*, which was organised by *ELSA* in Hamburg on 15-19 March. Attorneys-at-law, professors, specialists of the European Union institutions, practicing in the area of commercial law, judged in the competition. Most of the judges acknowledged this team as the team which had made the biggest progress during the competition.

Associate Andrius Mamontovas participated in *Philip C. Jessup International Law Moot Court competition* held in Washington on 25-31 March. 95 strongest national teams from 75 countries participated in the competition. Associate Andrius Mamontovas was heading

Mykolas Romeris University team, who contested against the teams from Russia, Canada, Kirghistan and Turkey.

We are pleased to announce that on 5 May associates Audrius Biguzas and Jevgenija Kovaliova participated in the moot court competition *STart 2007* and won the 2nd place as well as a possibility to participate in a traineeship in the European Court of Justice.

On 1 June associate Laimonas Mačiulis took part in the international conference *Arbitration in the Baltics: Contemporary Issues*, organised by Riga Graduate School of Law, where he delivered a speech on *How important is an Arbitration Clause: Lithuanian Practice on the Ambiguous Arbitration Clauses and Guidelines for Drafting a Proper One*.

An article by associate Jevgenija Kovaliova *Protect the Invented* appeared in the magazine of American Chamber of Commerce *AmCham*.

News from Baltmane & Bitans Law Office

Inese Kalnāja-Zelča, a lawyer of Baltmane & Bitans Law Office, has published two articles in a monthly enclosure "SALDO" of a daily business newspaper "Dienas Bizness": *New possibilities in sphere of protection of intellectual property* (SALDO, April 2007) and *Law on Commercial Practice in Preparation* (SALDO, May 2007).

On April 16-18, 2007 Māris Logins, an associate of Baltmane & Bitans Law Office, attended the seminar "Public Private Partnerships (PPP) – a Practitioners' Workshop" held in Amsterdam, the Netherlands. The discussion in the seminar focused on the latest developments of PPP projects in Europe, analysis of the recent legislative initiatives regulating PPP on EU

level, as well as on contracting processes within the framework of PPP projects and PPP contracts-related legal risks.

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

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On April 17, 2007 Ginta Sniedzīte, an associate of Baltmane & Bitans Law Office, took part in a lecture "Pre-emptive rights and their exercise" given by the head judge of Riga City Land Book department. Best practices and solutions for exercise of pre-emptive rights concerning real estate in the light of the Land Book's registration processes were presented. Likewise, recent case-law regarding procedural aspects of exercise of pre-emptive rights was analyzed.

On June 19, 2007 Inese Kalnāja-Zelča, a lawyer of Baltmane & Bitans Law Office, participated in the seminar "The role of patents in business". Topicalities in the sphere of patent protection in Europe and USA were discussed, new Patent law which came into force on March 1, 2007 was analyzed and advantages of patent protection for business were examined.

An interview with Agris Bitāns, a managing partner of Baltmane & Bitans Law Office, concerning legal environment for PPP (Private Public Partnership) projects in Latvia was published in a weekly publication "ДЕЛОВОЙ ЧАС" (ДЕЛОВОЙ ЧАС, June 2007).

Together with the specialists from Eversheds International Limited, London's office, lawyers of Baltmane & Bitans Law Office serviced Riga City Municipality in regard to the construction of the second stage of the most complex transport building in the Baltic States within couple of last decades – a Southern Bridge over Daugava river in Riga City. Our lawyers rendered legal opinions on construction of second stage of the Southern Bridge and its financing scheme. The total cost the project comes close to half billion euros.