LEGAL ENVIRONMENT IN LITHUANIA

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Note: This chapter contains general information and does not constitute and should not be relied upon as a legal opinion or advice. The information in this chapter is updated as of 28 September 2005, except where expressly indicated otherwise.

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Legal Framework for Investment

Lithuanian legal system

The Lithuanian legal system is principally based on the legal tradition of continental Europe. Since restoration of Lithuania's independence in 1990 the legal system has been vastly reformed to meet the demands of the modern open economy. During the last years the central priority was the harmonisation of Lithuanian law with that of the EU. From 1 May 2004 the *acquis communautaire* is also a part of the Lithuanian law.

In the Lithuanian legal system, the principal body of law is statutory. Main areas of substantive law are codified in codes (*e.g.* Civil Code, Code of Civil Procedure, Labour Code, Customs Code *etc*.). The system of regulatory acts is hierarchical where the Constitution is an act of the supreme power, followed in the descending order by constitutional laws, laws (*įstatymai*), resolutions of the *Seimas* (the Parliament) or the Government of the Republic of Lithuania (*Vyriausybė*; the 'Government'), decrees of the President of the Republic of Lithuania, and acts of other governmental institutions and local municipal authorities. All regulatory acts, including laws, must comply with the Constitution. All international treaties and conventions must be implemented in Lithuania, however, the ones ratified by the *Seimas* prevail over national laws. As has been mentioned, the EU law became a part of Lithuanian legal system since 1 May 2004.

The system of general jurisdiction courts consists of the Supreme Court, the Court of Appeals, district courts and local courts which deal with civil and criminal matters. In 1999 the system of specialised administrative courts was established to deal with administrative litigation. The latter system consists of the Highest Administrative Court and district administrative courts.

Though earlier the doctrine of precedent was not acknowledged in the Lithuanian law, its elements have been gradually introduced due to the need to ensure the consistency in the interpretation of law. Currently, the court hearing the case is obliged to take into consideration published decisions of the Supreme Court and the Highest Administrative Court.

The Constitutional Court is not a part of the general court system, but is an independent judicial body with the authority to determine whether the laws and other legal acts

adopted by the *Seimas* are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government conform to the Constitution or laws.

Regulation of foreign investment

Foreign investments in Lithuania are regulated and protected by national legislation as well as numerous international agreements on promotion and protection of investments. Currently, there are about 35 bilateral agreements in place with most of the EU member states, the USA, and many Central and Eastern European countries. Such agreements prevail over the provisions of the Lithuanian national laws and usually provide for more favourable treatment of reciprocal investments.

The Law on Investments of 7 July 1999 (the 'Law on Investments') establishes the following fundamental principles of treatment of foreign investments in Lithuania:

- *equal protection* – rights and lawful interests of Lithuanian and foreign investors are equally protected by the laws of Lithuania;
- *equal treatment* – foreign investors enjoy the same rights and obligations relating to commercial activities as Lithuanian domestic investors, including the State and municipalities, and the economic conditions are the same for all investors;
- *free access to all sectors of economy* – foreign investors have free access to all sectors of the economy, except for the activities of the State security and defence (however, investments from countries satisfying EU and NATO integration criteria are allowed upon the consent of the State Protection Council).

When a licence or permit is required for a certain type of activity, licensing requirements apply equally to entities owned by foreign and domestic investors. Activities which require prior permission or licence are mostly related to the increased danger to the human life, health, environment, and also include activities in certain regulated sectors (such as pharmacy, energy *etc.*).

Investment protection and guarantees

The Law on Investments emphasises protection of investments, rights and lawful interests of investors. State institutions or officers have no right to prohibit or restrict the possession, use and disposal of the investment by investor. Investors can claim

compensation of any damage suffered due to unlawful practices of the State or municipal institutions.

Expropriation of an investment may take place only for the public necessity and only in cases and under the procedures established in the laws, and provided the investor is adequately compensated pursuant to the rules established by the Government. Generally, the investor must be compensated at the market value of the assets deprived. The compensation must be paid within three months after the day of expropriation in the currency requested by a foreign investor, including the interest from the moment of publication of the notice of expropriation until the payment of compensation (based on the LIBOR rate of the relevant currency).

Investors have the right, after having paid all taxes, to transfer abroad their profit (income) without restrictions.

Disputes concerning the rights and lawful interests of a foreign investor are settled according to the agreement between the parties, by the courts of Lithuania, international arbitration or by other institutions. In case of investment disputes foreign investors may also apply to the International Centre for Settlement of Investment Disputes since Lithuania is a member of the 18 March 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States. The disputes are resolved under the provisions of applicable Lithuanian or foreign law and the relevant international treaties.

Forms of investment

Investments may be made by means of monetary funds or other tangible, intangible and financial assets invested for the purposes of generating profit (income), social results (educational, cultural, scientific, health, social security and in similar areas) or to ensure the implementation of State functions.

The Law on Investments provides for the following forms of investment:

- establishment of an enterprise or acquisition of shares (or other participation rights) in an operating enterprise registered in Lithuania;
- acquisition of securities of any type;
- creation, acquisition or increase of the value of fixed assets;

- lending of funds or other valuables to the enterprise in which the investor owns a stake allowing to control or considerably influence it;
- conclusion of concession or leasing agreements.

Foreign entities may also establish branches or representative offices. Notably, foreign entities performing economic activities in Lithuania in certain cases are required to register permanent establishment in Lithuania for tax purposes.

Investments related to real estate

Enterprises with foreign capital may own, lease or use real estate in Lithuania. There are no limitations on the ownership or usage of buildings, but some particular requirements may apply if those are buildings with cultural or historical value.

Enterprises can lease state-owned land plots for a maximum period of 99 years. Privately owned land may be leased for a maximum period of 100 years.

Foreign citizens and entities engaged in registered commercial activity in Lithuania and complying with certain established criteria are allowed to purchase non-agricultural land plots. Based on the amendments to the Constitution adopted in January 2003, it is also possible to acquire agricultural land, but subject to a number of restrictions.

Concessions

Currently, concessions are regulated by the Law on Concessions, which was significantly amended on 24 June 2003 (the 'Law on Concessions'), which is harmonised with the EU directives 89/665/EEC, 92/50/EEC, 93/37/EEC and 2001/78/EU. The law defines a concession as the granting of special permission to the concessionaire to perform economic activities related to design, construction, development, renovation, change, repairs, management, use and (or) supervision of infrastructure objects, rendering of public services, management and (or) use of state or municipal property (including natural resources) in accordance with the concession agreement, whereby the concessionaire accepts all or main liability for risks, rights and obligations arising out of such activities. The law includes the list of spheres of activities which may be subject of concession agreement. Concessions may be granted to Lithuanian or foreign entities. Usually a public tender must be held for granting of a concession, however, in case of necessity a concession may be granted without it.

Lately, the concessions have been rapidly gaining popularity, particularly among the municipalities.

Incentives

Currently, there are no laws establishing special incentives for foreign investments, although certain tax incentives still continue to apply to some foreign investments that were made during 1993–1997. The Law on Investments provides for several forms of incentives, such as compensation of a portion of interest on the loans for investment projects, granting of State (municipal) guarantees, granting of loans by the State *etc*. The application of such incentives is, however, subject to the discretion of respective State or municipal institutions.

Some specific incentives were provided to strategic investors, *i.e*. investors with whom the Government until September 2001 executed investment agreements providing for special investment and business conditions in relation to investments exceeding LTL 200 million.

Currently, the Government or its authorised institution may enter into the investment agreements regarding investments reaching LTL 20 million (LTL 5 million in regions with high unemployment). With respect to investments into municipal infrastructure, manufacturing and services, the municipality may enter into investment agreements that meet the criteria established by the Council of the Municipality. Special investment, business and land plot selection conditions may be established in accordance with the competence of the municipality. Based on the practice of the Constitutional Court, stability clauses can be provided in the investment agreements only to the extent that they do not limit applicability to the foreign investors of any laws implementing the Constitution.

Free economic zones

Lithuania has enhanced its appeal to foreign investors through the development of free economic zones ('FEZs'). Lithuanian and foreign enterprises, corporations and associations are eligible to participate in FEZs. FEZs offer considerable benefits for the companies registered and operating within their boundaries. These benefits include:

- profit tax incentives: 6 years exemption from profit tax following the date of investment and 50% discount for the following 10 years – for the FEZs

companies that have invested more than EUR 1 million; no taxes on dividends for foreign investors;

- exemption from customs duties and import taxes for the goods imported from a foreign country into free areas (*i.e.* parts of FEZ territory separated from it and from customs territory of Lithuania which does not belong to FEZ) and exported from the free areas into foreign countries; those duties and taxes also do not apply to the goods stored, destroyed in or used for functioning of such free areas; and

- FEZ companies receive the same legal guarantees as those operating outside the FEZ.

It should be admitted that in the light of the EU law the above listed incentives (applicable to FEZ companies) are recognised as the State aid which is strictly regulated in the EU legislation and monitored by the European Commission.

Currently, one FEZ established in ice-free port city Klaipėda is already successfully operating. In 2001 the scheme of the State aid 'Investments into Klaipėda's FEZ' was approved.

The second FEZ was established in Kaunas in 1996, however, Kaunas FEZ is just starting its actual operations.

Forms of Business Organisations

Types of presence

Under Lithuanian law foreign investors may establish the following forms of presence in Lithuania:

- a representative office;
- a branch;
- a permanent establishment (for tax purposes);
- an enterprise (a company or other).

Representative office

A representative office of a foreign enterprise may be established for representational and promotional purposes only and may not engage in commercial activities. The representative office may perform various actions set forth in its statutory documents, *e.g.* to represent and protect the interests of the foreign parent company (*i.e.* the incorporator of the representative office), enter into transactions on behalf of the parent company *etc.*

Notably, if the foreign parent company's activities carried out through its representative office amount to permanent commercial activities in Lithuania (*i.e.* if the foreign company is deemed to have a permanent establishment in Lithuania, as discussed in more details below), they may become subject to the profit tax in Lithuania.

The representative office does not have the capacity of a legal person and is not required to keep a separate balance sheet. The foreign parent company is liable for the obligations of its representative office.

The Civil Code establishes the requirement that at least one of the persons authorised to act on behalf of the representative office (in practice, the manager of the representative office) must reside in Lithuania.

Branch

A branch of a foreign enterprise is its structural subdivision which is located in Lithuania. Differently from the representative office, the branch of a foreign enterprise may engage in commercial activities, enter into transactions and assume obligations, however only within the scope of powers provided for in its statutory documents.

The branch does not have the capacity of a legal person. The parent company is liable for the obligations of its branch, and the branch is liable with all of its assets for the obligations of the parent company. The activities of the branch are organised and carried out by the manager of the branch who has the right to represent the branch in relations with third parties only upon registration of the branch. At least one of the persons authorised to act on behalf of the branch (in practice, the manager of the branch) must reside in Lithuania.

Permanent establishment

Permanent establishment is a notion of the tax legislation. Permanent establishment is not a separate legal entity or a subdivision of a foreign enterprise. Rather, it is just the form of a foreign company's activities in Lithuania which are regarded as a presence for tax purposes.

The foreign enterprise may be required to register a permanent establishment if its activities in Lithuania comply with criteria of a permanent establishment. Under the Law on Profit Tax of 20 December 2001, a foreign enterprise is deemed to have a permanent establishment in Lithuania if it:

- permanently carries out commercial or industrial activity in order to receive income or other economical benefit;
- carries out its permanent activity through a dependent representative (agent) in the territory of Lithuania; or
- uses in the territory of Lithuania a construction area, an object of construction, fitting or equipment, or permanently uses equipment or construction for research or extraction of natural resources, including drilling wells or ships used for that purpose.

The permanent establishment of a foreign company in Lithuania is registered with the Register of Tax Payers and must compute and pay taxes in accordance with the applicable Lithuanian legislation and international treaties.

Private and public companies

Lithuanian laws provide for a number of different types of enterprises which may be established in Lithuania. However, the most convenient and popular way to invest capital in Lithuania is through incorporation of a private or public company or acquisition of shares in existing Lithuanian companies. For this reason key issues related only to private and public companies are more thoroughly described below.

General

Public and private companies are limited liability enterprises with authorised capital divided into shares. The company is liable for its obligations only to the extent of its assets. The shareholders have no property obligations to the company, except the obligation to pay for the shares subscribed. Only in case the company is unable to perform its obligations due to unfair actions of a shareholder, the shareholder may incur personal subsidiary liability for the obligations of the company.

Capital formation and capitalisation requirements

Capital may be contributed in cash or in kind: (1) at least 25% of the capital but not less than the minimum authorised capital amount (as described in the comparative table below) should be paid in cash prior to registration of the company; (2) the remaining part of the authorised capital may be paid either in cash or in kind within 12 months after the subscription for the shares. While increasing the authorised capital by in-kind contributions, the amount of the increase should be paid in full at once.

Shareholders' equity may not be less than 1/2 of the authorised capital of the company. If it becomes less, the situation must be rectified.

Shareholders

Shareholders of private and public companies may be Lithuanian or foreign natural and legal persons. Each shareholder has such rights in the company which are inherent to the shares owned. The Law on Companies of 11 December 2003 (the 'Company Law')

provides for the general principle 'one share – one vote'. It further establishes that the number of votes given by a share must be proportional to its nominal (par) value. Shareholders' rights are divided into:

- property rights (*e.g.* to receive dividends if the company generates profit, to receive a portion of the assets of the company in liquidation, to receive shares without additional payment if the authorised capital is increased from the funds of the company *etc.*); and
- non-property rights (*e.g.* to attend meetings of shareholders and to vote, to receive information about the company, to challenge in court resolutions of the General Meeting of Shareholders or resolutions and actions of other company's bodies *etc.*).

The statutory rights of shareholders may not be restricted in any way, except in cases specified by laws or by court order.

Shares

Shares are securities certifying the participation in the company's capital and entitling their owners to certain property and non-property rights. Public trading in shares of private companies is not allowed, *i.e.* such shares may be traded only privately. The Company Law establishes the right of first refusal (under the terms offered by the seller to a third party) for the other shareholders of the private company in case the shares are offered either to other shareholder or to a third person who is not a shareholder of the company. However, this statutory right may be modified or limited by the Articles of Association of a company.

Companies are prohibited from introducing any restrictions on the shareholders' right to transfer fully paid shares to other persons (except for the case when such transfer would increase the number of shareholders of the private company in excess of the maximum number permitted, *i.e.* 249).

Companies, both public and private, may issue bonds convertible into shares, as well as ordinary bonds.

Governance structure

Either private or public companies must have two mandatory bodies – the General Meeting of Shareholders and the Head of the Company (the chief executive officer). Shareholders of the company may also decide to form collective bodies of the company – the Board (of Directors) and/or the Supervisory Council. In practice, Supervisory Councils rarely occur in private companies, but Boards are formed quite often.

Body	**Mission and Authority**
General Meeting of Shareholders (*compulsory*)	Mission: general guidance of the company Authority: - election and removal of the Supervisory Council / or the Board / or the Head of the Company - amendment of the Articles of Association - distribution of profit - choice of audit enterprise - increase / decrease of the authorised capital - reorganisation, liquidation *etc*.
Supervisory Council (*optional*)	Mission: supervision of the activity of the Board and the Head of the Company Authority: - supervision of activities of the Board and the Head of the Company - control of legality of corporate decisions *etc*.
Board (*optional*)	Mission: strategic management of the company

	Authority: - determination of company's strategy - formation of company's management structure - decisions on investments *etc*.
Head of the Company (*compulsory*)	Mission: daily management of the company Authority: - planning of company's activities and achievement of its objectives - execution of transactions on behalf of the company *etc*.

Bookkeeping

Bookkeeping may be carried out by a chief financial officer (usually titled the 'chief financier' or 'chief accountant') who is an employee of the company or by a bookkeeping company under a service agreement. The same person may not hold offices of both the Head (chief executive officer) and the chief financial officer of the Company.

Financial control

Audit is compulsory to all public companies. Audit is also compulsory to private companies which meet at least two of the following requirements:

- annual revenue amounts to LTL 10 million (app. EUR 2.9 million);
- more than 50 employees; and
- value of assets amounts to LTL 5 million (app. EUR 1.45 million).

Comparative table

Feature	Private company	Public company
Minimum authorized (share) capital	LTL 10,000 (app. EUR 2,900)	LTL 150,000 (app. EUR 43,450)
Maximum number of shareholders (if any)	249	Not established
Minimum number of shareholders (incorporators)	1	1
Liability of shareholders	Limited[1]	Limited[1]
Way of formation of authorized capital	Both monetary and non-cash contributions are acceptable	Both monetary and non-cash contributions are acceptable
System of corporate bodies	Obligatory corporate bodies: General Meeting of Shareholders and the Head of the Company (CEO). Optional corporate bodies: Board and Supervisory Council	Obligatory corporate bodies: General Meeting of Shareholders and the Head of the Company (CEO). Optional corporate bodies: Board and Supervisory Council[2]

[1] However, if a company becomes unable to perform its obligations due to unfair actions of a shareholder, the shareholder may be held subsidiary liable for the obligations with his/her/its personal property.

[2] According to the Corporate Governance Code of Lithuania, it is advisable for the public companies to have at least one of mentioned optional corporate bodies formed.

Registration of shares with Securities Commission	Not applicable	Mandatory (with certain exceptions)
Public trade in securities	Prohibited	Allowed
Audit	Obligatory only if special criteria are met	Obligatory

Agency, Distributorship and Franchising

Introduction

For foreign producers and suppliers, agency, distribution and franchising often are quite an effective alternative to establishing a business in Lithuania. This section will cover basic regulatory principles applicable to agency, distribution and franchising.

Agency

Under the Lithuanian law, commercial agent is an independent legal or natural person engaged in continuing business activity to negotiate the transactions on behalf of the principal or to conclude the transactions in the name and at the expense of the principal. The principal source of rules governing commercial agency is the Civil Code of 18 July 2000 (the 'Civil Code'). Provisions of the Civil Code on commercial agency aim to implement the EC Council Directive 86/653/EEC of 18 December 1986 regarding self-employed commercial agents while the provisions concerning agency in the international sale of goods in principle are tailored according to the 17 February 1983 Geneva (UNIDROIT) Convention on Agency in the International Sale of Goods.

According to the Civil Code, the parties may agree on the terms of agency either in written or verbally. However, the provisions on non-compete undertaking, procedure and grounds of contract termination, exclusive rights of the agent as well as those limiting party's civil liability or establishing dependence of the agent's remuneration on the execution of a transaction by the third party are legally binding and enforceable only if they are agreed in the written form. The Civil Code requires the agents to maintain valid insurance of their civil liability, therefore, it is advisable to request the commercial agent to provide a valid insurance policy before entering into agency contract. The Civil Code does not provide for a mandatory amount of insurance, thus, it is for the principal to decide whether amount of the agent's insurance sufficiently covers the potential risks. The main obligation of the agent is to act in good faith and dutifully in performing the principal's instructions, to be loyal and look after the principal's interests. The agent may undertake not to compete with the principal, however, such an undertaking will be binding on the agent only if it is expressly provided in the written contract.

In protection of agent's interests the Civil Code entitles the agent to exercise a lien on the merchandise of the principal in case of failure by the principal to pay the agent's

commission in time. Besides, the agent is also entitled to demand the audit of the principal if the dispute regarding correctness of calculation of the commission arises.

Agent is entitled to the commission on the concluded transactions as well as transactions concluded by the principal as a result of the agent's activities. The parties may agree that agent's remuneration is due only if the transaction is performed by the third party or make agent's remuneration dependant on the quality of agent's performance. The agent is also entitled to additional remuneration (*del credere*) if he guarantees such due performance of the transaction by the third party.

Notably, the agent's commission does not include the reimbursement of agent's expenses incurred in relation to the performance of the assignments, therefore, such expenses must also be compensated by the principal.

Although the parties may agree on the moment and procedure of payment of the commission, however, in any case the commission becomes due upon execution by the third party of its part of the transaction and must be paid at the end of the third month thereafter at the latest. In case the payment of the commission is subject to the execution of the transaction by the third party, the agent is entitled to claim the advance payment which may not be less than 40% of the commission.
Agency contract concluded for indefinite period may be terminated by prior notice of either party. The term of such prior notice varies from one to four moths, depending on the length of the agency contract. Agency contract for a fixed period may be terminated prior to expiry of the period only for good cause. The principal must compensate the loss of agent's benefit upon termination of the contract. Such compensation might take either the form of indemnity or, as an alternative, compensation for the damage suffered as a result of the termination of the relations with the principal. As a general rule, the agent shall be entitled to an indemnity unless the parties specifically agree on compensation of damage. The agent's right to indemnification or compensation for the damage is denied only in case of termination of the agency contract due to the fault of the agent.

Noteworthy that along with the commercial agency the Civil Code provides another form of commercial representation – commission contract, which might be viewed as an alternative to the commercial agency. Pursuant to the commission contract, the commissioner undertakes to conclude the transactions in his (*i.e.* commissioner's) name at the expense of the principal. The commissioner, being a party to the transaction,

acquires the rights and undertakes the obligations with regard to another party of the transaction. On the other hand, the commissioner is not responsible to the principal in case the other party to the transaction fails to fulfil its obligations, provided he was sufficiently diligent in selecting that other party. The commissioner is entitled to assign, and the principal is entitled to take over, the claim against such a defaulting party.

All the items handed over to the commissioner by the principal or acquired by the commissioner at the expense of the principal is the property of the principal.

Commission contract concluded for indefinite period may be terminated by notice of the principal served at least 30 days prior to the termination. In case of contract termination upon initiative of the principal, the commissioner is entitled to compensation for the damage suffered as a result of termination. The commissioner is entitled to refuse to perform the assignment only if such performance becomes impossible or in case the principal defaults.

Distributorship

Distributorship implies the obligation of a distributor to acquire in his name and at his expense goods or services provided by the supplier and to resell such goods to the customers or other dealers. By contrast to the agency and commission agreement, distributor undertakes all the risks related to the conducted business activity.

According to the Civil Code, the distribution agreement must be concluded in written form, otherwise the agreement will be void. Besides, only the enterprises (businessmen) may become a party to the distribution agreement.

The parties may enter into exclusive distribution agreement whereby the supplier appoints only one distributor for a specific territory or a specifically allocated group of customers. However, exclusivity conditions and other vertical restraints are subject to the competition law rules.

Unless otherwise provided in the agreement, the distributor is under obligation to ensure effective distribution of goods, advertising, sufficient qualification of the personnel, proper warehousing of goods, to sell goods under the trademark of the supplier if applicable, buy and resell the agreed quantities of goods within agreed period of time, provide warranty repair, provide the supplier with information on the market situation, protect commercial secrets of the supplier. The supplier must ensure proper quality of

goods, train employees of the distributor and provide distributor with advertising material. The supplier is also entitled to control distributor's warehouses and supervise compliance of the distributor with the distribution agreement. In any case, parties to the distribution agreement may not assume such undertakings which are not in compliance with competition rules.

If the supplier is a manufacturer of the defective goods, it is liable to compensate the damage caused to the consumers. However, in case the defective goods were imported by the distributor, the distributor is liable to the same extent as the manufacturer.

Distribution agreement concluded for indefinite period may be terminated by notice of either party served at least three months prior to the termination. In case distribution agreement for a fixed period is terminated prior to its expiry due to the fault of either party, the defaulting party is liable to compensate damages caused to the other party.

Franchising

Pursuant to the franchise agreement franchisor undertakes to provide franchisee a package of exclusive rights (*e.g.* trade names and trademarks, know-how *etc.*) to be used for commercial purpose while franchisee undertakes to pay a franchise fee. Only the enterprises (businessmen) may become a party to the franchise agreement.

Franchise agreement, in order to be valid and enforceable, must be concluded in written form. Furthermore, such agreement may be invoked against any third party only if the agreement and its amendments, if any, are registered with the Register of Legal Persons. The licence to use certain intellectual property rights under the franchise agreement, if such is issued, must be registered with the State Patent Bureau.

The principal undertakings of the franchisor are to provide franchisee with relevant technical and commercial documentation and grant necessary licences in compliance with the agreement. Besides, unless otherwise provided in the agreement, the franchisor must ensure due registration of the franchise agreement, control the quality of goods or services supplied by the franchisee, provide technical support and consulting and assist in training of franchisee's employees.

The franchisee is obliged to perform its activities under licensed trademark, ensure quality of goods/services, preserve confidentiality of commercial secrets entrusted by the principal, provide clients with services which would have been reasonably expected

to be provided had the goods/services been purchased directly from the franchisor as well as to disclose the fact that he acts under the franchise agreement.

The parties may also agree on exclusivity of franchising as well as to impose some other restrictions limiting activities of the franchisee and/or franchisor's right to exploit its intellectual property rights at discretion. However, such agreements must comply with competition rules.

The franchisee shall be primarily responsible for the quality of goods or services produced under franchise agreement. However, in case of franchisee's refusal to honour the claim or failure to respond to the claim within reasonable period of time, the third party-claimant will be entitled to sue the franchisor. Besides, the franchisor and the franchisee shall be jointly and severally liable for the damage caused to the consumers by the defective products.

Franchise agreement concluded for indefinite period may be terminated by notice of either party served at least six months prior to the termination. Termination of the agreement must be notified to the Register of Legal Persons. Notably that the assignment of all or some of the intellectual property rights licensed under franchise agreement from the franchisor to a third party does not impede validity of a franchise agreement. However, the assignee must also become a party to the franchise agreement at issue.

In case of expiry of a franchise agreement concluded for a fixed term, the franchisee, provided he duly performed contractual obligations, has a pre-emptive right to enter into a new franchise agreement on the same terms and conditions as previous one. The franchisor may refuse to enter into new agreement with the franchisee but only if he undertakes not to conclude franchise agreements for the same territory with other third parties for the period of three years.

Labour Law

Introduction

The main legal act in Lithuania regulating labour relations is the new Labour Code which came into effect from 1 January 2003. Nevertheless, separate labour law areas such as activities of trade unions, works councils, safety and health of employees, support of unemployed are regulated by special laws.

Trade unions and works councils

In labour relations the rights and interests of employees may be represented and protected by the trade unions. Where an enterprise, agency or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate sector of economic activity, the employees shall be represented by the works council elected by a secret ballot at the general meeting of the employees.

Trade unions may be established on the basis of professional, office, industrial, territorial or other principles that represent and protect the interests of employees, as determined by the trade unions. A group of trade unions, through free choice and on their own initiative, may join together to form a trade union association.

In order to establish a trade union:

- its founding members must account for not less than 20% of all employees in the company, but not less than 3 employees; or
- it must have at least 30 founding members (then founding members may account less than 20% of all employees in the company or include other members).

Trade unions have the capacity of a legal person from the moment when their articles of association (by-laws) are registered with the Ministry of Justice, the County Governor or the municipality, depending on the geographic area of their activities.

The works council may be formed only in an enterprise in which the number of employees is not less than 20. In an enterprise with less than 20 employees, the functions of the works council may be performed by the representative of the employees to be elected at the employees' meeting. The number of the members of the works

council depends on the number of employees in the enterprise and must be not less than 3 and not more than 15. The works council will be formed for the term of office of three years.

Collective agreements

Trade unions represent employees when negotiating and making of enterprise, branch of industry, territory or state collective agreements. Works councils will be able to represent employees only in negotiating and making of enterprise collective agreements.

Employment contracts

Parties to an employment contract must agree on the following substantive terms: the employee's place of work (a company, branch *etc.*), the official duties and/or position. Parties must also agree on remuneration. The employment contract may not establish terms less favourable to the employee than employment conditions stated under the law.

An employment contract is deemed concluded when the parties have agreed on the conditions of the employment contract. Employment contracts must be in writing and in accordance with the model form established by the law. The model form for employment contracts contains blank space for additional clauses. Employment contracts may be concluded for indefinite period or for a fixed period if the work is of temporary nature. It is prohibited to conclude a fixed-term employment contract if work is of a permanent nature, except for the cases when this is provided by laws or collective agreements.

An employment contract terminates:

- upon the liquidation of an employer without a legal successor;
- upon the death of an employee;
- by agreement between the parties;
- upon its term expiry;
- upon the notice of an employee;
- on the initiative of an employer with notice;

- on the initiative of an employer without notice;
- in other cases provided for by the law.

Work permits for foreign personnel

Foreign citizens (except EU citizens) and stateless persons who are not permanent residents of Lithuania may work temporarily in Lithuania under an employment contract provided they have a work permit issued by the National Labour Exchange under the Ministry of Social Protection and Labour. EU citizens are released from the obligation to obtain a work permit, but those who intend to work, or reside in Lithuania for more than 3 months per half a year (certain longer periods apply for job seekers), must obtain a temporary residence permit.

The law includes a list of other exemptions for persons who do not need work permits. Exempted foreigners might be required to obtain a visa or a temporary residence permit, as the case may be.

Remuneration

The permitted minimum wage is set periodically by the Government. From 1 July 2005, the general minimum hourly rate has been LTL 3.28 (app. EUR 0.95) and the general minimum monthly wage has been LTL 550 (app. EUR 159.29). Wages must be paid to employees at least twice a month. Wages may be paid once per month if employee presents a respective application in writing asking to pay wages in such a way.

At least 1.5 times the hourly wage rate, or a proportion of the monthly salary established for the employee, must be paid for overtime and night work (from 10 p.m. to 6 a.m.). The pay for work on a rest day or a holiday which has not been provided for in the work schedule, must be at least at the double rate, or it must be compensated for by granting to the employee another rest day during the month or by adding that day to his annual leave. The pay for work on a holiday which has been provided for in the work schedule must be at least the double rate of the hourly or daily pay.

Work hours

The normal work hours for an employee may not exceed 40 hours per week. A daily period of work normally should not exceed 8 working hours. A 5-day workweek is the

standard established under the law, but it may be extended to six days. Maximum working time, including overtime, must not exceed 48 hours per 7 working days.

Duration of working time of specific categories of employees (in health care, care (custody), child care institutions, specialised communications services and specialised accident containment services *etc.*) as well as of watchmen in premises may be up to 24 hours per day. The duration of working time of such employees must not exceed 48 hours per 7-day period, and the rest period between working days must not be shorter than 24 hours. For employees employed in more than one undertaking or in one undertaking but under two or more employment contracts, the working day may not be longer than 12 hours.

Holiday leave

The minimum annual paid vacation leave is 28 calendar days. The minimum annual paid vacation leave is 35 calendar days for employees under 18 years of age, single parent who raises a child under the age of 14 or a disabled child under the age of 18, and disabled persons. Normally, all employees are entitled to their annual paid vacation leave after they have worked in the company continuously for an initial period of six months. Additional annual leave shall be granted to the employees for the conditions of work which are not in conformity with the normal work conditions, for a long uninterrupted employment at the same work place or for a special character of work. Extended annual leave up to 58 calendar days must be granted to certain categories of employees whose work involves greater nervous, emotional and intellectual strain and professional risk, as well as to those employees who work in specific working conditions.

At the request of the employee annual leave may be taken in instalments. One instalment of annual leave may not be shorter than 14 calendar days. During annual leave the employee must be guaranteed his average wage received at all places of employment.

Special-purpose leave is also available and includes the following:

- maternity leave (70 calendar days before childbirth and 56 calendar days or, in the event of a complicated childbirth or birth of two or more children, 70 calendar days after it), which is normally paid by the company but covered by social insurance or social aid authorities;

- child care leave (until the child reaches 3 years of age), which is normally paid directly by social insurance or social aid authorities;
- educational leave, which is paid by the company if an employee is sent to study at the company's request (3 paid days for each normal examination);
- sabbatical leave;
- leave for performance of official or public duties, which are paid, or compensated not less than the average wage by the agency or organisation whose obligations are being performed unless the law provides otherwise;
- unpaid leave.

Dispute Resolution

Litigation

General

Any person or legal entity may sue or be sued in courts of the Republic of Lithuania subject to the applicable procedural rules. The rules regulating procedure in civil actions are contained in the Code of Civil Procedure of 28 February 2002 (the 'Code of Civil Procedure'). The rules regulating procedure in administrative actions are contained in the Law on Administrative Proceedings of 14 January 1999.

The Lithuanian court system includes:

- *Local Courts* – the courts of first instance in matters of civil, criminal and administrative law, except matters assigned by law to higher courts;
- five *District Courts* functioning as the courts of first instance in matters ascribed to them by laws and as the courts of appellate instance for decisions, judgments and rulings of Local Courts. The District Courts are courts of first instance for, *inter alia*, civil cases where the amount of action exceeds LTL 100,000; cases regarding intellectual property relations; cases involving foreign state as a party; bankruptcy cases. The District Court of Vilnius (capital of Lithuania) has exceptional competence to hear as the court of first instance civil cases regarding, *inter alia*, patenting and use of inventions; registration and protection of trademarks; adoption matters involving citizens of foreign countries;
- *the Court of Appeal*, seated in Vilnius, functions as the court of appellate instance for decisions, judgments and rulings of the District Courts adopted at first instance and hears other cases ascribed to it by laws;
- *the Supreme Court*, seated in Vilnius, is the only court of cassation instance for other courts' (of first and appellate instances) decisions, judgments and rulings, which have entered into force and were appealed at appellate instance.
- The system of *administrative courts* was established in 1999. It is comprised of five District Administrative Courts and the Highest Administrative Court of Lithuania, which is seated in Vilnius. Administrative courts decide, among other things, on the following issues:

- legality of decisions taken by state or municipal administrative institutions or failure to act in proper way or procrastination;
- compensation of moral and material damage caused by unlawful actions of state or municipal administrative institutions;
- tax disputes;
- claims of employees of state or municipal administrative institutions;
- disputes among two subordinated administrative bodies;
- violations of election and referendum laws;
- appeals against decisions in cases of violation of administrative laws;
- decisions of public institutions and non-governmental organisations in sphere of public administration;
- legality of decisions taken by public organisations and political parties.

All lawsuits are commenced by filing statement of claim with the competent court. Appropriate venue generally is defendant's domicile or seat. The parties may agree, with certain exceptions, on choosing other appropriate venue (jurisdiction). Actions regarding ownership of or right to use land, buildings or other real estate, or regarding release of attachment and actions of creditors of deceased are subject to the court of location of, respectively, real estate or inheritance. In certain cases plaintiff has alternative to sue in court other than defendant's domicile, like the place of tort, place of contractual performance, place of legal entity's branch or plaintiff's domicile *etc*.

Court costs, which include stamp duty and costs related to court proceedings (fees to witnesses and experts, costs of site examination, search of defendant, enforcement of court judgment *etc.*), are regulated by the Code of Civil Procedure. Generally, stamp duties for bringing actions in proprietary disputes are: for claims up to LTL 100,000 – 3% of claimed amount, but not less than LTL 50; for claims up to LTL 300,000 – LTL 3,000 plus 2% of claimed amount exceeding LTL 100,000; for claims over LTL 300,000 – LTL 7,000 plus 1% of claimed amount exceeding LTL 300,000. However, in any case the stamp duty may not exceed LTL 30,000.

Stamp duty for appeal of a court decision is of the same amount as payable for bringing an action. In a number of cases (including *e.g.* recovery of alimony, compensation of losses caused by crimes *etc.*), plaintiff is exempted from payment of stamp duty. Payment of court costs by parties may be deferred or apportioned by court decision. Losing party has to bear all costs, including stamp duty and costs related to court proceedings. Losing party has to cover winning party's attorney fees within the limits of established rates.

Pursuant to the Code of Civil Procedure, representatives of parties have to be advocates or counsellors of advocates with few exceptions: legal persons may be represented by their employees in lower courts; labour unions are able to represent their members in labour disputes; person, who has university degree of law – his or her nearest relatives or spouse; when a few persons participate in dispute as one party, one of these persons may be appointed by others to represent them. It is possible for the court, upon request of the party to the dispute, to appoint a tutor for the other party, if the latter is incapable or does not have statutory representative, or its residence and the place of work are not known, or it has nobody to represent it.

Depositions and discovery

The Code of Civil Procedure provides for witness testimony and taking of evidence in Lithuanian courts. If evidence is not available to party due to reasonable grounds it may be collected with assistance of court. Court may take measures to secure evidence, including prior to initiation of the court procedures, provided there are reasons to expect that evidence will consequently be destroyed or become unavailable. Opponent party is provided with information on collected evidence. Generally, all available evidence must be submitted to the court before hearing of the case. However, evidence may also be submitted later if it was unavailable before.

Parties may invite as a witness any person aware of circumstances related to the case. Due to valid reasons a witness may give testimony elsewhere than in court. Evidence may also be collected abroad with assistance of foreign courts in compliance with the EU law or the international agreements of Lithuania. The Council Regulation No. 1206/2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters is also in force in Lithuania from 1 May 2004. Furthermore, Lithuania is a party to the European Agreement on Transmission of

Applications for Legal Aid (1977), the Convention on Taking of Evidence Abroad in Civil and Commercial Matters (1970) and a number of bilateral agreements.

Judgments

Judgments adopted at the first instance court enter into force upon expiry of 30 days (in case the appellant is a foreign legal person or natural person residing outside Lithuania – 40 days) from adoption, provided they are not appealed. Judgments adopted at the second (appellate) and the third (cassation) instances enter into force on the adoption day.

A judgment may be enforced only when it has come into force, except for urgently enforceable judgments. A judgment must be enforced urgently in certain cases provided by the Code of Civil Procedure or when the court deems it necessary on reasonable grounds. A judgment is enforced only upon request of the winning party after submission of the enforcement writ. Limitation period for enforcement of judgments is ten years from entry into force.

Judgments are enforced by bailiff offices. Orders of bailiffs are binding on every natural person or legal entity of the Republic of Lithuania. Costs of enforcement are borne by the judgment debtor. Action or inaction of a bailiff may be appealed within 10 days in court of the location of the respective bailiff office. Foreign judgments are enforced in Lithuania either on the basis of EU law – the Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters or on the basis of international agreements on legal aid (judgements rendered in Byelorussia, Estonia, Kazakhstan, Latvia, Moldova, Poland, Russia, Ukraine, Uzbekistan, Azerbaijan, China, Armenia and Turkey (only in civil and commercial cases)) or on the basis of the Code of Civil Procedure (judgements rendered in all other countries).

Limitation of actions

Limitation of actions is considered a matter of substantive law in Lithuania. The Civil Code provides that the right to seek protection of a right and rights supplementary to it (pledge, guarantee *etc.*) ceases to exist upon expiry of limitation period. However, court may not reject statement of claim on grounds of expired limitation period. Limitation of action is applied only upon request of the opponent party to dispute. The debtor may not demand restitution if he satisfied creditor's claim after expiry of limitation period.

The Civil Code establishes the general limitation period of ten years. It also establishes the shortened period of one month for claims arising out of results of a tender; three months – for claims to invalidate decisions of managing bodies of legal entities; six months – for claims for forfeit (default interest, fines); one year – for claims related to insurance; three years – for claims for damage; and five years – for interest and other periodic payments. Different limitation periods may be established by other laws or international treaties. Limitation of actions does not apply to claims arising out of violation of personal non-property rights and claims of depositors to repay bank deposits.

Arbitration

Commercial disputes in Lithuania are currently most commonly adjudicated through the courts. However, arbitration has been continuously gaining popularity and trust among commercial entities, particularly in relation to international business transactions. A foreign or Lithuanian permanent arbitration institution (*e.g.* Vilnius Court of Commercial Arbitration) or *ad hoc* arbitration may be chosen for settlement of the disputes by inserting an arbitration clause in a contract or by concluding a separate arbitration agreement.

Notably, according to the Law on Commercial Arbitration of 2 April 1996 (the 'Law on Commercial Arbitration') the following disputes are not arbitrable:

- disputes arising out of constitutional, employment, family or administrative legal relations;
- disputes related to competition law, patents, trademarks and service marks, and bankruptcy;
- disputes arising out of consumer contracts.

Disputes in which State or municipal enterprises, institutions or organisations, except the Bank of Lithuania, are parties may not be submitted to arbitration, unless advance consent to arbitration has been given by the founder of such an enterprise, institution or organisation.

Lithuania is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Thus an arbitral award made in any state which is a party to the New York Convention is recognised and enforced in Lithuania

according to the provisions of the Law on Commercial Arbitration, the Code of Civil Procedure and the New York Convention.

About Lideika, Petrauskas, Valiūnas ir parneriai LAWIN

General

Lideika, Petrauskas, Valiūnas ir partneriai LAWIN is one of the leading and largest law firms in Lithuania and the Baltic States. The firm is a member of LAWIN – a group of the leading Baltic law firms also including Klavins & Slaidins LAWIN from Latvia and Lepik & Luhaäär LAWIN from Estonia. LAWIN currently has over 80 lawyers, making it the largest legal presence working in the Baltics.

The principal office of Lideika, Petrauskas, Valiūnas ir partneriai LAWIN is situated in Vilnius. Presently, the firm has 41 law professionals. Services are provided in English, German, Russian and Lithuanian. The firm's specialists work in Corporate and M&A; Finance & Tax; Trade & Technology; Property & Environment; Dispute Resolution & Transport practice groups.

Rankings

Chambers Global – The World's Leading Lawyers (www.chambersandpartners.com), one of the world's most prestigious law firm directories, ranks Lideika, Petrauskas, Valiūnas ir partneriai LAWIN as No. 1 law firm in Lithuania in corporate/commercial area and notes that "the practice has played a key role in most privatisations in Lithuania, and it remains prolific in advising foreign and domestic investors".

Another outstanding law publication The Legal 500 (www.legal500.com) also recommends Lideika, Petrauskas, Valiūnas ir partneriai LAWIN as No. 1 Lithuanian law firm for banking and finance, corporate and commercial, foreign investment, IT and telecoms, privatisation, real estate and tax law.

International Financial Law Review 1000 (www.legalmediagroup.com) recommends us as a top firm for capital markets, banking, mergers and acquisitions, and project finance.

Contacts

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