

# Baltic Newsletter

## Legal News at Your Glance

Summer Edition, 2005

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*Law Office Ots & Co (Estonia), Baltmane & Bitans Law Office (Latvia) and Law Firm Saladžius & Partners (Lithuania) hereby present the second edition of the Baltic Newsletter. In this newsletter you will find the most recent business law related updates on legal issues in the Baltic region generally and every State in particular. You will receive the Baltic Newsletter quarterly and each edition will include the overview of the EU business law as well as legal updates in the Baltic region. We will also introduce you with the internal news about our Law Firms in the Baltics.*

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

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***In this issue: • EU: Unfair Commercial Practices Directive • Estonia: Implementation of EU Savings Tax Directive • Latvia: Privatization Completion Act Adopted • Lithuania: Tax on Real Estate***

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## EUROPEAN UNION LAW

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### *Unfair Commercial Practices Directive*

As of 12 June 2005 Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market ("Unfair Commercial Practices Directive") came into force. The Directive prohibits unfair commercial practices. For the purposes of the Directive a commercial practice is considered unfair if it contrary to the requirements of professional diligence and materially distorts the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed. The Directive also sets forth concrete definitions and examples which commercial practices must be treated as unfair.

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

### *New Directive on Money Laundering and Financing of Terrorism*

On 7 May 2005 a new Directive on Money Laundering and Financing of Terrorism was adopted. This Directive concerns financial services and other services, including supply of goods, provided that the payment in cash exceeds 15 000 euros. In addition, the said Directive applies to the notaries, bookkeepers, real estate agents, casinos etc.

It should be noted that the new Directive will become effective only within 2 years after its publication within the Office Journal of the European Union, when it will replace the currently effective 1991 EU Directive on Money Laundering. It is planned that the publication would take place at the end of the year 2005.

The persons subject to the regulation of the new Directive *inter alia* will be required to inform appropriate institutions on suspicious transactions, to provide for their internal corporate system for

prevention of possible violations, as well as they will be responsible for provision of adequate staff training. Moreover, special requirements and protection measures will be prescribed for high-level risk situations, for example, when dealing with corresponding banks outside the European Union.

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### *Commission regulation 2868/95 implementing Council regulation on the Community trade mark amended*

On 29 June 2005, the European Commission adopted regulation No 1041/2005 in order to implement the latest changes to the Regulation on the Community trade mark, and to rectify various procedural drawbacks discovered in the practice of application of the Regulation on the Community trade mark. The regulation changes and simplifies opposition for the registration of trade mark, application for conversion and renewal of the trade mark procedures. It also abolishes trade mark transfer fee, clarifies in detail the procedures for electronic and facsimile communications and addresses other pertinent questions.

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## LEGAL UPDATES IN THE BALTIC REGION

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### Commercial law

#### LATVIA

#### *Corporate Insolvency Act Amended*

On 19 May 2005, the Corporate Insolvency Act of Latvia was amended in order to provide for a more precise regulation on the role and functions of the State Insolvency Agency within corporate insolvency proceedings. It is now stated in detail, that the Agency is responsible for supervision and certification of administrators.

Furthermore, the amendments provide for a list of exceptions when administrators are prohibited to perform their professional duties. For example, administrators tried, prosecuted or suspected of committing of crimes related to property, economic activity, state service, jurisdiction etc. cannot be appointed administrators of corporate insolvency proceedings.

Finally, the said amendments provide for clarification with respect to the disputing and appealing of Agency's resolutions. It is now determined, that the resolution on satisfaction of employees' claims against the insolvent company, resolution on payment of insolvency proceedings administration costs and resolution on issuing, cancellation or suspension of administrator's certificate shall be disputed in accordance with the procedures prescribed by the Administrative Procedure Act. Special regulation on examination of other complaints and disputes within the insolvency proceedings is also incorporated into the Corporate Insolvency Act.

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## Competition law

### LATVIA

#### *Competition Council Resolution on Breach of Advertising Act*

*Air Baltic* filed a claim with the Competition Council against *Ryanair* due to the reason that *Ryanair* had announced a special *Air Baltic* pilots' recruitment day. *Air Baltic* alleged that such practices of *Ryanair* constituted unfair competition.

On the one hand, the Competition Council admitted that the announcement in one of the largest local newspapers informing on the *Air Baltic* pilots' recruitment day was not solely information on available vacancies, but it constituted advertisement of *Ryanair*, as several widely known advertising slogans of *Ryanair* and other attention attraction tools were used. Besides, it was

established that the *Air Baltic* trade mark was used in the disputed advertisement without prior consent of *Air Baltic*. Thus *Ryanair* had violated Advertising Act, which prohibits usage of competitor's trade mark in advertising without its prior consent.

On the other hand, the Council did not consent with the *Air Baltic* argument that the recruitment day oriented directly and specifically to the *Air Baltic* pilots constitutes unfair competition. The Council stated that employment advertisement addressed directly to the competitor's employees does not contradict the principles of fair competition as long as the requirements of the Advertising Act are observed.

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## Credit institutions law

### LATVIA

#### *Credit Institutions Act Amended*

On 9 June 2005 amendments were made to the Credit Institutions Act in order to provide for a wider regulation on the credit institutions' obligation to provide information to the Finance and Capital Market Commission, courts, prosecution offices, Corruption Prevention and Combating Bureau, court bailiffs, State Treasury, State Revenue Service and other public authorities.

In addition, the procedures for Finance and Capital Market Commission on allowing establishing of foreign branches of credit institutions are now prescribed by the law. Finally, the said Commission is responsible also for issuing of licenses for new credit institutions established by foreign credit institution, as well as the Commission is entrusted with carrying out of other supervision over the credit institutions.

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## Environmental law

### ESTONIA

#### *Amendments to the Waste and Packaging Legislation*

The Estonian parliament and government specified the producers' and distributors' obligation to mark, collect and recover waste of electrical and electronic equipment and of end-of-life vehicles. Amendments also stipulate the establishment of register of products of concern. Concerning changes of the Packaging Act, the final day of implementation of the packages' deposit system was postponed from 1 August to 1 of October 2005. Starting from 1 October 2005 majority of beverages either produced in Estonia or imported to Estonia are subject to the packages' deposit system. This means that upon a sale of beverage a seller is required to add the value of the package's deposit to a sales price whereas the deposit is refunded to a buyer upon the return of the package.

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## Insurance law

### LATVIA

#### *Regulation on Insurance Compensation for Non-material Damages*

On 17 May 2005 the Cabinet of Ministers passed new regulations on the calculation of and permissible amount of the insurance compensation for non-material damages caused to individuals. The said regulations state, that the whole insurance compensation for non-material damages should be paid together, provided that the respective insurer or bureau of motor vehicles insurers has resolved to pay insurance compensation.

Furthermore, the amount for the non-material damages is determined by the said regulations. For example, compensation at the amount of 20 to 400

Latvian lats should be paid for suffering of pain due to physical trauma depending on the seriousness of the bodily injury. Finally, it is stated that the amount of insurance compensation should not exceed 1000 Latvian lats to a person injured as a result of a traffic accident.

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## International law

### ESTONIA

#### *Accession of the Republic of Estonia to the United Nations Convention on the Law of the Sea of 10 December 1982*

On 31 May 2005 the Estonian parliament adopted the law on the accession of Estonia to the United Nations Convention on the Law of the Sea of 10 December 1982. The convention constitutes the principal source of international maritime law, including such issues as territorial sea, rules applicable to ships passing territorial sea, protection and preservation of the maritime environment, as well as settlement of disputes relating to the above matters.

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## Labour law

### LITHUANIA

#### *The rules for drafting the instructions and instructing employees on safety and health at work*

The rules for drafting the instructions and instructing employees on safety and health at work have been approved by the Order of the General State Labor Inspector of the Republic of Lithuania. According to the Labor Code of the Republic of Lithuania, every employer has to ensure safety and health of his employees. While performing this obligation an employer or a person authorized by him, should prepare, approve, amend and modify the instructions on safety and health at work

according to the requirements adopted by the Order. The Order requires adopting instructions relating to employees of certain professions (metalworkers, etc.), specific works (e.g. reparations, etc.), etc.

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## LITHUANIA

### *Government augments the sum of minimal wage*

By Resolution No. 361 "Regarding the increase of minimal wage" adopted on April 4, 2005 the Government of the Lithuanian Republic has increased the minimum hourly pay from 2,95 LTL (Lithuanian litas) to 3,28 LTL paid to employees of the companies. Accordingly, the minimum monthly salary was increased from currently effective 500 LTL per month to 550 LTL. The Resolution is effective as from 1 July 2005.

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## LITHUANIA

given their consent, possibility to use court assistance for collection of evidence before filing a claim to a court, new rules for partition of legal fees etc. The new Code of Enforcement Procedure aims to respond to difficulties encountered in practice.

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## Privatization

### LATVIA

#### *Privatization Completion Act Adopted*

After long debates, on 16 June 2005 the Privatization Completion Act was finally adopted. The aim of the Act is to determine procedures for completion of state property privatization process and land reform, as well as to finalize issuance and usage of privatization certificates. The Privatization Completion Act prescribes the main principles to be applied to the privatization process completion, as well as it states the scope and extent of the application of this Act and other legislative acts regulated to the privatization process and land reform in Latvia.

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

## Property law

### ESTONIA

#### *Immovable Expropriation Act Amended*

On 16 June 2005 the Estonian parliament adopted changes to the Immovable Expropriation Act. Under the changes a submission of an appeal against an act stipulating expropriation (for instance decision establishing a detailed plan) shall not suspend expropriation proceedings. Nevertheless, until making of the final and binding decision in the dispute against the act stipulating the expropriation the current owner cannot be deprived from the title and possession of an immovable. The same applies to the case where a person has objected the amount of an expropriation payment. However, in the latter case

the owner may be deprived both from the title and possession of an immovable.

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

## Public assistance

### ESTONIA

#### *Substantial Amendments to the Structural Assistance Act*

As of 1 July 2005 major amendments to the Structural Assistance Act are effective. The amendments set forth requirements concerning applicant and application for the structural assistance, detail obligations of recipient of the assistance, establish rules for supervision of the use of the assistance and create register of the structural assistance.

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

## Securities Market

### LATVIA

#### *New Financial Conglomerates Act*

A new Act on Financial Conglomerates was passed on 9 June 2005 in order to promote the client protection and to provide for stability of finance and capital market. Therefore additional supervision is planned over regulated companies (banks, insurance companies, deposit broker companies) and other companies being within conglomerates.

The new Act states that the Finance and Capital Market Commission shall have the competence of supervision over the said companies in case they are based in Latvia or in case one of the conglomerate's companies is based in Latvia and the said Commission is appointed supervision coordinator of such conglomerate. Procedures for exchange of information and co-operation with international counterparts of the Commission are also incorporated in the new Act.

Furthermore, it is prescribed that the said Commission shall provide for supervision over the sufficiency of the conglomerate's own capital, risk concentration, significant internal transactions exceeding 5% of the conglomerate's own capital. Besides, the conglomerates are obliged to establish internal control and risk management systems. Finally, special requirements to the board members of mixed financial management companies governing the conglomerate are prescribed by the respective law.

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## LATVIA

### *Financial Instruments Market Act Amended*

On 9 June 2005 considerable amendments were made to the Financial Instruments Market Act. The amendments were made for the purposes of harmonization thereof with the new Act on Financial Conglomerates. In addition, the Financial Instruments Market Act has now been harmonized with the requirements of several Directives of the European Parliament and Council on additional supervision over credit institutions, insurance companies and deposit broker companies within the financial conglomerates.

It should be noted that not only several new definitions are incorporated into the Financial Instruments Market Act, but also the procedures for review of public offers, incorporation of financial instruments into regulated markets, and liability for violation of regulatory enactments on financial instruments markets are prescribed.

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## LITHUANIA

### *The amendments and supplements to the Law on Securities Market came into force*

According to the latest amendments to the Law on Securities Market (effective from 12 July 2005), the shareholder of any accountable issuer incorporated

in Lithuania who holds the shares which grant him no less than 95% of all votes at a general meeting of shareholders of that issuer shall be entitled to request that all the remaining shareholders of the issuer sell to him the shares conferring voting rights held by them and the minority shareholders shall be obliged to sell such shares following the order stipulated in the Law (squeeze-out right). The amendments to the Law also established a right of the minority shareholders to demand from the shareholders, who hold no less than 95% of all votes at a general meeting of shareholders of that issuer, to buy their shares (sell-out right). Previously (until entry into force of the last amendments of the Law) the above-mentioned provision was applicable only to the shareholders of the accountable issuers which shares were included into the official or current lists of a stock exchange.

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## Tax law

### ESTONIA

#### *Implementation of Council Directive 2003/48/EC on Taxation of Savings Income in the Form of Interest Payments*

On 1 July 2005 amendments to the Income Tax Act came into force. Under the amendments, an Estonian company, a permanent establishment of a foreign company, an Estonian state or local government authority or individual engaged in business (*interest payer*) who has during a calendar year paid interest on loans, securities, leases or other debt obligations to a natural person residing in another member state of the European Union, is required to submit an interest declaration to the Tax and Customs Board by 10 April of the following year. In the declaration the interest payer must set forth details concerning the recipient of the interest and the debt obligation for which the interest is paid. The Estonian Tax and Customs Board must in its turn forward the information to tax authorities of other member states of the European

Union by 30 June of the same year. Nevertheless, the above rules shall apply to these interests only which are paid either on or after 1 July 2005.

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## LITHUANIA

### *Tax on real estate*

According to the Law on Real Estate Tax (adopted on 7 June 2005), as from 1 January 2006, real estate situated in the territory of the Republic of Lithuania and used for commercial purposes shall be subject to real estate tax, amounting to 1% of the fiscal value of the real estate. The real estate tax shall be payable not only by legal persons holding real estate by the right of ownership but also by individuals which shall be subject to real estate tax charged on real estate used for economical or individual activity.

It is noteworthy, that legal persons shall also assess, declare and pay the said tax for the real estate (or its part) pertaining by ownership right to natural persons, in respect of the real estate which was transferred to legal persons for termless use or use for a period exceeding one month (in other cases, natural persons shall assess, declare and pay the real estate tax by themselves).

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## LITHUANIA

### *Social tax is being ordained*

In accordance with the Law on Temporary Social Tax, enacted on 7 June 2005, as from 1 January 2006, legal persons that have an obligation to pay profit tax on the taxable profit shall be subject to an additional temporary social tax. This tax, which replaces contributions from income payable to the road program (road tax), shall be paid for the tax periods starting in the calendar years 2006 and 2007. When assessing the tax for the taxable period starting in the calendar year 2006, the tax rate of 4 % shall apply, and for the taxable period starting 2007 - the tax rate of 3 % shall apply. The base of this tax is taxable profit assessed following the rules of the Law on Corporate Profit Tax.

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## OTHER NEWS

### Law Office Ots & Co

On 10 May 2005 Maivi Ots, partner, delivered lecture at The Estonian Lawyers' Union regarding the planned changes to the Estonian Commercial Code.

On 17 June 2005 Rando Maisvee, Attorney and labour law specialist, delivered lecture jointly with officials from the Estonian Labour Inspectorate focused on main mistakes upon termination of employment contracts. The lecture was delivered within the framework of a large conference addressed to SME-s.

On 17 June 2005 University of Tartu conferred *Magister iuris* degree to Maris Kuurberg, Attorney-at-Law. The subject of Maris's Master's thesis was "Transactions Contrary to Good Morals as Void Transactions". Additionally, Maris published on the basis of her Master's thesis an article in "Juridica", the legal journal of Faculty of Law of the University of Tartu.

### Baltmane & Bitans Law Office

On 17-18 June 2005 Ilze Baltmane, partner, took part in the seminar "Getting the Deal Done – Issues, Steps and Negotiations in M&A Transactions". The seminar was held in Paris and it was organized by AIJA in cooperation with IBA.

On 27 June – 1 July 2005 Maris Logins, legal assistant, participated at the summer school seminar „European Private and Labour Law”, which was held in Trier, Germany by the Academy of European Law.

On 23-27 August 2005 Agris Bitans, partner, took part in the 43<sup>rd</sup> AIJA Congress held at Mexico City.

Agris Bitans, partner, and Dace Cirule, associate, presented their lectures at the legal training for judges organized by the Latvian Judicial Training Center on 15-26 August 2005. Agris Bitans reported on the applicability and usage of civil law principles at the court rulings, but Dace Cirule presented an overview on plea bargaining – an innovation introduced in Latvia with the adoption of the new Criminal Procedure Act.

### Law Firm Saladžius & Partners

On 20-22 June 2005 the Attorney-at-law of the Law Firm Dr. Alvydas Gineitis delivered lectures at the Institute of East European Law, Christian – Albrechts University at Kiel, Germany. The set of lectures titled "Selected issues of Private International Law of Lithuania" introduced the German audience with the general picture of the Lithuanian international private law.

Managing Partner of the Law Firm Jonas Saladžius headed the Delegation of the Lithuanian Bar Association to the Plenary Session of CCBE (Council of Bars & Law Societies of Europe) organized in Bordeaux, France.

As from 1<sup>st</sup> September 2005 the Law Firm Saladžius & Partners will be moving to the new premises situated in the Business Centre VICTORIA. The newly built skyscraper is situated in the very centre of Vilnius city – a two minutes walk as from the Parliament of the Republic of Lithuania and locates the most prominent international and Lithuanian companies.

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