

# Baltic Newsletter

## Legal News at Your Glance

Autumn 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 seventh 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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# LEGAL UPDATES IN THE BALTIC REGION

## Companies law

### LATVIA

#### *Amendments to the Associations and Foundations Law*

The Latvian Parliament (Saeima) has adopted amendments to the Law on Associations and Foundations whereby it is now regulated that the human rights protection and similar purpose organisations may initiate legal action at court where the case relates to breach of differential treatment prohibition. The person's membership with the organization is not obligatory for bringing of the legal action whilst the consent of the offended person is a mandatory precondition for commencement of the court proceedings.

It appears that these amendments would primarily facilitate the protection and representation capacity of labour unions since the differential treatment prohibition is expressly prescribed by employment laws. With having consent of the employee the labour union will be entitled to commence litigation against the employer. It is down to practice to suggest how actively the labour unions would exploit this new entitlement. Nevertheless, such labour union action is likely to be perceived as a powerful tool in employee rights protection system.

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### LITHUANIA

#### *Amendment to the Law on Company Restructuring*

Article 15 of the Law on Company Restructuring has been amended with the aim of harmonizing the provisions of the said law with the requirements of the EU legal acts in regard of

notification on grantable state aid (including information about the discounts on debts that the state institutions intend to apply to the company-under-restructuring).

The provisions on how parties of restructuring procedures and court should act, when the creditor – the state institution – is willing to apply discounts on obligations of the company-under-restructuring are included into the Law. In such cases, state aid providers shall apply to the European Commission following the order set in the EU legal acts, whereas the court shall suspend the restructuring case.

In case of failure to apply to the European Commission regarding the state aid provision to the company-under-restructuring, the company in question may be requested to return the aid received, if such aid is acknowledged incompatible with the common market.

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## Construction law

### LITHUANIA

#### *Law on Construction amended*

The Law on Construction was amended with the aim of 1) unifying the definitions used in the Law of the Republic of Lithuania on Immovable Cultural Heritage and the Law of the Republic of Lithuania on Construction; 2) reducing the number of cases of unauthorised construction; and 3) simplifying the order of issuance of construction permits.

The construction was considered unauthorised prior to the effect of the amendment, if a building was being constructed without a construction permit. Moreover, the Law on Construction used to provide for a possibility to legalise such an unauthorised construction afterwards. The amendments to the Law on Construction provide for a broader definition of unauthorised

construction, which now includes construction of the building having a construction permit but in breach of a building project solvings. The Law indicates the following particular cases when construction shall be considered unauthorised due to the breach of a building project solvings.

The builder shall be obliged to demolish the unauthorised construction (building) or reconstruct such a building or its part within the time period set at his own expense following the requirements prescribed.

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## Court procedure law

### ESTONIA

#### *Amendments to the procedure codes*

On 11 October 2006 the Estonian parliament passed amendments to the Code of Civil Court Procedure, the Code of Administrative Court Procedure, the Code of Misdemeanour Procedure and the Code of Criminal Procedure. The amendments provide for a possibility to apply for amendment of a court judgment or compensation of damages due to the fact that the European Court of Human Rights has made a judgment stating that the Republic of Estonia has failed to comply with its obligations under the European Convention on Human Rights or Additional Protocols thereto in a similar case and on the same legal grounds as those of the applicant. Nevertheless, one can apply for amendment of a court judgment or claim for damages only if the applicant either already has submitted an individual application to the European Court of Human Rights or whose term of six months for submitting such application as referred to in Article 35 of the Convention has not expired.

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### LATVIA

#### *Amendments to the Civil Procedure Law*

Amendments to Civil Procedure Law relate to the procedures involving recognition of foreign court judgments in the Republic of Latvia.

The law specifies competence of Latvian national courts by narrowing their entitlement to reject recognition and enforcement of foreign court judgments in Latvia on formal grounds.

The new statutory regulation addresses also matters of the European Union level execution documents, procedure of mistakes correction thereto and the revocation matters.

In addition, the amended Civil Procedure Law concerns also the procedure of enforcement of instructions by competent local institutions on the occasions where specific general sanctions are applied by international organizations where Latvia is a member.

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## Employment law

### ESTONIA

#### *Ratification of the ILO Minimum Age Convention*

On 11 October 2006 the Estonian parliament ratified the ILO Minimum Age Convention No 138 of 1973. Upon ratifying the Convention the Republic of Estonia declared that a minimum age for admission to employment or work within its territory and on means of transport registered in its territory is 15 years of age, and that, subject to certain exceptions (e.g. employment of persons 13 to 15 years of age on light work) no one under that age shall be admitted to employment or work in any occupation. The Convention should not have any practical impact because the Estonian Employment Contract Act and other concerning acts already

provide that persons 13 to 15 years of age may be employed only on certain conditions.

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## LATVIA

### *Minimum monthly salary increased*

In line with the Cabinet of Ministers approved policy, the minimum monthly salary in Latvia has been increased from the current 90 LVL (approximately 128 EUR) to 120 LVL (approximately 171 EUR). In line with the increase the minimum hourly rate is set at 0,713 LVL instead of the current 0,535 LVL.

For youth employees (under 18 years of age) and employees exposed to higher risk the minimum hourly rate is set at 0,815 LVL because of their regulated reduced working time of 7 hours per day and 35 hours per week.

The rules on increased monthly salary and hourly rate become effective as of 1 January 2007.

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## Environmental law

### ESTONIA

#### *Popular complaint in environmental matters introduced*

On 28 November 2006 the Supreme Court of Estonia made a judgment by which it confirmed and developed further its earlier position concerning the right of recourse to administrative court in environmental matters. The Supreme Court took the view that in addition to a physical or legal person whose rights may be harmed by a decision having impact to environment, an environmental organization or even a partnership without legal personality with the purpose to protect or

converse nature may turn to an administrative court in order to submit complaint against decision having impact to environment. The Supreme Court grounded its position with reference to the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. By the above judgment the Supreme Court introduced the concept of popular complaint in environmental matters to the Estonian legal order.

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## Financial law

### LITHUANIA

#### *Amendments to the Law on Securities Market*

The amendments to the Law were prepared for the purpose of transposing in the national legislation the provisions of the Directive 2004/25/EC on takeover bids.

The amendments are aimed at establishing requirements for procedure of presentation and implementation of takeover bids. Therefore, for the purpose of implementing the Directive on takeover bids, the Law on Securities Market is supplemented by a new chapter, which regulates the scope of application of takeover bid, principles of takeover bid, the procedure of implementation of takeover bid, the procedure of fixing the price, restrictions on takeover bid, cases, when a mandatory takeover bid can not be made, etc.

One of the new developments, supplementing the Law on Securities Market is the legislative regulation of removal of shares from the trading list of the stock exchange. The decision to remove issuer's shares from the trading list of the stock exchange can be made either by issuer's general meeting of shareholders or by the Securities Commission, when it decides that

further existence of issuer's shares in the trading list of the stock exchange can endanger the interests of investors or proper functioning of the stock market.

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## Investment law

### LITHUANIA

*Law amending and supplementing the Law on Concessions of the Republic of Lithuania was adopted*

The purpose of these amendments is to specify some provisions of the currently valid Law on Concessions of the Republic of Lithuania in order to encourage the investment of the private capital into the public sector through the concession. Under the new wording of the law, the notion of the concession was elaborated. Now it also includes the possession and (or) use of property held by title or the right of trust by the state or municipality controlled persons and is not limited only to the possession and (or) use of the property held by the state or municipality. Besides, some requirements related to occasions, when the property is transferred to the concessionaire for possession and (or) use, were established.

The Law supplements the principles of awarding concessions. It is established that the awarding authority shall constitute a commission for the arrangement of and performance of procedures of awarding concessions. Moreover, the competence of such commission, the requirements for its members, as well as the provisions on the reimbursement to the concessionaire payable under the concession agreement are established by the amendments.

The essential terms of the concession agreement were elaborated: it was established that the duration of the concession shall not exceed the period of 25 years, and the

requirement that the sharing of risk between the concessionaire and the awarding authority must be described in the concession agreement.

For further information please contact Mr. Rintis Puišys at [rintis.puissys@splegal.lt](mailto:rintis.puissys@splegal.lt)

## Pharmacy law

### LITHUANIA

*New Law on Pharmacy adopted*

The new Law on Pharmacy has replaced the Law on Pharmaceutical Activities and the Law on Medicines, which were in effect thus far. The new Law has filled the gaps of legal regulation and harmonized provisions of national law with the appropriate requirements of legal acts of the European Union.

The law provides for a lot of new definitions, as for example, definitions of generic medicinal products and reference medicinal products are provided, pharmacovigilance is defined and control system of pharmacovigilance is established.

The new Law regulates the procedure of issuance and conditions for such issuance of medicinal product marketing authorization, the procedure of presentation of application to receive medicinal product marketing authorization, the procedure of examination of application and granting the marketing authorization. It also regulates the parallel import of medicinal products. The new Law is more detailed concerning the regulation of provision of information about medicinal products and requirements applicable to advertising of medicinal products. Besides, the Law also provides for regulation of supply of medical goods to the market.

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## Public law

### LATVIA

#### *Adopted Law on Legalization of Documents*

The Parliament has passed the law on legalization of documents. The law fills local legislative gap since there was absence of a national law instrument regulating the documents legalisation matters in Latvia.

The new law stipulates procedure for legalization of public documents issued in the Republic of Latvia and addresses matters concerning use of foreign origin public documents in the Republic of Latvia. Legalization of documents is certification of the signature (authority of signing official) and authenticity of stamp on the document which is approved by a competent official. Consequently, legalized public document issued in one country becomes equally valid also in another country.

The law actually describes currently applied practice in documents legalisation matters. The law refers also to 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents which regulates the procedure of affixing apostille (a simplified uniform legalization form) to public documents. The state institution in Latvia authorised to affix apostille to Latvian origin public document for use abroad is the Consular Department of the Ministry of Foreign Affairs (address at Riga, Elizabetes iela 57, tel. +371 7016364). The document bearing apostille is not subject to any other legalization by Latvian diplomatic / consular mission abroad. The same applies also to use of foreign public documents in Latvia if these bear apostille.

No additional legalization is required for public documents (a coat of arms seal shall appear on the document) issued in countries with which Latvia has entered into bilateral

agreements on legal assistance and legal relations in civil, family law and criminal law matters. Latvia currently has effective bilateral agreements with Lithuania, Estonia, Russia, Belarus, Kyrgyzstan, Moldova, Poland, Ukraine and Uzbekistan.

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## Real estate

### ESTONIA

#### *Amendments regarding energy performance of buildings*

On 27 September 2006 the Estonian parliament adopted amendments to the Building Act, the Apartment Ownership Act and other concerning acts stipulating requirements concerning the energy performance of buildings, minimum requirements on the energy performance of new buildings, energy certification of buildings and regular inspection of boilers and of air-conditioning systems in buildings. The amendments are due to the need to implement the Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings. Under the amendments starting from 1 January 2009 upon sale or delivery of a building or a separate part thereof by a seller or building contractor, respectively, the seller or building contractor must hand over to the buyer or contracting person, along with other concerning documents, energy certificate concerning consumption of energy by the building. Additionally, all new buildings, with the exception of buildings, which are built before 1 January 2008 or for construction of which building permits have been issued prior to 1 January 2008, are subject to minimum requirements on the energy performance.

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## State aid

### LATVIA

#### *Business Support Control Law Amended*

The legal norms of Business Support Control Law are specified with respect to public utility service providers. The amendments include legal provisions outlining the instances when compensation payment made to public utility service provider shall not be considered as state aid. The revised law introduces also general terms for support to public utility service providers, including the reporting requirements.

The amendments stipulate also principles for granting support to entities in financially vulnerable situation depending on the size of the entity.

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## Tax law

### ESTONIA

#### *Convention on elimination of double taxation ratified*

On 18 October 2006 the Estonian parliament ratified the Convention 90/436/EEC of 23 July 1990 on Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises. The Convention aims to eliminate situation where profits which are included in the profits of an enterprise of one Member State are also included or are likely to be included in the profits of an enterprise of another Member State on the grounds of association between the two enterprises. Therefore, the Convention stipulates that concerning enterprises may apply the tax authorities for mutual co-operation regarding the assessment of profits.

#### *New rules on assessment of taxable value of transactions between associated enterprises*

The Minister of Finance established by its regulation No 53 of 10 November 2006 new rules for assessment of taxable value of transactions between associated enterprises. The new rules that will enter into force starting from 1 January 2007 will replace the old rules effective already from 1 January 2000. As compared to the old rules, the new rules provide for more detailed regulations for determination of taxable value, including requirements concerning features of the object of the transaction, special provisions concerning intangible property, activity analysis and business strategy of the enterprises involved, economic conditions under which the transaction was made, as well as obligation to keep documents relating to the transaction made with associated enterprises. Finally, under the new rules both the tax authorities and taxpayer are suggested to be guided by the OECD transfer pricing guidelines insofar as these are not in conflict with the new rules.

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

### LATVIA

#### *Personal Income Tax Law amended*

On 28 September 2006 amendments were passed to Personal Income Tax Law. The amendments provide that income from sale of timber (from forest owned by the person) shall be taxable with 25% personal income tax (PIT) if the forest has been in the person's property for less than 12 months period.

Until the said amendments individuals were under legal obligation to pay PIT on timber sale proceeds regardless of the forest ownership period. The amendments now effectively provide for the same taxation principle (12

months from acquisition criterion) as with the real estate objects.

The amendments to the statute specify also matters regarding income of non-residents as well as the taxable income of an individual taxpayer who is employed by foreign entity.

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## LITHUANIA

### *Amendments to the Law on Individual Income Tax*

Amendments to the Law on Individual Income Tax provide that pensions and annuities generated from international organisations (Clause 11 of Part 1 of Article 17), as well as gift income received not only from spouses, children (adoptees), parents (stepparents), but also from grandparents (Clause 19 of Part 1 of Article 17) shall be exempt from individual income tax. The provision of the Law stating that only those lottery prizes, that are paid by taxable entities paying tax from the lottery turnover according to the laws of the Republic of Lithuania, shall be exempt from tax, has been also amended. The provision of the Law has been changed according to the report of the European Commission, which has pointed out that this particular provision has been discouraging Lithuanian citizens from participating in lotteries organised by entities registered in other countries of the European Economic Area. Therefore, the Law has been accordingly amended by replacing Lithuanian taxable entities by a broader group – entities from the Member States of the European Economic Area.

Also, the provisions of the Law concerning tax deductions applicable to the agreements of financial lease or credit for residential apartments have been changed. Previous to the amendment an individual could deduct from taxable income the financial lease or credit

interest, irrespective the number of credit and (or) lease agreements he has entered into. Upon the amendment having taken effect, the individual will be able to deduct from his taxable income the interest paid only for one taken credit for construction or acquisition of one residential apartment, or interest paid for one financial lease of residential apartment.

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## OTHER NEWS

### Law Office Ots & Co

Tarmo Repp successfully passed the exam of Assistant to the Attorney-at-Law and is as of 19 September 2006 Assistant to the Attorney-at-Law of the Estonian Bar Association.

As of 1 July 2006 there are three new partners in Law Office Ots & Co.: Toomas Pikamäe, Raiko Lipstok and Randu Riiberg. Maivi Ots, former sole partner of the law office, continues as the managing partner. Due to summer season the public announcement of partnership was postponed from July to October 2006.

Maivi Ots, managing partner of the law office, has held several lectures concerning commercial law. On 29 September 2006 Maivi gave lecture concerning amendments to the Commercial Code at the annual conference of the Estonian Taxpayers Association. On 31 October 2006 Maivi made presentation regarding business secrets to practicing lawyers at the training day organized by the Estonian Lawyers' Union.

On 23 November 2006 Maivi and Randu, partners of the law office, gave lectures concerning M&A and commercial law addressed to chief and senior executive officials at the training day organized by Tallinn Conferences.

## Baltmane & Bitans Law Office

We are pleased to announce that Inese Kalnāja-Zelča, legal assistant, has joined Baltmane & Bitans Law Office. Inese has extensive experience in the field of intellectual property law. Formerly she was lawyer at Patent agency KDK. Inese practices in the fields of intellectual law and competition law.

Agris Bitāns, partner, has recently published tort and civil liability subjects related article in Tort and Insurance Law Yearbook, European Tort Law 2005 edited by Helmut Koziol and Barbara C. Steininger, published by 2006 Springer-Verlag/Wien.

Agris Bitāns, partner, together with Jānis Lagzdīņš and Inese Kalnāja-Zelča have recently published the following articles with daily business newspaper "Dienas Bizness" monthly enclosure "SALDO":

- Investment of industrial property objects into share capital of a commercial company (SALDO, September 2006);
- Domain name vs. trademark (SALDO, November 2006).

## Law Firm Saladžius & Partners

Associated partner Rimtis Puišys and assistant to attorney-at-law Beatričė Laužikaitė have presented an overview of legal acts of the Republic of Lithuania regulating the product liability to the International Comparative Legal Guide to Product Liability 2006.

Managing partner Jonas Saladžius and lawyer Jevgenija Kovaliova have presented an overview of legal acts of the Republic of Lithuania regulating the advertising of medicinal products to the International Comparative Legal Guide to Pharmaceuticals Advertising 2006.

Assistant to attorney-at-law Andrius Bambalas received a Fellowship from the Lord Slynn Organization. The purpose of this Foundation is to promote better understanding between Britain and Eastern European countries and to contribute to cooperation.

Managing partner Jonas Saladžius participated in the conference "Lawyer advertising: is it needful" on 10 November which was organized by student organization ELSA together with Lithuanian Bar Association. In the conference Jonas Saladžius presented an overview on Lawyer advertising prepared together with assistant to attorney-at-law Jevgenija Kovaliova

Assistant to attorney-at-law Audrius Biguzas delivered a presentation on "Need of non-disclosure agreements keeps growing" in the international conference, which was held in Panevėžys on 17-18 November.

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