

**IN THIS ISSUE:**

- 1. Investment funds
- 2. Commercial law
- 3. Competition
- 4. Tax treaties
- 5. Immigration



Recently our firm acted for US company ABRO INDUSTRIES, INC. in counterfeiting matter. Counterfeited goods – car gasket markers – actually made in China, not US as originals was seized by a customs and destructed. Owners of intellectual property rights may arrange watching service with the custom's authorities against counterfeited and pirated goods. Such opportunity relates to protection of trademarks, designs, copyrights or related rights.

# Investment funds

## *Investment funds*

The investment of private savings in the securities market in Latvia is regulated by the Investment Management Companies Law of 1997. The law provides the procedure for establishment and operation of investment management companies, the procedure for public investment of money in Latvia and for the joint investment of this money on behalf of the investor in investment funds administrated by investment management companies.

An investment fund is defined as an aggregate of assets formed by investments made in return for investment certificates, as well as assets obtained in transactions with investment fund property on the basis of the rights embedded in such property.

### **Investment management companies**

An investment management company in Latvia may be established in the form of a closed joint-stock company. Firstly the company must receive a licence from the Financial and Capital Market Commission. The licence is issued for an indefinite time period. The law follows the joint licence

principle for European Union companies: a licence issued in one EU member state is valid in all member states.

The investment management company may only manage investment funds, issuance of investment certificates of these funds and other activities directly related such funds as well as the management of the resources of private pension funds and state-funded pension schemes.

An investment certificate confirms the participation of a fund investor in the investment fund and the rights arising from such participation. The investment certificate is considered a security. The investment fund may be either open or closed. The management company of an open investment fund has a duty to repurchase investment certificates based on the request of fund investors. The management company of a closed investment fund is prohibited from the repurchase of investment certificates.

## Investment objects

Attracted money may be invested in transferable securities, money market instruments (such as promissory notes, deposit certificates and commercial paper), term deposits in a bank and other allowed assets. Only the resources of a closed-ended fund may be invested in immovable property.

## The prospectus

Investment certificates may not be issued without a fund prospectus approved by the management company. The fund prospectus shall include information necessary for investors, so that they can take a reasonable decision on the investment offered. In order to make the investment funds more accessible and

understandable for investors without specific professional knowledge of investment funds, open-ended funds shall also prepare a short version of the prospectus.

The complete prospectus, among other things, shall include: brief explanation of the rights of investors; information on tax and duty payments applicable to investors and payment procedures; information on the management company and fund auditor; price, amount and time of the investment certificate issue; provisions and procedures for sale, repurchase and reacceptance of certificates; circumstances under which repurchase and re-acceptance of investment certificates may be suspended; methods and frequency of calculation of the sale and repurchase price, as well as how, where and how

often these prices are made public; commissions for transactions of the investment certificates; principles and provisions for determining the fund value; calculation of the fund income, its use and distribution among fund investors as well as investment policy, objectives and risk analysis.

It is allowed that the prospectus does not repeat the information already included in the management by-laws of the relevant fund. The fund prospectus enters into force upon the fund's registration within the Financial and Capital Market Commission.

The Investment Managing Companies Law has created a more detailed regulatory framework for investment services in Latvia corresponding to the requirements of the EU securities market.

# Commercial law

**New amendments to the Commercial Law has entered into force on 10 April 2006, provides for change of rules applicable to elections of auditors as well as for an increase of a share capital.**

## Auditors

The changes provide that sworn auditor is required only if two of the criteria listed below are exceeded:

- total assets: 100 000 Lats;
- net turnover: 200 000 Lats;
- average number of employees in the reporting year: 25.



Optionally, sworn auditor may be appointed also if the criteria are not exceeded. The Commercial Register will not register auditors in a future and all existing records regarding auditors will be deleted from the Commercial Register.

## Increase of a share capital

Limited liability companies may increase a share capital by increasing nominal value of the share after approval of the annual report by counting fully or partly in the share capital the positive difference between equity and share capital plus reserves.



# Competition

## Recently the Latvian Government started consideration of new draft amendments to the Competition Law of 2001.

### **Dominant position**

The main target of the amendments is to extend the definition of dominant position thus strengthening the effectiveness of the competition policy. The existing definition allows to establish the situation of dominant position only for a company hindering, restricting or distorting the competition, which has in a relevant market at least 40% market share. If a company has less than 40%, it was not in dominant position, notwithstanding to its activities against competition. Therefore, the existing definition does not cover all range of market participants which activities may affect honest competition. It is planned that further, notwithstanding to the amount of market share, any company could be recognized as being in dominant position, if the company has capacity to substantially hinder, restrict or distort competition in any relevant market for a sufficient period by acting fully or partially independently from competitors, suppliers or consumers.

### **Presumption**

In practice, it has been established that those market participants having at least 40% in the relevant market, ordinarily

are in dominant position. Therefore, the draft amendments creates the presumption that any market participant having at least 40% market share in a relevant market has a dominant position, unless the market participant itself has proved that he is not in such position.

### **Mergers and acquisitions**

The existing reporting procedure requires the market participants to submit the voluminous report to the Latvian Competition Authority on the planned mergers & acquisitions also in cases when merger or acquisition although corresponds to any of reporting criteria (e.g. total annual turnover of involved participants exceeds 25'000 LVL or total market share exceeds 40%) even if such merger or acquisition does not entail considerable market changes.

The draft amendments provide two notable changes. Firstly, if the of parties involved in merger or acquisition and having total turnover exceeding 25'000 LVL, has total market share not exceeding 15%, or neither of the involved parties is acting in the same relevant market or a market vertically related to the relevant market then the parties are entitled to submit the shortened report.

Secondly, one of the mentioned criteria for submitting the complete report has been strengthen- the report shall be submitted if total market share of participants exceeds 35% (previously 40%).

# Tax treaties

## Withholding Taxes

	Dividends %	Interest %	Royalties %
Armenia	5/15	10	10
Belarus	10	10	10
Belgium	5/15	10	5/10
Bulgaria	5/10	5	5/7
Canada	5/15	10	10
China	5/10	10	10
Czech republic	5/15	10	10
Croatia	5/10	10	10
Denmark	5/15	10	5/10
Estonia	5/15	10	5/10
Finland	5/15	10	5/10
France	5/10	10	5/10
Germany	5/10	10	5/10
Georgia	5/10	10	10
Greece	5/10	10	5/10
Hungary	5/10	10	5/10
Iceland	5/15	10	5/10
Ireland	5/15	10	5/10
Kazakhstan	5/15	10	10
Lithuania	0/15	0	0
Moldova	10	10	10
Malta	5/10	10	10
Norway	5/15	10	5/10
Poland	5/15	10	10
Portugal	10	10	10
Rumania	10	10	10
Spain	5/10	10	5/10
Sweden	5/15	10	5/10
Singapore	5/10	10	7.5
Slovenia	5/15	10	10
Slovakia	10	10	10
Switzerland	5/15	10	5/10
The Netherlands	5/15	10	5/10
Turkey	10	10	5/10
UK	5/15	10	5/10
Ukraine	5/15	10	10
USA	5/15	10	5/10
Uzbekistan	10	10	10
Non-treaty country	10	0/5/10	5/15

# Immigration

Amendments in the Immigration Law provides that a permanent residence permit may be granted after 5 years of stay in Latvia, not after 10 years as it was before. Expatriate having a status of permanent resident in EU does not need a work permit in Latvia. However a residence permit is still required. Residence permit may be nullified if a third country's citizen, who has permanent resident status in any EU country, has been out of EU without interruption for 12 months.

Starting from April 1, 2006 minimal personal finances required for citizens from third countries (non-EU countries) are 492 lats per month for Board/Council members, 246 lats per month for employees, 105 lats per month for family members (adults).

## NEWLY EMPLOYED

We are pleased to announce that **Aira Strautmane** has joined the firm as a lawyer. Before she was working with a Legal department of the State Revenue Service of the Ministry of Finance, acting for tax authorities in tax cases against companies and individuals. She has represented tax authorities in vast majority of cases, including in the Supreme court as well as has worked on consulting side.

## SEMINAR NEWS

Recently our firm held seminar "Expatriate and Corporate Tax Planning 2006" at the Reval Hotel Ridzene organized jointly with the Swedish Chamber of Commerce. The presentation provided tax issues, involving residency, Taxation of expatriates in Latvia, dividend structure and convention of definition to equity. Summary of slides are available at <http://www.gencs.lv/doing.html>

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