

# Borenius

## Baltic Law unto itself

Times have been hard in the Baltics since the crash last Autumn. However, there's plenty of evidence to suggest the good times will soon return to the three independent Baltic States and Finland. We conference called business law specialists working for Borenius Group, the most trusted practice in the FennoBaltic region to canvass their thoughts on the subject.

The results were rather encouraging...

### 1. Does business law differ greatly between the Baltic States?

**Peeter Kutman - Estonia:** Although there are a lot of differences in details, in general the three legal systems are still based on similar principles due to having gone through the harmonisation process within the EU.

**Dalia Foigt - Lithuania:** Lithuania, Latvia, Estonia stem from the legal traditions of Continental Europe and are in accordance with the EU's *acquis communautaire*. So, the main principles of business law in three Baltic States are the same. Of course, certain differences exist in the particular fields of business law, e.g. company law, bankruptcy law could be found.

**Ieva Azanda - Latvia:**

That is rather hard to compare since lawyers are normally trained and allowed to practise in a specific country. Overall, however, the Baltic countries have implemented most of the EU requirements affecting the way business is done and the overall business law framework. The Baltic countries are borrowing from similar historical foundations of their legal systems.

That said, it should not be automatically assumed that what can be accomplished legally in one of the Baltic states automatically transforms also to the others. While the general principles are rather similar, there are always small technical details distinguishing the solutions.

**Ari Kaarakainen - Finland:** Regulation concerning real estate, tax legislation and insolvency law vary a great deal from country to country. However, the Baltic countries have been very rapidly implementing the EU legislation which has led to harmonisation of business law.

### 2. Do the laws here vary much from what our readers are used to in Western Europe?

**PK:** The laws don't vary substantively because we were in a situation to establish our new legal system within a very short time and did not have time to "reinvent the wheel". Therefore our legislators have borrowed a lot of Western experience as a model, drafted and implemented the laws to suit the local context in order to build up our own system.

For example, Estonian private law, including real estate law, as well as company law is based on and similar to the principles of German law. However, one can still notice differences in general business ethics - although the development in business ethics has undergone wide-ranging improvements in Estonia, the difference between Nordic and Western climate is still visible.

**DF:** Due to the very rapid and complex transformation from soviet laws based on planning economy and state ownership to the western style laws based on market economy and private ownership our laws are more balanced and modern compare this the laws of Western Europe.

The problem is that the legal culture, law enforcement and practise are very much behind those in Western Europe. E.g. Lithuanian businessmen are not used to consulting lawyers beforehand. Instead they come to them when the problem has become huge and almost impossible to solve!

**IA:** Most of the law is harmonised with the EU

requirements, so, again, technically it should be similar to Western European countries. From the "user" perspective, however, it has to be noted that many changes take place rapidly and are not always accompanied by a proper prior discussion and evaluation of the effects.

Therefore, the main difference from the Western European approach is that Business has to follow very closely what happens to legislation in the particular area.

**AK:** There are still differences compared to the Western legal environment. In my experience at least insolvency legislation and the regulation governing ownership of land differ a great deal compared to the regulation in Western Europe.

### 3. Your company is at the sharp end of inward investment into the region. How has the recent downturn affected business in the region - both new and existing?

**PK:** In recent years, our firm has been kept very active and busy in the local M&A market. The beginning of 2009 has been very quiet in this market as sellers expectations have not yet "come down" and the buyers are waiting for changes in prices. The trend for 2009 suggests that there will be more transactions from strategic investors and also more mergers between competitors.

However, as bank finance is still very limited the opportunities are increasing for private equity companies to be more competitive.

**DF:** Sectors like the automotive industry, con-



caused by aggressive lending during the boom years. That said, there are also segments of the economy showing slow signs of recovery - for example, forestry and the timber industry, which is one of Latvia's primary exports.

**AK:** We have seen a substantial drop in new private equity investments, real estate investments and financing deals in the region. On the other hand, we expect to gain some finance-related restructuring work and insolvency work in the near future.

### 4. What type of companies have you been dealing with recently and has their mood been wary or bullish?

**PK:** In recent years the majority of M&A assignments came from foreign firms/investors - both financial and strategic. Today, with few exceptions like EBRD (European Bank for Reconstruction and Development), most of the deals we have been involved in are between local players.

There are also some examples and signs of the strategic investors buying local companies to gain larger market share but not many of such transactions are signed or closed yet. It is clear that for 2009 and probably even longer the markets remain turbulent.

**DF:** Among our clients are very different types of companies - from multinational large enterprises (MNEs), to banks and to small local family businesses. A great majority of them are very much concerned about the business downturn, huge problems of payment of invoices, and disputes of different kinds.

Some companies use the momentum and project decent investments, create new products, services, new lines of business, restructure their business internally.

**IA:** Liepa, Skopina/Borenius has always had many different types of clients. The generally tendency has been much less transaction work and much more restructuring, debt collection and dispute resolution work. We recently advised Nedela S.A. during the acquisition of AS Diena and "Dienas Bizness", one of the most influential Latvian newspapers.

In addition, the financial sector is reporting losses for the second quarter of 2009, mostly

it has to be noted that it generally depends on the business sector they are in. Some companies are taking advantage of the cheap assets on the market, some are more cautious and others are defending themselves from creditors trying to survive.

**AK:** In the past we have been dealing from Finland with commercial banks, private equity investors and real estate investors having business in the Baltic Region. All of these clients are currently very cautious in relation to the region.

### 5. What incentives are there in terms of attracting new business into the region?

**PK:** Lot of companies are put on sale or need extra equity capital but only a few investors are around who have money to invest. The main subject remains to be the pricing as it is very difficult to predict the future and therefore also "what is the right price" as the expectations of sellers and buyers are still different.

However, many investors still believe that 2009/2010 could be one of the best years to invest in the region, provided that one selects investments carefully.

**DF:** Lithuania's proximity to the markets of the CIS and the EU, the country's excellent infrastructure (EU recognized Lithuania as a prime transport centre in the region), competitive living and operating costs and a highly skilled workforce offer great opportunities to foreign investors.

Investment laws conform to EU standards. Leading business sectors at the moment are: computer software and hardware, energy and power generation, pollution control, environmental services, building materials, and the agricultural sector.

**IA:** The biggest incentive could be the fact that the labour costs have now reached a reasonably low level. Also, the new government in place could potentially be more open and understanding towards foreign investors wishing to commence business in the region.

### 6. How was news of the IMF's recent €7.5 billion bailout received by investors?

**IA:** It is hard to comment on the overall investor sentiment. Judging from the exchange indices of the Scandinavian banks having presence in the region, most of the times the news about further IMF involvement were received with positive reaction; any news of the government not being able to fulfil the requirements of IMF with negative downturn. >



## 7. The IMF believes recovery for the region will kick in next year. What advice would you give to investors looking at moving in on the Baltics?

**PK:** Most of the companies in the region probably have gone through restructuring, mergers, and re-financing. Many shareholders have been forced to sell their shareholding. Therefore while making deals in the region, the key words and main principles should be:

- careful due diligence of the target;
- guarantees from the banks to be issued or
- retention amounts to be retained by the sellers as often the sellers' financial background does not cover the risks related to the target and their representations and warranties could be worthless;

There is not a market practice in times like these – everything is market practice!

**DF:** Do not miss the momentum! Lithuania expects to receive approximately 12,5 billion EUR in EU Structural, Cohesion and other funds in the period of 2007 – 2013 to implement infrastructural projects.

Major infrastructure projects currently pending or underway include: decommissioning of Ignalina nuclear power plant, construction of Visaginas nuclear power plant, construction of electrical power lines to Poland and Sweden, construction of Via Baltica highway and Rail Baltica line to connect the Baltic countries to the rest of Europe, expanding and modernizing the Klaipeda sea port facilities, building a natural gas storage facility, and construction of an LNG terminal.

Consulting a local lawyer and conduct due diligence of potential business partner is always advisable.

**IA:** Judging from the news coming from the real

estate market, it is showing some fragile stabilisation signs. This autumn should reveal what influence the drastic budget cuts the government of Latvia had to take in the beginning of the summer will have.

However, the overall situation seems that be that if any of the potential investors were waiting not to “catch a falling knife”, the time to stop waiting could be rather close.

## 8. Finally, what sets you apart from other business solution providers in the region – what would our readers gain from employing your services?

**PK:** The mission of Borenius Group is to provide a full range of tailored business and corporate law services in the Baltic region and Finland. Our clients have benefited through easy access to Fenno-Baltic know-how and integrated standards of legal assistance.

**DF:** All the top legal firms provide excellent professional service. Borenius Group law firms strongly believe that an idea-driven approach brings clients added value. We are not purely service providers, but aim to provide ideas that open new opportunities for clients to explore.

**IA:** Our main values are responsiveness, efficiency and speed of reaction to the requests and needs of the clients. We are accessible and at the same time providing quality services within a very short time frame.

**AK:** Borenius Group is a transaction oriented firm active in all the three Baltic countries and Finland having in each of the countries a top-tier business law practice. Therefore, we are very well positioned to advise in any transactions which have connections to all or some of these countries.

If the customer so wishes, we can provide one contact person within any of the four Borenius offices and he or she can manage the whole transaction or other assignment in each of the countries. This means, among others, that the customer will receive only one joint invoice from all the Borenius Group offices. ■

**Borenius Group is the alliance of law firms Borenius & Kempainen in Finland, Luiga Mody Hääl Borenius in Estonia, Liepa Skopina / Borenius in Latvia and Foigt & partners / Regija Borenius in Lithuania.**

**Borenius Group provides easy and reliable access to seamless full-scale business law advice covering the whole Fenno-Baltic region. Borenius Group firms are known by their creative approach to business law which - in addition to solving problems - also tends to find new business opportunities.**

**The member firms of Borenius Group are independent and separate legal entities practising advocacy on their own account and following their respective local Bar rules.**



[www.boreniusgroup.com](http://www.boreniusgroup.com)