

## Legal advisers

Our professionals consulted the international property investment company Dawnay Day Carpathian Plc in acquisition of one of the largest shopping and entertainment centres in Lithuania - Babilonas. The transaction value - approximately EUR 32.5 m. It was the first investment of Dawnay Day Carpathian Plc. in Lithuania.

## Possible concession approved

**Vilnius City Council approved the possible public-private partnership (PPP), i.e. transfer of operations and maintenance of outpatient treatment centres - Naujoji Vilnia and Karoliniškės polyclinics - to a private investor.**

The possibilities to improve operations and maintenance efficiency were studied and the feasibility study drawn up by a consortium consisting of law firm Lideika, Petrauskas, Valiūnas ir partneriai LAWIN, UAB Žabolis ir partneriai and public institution VšĮ Sveikatos priežiūros vertinimo nepriklausoma agentūra (Independent Agency of Health Care Valuation).

A tender for an award of the concession is to be held soon, thus implementing the first concession-based PPP project between Vilnius municipality and private investor.

## EU LAW NEWS

### ENERGY TAXATION

**On 30 June 2006, the European Commission adopted a Communication (COM(2006)342) in which it reviewed more than one hundred derogations in the Energy Tax Directive (2003/96/EC) that are due to expire by the end of 2006.** The review concludes that most of the derogations are no longer needed as the tax measure can continue to be applied on the basis of the optional provisions foreseen for such purpose by the Energy Tax Directive. The Communication provides an overview of the wide range of flexible options offered by the Directive that can allow Member States to continue to apply this kind of tax measures after the expiry of the derogation. In particular Member States can apply more favourable tax treatment to certain products (more environmental-friendly fuels) or to certain uses (public transport, some business uses).

It is up to Member States to consider under their own responsibility whether, despite the arguments presented by the Commission, they wish to apply for a renewal of any of these derogations. Any such request will be assessed taking into account the proper functioning of the Internal Market, the need to ensure fair competition as well as Community environment, energy and transport policies.

Further information on the Energy Directive and the Communication can be found at:

[http://ec.europa.eu/taxation\\_customs/taxation](http://ec.europa.eu/taxation_customs/taxation)

[/excise\\_duties/energy\\_products/legislation/index\\_en.htm](/excise_duties/energy_products/legislation/index_en.htm)

### PERSONAL DATA PROTECTION

**On 3 July 2006, the Commission opened an online public consultation on how the European Commission can help to ensure that the growing use of radio frequency identification devices (RFID) increases the competitiveness of the Europe's economy and improves the quality of life of its citizens, while safeguarding their basic rights, and in particular their privacy.** From March to June 2006, the Commission has already held five workshops to assess the potential of RFID for business and society. These workshops looked at standards, international compatibility, radio spectrum allocation, and the future of RFID technology. From the ongoing public consultation the Commission expected to produce a wide consensus as to whether, and if so to what extent, Europe needs a conducive and stable policy environment encouraging all types of companies to invest in RFID technology and harmonizing technology standards as well as radio frequency allocation, while at the same time safeguarding individuals' privacy and security. A final conference, scheduled for October 2006, will present the main outcomes of the workshops and the online consultation to an audience of experts and decision-makers. In addition, it will help to prepare the Communication to European Parliament and Council.

For more information:  
'Your Voice in Europe':  
<http://ec.europa.eu/yourvoice/>  
RFID Consultation website:  
<http://www.rfidconsultation.eu>

### SOCIAL POLICY

**On 4 July 2006, the European Parliament adopted the legislative package for new Cohesion policy 2007-2013, thus framing the future allocation of 35.7% of the total EU budget (308 bn EUR).** The legislation consists of one general and four specific regulations: the former (1083/2006/EC) lays out the common rules in programming, managing, controlling and evaluating the new Cohesion policy; the other four regulations outline specific rules for the European Regional Development Fund (ERDF) (1080/2006/EC), the European Social Fund (ESF) (1081/2006/EC), the Cohesion Fund (CF) (1084/2006/EC) and the European grouping of territorial co-operation (EGTC) (1082/2006/EC). According to new legislation, Member States and regions will have to use their Structural Funds for more investment in innovation-related projects. The ESF should make a strong contribution to the EU's Lisbon strategy for 'Growth and Jobs' in the next programming period of 2007-2013. Links between the ESF and the EU's European Employment Strategy are being reinforced to help reach its employment objectives. Particular importance will be given to the strategy's main objectives of economic changes, full employment, quality and productivity at work, social cohesion and social inclusion. The next step is the agreement by the European Parliament and the Council to the Community

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Lideika, Petrauskas, Valiūnas ir partneriai LAWIN provides services in all major fields of business law. The firm's specialists work in Corporate and M&A; Finance & Tax; Property & Environment; Trade & Technology; Dispute Resolution & Transport practice groups.

The firm is a member of LAWIN – group of the leading Baltic law firms also including Klavins & Slaidins LAWIN from Latvia and Lepik & Luhaäär LAWIN from Estonia. LAWIN currently has 90 lawyers making it the largest legal presence working in the Baltics.

Lideika, Petrauskas, Valiūnas ir partneriai LAWIN started activities in 1992 in Vilnius and since 1998 its branch has been successfully operating in the seaport Klaipėda. Presently, the firm has 44 professionals.

Services are provided in English, German, Russian and Lithuanian.

*This Law Update contains general information and does not constitute and should not be relied upon as legal opinion or advice.*

Strategic Guidelines for cohesion policy. The guidelines set out a framework for new programmes which will be supported by the European Regional Development Funds (ERDF), the European Social Fund (ESF) and the Cohesion Fund. Their adoption by the Council is expected by next October following a proposal by the Commission. For more see:

[http://ec.europa.eu/regional\\_policy/funds/2007/index\\_en.htm](http://ec.europa.eu/regional_policy/funds/2007/index_en.htm)

### MARITIME LAW

**On 5 July 2006, the European Commission adopted a Communication on "Implementing sustainability in EU fisheries through Maximum Sustainable Yield" (MSY) (COM(2006) 360).** Maximum sustainable yield is the highest yield that may be taken from a fish stock without lowering its productive potential for future years. At the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002, Member States of the EU committed themselves to maintaining or restoring fish stocks to levels that can produce at MSY no later than 2015. The Communication outlines the steps by which the Commission proposes implementing an MSY approach, the benefits this will bring once stocks have been restored to this level, and the

options for managing the 'transitional' period for stocks which are currently overfished. As well as preventing vulnerable stocks from collapsing, this approach will allow the development of larger fish stocks of all species, thus reducing costs and increasing profits for the fishing industry, as the amount of effort (and associated costs, such as fuel) required per tone of fish caught decreases. The result will be more stable catches, providing more secure employment and a greater guarantee of wealth for the industry as a whole. The Commission is committed to carrying out impact assessment for all the MSY long-term plans it will propose, enabling Member States, before they make their decision, to clearly identify the necessary trade-offs between the short-term losses and the long-term benefits in fisheries.

**On 19 July 2006, the Commission approved the introduction of a tonnage tax system whereby tax liable entities in Lithuania engaged in international transportation by ship or a directly related activity can change the tax base for their operating profits.** Companies fulfilling certain criteria may opt for a "tonnage tax" for the taxation of their profits from international maritime traffic. The tax will be calculated according to the net tonnage of their fleet, instead of the normally applicable corporation tax. The authorised scheme will run from January 2007 for 10 years. The measure is designed to stimulate the Lithuanian shipping sector, as ship-owners will pay a lower level of tax for vessels registered in any EU/EEA Member State. The Commission considers that this scheme complies with Community rules and has approved it in the context of its maritime policy which aims at maintaining the Community fleet and preserving employment of EU staff both on-board and on shore. The measure will decrease flagging-out of the EU maritime fleet, thereby retaining employment and maritime know-how in Europe.

## AVIATION LAW

**On 4 July 2006, the Commission adopted the 'flight plans' Regulation (1033/2006/EC) and on 6 July 2006, the 'co-ordination and transfer' Regulation (1032/2006/EC) concerning the interoperability of European air traffic management systems.** The two actions aim at modernizing air traffic management systems in accordance with the Single European Sky initiative. The 'co-ordination and transfer' Regulation establishes the requirements for automatic systems for the exchange of flight data that notify, co-ordinate and transfer flights between air traffic control units. The aim is to ensure a high level of safety and efficiency of the systems located in the same or in different Member States. The 'flight plans' Regulation sets out the procedural requirements for flight plans in the pre-flight phase. The aim is to ensure that all parties involved in submitting, modifying, accepting and distributing flight plans (i.e. aircraft operators, pilots and air traffic service units) will have the same flight plan before take off. It defines the obligations of a centralised flight planning, processing and distribution service, provided through the Integrated Initial Flight Plan Processing System (IFPS), established under the authority of Eurocontrol.

Further Information on the Single European Sky is available on:

[http://ec.europa.eu/transport/air/single\\_sky/index\\_en.htm](http://ec.europa.eu/transport/air/single_sky/index_en.htm)

## ENVIRONMENTAL LAW

**On 12 July 2006, the European Commission adopted a new strategy (COM/2006/0372) aimed at improving the way pesticides are used across the EU.** It complements existing EU legislation controlling which pesticides can actually be placed on the market. The strategy foresees measures such as national action plans, training for professional users and distributors, certification and control of application equipment, protection of the aquatic environment, and restricting or banning the use of pesticides in specific areas. Aerial spraying is banned except for strictly defined cases. The strategy is set out in a Communication, accompanied by a proposal for a Framework Directive which sets out common objectives and requirements while allowing for flexibility according to the geographic, agricultural and climatic situation of each Member State. The Commission also adopted and plans in near future to adopt other related legislation proposals. On the whole, the strategy will stimulate research and innovation for the development and use of more effective and safer substances and crop protection services. It will promote the use of alternative plant protection methods with lesser impact on health and the environment. This will mean a market opportunity for the most innovative companies developing chemical and non-chemical plant protection products. For the time being, the strategy only deals with the largest group of pesticides - plant protection products (PPPs). At a second stage, its scope may be extended to biocides once the impacts of the 1998 Directive on biocidal products have been evaluated. Biocides, e.g. disinfectants, wood preservatives and antifouling paints, are used to control other harmful organisms than those damaging crops or controlling plants.

Full details of the Strategy are available at:

<http://ec.europa.eu/comm/environment/ppps/home.htm>

## TELECOMMUNICATIONS

**On 13 July 2006, the Court of Justice of the European Communities (ECJ) issued a judgement in case C-438/04 *Mobistar SA v. Institut belge des services postaux et des télécommunications (IBPT)* stating that national regulatory authorities may fix *ex ante* maximum prices for the transfer of a mobile telephone number from one mobile telephone operator to another.** According to the ECJ, prices must be fixed on the basis of costs in such a way that consumers are not dissuaded from making use of the portability facility.

The Universal Service Directive (2002/22/EC of the European Parliament and of the Council) provides that all subscribers of mobile services who so request must be able to retain their number(s) when changing operator. The

national regulatory authorities are to ensure that pricing for interconnection related to the provision of number portability is cost-oriented and that direct charges to subscribers do not act as a disincentive for the use of these facilities.

The Court holds, firstly, that pricing for interconnection related to the provision of number portability, as referred to in the Universal Service Directive (2002/22/EC), concerns the traffic costs of transferred numbers and the set-up costs incurred by mobile telephone operators to implement requests for number transferral. Secondly, the Court rules that the Directive does not preclude the fixing of maximum prices for all mobile telephone operators by the national regulatory authorities in advance on the basis of an abstract model of the costs. Finally, the Court states that the body responsible for hearing an appeal against a decision of the national regulatory authority must be able to have at its disposal all the information necessary in order to decide in full knowledge of the facts on the merits of the appeal, including confidential information. However, the protection of such information and business confidentiality must be guaranteed and must be adjusted to reconcile it with the requirements of effective legal protection and the rights of defence of the parties to the dispute.

## STATE AID

**On 19 July 2006, the European Commission adopted Guidelines to determine when state aid to support risk capital investment in small and medium-sized enterprises (SMEs) is compatible with EC Treaty state aid rules (Article 87).** The rules will facilitate access to finance for SMEs in their early stages of development, particularly where alternative means of funding from financial markets are lacking (i.e. market failure). Better access to capital will spur their growth and create more jobs in the EU. The Guidelines form part of the Commission's efforts, announced in the State Aid Action Plan, to encourage Member States to focus state aid on improving the competitiveness of EU industry, in particular through innovation, and on creating sustainable jobs, while minimising distortions of competition. The Guidelines include a 'safe harbour' of EUR 1.5 million investment per SME over 12 months, an increase of 50% on the previous threshold (below which a market failure has been found to exist), a light assessment procedure for clear cut cases fulfilling certain conditions and assessment criteria which ensure that state funding will leverage private investment, target market failures and be proportionate.

The Guidelines replace the 2001 Communication on state aid and risk capital. They will foster access to risk capital, in particular for innovative companies. More investments may also lead to more environmentally friendly production, for instance through energy saving.

The Guidelines are available at:

[http://ec.europa.eu/comm/competition/state\\_aid/others/risk\\_capital\\_guidelines\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/others/risk_capital_guidelines_en.pdf)

## PUBLIC PROCUREMENT

**On 24 July 2006, the European Commission published guidance on how public authorities should award contracts of low monetary value fairly.** These contracts account for the vast majority of public contracts in the EU - over 90% in some Member States. Although they are not covered by the EU Directives on public procurement, it is well established that their award should nevertheless comply with the internal market principles of transparency and non-discrimination. The Commission's guidance, which is in the form of an 'Interpretative Communication', contains suggestions on how public authorities should comply with these principles, together with examples of innovative ways to award contracts in a modern, transparent and cost-efficient manner. The guidance also applies to certain services not fully covered by the EU Directives on public procurement. Low-value contracts present significant opportunities for European businesses, in particular for small and medium sized enterprises and start-up companies. Competition for these contracts would allow public authorities to choose from a broader range of potential suppliers and to gain from better-value offers.

The detailed rules of the public procurement directives do not apply to these contracts, as they have a value of less than EUR 211 thousand in the case of services or supplies contracts, or EUR 5,278 million in the case of works contracts. Nevertheless, the European Court of Justice (ECJ) has developed minimum standards of transparency and non-discrimination for the award of these contracts. However, in many instances public authorities continue to award these contracts directly to local providers without any competition.

The Commission's Interpretative Communication provides guidance to contracting authorities to help them comply with the standards developed by the ECJ, in particular in the following areas:

**Advertising.** The Communication explains how to ensure that low-value contracts are advertised adequately and transparently. It gives specific guidance on how widely the contract should be advertised, various methods of advertising that could be used, and which elements the advertisement should contain.

**Contract award.** The Communication also provides guidance on how public authorities can ensure a fair and impartial procedure for awarding a contract. The principles of such a procedure include a transparent and objective approach, appropriate time-limits, mutual recognition of written evidence between different Member States, equal access for economic operators from all Member States, and non-discriminatory description of the subject-matter of the contract.

**Review procedures.** Finally the Communication explains how bidders can request a review of the impartiality of decisions taken in the course of an award procedure.

The Interpretative Communication is available at:

[http://ec.europa.eu/internal\\_market/publicprocurement/key-docs\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm)

## ENERGY LAW

**On 24 July 2006, the Council adopted new Trans-European Energy Network (TEN-E) Guidelines on cross-border energy transmission for all EU Member States.** The European Parliament already endorsed these guidelines on 4 April. In particular, the guidelines integrate fully the ten new Member States into the network and present 42 projects of European interest. In addition, they provide the framework for increased coordination, exchange of information and the possibility of the appointment of a European Coordinator. The revised guidelines clearly reflect the three main objectives of Europe's energy policy, namely sustainability, competitiveness and security of supply.

The TEN-E guidelines are an important policy instrument for establishing the effective operation of the internal energy market and reinforcing the security of energy supply by better linking the national markets and by strengthening relations with third countries in the energy sector. Increasingly interlinked regional and national markets give customers the benefit of better service quality, a wider choice of the energy mix and competitive prices. On the top of that, the integration of large-scale wind generated electric power into the grid constitutes a Europe-wide challenge, exceeding already today the national dimension.

Gas and electricity infrastructure projects of European interest are to be financed by Member States and market participants with the EU providing cash mainly to cover feasibility studies. Projects involving neighbouring countries such as Ukraine and other EU applicant countries are also to be encouraged, the Council said in a statement.

More information at: MEMO/06/304

## FINANCE LAW

**On 28 July 2006, the Commission published its third annual monitoring report for the financial services sector - the Financial Integration Monitor (FIM) 2006 (SEC(2006) 1057).** This year's Financial Integration Monitor focuses on the increased importance of both institutional investors and the external dimension for EU financial services. The report covers three areas: the EU financial sector in the global context and it analyses two market segments, the EU insurance and pension funds sector and the EU investment funds sector. The FIM reveals the relevant role of institutional investors on EU financial market. It also brings economic data and evidence into the policy debate and is part of the evidence-based policy making of the Commission. The FIM is included in the White Paper for Financial Services Policy 2005-2010.

The report is available at:

[http://ec.europa.eu/internal\\_market/finances/fim/index\\_en.htm](http://ec.europa.eu/internal_market/finances/fim/index_en.htm)

## IT AND MEDIA

**On 28 July 2006, the Commission launched a public consultation on ways to stimulate the growth of a true EU single market for online digital content, such as films, music and games.** The Commission intends to encourage the development of innovative business models and to promote the cross-border delivery of diverse online content services. It is also keen to ascertain how European technologies and devices can be successful in the creative online content markets. Input to this consultation will help shape a Commission Communication on Content Online, due to be adopted at the end of the year. Online content can play a crucial role for the growth of Europe's sector for information and communication technologies (ICT) and media. Western European online content-sharing frameworks and markets are expected to triple by 2008 (with the user/creator part growing tenfold).

Questions asked in the Commission's content online consultation include: Which economic and regulatory barriers do online content services face in Europe's single market? How does the competitiveness of Europe's online content industry compare to that of other world regions? Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? Is progress needed as regards interoperability of digital rights management (DRM) systems in Europe? This consultation follows earlier Commission initiatives to develop a European single market for the delivery of online music services

The creation of an open and competitive single market for online content is one of the key aims of the EU's i2010 initiative - a European Information Society for growth and jobs, started by the Commission on 1 June 2005. The content online consultation also aims to identify stakeholder views on self-regulatory initiatives such as the Film Online Charter, to assess whether the initiative could be used as a model for similar initiatives in other online content sectors, and to evaluate whether regulatory measures at EU level are required to ensure the completion of a true EU market for online content without borders. The deadline for replies to the content online consultation is 13 October 2006.

Further information on the public consultation and the consultation document can be found at:

[http://ec.europa.eu/comm/avpolicy/other\\_actions/content\\_online/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/other_actions/content_online/index_en.htm)

## LITHUANIAN LAW NEWS

## TAXES

**On 27 June 2006, the Supreme Administrative Court of Lithuania in administrative case No A7-1088/2006 UAB Vistule v State Tax Inspectorate**

ruled that if a taxpayer is aware that his economic operations or any other activities contribute to non-payment of taxes, or if he is not aware of that but in consideration of a number of legally significant circumstances has the possibility to be aware and notwithstanding that performs such economic operations, then he is considered as acting unfairly. When acquiring goods or services and being aware or having the possibility to be aware that the seller will not pay value added tax for the value added which is created by such economic operations, a taxpayer acts unfairly and therefore acquires no right to the VAT refund. Significant is information about deregistration of the seller from the register of VAT payers which is announced in the information notice of the Official Gazette *Valstybės žinios*. Namely this fact - announcement in the information notice of the Official Gazette *Valstybės žinios* about the relevant circumstances in terms of payment of taxes as related to the change of the legal status of an undertaking - is important: from this moment a person may be recognised as not complying with the legal principles of *bona fides* and due care which constitute an integral part of the right to the refund of the purchase VAT. Any undertaking, when performing economic operations with another undertaking against VAT invoices, should, and acting with due care can be, aware of the change of the legal status of such other undertaking as well as of the grounds for adopting a respective decision.

## COMPANY LAW

**On 27 June 2006, the Parliament adopted Law No X-731 on amending and supplementing of Articles 1, 2, 3, 10, 11, 12, 19, 20, 23, 24, 25 and the Annex of the Law on the Corporate Financial Accounting, and appending of Article 19<sup>1</sup> and Section Four<sup>1</sup> thereto.**

This Law establishes that public companies, private companies, general partnerships and limited partnerships whose general partners are public companies or private companies must prepare an annual report apart from the annual financial statement. An annual financial statement should comprise: (i) an objective review of the company's status, performance and development, as well as the description of key types of risk and uncertainties the company is facing; (ii) the analysis of financial and non-financial performance results, the information pertaining to environmental matters and personnel; (iii) references and additional explanations in respect of the data given in the annual financial statement; (iv) the number of all own shares acquired and owned by the company, their nominal value and part of the authorised capital which they comprise; (v) the number of own shares acquired or transferred over the accounting period, their nominal value and part of the authorised capital which they comprise; (vi) information about payment for

own shares in cases where they are acquired or transferred for compensation; (vii) the reasons of acquisition of own shares over the accounting period; (viii) information about branches and representative offices of the company; (ix) material events since the end of the previous financial year; (x) plans and forecasts of the company's performance; (xi) information about research and development activities in the company; (xii) in cases where the company uses financial instruments and when this is important for evaluation of the corporate assets, equity capital, obligations, financial status and performance results, the company should disclose the goals of financial risk management, the exercised hedging for major groups of forecasted transactions which is subject to the hedging accounting, as well as extent of risk of prices of the enterprise, credit risk, liquidity risk and the cash flow risk. The laws and other legal acts governing the activities of companies or company's articles of association may also prescribe other requirements.

Enterprises in which at least two of the following performance indices on the last day of the reporting period do not exceed the below indicated amounts during two consecutive years (including the reporting financial year): (i) the net income from sales over the reporting financial year - LTL 7 million; (ii) the value of assets on the balance sheet - LTL 5 million; (iii) an average annual number of listed employees per accounting financial year - 10, are not required to prepare the annual report. In such cases, however, the explanatory notes should contain information on: (i) the number of all own shares acquired and owned by the company, their nominal value and part of the authorised capital they comprise; (ii) the number of own shares acquired or transferred over the accounting period, their nominal value and part of the authorised capital they comprise; (iii) information about payment for own shares in cases where they are acquired or transferred for compensation; (iv) the reasons of acquisition of own shares over the accounting period.

**On 27 June 2006, the Parliament adopted Law No X-732 on amending and supplementing of Articles 1, 2, 3, 8, 9, 11 and the Annex of the Law on the Corporate Consolidated Financial Accounting, and appending of Section Two<sup>1</sup> thereto.**

This Law sets forth that companies must prepare a consolidated annual report along with a consolidated annual financial statement. A consolidated annual report should contain: (i) an objective review of the status, performance and development of a group of companies, as well as the description of key types of risk and uncertainties they are facing; (ii) the analysis of financial and non-financial performance results of a group of companies, the information pertaining to environmental matters and personnel; (iii) references and additional explanations in respect of the data given in the consolidated annual financial statement; (iv) important events since the end of the previous financial year; (v) plans and forecasts of the performance of a group of companies; (vi) information about research and development activities in the group of companies; (vii) the number and nominal value of shares in the parent company held by the company itself, its subsidiary companies or by the persons acting in their own name but on behalf of those undertakings; (viii) in cases where a group of

companies uses financial instruments and when this is important for evaluation of the corporate group assets, equity capital, obligations, financial status and performance results, it should disclose the goals of financial risk management, the exercised hedging for major groups of forecasted transactions which is subject to the hedging accounting, as well as extent of risk of prices of the group of companies, credit risk, liquidity risk and the cash flow risk. A company which is preparing a consolidated annual report may include its annual report in the consolidated annual report. When preparing such a single report, it would be expedient to lay greater emphasis on the issues which are relevant to a group of companies.

**On 2 June 2006, the Supreme Court of Lithuania in civil case No 3K-3-270/2006 Microsoft Korporacija v UAB Verslo ir kompiuterių mokymo centras, J. R.**

ruled that the essence of the institute of indemnification of damage is that damage inflicted to a person or his property must be indemnified by the person who is responsible for infliction of damage. The court has taken into account that the respondent was not only the incorporator and the sole shareholder of the company but also the company's director from the moment of incorporation of the company up to the moment of establishment of an infringement of law. As established in the case in question, it was the respondent who performed the actions infringing the rights and interests of holders of author's exclusive rights thus inflicting damage to third parties - the holders of author's exclusive rights. The head of a company manages the company by organising its daily activities, acting, on the basis of statutory representation, on behalf of the company in relations with third parties and performing other functions. He acts as a trustee of the company. The head of a company must act fairly and reasonably without abuse of powers. He may not exercise his powers for his own benefit or the benefit of third parties and when exercising his powers he may not infringe the rights and legitimate interests of third parties. The fact of infringement of a third party's rights and legitimate interests presupposes respective liability - either pecuniary liability of the company whose head has inflicted damage while representing the company or the personal pecuniary liability of the company's head. For the civil liability of the company's head to arise, his conduct should contravene legal requirements or infringe the subjective rights and interests of the company or third party, i.e. a company or third party should have suffered pecuniary damage as a result of law-contravening actions by the head of the company. In such case the inflicted damages must be compensated by the head of the company. These general provisions should also apply in the proceedings concerning breaches of author's rights, and liability in such cases arises not only to the persons who have directly infringed the rights of holders of the author's rights but also to those who have committed an indirect infringement, i.e. contributed in any way to the infringement of rights. Article 1.5(1) of the Civil Code sets forth an obligation of the subjects of civil legal relations to behave in the just manner, reasonably and fairly, so accordingly the participants of a legal person (e.g. shareholders)

must also act in compliance with the mentioned principles. Failure to fulfil an obligation to act fairly constitutes actions at fault of a person that evoke civil liability. Liability of a participant of a legal person arises from unfair actions of such participant. Consequently, liability arises for participants of a legal person in order to prevent their abuse of the possibility to avoid pecuniary liability in cases where their actions predetermine the inability of a legal entity to perform its obligation to the creditor to full extent and attempts are made to avoid liability by unfair actions. The statement of existence of unfair actions means the establishment of fault of a participant of a legal person.

## SECURITIES

**On 22 June 2006, the Parliament adopted Law No X-714 on amending and supplementing of Articles 2, 6, 7, 13, 14, 17, 18, 19, 19<sup>1</sup>, 40, 45, 52, 61 of the Law on Securities Market, appending of Section<sup>1</sup> to the Law and supplementing of the Annex of the Law.** This Law serves to implement Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids. Below we will address essential amendments of the Law on Securities Market:

- (i) The report on activities of the issuer whose issued securities are traded on the regulated market of the Republic of Lithuania should contain the statement of his compliance with the Corporate Governance Code of companies whose securities are traded on the regulated market, as approved by the stock exchange. In case the Corporate Governance Code or any provisions thereof are not complied with, the statement should specify what particular provisions are not complied with and on what grounds.
- (ii) Upon adoption of the decision to remove the issuer's shares from the trading lists of the stock exchange, a tender offer should be made to purchase the issuer's shares which are entered on the trading lists of the stock exchange. A decision to remove the issuer's shares from the trading lists of the securities exchange should be adopted at the general meeting of shareholders by at least 3/4 majority vote of the shareholders attending the meeting.
- (iii) When implementing squeeze-out of shares, it is necessary to apply to court for underwriting of shares not sold by shareholders.
- (iv) During the period of acceptance of a tender offer, any limitations imposed on transfer of shares in the articles of association of the company in respect of whose shares an official bid is made or in the agreements of the company and/or shareholders executed after 21 April 2004 will not apply in respect of the offeror; any limitations on the voting rights (prescribed in the articles of association or agreements of the company and/or shareholders executed after 21 April 2004) will not be valid at any meeting of shareholders which is deciding the issue of "defensive" measures; in cases where a bidder after the tender offer holds 75% of all votes, no limitations will apply to the transfer of shares or

voting rights and no special rights of shareholders in respect of appointment or dismissal of board members will be applicable.

(v) Upon exceeding the 40% limit of votes of an issuer, it is necessary to notify within 7 days of such exceeding and the intention to make a mandatory tender offer or to transfer the shares that are above the mentioned limit. A decision to make a voluntary tender offer should also be notified within 7 days. The circular of a tender offer should be presented to the Securities Commission for approval within 20 days of notification of such intention/decision.

(vi) The period of exercising a tender offer may take from 14 to 70 days.

(vii) The price of a mandatory tender offer should be not less not only than the highest price paid by the offeror over the last 12 months before exceeding 40% limit but also than the average weighted market price over the last 6 months of securities trading on the exchange. The rights of the Securities Commission to change the price of a tender offer have been extended.

(viii) A tender offer should be notified to the employees of the offeror and the company in respect of whose shares a tender offer is being made. The opinion of the board of the company in respect of whose shares a tender offer is being made should also take into account the effect of the bid on the company's interests, working conditions, number of employees, etc.

(ix) The managing bodies of the company in respect of whose shares a tender offer is being made may not take any actions which are likely to hinder such tender offer (including the implementation of earlier adopted decisions) without prior consent of the meeting of the shareholders (such meeting may be convened only within 15 days).

(x) The Law has approved and revised the list of cases when a mandatory tender offer may not be announced.

(xi) An offer document which is approved by the supervisory authority (Securities Commission, etc), translated into a respective language, will be recognised in all EU Member States in which the company's shares are traded.

## FINANCE LAW

**On 12 June 2006, the Supreme Court of Lithuania in civil case No 3K-3-391/2006 *BUAB Elbiga v AB SEB Vilniaus bankas*** ruled that a bank is fully or partly not liable for failure to retain the monetary funds entrusted to it if it proves that it has duly fulfilled its obligations pursuant to law, statute or agreement, or if it proves that damage has been inflicted through the fault of its client, i.e. the bank is obliged to prove that it has not breached the requirements of laws, is not at fault for claimed damages and is not under an obligation to indemnify damages to the respondent.

**On 30 June 2006, the Supreme Administrative Court of Lithuania in administrative case No A<sup>3</sup>-1079/2006 *AB FMI Finasta v Securities***

**Commission** ruled that intermediaries must act fairly, in the interests of clients and market reliability, carefully, professionally and cautiously. The securities portfolio management is conceived as an uninterrupted operation of an intermediary in observation and assessment of the securities market, specific analysis, the adoption of investment decisions and the conclusion of transactions. Pursuant to the agreement executed between an intermediary and a client, the activities of an intermediary should be aimed at deriving the maximum benefit to a client. An intermediary's behaviour when for several months he does not invest the client's funds and performs no other operations with the securities and cash portfolio may be considered as fair, careful, cautious and professional if it can be proved that it was inevitable in the client's interests.

## CONCESSIONS

**On 11 July 2006, the Parliament adopted Law No X-749 on amending and supplementing of the Law on Concessions and the Law on Local Government.** The amendments of the Law on Concessions serve to more clearly define a concession, conditions of the possession and/or use of property, publicity and duration of concession contracts, imperative provisions of concession contracts, restrictions of transfer of public property, extent of financial obligations, control over granting of concessions and supervision of performance of concession contracts.

The Law sets forth that the scope of a concession contract comprises, apart from the possession and/or use of the state-owned and municipal property, the possession and/or use of property owned or held by the trust right by the state and municipality controlled persons. When defining the participation of the state or municipality controlled person in the concession granting process the Law prescribes that before announcement of a tender, or granting of a concession in cases when it is granted without conducting a tender, a decision must be obtained from such controlled person concerning his participation in the concession contract and the transfer to a concessionaire of a certain property owned or held by the trust right and/or used by such controlled person. The property previously held by the state, municipality and/or the state or municipality controlled persons by the ownership or trust right which is taken over by a concessionaire into possession and/or use should be: insured in accordance with the terms and conditions stipulated in the concession contract, possessed and/or used so as to satisfy the interests or needs of not a sole social group or separate persons, to make this property serve the public interest, public need and to return the held property in the condition not worse than it was received by the concessionaire, in consideration of normal wear and tear, or in the condition agreed in the concession contract. The Law also defines the concepts of the state or municipality controlled persons and control.

The Law establishes that for the purposes of organising of granting of a concession and performing of the concession granting

procedures the granting authority should form the commission. The Law also sets forth the powers of the commission and the requirements to the commission members. It contains the provisions in respect of accounting and the fee paid to concessionaires by the municipality under concession contracts. The Law on Concessions also prescribes requirements to participants of a tender. The granting authority is empowered to renew the term for filing of the documents required for participants in a tender for granting a concession in cases when not a single offer is received.

## PHARMACY LAW

**On 22 June 2006, the Parliament adopted Law No X-709 on Pharmacy.** The new Law on Pharmacy was adopted seeking to implement Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, and Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use. The new Law also consolidated the regulation contemplated in previous Law on Pharmaceutical Activities and the Law on Medicines, in order to eliminate the conflict of laws and inconsistencies that existed before adoption of the new Law. The most important novelties introduced in the new Law are as follows:

(i) The performance of all procedures related to the licensing of pharmaceutical companies has passed into jurisdiction of the State Medicines Control Agency (SMCA). The types of licences have changed and presently they are as follows: the manufacturing licence, the wholesale distribution licence, the licence of a pharmacy store, the licence of the manufacturing pharmacy store and the licence for pharmaceutical waste handling, except for disposal.

(ii) The advertising of medicinal products is divided into information on medicinal products and advertisements. Information may be provided also on non-registered medicinal products (specifying this) and prescribed medicinal products (mentioning, however, the common name of a medicinal product only); advertising to residents is allowed only of registered, non-compensatory, non-prescribed medicinal products. When advertising medicinal products, it is prohibited to leave the non-sale samples of medicinal products to health care specialists, distribute to pharmacy specialists and residents or use them for health care purposes. The travel, accommodation, catering and/or registration costs of pharmacy specialists are allowed to be compensated for only in cases of professional events (compensation in advertising actions is prohibited).

(iii) The new Law provides for the control of the system of pharmacovigilance of marketing authorisation holders which will be exercised

through pharmacovigilance inspections. During inspections, it is intended to check and assess the organisational structure of a marketing authorisation holder, written procedures of activities, competence of a qualified person and scientific council, the execution and delivery of periodically updated safety protocols, adverse drug reaction databases, stored reviews of literature, conducted training of employees, etc.

(iv) It is stipulated that a renewed marketing authorisation (after 5 years) in respect of a medicinal product will be valid for an unlimited term, unless for reasonable grounds related to pharmacovigilance the SMCA decides that it needs to be renewed after another 5-year term.

(v) The Law provides for a general obligation of a marketing authorisation holder to adjust the manufacturing and testing of a medicinal product so that it is manufactured and tested using the globally recognised scientific methods, and to immediately furnish to the SMCA all the up-to-date information which is likely to necessitate the updating of the summary of characteristics of a medicinal product, the conditions of a marketing authorisation or any other documents and information, in particular where restrictions or prohibitions in respect of a medicinal product are imposed by an authorised authority of another state, as well as to provide all new information which is likely to have effect on the assessment of the relation between the benefit and risk of a medicinal product.

(vi) The SMCA may at any time request the medicinal product marketing authorisation holder to produce evidence that the relation between the benefit and risk of a medicinal product remains favourable.

(vii) The Law sets forth the so-called "Bolar Exemption" which means that the performance of the research and tests necessary for filing an application to register a medicinal product, and the related practical needs, do not constitute infringement of the rights granted under a medicinal product patent or additional protection licences.

(viii) The Law sets forth the conditions of a parallel import: the parallel importing into the Republic of Lithuania is allowed of medicinal products that are entered on the List of Parallely Imported Medicinal Products and in respect of which a parallel import permit has been issued (such permit may be issued for a medicinal product which is identical or similar enough to the medicinal product registered in the Republic of Lithuania). A legal person may engage in manufacture and/or import of medicinal products or being tested medicinal products from third countries only after it has obtained a manufacturing licence issued in the prescribed procedure.

## LABOUR LAW

**On 4 July 2006, the Parliament adopted Law No X-745 on Professional Pension Accumulation.** This Law governs the terms, conditions and procedure of organisation of

professional pension accumulation in the Republic of Lithuania. The Law is applied to all associations operating as associations of participants of the professional pension fund(s) in the Republic of Lithuania. The Law will come into force on 27 October 2006.

## INSURANCE LAW

**On 7 June 2006, the Supreme Court of Lithuania in civil case No 3K-3-381/2006 UAB Esviga v UAB Baltijos garantas** stated that sum insured is an amount within the limits of which an insurer indemnifies the damage inflicted during an insurance event. Pursuant to the insurer's Rules of Vehicle Insurance, damages comprised minimal expenses required directly as a result of an insurance event for the repair of a vehicle, in consideration of the determined vehicle wear and tear rates. The court has ruled that in cases where the vehicle repair services are rendered by a taxable person who is not under an obligation to deduct and pay VAT to the budget, minimal expenses of repairing a vehicle will be the value of goods and services excluding VAT. In cases where the vehicle repair services are rendered by a taxable person who is obliged to deduct and pay VAT to the budget, such person will calculate the VAT established for the services rendered and goods supplied. However, when a person who acquires goods and services (the owner of a being repaired vehicle) is a VAT payer, then such person will include the VAT paid for the repair works and spare parts into the VAT refund, i.e. the VAT payable to the budget will be reduced by this amount or this amount will be refunded from the budget. Consequently, when goods and services are acquired by a VAT payer, the purchase VAT amount may not be considered as a loss incurred by such person. Otherwise, such person will get the VAT refunded from the budget and will receive the indemnity from the insurer, which would mean unjustified enrichment.