

**LEGAL ASPECTS OF UNDERTAKING  
BUSINESS ACTIVITIES BY  
FOREIGN INVESTORS IN LITHUANIA**

This brochure has been prepared by law firm Foresta Business Law Group (Foresta BLG). Foresta BLG was founded in 1991 and is one of the leading law firms in Lithuania. The firm in its activities concentrates on the issues of commercial and international private law and on providing legal services to local and international business clients. The principal areas of the firm's practice are corporate law, mergers and acquisitions, competition law, banking and finance, securities, privatisation, energy law, property law, insolvency, litigation and arbitration.

This brochure provides an introduction to the issues, which may be of special interest to foreign investors. In particular, the brochure provides basic information on forms of business organisation in Lithuania, regulation of foreign investments and tax regime. The brochure also covers competition, securities, protection of intellectual property, labour, and dispute settlement issues.

The brochure is intended to draw your attention to important aspects relating to corporate and other relevant laws and try to make you aware of the role that your lawyer can play in such matters.

This brochure has been updated according to laws effective as of 15 September 2005. However, we note that Lithuanian laws are under constant development.

The information contained in this brochure is for illustrative purposes only and of a general nature and shall not be relied upon as legal advice. You are recommended to seek further specific advice, whenever decisions on investments into or regarding business activities in Lithuania are to be taken. We would be pleased to discuss this further with you.

Sincerely Yours,  
Foresta BLG

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## THE SYSTEM OF LAW

The Lithuanian system of law is based on the legal traditions of continental Europe. The primary source of Lithuanian law is enacted legislation.

The following acts are considered as being the sources of law in Lithuania:

- 1) The Constitution;
- 2) Constitutional laws;
- 3) International treaties;
- 4) EU legal acts;
- 5) Laws passed by the Parliament and/or referendum;
- 6) Legal acts of the Government of the Republic of Lithuania and other state institutions;
- 7) Rulings of the Constitutional Court; and
- 8) Legal acts of municipal authorities.

According to the Constitutional Law of the 13 of July 2004, regarding the membership of the Republic of Lithuania in the European Union (EU), legal rules of the EU shall constitute a part of the Lithuanian legal system. Legal rules following from the foundation treaties of the EU shall be applied directly, and in case of the collision they shall have the priority over national laws and other legal acts.

The Constitution provides that international treaties of the Republic of Lithuania ratified by the Parliament of the Republic of Lithuania shall constitute a part of the Lithuanian legal system. The Civil Code and separate laws of the Republic of Lithuania explicitly set forth the priority of international treaties of the Republic of Lithuania in respect of national laws.

The Government of the Republic of Lithuania as well as other state institutions shall have the right to adopt legal acts in the sphere of their respective competence. Such acts and regulations must comply with the superior legal acts.

Courts, state and other institutions and persons shall take into consideration the interpretation of application of the Lithuanian legal acts in the decisions published in the bulletin of the Lithuanian Supreme Court, applying the same laws and other legal acts.

## BUSINESS ENTITIES

### Forms of business entities

Legal norms regulating foundation, legal status, management bodies and their competence, liquidation and reorganisation of different type companies in Lithuania are contained in the Civil Code of the Republic of Lithuania, however, certain specific provisions may be set out in laws regulating separate forms of legal entities. According to the Civil Code, all companies registered in Lithuania have a status of a legal person. A legal person shall be defined as an enterprise, institution or organisation having its own name, which may acquire and hold rights and

obligations at its own name; to be plaintiff or defendant at court. Legal persons are divided into those of limited liability and unlimited liability. Legal persons of unlimited liability are individual (personal) enterprise and partnership. Legal persons are also divided into public, aiming to meet public interests and private, aiming to meet private interests. The state and municipalities are also treated legal persons.

The specific laws provide for the following companies, having status of a legal person, which may operate in the Republic of Lithuania:

- 1) Individual (personal) enterprise (sole proprietorship);
- 2) General partnership;
- 3) Limited partnership;
- 4) Public joint stock company;
- 5) Private joint stock company;
- 6) State enterprise;
- 7) Municipal enterprise;
- 8) Agricultural company;
- 9) Co-operative enterprise.

Both Lithuanian and foreign companies may establish their branches and representative offices. They shall function under the authorisation/regulations of the incorporator and they have no status of a legal person.

The legal persons are allowed to merge into concerns, consortiums, associations and other formations if it is not in contradiction with competition rules (see Anti-trust legislation, below).

The most common way to invest in the Republic of Lithuania is establishment or acquisition of a private or public joint stock company.

## **Register of Legal Persons**

The Register of Legal Persons, which is the main register of the state, started to function in 2004. The following legal persons' data are cumulated with the Register of Legal Persons: name of the legal person, legal form, code, address of the office, bodies of legal person and data of the members thereof, the members of the bodies of legal person who have right to sign on behalf of the legal person, limitations of this right and the samples of the signatures of authorised persons, the branches and representative offices of the legal person, the restrictions of the activities of legal person, the legal status of legal person, the ending of legal person etc. The Register of Legal Persons shall be provided with changes of the aforesaid data within 30 days from the date of amendments. Further, legal persons are obliged to provide the Register of Legal Persons with their annual financial accountability documents within 30 days from their approval by the legal person.

Legal person shall be considered having been established from the date of its registration with the Register of Legal Persons. The activities of an unregistered legal person shall be prohibited. Also members of the bodies of legal person who have the right to conclude agreements and sign on behalf of legal person shall be considered duly authorised to perform their duties from the date of registration of such rights in the Register of Legal Persons.

The Register of Legal Persons is entitled to initiate the legal person's liquidation procedure in the following cases:

- Legal person does not renew its data in the Register of Legal Persons within 5 years and there are the grounds to presume that it does not carry out any activities;
- Legal person does not submit its annual financial accountability documents within 2 years and the Register of Legal Persons is not informed about the reasons whereof;
- The management bodies of legal person are not able to make a decision, because the quorum at the bodies of legal entity is not present or the head of the Company is not appointed for within 6 months;
- The Register of Legal Persons cannot contact the members of the bodies of legal person at its registered office or their personal addresses indicated to the Register of Legal Persons longer than 6 months.

## **REGULATIONS PERTAINING TO INDIVIDUAL BUSINESS UNITS**

### **Joint stock companies**

The establishment, reorganisation and liquidation of public and private joint stock companies, their management and activities, rights and obligations of shareholders are regulated under the Civil Code and the Law on Joint Stock Companies.

A joint stock company is an enterprise the authorised capital whereof is divided into parts called shares. A joint stock company is a legal person and it is a limited liability formation. It shall be liable for its obligations only to the extent of its assets. The shareholders shall be liable only for the amounts, which they must pay for their shares, except the case when the company is not able to fulfil its obligations due to the unfair actions of its shareholder and with exceptions to the cases set out in law or incorporation documents of the company.

A registered office of a joint stock company must be situated in the Republic of Lithuania. A joint stock company may be established for a period of limited or unlimited duration.

The information which must be indicated in the documents of the company used in the relations with third parties is as follows:

- 1) name of joint stock company;
- 2) legal form;
- 3) registered office of the joint stock company;
- 4) joint stock company code;
- 5) register within the data concerning the joint stock company is kept.

The aforementioned information must be indicated in the Internet site of the company.

## **Setting up a joint stock company**

The incorporators of a joint stock company shall be natural and/or legal person(s) who have executed a company's incorporation agreement (statement in case of one incorporator). During the establishment of a private joint stock company (UAB) only those engaged in incorporation are permitted to subscribe for the company's shares and a number of shareholders is limited to 250. The number of the shareholders is not limited for a public joint stock company (AB). There are no legal requirements with respect to citizenship or residency of incorporators, members of the Board and the Supervisory Council or the Head of the Company.

A person (-s) intending to register a joint stock company in Lithuania is (are) required to submit incorporation documents to the Register of Legal Persons.

A joint stock company shall acquire the rights of a legal person as of the day of its registration. The company's registration procedure normally takes 2 -3 weeks.

### ***Authorised capital***

The amount of the authorised capital of a public joint stock company may not be less than LTL 150,000 (EUR 43,443). Its shares may be circulated and traded publicly. The amount of the authorised capital of a private joint stock company may not be less than LTL 10,000 (EUR 2,896) and its shares may not be circulated or traded publicly.

The authorised capital of a joint stock company can be formed by monetary contributions and contributions in-kind. During foundation of a joint stock company the initial contributions must be paid only in money. The total amount of the initial contributions collected prior to the statutory General Shareholders Meeting cannot be less than minimal authorised capital established by the law.

Only the assets, which can be an object of civil circulation may be used as contributions in-kind. Works and services may not be used as contributions to the authorised capital of the company. The contributions in-kind shall be evaluated by the licensed appraiser. The shares shall be deemed fully paid up after the contributor transferred all the assets provided in the share subscription agreement to the company's ownership.

### ***Bodies***

The bodies of a joint stock company shall include the General Shareholders' Meeting ("the General Meeting"), the Supervisory Council, the Board and the Head of the Company (President, General Director, Managing Director).

Following its articles of association, a joint stock company may refrain from formation the Supervisory Council and/or the Board.

When the Board is not formed in the company, its functions shall be delegated to the Head of the Company, except for the cases established in the Law on Joint Stock Companies. If the Supervisory Council is not formed in the company its functions shall not be delegated to other bodies.

### ***Closing and restructuring of a joint stock company***

Legal persons end up in a way of liquidation or reorganisation. Legal persons end up from the date of their exclusion from the Register of Legal Persons.

#### **Reorganisation**

The Civil Code defines reorganisation as an end up of a legal person without a liquidation procedure.

A joint stock company may be reorganised in the following ways:

- Merging;
- Splitting.

The reorganisation of a joint stock company may be initiated only when the authorised capital (the price of last emission of shares) of the company is fully paid.

A company must publicly announce about the reorganisation 3 times with not less than 30 days intervals or once announce publicly

and inform each creditor personally in writing. A creditor of a joint stock company has a right to require to provide additional guarantees of performance of company's obligations.

#### Change of a legal form

Change of a legal form of a joint stock company is defined as situation when a company of a new legal form takes over all rights and obligations of the company, which changed the legal form. The change of a legal form of the joint stock company is also subject to the legal requirements regarding information and guarantees to be provided to the creditors.

## Liquidation

A decision on liquidation shall be taken by 2/3 votes of the General Meeting (higher qualified majority vote may be set out in the articles of association), except the cases when such a decision is taken by the court under the procedure prescribed by the laws. The General Shareholders' Meeting is not allowed to adopt decision on liquidation if a company is insolvent.

A company in liquidation may conclude only transactions, which are related to the liquidation thereof or which are provided in the shareholders' resolution on liquidation.

A company must publicly announce about the liquidation 3 times with not less than 30 days intervals or once announce publicly and inform each creditor personally in writing. The distribution of company's assets to the shareholders could only be started after 2 months when the last public announcement was issued or respectively creditors and shareholders were informed.

#### *Other requirements*

The number of shareholders of a private joint stock company cannot exceed 250, however, the number of shareholders of a public joint stock company is not limited.

Net asset ratio required for the joint stock companies is at least 50% of their authorised capital.

In cases provided in the articles of association of a company, a decision of the General Shareholders' Meeting may be required to support and approve decisions of the Board concerning investment, lease or other transfers of fixed assets, as well as pledge/mortgage or acquisition of the fixed assets, or, otherwise securing commitment of third parties by fixed assets, amounting to more than 5% of the value of the company's authorised capital. Although, the support of the General Shareholders' Meeting shall not eliminate the liability of the Board for the aforementioned decisions.

When a joint stock company is not in compliance with the credit terms, and such overdue liability exceeds 5% of its authorised capital, the company may invest assets into another company only upon written consent of its creditors.

There are some restrictions (e.g. interest rate, restriction to pledge/mortgage the company's assets) when borrowing money from the shareholders.

At the end of financial year financial statements of public joint stock companies must be audited by an audit company. This requirement is also applicable to private joint stock companies if at least two of the below thresholds are met:

- Sales revenue exceeds LTL 10,000,000 per accountable financial year;
- Average number of employees during the accountable financial year is not less than 50;
- Assets value recorded in the balance sheet exceeds LTL 5,000,000.

## Unlimited liability companies

Partnerships, both general and limited, as well as individual (personal) enterprises, i.e. unlimited liability legal persons are not widely used by foreign investors for establishing business in Lithuania. There are no minimum capital requirements for such companies.

#### *Individual (personal) enterprise (sole proprietorship)*

An individual (personal) enterprise shall belong to one natural person by the right of ownership. Its assets shall not be separated from the owner's assets and the owner shall be liable for the obligations of the enterprise with all his/her personal assets.

#### *Partnerships*

According to the Law on Partnerships a partnership is an enterprise established on a basis of partnership agreement by natural or legal persons, combining their assets with the aim of conducting joint business and other activity under a common enterprise name.

The Law on Partnerships provides for two type partnerships: general and limited. A general partnership is an enterprise with unlimited liability, which assets are not separated from the assets of the individual partners. A general partnership must have at least 2 and no more than 20 members. All partners of a general partnership are jointly liable for the obligations of the general partnership with all their personal assets.

A limited partnership is an association of general and limited partners acting under a common name of the enterprise. The assets of the limited partnership is separated from the assets of the limited partners, but it is not separated from the assets of the general partners. A limited partnership must have at least 3 and no more than 20 members.

It is noteworthy, that, since Lithuania has entered into the EU, European economic interest groups are not allowed to act as the general partners of a partnership.

## **Branches and representative offices of foreign companies**

The Lithuanian legislation does not limit a number of branches and representative offices to be established by a foreign company in Lithuania. Both branches and/or representative offices are not legal persons.

Authority granted to the head of a representative office/branch may not contradict to the laws of the Republic of Lithuania. The branches and representative offices must maintain their accounting books, financial documents in Lithuanian (and in foreign language, if needed).

Both a representative office and a branch are considered established from their registration with the Register of Legal Persons date.

A foreign company, incorporator of a representative office/branch must inform the Register of Legal Persons about changes in data or documents presented to the Register of Legal Persons and change of legal status of the incorporator.

### ***Branch***

The Civil Code defines branch as a structural unit of a company, having its office, which is entitled to carry out all or part of the functions of that company (parent company). The parent company is liable for the obligations of its branch and the branch is liable for the obligations of its parent company.

The branch activity is organised and managed by the head of the branch who is entitled to represent the branch only upon its registration. The branch operates according to the branch regulations issued by the parent company. Commercial activity of the branch could only be commenced upon its registration with the Register of Legal Persons.

### ***Representative office***

The Civil Code describes representative office as a unit of a company having its registered office, which is entitled to represent and protect the interest of a parent company, conclude transactions and perform other actions on behalf of the parent company. The representative office is not allowed to carry out commercial activity in Lithuania. Export-import operations can only be carried out between the representative office and its parent company or any other companies related to the parent company.

## **Permanent establishment**

The Corporate Tax Law defines permanent establishment (PE) as an expression of a foreign company's activity in Lithuania. A foreign company is treated having PE in Lithuania, if business of that foreign company is permanently conducted in the territory of Lithuania; the conduct of activity through a dependent person (agent) also could give rise to treatment of such activity as PE. The definition of PE also includes use of a construction site, object of a construction, equipment, or use of a construction for exploring and extraction of natural resources in Lithuania including drilling equipment and vessels.

The beginning of PE's activity is the date when the first transaction is concluded and the end of the activity is the date when all transactions are fulfilled. Temporary interruptions in the activity of the PE (interruptions due to seasonal breaks, etc.) do not constitute a termination of activity.

According to the effective legislation, PE is required to be registered in Lithuania only for tax purposes without formal registration with the Register of Legal Persons. In case income of PE in Lithuania for the goods sold and services provided is going to exceed

the amount of LTL 100,000 (EUR 28,962) in 12-month period, the registration as a VAT payer is required too.

## **FOREIGN INVESTMENTS**

### **The source and means of investments**

The main legal source regulating investors' business activities in Lithuania is the Law on Investments. The law provides investment conditions in the Republic of Lithuania, investors rights and protection means for all kind of investments.

Investments may be made in the Republic of Lithuania in the following ways:

- Establishing a company, acquiring all or part of the company's, registered in Lithuania, equity;
- Acquiring all kind of securities;
- Acquiring or creating fixed assets or increasing their value;
- Lending money or assets to company, where investor owns part of the company's equity allowing him to control or make significant influence to such company;
- Executing concession or performing financial leases transactions.

Foreign investments are prohibited in the spheres of business activity which are related to the national defence and security of the Republic of Lithuania (except foreign companies complying with the European and Transatlantic integration criteria and approved by the State Defence Council).

Certain activities, e.g. pharmacy, carriage of passengers, international transporting of loads, import and trade in alcohol and tobacco products, oil to be carried out in Lithuania, require for a special license.

Disputes between foreign investors and the Republic of Lithuania regarding breach of investors' rights and their lawful interests may be solved by the relevant Lithuanian court, international arbitration or other institutions. In case of investment dispute, a foreign investor has a right directly to apply to the International Centre of Investment Disputes.

### **Purchase of land**

Pursuant to Article 47 of the Constitution of the Republic of Lithuania foreign persons may acquire land plots in the Republic of Lithuania according to the conditions set in the Constitutional Law. According to Article 3 of the Constitutional Law land plots may be acquired and owned by foreign natural and legal persons who comply with the criteria of European and Transatlantic integration. The above mentioned criteria are defined in Article 4 of the Constitutional Law. According to Article 4 only the foreign investors who originate from the EU, states concluded European Agreement with European Community and its state members, as well as OECD, NATO or European Free Trade Agreement member states are entitled to acquire land plots in Lithuania. Since Lithuania has entered the EU foreign investors who comply with these criteria may acquire land plots in the Republic of Lithuania according to the order and conditions which are applicable to natural and legal persons in Lithuania. Foreign investors who do not comply with the criteria are not allowed to acquire land plots in the Republic of Lithuania, but they may use and possess them under the order established by the laws of Lithuania. Foreign investors are allowed to acquire non-agricultural land for commercial activities, however, agricultural land may be purchased not earlier than 7 years after the Republic of Lithuania has joined the EU. However this transition period will be not applicable for foreign investors who are residing and are engaged in farm works in Lithuania for more than 3 years or have established branches or representative offices in Lithuania.

### **Encroachment of private ownership**

Private property is protected under the Constitution and laws of the Republic of Lithuania. Property may be expropriated by the State only in the cases determined by the Lithuanian laws and according to the procedure established by the Lithuanian laws, only for public needs and only against monetary compensation equivalent to the market value of the property taken.

The amount of the compensation for the expropriated property must correspond to the market value before taking the property, or, before a public announcement is made regarding the property, depending upon which is earlier. The compensation shall be paid within 3 months from the expropriation. The established interest that has been accrued until the day of payment of compensation must be added to the amount of compensation. The title to the property is transferred to the State upon final settlement with the owner.

The state and municipal institutions are not allowed to interfere with the investor's management, use or disposal of the property owned by the investor, excluding cases of violation of the Lithuanian laws.

## Exchange control

All payments made within the territory of Lithuania, except free economic zones between the zone companies and duty free shops and all payments made between local individuals/companies must be in Litas, which is the only legal tender. However, foreign currency can be used for noncash payments if the parties agree to do so and the EU currency – euro – for cash payments as well. Litas is pegged to EUR at the official rate of Litas 3,4528 to EUR 1.

Natural and legal persons of Lithuania must inform the Lithuanian tax administrator about opening or closing accounts abroad.

Foreign-source loans received by the Lithuanian registered companies as well as Lithuanian-source loans granted to foreign companies, have to be registered at the Lithuanian Central Bank.

Appropriate measures to prevent money laundering have been introduced to financial and credit institutions, such as reporting to the Financial Crime Investigation Service on all suspicious transactions, or, transactions exceeding the sum equivalent to LTL 50,000 (EUR 14,481) and maintaining a Transaction Register, etc. In addition, the current legislation requires banks to advise the Financial Crime Investigation Service regarding their clients, who perform a single currency exchange in excess of the amount equivalent to LTL 20,000 (EUR 5,792). Some reporting requirements also apply to the insurance companies, notary bureaus and customs office.

## TAXATION

### Corporate taxation

A standard corporate tax rate for Lithuanian registered companies and permanent establishments is 15%.

Dividends received by a Lithuanian company from other Lithuanian and/or foreign registered companies are taxed at 15% tax rate. However, dividends paid by a company to the other company where the company receiving the dividends holds shares granting more than 10% votes not less than 12 months without a breach of continuity (including dividends distribution moment) are tax free. This provision is not applicable if profit of Lithuanian company paying out the dividends is not taxable under the standard corporate tax rates (13% or 15%).

Small businesses enjoy 13% tax rate. A legal person qualifies as a small business if its maximum revenue per tax year does not exceed LTL 500,000 (EUR 144,810) and the total average number of employees does not exceed 10.

Losses can be carried forward for a period of 5 tax years, except losses incurred due to the transfer of securities and/or derivative financial means, which can be carried forward for a period of 3 tax years.

The employer has to make social security contributions equivalent to 31% of the employee's gross payroll. The employer is also liable to make contributions in amount of 0.2% from the employee's gross payroll to the State Guarantee Fund. The said employer's contributions are deductible for corporate tax purposes.

Repatriation of profits taxed at a standard corporate tax rate is not restricted.

### *Withholding tax*

The following type of foreign companies' income (excluding income received through their permanent establishments), which source is in Lithuania, is subject to withholding tax at a rate of 10%:

- interest income received from any type of borrowings including securities (except the Government securities issued in the international financial markets), bonds as well as any allowances and premiums related to such borrowings, except interest income for deposits and subordinated loans, which comply with the legal requirements established by the Lithuanian Central Bank;
- income from the distributed profit;
- royalties income, including remuneration income for the neighbouring rights granted and income for the certain rights transferred together with the software;
- income received as remuneration for the transferred right or right granted under the license agreement to use the object of industrial property, franchise;
- remuneration for the information granted on industrial, trade or scientific experience (know-how);
- income received from sale or any other transfer to the ownership as well as lease of the immovable by nature property located in the territory of Lithuania. Immovable by nature property is a land plot and other objects, which cannot be relocated from one place

to another without changing their purpose and substantially reducing their value.

- indemnification income received for the breach of authors' and neighbouring rights.

Dividends due to foreign companies are subject to withholding tax at the rate of 15%. However, dividends paid by the Lithuanian company to a foreign company where the foreign company receiving the dividends holds shares granting more than 10% votes not less than 12 months without a breach of continuity (including dividends distribution moment) are tax free, except cases when the foreign company receiving the dividends is registered or otherwise organized in the 'Purposive Territories'. This provision is not applicable if profit of the Lithuanian company paying out the dividends is not taxable under the standard corporate tax rates (13% or 15%), except cases, when the Lithuanian company, by which the dividends are paid, is an enterprise of free economic zone.

According to Article 2 of the Corporate Tax Law the 'Purposive Territories' are described as a foreign state or zone, which is included into the special list approved by the Ministry of Finance and comply at least with two criteria out of the set below:

- analogical tax rate in that territory is 75% less than the standard corporate tax rate established by the Corporate Tax Law (i.e. 15%);
- the territory applies different taxation rules for analogical tax depending on a country where a holding entity is registered or otherwise organised;
- the territory applies different taxation rules for analogical tax depending on a country activity is carried out;
- a taxable entity, which is under control has an agreement with the tax authority of that country in place with respect to tax tariff or taxable base;
- there is no efficient exchange of information in that territory;
- the territory has no financial-administrative transparency: the tax administration rules are not sufficiently clear and application order of these rules is not presented to the tax authorities of the other countries.

Item 2 of Article 31 states that any disbursement made by the Lithuanian company or permanent establishment to a foreign company, which is established or otherwise organised in the 'Purposive Territories' is treated as non deductible if the Lithuanian company or permanent establishment performing such disbursement is not presenting the evidences to the local tax authority under the order established by central tax authority that:

- these disbursements are related to the regular activity of both paying and receiving companies;
- a foreign company receiving such disbursements possesses property required for performance of such regular activity;
- there is cohesion between the disbursement and economically grounded transaction.

The withholding tax rate may be reduced under a double tax avoidance treaty. Lithuania is currently a party to 38 such double tax avoidance treaties, which are in effect.

## Individual taxation

A standard rates of individual income tax are 15% and 33%. Income tax rate of 15% shall be applied to the following income:

- income from distributable profit (including dividends), if it is received from Lithuanian companies or from the companies which are registered or otherwise organized in a foreign state or zone, which is included into the special list approved by the Ministry of Finance, and interest;
- income of sportsmen from sport activities and performers emoluments and other income received in relation to performance activities;
- royalties;
- income received under an authorship agreement (if permitted deductions are not deducted);
- income received from lease of an asset (if permitted deductions are not deducted);
- other income of individual activities (if permitted deductions are not deducted);
- income from sales of assets of non-individual activities;
- pension payment income received from voluntary accumulative pension funds, except from payments from the "Purposive Territories";
- certain income for payments according to accrued life insurance agreements;
- refundable premiums of life insurance or contributions to pension funds.

For all other income not specified above, including income related to labor relations, a rate of 33% applies.

The employer withholds individual income tax from the employees' salaries. Non-taxable minimum, which is currently LTL 290 (EUR 84.06), has to be deducted from the employee's gross payroll when calculating income tax.

Non-residents receiving foreign source employment income is liable for tax on all income earned in regard to assignment to Lithuania at a rate of 33%. The same rate applies to employment income of Lithuanian residents working in Lithuania for a foreign employer.

Inherited property is taxed from 5% to 10% (except property inherited from close relatives).

### ***Social security tax and health insurance***

The employer withholds 3% social security contribution payable by the employee from the employee's gross payroll.

Foreign residents having no permanent residence permit are not entitled to compulsory health insurance in Lithuania even they are paying social security taxes. In the event of a medical emergency, limited urgent services are rendered free of charge. Otherwise, usual regular services are to be paid by the foreign resident.

## **ANTI-TRUST LEGISLATION**

The main piece of legislation protecting competition in the Lithuanian market is the Law on Competition; for situations having "EU-dimension" as set forth in the EC Treaty and further developed by the European Court of Justice, European Community competition rules shall apply. The law prohibits agreements, decisions and concerted practices restricting competition, rules out abuse of the dominant position of a business entity (including individuals) and regulates relations between companies in terms of market concentration and unfair competition.

The Law applies also to activities of foreign registered companies if such activities restrict competition in Lithuanian internal market. This Law shall not be applied to activities of legal entities, which restrict competition on foreign markets, unless international agreements, to which Lithuania is a party, provide otherwise.

### **Prohibited Agreements**

All agreements concluded between companies or individuals targeted to restrict competition or which restrict or may restrict competition are forbidden and treated as null and void from the date they were concluded.

The Law on Competition provides for a non-exhaustive list of agreements which shall be prohibited (except when these agreements are of insignificant importance and they may not restrict competition (*de minimis*)):

- Directly or indirectly fixing prices or purchase/sale conditions;
- Territorial market share of particular goods or market sharing according to customers or suppliers groups, or otherwise;
- Fixing production or sales quantities of goods, restricting technical progress or investments;
- Applying dissimilar (discriminating) conditions to equivalent transactions with individual undertakings, thereby placing them at a competitive disadvantage;
- Requesting for additional obligations or applying discriminating conditions to equivalent transactions with individual entities, placing them at a competitive disadvantage;

However, the restrictions are not applicable for the agreements mentioned above if such agreements stimulate technical or economic progress or improve manufacture or distribution of goods and due to these reasons benefit all consumers. Such an agreement shall be in force *ab initio* without any prior decision of the Competition Council.

### **Dominant position**

An activity of a business company (-ies), holding a dominant position in the market, which restricts or may restrict competition, limits possibilities of other business entities to act in the market or violates consumers interests are forbidden. A business entity is presumed to be an entity with a dominant position if its market share constitutes at least 40%. The market definition encompasses both goods/services and geographical market.

The following actions could be treated as abuse of the dominant position, including but not limited:

- Direct or indirect thrust of unfair prices or purchase/sales conditions;
- Restriction of trade, production or technical progress resulting damage to consumers;
- Application of different (discriminating) conditions to individual business entities stating them at a competitive disadvantage;
- Thrust of additional obligations to the contracting party, which are not directly related to the object of the contract.

## Market concentration

Prior to concentration, (e.g. acquiring shares (capital) of other companies, merge of companies), the Competition Council must be informed and permission must be obtained if the following thresholds are met:

- Total last business year turnover of the undertakings involved in concentration is more than LTL 30,000,000 (EUR 8,688,600) and;
- Total last business year turnover each of at least two undertakings involved in concentration is more than LTL 5,000,000 (EUR 1,448,100).

Total turnover of a foreign registered company is calculated as amount received in the Lithuanian market. In case an undertaking involved in concentration has connected undertakings as defined in the law the total turnover shall be calculated as aggregate turnover of all connected undertakings.

Concentration shall be notified to the Competition Council before the realization of the concentration. The notification shall be given to the Competition Council after the submission of proposal to conclude the agreements or to acquire the shares or assets, authorization to conclude the agreement, conclusion of the agreement, acquisition of title or the right to dispose of certain assets. However, the notification may be submitted also having clear intentions to conclude the agreement or to provide a public offer to buy-out the shares. The legal persons or controlling persons participating in the concentration, which is subject to notification, shall have no right to implement the concentration until the Competition Council takes a decision permitting the concentration.

Actions and transactions according to which the concentration is implemented having no permission from the Competition Council are treated as null and void.

## Unfair competition

The Law on Competition prohibits unfair competition and sets forth a non-exhaustive list of actions that are considered as unfair competition, contradicting to fair commercial activity practice and good customs, inter alia:

- Soliciting that the employees of the competing undertaking terminate their employment contracts;
- Using another company's certain intellectual property without proper authorization, that may, as a result, incur losses;
- Misleading of undertakings by providing them with incorrect or ungrounded information about quantity, quality, components, properties of usage, place and means of manufacturing, price of own goods or goods of another company;
- Making announcements on the business of another company without prior consent;
- Imitating of another company's packaging and, therefore, dishonestly gaining profit;
- Using the advertisement, which according to the Laws of Lithuania, is considered to be misleading one.

## Sanctions

In case of conclusion of prohibited agreements, breach of a dominant position, implementation of concentration without an authorization of the Competition Council when such an authorization is needed, continuation of concentration in a period of suspension, the violation of conditions or obligations concerning concentration set by the Competition Council, the Competition Council may impose fines up to 10% annual turnover of the last business year. For the actions of unfair competition, the Competition Council may impose fines up to 3% annual turnover of the last business year. For not presenting the information which is necessary for the execution of an investigation or examination of concentration, as well as presenting incorrect or insufficient information, or for preventing the Competition Council from the execution of an investigation, the Competition Council may impose fines up to 1% annual turnover of the last economic year.

Moreover, the Competition Council shall have the right:

- To place the undertakings under an obligation to terminate the illegal activity, to carry out appropriate actions restoring the previous situation or eliminating consequences of infringement, including the obligation to cancel, amend or conclude contracts;
- To oblige the undertakings or controlling persons to perform appropriate actions restoring the previous situation or eliminating the consequences of concentration, including the obligation to sell the company or a part thereof, the assets/shares of the company or a part thereof, to reorganize the company, to cancel or amend contracts and to set the terms and conditions of the realization of these obligations.

The Competition Council, upon the decision of the Administrative Court, shall have the right to suspend export-import, banking operations and the validity of the permit (license) to engage in certain economic activity to undertakings, which have not followed the sanctions imposed by the Competition Council.

## **BANKRUPTCY**

According to the Law on Bankruptcy, a bankruptcy may be initiated by filing a petition to the District Court if at least one of the following conditions is present:

- Company fails to pay wages and other employment related amounts when due;
- Company fails to pay for goods received, work performed, services provided, defaults in the repayment of credits and fails to fulfill other obligations under the contracts when due;
- Company fails to pay taxes, other compulsory contributions prescribed by laws or the awarded amounts when due;
- Company made a public announcement or otherwise notified creditors of its inability to discharge its liabilities;
- Company has no assets or income debts may be paid to creditors and the bailiff returned the execution document due.

The following persons shall be entitled to file a bankruptcy petition to the court:

- Creditor/creditors;
- Owner/owners (shareholders);
- Head of the Company;
- Liquidator.

The bankruptcy proceedings may be instituted if one of the following conditions is met:

- Company is insolvent, i.e. it fails to settle with its creditors after 3 months from the established term and outstanding amounts exceed half of the assets value recorded in the balance sheet or the company fails to pay wages to its employees for 3 months;
- Company has made a public announcement or otherwise notified creditors of its inability to discharge its liabilities.

The court shall refuse instituting bankruptcy proceedings if the company satisfied the claims of the creditors who filled a petition for bankruptcy or in case restructuring proceedings have been instituted against the company.

Bankruptcy procedures may be applied out of the court. The decision to carry out the extra judicial bankruptcy procedures may be adopted by the creditors' meeting if the decision is taken by the creditors whose claims amount for not less than 4/5 of the total company's liabilities. During extra judicial bankruptcy procedures the issues within the competence of the court shall be considered and decided by the creditors' meeting.

The right to manage, use and dispose of the assets of the company in bankruptcy shall be granted only to the administrator.

During the course of bankruptcy the immovable property of the company in bankruptcy or those of a bankrupt company shall be sold at the auction according to the procedure established by the Government. The procedure of sale of other assets, except mortgaged ones, shall be decided by the creditors.

The creditors' claims shall be satisfied in two stages. During the first stage creditors' claims shall be satisfied excluding the accrued interest and default interest in the order specified below:

- Claims of employees arising out of the employment relationship, claims for compensation caused by injury at work, claims of natural and legal persons for payment for agricultural production;
- Claims for payment of taxes and other payments into the budget, as well as compulsory state social insurance and compulsory health insurance contributions, claims relating to loans obtained on behalf of the State or guaranteed by the State;
- All claims other than those specified above.

At the second stage the accrued interest and default interest shall be satisfied following the same sequence of preference which is specified above.

## **RESTRUCTURING OF COMPANIES**

The purpose of restructuring is to provide certain conditions for companies in temporary financial difficulties, which have not discontinued their economic and commercial activities, to maintain and develop these activities, to settle their debts, to restore solvency and prevent bankruptcy.

Restructuring of the company may be commenced if:

- Company fails to settle with its creditors for more than 3 months after the deadline prescribed by laws, other legal acts or agreements;
- Company has not discontinued its economic and commercial activities;
- Neither bankruptcy proceedings have been initiated against the company nor extra judicial bankruptcy process has been commenced.

The proposal for restructuring of the company may be presented by the creditors to the head of the company. The proposal for restructuring may also be presented to the creditors by the head of the company, having decision of the management body/shareholders (owners). A petition on initiating the company restructuring proceedings may be filed in the court by the head of the company.

The court shall refuse to initiate the restructuring proceedings when:

- Company satisfies the claims of the creditors who initiated restructuring procedures;
- Required documents have not been submitted to the court;
- Bankruptcy proceedings have been commenced against the company.

Duration of restructuring of the company shall be determined in the restructuring plan and it may not be longer than 4 calendar years.

From the day of a decision to initiate restructuring proceedings it shall be prohibited to discharge any liabilities of the company, which were not discharged before the court order became effective, calculation of default interest and late penalties for all liabilities of the company shall be stayed, recovery under writs of execution shall be suspended if they are not provided for in the restructuring plan. The company must discharge its obligations to the creditors according to the schedule and amounts set forth in the restructuring plan.

Termination of the restructuring of the company shall be confirmed by the court decision after the company's restructuring plan has been implemented.

The court shall discontinue the restructuring proceedings if it becomes evident that:

- During the company restructuring proceedings false information about the economic situation of the company has been provided and as a result, implementation of the restructuring plan is impossible;
- The company fails to submit the restructuring plan to the court within the provided term or the court do not confirms this plan;
- The measures provided for in the restructuring plan will not be implemented and the company fails to prove that these measures will be implemented.

## **PLEDGE AND MORTGAGE**

### **Pledge of movable property**

According to the Civil Code of the Republic of Lithuania, any movable assets and property rights may be subject to pledge, except property, to which, under the effective laws, enforcement may not be levied as well as movable assets mortgaged together with immovable assets. Any performance of the monetary obligation may be secured with the pledge.

The property can be pledged if it is owned by the pledger or it will come into the pledger's ownership in the future. However, when the obligation is secured by the pledge of property, which will come into the pledger's ownership in the future, such pledge may be enforced only after the pledger acquires title to the pledged property.

The property of the pledger may not be pledged under the general pledge of the pledger's property. Each item of the property subject to pledge must be identified.

If the property subject to pledge is handled over to the security holder, a written pledge agreement shall be concluded. If the property subject to pledge remains with the pledger or it is handled over to a third party then a bond of pledge of movable property in the standard form established by the Ministry of Justice (the "Bond of Pledge") must be executed. The Bond of Pledge has to be certified by the notary public and registered with the Hypothec Register administered by the Hypothec Offices at District Courts.

The right of the security holder in respect of the pledged assets shall arise from the moment of registration of the pledge with the

Hypothec Register. In case the pledged property is handed over to the creditor, the pledge comes into effect from the moment when the pledge agreement has been concluded. Unless otherwise provided by the pledge agreement, it shall not be prohibited to re-pledge the property.

The Bond of Pledge (and the Mortgage Bond, see below) shall be concluded in the Lithuanian language or in case the Pledge Bond is concluded in foreign language (using the standards of the Pledge Bond form), a certified translation of the Pledge Bond into Lithuanian has to be provided. All other documents necessary for registration of the pledge can also be in another language than Lithuanian, however in that case their certified translations must also be attached.

Where the property is subject to multiple pledges, the creditors' claims shall be satisfied in the order of the date of registration of the pledge. Claims of lower-priority creditors shall be satisfied from the value of the collateral only after the claims of the higher-priority creditors have been satisfied in full.

Any person shall be entitled to have access for a fee to the information contained by the Hypothec Register about the pledges (mortgages), which are in the process of registration and which have been registered.

## **Mortgage of immovable property**

According to the Civil Code of the Republic of Lithuania, a mortgage may be established towards immovable property registered in the Real Estate Register of the Republic of Lithuania (the "Real Estate Register") and not excluded from the civil turnover. The mortgage of the property excludes income received from that property.

Only the insured immovable property, except land, may be subject to mortgage. The mortgage of the immovable property also includes insurance award of that property. The Civil Code provides that in the case of mortgaging a building, the land beneath the building or right to the land lease must also be mortgaged/pledged.

According to the Civil Code a mortgage shall be created by concluding a contract between the creditor and the owner of the mortgaged property or another person holding the property in trust, or by a unilateral declaration of the owner of the mortgaged property and the registration of the mortgage in the Hypothec Register administered by the Hypothec Offices at District Courts. A mortgage not registered in the Hypothec Register shall not be valid. The mortgage transaction must be concluded in accordance with the standard form approved by the Ministry of Justice (the "Mortgage Bond").

An application for registration of the mortgage of immovable property must be filed with the Hypothec Register within the district where the immovable property is situated.

Where the property is subject to multiple mortgages, the creditors' claims shall be satisfied in the order of the date and time of registration of the mortgage. Claims of lower -priority creditors shall be satisfied from the value of the collateral only after the claims of the higher -priority creditors have been satisfied in full.

If the mortgagor fails to fulfil the obligation secured by mortgage within the terms established by the contract, the mortgagee may file a statement for the forced debt collection to the Hypothec Register where the mortgage has been registered. Within 3 business days after the submitting it, a hypothec judge shall attach the mortgaged property and not later than on the following day shall warn the mortgagor that in the event of failure to settle the debt within one month, the mortgaged property shall be sold at the auction.

In those cases when bankruptcy proceedings have been initiated against the mortgagor (the owner of the mortgaged property), the mortgaged property shall be sold and the claims of mortgagees shall be satisfied in the manner prescribed by the Bankruptcy Law.

## **SECURITIES MARKET**

The main legal act regulating securities market in Lithuania is the Law on Securities Market. This law regulates such issues as public offering of securities, establishes the requirements for participants of the securities market, regulates the activities of brokers, provides for the competence of the securities market authorities and the liability for abuse of securities market legislation. This law is accompanied by a number of legal acts passed by the Lithuanian Securities Commission, National Stock Exchange and Central Securities Depository.

The main regulatory authority of securities market is the Lithuanian Securities Commission. Trading on the National Stock Exchange is supervised by the National Stock Exchange and the accounting of securities is supervised by the Central Securities Depository. The main participants of securities market are public companies, securities market intermediaries and the investors. All of them are subject to securities market legislative requirements.

## **Public offering of securities**

Public offering of securities in the Law on Securities Market is described as a communication to persons in any form and by any means offering securities and presenting sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe to these securities.

Communication to persons on the basis of trading in the regulated market of the Republic of Lithuania is not deemed to be the public offering of securities.

The public offer of securities may be exercised in the Republic of Lithuania only after the issuer or the offeror publishes the prospectus, with the exception of the cases provided in the Law on Securities Market.

The prospectus shall present all information on the issuer and its securities to be offered to the public or admitted to trading on a regulated market.

It is noteworthy, that only the prospectus, which was approved by the Lithuanian Securities Commission or by empowered authority of the other member state of the European Union can be published.

However, the Lithuanian Securities Commission is able to establish general exceptions applicable to securities the public offer or admission to trading on a regulated market is not subject to the obligation to publish the prospectus.

## **Material events**

Pursuant to the Law on Securities Market an accountable issuer and any other issuer whose securities are offered to the public or admitted to trading on a regulated market must immediately notify the Lithuanian Securities Commission and the operator of the regulated market at which the securities issued thereby are being traded and at least two national news agencies or daily periodicals about every material event, and publish the information on the material event in its Internet website, with the exception of events if disclosure of such information may inflict financial or competition-related losses on the accountable issuer, and the non-disclosure of such information would not mislead the public and the issuer is able to ensure the confidentiality of such information, it shall be exempt from the obligation to publish this information and shall submit it only to the Lithuanian Securities Commission with a mark "confidential information" and a written explanation of the reasons precluding the disclosure of information. Material events are defined as events related to the company's activity and known or to be known to the company, which may significantly influence the market price of securities of such public company, e.g.: increase/reduction of share capital, change in managing bodies of the company, conclusion/termination of significant contracts, etc. Usually, a public company is required to report within 5 business days from the day of the event, however, the biggest companies are required to report immediately. A company having failed to report may be fined by the securities market authorities.

## **Acquisition of a block of shares**

According to the Law on Securities Market a natural or legal person acting independently or in cooperation with other persons (e.g. parent and subsidiary company, agent and principal, etc.) acquires 1/20, 1/10, 1/5, 1/3, 1/2, 2/3, 3/4 or 19/20 of votes at the general meeting of shareholders of an accountable issuer incorporated in the Republic of Lithuania, must, not later than within 7 days, inform the Lithuanian Securities Commission and the issuer about the total amount of votes and furnish data on securities entitling him to vote or hold securities of the issuer in the future. This obligation shall also be binding where the specified limits are exceeded in the diminishing direction.

A person having failed to disclose shall lose all the votes exceeding the above mentioned threshold for the period of 2 years from the moment of disclosure of correct data on the acquisition.

## **Public offer**

Under the Law on Securities Market, a public offer may be mandatory and voluntary. If a person (both natural and legal) acting independently or in cooperation with other persons acquires more than 40% of votes at the general meeting of shareholders of an accountable issuer incorporated in the Republic of Lithuania, he must, within 30 days, either transfer securities exceeding this threshold, or announce a tender offer to buy up the remaining voting securities of the issuer and the securities confirming the right to acquire voting securities.

The price of a mandatory tender offer may not be lower than the highest price of the securities which the offeror acquired over one year before exceeding the threshold. In other cases the price of the securities purchased under the mandatory tender offer shall be

established by the assets valuator. The assets valuator shall be approved by the Lithuanian Securities Commission on the proposal of the offeror.

A person acting independently or in cooperation with other persons shall be devoid of all the votes at the general meeting of shareholders from the moment of exceeding 40% of votes. Voting rights shall be regained on the day when the mandatory tender offer is registered with the Securities Commission or the amount of votes held falls at least to the 40% of votes due to a securities transfer transaction or other reasons. The Lithuanian Securities Commission shall have the right to establish general cases of exceptions when announcement of a mandatory tender offer is not compulsory if the requirement to announce a tender offer would be unfair, inexpedient or contradictory to the market interests.

It is noteworthy, that according to the Law the shareholder of an accountable issuer incorporated in the Republic of Lithuania acting independently or in concert with other persons and having acquired shares representing not less than 95 percent of the total votes at the general meeting of shareholders of the issuer shall have a right to require that all the remaining shareholders of the issuer sell the voting shares owned by them, and the shareholders shall be obligated to sell the shares.

Both mandatory and voluntary public offers are implemented through the National Stock Exchange.

## **Insider dealing**

The Law provides strict requirements related to insider dealing. All the information on material events of a public company not disclosed to the public shall be considered as inside information. Until the day of a public disclosure, a person having inside information may not: (1) directly or indirectly disclose it to any third party except when the information is disclosed as ordinary performance of professional activity or work duties; (2) enter into any contracts with securities related to such inside information; (3) provide recommendations to any third party on investment in securities related to inside information. Pursuant to the Law, a number of persons are presumed of having the inside information, such persons being the directors of a public company (head of the company, members of the Board and Supervisory Council), the consultants of a company, etc. Insider dealing or abuse of inside information may be fined by the securities market authorities.

## **Intermediaries of securities market**

Only companies having a license issued by the Lithuanian Securities Commission and the commercial banks having special licence issued by the Bank of Lithuania are entitled to act as intermediaries of the securities market. The license is not required for attorneys at law, auditors who perform their professional activity, insurance companies, etc. Securities brokerage firms and commercial banks are subject to strict capital adequacy requirements. The securities market intermediary is represented by a financial broker, having a license or any other qualification document approved by the Lithuanian Securities Commission.

## **LABOUR REGULATIONS**

All Lithuanian and foreign residents employed by companies registered in Lithuania shall be hired under employment contracts (for definite or indefinite period), a sample form of which shall be established by the Government of Lithuania. Employment contracts may also be concluded for temporary work (up to 2 months), additional work, outwork and certain kinds of supply services (personal household services).

The employment contract must contain the essential conditions of the work agreed:

- Working place of the employee (e.g., company or department);
- Work duties – certain profession, speciality, qualifications or certain position.

Besides, the parties to the employment contract must agree on conditions of payment for work.

As a general rule, a 3-month trial period for new employees may be established. The employer who has recognised that the results of a trial of an employee's suitability for the assigned work are unsatisfactory, may dismiss the employee giving an employee a written notice 3 days in advance.

## **Illegal work**

According to the Lithuanian labour legislation, any work performed in companies registered in Lithuania must be performed under a written employment contract concluded between an individual and a company, including branches and representative offices. This provision does not apply to individuals working under the royalty (copyright) contracts and individuals, who have obtained business

certificates (i.e., sole traders).

Work is defined as illegal:

- When an employment contract is not concluded with an employee except the cases specifically mentioned in the laws (assistance (help) and voluntary works, etc.);
- When work is performed by foreign citizens and stateless persons not complying with the requirements set by the legislation.

## **General working conditions**

As a general rule, minimum annual paid vacation leave is 28 calendar days per year, including weekends but excluding public holidays.

A standard working week is 40 hours, but a shorter period may be negotiated. A five-day workweek is the standard one established by the labour legislation, but it may be extended to a six-days workweek.

Work payment directly relates to the work performed/time spent. The minimum monthly salary must not be less than officially set by the Government, which currently amounts to LTL 550 (EUR 159,29). The minimum hourly pay is currently set at LTL 3,28 (EUR 0,94). Upon the recommendation of the Tripartite Council, the Government may establish different minimum rates of the hourly pay and the minimum monthly salary for different branches of economy, regions or categories of employees. The salary must be paid twice per month or, if there is a written employee's request, once per month. After the payment of salary the employer shall be also obliged to give payment statements to all employees showing gross pay, the sum paid off and deductions.

Overtime and night time work from 10 p.m. until 6 a.m. is paid applying a coefficient of 1.5 to the regular salary (hourly pay). Although the work of management officials, which exceed the set working time, shall not be deemed as overtime work, but a list of such positions should be established in collective agreements or internal discipline rules. Work performed during the public holidays and weekends are paid twice as much as regularly. In case of work in harmful and unhealthy conditions the pay for work should be higher than the pay rate applicable under the normal working conditions. If the employee's scope of work is increased in comparison with the prescribed scope, the employer shall be obliged to pay a proportionately higher wage.

## **Dismissal of employees**

The Labour Code does not provide a comprehensive list of termination grounds of an employment contract under the initiative of an employer, although in this case, if there is no fault of the employee, the employment contract may be terminated only for the essential reasons: the reasons related to the qualification, professional skills or conduct of the employee. An employment contract may be also terminated on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar valid reasons. In these cases the employer shall be obliged to give written notice to the employee on termination at least 2 months before the termination of the contract. Certain categories of employees (employees, who will be entitled to the full old age pension in not more than 5 years, persons under 18 years of age, disabled people and employees raising children under 14 years of age) require 4 months advance written notice. Besides, employment contract with the aforementioned employees may be terminated only in extraordinary cases where the retention of an employee would substantially violate the interests of the employer.

In certain cases the employer must offer an alternative employment within a company.

Severance pay when dismissing the employee at the employer's initiative without any fault on the part of the employee is the amount of his/her average monthly wage taking into account the continuous length of service of the employee concerned at that workplace and amounts from 1 monthly average wage for the service period under 12 months to 6 average monthly wages for the service period over 240 months.

The employer must, within 2 months, notify in writing the territorial labour exchange, the municipal institution and representatives of the enterprise's employees (Article 19 of this Code) when the employer intends to make redundant within 30 calendar days:

- 1) 10 and more employees, if the number of employees in the company is up to 99;
- 2) more than 10 % of employees, if the number of employees in the company is from 100 to 299;
- 3) 30 and more employees, if the number of employees in the company is 300 and more.

## PROTECTION OF INTELLECTUAL PROPERTY

### Firm names

Requirements for firm names and procedures related thereto are regulated by the Civil Code, Regulation on Register of Legal Persons and Rules on Administration of the Register of Legal Persons.

The firm name must comply with the public order, good morality, other requirements and cannot be misleading. It is noteworthy that legal persons shall be liable for correspondence of firm name to the requirements stipulated by the laws. Authorities shall verify only if a firm name is not identical to the one already registered or temporarily included into the Register of Legal Persons. Further, necessary permits for using words “Lithuania”, “Republic of Lithuania” and “catholic” in firm name must be obtained.

It is noteworthy that the firm name cannot be registered separately from the legal person. However, under request of an applicant firm name can be included into the Register of Legal Persons for temporary protection. In case the legal person, name whereof is temporarily protected, is not registered within 6 months, the name shall be excluded from the Register of Legal Persons.

The firm name is an ownership of the company and it cannot be separated from the company. The exceptional right to the firm name may be inherited, pledged, sold or otherwise transferred only with the company.

Before changing the name, a company must once announce publicly or inform each company’s creditor in writing.

### Trademarks

The Law on Trademarks regulates registration, legal protection and use of trademarks in the Republic of Lithuania.

An individual or legal person intending to register a trademark has to present an application to the State Patent Bureau of the Republic of Lithuania (“Patent Bureau”). Words, personal names or slogans, pictures, emblems, combination of colours, etc. may constitute a mark.

The applications of foreign individuals and companies, having no branch or representative office in Lithuania or other country in the EU, addressed to the Patent Bureau should be presented through the patent attorney of the Republic of Lithuania. One application has to be presented for the registration of one trademark. The applicant may also request to register one trademark for one or a few kinds (classes) of goods/services.

The Patent Bureau performs a formal expertise of application documents within 1 month from the receipt of the application documents. After the expertise of application’s documents, an expertise of the trademark is performed by the Patent Bureau. If the trademark complies with the requirements set by the Law on Trademarks and stamp duty is paid, the Patent Bureau includes the trademark into the Trademarks Registry.

Initial validity of the trademark is 10 years from the application submission date. Validity of the trademark could be prolonged each time but not longer than for 10 years. Registered trademark in Lithuania is applicable only to goods or services listed in the Trademark’s Registration Certificate. In order to supplement the list of goods/services, the owner of the trademark should present a new application to the Patent Bureau.

A trademark, recognized in the Republic of Lithuania as well-known, enjoys the protection without formal registration at the Trademarks Registry. The trademark may only be recognized as well-known by the court decision.

The trademark may be transferred to another undertaking for marking all or part of goods. The transfer of the trademark has to be recorded into the Trademarks Registry.

The owner of the trademark may also grant the exceptional or non-exceptional licence to another person for marking all or part of goods in the entire territory of Lithuania or in part of it. A licencing contract shall be effective vis-à-vis third parties only upon its entry at the Trademarks Registry.

The Republic of Lithuania is a party to the Madrid Protocol (Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks), which entitles the applicants to secure protection of their trademarks through the international registration system.

## Patents

The Patents Law of the Republic of Lithuania legitimates inventions as industrial property objects, establishes the order of issuing patents, regulates rights and obligations of individuals and legal entities with respect to inventions and provides legal protection means for inventions.

The Law defines invention as new, unknown for specialists of the respective area (does not form a part of the state of art) and having industrial adaptability. The protection form of the invention is a patent. The right to the patent belongs to an inventor or his/her assignor or employer, if invention is employment-related. The right to the patent could also be established on a basis of the agreement if the invention is made at the company performing scientific research, industrial, designing or similar works.

The term of the patent validity shall be 20 years as from the date of filing the application. The maintenance of the patent shall be subject to an annual fee. The first annual fee shall be due in the third year of the validity of the patent. In certain cases a supplementary protection certificate may be issued for a period up to 5 years (in case of patenting active ingredients of pharmaceuticals or active substances of plant protection materials).

A person intending to obtain a patent has to present a patent application to the Patent Bureau. The patent application could be presented by a few legal persons or individuals or legal person and individual jointly or their authorised representatives. Foreign legal persons and individuals, having no permanent residence or establishment, branch or representative office in Lithuania or member state of the European Economic Area (EEA) or European Patent Convention, has to present a patent applications to the Patent Bureau through the patent attorney included in the list of the patent attorneys of the Republic of Lithuania.

The Patent Bureau shall make an expertise of the patent application and ascertain whether the application complies with the requirements established for the patent applications.

An applicant presenting the patent application could also request to grant a priority according to the Paris Convention for Protection of Industrial Property on a basis of national or international patent applications earlier presented in other countries.

The Patent Bureau shall publish the patent application within 18 months from its filing date (or from the priority date if it was requested). Referring to the written request of the applicant the Patent Bureau may publish the patent application earlier but not earlier than 6 months after the filing date. Provisional legal protection shall be provided to the published patent application from the date of its publication until the date of the patent issue.

If the patent application complies with all requirements of the examination, the Patent Bureau, if the prescribed fee is paid by the applicant, shall issue the patent within 6 months. The decision of the Patent Bureau to issue the patent is published in its Official Bulletin. The issued patent is recorded into the Patents Registry of the Republic of Lithuania.

The Republic of Lithuania is a contracting party to the Patent Cooperation Treaty, which establishes the system simplifying the procedure of obtaining international patent protection. On 22 June 2004 the Republic of Lithuania ratified the European Patent Convention, which establishes a system of law for the grant of patents for invention. As to the Republic of Lithuania, the European Patent Convention entered into force on 1 December 2004.

## THE CHOICE OF LAW AND DISPUTE SETTLEMENT

### Choice of law

Foreign law is applicable to civil relations when it is provided by the international treaties of the Republic of Lithuania, contracts of the parties or Lithuanian laws. If application of foreign law is provided by the contract, all the evidences related to application of the content of foreign laws, their official ruling, application practice and doctrine have to be presented by the party, which refers to the foreign law. Foreign law provisions are not applicable if their application contradicts to public order established by the Constitution and other laws of the Republic of Lithuania.

The parties to the contract are free to choose foreign law as the law applicable to their contract. The parties may choose foreign law, which shall be applicable to the entire contract or to one or several parts of it. The parties may anytime change one applicable law to the contract to another by the mutual agreement. However, choice of applicable law shall not be a ground of refusal to apply mandatory rules of law of the Republic of Lithuania or other state, which may not be disclaimed or amended upon agreement of the parties.

If parties to the contract have not established applicable law, law of the state to which contractual obligation is mostly connected shall be applied.

## **Dispute settlement**

The Constitution of the Republic of Lithuania and the Civil Procedure Code of the Republic of Lithuania provide that any person irrespectively to his/her nationality and/or legal personality has the right to defend violated rights and have the dispute arising from them settled in relevant institutions in accordance with the law.

As the practice is, the courts are the main institution of dispute settlement in the Republic of Lithuania.

Special laws and legal acts of the Republic of Lithuania in some cases nominate state institution(s), which has (have) a right to settle a dispute arising out of relevant legal relations stipulated in the respective law or legal act. Such an institution(s) may be either an alternative institution for the disputes settlement (e.g. arbitration) or a pre-trial institution (i.e. it is allowed to apply to court only after the attempts have been made to settle a dispute in such an institution (-s)).

Lithuanian laws have established the principle of priority of jurisdiction of courts when settling disputes, arising out of civil legal relations. Pursuant to the Civil Procedure Code of the Republic of Lithuania, in case a number of related claims are joined together, several of which fall under the jurisdiction of courts and others to non-judicial institutions, all the claims shall be settled at court. It is also stated therein that in case the jurisdiction of a specific dispute is doubtful or there is a collision of laws, the dispute shall be settled at court.

Pursuant to the Civil Procedure Code of the Republic of Lithuania, any disputes arising out of business or related legal relations may be settled by the commercial arbitration upon the agreement of the parties, except for certain disputes as set forth in laws (disputes related to trademarks, patents, competition, bankruptcy, as well as disputes arising out of constitutional, administrative, family and labour relations or of consumer contracts). Currently there is one institutional international commercial arbitration in the Republic of Lithuania (Vilnius Court of Commercial Arbitration). Disputes may be referred to a foreign institutional arbitration or arbitration ad hoc as well.

## **Enforceability**

On 17 January 1995 Lithuanian Parliament ratified the New York Convention as of 1958 on Enforcement of Arbitration Awards. Accordingly judgements made by arbitrations are enforceable in Lithuania pursuant to the provisions of the Convention within the scope of its application.

The Civil Procedure Code sets forth the order for permitting execution of judgements of foreign courts. However, judgements issued by courts of EU Member States are recognised according to the order set out in EC regulations and the Civil Procedure Code. Where EU Member States judgements fall outside the scope of EC regulations, the same order which is applicable for the rest shall be followed.

Lithuania has bilateral treaties on legal cooperation with the following countries: Azerbaijan, Byelorussia, China, Kazakhstan, Moldova, Poland, Russia, Ukraine, USA (cooperation limited to criminal cases), Uzbekistan, Turkey and the tripartite treaty on legal cooperation with Estonia and Latvia. Judgements of courts of the said countries may be recognised and enforced following provisions of the respective treaties.

According to Article 812 of the Civil Procedure Code, applications regarding the recognition of judgements made by foreign courts and arbitrations are considered by the Lithuanian Court of Appeal.

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