

ROUTE TO THE BALTICS

The Baltic States had the highest growth rates in Europe between 2000 and 2006, and this continued in 2007. In 2006 the economy in Estonia grew by 11.2% in gross domestic product (GDP), while the Latvian economy grew by 11.9% and Lithuania by 7.5%. All three countries saw their rates of unemployment falling below EU average by February 2006. Additionally, Estonia is among the ten most liberal economies in the world and in 2006 switched from being classified as an upper-middle income economy to a high-income economy by the World Bank. All three countries are expected to adopt the Euro around 2012.

However, due to the global economic crisis, the Baltic economies are at present fragile and the previous growth had switched to recession in Estonia and Latvia by the end of 2008, followed by Lithuania in 2009.

Estonia

According to Statistics Estonia, the 2008 fourth quarter fall in GDP amounted to 9.4% year-on-year. For the entire 2008, GDP in Estonia decreased by some 3.5%. Since external demand turned out to be much weaker than expected last autumn, Eesti Pank's autumn forecast was revised in keeping with new external assumptions. The forecast now projects Estonia's economy to contract by up to 5.5% in 2009.

However, since the global economy is currently surrounded by high uncertainty, the slump in external demand in November and December 2008 may not be temporary. Thus, it cannot be excluded Estonia's economic developments will follow the forecast risk scenario, i.e., economic downturn may even reach close to 9%.

Latvia

Latvia's economy contracted 18% in the first three months of the year, compared with a year earlier, as the country's recession accelerated. The slide in the manufacturing and services sectors continued in the first quarter, the statistics office said. The Latvian economy, driven by consumer demand, was hit hard last year amid the global economic downturn. In December the International Monetary Fund approved a 7.5billion-euro (£6.7billion) rescue package for Latvia. Output fell across all sectors of the Latvia economy during the first quarter of the year. The biggest drop was seen in hotels and restaurants, with activity down 34%



Latvia continues to have one of the most troubled economies in the European Union (EU). Its Finance Ministry has said it expects GDP to fall 13% this year. Latvia joined the EU in 2004 and its economy grew at an average of 10% per year, for four consecutive years. However, most economists believe the speed of that growth is the reason why it is contracting so sharply now.

Lithuania

The Lithuanian economy shrank by 12.6% in the first quarter of 2009 compared with the same period last year, the country's statistics office has said. Falling industrial output, lower demand for exported goods and a lack of credit were blamed for the decline.

It is the country's largest contraction in gross domestic product (GDP) since it started official records in 1995. Lithuania, which joined the EU in 2004, has forecast a contraction in GDP of 10.5% for the whole of this year. But on a quarter-to-quarter basis, the decline was 9.5%. The contraction in the Lithuanian economy is believed to be the largest so far of any country affected by the global recession, and marks a sharp reversal of fortunes for this small Baltic state.

The Lithuanian economy grew by 8.9% in 2007, which was a record increase for the country, but last year growth had slowed to 3%. But falls in demand for construction, the retail industry and textile sectors have contributed to the turnaround, according to the Lithuanian office for statistics.







The NASDAQ OMX

The NASDAQ OMX stock exchanges in Tallinn, Riga and Vilnius form the Baltic Market, the core idea of which is to minimise to the extent possible the differences between the three Baltic markets in order to facilitate cross-border trading and attract more investments to the region. This includes sharing the same trading system and harmonising rules and market practices, all with the aim of reducing the costs of cross-border trading in the Baltic region.

NASDAQ OMX Tallinn and Estonian CSD are the leading securities market infrastructure operators in Estonia. Through these two enterprises, market participants are provided with an environment for carrying out transactions with securities, clearing and settlement of securities transactions, listing of securities, operating of central securities register and funded pension fund register in Estonia.

NASDAQ OMX Riga and Latvian Central Depository are the leading securities market infrastructure operators in Latvia. Through these two enterprises, market participants are provided with an environment for carrying out transactions with securities, clearing and settlement of securities transactions, listing of securities, operating of central public securities register and funded pension fund register.

The NASDAQ OMX Vilnius (VSE) is the only regulated exchange operator in Lithuania, offering trading, listing and information services. The mission of the VSE is to organise and develop the Lithuanian securities market by creating the most favorable conditions for issuers, investors, and financial intermediaries to exploit efficiently the advantages of the capital market. Only VSE members – banks and brokerage companies – may trade on the VSE. VSE is a self-regulated organisation, issuing and enforcing its own rules and regulations consistent with standard exchange operating procedures.

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The banking law system in Latvia, created during the past twenty years, was designed to integrate Latvian financial institutions into the global financial and monetary system. At present it is fully compliant with the international conventions and European Union regulation. The legislative efforts carried by the regulator, Financial and Capital Markets Commission (FCMC) are constantly improving the regulatory environment.

At present the Latvian banking and finance law services are concentrated into two major streams: compliance with the requirements of regulatory environment and restructuring the bank lending facilities to commercial customers. Over the past decade all the banks have developed sophisticated internal procedures in relation to AML requirements thus creating Latvia as a pro-active and cooperative jurisdiction in the area of fighting international money laundering and terrorism financing. During this decade of economical growth it was rather common to structure syndicated lending transactions and draft documentation for domestic and European bond emissions. However, as a result of the global economic slowdown, the banks now require advice and service in restructuring the loan facilities extended to viable businesses, currently facing liquidity problems. The banks are also setting up a special purpose entities for the assets with presently decreased value, e.g. particular real estate properties.

The banking and finance team of Liepa, Skopina /BORENIUS consists of experienced professionals, including former bank in-house lawyers, who have had hands-on experience in drafting the banking documentation and servicing commercial transactions. We have helped our clients to structure secured and unsecured lending facilities, business acquisition transactions and emission of securities. We are qualified to represent financial institutions in complex litigation matters. Among the particular areas expertise are the corporate experience: assistance in incorporation and licensing of financial institutions, acquisition of financial institutions (e.g. Multibanka by SMP bank (Moscow) and BTB bank by General Electric Corporation). We have also participated in successful restructurings of banks in difficulties: the firm represented major syndicates in restructuring a public commercial bank (at present DnB NORD Bank) and managed restructuring via insolvency of Paritate Bank (currently Privatbank).

Liepa, Skopina /BORENIUS has assisted both domestic and international banks (Lloyds bank PLC, HSH Nordbank, Nordea, Kaupthing bank, Raiffeisen bank, Deutsche bank) in various cross-border trade and business acquisition transactions. The main emphasis for lawyers' work in cross border financing arrangements is to carry on a precise assessment of potential risks for the financing and to choose the right type of collateral. Our clients appreciate the international character of our firm's service and in particular the cooperation of Borenius group offices in the Fenno-Baltic region. This enables us to swiftly conduct cross border due diligence and coordinate activities in all the involved jurisdictions.

Advokaadibüroo Greinoman & Co focuses on commercial and business law providing advice on both non-contentious and contentious matters.

M&A is one of our major strengths.

The current economic crisis has made Estonia more attractive to foreign investment. In particular, local investors unable to obtain funding are largely out of the game in hunting for acquisition opportunities. Obviously, this has resulted in a drastic decrease of the perceived value of the businesses, which may be acquired many times cheaper than a year ago. Thus far, foreign investors are yet to realise the opportunity and the main M&A activity to be expected in early 2010.

However, getting a deal through in Estonia is not that easy. The first main legal challenge is an extremely broad interpretation of a "substance over form" principle in tax law, which keeps every target exposed to hidden tax liabilities. Another issue is an automatic transfer of rights and liabilities under tax, employment and regular private law in course of undertaking transfer. Transfer of undertaking may be sometimes deemed to occur even if no transfer contract is made. Clearly, these two concerns also expose sellers and their management to the post-closing litigation.

In the challenging economic environment, both buy-side and sell-side clients are more likely to follow lawyer's advice to structure acquisition in a way, where transfer of liabilities is prevented by operation of law rather than relying on the counterpart's representations and warranties. This also affected the structure of M&A work.

From the position of the buy-side, upon my extensive experience, I usually recommend to acquire the target in an execution procedure, insolvency, or sometimes, restructuring.

Under Estonian law, a buyer in execution and insolvency proceedings is statutorily relieved from liability for the seller's debts, except for an unclear position with outstanding communal costs of an immovable. However, the sale is "as is" and liability of the seller, bailiff and the insolvency trustee for any non-conformity of the sold assets, as a general rule, is statutorily waived. In the situation, where many sellers are or about to become insolvent, assurance of no incurred liabilities tends to weight over often a questionable right to hold the seller legally responsible. Yet, the described deal structure also protects the seller from the buyer's claims.

Another technique to be used for the buy-side is separation of assets holding and operations. In this deal structure assets are owned by an SPV, which leases these to the operator. Even if the operator encounters problems with meeting her obligations, the asset holder is normally unaffected, as the Estonian courts are very reluctant to enforce silent partnership provisions. Surely, when drafting contracts agreements among the asset holder and the operator transfer pricing taxation is always to be borne in mind.

To sum up, Estonia is entering a phase of increase in hostile and friendly M&As. However, to ensure returns one should take care of keeping her legal risks under control.

