

# Estonia

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## Adoption of stricter corporate governance standards for Estonian companies

**Hannes Vallikivi and Meelis Hint**  
**Tark & Co**  
**Tallinn**

During 2006, many important amendments regarding corporate governance in Estonian public limited companies (*aktsiaselts* or *AS* companies) have come into effect.

First, extensive amendments to the commercial code came into force as of January 1 2006. The purpose of many of the amendments was to systemize corporate governance standards applied by Estonian public limited companies, and to make the management of such companies more transparent. The changes mostly apply to a company's internal control measures, cooperation between managerial bodies, liability of members of such bodies, and shareholders' right to information.

Secondly, following the trend in recent years in Europe and beyond, the Estonian FSA and the Tallinn Stock Exchange laid down the corporate governance recommendations effective since January 1. The recommendations are applicable, through listing rules requirements, to companies whose shares are admitted to trading on a regulated market in Estonia, and other companies are also invited to implement the recommendations. The recommendations are guidance-based, although listed companies are required to report the extent to which they follow the recommendations or the reasons of any non-compliance (the so-called comply-or-explain principle).

### Internal control measures

Commercial code amendments oblige the management board to lay down sufficient measures, above all internal control systems, for tracking down any events and circumstances that might harm the company's activities. Although such obligation could have been derived from the corporate governance principles before the amendment, the law was lacking the express *obligation* of the management board to lay down internal control systems.

However, the law does not provide specific requirements regarding this obligation. For listed companies, support is supplied by the corporate governance recommendations and, for those entities subject to financial supervision, the advisory guidelines of the Financial Supervision Authority regarding the arrangement of operational risk management (effective from September 1 2005). These recommendations specify to some extent the obligations of the management board in carrying out internal control of a company.

## Enhanced cooperation between management board and supervisory council

In Estonia, listed companies have a two-tier management structure, with managerial functions executed by the management board and supervisory functions by the supervisory council. The two-tier management system is sometimes said to result in insufficient information flow between the management board and the supervisory council, and the amendments to the commercial code strive to avoid such situation.

Firstly, an amendment grants to every member of the supervisory council the right to receive information and activity reports from the management board (under the old system, such right was granted only to the supervisory council). This amendment should also ensure the efficient flow of information flow to individual supervisory council members who are representatives of minority shareholders.

Secondly, the reporting obligations of the management board to the supervisory council were extended. The management board is now required by law to notify the supervisory council of all circumstances regarding the related companies (such as subsidiaries), rather than only the company itself, that might affect the activities of the company.

The cooperation between the management board and the supervisory council is further specified in the corporate governance recommendations. The recommendations provide that (i) both bodies should together ensure the reciprocal flow of information; (ii) the division of tasks between the bodies should be disclosed; and (iii) the management board should participate in laying down the activity plans and strategy of the company, and should notify the supervisory council of all events and circumstances deviating from such plans and strategy.

## Specified duty of care standard for management body members

Members of the management bodies of a public limited company are bound by two general fiduciary duties – the duty of care and the duty of loyalty. An amendment to the commercial code relates to the standard of duty of care. The law now provides that members of management bodies must fulfil their duties with the "care of a diligent entrepreneur" and that a member of a management body is released from liability if he establishes that he has fulfilled its obligations with care of a diligent entrepreneur. Once again, the law expressly lays down the principle that could have been derived from the logic of the law before.

It follows from the "diligent entrepreneur" standard that the activities of a management body's member will ultimately be compared

with activities of other similar companies' managers. Preparatory materials to the legislative amendments also maintain that the larger the company and the number of persons affected by its operations, the higher expectations are entrusted to the member of a company's management body. The duty of care test must thus be applied on case-by-case basis, taking into account the particularities of respective company and the member of the management body.

### Enhanced informational rights of shareholders

The amendments to the commercial code provide that shareholders must be given more information about the general meeting of shareholders in advance of the meeting. The notice calling a shareholders' meeting must now contain proposals of the supervisory council regarding all items included in the agenda of the meeting.

The corporate governance recommendations specify the practices that must be applied in carrying out the shareholders' meeting. Most importantly, the exercise of shareholders' rights should not be hindered by unreasonable formalities, and the controlling shareholder should avoid abusing its position at the shareholders' meeting (and also upon organizing the company's management generally).

The recommendations also stress the importance of the company's website. Important corporate documents, such as articles of association, financial reports, shareholders' agreements concerning concerted exercise of shareholders rights (if known to the company), data about members of the management and auditors, should be made available online.

## Banking and capital markets

### Recommended firms

#### Tier 1

Lepik & Luhaäär LAWIN  
Raidla & Partners  
Law Office Tark & Co

#### Tier 2

Luiga Mody Hääl Borenius  
Sorainen Law Offices

#### Tier 3

Aare Raigi Advokaadibüroo  
Advokaadibüroo Paul Varul  
Tamme & Otsmann

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Lepik & Luhaäär LAWIN  
Raidla & Partners  
Law Office Tark & Co

#### Tier 2

Luiga Mody Hääl Borenius  
Sorainen Law Offices

#### Tier 3

Aavik & Arvisto  
Advokaadibüroo Paul Varul  
Tamme & Otsmann  
Teder Glikman & Partnerid

## Project finance

### Recommended firms

#### Tier 1

Lepik & Luhaäär LAWIN  
Luiga Mody Hääl Borenius  
Raidla & Partners  
Law Office Tark & Co

#### Tier 2

Aavik & Arvisto  
Advokaadibüroo Paul Varul  
Sorainen Law Offices

### Lepik & Luhaäär LAWIN

Lepik & Luhaäär LAWIN, like many firms in Estonia, has reaped the benefits of a 10% growth in the Estonian economy in 2005. Such movement in the market has meant that the firm could extend its already large team by increasing to four partners and 22 associates. Three new associates have been brought in, and Katri Paas has returned from completing her masters and subsequent traineeships at the European Commission and Allen & Overy's Brussels office.

However, it's the old hands that remain the dominant players for the firm. Peeter Lepik and Toomas Luhaäär have been highlighted as important lawyers in the banking, capital markets and project finance sectors. But most of the praise from the market was reserved for "M&A star" Martin Simovart. All admit that he is "greatly experienced", and others remarked on his ability "to bargain without being too tough or too soft." The younger employees have not gone without mention though. Among them, Anton Sigal has been underlined as "one for the future" as he is "active, aggressive and on the point."

Once again, Lepik & Luhaäär LAWIN has maintained a fantastic banking client list. Over the past 12 months the firm has counselled ConCardis subsidiary Acredos, Goldman Sachs, Merrill Lynch, Citibank, CIBC World Markets, the Polimoon Group, DnB Nor and Vaasan & Vaasan. However, the highlight of the year was working for media services company Interinfo. The firm had to negotiate an acquisition facility relating to Interinfo's acquisition of Eniro entities across the Baltic states.

Capital markets has been equally successful for Lepik & Luhaäär LAWIN this year as the firm has represented such

respected clients as UBS, Citigroup and SIA Alta Capital. Indeed, it is for the latter that at the time of writing the firm is advising in relation to its convertible bond placement to institutional investors.

However, it is in project finance where the firm has most strongly maintained its top-tier position. Two deals stand out in particular. In the first, the firm advised the Tallinn City Housing Department on a €38 million municipal housing project, and in the second, it acted for the State Real Estate Agency on its financing of a new €35 million railway border station.

The firm is one of the founding members of the LAWIN Baltic network. Other members include Lideika Petrauskas Valiunas ir Partnerai in Lithuania and Klavins & Slaidins in Latvia.

#### Leading lawyer

Martin Simovart

#### Key contact partners

Peeter Lepik  
Toomas Luhaäär

### Luiga Mody Hääl Borenius

After the merger of Luiga Mugu & Borenius and Mody & Hääl Glimstedt in August 2005, it seems that new firm Luiga Mody Hääl Borenius has had a year of reorganization and reconciliation. Naturally, this has had an affect on market activity, but long-term the firm looks in excellent shape. For example, in project finance, the firm has had a relatively quiet year, advising a leading Estonian printing business on its €5.6 million investment into equipment and machinery. However, on the recommendation of most market commentators, Luiga Mody Hääl Borenius retains its tier one placing in the rankings for project finance this year. Many are sure that once the new firm has consolidated its working environment, it will be business as usual because “they are a good firm with the capacity to grow.”

Luiga Mody Hääl Borenius has enjoyed a steady year in banking and capital markets. A market commentator has noted that they are “trusting Priit Pahapill with lots of work.” His “very good work” has been matched by Sten Luiga, who “has been consistently good over the last ten to 12 years.” At the time of writing, the department is advising a leading US investment bank in the \$100 million purchase of a 100% shareholding in a large European galvanizing line. This successful counselling continues work from 2005 such as the €4.4 million purchase of a shareholding in a listed wood processing company and advice given to a Baltic investment fund regarding ventures into start-up entities in Estonia.

The firm has also been active in M&A. Again, this is chiefly due to the leadership of the “continuously strong” Luiga and “very good” Pahapill. At the time of writing, they are advising an oil trader in the €6 million acquisition of 100% of shares in the Baltic subsidiaries of Hydro Texaco. The firm is also counselling a leading private equity investment enterprise in its €10 million investments into the north Russia region.

Luiga Mody Hääl Borenius’ insolvency and restructuring department is headed by Jaanus Mody and Marti Hääl. In the second half of 2005, the department’s highlight was its advice to an Estonian oil trader in the restructuring of its €15 million-worth of debt. This work included a claim of €3 million bankruptcy proceeding settlement.

Luiga Mody Hääl Borenius enjoy good connections with Borenius & Kemppinen in Finland, Liepa Skopina Borenius in Latvia and Foigt and Partners in Lithuania. The firm also frequently receives referrals from the likes of Baker & McKenzie,

DLA Piper and Macfarlanes, confirming its status as a top choice for Lithuanian legal advice on big international deals.

#### Leading lawyers

Sten Luiga  
Karina Paatsi  
Priit Pahapill

#### Key contact partners

Sten Luiga  
Priit Pahapill

### Raidla & Partners

Out of the four partners and 26 associates at Raidla & Partners, there are three in particular that commentators frequently mention as driving forces. The first is “experienced leader” Sven Papp, described as “a tough negotiator who knows how to make compromises when necessary.” Raino Paron is equally well received and is described as having “great skills and a sharp mind... he has a good knowledge of business and finance.” The trio is completed by the “knowledgeable and experienced” Jüri Raidla, of who one competitor admitted that “he just does not lose.” The strong leadership of these three does not go unnoticed by clients; one international bank client said that Raidla is “the most impressive firm in Estonia ... it tends to be more experienced in transactions.”

It is in M&A that the firm has handled its biggest deals this year. In 2005 it closed its advice to TeliaSonera on its €500 million bid to acquire the state’s shares in Eesti Telekom. This was followed by Paron leading a team in representing the Council of Hansabank on the €1.407 billion offer from Swedbank for its minority shareholdings.

The large deals have not been restricted to M&A though. In capital markets, for example, Raidla & Partners counselled Eesti Energia regarding its offer to exchange €200 million-worth of notes listed in Luxembourg to €300 million notes due 2020 on the London Stock Exchange, and advised Tallinna Vesi in the first Estonian IPO in six years, which was valued at €50.5 million and was floated in Tallinn.

Tallink Grupp has proved to be a regular client for the active banking department. First, the firm advised the shipping company on the refinancing of €20 million loans. More importantly, it refinanced another loan for the €98 million construction of a new passenger vessel.

According to opinion from the market, Raidla & Partners has unearthed a potential gem in Jaanus Ikla. He is described as “responsible and dedicated to the work he does. He is clever and has an understanding of the legal field and the financial side behind it. A very good lawyer.”

#### Leading lawyers

Sven Papp  
Raino Paron  
Jüri Raidla

#### Key contact partners

Sven Papp  
Raino Paron  
Jüri Raidla

### Sorainen Law Offices

Market commentators are fully aware that international clients are increasingly looking for one-stop-shops in the Baltic states, and this frequently requires crucial research into the quality of links between independent firms across borders. However, Sorainen Law Offices has a strong, independent presence in Latvia, Lithuania and founding partner Aku Sorainen’s homeland, Finland. The firm’s office in Estonia completes the set and, with the addition of nine new lawyers this year, has one of the largest legal teams in the country. Regarding personnel, the market feels

that Pekka Puolakka is a rising star; one pundit noted that “he has had a very good year... he sees things in an intelligent manner.”

In banking, Sorainen Law Offices has continued its reputation for attracting impressive clients. In the past year, the firm has done a lot of work for the Nordic Environment Financial Corporation (Nefco). For example, Sorainen Law Offices advised Nefco in lending and securing a large loan to local industrial zinc and aluminium alloy casting and galvanizing companies. The firm also acted for a leading Russian credit institution regarding a guarantee given to them by an Estonian co-guarantor.

However, the most impressive deal that Sorainen Law Offices has been involved in recently was in the M&A sector. The firm acted as Estonian counsel to eBay on its acquisition of Skype Technologies, for €2.1 billion up-front and a potential performance-based consideration of a further €1.2 billion. Other M&A highlights saw the firm play a leading role in Estonia's first major property M&A deal, advising Citycon on its acquisition of Tallinn's Rocca al Mare shopping centre and neighbouring land for €62.1 million.

In project finance, meanwhile, Sorainen Law Offices has once again had an interesting year. Among a range of matters ongoing at press time, the firm is helping Pakri Saarte Arendamise Sintasutus plan a project with a local government authority to regenerate two deserted islands that were formerly reserved for military use.

#### Leading lawyers

Kaidor Loor  
Toomas Prangli

#### Key contact partners

Kaidor Loor  
Aku Sorainen

### Law Office Tark & Co

With seven partners and 18 associates, Law Office Tark & Co is one of the largest law firms in Estonia. There is huge respect for the firm in the market and this is proven by Law Office Tark & Co's membership of many organizations including the Association of European Lawyers, the International Lawyers Network, the Antitrust Alliance, the Association Européenne and the European Energy Law Practice Group. Law Office Tark & Co is also in a Baltic cooperation with Loze Grunte & Cers in Latvia and Sutkiene Pilkauskas & Partners in Lithuania. More importantly, clients describe the firm as “quality, both in terms of having the best ranked lawyers and in its workload capacity.”

Hannes Vallikivi heads up the banking and capital markets team, and one commentator hailed him as having “great qualities.” Another described him as “the main finance guy at the firm... his understanding of the market is good and he is extremely experienced.” In December 2005 the department was involved in the €166.4 million cross-border initial public offering (IPO) of AS Tallink Group in Estonia and Finland. In the deal, the firm advised Citigroup Global Markets, Nordea Bank Finland, AS Suprema Securities and SEB Eesti Ühispank. Similarly, Law Office Tark & Co advised AS Starman on its €13.4 million IPO in June 2005.

Another key deal in the Estonian market over the past year was the €40 million refinancing of the Linstow Ülemiste shopping centre in May 2006, on which Law Office Tark & Co advised HSH Nordbank. The firm has also acted for Eesti Telekom on two separate occasions over the past 12 months regarding compliance with new insider trading and corporate governance rules.

The Estonian real estate boom is closely linked to M&A, and both this and secured lending have flourished. Law Office Tark

& Co, like many others, has taken advantage of this trend, although not many of the firm's rivals can boast roles on such sizeable deals. Most notably, the firm represented Swedbank in its minority takeover of a 40.3% shareholding in AS Hansabank, which included delisting from the Tallinn Stock Exchange and was worth €1.407 billion. More recently, in April 2006, Law Office Tark & Co advised EMT on the acquisition of Rate.ee, and advised the sellers in the sale of shares in AS Thulema, Estonia's leading furniture producer.

The market universally perceives Risto Vahimets to be one of the brightest M&A stars in Estonia due to him having “the understanding of the field and the rules.” One competitor praised Vahimets because “when negotiating, he communicates well and knows the legal and financial implications of the deal.” Undoubtedly, Law Office Tark & Co should be proud to have two such well respected lawyers in Vallikivi and Vahimets. There is a wide opinion that they are “clearly the leaders” in Estonian M&A advice, and clients describe them as “high-quality, transaction-motivated, business-minded lawyers.”

The firm is still expanding, as seen by the fact that it brought in Kilvar Kessler as an associate on the board of the Estonian Financial Services Authority. Kersti Kägi was also added to the team in January 2006. The firm has a strong bedrock of talent on which to build, and all indications point to further success in the future as clients such as Barclays Capital, Deutsche Bank and Sampo Life Insurance continue to turn to the firm for advice.

#### Leading lawyers

Kaja Leiger  
Toomas Taube  
Risto Vahimets  
Hannes Vallikivi

#### Key contact partners

Aare Tark  
Risto Vahimets  
Hannes Vallikivi

### Teder Glikman & Partnerid

A relatively young firm, Teder Glikman & Partnerid is noted by the market as “great at litigation”. The firm's 19 lawyers and four support staff specialize in telecommunications, transportation & infrastructure, pharmaceutical, energy & utilities and biotechnology work, and the firm also handles its fair share of M&A work too.

Among the year's highlights, the firm has provided advice regarding the privatization of a Tallinn bus company, and acted on the sale of Microlink, one of the leading Baltic IT services groups. And in what was probably the firm's highest-profile role of recent times, Teder Glikman & Partnerid has been advising one of the world's leading hotel chains in its €1.6 billion bid for Raffles International.

In the finance arena, meanwhile, the firm acted for a Canadian international bank on the issue of structured notes in Estonia, and represented a shareholder of a Tallinn utilities company on restructuring its private shareholding worth around €17 million. And in a landmark project for the Estonian market, Teder Glikman acted for the investors in the development of Tallinn's first-ever industrial park.

#### Leading lawyers

Mariana Hagström  
Daisy Tauk

#### Key contact partners

Leon Glikman  
Indrek Teder

### Other notable firms

**Aare Raigi Advokaadibüroo** has had 12 years' experience in the Estonian legal market, and recently secured the services of Madis Saar from an in-house legal department at one of Estonia's largest insurance companies. In banking, the firm advised Skandinaviska Enskilda Banken on a \$12.3 million bridge facility of a chemical tanker. In October 2005, this single-term bridge facility was converted into a permanent syndicated facility in a transaction that Aare Raigi was also involved in. The firm has been active in capital markets too, as evidenced by its counselling of Infortar as the controlling shareholder in the Tallink Grupp's €166.4 million IPO.

**Aavik & Arvisto** is a six-lawyer firm that was only founded in 2003, yet peers have recommended the firm's debut on the rankings, particularly for M&A. Over the past 12 months the firm has advised a number of Swedish investment funds in relation to the acquisition of shares in a large Estonian IT products retailer and in investments into a sports goods retailer chain. It has also represented a Swedish IT company regarding its investment into, and acquisition of shares in, a major Estonian IP development firm. In project finance, Aavik & Arvisto counselled a client with regard to the financing of a hotel development in Tallinn.

**Advokaadibüroo Paul Varul** is made up of four partners and 14 associates in Tallinn, and one partner and two associates in Tartu. It is also a member of the International Business Law Consortium and the Euro-American Lawyers Group. With regard to banking, the firm can list Bank of Estonia, Eesti Ühispank and Ergo Kindlustuse as clients. But this year, the firm has been most active in M&A. Among the highlights, it represented Fortum Termest in relation to the sale of a power and heat production plant in Kohtla-Järve, counselled Finnish Road Enterprise in the purchase of an Estonian road building company, and at the time of writing was advising Tallinna Sadam on the purchase of operations and infrastructure of Estonian Railways. Advokaadibüroo Paul Varul is also active in multi-million euro real estate transactions, where clients include Manutent Latvia, Manutent Hotels and Rotermann City.

**Tamme & Otsmann** is "deserving of a place on the rankings" according to market commentators. The consensus is that the firm is particularly impressive in M&A, and this is proved by the experience that it has accumulated. For example, it advised Baltic Rail Services in relation to the £6.5 million sale of a 25% interest in Estonian Rail, and acted for NG Investeeringug and Ühendatud Capital on the €62 million sale of a leading shopping centre in Tallinn. Other notable deals saw it advise Norby Telecom in a local telecommunications company acquisition, and guide Estomatic Grupp through a joint venture with a leading Scandinavian coffee company. Tamme & Otsmann also has a banking department that has represented Beta Systems and Baltic Rail Services on separate refinancing projects.