



LAW FIRM ■ ADVOKATŲ KONTORA

SUTKIENĖ, PILKAUSKAS IR PARTNERIAI

LEGISLATIVE REVIEW

February 2006 No. 25

IN THIS ISSUE:

- **Laws and regulations of the Republic of Lithuania**

- Banks
- Insurance law
- Finance law
- Tax law
- Construction law
- Health care
- Tobacco control

- **Decisions of the European Court of Justice**

- Contract law
- Concept of 'producer' and product safety

- **European Union law news**

- Reform of the sugar sector

LAWS AND REGULATIONS OF THE REPUBLIC OF LITHUANIA

BANKS

New Banks Entering the Market

According to a public notice made by the Bank of Lithuania in February 2006, three more banks licensed in member states of the European Union are to start providing their financial services in the Republic of Lithuania: ING Bank N.V. (the Netherlands), Bear Stearns Bank plc (Ireland), and J.P. Morgan Bank Luxembourg S.A. (Luxembourg).

INSURANCE LAW

Procedure of Providing Information by Branches of Insurance Companies of Other Member States of the European Union Established in the Republic of Lithuania to the Insurance Supervisory Commission of the Republic of Lithuania Approved

On 14 February 2006 the Insurance Supervisory Commission of the Republic of Lithuania by its Resolution No. N-25 (state gazette *Valstybės žinios*, 2006, No. 24-833) approved the Procedure of Providing Information by Branches of Insurance Companies of Other Member States of the European Union Established in the Republic of Lithuania to the Insurance Supervisory Commission of the Republic of Lithuania (hereinafter referred to as the "Procedure"), which came into effect on 26 February 2006.

Upon the expiry of each calendar quarter and until the first day of the second month of the following quarter, branches of insurance companies of other member states of the European Union established in the Republic of Lithuania must, in accordance with the Procedure, provide information to the Insurance Supervisory Commission of the Republic of Lithuania necessary for performance of its supervisory functions. This information is to be provided to the Insurance Supervisory Commission of the Republic of Lithuania by presenting a statistical report (the form whereof is attached to the Procedure) on insurance activities, giving data of branches of insurance companies of other member states of the European Union established in the Republic of Lithuania about the number of concluded insurance agreements, the number of valid insurance agreements, insurance premiums and paid insurance benefits and other data according to insurance groups and types.

FINANCE LAW

DIDŽIOJI 23, LT - 01128 VILNIUS, LITHUANIA

Phone: (+ 370 5) 251 4444, 251 4445

Fax: (+ 370 5) 251 4455

E-mail: spp@spp.lt

www.spp.lt

Convention between the Republic of Lithuania and the Republic of Estonia for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and Prevention of Tax Evasion Came into Force

On 8 February 2006, the Convention between the Republic of Lithuania and the Republic of Estonia for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and Prevention of Tax Evasion, as signed in Luxembourg on 21 October 2004 and ratified by Law No. X-452 of the Republic of Lithuania, dated 15 December 2005 (state gazette *Valstybės žinios*, 2006, No. 5-137), came into effect. The convention provides that it is applicable to taxes on income and on capital as defined in the convention. The convention also defines a circle of persons to whom it is applicable and establishes the double taxation rules with respect to taxation on income from real estate, profits from commercial and business activities, profits from navigation and carriage by air, profits received by related persons, dividends, interest, royalty, income received by way of asset value increase, income from self-employed individual activities, income from activities in connection with employment relations, directors' remunerations, artists' and sportsmen's income, pensions, remuneration for civil service, payments received by students, as well as on any other income, also on capital.

Rules for Calculating Additional Capital Sufficiency Requirements Applicable to Supervised Companies Belonging to a Financial Conglomerate Approved

On 3 February 2006 the Government of the Republic of Lithuania by its Resolution No. 119 (state gazette *Valstybės žinios*, 2006, No. 16-550) "On Approval of the Rules for Calculating Additional Capital Sufficiency Requirements Applicable to Supervised Companies Belonging to a Financial Conglomerate" approved the Rules for Calculating Additional Capital Sufficiency Requirements Applicable to Supervised Companies Belonging to a Financial Conglomerate. The Rules determine the scope, principles and methods of calculating additional capital sufficiency requirements applicable to supervised companies belonging to a financial conglomerate. The Rules came into effect on 10 February 2006.

Electronic Format Sets for Financial Statements to be Submitted to the Administrator of the Register of Legal Persons Approved

On 9 February 2006 the Minister of Justice of the Republic of Lithuania by his Order No. 1R-38 (state gazette *Valstybės žinios*, 2006, No. 22-722) "On Approval of Electronic Format Sets for Financial Statements to be Submitted to the Administrator of the Register of Legal Persons" approved electronic format sets for financial statements to be submitted to the administrator of the Register of Legal Persons which one can access on the website of state enterprise the Centre of Registers at www.registrucentras.lt. The order also invalidated Order No. 1R-318 of the Minister of Justice of the Republic of Lithuania of 7 October 2005 "On Approval of Sets of Forms of Financial Statements to be Submitted to the

Administrator of the Register of Legal Persons" (state gazette *Valstybės žinios*, 2005, No. 121-4355) and the order that amended it. The order came into effect on 22 February 2006.

TAX LAW

Law of the Republic of Lithuania on Sugar and Laws Amending it Rescinded

On 9 December 2004 the Parliament of the Republic of Lithuania passed Law No. X-501 on Rescinding the Law of the Republic of Lithuania on Sugar and Laws Amending it (state gazette *Valstybės žinios*, 2006, No. 17-597), by which it rescinded the Law of the Republic of Lithuania on Sugar (state gazette *Valstybės žinios*, 1995, No. 41-990) and laws amending it. The law came into effect on 11 February 2006.

Description of the Procedure of Paying Tax and Related Amounts on Behalf of a Taxpayer Approved

The Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania by his order No. VA-6 of 30 January 2006 (state gazette *Valstybės žinios*, 2006, No. 16-570) "On Approval of the Description of the Procedure of Paying Tax and Related Amounts on Behalf of a Taxpayer and Invalidation of Certain Orders of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania" approved the description of the procedure of paying tax and related amounts on behalf of a taxpayer, the description of the procedure of completing form PRC902 of a request and a consent for the offset of paid amounts, as well as form PRC902 of a request and a consent for the offset of paid amounts itself. It also invalidated Order No. 205 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 9 August 2001 "On Approval of the Procedure of Paying Tax and Related Amounts on Behalf of a Taxpayer" (state gazette *Valstybės žinios*, 2001, No. 72-2553) and other orders that amended and supplemented it. The order came into effect on 10 February 2006.

CONSTRUCTION LAW

Construction Technical Regulation STR 2.05.20:2006 "Windows and Outside Entrance Doors" Approved

On 1 February 2006 the Environment Minister of the Republic of Lithuania by his Order No. D1-62 (state gazette *Valstybės žinios*, 2006, No. 18-643) approved Construction Technical Regulation STR 2.05.20:2006 "Windows and Outside Entrance Doors" (hereinafter referred to as the "Regulation") the provisions of which are mandatorily applicable to designing of buildings to be newly constructed and reconstructed when the design work is launched after 14 February 2006. The Regulation is applicable to windows, roof windows, glazed and non-glazed balcony doors, outside entrance doors and shop windows of residential and non-residential houses. The Regulation establishes requirements for resistance of windows and doors to various environmental factors and other operational characteristics which must be observed when designing windows and outside doors of new buildings and buildings to be reconstructed. In case of reconstruction of

buildings, the Regulation is applicable only in case the reconstruction involves replacement of windows and outside doors.

Land Improvement Technical Regulation MTR 1.11.01:2006 "Procedure of Recognising Land Improvement Structures Suitable for Use" Approved

On 31 January 2006 the Minister of Agriculture of the Republic of Lithuania by his Order No. 3D-35 (state gazette *Valstybės žinios*, 2006, No. 15-542) approved Land Improvement Technical Regulation MTR 1.11.01:2006 "Procedure of Recognising Land Improvement Structures Suitable for Use" (hereinafter referred to as the "Regulation"). The Regulation sets forth the procedure of recognising constructed, reconstructed, repaired or otherwise renovated land improvement structures, their complexes and appurtenances, the drained (irrigated) areas suitable for use. New and reconstructed land improvement structures are to be recognised suitable for use by the Commission for Recognising Land Improvement Structures Suitable for Use which is to be formed by the director of a municipal administration. The Commission is to be formed within 20 days as of the receipt by a municipal administration of a request of the owner of land improvement structures or the builder's notification of the completion of the construction work on the structures. A representative (representatives) of the contractor (sub-contractors) having performed the construction work on the land improvement structures and the construction technical supervisor for the construction work on the land improvement structures are to participate in the activities of the Commission for Recognising Land Improvement Structures Suitable for Use.

HEALTH CARE

Changes in the Price List of Basic Prices of Compensated Medicines Approved

On 7 February 2006 the Minister of Health of the Republic of Lithuania by his Order No. V-96 (state gazette *Valstybės žinios*, 2006, No. 16-557) approved changes in the Price List of Basic Prices of Compensated Medicines of 2005, as approved by Order No. V-778 of the Minister of Health, dated 18 October 2005. Certain medicines were removed from the price list of compensated medicines and new basic prices of some compensated medicines were fixed.

TOBACCO CONTROL

Rules for Licensing Retail Trade in Tobacco Products and Rules for Sale of Tobacco Products Amended

On 6 February 2006 the Government of the Republic of Lithuania by its Resolution No. 126 (state gazette *Valstybės žinios*, 2006, No. 16-557) approved amendments to the Rules for Licensing Retail Trade in Tobacco Products and the Rules for Sale of Tobacco Products (hereinafter referred to as the "Rules"), as approved by Resolution No. 383 of the Government of the Republic of Lithuania, dated 7 April 2004.

The Rules establish that from now on licenses to engage in retail trade in tobacco products are not necessary when tobacco products are kept and carried by persons providing transportation services and legal persons registered in foreign countries or their affiliates, possessing mandatory legally valid documents proving acquisition of tobacco products or transportation documents, when carrying tobacco products by transit or delivering them to their affiliates, representative offices and other branches registered in the Republic of Lithuania. Before this, such an exception was applicable only to legal persons of countries that are members of the European Economic Area.

The Rules also provide that the provision of the Rules that permits to display the manufacturer's and the trade company's trademark in a point of sale of tobacco products is valid until 31 December 2008.

DECISIONS OF THE EUROPEAN COURT OF JUSTICE

CONTRACT LAW

Preliminary Ruling on Procedures for the Award of Public Service Contracts delivered

In February the European Court of Justice (hereinafter referred to as the "Court") delivered a preliminary ruling on procedures for the award of public service contracts.

The undertakings *La Cascina*, *Zilch* and *G.f.M* responded to a call for tenders published by the Italian Ministry of Defence and the Ministry of Economy and Finance for the award of public service contracts to supply catering services to these institutions. However, the contracting authority excluded those undertakings from the procedure on the ground that they were not in compliance in respect of the payment of social security contributions for their employees and that *Zilch* was not in compliance in respect of the payment of its taxes. Later they had subsequently regularised their position regarding this incompliance.

The Court held, that the directive on public service contracts (92/50/EEC) lays down an exhaustive list of grounds for excluding candidates from a contract, including those of excluding candidates who have not fulfilled their obligations relating to social security and those who have not fulfilled their obligations as regards the payment of taxes. The Court indicated that application of those grounds of exclusion is left to the Member States which may not, however, provide for any other grounds of exclusion.

The directive does not contain a definition of 'has not fulfilled their obligations relating to social security and payment of taxes' which is therefore a question of national law. It is therefore for the Member States to define the content and scope of the tax and social security obligations and the detailed rules for their fulfilment. Thus, the period within which the persons concerned are to have made payments

must be established by the Member States and may extend from the date for lodging the requests to participate until immediately prior to the award of the contract.

CONCEPT OF 'PRODUCER' AND PRODUCT SAFETY

Scope of the Concept of 'Producer'

In the case C-127/04, the European Court of Justice (hereinafter referred to as the "Court") held that, in relation to liability for defective products, the term 'producer' can include a distribution subsidiary.

The Court held, that where one of the entities in the distribution chain is closely connected to the producer, for example, in the case of a wholly-owned subsidiary, it is necessary to establish whether it is a consequence of that link that that entity is in reality involved in the manufacturing process of the product concerned. The examination of such a close relationship must not be influenced by the question of whether or not distinct legal persons are involved. The fact that the products are invoiced to a subsidiary company and that the latter, like any purchaser pays the price is not conclusive. The same applies to the question of knowing which entity is to be considered as owner of the products. It is

for the national courts to establish, having regard to the circumstances of each case, whether the links between the producer and another entity are so close that the concept of producer also includes that latter entity and that the transfer of the product from one to the other of those entities does not amount to putting it into circulation.

EUROPEAN UNION LAW NEWS

REFORM OF THE SUGAR SECTOR

Common Agricultural Policy Reform in the EU: Ministers of Agriculture Adopted a Sugar Reform

On 20 February, the European Union agriculture ministers formally adopted a radical reform of the EU sugar sector which will commence on 1 July. The main features of the reform are: (i) a 36 percent cut in the guaranteed minimum sugar price, (ii) generous compensation for farmers and, (iii) a Restructuring Fund to encourage uncompetitive sugar producers to leave the industry.

This legislative review is for information purposes only and does not reflect all aspects of legal regulation. For full legal advice please contact our law firm by phone: (370 5) 251 44 44, (370 5) 251 44 45.