

Lithuania

Chamber of commerce:

Lietuvos Prekybos, Pramonės ir Amaru
Rumu Asociacija
J.Tumo-Vaizganto g. 9/1-63a
01108 Vilnius
Lithuania
Tel: +370 5 261 2102
Fax: +370 5 261 2112
Email: info@chambers.lt
Web: www.chambers.lt

Professional body:

Lietuvos Advokatura
Tilto g 17 / Radvilu g 4
01101 Vilnius
Lithuania
Tel: +370 5 262 4546
+370 5 261 6216
Fax: +370 5 212 1859
Email: la@advoco.lt
Web: www.advoco.lt

New M&A caveats

Zilvinas Zinkevicius and Robertas Ciocys
Lideika Petrauskas Valiunas ir partneriai LAWIN
Vilnius

The past year has not only seen a very lively acquisitions market. It has also brought some interesting pieces of legislation regarding M&A activity in Lithuania

Indirect acquisitions triggering mandatory offers

Lithuanian securities regulations stipulate that persons who individually or jointly (with others acting in concert) acquire 40% of votes in a general meeting of shareholders of a public company which is "issuer" (i.e. the shares of which are listed on the regulated stock exchange or otherwise publicly traded) must offer to purchase all of the shares of the remaining shareholders of the target company or transfer the shares below the indicated 40% threshold. The choice must be made within seven days after the acquisition of votes exceeding the threshold. Where this new control holder chooses not to transfer the shares below the 40% threshold, he must submit a mandatory offer within 20 days from the moment he announces his decision.

In order to induce the person to make the mandatory offer or sell below the 40% threshold, the law provides for severe encumbrances, establishing that all voting rights relating to the shares are suspended from the moment of exceeding the threshold until the person registers the mandatory offer with the Lithuanian Securities Commission.

Furthermore, according to recent case law, even a single minority shareholder may request that the court oblige the person who exceeded the threshold to make a mandatory offer, where this majority shareholder failed to do so. Such an order by the court may be made even where the respondent sells his shares and holds less than the 40% threshold

at the moment when the ruling of the court is passed (this refers to a situation where the shareholder did not indicate, within seven days of exceeding the threshold, his intention to sell the shares rather than make a mandatory offer).

The black-letter rule of the law elaborates on the direct change of control – that is, only related to the change of a shareholder holding more than 40% of votes in the issuer company. However, the Lithuanian Securities Commission issued its comments regarding the law and quite unexpectedly adopted a very broad interpretation of its wording. The Securities Commission indicated that the change of control in the shareholder of the issuer company in the same manner triggers a duty to make a mandatory offer. This obligation arises irrespective of whether or not the mandatory offer was previously implemented by the shareholder.

The mandatory offer must then be made by the direct shareholder of the issuer company or a person controlling the shareholder. The duty to make a mandatory offer does not relate to the legal form of the shareholder, which means that the majority shareholder of the Lithuanian issuer company may be a private company, and change of control of such private company would create an obligation to make a mandatory offer for the minority shareholders in the Lithuanian issuer company.

Accordingly, what we now see is that the change of control in the majority shareholder (whether it is a listed public company, non-listed public company, private company, Lithuanian or foreign company) in the Lithuanian issuer company triggers an obligation to make a mandatory offer and failure to do so or a simple unawareness of this duty leads to severe consequences. Notably, the Lithuanian Securities Commission has the right to officially interpret legal acts regulating public trading in securities and related matters, though such opinion is not binding upon

the court. So far, no potential bidders have sought to overrule this interpretation in the court and therefore it remains binding.

Lithuania has around 40 listed companies and 10 non-listed companies that are considered as issuers. Accordingly, the regulation affects shareholders of around 50 companies. Because of the high capital concentration in Lithuania, most of these are held by one or several majority shareholders and change of control among these majority shareholders would create the abovementioned obligation.

This is good news for minority shareholders and not so good for bidders, as they have to be ready to acquire 100% stakes in group companies where earlier they could stay comfortable with acquisition of control in the holding company, which in its turn held the majority stake in the Lithuanian issuer. This also makes acquisitions more expensive. Finally, bidders must be more cautious when acquiring groups of companies, so that the mandatory offer obligation does not come up unexpectedly.

No green light for financial assistance

EU member states used to prohibit companies from the financing or securing of financing of acquisition of the shares of such companies. The notion originated from the Second Company Law Directive on Capital Maintenance. In Lithuania, the restriction of financial assistance is applicable to both public and private companies. The directive was amended several years ago, enabling member states to make financial assistance regimes more flexible.

However, the Lithuanian Parliament, considering the transposition of the amendments to the directive into national law, went the other way, stipulating that the companies may not, directly or indirectly, advance funds or secure financing for the acquisition of their shares. The previous restriction of the financial assistance was supplemented by adding "directly or indirectly". There is no further

guidance on what is actually allowed or prohibited and whether the amendment changes anything in practice. The greatest regret is that parliament opted not to transpose the clear-cut rules of the directive under which the company may finance the acquisition of its shares.

This does not mean that leveraged buyouts are prohibited in Lithuania. It is just that the financing structures must be considered carefully and where, for instance, a special-purpose vehicle (established by the bidder to acquire the shares of the target company and carrying the debt for acquisition) is later merged with the target company, there should be good reason to do so, other than simply to push the debt onto the target company. For instance, this may be part of the tax planning of the transaction (to depreciate goodwill, among other things).

It may be summarised that the M&A regulatory environment is becoming more complex in Lithuania, requiring higher degrees of sophistication from bidders than before.

Banking and finance

Recommended firms

Tier 1

Bernotas & Dominas Glimstedt
Lideika Petrauskas Valiunas ir partneriai Lawin

Tier 2

Raidla Lejins & Norcoux
Sorainen
Sutkiene Pilkauskas & Partners

Tier 3

Eversheds Saladzius
Jurevicius Bartkus & Partners

Traditional work like bank lending and syndicated loans has declined considerably in Lithuania. Gone are the days of advising on financing for multiple projects at the same time. "Restructuring is the key word now" says one partner.

Restructuring work is different to the type of mandates before, with commentators noting that the complexity of the work has increased considerably. Law firms are effectively acting as trouble-shooters for both lenders and borrowers, unlike before when firms were setting up standard M&A and finance transactions every week.

Given the inability of some borrowers to repay debts, banks' asset portfolios are going to increase. Banks are going to have to start parking assets internally. This will cause much

grief, but could be a source of work for firms as they look to unload assets.

The Lithuanian government has launched some Eurobonds, creating work for firms with expertise in that practice area. One partner describes this work as exciting. His reason? Because the credit rating agencies have cut Lithuania's ratings on a number of occasions in 2009 and 2008, Lithuanian Eurobonds are less attractive to investors, increasing the need for quality work. Any other capital markets work is likely to be either sovereign or related to foreign issues.

Bernotas & Dominas Glimstedt

Bernotas & Dominas Glimstedt maintains its top-tier ranking despite the loss of former partner Elijus Burgis and some associates. While the market feels the loss might have a negative effect, it is too early to judge. Besides, a number of reputable partners still practice at the firm.

Chief among them is name partner Gediminas Dominas, consistently cited as an excellent banking and finance lawyer. The firm is strong in capital markets and debt finance work, and is the certified advisor for companies wishing to enter the alternative securities market First North Baltic.

In August 2008 the firm advised Verdispar International on a syndicated financing structure from SEB Bank and Nordea Bank Finland. The €46 million loan saw Verdispar buy and lease-back nine stores from a Lithuanian retailer.

In September 2008 Bernotas & Dominas advised Deka Immobilien on a large real-estate acquisition of the Akropolis in Kaunas. The transaction saw the firm advise on the financing for the acquisition.

Leading lawyers

Gediminas Dominas

Lideika Petrauskas Valiunas ir partneriai Lawin

Lideika Petrauskas Valiunas ir partneriai Lawin maintains its top-tier position for another year. Commentators note that on size and activity it is the largest firm in this practice area. Importantly the firm also has a reputation for quality. As one international client says: "We were very happy with them; they were amazing, very knowledgeable."

Head of the firm's finance and tax department Gediminas Recianas receives plaudits from the market for his knowledge and ability to advise clients. Giedrius Stasevicius is a recommended name, while associate Joana Baublyte is a rising star who is "really good in finance" according to one peer.

The firm advised both the borrower Ocean Breeze Energy and the security agent Bayerische Hypo- und Vereinsbank in the secured lending to Ocean Breeze Energy on the refinancing and partial financing of an offshore wind farm, including advice on Wind Lift I.

Despite difficult market conditions the firm successfully advised Natixis as the manager of Lithuania's €75 million Eurobond issue in December 2008 on the Luxembourg Stock Exchange.

The firm advised Neo Group and its shareholders on the restructuring of a syndicated loan from SEB Bank and Swedbank, and on the subordination of loan granted by the Ukrainian bank. Finally, the firm worked on the collapse of Latvian bank Parex, giving advice on the expropriation of the bank's shares by the Latvian government.

Leading lawyers

Gediminas Recianas
Giedrius Stasevicius

Raidla Lejins & Norcoux

The hire of partner Elijus Burgis from Bernotas & Dominas Glimstedt, along with some associates, is a significant addition for Raidla Lejins & Norcoux. "I have a lot of respect for Burgis," says one peer. "He is probably a little aggressive, but he is promising."

The firm represented MVC Capital on its \$28 million equity investment in Fima, a Lithuanian systems integrator. Advice included due diligence and negotiating a loan agreement with Parex banka.

Raidla Lejins & Norcoux advised CPIO Gulbinai Gardens Holdings, a subsidiary of Citigroup Property Investors, on the extension of a term loan facility with SEB. Finally, Bank of New York Mellon hired the firm to advise it on the outsourcing of trade finance operations to Lithuanian banks.

Leading lawyers

Ruslanas Bronikovas
Elijus Burgis
Irmantis Norkus

Sorainen

Sorainen is developing a strong banking and finance practice that is making the market sit up and take notice. Clients like the approach the firm brings to its work: "They are proactive, flexible and familiar with the clients' and banking markets' needs," says one. "They are a leading law firm that supports banks with their expertise in the field of company restructuring. They are very professional and commercial, and act in reasonable and co-operative manner."

Tomas Kontautas is the most respected practitioner in this practice area, but commentators note that managing partner Kestutis Adamonis is still active. Capital markets work is one practice area the firm is making a name in, with Sorainen acting as Lithuanian law adviser to Credit Suisse International on a €142 million notes issue by Lithuania in February 2009.

The firm worked alongside Clifford Chance to advise UniCredit Group on arranging the financing for the proposed takeover of pharmaceuticals company Sanitas. The financing was worth over €200 million and included advice on taking Sanitas from public to private ownership.

Leading lawyers

Kestutis Adamonis
Tomas Kontautas
Algirdas Peksys

Sutkiene Pilkauskas & Partners

Sutkiene Pilkauskas & Partners' banking and finance team has had an interesting year, with the departure and return of Vilius Bernatonis. In November 2008 the firm hired Neringa Grazinyte who briefly headed the banking and finance team in Bernatons' absence. Grazinyte has made an impression on clients, with one saying: "She is very good. She gives succinct, to-the-point legal advice. I was very impressed with her."

The firm acted as Lithuanian counsel for JPMorgan on the restructuring of a £600 million loan facility extended to the British Vita Group, which has subsidiary companies in Lithuania.

Like most major Baltic firms, Sutkiene has entered into some form of an alliance with practices in its neighbouring countries. The firm is a member of the TLS Alliance and, along with the other members, the firm drafted the first uniform documentation for the provision of financial services in all three Baltic states by subsidiaries of the Pohjola Group.

Surkiene is also active in aviation finance and worked for NordLB and Elviria Leasing on the rental of an aircraft to Star1 Airlines. The firm also worked for Aircastle on the restructuring of a leasing agreement with Flyljal-Lithuanian Airlines.

Leading lawyers

Vilius Bernatonis
Neringa Grazinyte
Jonas Pilkauskas

Other ranked firms

Commentators believe that Eversheds Saladzius benefits from the connection with Eversheds in London, meaning that it is brought on as local counsel for finance deals that originate in the UK.

The firm also advised Gild Financial Advisory Services on the IPO of Agrowill Group. The company was listed on Nasdaq OMX and the work included due diligence, transaction structuring and the generation of private placement contracts. The firm has acted for Ukio bankas, Parex banka and Argo Traders in various deals.

Jurevicius Bartkus & Partners is seen as a good firm for local work and has received praise from clients. "They were very good at coming up with practical and creative solutions and with how to address issues with the regulatory bodies, and getting to creative solutions," says one client.

Mergers and acquisitions

Recommended firms

Tier 1

Lideika Petrauskas Valiunas ir partneriai Lawin Sorainen

Tier 2

Bernotas & Dominas Glimstedt
Raidla Lejins & Norcous
Sutkiene Pilkauskas & Partners

Tier 3

Foigt & Partners/Regija Borenius
Jurevicius Bartkus & Partners

Tier 4

Eversheds Saladzius

Lithuania is no different to its Baltic neighbours, or indeed Europe, with little happening in the formerly burgeoning M&A market. "The market is dormant," says one partner. "Everybody is waiting to see how it will develop, when the bottom will come."

Joint ventures, between retailers for example, are the most common transactions now. Often, the merger is a mechanism for companies to survive due to the lack of finance and credit available. The biggest merger of 2008 was between energy companies, and this sector is the most likely to provide opportunities for bigger deals in the next year.

Distressed sales have started to pop up and are expected to grow as more companies hit the wall, which means transactions are getting more complex. "For [straight] M&A the work was commoditised. You would get certain groups involved. Now we can forget about that, the work is far more complicated."

Sources of cash for deals won't come from private-equity funds as they are finding it hard to get leverage, so strategic investors are the main potential buyers in this market; a position likely to remain the same for the foreseeable future.

Lideika Petrauskas Valiunas ir partneriai Lawin

Lideika Petrauskas Valiunas ir partneriai Lawin's position at the top of the table is undisputed by the market. The firm has probably the largest team in this practice area, and the fact it can maintain it is an indication of the quality of its work.

Dovile Burgiene, Rolandas Valiunas and M&A head Zilvinas Zinkevicius are all considered leaders in this practice area. Clients like the firm: "I think they are much bigger and are very strong compared to most of the others," says one client.

One standout deal saw the firm advise the Lithuanian government on the sale of a 10% equity interest in the owner of the oil refinery Mazeikiu Nafta to Orlen. The transaction was led by Valiunas and involved Zinkevicius and had a transaction value of over €200 million. Completed in April 2009, the deal is one of the largest Lithuanian M&A deals this year.

In September 2008 the firm advised Terminal Investment, a fund specialising in buying port terminals, on the acquisition of a controlling equity interest in the joint-stock company Klaipedos Smelte.

The same month saw Lawin complete advice to a private shareholder on the sale of a controlling equity interest in Fima. This was one of the last leveraged transactions in the country. Lawin also advised on the sale of shares in Finasta Bank.

Leading lawyers

Dovile Burgiene
Rolandas Valiunas
Zilvinas Zinkevicius

Sorainen

Sorainen moves up in the M&A rankings this year after the market noted both the firm's increase in size, and more importantly, increase in activity. Sorainen's M&A department is led by Laimonas Skibarka, a good choice according to competitors: "Skibarka is a good leader," says one. Managing partner Kestutis Adamonis is also known to get involved now and again, while senior associate Raminta Karlonaite is described by peers as a good lawyer.

Sorainen advised HSBC and the Lithuanian government on the merger of Lietuvos energija, VST and RST into a

national investor to develop and operate a new nuclear plant called Leo LT. The merger's value was €2.3 billion and involved the creation of the holding company, advice on the shareholders agreement and due diligence on VST.

The firm was involved in one of the last large real-estate transactions in 2008. It saw Sorainen advise the former owner and operator of Kauno Akropolis in Kaunas on the disposal of the shopping centre to a buyer.

Finally, the firm was mandated by Citigroup Venture Capital to work on the purchase of a 20.3% stake in pharmaceuticals manufacturer Sanitas. The stake was bought from Invalda for €30 million.

Leading lawyers

Kestutis Adamonis
Raminta Karlonaite
Laimonas Skibarka

Bernotas & Dominas Glimstedt

The loss of Elijus Burgis might be more keenly felt in the M&A practice than the banking side, but it is too early to say and there are still some excellent partners left at the firm. Department head Remigijus Jakutis is described as "the most active on transactions", while both Egidijus Bernotas and Gediminas Dominas come in for praise from the market.

In October of 2008 the firm was brought on board as legal counsel by Ingkas Beheer, a particle board producer, on its sale to Ikea. In September the firm advised Dekka Immobilien on its successful acquisition of the shopping and entertainment centre Akropolis in Kaunas.

Leading lawyers

Egidijus Bernotas
Gediminas Dominas
Remigijus Jakutis

Raidla Lejins & Norcou

The recruitment of Elijus Burgis is viewed as good thing for both firm and lawyer. "He is a significant young lawyer," says one competitor. "His move is a good promotion for him." Burgis brought some associates from Bernotas & Dominas Glimstedt too, further strengthening the firm. However, it is too early to judge the impact on Raidla Lejins & Norcou's position in the rankings, which is why the firm's ranking remains unchanged.

US firm Moog mandated the firm to provide counsel on its acquisition of Lithuanian company Viltechmeda. The deal was completed in December 2008 and the transaction was worth €15 million.

In January 2009 Raidla represented the shareholders of Gensina on the sale of the company to Ruukki Lithuania. The firm helped German pharmaceuticals firm Anzag with its acquisition of a 92% stake in the Lithuanian pharmaceuticals wholesaler Armila.

Raidla Lejins & Norcou also assisted the investment firm Martinson Trigon Venture Partners on the sale of 100% of shares in Norby Networks to Baltnetos komunikacijos.

Leading lawyers

Elijus Burgis
Ruslanas Bronikovas
Irmantas Norkus

Sutkiene Pilkauskas & Partners

The market believes Sutkiene Pilkauskas & Partner's strength is M&A work, and the firm has a strong track record in deals up until the general decline in the market that everyone has experienced.

The department is headed by Marius Matonis, a capable lawyer according to the market. Name partner Eugenija Sutkiene is considered a good M&A lawyer, while some suggest Jonas Pilkauskas is a strong lawyer, but is less active now.

The firm represented the private investor NDX energija in one of Lithuania's largest deals of 2008 – a merger between electricity grid operator Lietuvos energija, RST and VST to create the holding company Leo LT. The transaction was valued at €2.4 billion.

The firm represented Invalda in the sale of its 20.3% stake in Sanitas to Balticpharma, an investment vehicle for Citi Venture Capital International, for €30 million. In July 2008 the firm advised Archyvu Sistemose on legal issues surrounding the sale of shares to private-equity fund Lohmus Holding.

Leading lawyers

Marius Matonis
Eugenija Sutkiene

Other ranked firms

Tomas Rymeikis is Foigt & Partners/ Regija Borenus' most recognised partner in this practice area. "He is knowledgeable and is competent," says one client. The firm receives praise too. "They have no black spots as far as I can tell," says another client.

The firm benefits from having a Baltic presence through its alliance with other Regija Borenus firms, and was involved with Denmark's Baltic Argo Holding on the purchase of Baltic fertiliser wholesaler Kemira Growhow.

Rymeikis also led on food industry company Puratos's acquisition of a Lithuanian company.

Leading lawyers: Tomas Rymeikis

Jurevicius Bartkus & Partners is viewed as a respectable player on the local M&A market, and is able to do regional work through its membership of the Baltic Legal Solutions alliance with two other Baltic firms.

Despite becoming part of the Eversheds brand, **Eversheds Saladzius** is still seen as a boutique law firm. The market believes it does quality work, with Jonas Saladzius picked out as a good M&A lawyer.