

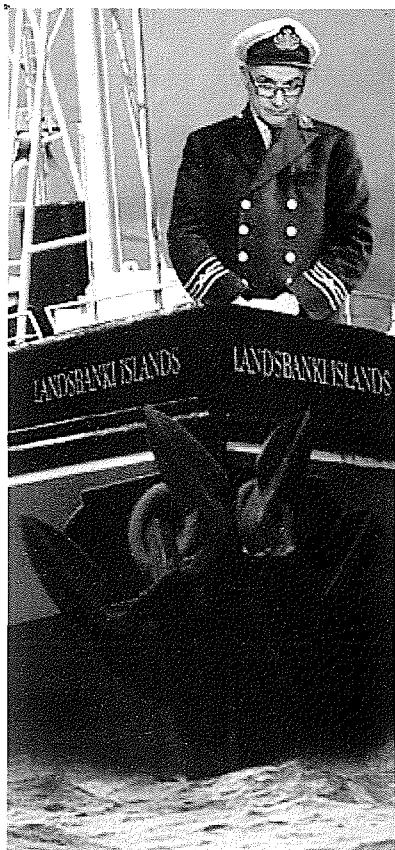
**"Should this man take the helm?"**

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Peter Lee

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**A big chunk of Iceland's second-largest bank looks destined to fall to a father and son team who made a fortune from selling their brewery in Russia. Questions remain, though, about their suitability to control the National Bank of Iceland.**



On Saturday October 19, the Icelandic government's executive committee on privatization, which operates out of the prime minister's office in Reykjavik, announced its decision to sell 45.8% of Landsbanki.

The stake in the country's second-largest commercial bank is set to go to Samson Holding, an investor group whose board comprises three wealthy Icelanders who made their fortune in brewing in Russia: Björgólfur Thor Bjorgolfsson, his father Björgólfur Gudmundsson and their long-standing business partner, Magnus Thorsteinsson.

There are a small number of people in Iceland who question – quietly, given their wealth and influence – whether the father and son are suitable choices to control such a big stake in such an important component of the Icelandic economy.

Outside Iceland, Landsbanki is mainly familiar to international bond investors and banks that have helped fund its loan growth in recent years.

It has an operation in Guernsey. And its biggest international move was the purchase in 2000 of a 70% stake in Heritable Bank, a London-based bank specializing in property. Landsbanki increased its holding to 95% earlier this year and intends to use Heritable to extend its private-banking business.

Thor Bjorgolfsson. "Landsbanki is a tiny bank by international standards but nevertheless a footprint to grow from," he says. "Its management might be able to identify more such opportunities." Heritable's senior management is scouting now for niche acquisitions in the UK and Scandinavia.

If Björgólfur Thor has any more specific plans for the bank, other than to increase what he says has been an unsatisfactory return on equity, he isn't giving them away.

In Iceland, Landsbanki, is a big, almost iconic institution. Following this sale, the government will retain a token holding of 2.5%. The remainder of the bank's shares are widely held mainly by institutional investors, following earlier sell-offs.

Though its market capitalization is less than that of the much more efficient Islandsbanki, which emerged ahead of it from state ownership, Landsbanki is still renowned as the National Bank of Iceland. It operated as the country's central bank from 1937 to 1956. One in three Icelanders bank with it.

Is it a good idea for such a large stake in the bank to be controlled by individuals with no track record in banking? And what's the background of these people who apparently earned their fortune in the beverages business in Russia? Indeed the validity of one of their first, key acquisitions in Russia – a soft-drinks bottler in St Petersburg – has been challenged vigorously in Russian and Icelandic courts by the original owners.

Several judgments have gone against the father and son. Even within Iceland this does not seem

to be well known.

There's another question. Why is it that the prime minister's office, the privatization committee, the finance ministry and the central bank seem so unconcerned by Björgólfur Gudmundsson's contribution to bringing a bank in Iceland to the point of insolvency in the 1980s?

For his part in this episode, which involved misrepresentation of the soundness of an Icelandic shipping line, Björgólfur Gudmundsson was given a 12-month suspended prison sentence by the Supreme Court of Iceland in 1991.

Björgólfur Thor Bjorgolfsson and Björgólfur Gudmundsson enjoy an extraordinary status in Iceland, partly because of the father's role in the financial scandal surrounding the shipping line Hafskip in 1985. Its collapse, and the connected near failure of the state-owned Utvegsbanki, the Fisheries Bank of Iceland, which had to be rescued by two other Icelandic banks, rocked the country's business, political and judicial elite.

But mostly Icelanders are fascinated by these men's now exceptional – by Icelandic standards – personal net worth.

This February, Heineken agreed to buy Bravo International. This is the Russian brewery the Icelandic entrepreneurs founded in 1999 with the proceeds of the sale to PepsiCo of a bottling plant they had earlier set up in St Petersburg and with the further backing of some venture capitalists.

The Icelanders had stepped in when the world's leading brewers held back for fear of the lawlessness of business in Russia. The entrepreneurs established themselves as low-cost producers with smart marketing, often using second-hand equipment that they upgraded. They developed a flair for working their way around the vipers' nest of customs, regulatory and tax authorities. And they developed good contacts in St Petersburg, including its powerful governor Vladimir Jakovlev, who has shown his support with public visits to their plants dating back to his time as deputy mayor.

Apparently coming from nowhere, Bravo had carved out a substantial share of the world's fastest-growing beer market by 2001, with large positions in St Petersburg and Moscow. For this, Heineken agreed to pay up to \$400 million, the precise amount depending on the business meeting specified volume and price targets in the year to February 2003.

Icelanders are acutely conscious of their country's natural limitations. "It's always been my belief that we're on a rock in the north Atlantic and that the only way to grow is to find opportunities outside Iceland," says Björgólfur Thor Bjorgolfsson. "There are limited opportunities for wealth creation amid such a small population."

Looking outside was what he did himself. After studying at New York University's Leonard N Stern School of Business and working as marketing manager of the Viking Brewery in his native Iceland, he struck out for the wilds of St Petersburg in 1993 and didn't look back until his fortune was made. By going abroad and becoming a huge success he lived out the fantasy self-image of many of his countrymen: that of the Viking raider, an image that he himself brings up in conversation.

Now still only 35, Björgólfur Thor has returned in triumph as the archetype of a new breed of Icelandic businessman – an internationalist, an arbitrageur motivated purely by profit and not political ambition. So he appears to stand outside the old Icelandic circles of influence where politics and business closely mix.

Though still not a resident of his native country (he lives in London), Björgólfur Thor is chairman of the board of one of its biggest public companies, Pharmaco. On any given day this runs neck and neck with Islandsbanki in having the largest market capitalization of any publicly traded Icelandic stock.

He and his father acquired a 30% share in Pharmaco nearly three years ago and have been behind the deals – mergers with Balkanpharma in 2000 and with Delta this July – that have increased its market value more than ten-fold to \$500 million.

"They have grown to be very rich and powerful in Iceland," says Bjarni Armannsson, co-CEO of Islandsbanki, the largest of the three Icelandic commercial banks. Islandsbanki was one of the disappointed bidders that applied to buy a stake in either Landsbanki or Búnadarbanki – the

country's third-largest commercial bank which is still majority owned by the state and is also scheduled to be privatized by the end of this year – in the summer and lost out when the executive committee initially reduced the list of five bidders for Landsbanki to three and then entered exclusive talks with Samson.

Armannsson says: "Everybody here is middle class. There's very little poverty and there are no billionaires and that creates a balance that may now be disturbed. I think they have to be careful how they behave."

Björgólfur Thor says that he prefers to keep a low profile and that privacy and anonymity are what he misses most since his return to Iceland and emergence as a leading figure behind large public companies. But it seems he and his father have a strange notion of what a low profile is.

In the second week of October any visitor hoping to arrange meetings with Icelandic political, financial and business leaders would have encountered a big problem. Large numbers of them had been flown to Bulgaria in a specially chartered 747 jet at the expense of Björgólfur Thor and his father to visit the new facilities in Dupnitsa of Balkanpharma, the Bulgarian pharmaceuticals company that Pharmaco merged with in December 2000.

### **Friends reunited**

Guest of honour on the flight was the president of Iceland, Olafur Grimsson. Björgólfur Thor had already sat in on a meeting in Reykjavik this September between Olafur and Georgi Parvanov, president of Bulgaria, which hailed the success of Pharmaco's investment in Balkanpharma. It proved "how two countries could collaborate in the business and how the economic collaboration might bring together their strategic interests," according to a summary from Balkanpharma.

Björgólfur Thor says he has no interest in politics and that he is purely a businessman and financial investor. Sitting in the temporary offices of Pharmaco, overlooking Iceland's national football stadium in Reykjavik's Laugardalur valley with the ocean and the mountains beyond, he says: "All that's done here is on the basis of what's best for shareholders."

He dismisses as a myth the conspiracy theory popular in Icelandic financial circles. This holds that the pro-free-market Independence Party of prime minister David Oddsson is engineering a transfer of Landsbanki to a sympathetic shareholder group, and that the left-leaning Progressive Party will have some say in choosing the strategic investor in Búnadarbanki.

Traditionally Landsbanki has been linked to the Independence Party and Búnadarbanki to the Progressive Party and political parties have had a say in appointing the respective banks' chairmen. But according to Björgólfur Thor those days are coming to an end. "People cannot pin us down. I don't want to align myself with anyone, nor do I want anyone to claim me."

So it's tempting to speculate what Björgólfur Thor and his father Björgólfur Gudmundsson found to talk about with the president of Iceland on the long flight to Bulgaria if not politics. Perhaps they discussed the growth prospects for low-cost generic drug makers. Certainly that's what interests the younger man.

The significance of the new plants in Bulgaria is that they have been refurbished to meet EU quality criteria, increasing the potential export market for a fast-growing pharmaceuticals company that already has a commanding market share in Bulgaria and has proven its ability to market and export generic drugs successfully in Russia and central and eastern Europe.

Perhaps the older men found other topics to discuss. Their minds might have wandered back to the convulsive last days of Hafskip in 1985 and 1986 when Olafur Grimsson, a former finance minister of Iceland and a left-wing MP, delivered fiery speeches in parliament about the scandal at Hafskip and the shipping company's managing director, Björgólfur Gudmundsson, ended up in the dock.

Politicians and bankers in Iceland shift uneasily in their chairs at any mention of Hafskip. They all



**Magnus Thorsteinsson (l), Björgólfur Thor Bjorgolfsson, and his father Björgólfur Gudmundsson**

know the story – books have been written about it in Iceland – they just don't want to talk about it to an outsider. Hafskip was Iceland's Guinness affair, its Enron.

### Too big to handle

"It was a very unhappy time for everyone in Iceland – the business community, press, parliament, even the judicial system," says a senior member of the present government. "In the end, you have to ask whether the whole thing was a storm in a teacup, or something simply too big for the system here in Iceland to handle." He adds: "Personally, I think it was the former."

Hafskip had operated for years in Iceland in competition with the much larger market leader, Eimskip, still today one of the country's largest private companies and now a diversified transport and logistics company. In the early 1980s, the chairman of Hafskip was one Albert Gudmundsson (no relation). He had enjoyed a successful career as a professional footballer playing for some of Europe's most famous clubs, including AC Milan and Arsenal, and had returned to Iceland independently wealthy and entered politics. He carved out his own position in the Independence Party as something of a champion of the little man and attracted several ambitious politicians to his side. These were known in Icelandic political circles, somewhat melodramatically, as the secret army.

Björgólfur Gudmundsson, a leading member of the executive committee of the youth movement of the Independence Party, was prominent among these.

Albert Gudmundsson himself eventually became Iceland's finance minister. As well as being chairman of Hafskip he was also chairman of the board of its main lending bank, Utvegsbanki – the Fisheries Bank of Iceland. Björgólfur Gudmundsson was brought into the company by Albert Gudmundsson and became its managing director.

Politicians and businessmen walked arm in arm in Iceland in those days.

In the early to mid 1980s, Hafskip's competition with Eimskip was becoming increasingly intense and bitter. Both made good profits from shipping material to the American armed forces in Iceland. But when an American shipping company started to compete on this route, that lucrative business was lost.

At first Hafskip's management did not know what to do. Eventually it decided to move into the transatlantic market, shipping goods from Europe to America in bigger ships, bringing it up against the even larger American shipping companies.

These transatlantic endeavours overstretched Hafskip, which struggled to win contracts to ship cargo back from America to Europe at a time of dollar strength. Stories ran in the Icelandic press that the company faced severe financial difficulties.

Politicians on all sides saw their chance to attack a company so closely linked to Albert Gudmundsson, a prominent member of the Independence Party and a maverick who had taken an obstinate line of his own and opposed the governing coalition's attempt to merge the Fisheries Bank with Búnadarbanki. From the political left, Olafur Grimsson took up the cry against Hafskip in Iceland's parliament, the Althingi.

Hafskip tried to recapitalize through a public share issue and even sought a merger with Eimskip. It struggled on for a few months but declared bankruptcy on December 6 1985.

Hafskip was the biggest borrower from the Fisheries Bank of Iceland, the remnant of which eventually had to be folded into two Icelandic banks. In the midst all its woes, Hafskip saw the bank seize some of its key assets – its ships – and sell them to its deadly rival Eimskip at rock-bottom prices.

There began a prolonged criminal investigation and prosecution. In May 1986, police arrested Björgólfur Gudmundsson and several other senior executives of Hafskip in early-morning raids on their homes. Björgólfur Gudmundsson was detained for 28 days. It was widely regarded as a harsh over-reaction by a police force struggling to cope with an unprecedented and complex investigation into so many prominent Icelandic businessmen.

Albert Gudmundsson, now growing old and unwell, was not prosecuted.

Björgólfur Gudmundsson along with several other Hafskip executives, Páll Bragi Kristjánsson,

Ragnar Kjartansson and the company's auditor, Helgi Magnússon, were charged with various counts of falsification of financial statements and accounts of Hafskip. Björgólfur Gudmundsson was also charged with embezzlement from company cheque accounts.

From the start, the whole affair tested the capacities of the Icelandic judicial system. A special prosecutor, Jónatan Thórmundsson had to be appointed. He pursued charges against 17 people. In July 1990 at the criminal court of Reykjavik 14 of them, including all those who had worked at the Fisheries Bank, were acquitted. Thórmundsson promptly resigned. The justice minister appointed another special prosecutor who appealed to the Supreme Court of Iceland for a final verdict.

When judgment was delivered in December 1991 Björgólfur Gudmundsson was sentenced to 12 months' imprisonment, suspended for two years.

It would seem to be a case the Icelandic authorities might want to bear in mind before handing over a 48.5% stake in the country's second-largest bank. But apparently it doesn't count for much. "I don't think it's a cause for concern. It was a long time ago," says Birgir Gunnarsson, governor of Iceland's central bank. "These people have shown their ability to run big businesses in St. Petersburg and in the Balkans."

Geir Haarde, the finance minister, says: "Maybe Hafskip was forced into bankruptcy. I think when he looks back Björgólfur Gudmundsson can be pleased with himself."

Skarphéðinn Berg Steinarsson, a key member of the privatization committee says: "The regulator and ourselves need to go through due diligence on the investor because he has to be a sound and proper person to own a stake in the bank. We've heard all these different stories and from what we know we believe they are sound and proper."

#### **Immaterial oversights**

The CEO of one Icelandic bank says: "This was all way back. They got limited sentences for oversights that were immaterial in my view."

Björgólfur Gudmundsson himself insists the episode has nothing to do with his fitness to control a stake in Landsbanki. He says: "The bankruptcy of Hafskip contributed to the downfall of Utvegsbanki but many other troubled companies contributed as well. Let's not forget that the economic and political landscape in Iceland was completely different 17 years ago. I am absolutely positive that Hafskip's business with Utvegsbanki has no bearing on Landsbanki."

Björgólfur Gudmundsson, Páll Bragi Kristjónsson, Ragnar Kjartansson and Helgi Magnússon were accused of mis-stating the financial position of Hafskip for the first eight months of 1984 in reports to its board of directors designed to ensure that credit lines from the Fisheries Bank continued. These reports showed the balance sheet to be in a positive equity position when it was in fact negative. Björgólfur Gudmundsson, Ragnar Kjartansson and Helgi Magnússon were similarly charged with falsifying the annual accounts for the year 1984, presented in May 1985, by preparing materially incorrect accounting data, deferring entries and failing to observe accepted accounting standards. By doing so they were said to have misled its board, shareholders and counterparties as to the true extent of Hafskip's negative equity position.

Björgólfur Gudmundsson was also charged with embezzling sums from the company's cheque accounts and charging personal costs to the company. True, some of these counts in isolation look minor. He paid with a company cheque for an overseas trip for his son that was unconnected to the company, for other travel expenses, for having his carpets cleaned, for settling his parking fines and buying a car. But there were a lot of them. He was also charged with embezzling bills of exchange from the company's portfolio for his personal benefit. (He later settled these.)

Björgólfur and the other defendants were found guilty of these charges by the Icelandic supreme court judges – but only partly so. In preparation of the misleading first eight-month figures and full-year accounts of 1984, the defendants were found to have violated articles of the Companies Act, but not the more serious General Penal Code. Björgólfur Gudmundsson was found to have violated the General Penal Code over several counts of embezzlement, two of which involved fraud.

"The people running Hafskip were young, like boys that were allowed to go too far in many respects. They weren't guided enough by the banks and by others," says Arni Tomasson, co-CEO of Búnadarbanki. "I think Mr Gudmundsson has learnt his lesson. He decided it would be best for

him to try his luck elsewhere, prove he can do things well and return with some dignity." He adds: "I'd have no problem doing business with them. I've not experienced anything other than positive things in dealing with them."

Halldór Kristjánsson, CEO of Landsbanki, quickly issued a statement after news broke of the forthcoming sale of 45.8% of the bank to Samson, stressing his strong support for the new shareholder group. It is, he said, "well regarded in Iceland and has an excellent record of investments both in Iceland and internationally".

In conversation after conversation in boardrooms and politicians' offices in Iceland, Björgólfur Gudmundsson is now presented as the victim. The widely held view is that his initial arrest and detention was unnecessarily harsh. The popular conspiracy theory is that Hafskip was forced out of business by reports in the yellow press and by a politically inspired hysteria whipped up against it.

Björgólfur Gudmundsson draws vindication from the court cases. He says: "After six years, 95% of the charges were dismissed and only minor technical charges were left."

Hafskip's administrators made good large portions – 65% – of its liabilities, even after the costs of administration. Björgólfur Gudmundsson attracted more sympathy by founding a rehabilitation centre for alcoholics – though this later closed down. And he gained employment at Pharmaco.

Some Icelanders explain Björgólfur Gudmundsson's rehabilitation as a sign of the country's tolerance, others of a general sympathy for those found guilty by the courts: a relic from the days when these were administered by Iceland's colonial master, Denmark.

Those involved in Hafskip are not outcasts. Helgi Magnússon, the auditor, was found to have violated articles of the Companies Act and the Auditors Act and relinquished his accounting practice, but now sits on the board of Islandsbanki.

Another interpretation is that it shows the closed nature of Icelandic society where about 20 prominent families dominate many of the leading businesses as well as the political scene. These coalesce in two groups, known as the octopus group and the squid. Inside the octopus camp are many members of the Independence Party and some of the country's largest privately owned companies. The squid group embraces the co-operative movement and many members of the Progressive Party.

Rivalries extend within and across these groups but this is a system that ultimately protects and looks after its own, especially the chosen sons of the leading families.

Even during the years following his conviction Björgólfur Gudmundsson remained a notable figure in Icelandic society. In 1994, for example, he became chairman of KR Reykjavik, the leading football club, and he occasionally travelled with the squad on forays across Europe.

Shortly after his conviction he gained employment at Pharmaco. In 1993 he acquired Viking Brewery for a nominal sum, later renaming it Hansa.

Today everyone is hugely impressed by his new-found wealth.

To the outsider this may smack of a certain complacency, though. "Iceland is the land of forgiveness," says Bjarni Armannsson co-CEO at Islandsbanki. "This case [Hafskip] plays little importance to the general public, which is perhaps quite surprising. It could be more of a worry outside Iceland." Perhaps so.

Bjarni Armannsson's more pressing question is whether three individuals should hold a controlling stake in the country's second-largest bank. "I would have thought another bank would be a more suitable entity," he suggests. But the Icelandic competition authorities offered an opinion against the merger proposed two years ago between Landsbanki and Búnadarbanki when both were still majority owned by the state, seemingly blocking further consolidation among the big three banks.

Björgólfur Thor Bjorgolfsson doesn't believe that lack of experience in banking should disqualify him and his partners from holding such a big strategic stake in a bank. He points to the success of Pharmaco. "We're not pharmacists either," he says. "We are like your average venture capitalist that goes into situations and applies normal, practical, methods of management. You look for the causes of concern for a business and address those and make sure that opportunities are seized

upon and executed well. We want to make the bank more dynamic. We'll be more active in looking at opportunities than a state-owned bank. I am not talking about explosive growth. But the bank has been quite stagnant. There's a lot of talented people in there, let's encourage them. We think this asset can perform better."

It appears he will now have his chance to make this happen, though some questions persist about his and his father's history. Rather less familiar in Reykjavik than the Hafskip saga is the dispute over how the two men really got started in Russia.

Two widely different versions of this story have been presented in courts in Russia and Iceland.

In 1991 western idealists, entrepreneurs and adventurers were swarming into Russia hoping to make their fortunes amid the land grab of the country's newly opened markets. Mostly they headed for Moscow and St Petersburg (then Leningrad). Two such were an Icelandic architect called Ingimar Haukur Ingimarsson and a British former stockbroker called Bernard Lardner. They had scored an early success in Leningrad in telephony. In 1991 foreign businessmen had to queue for hours to make international calls from one telephone in the business centre of one of the city's main hotels. Ingimar saw an opportunity and managed to find a transportable digital exchange that had been used to restore communications in Kuwait during and after the Gulf War. With this he helped set up PeterStar which was later sold off to Nasdaq-listed Petersburg Long Distance, a deal on which Lardner worked.

In late 1992 they were eager to repeat this success and saw an opportunity in soft-drinks bottling at a time when Russian consumers were eager for all things western and high quality. The market was ripe for transformation: Coca-Cola and PepsiCo were still importing, not producing and bottling locally, and local producers were turning out dull, ill-flavoured drinks in unattractive bottles made from returned glass in old, under-funded plants.

#### **Birth of a Baltic bottling plant**

Ingimar had met Björgólfur Gudmundsson while doing some work in Iceland for the charity for alcoholics. Now at Pharmaco, Björgólfur Gudmundsson was working for Gosan, a wholly owned subsidiary active in soft drinks that was decommissioning equipment that would be perfect for the venture in St Petersburg.

The Baltic Bottling Plant venture was founded. Ingimar and Lardner were the representatives of a British Virgin Islands-based holding company, Baltic Group Ltd – later it would be alleged the sole owners of BGL – which took up 75% of Baltic Bottling Plant in 1993. The newly privatized local repair company RMZ took 25% through the capital contribution of a plant on the city's outskirts. BGL signed agreements with Gosan to supply the bottling production lines and management expertise.

Ingimar Ingimarsson became the chairman of BBP and Björgólfur Gudmundsson, as a representative of a key supplier to which the company would owe considerable sums, also joined the board. BBP hired Magnus Thorsteinsson, a former executive at Gosan, to be managing director of BBP and Björgólfur Thor Bjorgolfsson, head of sales at Gosan, to run marketing and sales.

Later, in 1994, Björgólfur Thor Bjorgolfsson was appointed managing director after Magnus Thorsteinsson left the company.

In its first two years of operation BBP struggled. Why it did so is one of the many areas of dispute between Ingimar Ingimarsson and Bernard Lardner on one side and Björgólfur Thor Bjorgolfsson and his father on the other. The BGL side claims late delivery of equipment and poor performance by Gosan. The Gosan side suggest a mis-reading of the market by BGL as well as the unsuitability of the factory BGL had acquired and difficulties with water and electricity supplies.

Whatever the case, prospects were looking up by 1995. BBP by now had a contract to produce and bottle Pepsi-Cola, BGL had bought it new production equipment and the company was set to move into alcopops (pre-mixed low-alcohol drinks) under the brand name BRAVO.

Relations between the two key groups – the owners, BGL, and the executive managers who had joined from Gosan – continued to deteriorate. According to Lardner and Ingimar, Björgólfur Gudmundsson argued that he and his son should be made shareholders in BBP, a company after all being built by their efforts. Björgólfur denies this story.

At this stage the two sides' accounts start to diverge wildly. And they have traded allegations in court hearings in Russia and Iceland.

In September 1995, at a BBP shareholders' meeting not attended by either Ingimar or Lardner, two contracts were produced apparently signed by Ingimar on behalf of BGL handing over 32.5% of Baltic Bottling Plant to Björgólfur Gudmundsson and another 32.5% to Viking Brewery. BGL was to receive \$500,000 in return.

The document was apparently signed six months earlier in March 1995 at the time of the company's annual general meeting of shareholders in St Petersburg. Lardner and Ingimar did attend that earlier meeting but they say no such documents were signed or even discussed there.

There was a rather strange clause in the contract demanding that the March signatories should keep quiet about it until September 25, when it was to come into effect.

In early October 1995 the new shareholders (Björgólfur Gudmundsson and his company Viking Brewery) were registered at the chamber of companies registration in St Petersburg. Thereafter, armed guards denied access to BBP's offices to Ingimar and Lardner.

Suddenly they found themselves on the outside looking in.

#### **A bitterly disputed document**

Ingimar and Lardner have claimed repeatedly in courts in Russia and Iceland that the contract to sell shares in BBP was a forgery. Björgólfur Gudmundsson and his son have insisted it was genuine and that Ingimar Ingimarsson had initiated the sale at a time when he was losing his faith in BBP's prospects but did not want Lardner to know this.

Certainly Lardner and Ingimar were sounding out potential buyers in 1995 – but they say that they hoped to get a lot more than \$500,000. In December 1995, John Tyce, senior investment analyst at Société Générale Strauss Turnbull Securities, offered a rough valuation of the business at \$15 million to \$20 million. Lardner says he had conducted due diligence with one potential Swedish buyer who was prepared to pay up to \$20 million.

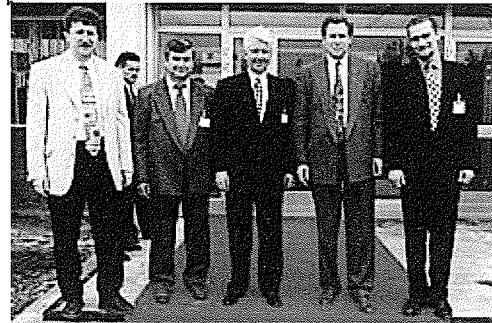
Numerous court cases ensued in Russia. BGL strove to invalidate the decision of the September 25 shareholders' meeting of BBP to recognize the new shareholders. It then pursued the registration chamber of St Petersburg to invalidate the registration of the new shareholders.

Despite occasional setbacks, BGL won these cases, which were then appealed upwards from the arbitration court of the St Petersburg and Leningrad oblast to the federal arbitration court of the north-west circuit. This court confirmed the invalidation of the shareholders' meeting on September 25 and the registration of the new shareholders.

Meanwhile BGL was itself pursued through the courts by former Russian partner RMZ requesting the original founding of BBP be invalidated. When these appeals were rejected, Lardner and Ingimar returned to the offices of BBP in March 1997 to find them empty. The plant was gone, the assets of the whole operation had been moved on. BBP was history. In fact it was almost written out of history.

Under the dynamic leadership of Björgólfur Thor Bjorgolfsson, Bravo – the new company name was the same as the brand of alcopops produced by BBP – went from strength to strength in bottling soft drinks and brewing beer. Eventually it sold out to Heineken for the fabulous sum of up to \$400 million.

Along the way Bravo attracted financial support from some of the most prestigious names in international finance, including Deutsche Bank and the IFC, the World Bank's private-sector lending arm. IFC officials have privately said that backing Bravo was their best ever investment in Russia.



Björgólfur Thor (far right) next to Vladimir Jakovlev and Ingimar Ingimarsson (centre): The powerful deputy mayor attends the inauguration of Baltic Bottling Plant at Parnas St Petersburg in July 1995, just months before a bitter dispute over its ownership breaks out between Björgólfur Thor and Ingimar

Meanwhile the much disputed contract to sell shares stipulated that it was subject to Icelandic law and so the case ended up in the district court of Reykjavik in September 1999. BGL once again pressed its claim against Björgólfur Guðmundsson that the contract of sale be declared invalid.

Ingimar Haukur Ingimarsson testified that he did not sign the contract, the original of which has not been produced, only copies. Björgólfur Guðmundsson testified that Ingimar did enter into the agreement in March 1995 because he wanted to get out of the company, which only turned profitable later in the year.

In the end the case came down to technicalities. BGL argued that, according to the articles of association of BGL, Ingimar did not have the power to sign over shares owned by BGL in Baltic Bottling Plant. Björgólfur Guðmundsson disputed this, claiming that Ingimar and Lardner were in effect the owners of BGL and that they had blanket powers of attorney to sign contracts on its behalf. The district court of Reykjavik decided that it could not be maintained, over the denial of the plaintiff [BGL], that Ingimar Haukur Ingimarsson had due authority to make the contract and that the contract must therefore be voided.

The court case dealt only with the validity of the contract, not any claim for damages. Lardner and Ingimar say a legal attempt to claim damages has been under consideration since that judgement in December 1999 but has not been launched because of unforeseen difficulties tracing authoritative accounts that might establish the financial position of Baltic Bottling Plant – and its actual worth – in 1995. Another court action is still a possibility.

What does Björgólfur Thor Bjorgolfsson make of all this now?

### **Chaos theory**

"It's a case of greenmail," he says. "It's a complex issue of people abusing a BVI [British Virgin Islands registered] company and trying to greenmail us. He owns the company and suddenly says he doesn't have authority to sign a contract. Powers of attorney are suddenly revoked." He shakes his head.

Björgólfur Thor looks back reflectively on those early years in St Petersburg. "We were so naive in those days," he says. "This was Russia and it was chaos. And this is an attempt to take advantage of that chaos." He recalls: "We had an Icelandic party supplying equipment [Gosan], a Russian party [RMZ], us running it and these other people who were supposed to bring lots of contacts and market knowledge and didn't." He adds: "It was certainly the worst period of my life. I was the managing director coming to the plant every day not knowing how I was going to pay the staff."

Does he feel the court cases are still hanging over him? Björgólfur Thor says he has never made a secret of the bitter dispute with Ingimar and Lardner, though it is not well known in Iceland. He cites an old Icelandic proverb to the effect that "we're hard-pressed to get into a conflict but pretty feisty once we're dragged into one."

Nevertheless he conveys a sense of disappointment that the issue should still be dragging on. "Listen, we have won court cases and they have won court cases but there's never been a final case to settle it all." He says it has taught him a valuable lesson. "I don't ever want to take people to court again or have people take me to court. We are very cautious on due diligence and take a good look at the characters we are dealing with."

In the meantime, Ingimar has sent exhaustive written details of his version of events in St Petersburg to many parties that have done business with the father and son or lent money to them: KBC Bank, Raiffeisen Zentralbank Österreich, Deutsche Bank, Hermes, Merrill Lynch (investment banking advisers to Björgólfur Thor), Heineken, IFC and others.

For the first time a note of indignation creeps into Björgólfur Thor's voice. "Can you imagine?" he says. "This set off a lot of alarm bells and suddenly we had compliance officers from these institutions all over us." He concludes defiantly: "We came out of all these checks clean."

For his part, his father does not think the Hafskip case is an obstacle either. He says: "Hafskip's business with Utvegsbanki has not even been mentioned – by the government, regulators, the media or in the Althingi – in relation to Landsbanki. After we wrote to the government registering our interest in Landsbanki, ministers not only welcomed this, they urged us to go ahead."

Yet one last check may remain before the two men take effective control of the second-biggest

bank in Iceland. The Financial Supervisory Agency (FME), the country's lead bank regulator, must approve any shareholder bidding to control more than 10% of any Icelandic bank.

FME director general Páll Gunnar Pálsson refuses to comment in any way on due-diligence investigations into any present or prospective applicant to own 10% or more in an Icelandic bank.

The law mentions seven key factors the FME should look at when assessing the eligibility of any applicant. These include: the financial position of the applicant and parties with which he has close links; the knowledge and experience of the applicant; whether such a holding creates risks of conflicts of interest; the size of the holding; whether such a holding might make surveillance of the bank by the FME more difficult; whether the applicant has provided the FME with all relevant information backed up by documents; any punishment to which the applicant has been sentenced and whether he is the object of a criminal investigation.

So does the regulator make a broad assessment looking at these factors as a whole, or does the applicant have to pass on each single one? Páll Gunnar says: "It's an overall assessment, but it could suffice for a denial if an applicant does not pass one of these factors, if the circumstances justify." He sums up: "The key question is: 'Is the applicant a sound and prudent owner? Would the bank be OK?'"

The FME has to make its decision within one month – dating from receiving complete information and documentation from an applicant. This relates to the applicant's financial position and funding of the proposed investment, future plans for the bank, proposed commercial relationship with the bank, the applicant's experience of financial activities, the applicant's links to other entities and any court sentence the applicant might have received.

The clock is ticking and the FME will have to make a decision before the end of November. David Oddsson, the most powerful man in Iceland, has invested considerable political capital in this deal. Now that the privatization committee, in which the offices of the prime minister, finance minister, foreign minister and minister of commerce and industry are key voices, also appears to have blessed it, won't the FME be under some political pressure to wave it through?

On this point, Páll Gunnar gives a firm answer. "We are very independent from political pressure."

What international investors, lenders, counterparty banks and regulators make of it all remains to be seen.



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ENDURRIT  
ÚR  
DÓMABÓK  
HÉRAÐSDÓMS REYKJAVÍKUR

Mál nr. E-2518/1998:

Baltic Group Limited  
gegn  
Hansa ehf.

Dómur 17. desember 1999

HÞ/san.

Ár 1999, föstudaginn 17. desember, var á dómþingi Héraðsdóms Reykjavíkur í málínus nr. E-2518/1998:

Baltic Group Limited

gegn

Hansa ehf.

kveðinn upp svohljóðandi

**d ó m u r :**

**I.**

Mál þetta, sem dómtekið var að loknum munnlegum málflutningi hinn 10. september 1999, var endurupptekið og flutt að nýju hinn 1. desember sl. Málið var dómtekið þann dag. Málið var höfðað fyrir dómþinginu af Baltic Group Limited, Palm Chamber nr. 3, Road Town, Tortola, Bresku Jónfrúreyjum, á hendur Hansa ehf., kt. 560793-2009, Vesturgötu 42, Reykjavík.

Dómkröfur stefnanda eru þær, að viðurkennt verði með dómi, að samningur dagsettur 24. mars 1995, milli Viking Brugg Limited og Baltic Group Limited þess efnis að Baltic Group Limited afsali til Viking Brugg Ltd. eignarétti yfir 325 almennum hlutabréfum í rússneska hlutafélaginu Baltic Bottling Plant (BBP) að nafnverði 20.000 rúblur hvert, sé ógildur. Þá krefst stefnandi þess, að stefndi verði dæmdur til að greiða stefnanda málskostnað, samkvæmt mati dómsins í samræmi við hagsmuni málsins, vinnu málflytjanda og annan kostnað af málinu.

Dómkröfur stefnda eru þær, að stefndi verði sýknaður og að stefnandi verði dæmdur til að greiða stefnda málskostnað samkvæmt mati dómsins.

**II.**

Mál þetta varðar meinta sölu stefnanda á hlutabréfum í rússnesku hlutafélagi til Viking Brugg Ltd. og Björgólfs Guðmundssonar.

Hinn 1. september 1992 var fyrirtækið Baltic Worldwide Ltd. stofnað á Bresku Jónfrúreyjum. Hinn 4. september 1992 var nafni fyrirtækisins breytt í Baltic Group

Limited. Núverandi hluthafar eru Savail International Limited og Proxima Services Limited.

Stefnandi kveður skipulag fyrirtækisins vera með hefðbundinni umgjörð og með þeim hætti, að fyrirtækið First Executive Directors Inc. á Bresku Jómfrúreyjum hafi annast framkvæmdastjórn. Ritari fyrirtækisins sé fyrirtækið Hugo Secretaries Ltd. á Jersey, Ermasundseyjum. Framkvæmdaaðili fyrirtækisins sé fyrirtækið Hugo Management Services Ltd. á Jersey.

Framkvæmdastjórn hafi falið Bernard J. Lardner og Ingimari Hauki Ingimarssyni umboð til þess að sinna ákveðnum verkefnum.

Stefndi heldur því fram, að stefnandi sé svokallað „offshore” fyrirtæki, en einkenni þessara „skúffufyrirtækja” sé að ekki sé auðvelt að rekja sig til raunverulegra eigenda, enda sé það tilgangurinn með stofnun þeirra og rekstri að fela raunverulega eigendur. Þessi fyrirtæki séu skráð með heimilisfang á stöðum, þar sem ekki sé gerð krafa til að fyrirtækin standi skil á ársreikningum sínum til yfirvalda. Með þessu móti komist fyrirtækin hjá því að greiða skatt af tekjum og með því sé mönnum veitt færi á að skjóta fjármunum sínum undan skatti og stunda „peningaþvætti”, án þess að vera dregnir til ábyrgðar, þar sem ekki sé unnt að fá upplýsingar um hverjir séu raunverulegir eigendur. Stefndi kveður skrásett hlutafé stefnanda vera samtals að fjárhæð 2.00 \$, sem skiptist í tvö hlutabréf, hvort að fjárhæð 1.00 \$. Stofnendur hafi verið tvö viðskiptafyrirtæki, Ratanui Corporation og Proxima Services Ltd. Núverandi hluthafar séu Savail International Ltd. og Proxima Service Ltd. Þessi félög séu „skúffufyrirtæki”, en raunverulegir eigendur þeirra séu Ingimar Haukur Ingimarsson að Proxima Services Ltd. og Bernard J. Lardner að Savail International Ltd.

Þessir tveir menn hafi valið sérstakt félag til að vera umboðsaðili fyrir sig í þeim tilgangi að auka fjarlægð þeirra frá stefnanda. Umboðsaðili hafi verið félagið Overseas Management Company Trust Ltd., sem hafi aðsetur á Bresku Jómfrúreyjum. Það fyrirtæki hafi síðan skipað annað félag, First Executive Director Incorporated, sem framkvæmdastjóra stefnanda, en það félag sé í eigu Overseas Management Company Trust Ltd. og sé með sama heimilisfang. Ms. Maureen Donovan, sem undirriti skjöl fyrir framkvæmdaðilann, sé óbreyttur starfsmaður fyrirtækisins.

Hinn 4. júní 1993 stofnaði stefnandi ásamt Remontno Mekhanichesky Zavod AOOT (RMZ) fyrirtækið Baltic Bottling Plant (BBP). Stefnandi átti 75% hlut í því

fyrirtæki en RMZ 25% hlut. Stjórnarformaður þessa fyrirtækis hefur frá upphafi verið Ingimar Haukur Ingimarsson.

Björgólfur Guðmundsson, var forstjóri gosdrykkjaverksmiðjunnar Gosan hf., þegar hún hætti rekstri. Björgólfur kveður eigendur þess fyrirtækis hafa falið sér að selja verksmiðjuna auk véla og tækja. Reksturinn hafi verið soldur Ölgerð Egils Skallagrímssonar hf.

Í október 1992 hafði Björgólfur samband við Ingimar Hauk, í þeim tilgangi að kanna möguleika á því að selja vélar og tæki Gosan hf. til Rússlands. Í framhaldi af því hafi komist á sambandi milli Björgólfss og Bernards J. Lardner. Niðurstaða þeirra samskipta var sú að stofna gosdrykkjaverksmiðju í St. Pétursborg.

Stefnandi og Gosan hf. gerðu með sér samning dagsettan 22. júní 1993, þar sem stefnandi keypti tæki, vélar og aðstoð við uppsetningu. Áður höfðu Björgólfur og Ingimar Haukur gert með sér samkomulag vegna fyrirhugaðra viðskipta, dagsett 5. desember 1992. Kaupverðið var 1.100.000 USD auk þess sem stefnandi skyldi greiða 400.000 USD fyrir stjórnunarstörf. Gert var ráð fyrir því að framleiðslan gæti hafist 1. júlí 1993.

Rekstur verksmiðjunnar gekk illa í byrjun. Aðilar eru ekki sammála um ástæður þessa. Kveður stefnandi, að þar sem áætlanir Gosan hf, hafi ekki staðist hafi ekki verið hægt að haga sölu með eðlilegum hætti. Stefndi kveður ástæðuna hafa verið þá, að verksmiðjubyggingin, sem átt hafi að hýsa vélarnar, hafi ekki verið í því ástandi, sem Ingimar Haukur og Bernard J. Lardner hefðu lofað þegar tímaáætlun var gerð. Ýmis vandamál hafi komið upp varðandi vatn og rafmagn til verksmiðjunnar og einnig hafi vantað leyfi til reksturs verksmiðjunnar. Hafi þetta leitt til þess, að seinkun hafi orðið á uppsetningu vélanna, alfarið á ábyrgð stefnanda. Stefndi fullyrðir að orsök þess að salan hafi brugðist hafi verið vanþekking Ingimars Hauks og Bernards J. Lardners á markaðnum.

Stefnandi kveður fulltrúa sína hafa séð um alla samningsgerð við viðskiptamenn fyrirtækisins, svo sem samninga um tæki, markaðsframlag o.fl.

Stefnandi kveðst hafa farið fram á endurskoðun samningsins við Gosan hf. í þeim tilgangi að fá lækkun á kaupverðinu, þar sem vélarnar hafi ekki reynst vera eins og um hafi verið samið. Á fundi Ingimars Hauks, Bernards J. Lardner og Björgólfss í London í september 1994, hafi stefndi talið sig geta fengið 300.000 USD afslátt af báðum samningunum við Gosan hf. og fá í staðinn  $\frac{1}{4}$  hlut í BBP. Þessu hafi Ingimar og Bernard hafnað, þar sem þá hafi verið farið að gruna að Gosan hf. væri í raun ekki

aðili að stjórnunarsamningnum og greiðslur vegna þess samnings færu beint í vasa stefnda og Björgólfs. Stefndi mótmælir þessari fullyrðingu stefnanda, sem rangri.

Samningur sá sem krafist er ógildingar á er svohljóðandi í íslenskri þýðingu: „Viking Brugg Limited”, íslenskt fyrirtæki, kt. nr. 560793-2009, sem skrásett var 9. júlí 1993 hjá hlutafélagaskrá sem fyrirtæki með takmarkaða ábyrgð, P.O. Box 4271, 124 Reykjavík, Ísland, Banki: Íslandsbanki hf., Reykjavík, Ísland, reikningur nr. 05281131, sem B.Guðmundsson er á sannanlegan hátt fulltrúi fyrir, hér eftir er nefnt VB, og „Baltic Group Limited”, fyrirtæki á bresku Jómfrúreyjum, sem skrásett var undir þessu nafni hjá hlutafélagaskrá sem fyrirtæki 4. september 1992, og sem á lögheimili í Palm Chamber, nr. 3. P.O.Box 3152, Roud Town, Tortola, British Virgin Islands, Banki: Standard Chartered Bank (C.I.) Limited, P.O. Box 89, Kansas Street, S-Hellier, Jersey, C.I., reikningur nr. 1702418 Hugo Trust, hér eftir verður nefnt BGL, sem Ingimar Ingimarsson er á sannanlegan hátt fulltrúi fyrir, hafa gert með sér eftirfarandi samning:

1. BGL afsalar til VB eignarétti yfir 325 almennum hlutabréfum sem eru gefin út á nafn (32,5%) að nafnverði 20.000 rúblur hvert í hlutafélagi af lokaðri gerð „Baltic Bottling Plant” (Rússland, Skt. Pétersborg), Bakunin-gata, hús nr. (xx) hér eftir nefnt BBP. Þar að auki lofar BGL að ógilda alla samninga (þar með taldir en þó ekki eingöngu: kaupleigusamningar í sambandi við hvers kyns tæknibúnað, lánssamningar, samningar um eftirgjöf vörumerkjja og aðrir samningar af öllum gerðum), sem gerðir voru, og allra annarra samninga sem geta verið gerðir af hálfu BGL eða allra annarra fyrirtækja sem á einhvern hátt eru í tengslum við BGL eða af hálfu hf. I. Ingimarssonar og B. Lardner, við BBP. Gegn því skilyrði að BGL uppfylli skilyrði þau sem nefnd eru hér að ofan, lofar VB að greiða BGL 500.000 Bandaríkjadalí á einu ári frá því að Samningur þessi tekur gildi. Þessi greiðsla er bundin því skilyrði að ekki sé fyrir hendi kröfur BBP á hendur VGL vegna óuppfylltra skyldna eða vegna kostnaðar sem það hefur orðið fyrir en hefur ekki fengið bætt.
2. BGL afsalar einnig VB öllum réttindum sem hlutabréfunum fylgja: réttindum til að taka þátt í að stýra málefnum BBP (þar á meðal rétti til að taka þátt og greiða atkvæði á hluthafafundum), réttindum til að fá arð, réttindum til að fá hluta af eignum BBP til sín eftir að fyrirtækið verður lagt niður, einnig öllum öðrum réttindum sem gert er ráð fyrir í ljöggjöf Rússlands.

3. Þessi samningur er gerður með samþykki annarra hluthafa BBP í samræmi við áskilnað 5.2. gr. stofnskrár BBP, og því til staðfestingar eru undirskriftir þeirra hér fyrir neðan.
4. Þessi samningur fer að íslenskum lögum og allar deilur sem koma upp vegna hans munu skoðast eingöngu af íslenskum dómstólum.
5. Þessi samningur tekur gildi að loknum sex mánuðum eftir dagsetningu undirskriftar hans. Allir aðilar sem undirrita samninginn og staðfesta taka á sig þá skyldu að ræða ekki innihald samningsins við neinn þriðja aðila á sex mánaða tímabili.
6. Þessi samningur er lögleg fyrirskipun um eignayfirfærslu, sem BBP gerir um 325 almenn hlutabréf sem gefin eru út á nafn BBP að nafnvirði 20.000 rúblur hvert, og sem slíkt á að framkvæmast af skrásetjara á nöfnum hluthafa BBP. VB má kynna þessa fyrirskipun fyrir skrásetjara á nöfnum hluthafa BBP eftir að sá dagur kemur þegar samningurinn tekur gildi, það er að segja eftir 24.09.95.
7. Þessi samningur hefur verið gerður og undirritaður í tveimur eintökum á rússnesku í Sankti Pétursborg, Rússlandi 24. mars 1995.

VB (sign)

BGL (sign)

Samþykkir:

Aðrir hluthafar BBP:

AO „Remontno-Mekhanicheskij Zavod” (stimpill og sign)

G.Khomskij, ríkisborgari Rússlands. (sign)”

Á aðalfundi í BBP 24. mars 1995 fyrir starfsárið 1994, sama dag og fyrrgreindur samningur á að hafa verið gerður, kveður stefnandi, að Bernard J. Lardner hafa tilkynnt að hann væri fulltrúi stefnanda, en Ingimar Haukur Ingimarsson hafi einnig verið á fundinum. Þann sama dag hafi verið gerðir aðrir samningar og hafi Bernard J. Lardner undirritað þá alla f.h. stefnanda. Samkvæmt því sem fram kemur á dómskjölum var ekki rætt um áðurgreindan samning á aðalfundinum, sem haldinn var sama dag.

Stefnandi kveður að samkvæmt áætlunum fyrir árið 1995, sem Viktor Pyatko og Björgólfur T., sonur fyrirsvarsmanns stefnda, hafi lagt fram á fundi 17. febrúar 1995 hafi BBP sýnt verulega hagnaðarvon.

Stefnandi kveður fyrirsvarsmnn stefnda, Björgólf Guðmundsson, og félaga hans hafi bókað hluthafafund í BBP í St. Pétursborg 29. september 1995, þar sem nýir hluthafar hafi átt að hafa yfirtekið hlutafé stefnanda, en þeir hafi síðan þurft að breyta þeirri dagsetningu í 25. september 1995 vegna þess að í ljós hafi komið að Björgólfur hafi ekki getað verið í St. Pétursborg 29. september 1995.

Engu uppgjöri, bréfaskiptum eða tilkynningum er til að dreifa um afhendingu stefnanda á yfírráðum á hlutum í BBP til stefnda og Björgólfss samkvæmt samningi frá 24. mars 1995.

Stefnandi kveður fyrirsvarsmann stefnda, Björgólf, ásamt öðrum aðilum, sem tekið hafi stjórn BBP í sínar hendur í september 1995, hafa meinað forsvarsmönnum stefnanda aðgang að verksmiðjunni og skrifstofum BBP.

### III.

Stefnandi byggir kröfur sínar á því, að hann hafi ekki gert áðurgreindan samning og Ingimar Haukur Ingimarsson, fulltrúi fyrirtækisins, hafi ekki undirritað þann samning, sem að framan greinir og lagður var fram í málínu, sem dskj. nr. 3. Heldur stefnandi því fram að annað hvort sé undirskrift Ingimars fölsuð eða að efni samningsins hafi verið sett á undirritað blað eftir að Ingimar Haukur hafi ritað nafn sitt á blaðið.

Fyrir dómi hélt Ingimar Haukur því fram, að hann hafi undirritað auð blöð þegar hann hafi verið í Rússlandi 18. maí 1994 í tilefni af stofnun hlutafélags. Kveðst hann hafa undirritað fimm auð blöð, þar sem hann hafi verið að fara frá Rússlandi og hlutafélagsstofnunin hafi ekki verið frágengin. Fjögur blöð hafi verið ætluð til að gera enska og rússneska útgáfu í tvíriti og eitt blað hafi verið undirritað til vara, ef einhver hinna blaðanna skemmdust. Blöðin kveðst hann hafa skilið eftir hjá lögfræðingi í Rússlandi. Lögfræðingur þessi hafi síðar afhent Ingimar skjöl af áðurgreindu tilefni nokkrum mánuðum síðar og þar á meðal auðu, en undirrituðu blöðin, að því er Ingimar hafi talið. Hins vegar hafi síðar komið í ljós er hann hafi farið að athuga innihald umslagsins betur, að blöðin hafi aðeins verið þrjú í stað fimm. Kvað Ingimar

að blöð þessi hafi verið geymd á stað, þar sem bæði Björgólfur Guðmundsson og sonur hans, Björgólfur Thor, hafi haft aðgang að.

Stefnandi byggir á því, að enda þótt ekki sé komin fram bein sönnun um fölsun á áðurgreindum samningi, m.a. af þeirri ástæðu að frumrit samningsins hafi ekki enn komið fram, bendi efni samningsins og aðstæður, bæði fyrir, eftir og við samningsgerðina til, að yfirgnæfandi líkur séu til þess, að um fölsun hafi verið að ræða. Tiltekur stefnandi eftirfarandi atriði, sem renni stoðum undir þá fullyrðingu sína.

Frumrit hins meinta samnings finnist ekki og sé ekki lagt fram af hálfu stefnda þrátt fyrir áskoranir stefnanda þar um.

Samningurinn hafi eingöngu verið gerður á rússnesku, sem ekki sé venja af hálfu stefnanda, svo sem aðrir framlagðir samningar beri með sér.

Þá sé það venja stefnanda að lögfræðingar séu viðstaddir gerð samninga, en umdeildur samningur beri það með sér að svo hafi ekki verið.

Efni samningsins sé óvenjulega opið og ónákvæmt, nánast barnalega einfalt, eigi það að stafa frá sömu mönnum og gert hafi aðra samninga vegna viðskipta aðila, samanber framlagða gerninga aðila.

Stefnanda kveðst hafa verið kunnugt um að Björgólfur Guðmundsson hefði keypt Viking Brugg (Hansa) fyrir táknað verð og að Björgólfur væri eignalaus maður og hvorki hann né félagið hafi haft bolmagn til að takast á hendur slíkar fjárskuldbindingar, sem í hinum meinta samningi felist. Þessi vitneskja stefnanda hafi síðar, eða á árinu 1995, verið staðfest með úttekt Guðlaugs Guðmundssonar, f.h. Löggiltra Endurskoðenda, f.h. stefnanda á fjárhagsstöðu þessara tveggja aðila.

Hafi Ingimar Haukur Ingimarsson verið orðinn hræddur um hagsmuni stefnanda, sem á þessum tíma hafi átt útistandandi um 4.000.000 USD vegna BBP og þess vegna selt 65% hlut fyrir um 7-800.000 USD, hefði verið eðlilegt að fara fram á tryggingar fyrir skilvísum greiðslum stefnda, en vitað hafi verið að stefndi hafi verið eignalaust fyrirtæki.

Á fundi í London hinn 17. febrúar 1995, hafi stefnanda verið tekið að gruna að ekki væri allt með felldu í bókhaldi BBP undir stjórn Björgólfs T. Björgólfssonar. Hafi því verið ráðinn framkvæmdastjóri í apríl sama ár til að koma reiðu á bókhaldið og færa það frá og með 1. janúar 1995. Stefnandi hafi því keypt bókhaldsforrit, sem unnt væri að treysta og fengið Guðlaug Guðmundsson, löggiltan endurskoðanda, til Rússlands til að gera úttekt á bókhaldskerfi BBP og veita ráðgjöf í þeim eftum. Hafi

hann síðan skilað skýrslu til Ingimars Hauks Ingimarssonar þann 13. september, þar sem gerðar hafi verið tillögur að hentugum bókhaldshugbúnaði fyrir félagið í framtíðinni. Á þessum fundi hafi þeir feðgar, fyrirsvarsmaður stefnda og sonur hans, farið fram á 25% eignarhlut í BBP hvor, samtals 50% fyrir „vel unnin störf”. Stefndi hafi hafnað þessu m.a. vegna grunsemda um heilindi þeirra feðga. Því verði að teljast ótrúverðugt, að stefnandi hafi mánuði síðar selt 65% af sínum hlut á jafnóhagstæðum kjörum og áðurgreindur samningur beri með sér, ógjalfærum kaupendum án nokkurrar tryggingar.

Þá bendir stefnandi á að á sama degi og margnefndur samningur á að hafa verið gerður hafi verið fjallað um viðskipti stefnanda og BBP að verðmæti 2.100.000 USD, án þess að þess sé nokkuð getið í umdeildum samningi.

Stefnandi kveður reikningsnúmer, sem gefið hafi verið upp sem reikningsnúmer stefnanda á samningnum ekki vera rétt. Rétt reikningsnúmer stefnanda sé 02-639328421. Stefnandi heldur því fram, að í öllum samningum stefnanda hafi verið gengið gaumgæfilega úr skuggá um að allar bankaupplýsingar um hann væru réttar og hefði sama verið gert ef stefnandi hefði í raun staðið að meintum samningi.

Bernard J. Lardner, sem skráður hafi verið fulltrúi stefnanda á aðalfundinum 24. mars 1995, hafi ekki undirritað samninginn, þrátt fyrir að hann væri á staðnum þann dag.

Stefnandi kveður Ingimar Hauk ekki hafa haft heimild til að selja hlutafjáreign í BBP, samanber bréf dagsett 15. júlí 1996. Fullyrðir stefnandi að það sé í samræmi við viðurkenndar reglur, að þessu leyti, um allan hinn vestræna heim. Jafnframt verði að líta til þess að eignarhlutinn í BBP hafi verið eina eign fyrirtækisins og hafi því skipt öllu málí.

Þá byggir stefnandi á því, að alkunna sé að við öll meiriháttar viðskipti óski aðilar eftir því að forsvarsmenn hlutafélaga sýni umboð til að gera viðkomandi gerning. Liggi umboð ekki fyrir og ekkert komi fram sem bendi til umboðs sé það samningsaðilans að sanna að sá, sem undirritar samning fyrir gagnaðila, hafi haft til þess gilt umboð. Takist sú sönnun ekki, sé samningurinn ekki skuldbindandi gegn mótmælum viðkomandi félags.

Í umdeildum samningi komi jafnframt fram, að stefnandi skuldbindi sig til að rifta öllum samningum, sem hann hafi gert við BBP. Hér sé um mjög opna og óskilgreinda skyldu að ræða. Þá skuldbindi samningurinn einnig einstaklingana Bernard J. Lardner og Ingimar Hauk Ingimarsson, sem verði að teljast harla

óvenjulegt, þó óvenjulegra sé að Bernard J. Lardner skyld ekki sjálfur skrifa undir samning fyrir sína hönd og stefnanda. Þetta geri samninginn vægast sagt ótrúverðugan. Þá sé hvorki Bernard J. Lardner né Ingimari Hauki ætlað endurgjald fyrir þessa skuldbindingu sína.

Stefnandi kveður samninginn vera í miklu ójafnvægi. Eina skylda stefnda hafi verið að leysa stefnanda undan skyldu við Gosan hf. Skuldin við Gosan hf. hafi á þessum tíma verið talin u.p.b. 200-300.000 USD. Stefndi hafi átt að hirða öll réttindi hins selda, þ.e. hlutafélagsins. Stefndi hafi ekki átt að fullnægja skyldu sinni gagnvart Gosan hf. fyrr en stefnandi hefði rift öllum samningum við ótiltekna aðila og að því er virðist leysa þau mál öll. Með hliðsjón af mati á hlutabréfunum, sem hafi verið grundvallað á upplýsingum sem legið hafi fyrir 17. febrúar 1995, sé ójafnvægi samningsins einnig með ólíkindum.

Af umdeildum samningi verði ráðið að Gosan hf. hefði þurft að samþykkja skuldskeytinguna vegna skulda stefnanda við Gosan hf. Parmaco hf., sem yfirtekið hafði Gosan hf., tryggði ekki stöðu sína samkvæmt samningnum, sem stefnandi telur enn frekar veikja trúverðugleika samningsins.

Í samningnum sé tekið fram að hann skuli taka gildi 6 mánuðum eftir undirskrift, en jafnframt að hann sé löggilt afsal á 325 hlutabréfum til stefnda. Sérstaka athygli vekji, að í samningnum, sem varði sölu á hlutabréfum í fyrirtæki í fullum rekstri, sé ekki vikið einu orði að heimildum seljanda til ráðstafana á tímabilinu frá meintri samningsgerð fram til afhendingar, né hvernig taka eigi á áhrifum þeirra ráðstafana á rekstur fyrirtækisins og eignastöðu, né heldur sé tekið á formsatriðum við afhendingu hins selda í september 1995 eða afhendingarskilmálum að öðru leyti.

Stefnandi kveðst hafa haft gífulegra hagsmuna að gæta að fyrirtækið gengi vel, m.a. vegna inneignar stefnanda hjá BBP. Eigendur stefnanda hafi haft enn meiri hagsmuna að gæta vegna Opera Holdings Limited, sem eigi nú inni hjá BBP u.p.b. 4.559.391 USD. Þetta renni enn frekar stoðum undir að óliklegt sé að stefnandi hafi gert umdeildan samning við stefnda. Stefndi hafi ekki átt að bera neitt úr býtum, en færa hins vegar alla hagsmuni yfir til stefnda og Björgólfs Guðmundssonar. Stefndi hafi því ekkert eftirlit getað haft með fyrirtækinu eftir þetta, sem hljóti að teljast afleit staða ef fyrirtækið hafi gengið eins illa og stefndi vilji halda fram.

Stefnandi telur, að samningar, sem stefnandi hafi gert sama dag og umdeildur samningur eigi að hafa verið gerður og samningar gerðir eftir þann tíma, staðfesti að umdeildur samningur geti ekki hafa verið gerður milli aðila. Þá bendi atvik máls eftir

24. mars 1995 fram til 29. september 1995 til þess að samningurinn geti ekki hafa verið gerður milli aðila. Á þessum tíma hafi fyrirtækið gengið vel og áætlanir fyrir árið 1995, sem lagðar hafi verið fram á fundi 17. febrúar 1995, hafi sýnt verulega hagnaðarvon. Bráðabirgðauppgjör fyrir fyrstu 9 mánuði ársins 1995, sýni að hagur fyrirtækisins hafi verið að snúast í samræmi við áætlanir, eins og við hafi verið að búast undir stjórn stefnanda, en Ingimar Haukur Ingimarsson hafi þá verið formaður félagsins. Fyrirtækið hafi skilað miklu meiri arðsemi, en gera hafi mátt ráð fyrir í Vestur-Evrópu og því hafi fjárfestingin verið mjög góður kostur. Stefnandi hafi á þessum tíma gert fjölda samninga við aðila sem átt hafi að þjóna hagsmunum BBP. Þá hafi stefnandi lagt mikið fé til BBP í formi lána vegna greidds kostnaðar og jafnframt hafi stefnandi greitt u.p.b. 2.300.000 USD eftir 24. mars 1995. Skuld BBP við stefnanda hafi verið 1.458.251 USD hinn 30. september 1995 og við Opera Holding Limited 4.559.391 USD í ágúst 1996. Stefnandi og Opera Holding Limited hafi gert fjölda samninga er vörðuðu BBP á tímabilinu frá því að umdeildur samningur á að hafa verið gerður og fram til 29. september 1995. Opera Holding Limited sé fyrirtæki skráð á Kýpur og í eigu sömu hluthafa og eigi hlutafé í stefnanda. Þetta nýja fyrirtæki hafi verið stofnað vegna þess að Sovétríkin hafi gert sérstakan samning við Kýpur, sem leitt hafi til þess að ekki hafi verið skyld að greiða virðisaukaskatt vegna samninga um kaupleigu á tækjum og annari þjónustu, tengdrí ráðgjöf og stjórnunarstarfsemi.

Stefndi hafi bókað hluthafafund í BBP í St. Péturnsborg 29. september 1995, þar sem nýir hluthafar hafi átt að hafa yfirtekið hlutafé stefnanda. Síðar hafi stefndi þurft að breyta þessari dagsetningu í 25. september 1995, þar sem í ljós hafi komið að Björgólfur Guðmundsson hafi ekki verið í borginni fyrrgreindan dag.

Þessi atriði öll sýni að útilokað sé að umdeildur samningur sé bindandi samningur milli aðila.

Til vara byggir stefnandi á því, að hinn meinti samningur sé ekki skuldbindandi fyrir stefnanda, þar sem Ingimar Haukur Ingimarsson, sem einn undirriti meintan samning, hafi skort umboð og heimild stefnanda til þess að standa þannig einn að hinni meintu ráðstöfun á hlutabréfum í BBP. Jafnframt verði að líta til þess, að eignarhlutinn í BBP hafi verið eina eign fyrirtækisins og hafi því skipt öllu máli.

Stefnandi kveður það alkunnugt að við öll meiriháttar viðskipti óski aðilar eftir því að forsvarsmenn hlutafélaga sýni umboð til að gera viðkomandi gerning. Liggi umboð ekki fyrir og ekkert komi fram sem bendi til umboðs sé það samningsaðilans

að sanna að sé, sem undirriti samning fyrir gagnaðila, hafi til þess gilt umboð. Takist sú sönnun ekki sé samningurinn ekki skuldbindandi gegn mótmælum félags.

Verði ekki fallist á framangreind rök stefnanda og Ingimar Haukur Ingimarsson verði talinn hafa undirritað samninginn í Rússlandi hinn 24. mars 1995, byggir stefnandi á því, að samningurinn sé ógildur, þar sem hvorugur samningsaðila, a.m.k. stefnandi og Ingimar Haukur Ingimarsson, hafi skilið tungumálið, sem samningurinn hafi verið ritaður á. Vilji stefnanda hafi ekki staðið til samnings með þessu efni og sé hann því ógildur, enda hafi stefnada verið ljós eða mátt vera ljós viljaskorturinn, sem leitt hafi af vankunnáttu stefnanda á samningstungumálínu. Hafi Ingimar Haukur Ingimarsson komið að undirritun samningsins, sé engu að síður ljóst að hann sé hvorki læs né skrifandi á rússneska tungu. Þá komi ekkert fram í afriti hins meinta samnings, um að samningsaðilar hafi notið aðstoðar túlka. Um hinn meinta samning gildi íslensk lög, sbr. 4. gr. samningsins. Samkvæmt íslenskum samningarátti sé samningur ekki gildur gagnvart manni, sem ekki skilur efni þess plaggs, sem hann hefur ritað undir og engum samningsvilja sé í raun til að dreifa. Af því leiði að hinn meinti samningur njóti engrar réttarverndar að íslenskum lögum og teljist því ógildur og markleysa.

Stefnandi telur hlut sinn í BBP vera a.m.k. 10-15 milljón USD virði eða 650-1000 milljónir íslenskra króna.

Stefnandi byggir og á 36. gr. laga nr. 7/1936, um samninga, umboð og ógilda löggerninga, en samkvæmt því sem að framan sé rakið eigi sú grein við um umdeildan samning.

Þá bendir stefnandi á, að samningurinn feli í sér, að stefnanda sé skyldt að rífta öllum samningum vegna BBP, sem þýði að öllum tækjum þyrfi að skila, jafnvel til Gosan hf. líka, og skyldt væri að hætta að nota leyfi annarra aðila. Öllum þessum hagsmunum sé fórnar að með 1. gr. samningsins. Ójafnvægið milli skuldbindinga samningsaðila sé slíkt, að ekki verði hjá því komist að ógilda samninginn í heild sinni með stoð í ógildingarákvæði 36. gr. laga nr. 7/1936. Stefndi hafi átt að efna þær litlu skuldbindingar sem hann hafði samkvæmt samningnum eftir að stefnandi hefði efnt sínar. Með hliðsjón af fjárhagsstöðu stefnda verði að telja ósanngjarn og andstætt góðri viðskiptavenju að stefndi beri samninginn fyrir sig og því beri að ógilda samninginn með stoð í almennri ógildingarheimild samningalaga.

Um lagarök vísar stefnandi til meginreglna kröfuréttar um skilyrði fyrir skuldbindingargildi samninga og samningaráttar um túlkun samninga og lágmarksskilyrði fyrir því að samningur teljist kominn á.

Stefnandi vísar og til ógildingarreglna íslensks samningaráttar á grundvelli viljaskorts, þar á meðal 32. gr. laga nr. 7/1936 til hliðsjónar.

Þá byggir stefnandi kröfur sínar á 36. gr. samningalaga.

Um varnarþing vísar stefnandi til 1. mgr. 33. gr. laga um meðferð einkamála nr. 91/1991.

Kröfu um málskostnað byggir stefnandi á 130. gr. laga nr. 91/1991.

#### IV.

Stefndi byggir kröfu sína um sýknu á því að samningurinn á dskj. nr. 4 hafi verið gerður hinn 24. mars 1995. Kveður hann ástæðu þess að Ingimar Haukur Ingimarsson hafi gert þann samning mega rekja til þess að rekstur fyrirtækisins hafi gengið illa fyrstu tvö árin, þ.e.a.s. árin 1993 og 1994 og fyrirtækið verið rekið með tapi. Þetta sýni m.a. ársskýrslur fyrirtækisins fyrrgreind ár. Kveður stefndi Ingimar Hauk Ingimarsson hafa fyllst efasemdum um að hann næði til baka þeim fjármunum, sem hann og fyrirtækið hafi lánað Baltic Bottling Plant Ltd. Hafi hann því viljað draga sig út úr fyrirtækinu. Einnig hafi Ingimar Haukur viljað losna út úr samstarfinu við Bernard J. Lardner. Þar að auki hafi rússnesku hlutahafarnir í fyrirtækinu verið orðnir tortrygganir í garð Ingimars Hauks og talið hann vera óheilan í samstarfinu. Stefndi kveðst hins vegar hafa haft trú á að bjarga mætti fyrirtækinu m.a. með því að blanda áfengi saman við gosið og með því framleiða svokallaða „long drinks”. Ingimar hafi hins vegar ekki haft trú á þessari hugmynd. Þá kveður stefndi að auk þessa hafi hann talið sig vera skuldbundinn Gosan hf. og bæri að sjá til þess að söluverð vélanna og tækjanna yrði greitt.

Stefndi kveður fyrrgreinda framleiðslu á „long drinks” hafa farið að skila árangri þegar á árinu 1995, en þó ekki fyrr en eftir að áðurgreindur samningur hafi verið gerður. Kveður stefndi Ingimar Hauk þá hafa séð að sér og gert sér grein fyrir að hann hefði hlaupið á sig með samningsgerðinni.

Stefndi kveður skýringu þess að samningurinn hafi ekki átt að taka gildi fyrir en sex mánuðum frá undirskrift hans hafa verið þá, að Ingimar Haukur hafi talið sig eiga mikið fé inni hjá fyrirtækinu og viljað tryggja að hann fengi það fé áður en samningurinn tæki gildi og gert ráð fyrir því í samningnum að hann héldi völdum sínum í fyrirtækinu og félaga hans, Bernard Lardner, haldið utan við samningsgerðina og áhersla lögð á að hann fengi ekki að vita af samningnum. Stefndi kveður Ingimar Hauk hafa sogað til sín fé úr fyrirtækinu eftir samningsgerðina og fram til þess er samningurinn varð virkur, en á þessum tíma hafi sala aukist eins og áður greini.

Stefndi kveður Ingimar Hauk og Bernard J. Lardner hafa neytt ýmissa bragða til að þurfa ekki að standa við samninginn. Hafi þeir m.a. höfðað mál fyrir rússneskum dómstórum eða úrskurðaraðilum til að fá samningnum hnekkt. Þetta hafi þeim mistekist, þar sem niðurstaða þessara úrskurðaraðila hafi orðið sú að þeir fengu ekki þeirri kröfu sinni framgengt.

Starfsemi fyrirtækisins hafi verið haldið áfram, en í mars 1997 hafi verksmiðjubygging, sem verið hafi hlutafjárframlag RMZ, verið dæmd af féluginu. Jafnframt hafi stofnun og skráning Baltic Bottling Plant Ltd. verið úrskurðuð ógild af tæknilegum ástæðum, en félagið hafi síðan verið skráð hjá Hlutafélagaskránni í Moskvu, sem sé æðsta firmaskrá Rússlands.

Stefnandi kveður sig hins vegar ekki hafa fengið allt það sem hann hafi talið sig vera að kaupa með umræddum samningi þar sem verksmiðjubyggingin hafi verið dæmd af féluginu, en áður hafi stefndi kostað miklu til að koma verksmiðjunni í það horf, sem hentaði starfseminni. Stefndi og aðrir kaupendur samkvæmt fyrrgreindum samningi hafi því orðið þolendur í því sem stefndi kallað leikfléttu Ingimars Hauks Ingimarssonar og Bernard J. Lardner.

Krafa stefnanda um ógildingu á samningnum á grundvelli þess að samningurinn samkvæmt efni sínu stafi ekki frá fyrirsvarsmanni stefnanda og sé um fölsun að ræða. Þessi staðhæfing stefnanda er með öllu órókstudd og ósönnuð eins og raunar sé viðurkennt í stefnu. Þá bendir stefndi á að ef Ingimar Haukur hafi verið sannfærður um þessa kenningu sína hefði verið eðlilegt að kæra til löggreglu, en það hafi hann ekki gert fyrr en að liðnum tæpum tveimur árum.

Stefndi mótmælir því að Ingimar Haukur hafi ekki haft umboð til að rita undir umdeildan samning. Stefndi kveður Ingimari og Bernard J. Lardner hafa verið veitt allsherjarumboð með stjórnarsamþykkt í féluginu Baltic Group Limited, í nóvember 1992. Stefndi kveður, að samkvæmt fyrirliggjandi gögnum sé ljóst, að hinir

raunverulegu eigendur stefnanda séu Ingimar Haukur og Bernard J. Lardner og sem slíkir hafi þeir haft allan rétt til að kaupa og selja eignir fyrir hönd félagsins, eins og ýmsir framlagðir samningar í málínu sýni. Hlutafé félagsins Baltic Group Ltd., stefnanda, hafi við stofnun þess verið 2\$. Ljóst sé samkvæmt því, að til þess að taka þátt í rekstri Baltic Bottling Plant Limited, hafi raunverulegir hagsmunaaðilar þurft að leggja fram fjármagn til verkefnisins.

Stefndi kveður Ingimar Hauk og Bernard J. Lardner hafa látið hina opinberu stjórnendur Baltic Group Limited dagsetja takmarkandi umboð aftur í tímann í því skyni að takmarka vald það, sem þeim hafi verið veitt með stjórnarsamþykkt stefnanda frá nóvember 1992.

Stefndi telur fullyrðingar stefnanda um ójafnvægi í samningnum vera merkingarlausar í ljósi þess að annar aðilinn hafi selt, þar sem hann hafi ekki haft trú á að bjarga mætti fyrtækini, en hinn aðilinn hafi tekið áhættu með kaupunum, þar sem hann hafi haft trú á að snúa mætti rekstrinum við auk þess sem hann hafi talið sig skuldbundinn seljanda vélanna og tækjanna um það að söluverð þeirra yrði greitt. Það sem stefnandi haldi fram að sé ójafnvægi í samningnum hafi ekki komið í ljós fyrr en nokkru eftir að samningurinn hafi verið gerður.

Samkvæmt því sem rakið hafi verið liggi fyrir, að Ingimar Haukur hafi haft umboð til að gera umdeildan samning, enda hafi hann verið í stöðu eiganda. Engar formkröfur séu gerðar í lögum um form slíkra samninga. Þá bendir stefndi á að Bernard J. Lardner hafi f.h. Baltic Group Ltd. framselt 100 hlutabréf í Baltic Bottling Plant Ltd, að nafnvirði 2.000.000 rúblna til G. Khomskij, samkvæmt fundargerð sem stefndi hafi lagt fram. Fundargerð þessi sé jafngildi samnings og jafnbindandi og samningurinn á dskj. nr. 3, þótt ekki sé getið umboða og þótt hann skrifí einn undir framsal hlutabréfanna. Umdeildur samningur fáist ekki dæmdur ógildur nema sönnuð verði staðhæfing stefnanda um að hann sé falsaður, en slíkri sönnun sé ekki til að dreifa. Stefnanda hafi heldur ekki tekist að sanna og sýna fram á ógildingarástæður eða að Ingimar Hauk hafi skort umboð til að gera slíkan samning. Raunverulegir eigendur Baltic Group Ltd. hafi allir haft heimild til að selja hlutabréf í Baltic Bottling Group Ltd. Báðir eigendur hafi og gert það hvor fyrir sig.

Kröfu um málskostnað byggir stefndi á 130. gr. laga nr. 91/1991.

Aðila máls þessa greinir á um gildi samnings, sem lagður hefur verið fram, sem dskj. nr. 4. Samkvæmt 4.gr. samningsins skal fara um hann samkvæmt íslenskum lögum og allar deilur, sem koma upp vegna hans munu skoðast eingöngu af íslenskum dómistólum. Samkvæmt yfirlýsingu lögmanns stefnda í þinghaldi hinn 8. september sl. ber að dæma um meinta undirritun stefnanda og heimild til hennar eftir íslenskum lögum.

Það er meginregla samkvæmt íslenskum lögum að mönnum er frjálst að semja á þann veg sem þeir óska. Þá eru og ekki gerðar kröfur til þess að samningar séu formbundnir.

Í málí þessu liggur frammi samningur, þó ekki sé hann í frumriti, og ber sá samningur með sér að vera undirritaður af Ingimar Hauki Ingimarssyni f.h. stefnanda og Björgólf Guðmundssyni f.h. Viking Brugg hf. Í lok árs 1994 var rekstur félagsins Viking Brugg hf. seldur Björgólf Guðmundssyni, að undanskildu nafni félagsins, sem aðeins mátti nota fram til 1. janúar 1995. Nýtt nafn félagsins, Hansa ehf. var tilkynnt hlutafélagaskrá í ágúst 1995.

Fyrirsvarsmenn aðila máls þessa hafa bæði í aðilaskýrslum fyrir dómi og í stefnu og greinargerð lýst viðskiptum sínum undanfarin ár í tengslum við stofnun og rekstur gosdrykkjaverksmiðju í Rússlandi með þeim hætti, að hvorugum væri treystandi og báðum trúandi til alls.

Stefnandi hefur tínt til ýmis atriði, sem að framan er getið, sem sýna eiga fram á að samningur þessi hljóti að vera falsaður og þá helst með þeim hætti, að áðurgreindur Ingimar Haukur hafi skilið eftir auð blöð með undirskrift sinni, sem síðar hafi verið fyllt út án hans vitundar.

Eins og áður segir liggur fyrir að framlagður samningur ber með sér að vera undirritaður f.h. beggja aðila. Þó svo að greina megi „ójafnvægi”, eins og stefnandi heldur fram, í samningi þessum verður ekki talið að stefnandi hafi með áðurgreindum rökum sýnt fram á að samningurinn sé falsaður. Enda verður ekkert fullyrt um annað, samkvæmt gögnum málsins og samskiptum aðila, en að umdeildur samningur hafi getað verið talinn hagstæður báðum aðilum á þeim tíma sem hann var gerður og ekkert verður fullyrt um hvaða ástæður lágu að baki samningsgerðinni.

Þá ber að athuga hvort aðilar, sem undirrituðu samninginn, hafi haft til þess gilt umboð. Þó svo fullyrt sé í samningnum sjálfum að áðurgreindir aðilar, séu á sannanlegan hátt fulltrúar fyrirtækjanna, sem þeir eru að skuldbinda, hefur stefnandi

fullyrt að Ingimar Haukur Ingimarsson hafi ekki haft umboð til samningsgerðarinnar. Stefndi hefur fullyrt að eigendur stefnanda séu Ingimar Haukur Ingimarsson og Bernard J. Lardner. Stefnandi er í eðli sínu hlutafélag. Umboð til handa stjórmarmönnum og framkvæmdastjóra nær til þesss, sem lög og samþykktir félagsins mæla nánar fyrir um. Stefnandi heldur því fram að samkvæmt samþykktum félgsins hafi Ingimar Haukur Ingimarsson ekki haft umboð til að gera umræddan samning. Stefndi heldur því fram, að bæði Ingimar Haukur og Bernard J. Lardner hafi ætíð komið fram sem eigendur stefnanda og gert samninga í þess nafni og jafnframt vísað til umboðs stjórnar stefnanda frá nóvember 1992, þar sem bæði Ingimar Hauk og Bernard J. Lardner var veitt umboð til samningsgerða f.h. félagsins. Þá hefur fyrirsvarsmaður stefnda fullyrt, að ætlunin hafi verið að láta hinn eiganda stefnanda ekki vita af samningnum og sölunni. Hins vegar liggur fyrir samkvæmt samþykktum félagsins og reglum, sem gilda um þess konar félög sem stefnandi er, að ekki er hægt að veita umboð til handa einstaklingi til þess að framselja meira en 50% hlutafjáreignar.

Með vísan til framanritaðs verður því ekki talið, gegn neitun stefnanda, að Ingimar Haukur Ingimarsson hafi haft tilskilið umboð til að gera margnefndan samning. Ber því þegar af þeirri ástæðu að taka til greina kröfu stefnanda eins og hún er sett fram og ógilda samninginn.

Þrátt fyrir þessa niðurstöðu þykir rétt, með hliðsjón af atvikum öllum, að hvor aðili um sig beri sinn kostnað af málinu.

Hervör Þorvaldsdóttir, héraðsdómari, kvað upp dóm þennan.

#### DÓMSORÐ :

Samningur, dagsettur 24. mars 1995, milli Viking Brugg Limited og Baltic Group Limited þess efnis að Baltic Group Limited afsali til Viking Brugg Ltd. eignarétti yfir 325 almennum hlutabréfum í rússneska hlutafélaginu Baltic Bottling Plant (BBP) að nafnverði 20.000 rúblur hvert, er ógildur.

Málskostnaður fellur niður.

Hervör Þorvaldsdóttir.



N. 5 Lægfræm í Héraðsdomi Reykjavíkur  
6/6 1996

AGREEMENT

Between Icelandic citizen Mr. Bjorgolfur Guðmundsson, address: Vesterbrun 22, 104 Reykjavik Iceland, Passport No. A175076 issued in Reykjavik 27.02.1995, Bank: Islandsbanki hf., Reykjavik, Iceland, Account No. 0513 11284, hereinafter referred to as BG, and Baltic Group Limited, a British Virgin Islands Company registered under this name on the 4-th of September 1992 by the Registrar of Companies, with legal address at Palm Chamber No.3 P.O.Box 3152, Road Town, Tortola, British Virgin Islands, Bank: Standard Chartered Bank (C.I.) Limited, P.O.Box 89, Conway Street, St.-Helier, Jersey, C.I. Account No. 1702418 by Hugo Trust, hereinafter referred to as BGL, duly represented by Mr. Ingimar Ingimarsson, have entered the following agreement:

1. BGL transfers to BG ownership of 325 ordinary registered stock shares (32,5%) with nominal value of 20.000 roubles each of the joint-stock company of closed type Baltic Bottling Plant (6 Bakunina street, St.-Petersburg, Russia), hereinafter referred to as BBP. Additionally, BGL undertakes obligation to cancel all the agreements (including but not limited to: leasing agreements in relation to all kinds of equipment, loan agreements, franchise agreements and other agreements of any kind) concluded and any other agreements which may be concluded by BGL or any other companies related in any way to BGL or Msrs. I.Ingimarsson and B.Lardner with BBP. Subject to the proper execution of aforementioned obligations of BGL, BG undertakes to release BGL from its two agreements with Gosan hf. (P.O.Box 4271, 125 Reykjavik, Iceland) both dated 22 of June 1993 and signed on behalf of Gosan hf by BG.
2. BGL also transfers to BG all rights certified by the shares: The rights to participate in the management of BBP's business affairs (including the rights of participation and voting in shareholders meetings), the rights to receive dividends, the rights to take the portion of BBP's property after BBP's liquidation and also all other rights provided by the legislation of Russia.
3. This Agreement is made with the consent of other shareholders of BBP in accordance with the provisions of par.5.2 of BBP's Statues and this is certified by their signatures below.
4. This Agreement is governed by the laws of Iceland and all the disputes arising concerning this Agreement will solely be heard by Icelandic courts.
5. This Agreement will come into force six months after the date of its signing. Those who sign and endorse this agreement obligate themselves not to discuss its contents with any third parties during the six months period.
6. This Agreement is the legal transfer deed which is made by BGL in respect of 325 ordinary registered stock shares of BBP with nominal value 20.000 roubles each and as such must be executed by keeper of BBP's register of shareholders. This transfer deed may be delivered by BG to BBP's register of shareholders keeper after the date when Agreement comes into force, i.e. after 24/09/95.
7. This Agreement was made and signed in two copies in Russian in St.Petersburg, Russia on the 24 of March 1995.

BG

BGL

APPROVED by  
other shareholders  
of BBP

AO Remontno-Mechanithestky Zavod]

Citizen of Russia G.Homisky

AGREEMENT

44-1534-

68612.

The present Agreement was concluded between "Viking Brewery Ltd", the company under the Laws of Iceland, reg. number 580793-2009, registered by July 09, 1993 by Limited Companies Register, P.O. box 427, 124 Reykjavik, Iceland, the BANK: Icelandbank hf, Reykjavik, Iceland, account number: 05281131, duly represented by Mr. B. Gudmundsson, hereinafter referred as "VB" and "Baltic Group Ltd.", British Virgin Islands company, registered with this name by Companies Register September 04, 1992, the legal address is Palm Chamber: No 3 P.O Box 3152, Road Town, Tortola, British Virgin Islands; the BANK: Standard Chartered Bank (C.I.) Ltd., P.O Box 89, Conway Street, S. Hailay, Jersey, C.I. account number 1702418 Hugo Trust, hereinafter referred as "BGL", duly represented by Mr. Ingmar Ingimarsson, as follows:

1. BGL transfer to VB the right of ownership to 325 common stocks (32,5 %) of JSC "Batic Bottling Plant" (hereinafter referred as "BGL") RUSSIA, St.Petersburg, ul.Bakunina 6 the nominal value of which is 20.000 Roubles per one stock. In addition to above mentioned fact BGL take an obligation to stop the validity of all the Agreements with BBP (including, but not limited with: agreements on leasing of any kind of equipment, credit agreement, trade mark license agreements and any other such agreements), which were concluded and all other agreements, which can be concluded by BGL or any other company related in any way to Mr.Ingimarsson and Mr. Lardner. In case BGL fulfil the above mentioned obligation in correct way, VB take an obligation to pay BGL an amount of USD 500.000 during one year since the signing of the present Agreement. This payment is under clause, that BBP has no claims to BGL related to unfulfilled obligations or caused losses.

2. BGL also transfer to VB all the rights related to the stocks: right to participate in the management of BBP (including the right to participate in the Meeting of Shareholders), the right to earn the dividends, the right to own the part of the property of BBP after its liquidation, and all other rights according to the legislation of the Russian Federation.

3. The present Agreement is concluded with the approval by other Shareholders of BBP in accordance with Articles 5.2. of BBP Charter and this fact is confirmed by the signatures below.

\* 4. The present Agreement is concluded in accordance with the legislation of Iceland and any dispute out of this Agreement shall be settled by Iceland Courts.

5. The present Agreement becomes valid after the six months after it is duly signed. All the signing and approving persons take an obligation not to disclose the fact of this Agreement being signed during a period of six months.

6. The present Agreement is a legal transferring order, which is made by BGL in relation to 325 common stocks the nominal value of which is 20.000 Roubles per one stock and must be treated in proper way by Shares Register Keeper of BBP. This transferring order must be presented to Shares Register Keeper of BBP after the present Agreement becomes valid, i.e. after 24.09.95.

7. The present Agreement is concluded and duly signed in 2 copies in Russian in St.Petersburg, RUSSIA, March 24, 1995.

VB

Mr. G.Hornsky

BGL

A/O "RMZ"

26-APR-1995 11:41 FROM

TO

01719300566

FAX/EC

G.1.1.30

HANSA EHF (Formerly Viking Brewery)  
Vatnagardar 28  
104. Reykjavik  
Iceland

RECEIVED  
26 APR 1995

REGISTERED LETTER

Baltic Group Limited  
P.O. Box 3152  
Road Town  
Tortola  
British Virgin Islands

Reykjavik 22.03, 1996

Dear Sirs,

Regarding BGL's request to the Arbitration Court of St. Petersburg dated 14.03, 1996 and your elaboration concerning the possibility to fulfil payments in accordance with the agreements from 24.03. 1995, between BGL and BG/Hansa (Formerly Viking Brewery) the undersigned wants to put emphasis on the following in Clause 1 of the Agreement between BGL and Hansa ehf:

"Hansa ehf (Formerly Viking Brewery) undertakes the obligation to pay to BGL US\$ 500.000 within one year from the date of this Agreement coming into force."

The undersigned on behalf of BG/Hansa will against a written confirmation from BGL; that no court cases exist regarding the agreements between BGL on one hand and BG/Hansa (Formerly Viking Brewery) on the other as well as confirmation from BGL that both Agreements will be respected to their full extent, immediately effect payment of the agreed sum US\$ 500.000 from an Icelandic Bank via our legal office of Mr. Gudmundur Ingvi Sigurdsson, Barrister to the Supreme Court of Iceland.

We would appreciate your soonest reply to the above.

Sincerely,  
for Hansa ehf (Viking Brewery)

*Björn Þorvaldsson*

Copy Fax to: Baltic Group Limited c/o Mr. Bernard J. Lardner and Mr. I.H. Ingimarsson, Fax no: 44 171 930 0566

TOTAL P. 02

Baltic Bottling Plant Limited

Stutt ysírlit yfir stofnun og rekstur fyrirtækisins, falsaða samninga, ólöglegan bluthafafund og ólöglega yfirtöku og skráningu hlutafjár og málarekstur vegna þessa í Rússlandi 1993 til 1997.

**1993**

4. júní Gosdrykkjaverksmiðjan Baltic Bottling Plant (BBP) stofnuð í St. Pétursborg, Stofnendur: Baltic Group Ltd. (BGL) á 75% hlutafjár og Remonto Mehanichsky Zavod (RMZ) á 25% hlutafjár  
BGL gerir stjórnunarsamning og kaupir notaðar framleiðsluvélar af Gosan hf. til framleiðslu  
gosdrykkja á tveimur framleiðslulínum í BBP fyrir samtals \$1.5m.  
22. júní Hluthafafundur BBP kýs stjórn fyrirtækisins og Ingimar H. Ingimarsson formann stjórnar.  
Starfsmenni Gosan hf og framleiðsluvélar koma til St. Pétursborgar og uppsetning véla hefst.  
29. júlí Framleiðslulína nr. 1 tekin í notkun til framleiðslu/áfyllingu á 1.5l plastflöskur. Sbr.  
júlí - des. nónember Starfsmenni Gosan hf og framleiðsluvélar koma til St. Pétursborgar og uppsetning véla hefst.  
Framleiðslulína nr. 1 tekin í notkun til framleiðslu/áfyllingu á 1.5l plastflöskur. Sbr.  
desember Hluthafafundur BBP kýs stjórn fyrirtækisins og Ingimar H. Ingimarsson formann stjórnar.  
Mikill taprekstur á 1. starfsári BBP þar sem framleiðsla reynist vera aðeins 5% af áætlaðri  
framleiðsluveretu verksmiðunnar samkvæmt áætlun Gosan hf.

**1994**

- júní Framleiðslulína nr. 2 tekin í notkun til áfyllingar á 33cl málmdósir niu mánuðum á eftir  
áætlun sbr. stjórnunarsamning og kaupsamning 22. júní 1993 átti þessi starfsemi að hefjast eigi  
í september 1993.  
1. júlí Magnús Þorsteinsson hættir sem forstjórit og Björgólfur Thor Björgólfsson ráðinn forstjóri  
BBP. Afkastageta framleiðsluvéla Gosan hf aðeins 25% sbr. upplýsingar og loforð Gosan hf.  
Björgólfur Guðmundsson senur fram kröfu um 25% eignaraðild að BBP.  
6. sept. Taprekstur á 2. starfsári BBP þar sem framleiðsla reynist vera minni en 50% af áætlaðri  
desember framleiðsluveretu verksmiðunnar samkvæmt áætlun Gosan hf. Í árslok 1994 og byrjun árs 1995  
framleiðsluveretu verksmiðunnar samkvæmt áætlun Gosan hf. Í árslok 1994 og byrjun árs 1995  
er reksturinn endurskipulagður. Vélbúnadur endurbættur og aukið við framleiðsluvörur. BBP  
skuldar BGL \$4m. Fyrirsjáanlegt er að hagnaður verður af rekstri BBP árið 1995.

**1995**

18. febrúar Björgólfur Guðmundsson setur fram kröfu um 25% eignaraðild að BBP og Björgólfur Thor  
Björgólfsson setur fram kröfu um 25% eignaraðild í BBP.  
24. mars Meintir kaupsamningar sagðir dagsettir og gerðir þar sem BGL á að hafa selt Björgólfí  
Guðmundssyni (BG) 32.5% og fyrirtækinu Viking Brugg hf (VB) 32.5%. Samtals 65% af  
hlutafjáreign sinni í BBP. Samningar eru sagðir gerðir á rússnesku og vera samkvæmt  
íslenskum lögum. BGL er með öllu ókunnuð um tilvist þessara samninga en 24. mars 1995 fór  
fram aðalfundur BBP þar sem engin umræða fór fram um samninga né sölu á öllu hlutafé BGL  
í BBP enda stóð slikt ekki til.  
8. júlí BGL hafnar kröfum Björgólfss og Björgólfss Thor um eignaraðild að BBP  
6. - 9. sept. Uttekt gerð á bókhaldi og fjármálum BBP af sérstökum ráðgjafa stjórnarformanns  
september Ljóst er að árvælta BBP stefnir í númar US\$ 25m og hagnaður af rekstri áætladur US\$ 6m. BGL  
hefur greitt US\$ 1.236m vegna samninga við Gosan hf./Pharmaco hf. 22. júní að upphæð US\$  
1.5m. BBP hefur endurgreitt US\$ 2.6m til BGL vegna láns að upphæð US\$ 4.03m.  
24. sept. Meintir samningar sagðir taka gildi sex mánuðum eftir undirskrift 24. mars 1994. BGL er enn  
með öllu ókunnuð um tilvist tveggja falsaðra samninga BG og VB.  
25. sept. Ólöglegur hluthafafundur BBP, sem haldin er án vitundar og þáttöku BGL. staðfestir BG og  
VB sem hluthafa með 65% hlut og Rússann Gennadin M. Homsky sem hluthafa með 10%  
hlut. Feðgarnir Björgólfur og Björgólf Thor yfirtaka rekstur BBP með ólögmánum hætti.  
10. október Skráningastofa Hlutafélaga Borgartjórnar Sankti Pétursborgar breytir skráningu á hluthófum  
fyrirtækisins. Samkvæmt beiðni BBP eru BG og VB og Rússinn Gennadin M. Homsky skráðir  
sem hluthafar í BBP án vitundar BGL.  
23. október Björgólfur Thor meinar fulltrúum BGL aðgang að skrifstofum og verksmiðju BBP.  
29. október Bernard Lardner, fulltrúi BGL, kemur til Sankti Pétursborgar og heldur fund með Björgólfí  
Thor Björgólfssyni. Á þessum fundi tilkynnir Björgólfur Bernard Lardner að BGL hafi selt alla  
hlutafjáreign sína í BBP og að Ingimar H. Ingimarsson, stjórnarformaður BBP frá 29. júní  
1993 hafi staðið að þeim samningum.  
nónember Fulltrúar BGL fá upplýsingar hjá Skráningastofu Hlutafélaga Borgartjórnar Sankti Péturs-  
borgar um tilvist falsaðra samninga, sbr. 24. mars 1995 hér að ofan, og verður ljóst að 75%

Baltic Bottling Plant Limited

Stutt yfirlit yfir stofnun og rekstur fyrirtækisins, falsaða samninga, ólöglegan hluthafafund og ólöglega yfirtöku og skráningu hlutafjár og málarekstur vegna þessa í Rússlandi 1993 til 1997.

	hlutafjárcign þess í BBP hefur verið stolið og að nýir hluthafar verið skráðir fyrir þessari hlutafjáreign í BBP sbr. 10. október 1995 hér að ofan.
5. des.	Gosan hf. & Pharmaco hf. rífta samningum við BGL frá 22. júní 1993
15. des.	Societe Generale Strauss Turnbull Securities Ltd. i London metur 65% hlutafjáreign í BBP á \$15-\$20m.
desember	Fulltrúar BGL fela rússneskum lögfræðingum sínum að fá meinta og falsaða samninga frá 24. mars 1995 lýsta ógilda fyrir rússneskum dómstóli. Rússneskur dómstóll synjar þessari málalcitan á þeiri forsendu að samningarnir séu sagðir gerðir samkvæmt islenskum lögum og það sé ekki á verksviði rússnesks dómstóls að fjalla um gildi þeirra. Að fengnu álti forseta lagadeildar háskólans í Sankti Pétersborg fela fulltrúar BGL rússneskum lögfræðingum sinum að fá samþykktum hluthafafundar BBP 25. september 1995 ríft með dómi og að ógilda með dómi skráningu á breytingu hluthafa í BBP hjá Skráningastofu Hlutafélaga Borgartjórnar Sankti Pétersborgar frá 10. október 1995.
<hr/>	
1996	
4. janúar	BGL stefnir Skráningastofu Hlutafélaga Borgartjórnar Sankti Pétersborgar, um viðurkenningu á ógildingu skráningu hennar 10. október 1995 á nýjum hluthöfum í BBP.
29. janúar	BGL stefnir BBP um viðurkenningu á ógildingu ákvörðunar hluthafafundar 25. september 1995
18. apríl	Gerðardómur Sankti Pétersborgar og Leningrad-héraðs (1. dómstig) lýsir samþykktir og ákvárdanir hluthafafundar BBP 25. september 1995 ógildar.
4.- 5. júní	Gerðardómur (2. dómstig) staðfestir niðurstöðu 1. dómsstigs og lýsir meintla kaupsamninga gerða 24. mars 1995 marklausa.
29. júlí	Gerðardómur Sambandríkisins Rússlands á Norð-Vestur svæði staðfestir dómsniðurstöðu 1. og 2. dómsstigs Gerðardóms Sankti Pétersborgar og Leningrad-héraðs 18. apríl og 4.-5. júní 1996 óbreyta.
14. des.	Hæstiðetur Sambandsríkisins Rússland í Moskvu vísar frá dómi afryjun BBP vegna dóms Gerðardóms Sambandríkisins á Norð-Vestursvæði frá 29. júlí 1996.
<hr/>	
1997	
20. janúar	Gerðardómur Sanktii Pétersborgar og Leningrad-héraðs (1. dómstig) kvedur upp dóm að skráning Skráningastofu Hlutafélagaskrá Borgartjórnar Sanktii Pétersborgar frá 10. október 1995 skuli lýst ógild og felld úr gildi.
12. mars	Fulltrúar BGL komast í fylgd lögreglu og dómsyfirvalda inn í verksmiðju og skrifstofur BBP eftir að hafa verið meinaður aðgangur að fyrirtækinu í 18 mánuði. Í ljós kemur að fyrirtækið BBP er með öllu eignalauð, 14.000 fm fasteign, skrifstofuáhöld, bílar, tæki og vélbúnaður þess hefur verið selt. Fyrirtækið á US\$ 17.- á bankareikningi. BGL hefur enga greiðslu fengið fyrir 75% hlut sinn í BBP.
28. mars	Gerðardómur Sanktii Pétersborgar og Leningrad-héraðs (2. dómstig) kvedur upp dómsúrskurð um að ákvörðun dómsins (1. dómstig) frá 20. janúar 1997 skuli látin standa óbreytt.
mars	Samkvæmt upplýsingum lögreglu og skattayfirvalda í Sanktii Pétersborg keypti og leigðu fyrirtækin "Rosa" og "Bravo" í borginni á tímabilinu 17. desember 1995 til 15. mars 1996 bíla, skrifstofuáhöld og allar framleiðsluvélar BBP og yfirtók rekstur BBP. Ársvelta Bravo árið 1996 var US\$ 37.369.000. Forstjóri Rosa og Bravo er Magnús Þorsteinsson, fyrrum forstjóri BBP. Í ljós kemur að Bravo keypti árið 1996 til 1997 nýjar framleiðsluvélar fyrir US\$ 2.861.000.- fob. Í mars 1997 skuldar Bravo US\$ 1.046.000.- í skatta og skattaskuldri og skattayfirvöld hafa tekið veð í öllum eignum fyrirtækisins.
april	Nýtt fyrirtæki "Bravo International" hefur starfsemi í Sanktii Pétersborg. Fyrirtækið er í leiguþúsneði við Kuznetzovskaya 52, 196199 Sanktii Pétersborg. Fyrirtækið framleiddir gosdrykki sem upphaflega voru framleiddir í BBP og síðar af Bravo. Stjórnendur Bravo International eru þeir sömu og stjórnuðu BBP og Bravo eftir 25. september 1995. Framleiðsluvélar fyrirtækisins eru nýjar vélar sem Bravo festi kaup á árið 1996 til 1997. Ekki er ljóst hvernig notkun og eignarhald þessara vélala fluttist yfir á Bravo International né hver græddi US\$ 1.423.000.- í tolla og aðflutningsgjöld vélanna.

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Baltic Group Limited 1992 - 1996 : Summary of events

CORPORATE STRUCTURE AND ADMINISTRATION ACTS (rmf-A..)

INCORPORATION

Baltic Worldwide Limited was incorporated the 1st day of September 1992 in the Territory of the British Virgin Islands, under the terms of The International Business Companies, Ordinance (No.8 of 1984 as Amended). The company's registered number is I.B.C. No.: 68703 (rmf-A.1.1.1., rmf-A.1.1.5.). On 4th September 1992 the company's name was changed to Baltic Group Limited (rmf-A.1.1.7., rmf-A.1.1.14., rmf-A.1.1.15., rmf-A.1.1.23., rmf-A.1.1.24., rmf-A.1.1.27.)

NAME, ADDRESS, AND DESCRIPTION OF SUBSCRIBER

Overseas Management Company Trust (B.V.I.) Ltd. of Palm Chambers No. 3, P.O.Box 3152 Road Town, Tortola, British Virgin Islands being a licensed trust company, for the purpose of incorporating an International Business Company under the law of the British Virgin Islands was the original subscriber to the Memorandum of Association of Baltic Worldwide Limited (rmf-A.1.1.1. / Memorandum of Association page 4 and page 19)

THE REGISTERED OFFICE

The registered office of Baltic Group Limited is Palm Chambers No. 3, P.O.Box 3152, Road Town, Tortola, British Virgin Islands (rmf-A.1.1.1. / Memorandum of Association para 2, rmf-A.1.1.15.).

THE REGISTERED AGENT

The registered agent of the Company is Overseas Management Company Trust (B.V.I.) Ltd., Palm Chambers No. 3, P.O.Box 3152, Road Ton, Tortola, British Virgin Islands (rmf-A.1.1.1. / Memorandum of Association para 3).

THE SECRETARY

The secretary of the Company is Hugo Secretaries Limited, P.O.Box 274, Hugo Chambers, 36 Hilgrove St., Helier, Jersey, Channel Islands (rmf-A.1.1.2., rmf-A.1.1.15.).

THE ADMINISTRATION

The administration services to the Company is provided by Hugo Management Services Limited, P.O.Box 274, Hugo Chambers, 36 Hilgrove St., Helier, Jersey, Channel Islands (nnf-A.1.1.15.).

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Baltic Group Limited 1992 - 1996 : Summary of events

LONDON OFFICE

The Company has established an office in London to provide support services to its business. The address is, James House, 1 Babmaes Street, London SW1Y 6HF.

ST. PETERSBURG

The Company established an office in St. Petersburg.

GENERAL OBJECTS AND POWERS

The objects for which the Company is established are to engage in any business or businesses whatsoever, or in any acts or activities, which are not prohibited under any law for the time being in force in the British Virgin Islands, including but not limited to: Carry out without any limitation (s) and anywhere in the world all kinds of legal activities, whether commercial, industrial, financial, investment, cinematographic, broadcasting, advertisement, aerial, real estate, mining, maritime or agricultural related activities, as well as acquisition and sale of shares, bonds, securities and any other assets, as well as to engage in any other legal activity which its Board of Directors or Members may decide.

To do all such or other things as are incidental to or the Company may think conducive to the attainment of all or any of its objects (rmf-A.1.1.1 / Memorandum of Association para 4).

THE SHAREHOLDERS

The shareholders of BALTIC GROUP LIMITED were Ratanui Corporation and Proxima Services Limited (rmf-A.1.1.8.) These shares were acquired from the Subscriber (see page 1). On 13th December 1995 Ratanui's shareholding in BALTIC GROUP LIMITED was transferred to Savail International Limited who became shareholder in BALTIC GROUP LIMITED from that date (rmf-A.1.1.9.).

THE DIRECTOR

Subject to any subsequent amendment to change the number of directors, the number of the directors shall be not less than one nor more than seven. (rmf-A.1.1.1 / Articles of Association para 56). The first director or directors shall be elected by the subscriber(s) to the Memorandum. Thereafter, the directors, other than in the case of a vacancy, shall be elected by the members for such term as the members may determine (rmf-A.1.1.1 / Articles of Association para 57). Until the directors are appointed the subscriber to the Memorandum of Association shall have the power to act as directors (rmf-A.1.1.1 / Articles of Association para 60).

The Sole Director of the Company is First Executive Directors Inc., (rmf-A.1.1.10., rmf-A.1.1.11.) who was appointed by the subscriber and the new shareholders did not change this arrangement.

THE POWERS OF THE DIRECTOR

The business of the Company shall be managed by the directors who may pay all expenses incurred preliminary to and in connection with the formation and registration of the Company, and may exercise all such powers of the Company as are not ('covered') by the Ordinance or by these Regulations required to be exercised by the members subject to any delegation of such powers as may be authorized by these Regulations and to such requirements as may be prescribed by resolution of the members; but no requirement made by resolution of the

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members shall prevail if it be inconsistent with these Regulations nor shall such requirement invalidate any prior act of the directors which would have been valid if such requirement had not been made (rmf-A.1.1.1. para 75).

The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provision for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him (rmf-A.1.1.1. para 77).

THE OFFICERS AND AGENTS OF THE COMPANY

- On 9th November 1992 "First Executive Directors Inc., being the sole director of the Company granted the individuals Mr. Bernard J. Lardner and Mr. Ingimar H. Ingimarsson authority concerning matters related to the establishment of Baltic Group Limited (rmf-A.1.1.15., rmf-A.1.1.18., rmf-A.1.1.21.).

**Bernard J. Lardner**

- On 9th November 1992 Baltic Group Limited authorized Mr. Bernard J. Lardner for the period commencing 9th November 1992 to 8th November 1993 to represent Baltic Group Limited in the Russian Federation and negotiate, execute and sign such documents and contracts as may be necessary on behalf of the Company (rmf-A.3.2.4.).
- On 9th November 1993 Baltic Group Limited authorized Mr. Bernard J. Lardner for the period commencing 9th November 1993 to 8th November 1994 to represent Baltic Group Limited in the Russian Federation and negotiate, execute and sign such documents and contracts as may be necessary on behalf of the Company (rmf-A.3.2.5.).
- On 9th November 1994 Baltic Group Limited authorized Mr. Bernard J. Lardner for the period commencing 9th November 1994 to 8th November 1995 to represent Baltic Group Limited in the Russian Federation and negotiate, execute and sign such documents and contracts as may be necessary on behalf of the Company (rmf-A.3.2.6.).
- On 9th November 1995 Baltic Group Limited authorized Mr. Bernard J. Lardner for the period commencing 9th November 1995 to 8th November 1996 to represent Baltic Group Limited in the Russian Federation and negotiate, execute and sign such documents and contracts as may be necessary on behalf of the Company (rmf-A.3.2.3.).
- On 23rd October 1995 a resolution of the corporate director was resolved that a Power of Attorney be executed under Corporate Seal of the Company in favour of Mr. Bernard J. Lardner for the specific purpose of authorizing him to represent Baltic Group Limited in all matters relating to the Legal, Financial, Corporate and Management Affairs of Baltic Group's Russian subsidiary Baltic Bottling Plant Limited and to execute such documents and make such representations as may be necessary in this respect (rmf-A.1.5.5.).
- On 20th December 1995 First Executive Directors Inc. in their capacity as Sole Director of Baltic Group Limited declare "TO WHOM IT MAY CONCERN" that Bernard J. Lardner had the authority from the Baltic Group to sign contracts and agreements, including the purchase and sale of corporate assets, on behalf of Baltic Group (rmf-A.3.2.2.).
- On 19th December 1995 First Executive Directors Inc. in their capacity as Sole Director of Baltic Group Limited declare "TO WHOM IT MAY CONCERN" para c) that Bernard J.

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Baltic Group Limited 1992 - 1996 : Summary of events

Lardner held the authority to represent the directors of Baltic Group Limited at the Annual General Meetings of Baltic Bottling Plant Limited (rmf-A.1.3.6., rmf-A.1.3.1 and rmf-A.1.3.2., rmf-A.1.3.3., rmf-A.1.3.4.).

**Ingimar H. Ingimarsson**

- On 3rd May 1993 Baltic Group Limited authorized Mr. Ingimar H. Ingimarsson to represent Baltic Group Limited and negotiate and execute the establishment of the Russian Company Baltic Bottling Plant Limited and sign such documents as may be necessary in connection therewith. (rmf-A.2.2.2., rmf-A.2.2.3., rmf-A.2.2.4.)
- On 23rd November 1995 Hugo Secretaries Limited, in their capacity as the Company Secretary confirmed that Mr. Ingimar Haukur Ingimarsson does not hold a formal position in Baltic Group Limited. He is neither a director of the Company nor an executive of the Baltic Group Limited. Mr. Ingimar Haukur Ingimarsson is a consultant of the Baltic Group Limited and in this capacity was appointed by Baltic Group Limited together with the other shareholders in Baltic Bottling Plant Limited as Chairman of that Company (rmf-A.2.3.1., rmf-A.1.3.1., rmf-A.1.3.3., rmf-A.1.3.4., emplmnt.cntrct. MR. INGIMAR H. INGIMARSSON/PRX).

DECLARATION CONCERNING SALE OF ASSETS

**THE DIRECTOR**

- On 19th December 1995 First Executive Directors Inc. in their capacity as Sole Director of Baltic Group Limited declare "TO WHOM IT MAY CONCERN" para a) that the Directors of Baltic Group Limited have never taken a decision to sell the company's interest in Baltic Bottling Plant Limited, para b) that the Directors have never issued a specific Power of Attorney to any person to sell the company's interest in Baltic Bottling Plant Limited (rmf-A.1.3.6.).

**THE SECRETARY**

- On 25th October 1995 Hugo Secretaries Limited declare "TO WHOM IT MAY CONCERN" that at no time since the establishment of Baltic Group Limited have they, Hugo Secretaries Limited in their capacity as Company Secretary and Administrators been requested to arrange for the issuance of a Power of Attorney for Mr. I.H.Ingimarsson to be authorized to enter into any Agreement to sell Baltic Group's entire shareholding to any other investor. There is no record in the Minutes of the Board of Directors of Baltic Group Limited that approval has been granted, or even requested, at any time for the sale of any part of Baltic's 65% shareholding in Baltic Bottling Plant Limited (rmf-A.2.2.1.)

**BERNARD J. LARDNER**

- On 7th December 1995 Bernard J. Lardner declares that he had no knowledge of an Agreement dated 24th March 1995 between Baltic Group Limited and Viking Brewery Limited that transferred the 32.5% of shares owned by Baltic Group Limited to Viking Brewery Limited in the company called Baltic Bottling Plant Limited. In this agreement under Clause 1 he, Mr. Bernard J. Lardner , was mentioned, in that all agreements between himself and any companies he represents would cease to have validity. He, Mr. Bernard J. Lardner , was not invited to participate in any discussions relating to it or was he invited to sign the Agreement to make his commitment to the terms valid (rmf-A.3.1.2.)

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Baltic Group Limited 1992 - 1996 : Summary of events

**INGIMAR HAUKUR INGIMARSSON**

- On 25th October 1995 Ingimar Haukur Ingimarsson declares that he has not personally or on behalf of Baltic Group Limited sold, or otherwise assigned any of the 65% shares Baltic Group Limited is presently holding in the Russian company Baltic Bottling Plant Limited in St.Petersburg, Russia (rmf-A.2.1.1.).

**BALTIC GROUP'S LIMITED COMMITMENT CONCERNING BALTIC BOTTLING PLANT LTD.**

**EPILOGUE 1992**

Baltic Group Limited established its operation in St.Petersburg in the last quarter of 1992. Based on the expertise of the company's representatives, Mr. Bernard J. Lardner and Mr. Ingimar H. Ingimarsson, who both had been working in this area since the second half of the year 1991. Baltic Group Limited was investigating feasible business operations and real estate cooperation with local companies and institutions and the St. Petersburg City's authorities.

On 1st December 1992 the company Baltic International Limited, a Russian-British joint-venture company was established by Baltic Group Limited (67%) with the participation of the Russian citizen Mr. Victor Anitsev (33%). The purpose of this company was marketing research and trading activity.

In October 1992 Mr. Ingimar H. Ingimarsson was approached in Iceland by the Icelandic citizen Mr. Bjorgolfur Gudmundsson inquiring the possibility of selling used equipment for bottling softdrinks to Russia. The equipment in question was owned by the Icelandic company Gosan Ltd. (Gosdrykkjaverksmiðjan Sanitas h.f.). Mr. Bjorgolfur Gudmundsson informed that he as the company's director had been given the task by the owner of Gosan Ltd., being the pharmaceutical company Pharmaco Ltd., to sell the company's entire production equipment and close down its production of softdrinks. He informed that preferably the equipment should be sold abroad and not to be used on the Icelandic market. This was based on and due to previous arrangement the owner had made with the company H.F. Ölgerðin Egill Skallagrimsson that had bought the franchise right from Gosan Ltd. to produce and bottle products from the Pepsi Cola Company.

**FEASIBILITY STUDY**

In October 1992 Mr. Ingimarsson introduced this inquiry of Mr. Björgólfur Gudmundsson to Mr. Bernard J. Lardner , the Baltic Group's representative in London and a direct contact was established between him and Mr. Bjorgolfur Gudmundsson and the management team of Gosan Ltd. in Iceland. A preliminary feasibility study with regard to establishing a softdrink production in St. Petersburg on behalf of Baltic Group Limited was undertaken by Mr. Bernard J. Lardner . Considering his preliminary feasibility study Mr. Bernard J. Lardner recommended the matter should be investigated further by preparing a business plan and to establish contacts with local authorities and interested parties in St. Petersburg. His recommendation was based on his knowledge of the situation and local market in St. Petersburg, which drew on his well established contacts in St. Petersburg as he had been visiting the City for well over a year and was familiar with the population structure, legal

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issues, taxation and investigated the direct manufacture of food and drink products. A vital contribution to the Business Plan was the information given by Mr. Bjorgolfur Gudmundsson and the Gosan Ltd. management team on the condition and performance of the equipment for producing soft drinks and the fact that Mr. Ingimar H. Ingimarsson had architectural experience in designing bottling production facilities whereas he had been responsible for designing the production buildings for the Coca-Cola Company and H.F. Ölgerðin Egill Skallagrímsson in Reykjavik.

THE BUSINESS PLAN

During following months number of information exchanged between Baltic Group Limited and Mr. Bjorgolfur Gudmundsson and the management team of Gosan Ltd. on range of possible products and production capacity of the equipment.

Preparations were made in St. Petersburg on behalf of Baltic Group Limited to establish contact with the "Administration of Public Catering St. Petersburg" that was the St. Petersburg City's administrative governing body concerning food production and food packing. The "Administration of Public Catering St. Petersburg" recommended the Russian state owned company Remonto Mehanichsky Zavod as the suitable partner for Baltic Group's Limited interest to establish a joint-venture company for the purpose of producing soft drinks in St. Petersburg. The negotiations in St. Petersburg were carried out on behalf of Baltic Group Limited by the company Baltic International Limited by Mr. Anitsev, the company's director and by Mr. Ingimarsson, the company's chairman.

The work on outlining the proposed business plan was in progress and the two parties being Baltic Group Limited and Gosan Ltd. established a working relationship for preparing the operation of a soft drink production factory in St. Petersburg. Baltic Group Limited entered into agreement with the city's Administration of Public Catering and the state owned company Remonto Mehanichsky Zavod (assigned to the city Administration of Public Catering St. Petersburg) to establish a Russian-British joint-venture for providing services and products in the food processing industry and the distribution of food products in St. Petersburg.

- On 3rd December 1992 a Protocol of Intention for production of soft drinks in St. Petersburg was signed by Baltic International Limited and by Remonto Mehanichsky Zavod assigned to the city Administration of Public Catering St. Petersburg (rmf-H.1.1.1.).
- On 4th December 1992 an agreement was signed between Baltic Group Limited and Remonto Mehanichsky Zavod (assigned to the city Administration of Public Catering St. Petersburg) to establish a shareholding company to be named in English "Baltic Bottling Plant" (rmf-H.1.1.2.). (The foundation documents for this company are dated the 4th day of June 1993, the registration date is 8th day of June 1993.)  
From this agreement there are in existence two versions as follows;  
a) an English version signed by Remonto Mehanichsky Zavod represented by Mr. G. Homsky and Baltic Group Limited represented by Mr. Ingimarsson (rmf-H.1.1.2.-a). This was signed by Mr. Ingimarsson as Mr. Lardner was not present in Russia and Remonto Mehanichsky Zavod AOOT were pressing. It was assumed that Mr. Lardner would sign the formal corporate papers establishing Baltic Bottling Plant very soon thereafter. In the event there was a gap of six months.

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b) a Russian version (rmf-H.1.1.2.-b).

This version which was submitted by Remonto Mehanichsky Zavod AOOT

- together with documents requesting the Special Department of the Militia, St. Petersburg in April 1996 to start a criminal investigation against Mr. Bernard J. Lardner Mr. Bernard J. Lardner, Mr. I.H.Ingimarsson and the company Baltic Group Limited and
- together with documents in a law suit / court case against Baltic Group Limited on 26th day of June 1996 where Remonto Mehanichsky Zavod AOOT asked the court to declare the foundation of Baltic Bottling Plant Limited not valid.

This Russian agreement is signed by Mr. G.Homsky for Remonto Mehanichsky Zavod (seal), and signed for Baltic Group Limited (no seal) by signature which is not the signature of Mr. I.H. Ingimarsson. This Russian version is later prolonged to 31st December 1994 by Bernard J. Lardner for Baltic Group Limited (seal), and by M.Thorsteinsson for Baltic Bottling Plant Limited (seal) (rmf-G.1.1.2.-b). Mr. Bernard J. Lardner has no knowledge of signing such a document.

The text of the Agreement in the English version and the Russian version is identical. Mr. Ingimar H. Ingimarsson did not sign this document and the signature in his name is falsified.

- On 5th December 1992 an agreement was signed between Baltic Group Limited and Gosan Ltd. concerning Baltic Group Limited wishing to purchase Gosan's complete softdrink production lines.
  - Gosan's operatives were to install and operate the equipment in St.Petersburg Russia until Baltic operatives had been familiarized and trained to this extent. This training process was to be completed within one year of commencement of production. (para c). -
  - The machinery was to be delivered to St.Petersburg during the month July of 1993 and the installment of the machinery will start at the same time. It is the intent of both parties to start production no later than 1st September 1993 (para c).
  - The value of this agreement was US \$1.500.000 to be paid prior to the shipment of the machinery (para d), (rmf-G.1.1.1.).
- On 19th February 1993 Baltic Group Limited on behalf of Baltic Bottling Plant Limited writes to Gosdrykkjaverksmiðjan Sanitas h.f. referred to as "Gosan h.f."
  - confirming the purchase of machinery and that Gosan's operatives were to install and operate the equipment in St.Petersburg Russia until Baltic operatives had been familiarized and trained to this extent. This training process was to be completed within one year of commencement of production, as detailed in a separate agreement between both parties (para 1 and para 2),
  - that Gosan h.f. shall ensure production license of the soft drink brand; "Euro Cola" & "Loranga" (para 3),
  - that Gosan h.f. will supply management team that will manage the proposed soft drink factory in St. Petersburg, until such time as Baltic Bottling Plant Limited decides to delegate the management to Baltic Bottling Plant's Limited Russian employees. This process was to be finished by dates in a separate agreements between both parties (para 4),
  - the price for machinery and services (para 1 to para 4) was US \$1.500.000 to be paid; US \$200.000 March 15th, 1993, US \$200,000 April 15th, 1993, US \$1.100.000 on revenue sharing basis as specified in a separate agreement between both parties (para 5).
  - Baltic Bottling Plant Limited will pay Gosan h.f. 2.5% of sales as royalties whilst the brand "Euro Cola" and "Loranga" are produced by the Baltic Bottling Plant Limited (para 6).
  - the machinery will be delivered to St. Petersburg Russia no later than 1st May 1993. It is the intent of both parties to start production July 1st, 1993 (para 7).

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This agreement was based upon the Baltic Bottling Plant Business Plan of February 1993, which both parties had mutually worked on in good faith. (Para 7.3 TIMETABLE of this Business Plan indicates; "installation of the lines is expected to take six weeks which will be followed by the recruitment and training of production staff prior to the launch on 1st July 1993 or earlier if this is possible").

- On 26th February 1993 Mr. Bjorgolfur Gudmundsson writes to Baltic Group Limited on a GOSAN letterhead confirming Gosan's h.f. intentions and conditions as detailed in the Baltic Bottling Plant Business Plan of February 1993;
  - Gosan's sale of machinery and equipment for soft drink. (He leaves out the time scheduled for completing installing of equipment and training of Russian employees within one year from commencing production (para 1 and para 2)).
  - Gosan h.f. will supply management team until such time .... (para 3).
  - Gosan h.f. shall ensure production license of the following brands;.... (para 4)
  - The price for machinery and services is US \$1.500.000, to be paid A) US \$400.000 down payment prior to shipment of machinery from Reykjavik and B) US \$1.100.000 on revenue sharing basis, which is defined as 8% of total sales revenue generated each month (para 5).
  - Gosan h.f. confirms machinery delivered to St.Petersburg no later than the 1st May 1993. Gosan h.f. confirms it is the intent of both parties to start production 1st July 1992.

This agreement is based upon the Baltic Bottling Plant Business Plan of February 1993, which both parties had mutually worked on in good faith. This Business Plan is submitted as an appendix to this agreement. (Para 7.3 TIMETABLE of this Business Plan indicates; "installation of the lines is expected to take six weeks which will be followed by the recruitment and training of production staff prior to the launch on 1st July 1993 or earlier if this is possible")

Baltic Group Limited prepared the Baltic Bottling Plant Business Plan of February 1993 in close cooperation with Gosan h.f. management with regard to possible range of products and condition and production capacity of the machinery. Mr. Bjorgolfur Gudmundsson but more detailed Mr. Magnus Thorsteinsson on behalf of Gosan h.f. did provide the information on the condition and production capacity of the machinery. These information on the production capacity of machinery was the basis for the Business Plan calculation and the profitability of this business venture.

Baltic Group's Limited market research in St. Petersburg had indicated huge demand for this soft drink production and limited only by the capacity of the machinery to be purchased by Baltic Group Limited from Gosan h.f..

- In March 1993 Baltic International Limited purchased from Gosan h.f., Invoice No. 054510 for US \$17.257.50, three containers of soft drinks produced by Gosan h.f. to be sold in St.Petersburg for marketing research. (rmf-G.1.1.4.).

Around the same time Mr. Magnus Thorsteinsson and Mr. Bjorgolfur T. Bjorgolfsson arrived to St. Petersburg to familiarize themselves with the market situation in St. Petersburg. Mr. Bjorgolfur Gudmundsson on behalf of Gosan h.f. had recommended that Mr. Magnus Thorsteinsson should become the head of the management team from Gosan h.f. and his son Mr. Bjorgolfur T. Bjorgolfsson should become the head of marketing of the management team from Gosan h.f. Both individuals had previously been working in these positions at the Gosan h.f. factory in Iceland.

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Gosan h.f. had undertaken and was committed (ref. Gosan's letter 26.02.93 / rmf-G.1.1.3.) to ensure necessary license to produce the soft drinks "Euro Cola" and "Loranga". As time went by it became clear to Baltic Group Limited that Gosan h.f. was unable to undertake and fulfill this commitment and that Baltic Group Limited had to solve this matter on its own. During preparation work and prior to completion of the Business Plan of February 1993 Mr. Bernard J. Lardner undertook a major marketing exercise to find a well established Western soft drinks company to come in as partner to provide a Western brand, supply services, expenditure and finance. This involved discussions in Canada, USA and Europe. The final two were Britvic and Cadbury Schweppes. Gosan made no contribution to this exercise. The final contact was with the soft drink production company Britvic International Limited in England. The purpose of discussions was concerning the manufacture, marketing, distribution and sale of Britvic products (brand names "Corona" and "Tango") in St.Petersburg and commercial collaboration with Baltic Bottling Plant Limited. This cooperation, as discussed was to a great extent based on the production capacity of machinery as informed by Gosan h.f. and reflected in the Business Plan.

It was arranged by Baltic Group Limited for Mr. Magnus Thorsteinsson to visit Britvic International Limited in Chelmsford, England and to discuss and explain to representatives of Britvic the technical details of machinery and equipment for production.

- On 16th April 1993 during his visit, Mr. Magnus Thorsteinsson signed on behalf of Baltic Group Limited / Baltic Bottling Plant Limited a confidentiality agreement between Britvic Soft Drinks Limited and Baltic Bottling Plant Limited (rmf-G.1.1.11.).
- On 4th June 1993 Mr. M. Salter, Managing Director of the company Britvic International Limited writes a letter to Mr. Bernard J. Lardner confirming that following their meeting on 3rd June 1993 his company remains very interested in cooperating in the proposal to establish a bottling plant in the CIS (rmf-G.1.1.5.).
- On 4th June 1993 Mr. Bernard J. Lardner on behalf of Baltic Group Limited writes a letter to Mr. Bjorgolfur Gudmundsson of Gosan h.f. informing about receiving confirmation that Britvic is proceeding with the project. The letter ends; "We would like to stress the importance of the fact that Britvic will request a performance guarantee from Gosan and therefore make sure that the machinery is up to the required standard according to the Business Plan" (rmf-G.1.1.6.).
- On 7th June 1993 Mr. Bjorgolfur Gudmundsson on behalf of Gosan h.f. writes a letter to Mr. Bernard J. Lardner of Baltic Group Limited confirming amongst other that;
  - that when additional required machinery and spare parts in order to run all lines simultaneously as detailed in the business plan "we feel confident to give the required performance guaranty to Britvic",
  - "Prior to delivery of machinery and management team we require a guarantee of payment of US \$300.000 for the machinery. Also we require US\$100.000 to secure the management and training services for the Icelandic team" (rmf-G.1.1.7.).

Mr. Bernard J. Lardner on behalf of Baltic Group Limited continued discussions with Britvic International Limited concerning future cooperation between Britvic International Limited and Baltic Group Limited regarding Baltic Bottling Plant Limited. Both parties were interested this business opportunity of producing soft drinks in St. Petersburg. Britvic International Limited indicated interested in becoming a share holder in Baltic Bottling Plant together with Baltic Group Limited. This interest however was conditional upon the success of the business but mainly upon the production machinery and equipment and the management to be provided by Gosan h.f.. Baltic Group Limited negotiated a financial contribution of US \$400.000 to be provided by Britvic International Limited and this was confirmed by Britvic's Chairman on 9th day of June 1993 (see rmf-G.1.1.5.).

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Britvic International Limited requested a guarantee that the equipment to be purchased from Gosan h.f. had a value in excess of US \$400.000.

- On 21st June the auditing company "Endurskoðunarstofa Sverris Ingólfssonar sf." issued a declaration "To Whom it May Concern" confirming the book value of the machinery well in excess of US \$400.000 (rmf-G.1.1.13.)

THE ESTABLISHING OF BALTIC BOTTLING PLANT LIMITED

- On 4th June 1993 the Russian-British joint-venture company Baltic Bottling Plant Limited was established by Baltic Group Limited (75%) and Remonto Mekhanicheskiy Zavod AOOT (25%) signing the statutes and agreement of the company on this day. The company was registered on 8th day of June, 1993 (rmf-H.1.1.3 / subtng. rmf-C.1.1.1 & rmf-C.1.1.2.). Mr. Ingimar H. Ingimansson signed this Agreement on behalf of Baltic Group Limited under his Power of Attorney issued expressly for this purpose.

The company Remonto Mekhanicheskiy Zavod AOOT had by then been changed from a state owned company to a privatized company and as such was able to become shareholder in the Baltic Bottling Plant Limited. The foundation documents for Baltic Bottling Plant Limited could not be signed prior to Remonto Mekhanicheskiy Zavod being privatized company due to Russian law. However this act was within the time schedule as set out in the agreement to establish Baltic Bottling Plant Limited signed on 4th day of December 1992 (para d) (rmf-H.1.1.2.-a).

THE CHAIRMAN OF BALTIC BOTTLING PLANT LIMITED

- On 29th July 1993 Mr. Ingimar H. Ingimansson was at the first meeting of the Board of Directors of Baltic Bottling Plant Limited elected as the chairman of the company;
- On 12th May 1994 Mr. Ingimar H. Ingimansson participates at the Annual Meeting of shareholders of Baltic Bottling Plant Limited as the Chairman of the company;
- On 24th March 1995 Mr. Ingimar H. Ingimansson participates at the Annual Meeting of shareholders of Baltic Bottling Plant Limited as the Chairman of the company;

The Annual Meeting of shareholders of Baltic Bottling Plant Limited on 12th May 1994 and 24th March 1995 were attended by the two shareholders, Mr. Gennadin Homsky on behalf of Remonto Mekhanicheskiy Zavod AOOT and by Mr. Bernard J. Lardner on behalf of Baltic Group Limited acting under his Power of Attorney. (rmf-H.1.1.4 / subtng. rmf-A.1.3.1 + rmf-A.1.3.2. + rmf-A.1.3.3. + rmf-A.1.3.4.)

THE BRITVIC INTERNATIONAL PURCHASE AGREEMENT

- On 22nd June 1993 a letter / purchase agreement was signed between Britvic International Limited, Baltic Group Limited, Baltic Bottling Plant Limited and Gosan h.f. regarding US \$400,000 financial contribution on behalf of Britvic International regarding the purchase of machinery from Gosan h.f. (rmf-G.1.1.12.).

The terms of payment were;

- US \$100,000 payment prior to shipment of machinery (para 1)
- US \$100,000 conditional to satisfactorily installed PET line (para 5.i)
- US \$100,000 conditional to satisfactorily installed can production line (para 5.i)
- US \$50,000 conditional in respect of the PET line when it has achieved agreed production efficiencies in accordance with the terms of the Baltic Bottling Plant business

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plan dated 18th May 1993 for a period of one month assuming single shift operation (para 5.ii).

- US \$50,000 conditional in respect of the can production line when it has achieved agreed production efficiencies in accordance with the terms of the Baltic Bottling Plant business plan dated 18th May 1993 for a period of one month assuming single shift operation, but not later than one month from the date of the US \$100,000 in respect of the can production line (para 5.iii).

The Baltic Bottling Plant Limited Business Plan from February 1993 had been addcd/revised the 18th May 1993 with regard to range of products, supplier of raw material, start of production, volume of production in 1993 and 1994 as specified in para 1. SUMMARY with regard to para 1.3 THE Business;

- production of range of Britvic carbonated drinks (para 1.3.1)
- it is proposed that Tango will be imported directly from the UK and sold through the distribution system that is being established by Baltic Bottling Plant. This phase has not been included in the business plan (para 1.3.2)
- supply of production material, not available in Russia, will be acquired from Britvic or with the assistance of Britvic from their suppliers (para 1.3.3)
- production is planned to start in late July (1993). As result of slippage of time and a reassessment of the market the number of litres to be produced has been reduced to 11.4m litres in 1993; and 40.7m litres in 1994. This can be achieved with less shifts than was required in the original business plan (para 1.3.4).

THE BRITVIC INTERNATIONAL FRANCHISE AGREEMENT

- On 8th July 1993 a franchise agreement (rmf-G.1.1.20.) was signed between Britvic International Limited by Mr. M.A.W. Salter, Managing Director and Baltic Bottling Plant Limited by Mr. Ingimar H. Ingimarsson, Chairman, relating to the manufacture and sale of Britvic Soft Drinks in part of Russia and the Baltic States. This license was a crucial factor / contribution in order to start up the production and the business of Baltic Bottling Plant Limited. The license was granted by Britvic subject to fulfillment of conditions which had been discussed previously between Britvic International Limited, Baltic Group Limited / Baltic Bottling Plant Limited and Gosan h.f. Under paragraph 2. LICENSE of this agreement are set out the most important condition such as that Baltic Bottling Plant Limited should establish;
  - (b) - (i) - a) a fully equipped and operational 1 1/2 PET filling line,
  - b) a fully equipped and operational 33cl can filling line and
  - c) a fully equipped and operational quality control laboratory staffed by suitably-trained and competent personnel
  - (ii) - Agreement between BBP and Britvic of a marketing plan
  - (iii) - BBP paying to Britvic a franchise fee of US \$400,000.....

Based upon the successful operation and business of Baltic Bottling Plant it was envisaged that Britvic would grant a exclusive license to manufacture and sell Tango in the entire license territory (para 3-a) (rmf-G.1.1.20.).

THE BRITVIC INTERNATIONAL "MARKETING CONTRIBUTION"

With regard to the import and distribution of "Tango" soft drinks through the distribution system of Baltic Group Limited;

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- On 10th October 1993 Mr. Ingimar H. Ingimarsson writes a letter to Mr. Tony Denton, Britvic International Limited referring to the Britvic Purchase Agreement and further negotiation between him and Tony Denton and requesting payments and stating;
  - "As you and I negotiated it was agreed that Britvic will contribute to the distribution of Baltic's Bottling Plant products by paying for two new vans and two new trucks. .... (rmf-G.1.1.18)
- On 12th October 1993 Mr. Bernard J. Lardner on behalf of Baltic Group Limited writes to Tony Denton, Operations Controller Britvic International Limited requesting Britvic to pay for these trucks and vans.

In accordance to Britvic agreeing upon a "marketing contribution" Britvic International Limited paid FIM485,261 on behalf of Baltic Group Limited to the Finnish company VEHO for three delivery trucks and one delivery van. This payment was effected in October 1993 at the time when the relations between Britvic International Limited and Baltic Group Limited / Baltic Bottling Plant Limited and Gosan h.f. had become very difficult due to reasons later described in this report.

THE PURCHASE AGREEMENT PRODUCTION MACHINERY

- On 22nd June 1993 a purchase agreement was signed between Baltic Group Limited by Mr. Bernard J. Lardner acting under his Power of Attorney from Baltic Group Limited and Gosan h.f. by Mr. Bjorgolfur Gudmundsson (rmf-G.1.1.8.)
  - The purchase price was US \$1,100,000 to be paid the following;
  - i) US \$300,000 prior to the shipment of the machinery from Reykjavik to St.Petersburg,
  - ii) US \$800,000 on revenue sharing basis, based on the total monthly sales (excluding VAT) generated by Baltic Bottling Plant Limited subject to the machinery achieving satisfactory production performance. (para 3)
- The machinery will be expected to achieve the production rate continued in the Business Plan dated February 1993 (para 4).

THE MANAGEMENT AGREEMENT

- On 22nd June 1993 a management agreement was signed between Baltic Group Limited by Mr. Bernard J. Lardner acting under his Power of Attorney from Baltic Group Limited and Gosan h.f. by Mr. Bjorgolfur Gudmundsson (rmf-G.1.1.9.).
  - Baltic Group Limited wished to contract a Management team from Gosan h.f. to manage the Baltic Bottling Plant soft drink factory in St. Petersburg until such time Baltic Bottling Plant decides to delegate the management to Baltic Bottling Plant's Russian employees (para a).
  - Gosan h.f. agreed to supply a management team that is familiar with soft drink filling and associated equipment and capable of installing and running such plant. The Management team would also be responsible for the training of Russian staff (para b).
  - The payment to Gosan for the services of the Management team will be US \$400,000 of which US \$100,000 will be paid at the commencement of the contract when the Management team arrives in St.Petersburg. The balance will be paid from 8% of Baltic Bottling Plant's monthly revenue (excluding VAT). Payments will follow immediately the payment for the machinery has been completed (para c).

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**Note:** It was not part of the Agreement as signed that Baltic Group Limited would be responsible for the payment of salaries. Any salary payments were made by Gosan either itself or from funds received under the Management Contract.

THE MANAGEMENT AGREEMENT; CONTRACT MR. MAGNUS THORSTEINSSON

- On 9th July 1993 Mr. Magnus Thorsteinsson signed an employment contract with Baltic Bottling Plant Limited where the company employed him as the company's Managing Director from the 1st July 1993 until December 30th, 1994. (rmf-G.1.1.19.) Under and amongst his duties Mr. Magnus Thorsteinsson shall;
  - train the Russian staff of BBP so as they become competent to perform the duties of the Icelandic team. The training of the technical and production staff shall be completed by no later than 1st day of July 1994, training of the Russian management deputies shall be completed no later than 1st January, 1995 (para 2-f).

As previously stated Mr. Magnus Thorsteinsson was recommended by Mr. Bjorgolfur Gudmundsson on behalf of Gosan h.f. to become the head of the management team from Gosan h.f.. Following this Mr. M.Thorsteinsson was responsible for selecting and the hiring of the members of the Gosan h.f Management Team as per Management agreement dated 22nd June, 1993.

GOSAN INVOICE FOR EQUIPMENT

- On 28th June 1993 Baltic Group Limited receives from Gosan h.f. an invoice for 10 containers containing a complete soft drink factory, ..... (rmf-G.1.1.10.) This invoice bears no invoice number and its form differs and is not identical to Gosan's invoice received for the soft drinks bought in April 1993 (see rmf-G.1.1.4.). Furthermore this invoice was not in accordance to terms of payments as agreed upon in the purchase agreement for machinery and equipment nor the management agreement, both agreements dated on the 22nd day of June 1993, between Baltic Group Limited and Gosan h.f.

BALTIC GROUP'S LIMITED PAYMENTS RE; GOSAN AGREEMENTS

- US \$300,000  
Prior to the shipment of machinery to St. Petersburg Baltic and in accordance with the purchase agreement for equipment Baltic Group Limited arranged for US \$300,000 to be paid as instructed verbally by Mr. Bjorgolfur Gudmundsson to the following bank account (rmf-G.1.1.16.);
  - Chemical Bank New York  
A/c Islandsbanki Gullinbru Reykjavik Iceland  
A/c No. 544-7-21738  
in favour of Account 100061

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• US \$125,000

From 7th October 1994 until 20th day of September 1995 Baltic Group Limited paid in accordance with the purchase agreement for equipment and later arrangement/agreement with Pharmaco h.f. US \$125,000 to the following bank account (rmf-G.1.1.15.)

- Islandsbanki, Reykjavik, Iceland
- Account No.: 0546-38-180007
- Account Name Pharmaco

• US \$525,960

Prior to arrival of the Gosan's h.f. Management team to St.Petersburg and in accordance with the management agreement Baltic Group Limited arranged for US \$100,000 to be paid as instructed by Mr. Sigurður Óskarsson, Finance manager of Gosan h.f. (on behalf of Mr. B. Guðmundsson) to the following bank account (rmf-G.1.1.14.-a, nmf-G.1.1.14.-b);

- Islandsbanki, Gullinbrú, Stórhöfða 17, 112 Reykjavik, Iceland
- Bank No. 528
- Account Type 38
- Account No. 100064

Account Name Baltic BP / Gosan h.f.

From 27th July 1993 until 17th day of October 1995 Baltic Group Limited arranged for US \$525,960 to be paid into this account; (the initial US \$100,000 is included in the US\$ 136,300 payment on 27th day of July 1993) (rmf-G.1.1.14.-b).

Confidential information given by Islandsbanki have confirmed that this account never belonged to Gosan h.f. but to the (then newly established) company Viking Brugg h.f. The information on this account as given by Mr. S. Óskarsson were incorrect with regard to the account belonging to Gosan h.f.. Baltic Group Limited did not have any business with the company Viking Brugg h.f.

• US \$31,200

From 2nd June 1994 until 22nd August, 1994 Baltic Group Limited arranged for US \$31,200 to be paid in accordance to the Management agreement and as instructed by Mr. Magnus Thorsteinsson to the following bank account (rmf-G.1.1.21.);

- Bank name: Midland Bank Plc, 431 Oxford Street, London W1
- Sort Code: 40 05 18
- Account No. 41648012
- Beneficiary Mr. M.Thorsteinsson

• US \$254,497

From 21st April 1994 until 29th September 1995 Baltic Group Limited arranged for US \$254,497 to be paid in accordance to the Management agreement and as instructed by Mr. Bjorgolfur T. Bjorgolfsson to the following bank account (rmf-G.1.1.22.);

- Bank name: Lloyds Bank Plc, Waterloo Place, Pall Mall, London
- Account No. 1044609
- Beneficiary Bjorgolfur Thor Bjorgolfsson

The total payment made by Baltic Group Limited against the two agreements with Gosan h.f. is US \$1,236,657 whereas US \$425,000 was paid against the purchase agreement for equipment

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and US 811,657 was paid against the management agreement and including payments made directly to bank accounts of Mr. Magnus Thorsteinsson and Mr. Bjorgolfur T. Bjorgolfsson.

These payments made by Baltic Group Limited and the facts as described later in this report;

- that the machinery and equipment did not have the production performance as guaranteed by Gosan h.f.,
- that the machinery and equipment was not delivered on time and the installing of the production lines was not completed until autumn 1994 due to which
- the Business Plan projections and cash flow situation lead to the contracts with Britvic International cancellation and
- the failure of the Gosan's h.f. Management team to implement and supervise a proper management structure for the company

were the reason to for Baltic Group's Limited request to revise the terms of payments due to Gosan h.f. according to the two agreements signed on 22nd June, 1993.

ARRIVAL MACHINERY AND MANAGEMENT TEAM TO ST.PETERSBURG

The Gosan h.f. Management team arrived to St. Petersburg in the second half of July 1993. The team consisted of seven persons. The executive team consisted of three persons; the managing director Mr. Magnus Thorsteinsson, the finance director Mr. Sigurður Oskarsson and the sales director Mr. Bjorgolfur T. Bjorgolfsson which had arrived in June 1993. The technical team consisted of four persons, Mr. Ragnar Tryggvason, Mr. Kristinn Baldursson, Mr. Jón Brynjar \_\_\_\_\_ and an additional electrical employee which was employed for several months during installation of equipment.

According to the purchase agreement the machinery was to be delivered CIF, at port in St. Petersburg. Gosan h.f. however decided to ship the equipment to Riga and have it delivered by trucks to St. Petersburg. This caused many weeks delay of delivery and machinery and equipment that was being shipped from Iceland was being delivered and arrived in St. Petersburg in July and August and September 1993. Machinery that Gosan h.f. had ordered separately in England and Germany in order to deliver and to install complete production lines for PET and can filling production arrived during the autumn 1993 and in the first months of 1994.

The technical team of Gosan h.f. started to install the machinery and equipment as soon as it had arrived to St. Petersburg. Due to the delayed delivery of machinery and equipment the team was not able to be fully occupied with installing work. Therefore they were assisting and working together with the Russian contractors who had been hired to necessary alteration and preparation work on the building to be made suitable for the installation of production equipment and machinery.

This very fact is stated here because later, when Baltic Group's Limited and Gosan's representatives started to argue about installing of machinery and start up of production being behind schedule, Gosan's representatives argued the production building had not been ready for installation of production lines. Therefore the technical team had to work on this task prior to be able to start the installation of machinery. This argument is partly true as Gosan's technical team was occupied with alterations and preparation work on the building. But as the necessary machinery and equipment had not arrived, it was only reasonable, and accepted by the Gosan Management executives, to occupy Gosan's technical staff for this purpose.

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THE INSTALLATION OF PRODUCTION MACHINERY AND EQUIPMENT

The technical team of Gosan started to prepare and to install the machinery and equipment as soon as it arrived in St.Petersburg. The time for this task had been severely underestimated by the Gosan Management team. Gosan's previous verbal and written statements with regard to the time for installation and date of start up of production given to Baltic Group Limited and Britvic International Limited were wrong which indicated Gosan's lack of knowledge and expertise to undertake such a task. This very fact and the fact that the machinery and equipment did not arrive on schedule, additional machinery from England and Germany in order to complete the production lines was delivered months behind schedule were the first signs for Baltic Group Limited that Gosan was incapable of handling its assigned task.

- PET line
  - Despite very hard work on behalf of the Gosan's technical team it was not possible to start producing on the PET line until November 1993. Although this line was not completed a limited production was started by using Russian man power to replace yet not delivered and missing parts of the line.
  - The production on the PET line was close to nil due to difficulties with using "elephant feet" instead of "base-cup" bottles as had been used whilst this line was installed in Gosan's factory in Iceland. It took months to solve this problem during which the planned production capacity on the line was restricted.  
It was only after months of negotiations that the seller i.e. the Icelandic Company Pharmaco c/o Gosan accepted full responsibility that the malfunctioning of the PET line was due to usage of the wrong type of "elephant feet" bottles and agreed to finance and purchase a new mould for producing plastic bottles which could be used on the PET line. The new moulds were delivered in April 1994.
  - The necessary rebuild of the production equipment and the fine tuning and adjustment of the Pet-line and test production was completed at Baltic Bottling Plant's cost in May 1994 and with regard to the new type of bottles the problem free production started end of May 1994 i.e. 10 months behind schedule (rmf- H.1.1.6).
- CAN line
  - The work on installing the can line could not be started during 1993 as Gosan's technical team was fully occupied with solving problems and keeping the PET line running. This together with the fact that the main part of the can line i.e. the can filler and seamer did not arrive in St.Petersburg until in the last week of December 1993 resulted in many months delay in starting up the production on the can line. The can line was started in June 1994 (rmf-A.1.4.6.) but it took many months of experiments to try to fine tune the production flow. (rmf- H.1.1.6).
- GLASS line
  - In the Business Plan a provision was made to install and operate glass-bottle production. Machinery and equipment was delivered under the Gosan h.f. / Baltic Group Limited purchase agreement to this effect. This line however was never installed as equipment delivered was old and incomplete and it was not recommended by Gosan's own technical team to be installed!

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The equipment and machinery as delivered by Gosan h.f. under the Purchase Agreement Gosan h.f. / Baltic Group Limited dated 22nd June 1993 (rmf-G.1.1.8.) and Purchase Agreement Britvic International Limited / Gosan h.f. / Baltic Group Limited / Baltic Bottling Plant Limited (rmf-G.1.1.12) was not complete in order to install complete production lines and ensure productivity as agreed and undertaken by Gosan h.f.. During the second half of 1993 it emerged that Gosan h.f. was not willing or unable to fulfill its contractual commitment with regard hereto.

- During August, September and November 1993 Baltic Group Limited c/o Baltic Bottling Plant had to purchase additional and missing production machinery for US \$70,906 and in May 1994 additional machinery for US \$26,400, total US \$ 97,306 in order to complete the installation of the two production lines the purchase of this additional equipment the two lines (PET and can) were not completed as had been planned and production in 1994 and 1995 had to be carried out by using Russian man power replacing missing equipment (rmf-H.1.1.5. para b).
- In addition to Baltic Group's Limited additional expenses on machinery as above Baltic Bottling Plant Limited had to invest and provide funding to finance locally bought equipment and material with regard to completion of the PET and can line production. This created additional problems to the very difficult cash-flow situation of the company
- On 22nd November 1993 Mr. Bernard J. Lardner on behalf of Baltic Group Limited writes a letter to Mr. Bjorgolfur Gudmundsson c/o Gosan h.f. expressing his serious concern about (rmf-G.1.23)
  - the progress being made to set up the Baltic Bottling Plant in St. Petersburg
  - the serious effect of delay on the business plan, the planned production, and more seriously, the cash flow.
  - the possible breach of contract and cooperation with Britvic International Limited

THE OPERATION OF BALTIC BOTTLING PLANT

In order to involve the Russian members of the Board of Directors of Baltic Bottling Plant Limited in the development of the company's business and activity an "Executive Committee" was established represented by three members of the Board of Directors. Their appointment is in accordance to Letter of Appointment dated 30th July 1993 (rmf-1.1.8.)

The activity of the committee in the initial stage of the company's business circled around the preparations of the factory building and installing the production equipment (rmf-H.1.1..)

The management of Baltic Bottling Plant Limited by Mr. Magnus Thorsteinsson was a task which turned out to be to difficult and complex to be undertaken by him. He simply did not have the necessary management experience although this had been stated by Mr. Bjorgolfur Gudmundsson with the proof that Mr. M.Thorsteinsson had successfully been the manager of the Viking Brewery h.f. in Akureyri, Iceland. Mr. M.Thorsteinsson had difficulties in operating in this new environment and lacked both the experience and willingness in delegating tasks and working with both the Icelandic and the Russian members of the Management of Baltic Bottling Plant Limited.

In order to solve this problem the following actions were taken:

• THE FINANCE DEPARTMENT

The first serious problem arose concerning the financial management of the company. The Gosan h.f. Management team was not able to implement a proper financial and accounting system. Gosan h.f. had intended to use the software system the company had been using in Iceland but this software had been used under a license valid only for the use in Iceland. The

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software company was not willing to grant the usage in Russia without further compensation. The result of this was that the delivered IBM computer system for the financial and accounting system was useless and never was used due to the software system missing. After lengthy discussion and serious delay regarding this matter the Icelandic company Pharmaco h.f. c/o Gosan h.f. agreed to finance and purchase both a hardware system as well as software system as selected and recommended by Mr. Magnus Thorsteinsson.

By this time however and after only a short stay in St.Petersburg the financial manager Mr. Sigurður Óskarsson had decided to leave his task and employment with Baltic Bottling Plant Limited. In a letter that Mr. Bernard J. Lardner wrote to Mr. Ingimar H. Ingimarsson on 12th July 1993 he informs about his understanding that Mr. M. Thorsteinsson "does not want the financial man, so to have much control and wishes to do it himself" (rmf-G.1.1.25). Mr. M. Thorsteinsson was not willing or unable to hire an experienced Westerner to replace Mr. S. Óskarsson as financial manager of the company. He instead decided to take care of this task himself and later hired a Russian employee Mr. Igor Kalugin, with limited experience in Western accounting practice and little understanding of the requirements requested by Baltic Group Limited with regard to financial and accounting information.

As a result of this Baltic Bottling Plant's Limited financial management has suffered severely and never got properly implemented. This caused disagreements between the Chairman and the managing director Mr. Magnus Thorsteinsson and later Mr. Bjorgolfur T. Bjorgolfsson, who became managing director from 1st July 1994. Finally during the first half of 1995 this became a very serious situation and damaged the relation between the representatives of Baltic Group Limited and the Management of Baltic Bottling Plant Limited and finally became the reason for the fraudulent take over by the Gosan h.f. representatives of Baltic Groups Limited shareholding in the company in September 1995.

• THE SALES DEPARTMENT

The activity of the sales department was severely restricted due to the lack of products to sell. It was difficult to sell the companies production as the company could not able to guarantee and deliver products in accordance to the request of the market. As production process and volume was behind schedule and the deadline 8th December 1993 with regard to the contract with Britvic International Limited (rmf-G.1.1.20. para 2(b)(i), 2(b)(ii)and 2(b)(iii) ) -b-) was coming up the contract with Britvic was in jeopardy.

In order to indirectly to prolong the contract and keep Britvic supporting the company with production supplies it was decided, based on the recommendation of Mr. Bjorgolfur T. Bjorgolfsson, director of sales to make a big order (18 containers) and import Britvic's Tango product for sale and distribution through Baltic Bottling Plant's sales network. This was agreed with Britvic and also that the goods should be kept in the 'duty free zone' Helsinki on behalf of Britvic for upon Baltic Bottling Plant's Limited short time notice delivery. This deal / proposition became a complete disaster. The sales department had underestimated the market demand and was unable to sell the product. The containers had to be kept during the winter under '0' temperature which damaged the product. This whole exercise was the 'last straw' in the cooperation between Britvic International Limited and Baltic Group Limited / Baltic Bottling Plant.

Due to the unsatisfactory result of installing the production equipment and achieving envisaged production capacity and sales (as specified in the Business Plan 18th day of May 1993) during

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one month of production on each line, accumulation of debts due to purchase of raw material supplied by Britvic, the failure and misjudgment by the sales department regarding the Tango import brought the cooperation between Britvic International Limited and Baltic Group Limited / Baltic Bottling Plant by the end of December 1993 into a tense and critical situation.

These events strengthened Baltic Group's growing uncertainty about Gosan's capability with regard to output capacity and condition of the production machinery and equipment as well as technical and management skills. Mr. Magnus Thorsteinsson the managing director "dug" himself on the factory floor trying to solve the production process with the PET line but simultaneously neglecting the over all management of the company.

In order to save the situation and to create some revenue it was decided to offer to Russian local firms to contract pack / bottle alcohol and water in plastic bottles (rmf-H.1.1.7.). This task was undertaken by Mr. Ingimar H. Ingimarsson and a lucrative and a profitable contract could be secured for bottling red wine imported from Moldavia into 1.0litre bottles.

Further discussions were held with interested parties with regard to bottling vodka into glass bottles on the glass-bottling line to be installed (rmf-H.1.1.7.) As the glass bottling line was not given the priority this business could not be followed upon during the autumn of 1993. However, after completion of installing and starting up of production on the PET and CAN lines in May and June 1994 Baltic Group Limited required the glass-bottling line to be installed. During preparation work for this task it was discovered that too many parts of machinery and equipment were missing and the delivered machinery was not recommended by the technical team to be installed. The information on this line, as given previously by Gosan h.f. and provided for in the Business Plan, was not correct.

In order to capitalize on this business opportunity and to produce bottled vodka it was decided to work out a business proposal for this task by using the can line instead of the glass line. This task was given to Mr. Bjorgolfur T. Bjorgolfsson in the autumn of 1994 after he had taken over as the company's managing director. It was later decided to implement and to produce long drinks in cans as by then, in late 1994, they were successfully being imported from Finland by Russian and Finnish wholesalers operating in the market.

• MR. MAGNUS THORSTEINSSON

By the end of the year, 1993, the situation with the managing director Mr. Magnus Thorsteinsson had become more difficult. He became tired, nervous and tense and difficult to work with. His managing activity was lacking the spirit necessary for the leadership with regard to the Russian employees of Baltic Bottling Plant in the critical start up situation of its business.

This situation was discussed intensively between Mr. Bjorgolfur Gudmundsson and Mr. Bernard J. Lardner following Mr. Bernard J. Lardner's letter to Mr. Guðmundsson the 22nd November 1993 (rmf-G.1.1.23.) It was decided that Mr. Bjorgolfur Gudmundsson on behalf of Gosan h.f. and Mr. Ingimar H. Ingimarsson on behalf of Baltic Bottling Plant Limited should discuss the situation with Mr. Magnus Thorsteinsson during his Christmas Holiday leave in Iceland.

Two meetings were held in Reykjavik between Christmas and New Year in 1993 where Mr. Bjorgolfur Gudmundsson and Mr. Ingimar H. Ingimarsson discussed the situation with Mr. Magnus Thorsteinsson. The conclusion of the meetings was after Mr. Magnus Thorsteinsson had explained his situation within Baltic Bottling Plant Limited and he firmly

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stated he believed he was capable of undertaking this task, which was strongly supported by Mr. Bjorgolfur Gudmundsson , it was decided that Mr. M.Thorsteinsson should continue his task as initially planned and his priorities should be as follows; (rmf-G.I.1.24.);

- to implement a proper management structure with management chart and job description
- to implement internal communication structure and secure information flowing freely between departments;
- to implement reporting structure with regard to sales figures / production planning / invoicing.
- to make necessary preparations for starting up production of the new brand BRAVO in the case the cooperation bctween Britvic International Limited / Baltic Group Limited / Baltic Bottling Plant Limited should be terminated and cease to exist.

The continued employment of Mr. Magnus Thorsteinsson as managing director did not improve the operation and business or management structure of Baltic Group Limited (rmf-G.I.1.24.). His lack of understanding the importance of hiring experienced staff and delegating task to the Russian employees did not improve the situation or the management of the company. This was especially of concern regarding "production planning / production costs / sales forecast / sales / invoicing / accounting" with regard to the financial management of the company. As previously stated in this report this situation arose from "day one" when the financial manager from the Gosan h.f. Management team Mr. Sigurður Óskarsson left the company and Mr. M.Thorsteinsson decided to handle this task on his own.

This was not an acceptable situation for the shareholders of the company and on Baltic Group's Limited request Mr. Bjorgolfur Gudmundsson c/o Gosan h.f. decided that Mr. M.Thorsteinsson should leave the company. Mr. Magnus Thorsteinsson resigned from his duties on 1st July 1994.

• **MR. BJORGOLFUR T. BJORGOLFSSON**

Mr. Bjorgolfur Gudmundsson c/o Gosan h.f. recommended his son Mr. Bjorgolfur T. Bjorgolfsson should take over as managing director of Baltic Bottling Plant Limited from 1st June 1994. This was accepted by the sharehodlers of the company being Remonto Mehanichsky Zavod AOOT and Baltic Group Limited.

The management, business and structure of the company, as left by Mr. Magnus Thorsteinsson and taken over by Mr. Bjorgolfur T. Bjorgolfsson, was a "Russian jungle".

Especially disastrous were the management structure/management chart, the financial department and the accounting system. Mr. Magnus Thorsteinsson had not been able to implement an office file system or internal communication structure as required for a company of this size. He had kept almost all information scattered around with various employees and kept himself as the center point where all information could be recalled. After Mr.

M.Thorsteinsson had left the company Mr. Ingimar H. Ingimarsson undertook the task to establish a status report on the management. During weeks 33 and 34 of 1994 Mr. Ingimarsson discussed and instructed Mr. Bjorgolfur T. Bjorgolfsson on the task ahead of him as managing director.

- On 23rd August 1994 Mr. Ingimarsson issued to Mr. Bjorgolfur T. Bjorgolfsson a 26 pages of BBP-InterOffice Memo instruction concerning the following matters;
  - 01 BBP Files & Storage of Contractual and Official Documentation
  - 02 Official Licenses and Approvals for BBP's operation and production
  - 322 Management structure of BBP
  - 323 Office file system

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- 324 Office Computer System, Hardware and Software
- 3452 Maintenance Management Production Equipment
- 34531 Maintenance Management Building and Site in Parnas
- 34532 Maintenance Management Building and Site in Sampsonievski
- 35 Financial department
- 351 Accounting System
- 37 Legal department
- 381 1993 Audit result

The Russian representative, Mr. Gennadin Homsky of Remonto Mehanichsky Zavod AOOT, approved of Mr. Bjorgolfur T. Bjorgolfsson's appointment as managing director of Baltic Bottling Plant limited especially as Mr. Magnus Thorsteinson had not managed to establish a fruitful working relationship with Mr. G.Homsky. Furthermore Mr. G.Homsky considered himself as being excluded from the actual management of the company due to the fact that Mr. M. Thorsteinsson had established a close and friendly working relationship with Mr. Victor Anitsev, the Russian representative of Baltic Group Limited on the board of directors of Baltic Bottling Plant. Mr. V.Anitsev had taken over the task of supervising the preparation work on altering and making the factory building, provided by Remonto Mehanichsky Zavod AOOT, suitable for the planned soft drink production. This task however initially was the responsibility of Mr. Gennadin Homsky but, due to the personal relationship between him and Mr. Anitsev, Mr. G.Homsky had withdrawn from this responsibility.

Mr. Bjorgolfur T. Bjorgolfsson disliked working with Mr. Victor Anitsev and made it his condition for taking over the post of Managing Director of Baltic Bottling Plant Limited that there would be no interference by Mr. Victor Anitsev in managing the company. The professional relationship between Mr. Bjorgolfur T. Bjorgolfsson and Mr. Victor Anitsev was burdened by their difference of age, back ground and understanding of handling management matters in the Russian environment. This situation had been in existence since the arrival of Mr. Bjorgolfur T. Bjorgolfsson in April 1993 and is indicated in his memo dated 10th day of May 1993 (rmf-G.1.1.26).

• MR. VICTOR ANITSEV

Following the announcement that Mr. Bjorgolfur T. Bjorgolfsson would be appointed Managing Director of Baltic Bottling Plant Limited Mr. Victor Anitsev wished to terminate his working relationship with the Baltic Group Limited. On 12th June 1994 Mr. Victor Anitsev and Mr. Bernard J. Lardner, on behalf of Baltic Group Limited, signed an agreement to this effect. Upon Mr. V.Anitsev's specific request Mr. Ingimar H. Ingimarsson confirmed this agreement with his signature under this agreement (rmf-H.1.1.9).

It was later discovered that Mr. Magnus Thorsteinsson and Mr. Victor Anitsev became partners in a Russian company with the name VIKING trading in imported goods into Russia. This company "took over" the business activity of the company Baltic International Limited importing herring from Iceland into Russia. When Mr. Victor Anitsev left Baltic Bottling Plant Limited he sold his 33% share holding in Baltic International Limited to Baltic Group Limited.

• VICTOR FERENS-SOROTSKY

Legal matters concerning the business of Baltic Bottling Plant Limited were handled by the Russian lawyer Mr. Victor Ferens-Sorotsky. He is the author of the foundation documents of Baltic Bottling Plant and advised on the establishment of the company. Furthermore Mr. Victor Ferens-Sorotsky was the legal adviser to Baltic International Limited as well as advising Mr. Ingimar H. Ingimarsson in legal matters and negotiations concerning other activities he was

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participating in Russia (rmf-H.1.1.10 / -a / -b / -c / -d -e.). The consultancy work and legal advice by Mr. Victor Ferens-Sorotsky regarding planned establishment of the company "The Emperor Limited" is a very important issue in the fraudulent "take over" of the 65% shareholding in Baltic Bottling Plant Limited through Mr. Bjorgolfur Gudmundsson and his company Viking Brugg h.f.

- It will be described later in this report how Mr. Bjorgolfur Gudmundsson got access to two clean sheet of papers with the signature of Mr. Ingimar H. Ingimarsson (rmf-K.1.1.1).

REQUEST FOR REVISION OF FINACIAL TERMS OF AGREEMENTS DATED  
22ND JUNE 1993 BETWEEN GOSAN H.F. / BALTIC GROUP LIMITED

The Baltic Group Limited accepted Mr. Bjorgolfur T. Bjorgolfsson as the managing director of the company as it was holding Gosan h.f. responsible for its commitments under the Purchase Agreement of Equipment and the Management Agreement dated 22nd June 1993 (G.1.1.8. + rmf-G.1.1.9.). Furthermore, Baltic Group Limited had at this time raised the issue with Mr. Bjorgolfur Gudmundsson c/o Gosan h.f. to revise the agreements with regard to the moncys due to Gosan h.f.

- On 28th July 1994 Mr. Bernard J. Lardner, on behalf of Baltic Group Limited, wrote a letter to Mr. Bjorgolfur Gudmundsson at Gosan h.f. expressing Baltic Group's extreme disappointment with both the performance of the equipment and management of the company (rmf-A.1.4.6.). The efficiency of the PET line in 1993 was less than 5% of planned output. By July 1994 the PET and Can production lines were running only at 25% of planned efficiency and output. The final note of this letter was that financial terms should be revised.
- From 28th July 1994 until 20th September 1995 Baltic Group Limited is exchanging correspondence regarding the matter of payment and revision of financial terms (rmf-P)
- On 6th September 1994 a meeting was held at Baltic Group's Limited office in London attended by Mr. Bernard J. Lardner , Mr. Ingimar H. Ingimarsson, Mr. Bjorgolfur Gudmundsson and Mr. Bjorgolfur T. Bjorgolfsson. On the agenda was the situation concerning Baltic Bottling Plant Limited.
- By this time Pharmaco h.f. had accepted Baltic Group's Limited proposal (rmf-P / BGL letter 30.08.1994) for repayments of US \$10,000 a month during low season (rmf-P / Pharmaco's letter dated 30.08.1994). Furthermore Mr. Sindri Sindrason Managing Director of Pharmaco h.f., had announced in his letter to Baltic Group Limited dated 22nd August 1994 (rmf-P) that he had taken over the direct contact with Baltic Group Limited concerning matters related to Gosan h.f. c/o Kemikalia h.f..
- In this meeting on 6th September 1994 whilst discussing revised financial terms of the agreements Mr. Bjorgolfur Gudmundsson informed and stated he could guarantee Baltic Group Limited a US \$300,000 discount on the Purchase Agreement for equipment of initially total US \$1,100,000. For this he requested to become a shareholder in Baltic Bottling Plant Limited and his shareholding to be no less than 1/4 of Baltic Group's Limited shareholding in that company. When asked to explain how he could make such a proposal as this had previously not been offered by Pharmaco h.f. he stated he had Baltic Group's Limited situation with Pharmaco h.f. "under his control". Baltic Group Limited did not accept this offer of a US\$300,000 discount on behalf of Mr. Bjorgolfur Gudmundsson c/o Pharmaco h.f. in return for him becoming a shareholder in Baltic Bottling Plant Limited.
- It was not until later that it was discovered that the management contract with Gosan h.f. for US \$400,000 was not registered or accounted for by Gosan h.f. / Pharmaco h.f.. Also that the bank account with Islandsbanki no. 528-38-100064 named Baltic BP / Gosan h.f.

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(rmf-G.1.1.14-a) where the initial US \$100,000 was paid to and later US \$525,960 does not belong to Gosan h.f. or Pharmaco h.f. but to Viking Brugg h.f. (now Hansa h.f.) which is now owned by Mr. Bjorgolfur Gudmundsson. In the meeting 6th September 1994 Mr. Bjorgolfur Gudmundsson was offering a discount equivalent to the US\$300,000 outstanding on the initial US\$400,000 for the management contract with Gosan h.f. i.e. he was going to buy himself 1/4 of Baltic Group's Limited shareholding in Baltic Bottling Plant Limited for money Baltic Group Limited in fact was not obliged to pay to Gosan h.f. or Pharmaco h.f.

MEETING IN LONDON 17/18TH FEBRUARY 1995

re ; accounting system, cash flow situation; arranging long drink production  
BG/BTB requesting 50% shareholding in BBP

START UP OF LONG DRINKS (nmf-Q)

TRANSFER OF PARNAS BUILDING INTO STATUTORY FUND OF BBP  
(rmf-H.1.1.10.-c & BTB's letter 03.11.'94;

TRANSFER OF PARNAS SITE INTO BBP'S OWNERSHIP  
(rmf-M / IHI's letter 08.05.'95 = rmf-A.2.4.6; BTB's letter 10.05.'95)

ACCOUNTNG SYSTEM (rmf-M / IHI's letters 23.08.'94; 08.05.'95; 2 x 25.05.'95;  
02.06.'95; 07.06.'95; 25.07.'95; 31.07.'95; 11.08.'95; 02.09.'95;

CUSTOM DUTIES ON IMPORTED EQUIPMENT (rmf-H.1.1.10-b)

MANAGEMENT CHART FOR BBP (rmf-L.1)

THE FRAUDULENT AGREEMENTS DATED 24TH DAY OF MARCH, 1995

The signature of Mr. Ingimar H. Ingimarsson on the two fraudulent agreements regarding sale of 65% (2 x 32.5%) of Baltic Group's Limited shares in Baltic Bottling Plant Limited were not signed by Mr. Ingimarsson.

In May 1994 Mr. Ingimarsson, together with his legal adviser Mr. Victor Ferens-Sorotsky, had been negotiating with the Russian citizen Mr. Victor A. Vorotnikov for the establishment of a Russian company to be named "The Emperor Limited".

- On 18th May 1994 Mr. Victor A. Vorotnikov and Mr. Ingimarsson signed an agreement for the establishment of the said company. The agreement was signed in two English and two Russian versions. Mr. Victor A. Vorotnikov was very keen to establish the company as soon as possible as he was in financial difficulties with his business.

Mr. Victor Ferens-Sorotsky was instructed by Mr. Ingimarsson to prepare the formal foundation documents for establishing and registering the company. For this purpose and in order not to lose time Mr. Ingimarsson signed five blank sheets of white paper with his signature he entrusted and left these five sheets with Mr. Victor Ferens-Sorotsky to complete the foundation documents and for Mr. Victor A. Vorotnikov to sign these as well. These five white blank sheets were signed by Mr. Ingimarsson on or shortly after the 18th May 1994. These were five sheets as they would be signed in duplicate in English and Russian and one

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copy was spare as requested by Mr. Ferens-Sorotsky in case we would "have some mistakes" when printing out the last (signed) page on the foundation documents.

- On 28th June 1994 Mr. Victor Ferens-Sorotsky wrote a letter to Mr. Ingimarsson (rmf-K.1.1.1.-c) informing him about Mr. Vorotnikov having "some notes" concerning the statutory documents of the company.

This company was never established. During summer/autumn of 1994 Mr. Victor Ferens-Sorotsky returned the agreement signed on 18th May 1994 together with the white sheets of papers to Mr. Ingimarsson. He handed the documents in a brown envelope to Mr. Ingimarsson who recognized the white sheets of papers with his signature. Mr. Ingimarsson then took this brown envelope to London where he kept it in the Baltic Group's Limited apartment at 44 Dover Street together with other documents (to be filed or destroyed) regarding various business activities in Russia. It was not until the end of September 1995 that Mr. Ingimarsson reviewed his file in the apartment. He then came across "The Emperor Limited" file and discovered there were only three white sheets with his signature. Wondering why the number was only three he thought no further about this fact and destroyed the three sheets.

When recollecting these facts and comparing the signature of Mr. Ingimarsson (rmf-K.1.1.1-b) on the fraudulent agreement meant to be signed on the 24th March 1995 Mr. Ingimarsson believes that the two "originals" i.e. the agreements with Mr. Bjorgolfur Guðmundsson and Viking Brugg are one and the same that he signed on or around 18th May 1994. Both Mr. Bjorgolfur T. Bjorgolfsson together with his girlfriend Ms. Kristín Ólafsdóttir and Mr. Bjorgolfur Guðmundsson and his wife stayed in the Baltic Group's Limited apartment in 44 Dover Street in London in the period after 18th May 1994 until August/September 1995. It is possible that either of them went through the documents and files Mr. Ingimarsson kept in the apartment and took two white sheets of papers with the signature of Mr. Ingimarsson from 'The Emperor Limited' file.

As described other else where in this report Mr. Ingimarsson believes that the fraudulent agreements meant to be signed on 24th March 1995 were in fact signed by the other signatories on the agreement after 8th July 1995. On this day Mr. Bernard J. Lardner informed Mr. Bjorgolfur Guðmundsson in a meeting in St. Petersburg that he would personally deal directly with Pharmaco h.f. regarding Baltic Group's Limited contract with Gosan h.f. regarding purchase of machinery and management team.

A forensic investigation into the signatures could show that the one signature was made before another and that there was a time difference between the signatories of up to 15 months i.e. May 1994 until August 1995 (rmf-G.1.1.27).

VALUATION OF BBP (rmf-R.)

BGL'S INVOLVEMENT IN BBP AFTER 24. MARCH 1995 see rmf-A.1.2. & rmf-A.1.4.2  
Nick Clark (rmf-A.1.4.15)

IHI'S INVOLVEMENT IN BBP AFTER 24. MARCH 1995 SEE RMF-M & rmf-A.2.4

IHI management charts (rmf-L.1 & rmf-M., appointment financial director Thor Kristjansson & letters 08.05.'95; 2 x 25.05.'95; 02.06.'95; 07.06.'95; 25.07.'95; 31.07.'95; 11.08.'95; 02.09.'95;

STATUS OF ACCOUNT BGL/BBP 24.03.1995 I.E. \$4,500,000M (rmf-H.1.1.5.)

BBP DEPTS OWED TO BGL 25.3.1995 (rmf -H.1.1.5.-a & b)

## Efni

- Fréttir
- Viðskipti dagsins
- Siðustu tilboð
- Visitörlur
- Gengi gjaldmiðla
- Tilkynningar
- Fréttir vikunnar

## Hafðu samband

Ahugavert efni

- Búnaðarbunkinn
- Kauphóllin
- Kaupþing
- Landsbankinn
- Íslandsbanki

## Leit

Upplýsingar um fyrirtæki:

Leit með  
mbl.is

Hvar viltu leita



## mbl.is ▶ viðskipti ▶ frétt

Viðskipti | 14.11.2002 | 14:37

# Samson sendir frá sér greinargerð um viðskipti við Ingimar Ingimarsson

Eignarhaldsfélagið Samson ehf., sem er í eigu Björgólfss Guðmundssonar, Björgólfss Thors Björgólfssonar og Magnúsar Þorsteinssonar, hefur sent frá sér yfirlýsing vegna umfjöllunar timaritsins Euromoney um viðskipti og deilu eigenda félagsins og Ingimars Hauks Ingimarssonar. Segir í yfirlýsingunni að þessi átta ára gamla delia snuist fyrst og fremst um þá staðreynd að Ingimar Haukur Ingimarsson sjái ofsjónum yfir þeiri velgengni sem fyrrum samherjar hafa notið og reynt með hótunum og blekkingum að fá aðila til að endurskoða fjárhagslega þætti samninganna um sölu Ingimars á meirihluta í rússnesku verksmiðjunni Baltic Bottling Plant Ltd.

- Senda frétt
- Leita í fréttum mbl.is
- Fréttir vikunnar
- Prenta frétt

Fram kom í fréttum Ríkisútvarpsins í dag að Ingimar Haukur Ingimarsson hefði ritað einkavæðinganefnd og Fjármálaeftirlitini bréf og vakið athygli á dónum í málaferlum hans við Björgólf Guðmundsson og félög hans.

Yfirlýsing Samsonar er eftirfarandi:

### Til fjölmiðla – Að gefnu tilefni

Tilefni þessarar samantektar er grein breska timaritsins Euromoney og úttekt Fréttastofu Útvarps og Sjónvarps á greininni sem fjallar að mestu um aðstandendur Eignarhaldsfélagsins Samson ehf., sem nú eiga í viðræðum við framkvæmdanefnd um einkavæðingu um kaup á 45,8% hlut ríkisins í Landsbanka Íslands hf., og viðskipti þeirra með eignarhluti í verksmiðjufyrirtækinu Baltic Bottling Plant Limited (BBP) í Pétursborg í Rússlandi árið 1995 og þeim deilum sem spruttu í framhaldinu. Að svo komnu máli verður ekki fjallað um ýmiss önnur atriði í grein timaritsins sem þó er full þörf á að leiðréttu.

Þann 24. mars 1995 undirritaði Ingimar Haukur Ingimarsson, eigandi Baltic Group Limited (BGL), samninga við Björgólf Guðmundsson annars vegar og Hansa ehf. hins vegar, þar sem hann selur 65% hlut fyrirtækis síns í rússnesku verksmiðjunni BBP til þessara aðila. Rekstur gekk mjög illa á þeim tíma sem samkomulagið var gert og var stutt í greiðslustöðvun. Lausafjárstaða verksmiðunnar var verulega erfið og voru vanskil gagnvart hinum ýmsu aðilum gríðarleg. Auk þess var aðaleigandi verksmiðunnar, þ.e. eignarhaldsfélag Ingimars Hauks Ingimarssonar, BGL, í umtalsverðum vanefndum gagnvart Gosan hf./Pharmaco hf., en upphaflega höfðu framleiðsluvélar og tæki verið keypt af því félagi og fluttar frá Íslandi til Rússlands. Jafnframt hafði eigandi BGL, Ingimar Haukur



Ingimarsson, lagt hinu rússneska félagi til fé í formi lánafyrirgreiðslu og var orðinn mjög uggandi að honum tækist ekki að ná þeim fjármunum til baka.

Björgólfur Guðmundsson, sem þá var framkvæmdastjóri Gosan/Pharmaco og bar ábyrgð á sölu vélanna til BGL og Ingimars Hauks Ingimarssonar, var orðinn mjög áhyggjufullur um stöðu mála, enda voru vanefndir orðnar verulegar auk þess sem fyrir hans orð þá héldu hráefnisborgjar ró sinni þrátt fyrir ógreiddar úttektir BBP. Björgólfur sjálfur var því nátengdur verkefninu.

Aðstandendur Samson ehf. hafa í fórum sínum itarleg gögn sem sýna fram á stöðu fyrirtækisins á þessum tíma. Björgólfur Guðmundsson og félagið Hansa ehf. buðust til að kaupa hlutabréf eignarhaldsfélagsins BGL í verksmiðjunni og freista þess að ná betri tökum á rekstrinum. Að því gekk Ingimar Haukur Ingimarsson fyrir hönd BGL þann 24. mars 1995, þegar áðurnefndir samningar voru undirritaðir. Samningar þessir voru undirritaðir í viðurvist fulltrúa RMZ fyrirtækisins, sem voru rússneskir meðeigendur í BBP að 35% hluta.

Fljóttlega eftir að samningar voru undirritaðir hóf fyrirtækið framleiðslu á áfengum drykkjum í dósum. Sú nýjung fell í góðan jarðveg og tók reksturinn griðarlega við sér á fáum mánuðum og margfölduðust tekjur verksmiðjunnar á skömmum tíma. Í ljósi þess óskaði Ingimar Haukur Ingimarsson eftir endurskoðun á umræddum samningum við Björgólf Guðmundsson en samkomulag náðist ekki. Ingimar Haukur Ingimarsson undi ekki þeim málalokum.

Hluthafafundur var haldinn í BBP 25. september 1995 og ný stjórn kosin. Eitt fyrsta verk hennar var að ráða til starfa rannsóknarnefnd fulltrúa frá þemur virtum lögmannsstofum til að gera úttekt á fyrirtækinu og viðskiptum BGL og annarra fyrirtækja Ingimars Hauks og meðeiganda hans í BGL, Bernards Lardners, við BBP. Nefndin skilaði itarlegrí skýrslu í janúar 1996. Rannsóknarnefndin telur upp margs konar ósæmileg og refsiverð atriði í viðskiptum fyrirtækja Ingimars og Lardners við BBP.

#### Málaferli

Ingimar Haukur Ingimarsson hefur gengið svo langt að segja að kaupsamningurinn frá 24. mars 1995 sé falsaður. Hann hefur höfðað mál vegna þess í Rússlandi og á Íslandi. Hann hefur í bréfaskriftum og í fjölmöldum rangtúlkað þá dóma sem fjallað hafa um deiluna með mjög alvarlegum hætti. Öll málaferlin í Rússlandi snérust um tæknileg atriði sem aldrei voru sótt gegn aðstandendum Samson.

Ingimar Haukur Ingimarsson heldur fram að samningamir hafi verið dæmdir ógildir og marklausir með hliðsjón af rússneskum lögum um hlutafélög. Þetta er rangt. Málaferlin í Rússlandi fjölluðu ekki um gildi samninganna frá 24. mars 1995 heldur fyrst og fremst um lögmæti ákvörðunar hluthafafundar, þann 25. september sama ár í félaginu BBP, um

breytingar á samþykktum félagsins vegna framsals hlutabréfanna þar sem ekki hafði verið áður leitað samþykkis opinberrar nefndar á framsali þeirra. Málaferlin beindust gegn félagini sjálfa sem og Hlutafélagaskrá St. Pétursborgar en ekki að kaupendum bréfanna. Í kjölfar dómsniðurstöðu var framsal bréfanna skráð hjá réttum yfirvöldum og samþykktir félagsins skráðar hjá æðstu firmaskrá Rússlands í Moskvu án athugasemda eða mótmæla.

Ingimar Haukur Ingimarsson höfðaði mál á Íslandi til ógildingar samningnum fjórum árum eftir að hann var gerður og hélt því fram í senn að undirskrift hans væri fölsuð eða að textinn hefði verið færður á blað sem hann hefði undirritað til annars brúks eða til vara að hann hefði ekki haft umboð til að skuldbinda fyrirtækið BGL. Á staðhæfingu sinni um að kaupsamningurinn sé falsaður hefur Ingimar byggt ásakanir sínar um að fyrirtækinu BBP "hafi verið stolið frá sér".

Umræddir samningar voru undirritaðir í viðurvist hinna rússnesku meðeigenda Ingimars Hauks Ingimarssonar og hafa þeir staðfest undirritun hans við umrædda samningsgerð. Í öðru lagi hafa opinberir vottar (Public Notarius), bæði á Íslandi og í Rússlandi staðfest með áritun tilvist frumrita samninganna. Jafnframt hafa samningarnir verið sendir til rannsóknar hjá rithandarsérfræðingum sem og opinberri rannsóknarstofnun í Rússlandi (Sérfræðideild glæpamála – sérdeild innan aðalstjórnar innanríkismála St. Pétursborgar), sem einnig hafa staðfest að undirritun á frumritum samninganna sé Ingimars Hauks Ingimarssonar. Þetta ferli reyndist m.a. nauðsynlegt í tengslum við endurskráningu verksmiðjufélagsins BBP hjá æðstu hlutafélagaskrá rússneska ríkisins í Moskvu.

Í desember 1999 felldi síðan Héraðsdómur Reykjavíkur dóm í mál BGL gegn Björgólf Guðmundssyni og Hansa ehf. sem höfðað var til ógildingar samningunum frá 24. mars 1995. Niðurstaðan var sú að samningarnir voru dæmdir ógildir á grundvelli þess að Ingimar Haukur Ingimarsson sjálfur, taldi sig ekki hafa haft umboð til undirritunar umræddra samninga.

Í dómnum kemur jafnframt skýrt fram að BGL hafi ekki sýnt fram á að samningarnir hafi verið falsaðir, eins og Ingimar Haukur Ingimarsson heldur stöðugt fram, enda "hafi hann getað verið talinn hagstæður báðum aðilum á þeim tíma sem hann var gerður".

Dómur þessi hefur reynst algerlega marklaus m.a. vegna dóms sem féll þann 17. mars 1997 í gerðardómi St. Pétursborgar sem ógilti stofnsamning BBP, vegna vanefnda á stofnsamþykkt félagsins. Niðurstaða dómsins var á þá veru að ógilda umræddan stofnsamning og var félagið því tekið út af firmaskrá St. Pétursborgar.

Í aðdraganda málaferlanna á Íslandi árið 1999, kærði Björgólfur Guðmundsson og Hansa ehf.

Ingimar Hauk Ingimarsson til Rannsóknarlöggreglu ríkisins fyrir fölsun á umboðum í því skyni að takamarka heimildir hans til undirritunar samninganna frá 1995. Í kjölfarið barst embættinu einnig kæra frá Ingimari Hauki Ingimarssyni á hendur Björgólfí Guðmundssyni þar sem hann er ásakaður um að falsa undirritun Ingimars Hauks Ingimarssonar á samningunum frá 24. mars 1995. Rannsóknarlöggregla ríkisins sendi lögmönnum deiluaðila bréf þann 17. nóvember 1998 þar sem niðurstaða embættisins var kunngjörð, þar segir orðrétt:

„Það er niðurstaða þeirrar athugunar að ekki sé grundvöllur til þess að halda málum þessum áfram. Ákvörðunin um að hefja ekki löggreglurannsókn vegna þessara mála er tekin á grundvelli gagna í báðum málunum.” Fullyrðingar Ingimars Hauks Ingimarssonar að hann hafi ekki undirritað umrædda samninga standast því ekki.

#### Að lokum

Rannsóknarnefnd fulltrúa þriggja virtra löggmannsstofa, sem skipuð var í kjölfar þess að nýir hluthafar komu að félaginu eftir hluthafafundinn 25. september 1995 og stýrt var af einum virtasta lagaprófessor St. Pétursborgar, prófessor Valerie Musin, komst að þeirri niðurstöðu að þátttaka BGL og Ingimars Hauks Ingimarssonar í BBP hafi einkennst að stórfelldum svikum svo sem fjárdráetti, brot á skattalöggjöf, brot á hluthafasamkomulagi við hina rússnesku meðeigendur o.fl. Það var samt mat allra hluthafa BBP að erfitt yrði að sækja mál gegn Ingimari Hauki Ingimarssyni og samstarfsmanni hans Bernard Lardner sökum þess hvernig eignarhaldi BGL væri háttáð en uppsetning félags þeirra, sem skráð er á Bresku jómfrúareyjunum, er þess eðlis að erfitt er að draga menn til ábyrgðar.

Hin siðstu ár hafa verið framkvæmdar fjölmargar áreiðanleikakannanir af hálfu fjölpjöðafyrirtækja og stórra fjármálaufyrirtækja og stofmanna, sem haft hafa hafa samskipti við fyrirtæki tengdum Björgólfí Guðmundssyni, Björgólfí Thor Björgólfssyni og Magnúsi Þorsteinssyni. Má þar nefna fyrirtæki á borð við KBC Bank, Raiffeisen Zentralbank Österreich, Deutsche Bank, Hermes, IFC, Merrill Lynch og Heineken. Umræddar kannanir eru tilkomnar vegna sölu á félögum, sölu á eignarhlutum og lánavfyrirgreiðslu. Öllum þessum aðilum voru ljósar þær deilur sem staðið hafa yfir við umræddan Ingimar Hauk Ingimarsson og er skemmt frá því að segja að fjölmargir lögfræðingar og sérfræðingar á vegum þessara aðila hafa kynnt sér málsgögn og deilurnar og niðurstaðan ávalt verið sú að engin ástaða hefur þótt að taka tillit til athugasemda Ingimars Hauks Ingimarssonar.

Hin átta ára gamla deila snýst fyrst og fremst um þá staðreynð að Ingimar Haukur Ingimarssonar sér ofsjónum yfir þeirri velgengni sem fyrrum samherjar hafa notið og hefur reynt með hótunum og blekkingum að fá aðila til að endurskoða fjárhagslega þætti samninganna frá 24. mars 1995

en án árangurs.

Til baka



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## Ábyrðarbréf

Hr. Páll Gunnar Pálsson  
Fjármálaeftirlitið  
Suðurlandsbraut 32,  
108 Reykjavík

Efni: Yfirlýsing Samson ehf. í Morgunblaðinu 9. nóvember s.l.

Þann 8. nóvember s.l. mun Samson ehf. hafa sent fjölmöldum yfirlýsingu vegna forsíðugreinar nýjasta tölublaðs fjármálatímaritsins *Euromoney*. Morgunblaðið birtir yfirlýsinguna 9. nóvember s.l..

Í yfirlýsingu Samson er sagt frá viðtali Fréttastofu Útvarps í hádeginu 8. nóvember s.l. við undirritaðan þar sem hann á að hafa greint frá samskiptum sínum við aðstandendur Samson um miðjan síðasta áratug. Þá er sagt að vilji undirritaður taka þessi mál upp á ný á þeim vettvangi verði honum mætt og að aðstandendur Samson hafi ekki hingað til og ætli ekki að taka upp á því nú að láta undan sifelldum hótunum undirritaðs. Þá er þess getið að Samson eigi í viðkvæmum viðskiptasamningum við einkavæðinganeftnd ríkisstjórnarinnar, sem séu á lokastigi.

Yfirlýsing Samson er röng hvað varðar undirritaðan. Undirritaður hefur ekki haft í hótunum við aðstandendur Samson. Undirritaður hafði síðast samskipti við aðstandendur Samson í Héraðsdómsmánum Reykjavíkur Mál nr. E-2517/1998 og Mál nr. E-2518/1998.

Fréttamaður fjármálatímaritsins *Euromoney* átti að eigin ósk og frumkvæði viðtal við undirritaðan í Reykjavík 15. október s.l. þar sem hann spurði spurninga vegna starfa og afskipta hans af gosdrykkjaverksmiðjunni Baltic Bottling Plant Ltd. í St. Pétersborg í Rússlandi. Undirritaður greindi fréttamanninum frá ólöglegri yfirtöku hlutafjár í verksmiðjunni af hálfu aðstandenda Samson í september 1995 og málafærslum í Rússlandi og Íslandi vegna þessa. Undirritaður upplýsti fréttamanninn um og afhenti afrit dóma rússneskra og íslenskra dómstóla. Undirritaður skrifaði í janúar s.l. og sendi til ýmissa fjármálastofnana og banka "til þeirra er málið varðar" greinargerð sem hann einnig afhenti fréttamanni *Euromoney*. Þá upplýsti undirritaður fréttamanninn að Baltic Group Ltd. hefði unnið á öllum dómsstigum öll dómsmál, sem það efndi til og stefndi fyrir dómstólum í Rússlandi og á Íslandi til ógildingar meintra kaupsamninga vegna eignarhluta þess í gosdrykkjaverksmiðjunni, ólöglegs hluthafafundar í fyrirtækinu í september 1995 þar sem meintir nýir eigendur að félagini sátu fundinn og ógildingu skráningu firmaskrár í St. Pétersborg í Rússlandi á meintum eignarhlutum Björgólfss Guðmundssonar og hlutafélagsins Viking Brugg ehf (síðar Hansa ehf.) í fyrirtækinu. Þá upplýsti undirritaður að Baltic Group Ltd. hefði fram til þessa dags engar greiðslur fengið frá Björgólfí Guðmundssyni og/eða hlutafélagini Viking Brugg ehf (síðar Hansa ehf) fyrir meint kaup þeirra á eignarhlut í Baltic Bottling Plant Ltd.

Í ofangreindu viðtali við Fréttastofu Útvarps svaraði undirritaður aðspurður af fréttamanni um númerandi stöðu Baltic Group Ltd. vegna ólöglegrar yfirtöku eignarhlutar félagsins í rússnesku gosdrykkjaverksmiðjunni eftirfarandi:

*I augnablikinu er málið í kyrrstöðu, það hefur verið reynt i nokkurn tíma að að gagna um rekstur fyrirtækisins í Rússlandi, gosdrykkjaverksmiðjuna Baltic Bottling Plant fram að þeim tíma sem að henni var eða eigendaskiptin fóru fram á ólöglegan hátt þarna í september '95, við viljum fá yfirlit yfir reksturinn fram til september '95 frá opinberum aðilum í Rússlandi, svo sem framlagningu framtalsgagna og skattframtals og annars þess háttar. Það hefur ekki tekist og hefur reynst mjög erfitt að að gagna. En það er talin forsenda þess að hægt*

*sé að hefja skaðabótamál á hendur þeirra sem að yfirtóku hana ólöglega þarna i lok ársins '95 sem sagt umræddur Björgólfur Guðmundsson og fyrirtæki hans Hansa.*

Spurningu fréttamnnsins hvers vegna undirritaður sendi o.g. greinargerð "til þeirra er málið varðar" í janúar s.l. svaraði hann eftirfarandi: *Það gerði ég persónulega, ekki á vegum sem sagt Baltic Group Limited heldur bara í mínu eigin nafni þar sem að ég vek athygli á því að það sem að fram kemur í ýmsum fréttumaðnum í blöðum í Rússlandi þar sem að getið er um upphaf fyrirtækisins, hvernig það varð til að það er alrangt frá því sagt. Þeir halda því fram að þeir hafi stofnað þessa verksmiðju 1993 en það er alrangt. Verksmiðjan sem var stofnuð 1993 hélt Baltic Bottling Plant og hélt það þar til að þeir yfirtóku hana þarna '95 og þetta hef ég sent til allra helstu banka og lánastofnana sem ég tel að þeir hafi átt viðskipti við með þetta fyrirtæki og þetta gerði ég aðallega í ljósi þess sem ég var að sjá á netinu og frétti um i fyrra þegar að fram kom að Heineken í Hollandi ætlar að kaupa verksmiðjuna af þeim fyrir hvað 400 milljónir dollara.*

Í ofangreindri yfirlýsing Samson segir að félagið eigi í viðkvæmum viðskiptasamningum við einkavæðinganeftnd ríkisstjórnarinnar á lokastigi. Í niðurlagi ofangreindrar forsíðugreinar fjármálatímaritsins Euromoney segir að Fjármálaeftirlitið (the Financial Supervisory Agency (FME)) verði að samþykkja hluthafa sem óskar eftir að kaupa meira en 10% í íslenskum banka. Yður til fróðleiks sendast hjálögð gögn um o.g. dómsúrskurði í Rússlandi og Íslandi ásamt greinargerð undirritaðs "til þeirra er málið varðar" 2. janúar s.l.

Baltic Group Ltd. hefur unnið að öflun nauðsynlegra gagna um rekstur gosdrykkjaverksmiðjunnar Baltic Bottling Plant í Rússlandi fram til þess tíma að fyrirtækið var svípt eignarrétti sínum og ólögmæt eigendaskipti verksmiðjunnar fóru fram haustið 1995. Þessi gögn eru nauðsynleg til höfðunar skaðabótamála fyrir íslenskum dómtólum á hendur einum aðstanda Samson ehf. Björgólf Þið Guðmundssyni ásamt hlutafélaginu Hansa ehf.

Garðabær, 12. nóvember 2002

Virðingarfyllst

Ingimar Haukur Ingimarsson

Samrit:                   Ólafur Davíðsson  
                             Framkvæmdanefnd um einkavæðingu  
                             Forsætisráðuneytið  
                             Stjórnarráðshúsínu v/Lækjartorg  
                             150 Reykjavík

## Gerðardómur í Sambandslyðveldinu Rússland

**Gerðardómur Sankti Péturnborgar og Leningrad-héraðs  
Gerðardómur Sambandsríkisins á Norð-Vestur svæði**

Fyrirtækið Baltic Group Ltd. (Bresku Jómfrúareyjum), sem er einn af stofnendum fyrirtækisins Baltic Bottling Plant, h.f.l.g., og átti 75% hlut í stofnfé, leitaði til Gerðardóms Sankti Péturnborgar og Leningrad-héraðs með stefnu á hendur Baltic Bottling Plant, h.f.l.g., um viðurkenningu á ógildingu ákvörðunar aukahluthafafundar frá 29. september 1995, síðan var dagsetning fundarins leiðrétt í 25. september 1995 innan ramma 37. gr. laga Sambandslyðveldisins Rússlands um meðferð mála fyrir gerðardómi.

**Yfirlit málsflutnings og dómsniðurstöðu gerðardóms í máli nr. 638/96 & 947/96.**

**Gerðardómur Sankti Péturnborgar og Leningrad-héraðs**

**Dómsmál nr. 638/96**

Dagsetning:

29. janúar 1996

Málsflutningur:

Baltic Group Ltd. stefnir Baltic Bottling Plant, h.f.l.g., um viðurkenningu á ógildingu ákvörðunar aukahluthafafundar frá 29. september 1995

2. febrúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs hafnar stefnu Baltic Group Ltd. vegna formgalla

7. febrúar 1996

Baltic Group Ltd. stefnir Baltic Bottling Plant, h.f.l.g., um viðurkenningu á ógildingu ákvörðunar aukahluthafafundar frá 29. september 1995, síðan var dagsetning fundarins leiðrétt í 25. september 1995.

12. febrúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs samþykkir stefnuna (dómsmál nr. 638/96) og ákveður að réttað skuli í málinu 22. febrúar 1996.

22. febrúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsmeðferð til 14. mars 1996 vegna kröfú forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfss Thor Björgólfssonar, sem krefst þess af réttinum að fá dómnulk til þess að hann geti í réttinum talað fyrir máli sínu sem forstjóri fyrirtækisins á íslensku móðurmáli sínu.

14. mars 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsmeðferð til 18. apríl 1996 vegna kröfú forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfss Thor Björgólfssonar, sem krefst þess af réttinum að fá öll dómskjöl málsins þýdd á íslensku til þess að hann geti kynnt sér dómskjölin á íslensku móðurmáli sínu.

18. apríl 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs (1. dómistig) kveður upp dómsúrskurð um að ákvarðanir aukahluthafafundar Baltic Bottling Plant, h.f.l.g. frá 25. september 1995, skuli vera ógildar.

## Gerðardómur í Sambandslyðveldinu Rússland

**Gerðardómur Sankti Péturborgar og Leningrad-héraðs  
Gerðardómur Sambandsríkisins á Norð-Vestur svæði**

**Yfirlit málsflutnings og dómsniðurstöðu gerðardóms í máli nr. 638/96 & 947/96.**

24. apríl 1996 Baltic Bottling Plant, h.f.l.g. áfrýjar úrskurði Gerðardóms Sankti Péturborgar og Leningrad-héraðs (1. dómstig) frá 18. apríl 1996.
29. apríl 1996 Gerðardómur Sankti Péturborgar og Leningrad-héraðs samþykkir áfrýjun Baltic Bottling Plant, h.f.l.g. frá 24. apríl 1996 og ákveður að réttarð skuli í málinu 15. maí 1996.
15. maí 1996 Gerðardómur Sankti Péturborgar og Leningrad-héraðs ákveður að fresta málsmeðferð til 4. júní 1996 vegna kröfu forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfs Thor Björgólfssonar, sem krefst þess að fá dómtúlk til þess að hann geti talað fyrir máli sínu sem forstjóri fyrirtækisins á íslensku móðurmáli sínu.
4. og 5. júní 1996 Gerðardómur Sankti Péturborgar og Leningrad-héraðs (2. dómstig) kveður upp dómsúrskurð um að ákvörðun dómsins (1. dómstig) skuli látin standa óbreytt. Áfrýjunardómurinn félst á rökstuðning 1. dómstigssins og til viðbótar skodaði réttmæti samninga frá 24. mars 1995 um afsal hlutabréfa Baltic Group Ltd. til fyrirtækisins Viking Brewery Limited og Björgólfs Guðmundssonar. Dómurinn taldi samninga frá 24. mars 1995 um afsal hlutabréfanna vera marklausa í samræmi við 166. og 168. gr. einkamálagala Sambandslyðveldisins Rússlands. Dómurinn taldi einnig að með broti fyrirtækisins Viking Brewery Limited og Björgólfs Guðmundssonar gegn skilyrðum 49. gr. reglugerðarinnar og með visan í 51. gr. reglugerðarinnar sé grundvöllur til að telja samningana frá 24. mars 1995 ógilda.

**Gerðardómur Sambandsríkisins á Norð-Vestur svæði**

**Dómsmál nr. 947/96**

Dagsetning:

4. júlí 1996

Málsflutningur:

Baltic Bottling Plant, h.f.l.g. áfrýjar úrskurði Gerðardóms Sankti Péturborgar og Leningrad-héraðs (2. dómstig) frá 4. og 5. júní 1996.

10. júlí 1996

Gerðardómur Sambandsríkisins á Norð-Vestur svæði samþykkir áfrýjun (dómsmál nr. 947/96) Baltic Bottling Plant, h.f.l.g. frá 4. júlí 1996 og ákveður að réttarð skuli í málinu 29. júlí 1996.

29. júlí 1996

Gerðardómur Sambandsríkisins á Norð-Vestur svæði á grundvelli málsflutnings aðila fyrir dómnum og samkvæmt 174. og 177. gr. laga um meðferð mála fyrir gerðardómi í Sambandslyðveldinu Rússlandi kemst að eftirfarandi niðurstöðu:  
Ákvörðun frá 18. apríl 1996 (1. dómstig) og niðurstaða frá 4. og 5. júní (2. dómstig) í máli nr. 638/96 hjá Gerðardómi Sankti Péturborgar og Leningrad-héraðs er látin standa án breytinga og ekki skal tekið tillit til málskotskrafna Baltic Bottling Plant, h.f.l.g..

## Gerðardómur í Sambandslýðveldinu Rússland

### **Gerðardómur Sankti Péturnborgar og Leningrad-héraðs**

Fyrirtækið Baltic Group Ltd. (Bresku Jómfrúareyjum), sem er einn af stofnendum fyrirtækisins Baltic Bottling Plant, h.f.l.g., og átti 75% hlut í stofnfé, leitaði til Gerðardóms Sankti Péturnborgar og Leningrad-héraðs með stefnu á hendur Skráningarstofu Hlutafélaga Borgarstjórnar Sankti Péturnborgar, um viðurkenningu á ógildingu skráningu Skráningarstofunnar 10. október 1995 á nýjum hluthöfum í fyrirtækinu Baltic Bottling Plant, h.f.l.g., samkvæmt ákvörðunar aukahluthafafundar fyrirtækisins frá 29. september 1995.

**Yfirlit málslutnings og dómsniðurstöðu gerðardóms í máli nr. 156/96 & 5760/96.**

#### **Gerðardómur Sankti Péturnborgar og Leningrad-héraðs**

#### Dómsmál nr. 156/96

Dagsetning:

4. janúar 1996

Málflutningur:

Baltic Group Ltd. stefnir Skráningarstofu Hlutafélaga Borgarstjórnar Sankti Péturnborgar, um viðurkenningu á ógildingu skráningu Skráningarstofunnar 10. október 1995 á nýjum hluthöfum í fyrirtækinu Baltic Bottling Plant, h.f.l.g., samkvæmt ákvörðunar aukahluthafafundar fyrirtækisins frá 29. september 1995.

12. janúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs samþykkir stefnuna (dómsmál nr. 156/96) og ákveður að réttáð skuli í málinu 8. febrúar 1996.

8. febrúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs samþykkir "Sankti Péturnborgar Svæðisstjórn Ríkisnefndar sem berst gegn einokun og styður ný fyrirtæki í Sambandslýðveldinu Rússland" sem 3. aðila stefnanda. Dómurinn samþykkir Baltic Bottling Plant h.f.l.g. sem 3. aðila stefnda. Dómurinn ákveður að fresta málsméðferð til 22. febrúar 1996 þar sem stefnanda og 3. aðila (Sankti Péturnborgar Svæðisstjórn Ríkisnefndar sem berst gegn einokun og styður ný fyrirtæki í Sambandslýðveldinu Rússland) er gert að leggja fram frekari málsgögum til að styðja stefnu sína.

22. febrúar 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsméðferð til 14. mars 1996 vegna kröfu 3. aðila stefnda, forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfs Thor Björgólfssonar, sem krefst þess af réttinum að fá dómítulk til þess að hann geti í réttinum talað fyrir máli sínu sem forstjóri fyrirtækisins á íslensku móðurmáli sínu.

14. mars 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsméðferð til 25. apríl 1996 vegna kröfu 3. aðila stefnda, forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfs Thor Björgólfssonar, sem krefst þess af réttinum að fá öll dómskjöl málsins þydd á íslensku til þess að hann geti kynnt sér dómskjölín á íslensku móðurmáli sínu.

Gerðardómur í Sambandslýðveldinu Rússland

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs

Yfirlit málsflutnings og dómsniðurstöðu gerðardóms í máli nr. 156/96 & 5760/96.

25. apríl 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsneðferð til 6. júní 1996 vegna þess að lögmaður stefnda, Skráningarstofu Hlutafélaga Borgarstjórnar Sankti Péturnborgar er ekki viðstaddir réttarhaldið. Lögfræðingur 3. aðila stefnda, Baltic Bottling Plant h.f.l.g. herra Victor Ferens-Sorotsky gefur réttinum þær upplýsingar að lögmaður stefnda sé fjarverandi vegna viðskiptaferðar.

6. júní 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að ekki skuli réttað í málinu og að málinu skuli visað frá dóminum. Rökfærsla dómsins fyrir þessari ákvörðun er sú að um sé að ræða formgalla á umboði rússneska lögfræðings stefnanda, sem hafði undirritað stefnuna samkvæmt umboði stefnanda.

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs

Dómsmál nr. 5760/96

Dagsetning:

11. júní 1996

Málsflutningur:

Baltic Group Ltd. og "Sankti Péturnborgar Svæðissjórn Ríkisnefndar sem berst gegn einokun og styður ný fyrirtæki í Sambandslýðveldinu Rússland" stefna Skráningarstofu Hlutafélaga Borgarstjórnar Sankti Péturnborgar, um viðurkenningu á ógildingu skráningu Skráningarstofunnar 10. október 1995 á nýjum hluthöfum í fyrirtækinu Baltic Bottling Plant, h.f.l.g., samkvæmt ákvörðunar aukahluthafafundar fyrirtækisins frá 29. september 1995.

18. júní 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs samþykkir stefnuna (dómsmál nr. 5760/96) og ákveður að réttað skuli í málinu 22. júlí 1996.

22. júlí 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsmeðferð til 23. september 1996 vegna eftirtalinna atriða:

- vegna formgalla á tilkynningu um stefnu stefnanda 18. júní 1996 til 3. aðila stefnda, Baltic Bottling Plant, h.f.l.g.,
- vegna fjarveru 3. aðila stefnda, forstjóra Baltic Bottling Plant, h.f.l.g. herra Björgólfs Thor Björgólfssonar. Lögmaður 3. aðila stefnda, Baltic Bottling Plant h.f.l.g., herra Victor Ferens-Sorotsky gefur réttinum þær upplýsingar að herra Björgólfur Thor Björgólfsson sé fjarverandi vegna viðskiptaferðar.
- vegna þess að lögmann 3. aðila stefnda, Baltic Bottling Plant, h.f.l.g. hafi, samkvæmt upplýsingum herra Victor Ferens-Sorotsky, ekki tök á því að vera viðstaddir réttarhaldið.
- vegna þess að dómsmáli nr. 638/96 (stefna Baltic Group Ltd. á hendur Baltic Bottling Plant, h.f.l.g., um viðurkenningu á ógildingu ákvörðunar aukahluthafafundar frá 29. september 1995) hafi verið áfrýjað til til Gerðardóms Sambandsríkisins á Norð-Vestur svæðis (dómsmál nr. 947/96).

Gerðardómur í Sambandslyðveldinu Rússland

**Gerðardómur Sankti Péturnborgar og Leningrad-héraðs**

**Yfirlit málsflutnings og dómsniðurstöðu gerðardóms í máli nr. 1S6/96 & S760/96.**

23. september 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að fresta málsmeðferð til 7. október 1996 vegna þess að réttinum hafi borist eftir óformlegri lcið upplýsingar þar að lútandi að rússneskur lögmaður stefnanda, sem hafði undirritað stefnuna 11. júní 1996 samkvæmt umboði stefnanda muni ekki verða viðstaddir réttarhaldið.

7. október 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs ákveður að ekki skuli réttað í málinu og að málinu skuli vísað frá dómínum. Rökkversla dómsins fyrir þessari ákvörðun er sú að rússneskur lögfræðingur stefnanda, sem hafði undirritað stefnuna 11. júní 1996 samkvæmt umboði stefnanda, hafi dregið umboð sitt til baka og verði ekki viðstaddir réttarhaldið. Viðstaddir lögfræðingar stefnanda mótmæla þessari ákvörðun réttarins sem ólögmætri. Rétturinn tekur hins vegar ekki til greina þessi mótmæli lögfræðinga stefnanda, sem eru tveir rússneskir lögfræðingar (starfandi lektor og starfandi prófessor i lögum við Lagaháskóla Sankti Péturnborgar) og lögfræðingur lögfræðistofu Baker&McKenzie í Sankti Péturnborg.

**Gerðardómur Sankti Péturnborgar og Leningrad-héraðs**

Dómsmál

14. október 1996

Baltic Group Ltd. stefnir Skráningarstofu Hlutafélaga Borgarstjórnar Sankti Péturnborgar, um viðurkenningu á ógildingu skráningu Skráningarstofunnar 10. október 1995 á nýjum hluthöfum í fyrirtækinu Baltic Bottling Plant, h.f.l.g., samkvæmt ákvörðunar aukahluthafafundar fyrirtækisins frá 29. september 1995.

21. október 1996

Gerðardómur Sankti Péturnborgar og Leningrad-héraðs samþykkir stefnu dagsetta 14. október 1996 og ákveður að réttað skuli í málinu 25. nóvember 1996.

**Baltic Group Ltd. & Baltic Bottling Plant Ltd.**  
**Law Suits & Court Verdicts in Russia**

Name of Case / Case Number	Date of Verdict	Name of Court
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**Baltic Group Ltd. vs. Baltic Bottling Plant Ltd. concerning invalidating the meeting of Shareholders and Its decisions on September 29, 1995**

1	Case No. 638/96	18.04.1996	Arbitration Court of St. Petersburg and Leningrad Oblast
2	Case No. 638/96	05.06.1996	Arbitration Court of St. Petersburg and Leningrad Oblast
3	Case no. 947/96	29.07.1996	Federal Arbitration Court of the North-Western Circuit

**Baltic Group Ltd. vs. Registration Chamber of St. Petersburg concerning invalidating its registration no. 26067 on October 10, 1995**

4	Case No. A56-11554/96	20.01.1997	Arbitration Court of St. Petersburg and Leningrad Oblast
5	Case No. A56-11554/96	28.03.1997	Arbitration Court of St. Petersburg and Leningrad Oblast
	Case No. 11554/96	28.05.1997	Federal Arbitration Court of the North-Western Circuit

**Remonto-Mekhanitchesky Zavod ("RMZ") vs. Baltic Group Ltd. & Baltic Bottling Plant Ltd. concerning invalidating the foundation of Baltic Bottling Plant Ltd.**

7	Case No. 4079/96	26.06.1996	Arbitration Court of St. Petersburg and Leningrad Oblast
8	Case No. 1302/96	17.12.1996	Federal Arbitration Court of the North-Western Circuit

**Remonto-Mekhanitchesky Zavod ("RMZ") vs. Baltic Bottling Plant Ltd. & Baltic Group Ltd. concerning invalidating the Contract involving Technological Equipment on March 24, 1995**

9	Case No. A56-9632/96	22.10.1996	Arbitration Court of St. Petersburg and Leningrad Oblast
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**Remonto-Mekhanitchesky Zavod ("RMZ") vs. Baltic Bottling Plant Ltd. & Baltic Group Ltd. concerning invalidating the meeting of Shareholders and Its decisions on April 26, 1996**

10	Case No. 4404/96	11.03.1997	Arbitration Court of St. Petersburg and Leningrad Oblast
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**St. Petersburg City Property Committee vs. Remonto-Mekhanitchesky Zavod ("RMZ")  
Law Suit & Court Verdict in Russia**

Name of Case / Case Number	Date of Verdict	Name of Court
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**St. Petersburg City Property Committee vs. Remonto-Mekhanitchesky Zavod ("RMZ") concerning invalidating the foundation of Baltic Bottling Plant Ltd.**

11	Case No. A56-3144/97	17.03.97	Arbitration Court of St. Petersburg and Leningrad Oblast
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Emblem  
Arbitration Court of Saint-Petersburg and Leningradskaya Oblast

COURT ORDER  
(Seal of the Arbitration Court)

18 April 1996

Case no. 638 / 96

The Arbitration Court, represented by: Chairman N.N. Malysheva and judges E.A. Orlova, M.V. Pastukhova, having considered at session of court the statement of claim from the company "Baltic Group Ltd." against  
the Closed Joint Stock company "Baltic Bottling Plant",  
the third party: the Saint-Petersburg Territorial Department on Antimonopoly policy and Support of New economic structures,  
concerning the invalidation of the decision of the Meeting of the shareholders on 29.09 1995  
with participation:

For the plaintiff: Gutov V.V., Bertov A.V., Versinin A.P., Yemolkin V.N., Popondopulo V.F.  
From the defendant(s): B.T. Bjorgolfsson, General Director  
Attorneys: Ognev D.T., Ference Sorotsky, Lebedev K.K.,  
Sune Skadegort Thorsen  
the third party: The head of the St. Petersburg Ter. Dep. Kolomytchenko O.V., Shulga O.N.,  
Tazetdinov S.R., Romasheva O.

has determined the following:

The company "Baltic Group Ltd." filed a claim with the Joint Stock Company "Baltic Bottling Plant" regarding recognition as invalid the decision of the shareholders meeting of 29 September 1995 in connection with the fact that its interests as a shareholder were infringed and pr. 95-97, 99, 103, 105 of "The Ordinance on Joint Stock Companies" which was in effect at the time and pr. 7.2. of the Charter were violated.

The plaintiff filed an application regarding alteration of the subject of the law-suit in accordance with art. 37 of the Arb. Pr. Code of the Russian Federation, which application has been recognised as subject to fulfilment. Thus the plaintiff asks to recognise as invalid the decision of the shareholders meeting of September 25, 1995. In the course of the session the defendant stated that the extraordinary shareholders meeting had been held on September 25 and not on September 29, 1995 as it is specified in the Minutes. The corresponding documents concerning correction of the mistake in the date of the meeting were submitted to the Registration Chamber of St. Petersburg.

In opinion of the defendant, when the meeting was carrying out, the defendant did not violate neither the rights of the plaintiff, which is not considered by the defendant as a shareholder in connection with the fact of alienation of shares by means of entering into the Agreements of 24.03 1995 in accordance with the order established in par. 5.2. of the Charter "with approval of other participants", *not* the law in effect at the time of the meeting. Therefore the defendant asks to reject the claim.

The Court has examined the materials of the case, listened to the parties' opinions and established the following:

-the Extraordinary Shareholders Meeting was held on 25.09 1995, that was orally stated by the defendant at the session, was confirmed by the statement of RMZ's director, by Mr. Gudmundsson's letter and by the Minutes of the Extraordinary Shareholders Meeting of 22.11 1995,

-registration of the rights of movable assets (which securities belong to ) according to Art 130 of the CC of the Russian Federation is demanded only in cases specified by the law.

-according to par. 3 of Art 35 of the Russian Federation Law "On Foreign Investments in the Russian Federation" the acquisition of shares by foreign investors is subject to registration in the Ministry of Finance of the Russian Federation or other authorised state bodies.

-in cases where alienation of the property is subject to the state registration, a purchaser according to this Agreement gets the right of property from the moment of such registration according to art. 223 of the CC of the Russian Federation,

-alienation of the shares of the company "Baltic Group Limited" to the company "Viking Brugg hf." and to Mr. B. Gudmundsson, a citizen of Iceland was executed in accordance with the Agreements of 24.03.95.

-the court has not examined lawfulness of the execution of the Agreements in connection with the fact that it is not a subject of the present dispute and the plaintiff did not claim to change the subject,

-registration of the above mentioned Agreements was carried out in the Joint Stock Company "Orimi Broker Ltd.", the inscription of the registering body, certified by its seal attached to the copies of the Agreements and verified by the Notary witnesses to that,

-so it has been established by the court that the Extraordinary Shareholders Meeting of 25.09.1995 was held before the moment of registration of the transactions and consequently before transition of the right of property of the shares from "Baltic Group Limited".

- under these circumstances both violation of the plaintiff's rights and violation of art. 95-97,99,105 of "The Ordinance on the Joint Stock Companies" has been established by the court and in connection with that, the claims of the plaintiff are subject to be complied with.

Following art. 95.124-127 of the APC of the RF

THE COURT HAS DECIDED:

To recognise as invalid the decision of the shareholders meeting of the Joint Stock Company "Baltic Bottling Plant" of 25.09.95.

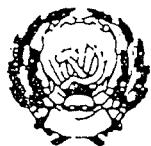
To recover from the bank account of the defendant 632000 rbl. of the fee in favour of the plaintiff.

To hand out the execution.

Chairman  
Judges

N.N. Malysheva  
E.A. Orlova  
M.V. Pastukhova

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## Арбитражный суд

Санкт-Петербурга и Ленинградской области

### РЕШЕНИЕ

"18" апреля 1986 г.

Дело № 638/96

Арбитражный суд в составе председательствующего Малышевой Н.Н.,  
судей Пастуховой М.В., Орловой Е.А.,  
рассмотрев в судебном заседании исковые материалы по иску  
компании "Болтик Групп Лтд"

к АСВТ "Болтик Ботлинг Шант"

Со либо: Территориальному управлению ЦБ по антимонопольной политике  
и поддержке новых экономических структур

о признании недействительным решения собрания акционеров от 25.09.85  
с участием: Емелькин В.Н.

от истца Гутов В.В., Борзов А.В., Вершинин А.Н., Понондонуло В.С.

от ответчика(ов) Ген. дир. Бьоргольфур Тор Бьоргольфссон, адвок. Огнев А.И.

Судебное заседание, судебное заседание, судебное заседание

Члены: начальник упр.экономики С.В., Мульга О.Н., Тажетдинов С.Р., Решение  
установил:

Компания "Болтик Групп Лтд" обратилась с иском о признании недействительным решением чрезвычайного собрания акционеров АОЗТ "Болтик Ботлинг Шант" от 25.09.85 г. в связи с ущемлением своих интересов наль акционера и нарушением действовавшего на момент принятия решения п. 5-7, п. 10, п. 15 положения об акционерах общества п. 7.2 Устава.

Истцом заявлено ходатайство об изменении предмета иска в порядке ст. 37 Адк РС, которое признано судом подлежащим удовлетворению. Таким образом истец просит признать недействительным решение чрезвычайного собрания акционеров от 25.09.85 г.

При рассмотрении спора ответчиком заявлено, что чрезвычайное собрание акционеров проводилось 25, а не 29 сентября, как указано в протоколе. Об исправлении ошибки в дате проведения собрания поданы соответствующие документы в Регистрационную палату ЦБ.

По мнению ответчика при проведении чрезвычайного собрания 25.09.85 г. им не нарушались ни права истца, которого он не считает акционером в связи с отчуждением акций путем заключения соглашений 2 марта 1985 г. в порядке предусмотренном п. 5.2 Устава "с согласия других участников", ни действующие на момент проведения собрания законодательство. Поэтому в иске ответчик просит отказать.

Судом исследованы материалы дела, заслушаны мнения сторон, установлено следующее:

- чрезвычайное собрание акционеров АОЗТ "Болтик Ботлинг

"Плант" проводилось 25.09.95 г., что устно заявлено ответчиком в заседании и подтверждено документально заявлением генерального директора АООТ "Ремонтно-механический завод", письмом Б.Гудмундссона и протоколом чрезвычайного собрания от 22.II.95

- регистрация прав на движимые вещи к которым относятся ценные бумаги согласно ст.130 ГК Рб требуется только в случаях указанных в законе,

- согласно п.6 ст.35 Закона РСФСР "Об иностранных инвестициях в РСФСР" приобретение иностранными инвесторами акций подлежит регистрации в Министерстве финансов РСФСР или иных уполномоченных на то государственных органах,

- в случаях, когда отчуждение имущества подлежит государственной регистрации, право собственности у приобретателя по договору возникает с момента такого регистрации, согласно ст.225 ГК Рб,

- соглашениями от 24.03.95 г. произведено отчуждение акций "Болтик Груп Лимитед" компании "Викинг Брури Лимитед" гражданину Исландии Вьорголфуру Гудмундссону,

- правомерность совершения соглашений судом не исследовалось в связи с тем, что это не является предметом настоящего спора, а об изменении предмета истцом заявлено не было,

- регистрация указанных соглашений произведена в АСЗ "ОРИМЛ Брокер Лтд" 28.03.95 г., о чем свидетельствует надпись регистрирующего органа, заверенная его печатью на нотариально заверенных копиях соглашений,

- таким образом судом установлено, что чрезвычайное собрание 25.09.95 г. проведено до момента регистрации сделок, а следовательно и до перехода права собственности на акции от компании "Болтик Груп Лтд",

- При таких обстоятельствах дела судом установлено как нарушение прав истца, так и нарушение ст.16-17, 39, 105 Правиления об акционерных обществах, в связи с чем требования истца подлежат удовлетворению.

Руководствуясь ст. 5, 12-127 АПК Рб, -

СУД РЕШИЛ:

Признать недействительным решение чрезвычайного собрания акционеров АСЗ "Болтик Ботлинг Плант" от 25.09.95 г.

Взыскать с расчетного счета ответчика в пользу истца 632500 руб. расходов по госпошлине.

Выдать исполнительный лист.

Председательствующий

Н.Н.Малышева

Судьи

Е.А.Орлова



М.В.Пастухова

**EMBLEM**  
**APPELATE TRIBUNAL**  
**COURT ORDER**

St. Petersburg  
04-05 June 1996

No 638/96

The Arbitrash court of St. Petersburg and the Leningrad Oblast'

in the composition of a panel of three judges headed by:  
chairman - M. Kuznetsov  
judges- I. Serikova, M. Nikitusheva

with the participation in the course of the Court Hearing

on behalf of the plaintiff: A. Vershinin, V. Popondopulo, B. Gutov, N. Bertov, Ingimar H. I.

on behalf of the defendant: Baltic Bottling Plant: General director B. T. Bjorgolfsson, K. Lebedev, V. Ferense-Sorotsky, D. Ognev, S. Thorsen

on behalf of the persons impleaded in the capacity of the third parties by the court:  
Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures: O. Shulga

considered in the course of an open hearing the appeal filed by the Closed Joint-Stock Company Baltic Bottling Plant ("BBP") in which Baltic Bottling Plant has petitioned the court to revoke the decision of the Arbitrash court of St. Petersburg and the Leningrad region dated 18.04.96 in action No 638/96 (judges Malyshева, Pastukhova, Orlova) taken with respect to the statement of claim filed by Baltic Group Limited against Baltic Bottling Plant

the person impleaded in the capacity of the third party by the court: Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures

**ESTABLISHED:**

The company Baltic Group Limited (the British Virgin Islands) as one of the founders of BBP with 75% of shares of BBP filed its statement of claim in the Arbitrash Court of St. Petersburg and the Leningrad Oblast' against BBP (St. Petersburg, Russia) in which Baltic Group Limited has petitioned the court to declare invalid the decision of the extraordinary shareholders' meeting of 29.09.95, insofar as the invitation to take part in

the shareholders' meeting (notice of the shareholders' meeting) was not served upon BGL and it did not take part in the shareholders' meeting, respectively.

In the process of examining the matter the plaintiff amended the subject matter of its statement of claim and petitioned the court to declare invalid the decision of the extraordinary shareholders' meeting of 25.09.95 due to the fact that minutes of the shareholders' meeting of 29.09.95 had been changed and dated 25.09.95 (sheet 91 of the case file).

The fact that the general shareholders' meeting had been held on 25.09.95 was confirmed by the representatives of the parties, as well as by virtue of its minutes (sheet 94 of the case file) and minutes of the extraordinary shareholders' meeting of BBP dated 22.11.95 (sheet 96 of the case file).

Pursuant to art. 37 of the Russian Arbitration Procedural Code (the "APC") the court took the decision to amend the subject matter of the statement of claim filed by the plaintiff.

In its decision of 18.04.96 the court declared the decisions of the extraordinary shareholders' meeting dated 25.09.95 invalid, since those persons who had taken part in it in the capacity of shareholders being Viking Brewery Ltd (the name was changed to Hansa Ltd (sheet 96 of the case file)) and Bjorgolfur Gudmundsson, a citizen of Iceland, were not the shareholders at the moment of the shareholders' meeting, i.e. by 25.09.95, insofar as the state registration of the two agreements on the sale of the shares by BGL to Viking Brewery Ltd and Bjorgolfur Gudmundsson did not take place in accordance with art. 35 (3) of the Federal Law "On Foreign Investment in Russia".

In its appeal Baltic Bottling Plant has petitioned the court to revoke the decision in question and dismiss the law-suit taking into account the arguments as follows set out in the course of the court hearing:

- in accordance with the provisions of art. 52 (3) of the Russian Civil Code founders being the shareholders in a legal entity are not entitled to refer to non-existence of the state registration of changes to the foundation documents in their relationships with third parties who were taking into account the said changes in their actions;
- since the moment of the state registration of the changes to the foundation documents of Baltic Bottling Plant by the Registration Chamber of the Mayoralty of St. Petersburg (No26067 dated 10.10.95, sheet 63 of the case file) the company BGL (the BVI) is no longer a shareholder of BBP, hence it is not entitled to file statements of claim in which it petitions the court to invalidate the shareholders' meeting;
- making an entry of new shareholders into the shareholders' register of BBP was done in accordance with the Provisional Regulations on Maintaining the Company's Shareholders Register;
- In accordance with par. 1.3 of the Instruction "On the Rules of Carrying out and Registration of Securities Transactions" approved by Letter of the Russian Finance

- Ministry No 53 dated 06.07.92 the state registration of agreements on sale of shares by shareholders in a closed JSC is not required;
- provisions of art. 35 of the Federal Law "On Foreign Investment" providing for the state registration of purchase by foreign investors of shares cover only those instances where it comes to the purchase of shares of a company not having a status of the enterprise with foreign investment, hence should not be applied to the purchase made by the defendant;
  - provisions of art. 35 (3) of the Federal Law "On Foreign Investment" are against the Russian Civil Code. The statement of claim itself was signed by T. Kristiansson acting on the strength of a power of attorney, however, the power of attorney had been granted not on behalf of the plaintiff but on behalf of two other legal entities – First Executives Directors Inc and Hugo Secretaries Inc who had nothing to do with the matter;
  - the decision of the general shareholders' meeting was declared invalid, despite the fact that the agreement involving the sale of the shares by former shareholders by virtue of art. 146, art. 382 of the Russian Civil Code entailed the changes to the composition of the Company's shareholders at the date of the meeting.

In their objections to the appeal the representatives of the plaintiff referred to the following:

- issuance of shares was never done at BBP, hence there was no possibility of their selling;
- transaction involving the buying and selling of the shares could have been completed only following the state registration of an issue of securities (the issue was not carried out by the moment of the shareholders' meeting);
- transactions involving the buying and selling of the shares are against art. 1 (10) of the Law "On Currency Regulation and Currency Control";
- provisions of art. 35 (3) of the Federal Law "On Foreign Investment" do not contradict the Russian Civil Code. Art. 2 (1) of the Civil Code provides that the Federal Law may establish other rules (in contrast with the ones established by the civil legislation) regulating legal relationships with the participation of persons or entities having a status of non-resident

The person impleaded in the capacity of the third party by the court - Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures also set forth its objections to the appeal as follows:

- in accordance with the Letter of the Economy and Finance Committee of the Mayoralty of St. Petersburg the primary issue of BBP's shares was registered only on 25.10.95, therefore in violation of par. 49, par. 50 of the Regulation "On Issuance for Circulation and Circulation of Securities and Stock Exchanges in the RSFSR" approved by Resolution No 78 dated 28.12.91 of the Government of the RSFSR transactions involving the buying and selling of BBP's shares carried out prior to their registration are invalid, hence the persons who participated in the extraordinary shareholders' meeting of 25.09.95 of the Company were not its shareholders and the meeting was invalid.

Having heard and discussed the arguments of the parties' representatives and reviewed the materials of the matter, the Appellate Tribunal established the following:  
In accordance the Certificate of Registration dated 08.06.93 the Foreign Relations Committee of the Mayoralty of St. Petersburg registered and entered into the state register with the registration number AOL-5108 Closed Joint-Stock Company Baltic Bottling Plant ("BBP").

According to the company's charter and foundation documents the following persons are BBP's founders: Baltic Group Limited ("BGL") being a legal entity under the legislation of the United Kingdom of Great Britain and Northern Ireland and Open Joint-Stock Company RMZ being a legal entity under the legislation of the Russian Federation.

In accordance with par. 3.2 of the foundation agreement the shares are distributed among the founders as follows: BGL owns 750 shares (or 75% of the charter capital), RMZ owns 250 shares (or 25% of the charter capital), in the aggregate the two founders owned 100% of the charter capital (sheet 11, 19 of the case file).

Pursuant the agreement dated 24.03.95 BGL transferred the ownership right of 325 common registered shares of BBP (32,5%) to B. Gudmundsson, a citizen of Iceland. BGL also transferred all the rights attached to the shares: to participate in the managing of BBP's business, including to participate in the general shareholders' meeting with the right to vote on all matters within its competence, to receive a portion of BBP's property in the event of its liquidation, as well as all the other rights provided by Russian legislation.

By virtue of the agreement dated 24.03.95 BGL transferred the ownership right of 325 common registered shares of BBP (32,5%) to Viking Brewery Ltd. (changed its name to Hansa Ltd), Reykjavik, Iceland, as well as all the rights attached to the shares.

In accordance with the minutes of the extraordinary shareholders' meeting of BBP dated 14.02.95 (sheet 92 of the case file) BGL and RMZ decided to transfer common registered shares owned by BGL to G. Khomsky, a citizen of Russia. There is no agreement on the transfer of the shares and rights attached to the shares entered into between BGL and G. Khomsky, a citizen of Russia.

By the decision of the extraordinary shareholders' meeting of BBP dated 25.09.95 (the minutes were erroneously dated 29.09.95) in which Viking Brewery Ltd., B. Gudmundsson, a citizen of Iceland, RMZ, G. Khomsky, a citizen of Russia, participated as shareholders the shares were redistributed among the said persons with corresponding changes made to the charter and foundation documents. It is stated in the minutes that shareholders holding together 100% of the Company's shares are present.

In accordance with the decision of the Registration Chamber of the Mayoralty of St. Petersburg (No 26067 dated 10.10.95, sheet 63 of the case file) the Registration Chamber

"took note" of the changes and additions to the foundation documents of BBP made by the shareholders' meeting that had been held on 25.09.95. The corresponding entries to the effect of the said changes were made in the Uniform Register of the State Registration (sheet 63 of the case file).

On the basis of established circumstances the Appelate Tribunal gives these circumstances a legal appreciation as follows.

The agreement dated 24.03.95 entered into between BGL and Viking Brewery Ltd. (Hansa Ltd.) and between BGL and B. Gudmundsson, a citizen of Iceland, on the transfer of ownership rights of 325 common registered shares under each agreement respectively and the transfer of all rights attached to the shares mean the circulation of securities inside the Russian Federation. The two agreements were entered into in St. Petersburg, Russia. This conclusion was reached on the basis of par. 2 of the Regulations "On the Issuance for Circulation and Circulation of Securities and Stock Exchanges inside the Russian Federation" approved by Resolution No 78 dated 28.12.91 of the Government of the RSFSR whereby the circulation of securities means their sale and purchase, as well as all the other actions stipulated by the legislation of RSFSR resulting in the change of an owner of securities. The said agreement results in the change of an owner of securities.

In accordance with par. 6 thereof only those securities are eligible for the issuance and circulation inside the Russian Federation that have been registered with the Economy and Finance Ministry of Russia (the securities are subject to the state registration and the relevant registration number should be assigned to the securities in accordance with the established order).

In accordance with par. 3 thereof its provisions apply to the shares of joint-stock companies.

At the moment of entering into the said agreements of 24.03.95, the state registration of BBP's shares did not take place at the Economy and Finance Ministry of the Russian Federation.

In accordance with the opinion of the Economy and Finance Committee of the Mayoralty of St. Petersburg No 05-26/729 of 18.04.96 and No 05-25/1087 of 13.05.96 the first issuance of common registered shares of BBP worth of the amount of the Company's charter capital (RUR 20 million) resulting from the issuance of 1000 shares, each having a nominal value of RUR 20000 was registered on 25.10.95 with the registration number 72-1-2293.

In accordance with the provisions of the Resolution of the Council of Ministers of RSFSR No 601 of 25.12.90 a joint-stock company can be of an open or closed type.

Thus, the requirement providing for the mandatory state registration with the Economy and Finance Ministry of RSFSR of securities issued by joint-stock companies applies both to open and closed joint-stock companies.

The said rule is confirmed by par. 40(2) of the Regulations above. In accordance therewith the state registration of a closed joint-stock company underlines the registration of shares to be distributed among its founders. The refusal to register securities issued through private placement is not allowed.

The defendant submitted no evidence that BBP's prospectus was exempt from the Economy and Finance Ministry of RSFSR registration requirements and the procedure of such an exemption.

Instruction No 2 of 03.03.92 "On the Rules of Issuance and Registration of Securities inside the Russian Federation" approved by the letter of the Finance Ministry of the Russian Federation of 03.03.92 also provides for the mandatory state registration of securities issued by joint-stock companies (including those of the closed type).

In accordance with par. 2 of the said Instruction the primary issuance of securities that is subject to the state registration should be carried out at the moment of establishing a joint-stock company and distribution of its shares among its founders.

In accordance with the provisions of par. 4(2) of the said Instruction when establishing a joint-stock company the state registration of securities should be done on the basis of notarised foundation documents (upon their presentation) pursuant to the Guidelines on Joint-Stock Companies approved by the Resolution of the Council of Ministers of RSFSR No 601 of 25.12.90. Given the subsequent changes, the mandatory presentation of notarised documents was abolished.

In accordance with par. 5 the state registration of securities is carried out by the financial department of the city administration of St. Petersburg in the event that the securities of a joint-stock company are issued for circulation, irrespective of the amount of issuance.

Since the state registration of BBP's shares was not done by the moment of entering into the agreements of 24.03.95, as a result of the said agreements the issuance for circulation of securities that were not registered with the Economy and Finance Ministry of the Russian Federation and were not assigned the state registration number in accordance with the established procedure took place. Which is not allowed in accordance with par. 6 of the Regulations "On the Issuance for Circulation and Circulation of Securities and Stock Exchanges inside the Russian Federation", the transactions (agreements) themselves are inconsistent with the requirements in question of the said Regulations.

In accordance with art. 168 of the Russian Civil Code any transaction that is not in line with the requirements of a law or other legal acts is void.

In accordance with art. 3 (6) of the Russian Civil Code Decrees of the Russian President and Resolutions of the Russian Government are attributed to other legal acts.

In accordance with art. 9 of the Introductory Law "On Effect of Part I of the Russian Civil Code" the norms regulating the legal basis and consequences of the invalidity of transactions (art. 165- art. 180) shall be applied to transactions regardless of the time of their conclusion.

Thus, the agreement dated 24.03.95 entered into between BGL and Viking Brewery Ltd. (Hansa Ltd.) and between BGL and B. Gudmundsson, a citizen of Iceland, as the ones being inconsistent with requirements set by the Resolution of the Russian Government No 78 dated 28.12.91 are void transactions.

The court has also established that B. Gudmundsson and Viking Brewery Ltd. (currently Hansa Ltd.) (each of which acquired over 15% of shares of one issuer (32.5% each)) failed to give a 5 days' prior notice to that effect to the Economy and Finance Ministry of Russia in violation of par. 49 of the Regulations above.

This violation of par. 49 provides a legal basis to invalidate the transaction in accordance with par. 51 of the Regulations.

Thus, the said agreements of 24.03.95 are invalid as being the ones not in line with the requirements of par. 49, 51 of the said Regulations.

In accordance with art. 167 (1) of the Russian Civil Code a void transaction does not entail any legal consequence except for the ones that are not related to its invalidity. Such a void transaction is invalid from the moment of its conclusion.

Therefore, the agreements of 24.03.95 do not entail the transfer from BGL to B. Gudmundsson and Viking Brewery Ltd. (Hansa Ltd), respectively, the title in 325 common registered shares (each of them), as well as do not result in the transfer of all rights attached to the shares (par. 2 thereof).

Thus, B. Gudmundsson, a citizen of Iceland, and Viking Brewery Ltd. (Hansa Ltd) were not entitled to participate in the extraordinary shareholders' meeting of BBP on 25.09.95, the meeting itself is considered invalid, since a quorum was not achieved at the shareholders' meeting. The shareholders' meeting could not have been held in the absence of a notice of the shareholders' meeting served upon BBP's founder and shareholder, that is, BGL and without BGL participating in the shareholders' meeting.

Thus, the conclusion of the Appelate Tribunal that the decision of the extraordinary shareholders' meeting of BBP on 25.09.95 is invalid is based upon the fact that the agreements of 24.03.95 do not give rise to any rights of shareholders for B. Gudmundsson and Hansa Ltd (in accordance with art. 155 of the APC of RF).

The Arbitrash Court of St. Petersburg and the Leningrad Oblast' reached a correct conclusion that the decision of the shareholders' meeting of BBP of 25.09.95 is invalid, since the ownership rights of BBP's shares were never transferred by BGL due to the fact that the meeting was held prior to the state registration of the transactions.

This conclusion was correctly reached based on art. 35 (6) of the Federal Law "On Foreign Investment in Russia" (a clerical mistake crept into the decision, number of the paragraph was indicated erroneously).

At the same time, the transactions can not give rise to the ownership right of the shares, as well as all the rights attached to the shares, regardless of their state registration, since they are void.

The court have verified the authority of BGL's representative T. Kristiansson to sign the statement of claim.

The latter signed the statement of claim accepted by the court on 07.02.96 acting on the grounds of the power of attorney of 23.01.96.

The power of attorney dated 23.01.96 (sheet 23 of the case file) is signed by Valerie Ellen Huxley, the director of First Executive Directors Inc, in the capacity of an authorised representative of Baltic Group Limited. The power of attorney is witnessed by Jeffry Saint-Claire Cornwell, as well as certified by the company's seal. The power of attorney is valid for the period of 6 months from the day of its signing.

There is an official notification of Jeffry Saint-Claire Cornwell in the materials of the case file given on the strengths of authority granted to him on 03.04.74 by His Holiness Arthur Michael, Archbishop of Canterbury, registered by the secretary of the Royal Clerical Court on 06.05.74 and registered by the Cannon (Church) Court of Jersey in the act dated 20.05.74, whereby he witnesses and certifies that the company First Executive Directors Inc is the sole director of BGL and that in accordance with par. 77 of Memorandum and Articles of Association Valerie Ellen Huxley is authorised to grant powers of attorney on behalf of Baltic Group Limited.

The said notification bears an apostile issued by Her Majesty's Governor of Jersey with the number of JY (A) 19562 in accordance with the Hague Convention of 05.10.61. On the grounds of art. 165 of "Fundamentals of the Civil Legislation of the USSR providing that form and term of validity of a power of attorney is defined in accordance with legislation of the state where the power of attorney in question have been issued, the court recognises the authority of Mr. T. Kristiansson to sign the statement of claim on behalf of BGL indicated in the power of attorney granted and signed in accordance with the legislation of a foreign state, that is, Iceland.

At the same time, the Arbitrash court followed art. 12 (1) of the APC of Russia regulating the application of foreign laws by the Arbitrash court.

The Arbitrash court dismissed the motion made by the defendant in which it had requested the court to suspend the proceedings with respect to this matter until the statement of claim in which B. Gudmundsson petitioned the court to declare valid the agreement involving the buying of 325 shares of BBP by him dated 24.03.95 would have been considered by the Circuit Court of Reykjavik.

Reasoning was based on the premise that art. 81 (1) (1) of the Russian APC binds the Arbitrash Court to suspend the proceedings with respect to the matter in the event that the matter could not be examined until the decision with respect to another issue or matter being considered within the framework of constitutional, civil, criminal or administrative proceedings is taken. By virtue of art. 118 of the Russian Constitution here the legal proceedings of the court in the Russian Federation are concerned. Since the international treaty does not provide otherwise, the court following art. 81 (1) (1) of the Russian APC is not obliged to Court to suspend the proceedings with respect to the matter in view of examination of another issue or matter on the territory of a foreign state.

As established by the court, the transaction of 24.03.95, including the agreement involving the buying of 325 shares of BBP made with B. Gudmundsson contradicts the requirements of the Russian legal and normative acts, hence it is void.

By virtue of art. 166 (1) of the Russian Civil Code a void transaction is illegal on the grounds stipulated by the Code, regardless of its recognition by the court as such.

The Appellate Tribunal did not declare the agreements of 24.03.95 invalid. It just established the fact of their inconsistency with the requirements of normative and legal acts of Russia, i.e. that they are void.

Thus, irrespective of the results of examination of the matter at the Circuit Court of Reykjavik the Appellate Tribunal had the right and opportunity to examine the substance of the matter.

The court dismissed the motions made by G. Khomsky, B. Gudmundsson, Hansa Ltd. with the request to be impleaded in the capacity of a third-party to the proceedings by the court.

The decision was based on the requirements of art. 39 of the Russian APC whereby the persons impleaded in the capacity of a third-party by the court may to step in in the legal proceedings on the side prior to the court's decision.

Since the motion with the request to step in in the legal proceedings was made by said persons following the decision taken by the court, the Appellate Tribunal is not entitled to sustain such motions.

When establishing the fact that the agreements of 24.03.95 are void, the Arbitrash court took no decision with respect to rights and responsibilities of G. Khomsky, B. Gudmundsson, Hansa Ltd., insofar as by virtue of art. 167 (1) of the Russian Civil Code an invalid transaction does not give rise to civil rights and responsibilities, hence the court is not in the position to take a decision with respect to the rights and obligations of the said persons, since these persons have no rights and responsibilities under the said transactions.

With respect to rights and responsibilities related to the invalidity of a transaction, which is to say, restitution the Arbitrash court has never taken its decision.

The court dismissed the defendant's motion in which it has petitioned the court to accept the statement of claim of RMZ as a person that had not been impleaded in the capacity of a third-party in terms of whose rights and responsibilities the decision was made by the court. The court took no decision with respect to rights and responsibilities of RMZ as a founder and shareholder of BBP acknowledging the said rights and responsibilities and not questioning them within the framework of this court case.

Due to reasons as follows, the Appellate Tribunal rejected the statement of the defendant's representatives arguing that the plaintiff had had no rights to file the statement of claim, insofar as since the moment of the state registration of the changes to the foundation documents of BBP by the Registration Chamber the plaintiff was no longer in the capacity of a shareholder.

As it follows from the wording of the decision of the Registration Chamber No 26067 of 10.10.95, the Registration Chamber only "took note" of the changes and additions to the foundation documents of BBP but not registered them.

As it is established by the court, the very decision of the Registration Chamber is based on the invalid decision of the extraordinary shareholders' meeting held on 25.09.95, hence it is against the law.

In the course of the court hearing the plaintiff's representatives argued that the said act of the Registration Chamber should not be applied as an act of the state body contradicting the law.

By virtue of art. 12 of the Russian Civil Code the defence of civil rights is conducted, inter alia, by way of non-application by the court of the act of a state body that is against the law.

Thus, following art. 12 of the Russian Civil Code the Appellate Tribunal decides not to apply the decision of the Registration Chamber No 26067 of 10.10.95 "To take note of changes and additions to the foundation documents of BBP made by the decision of the extraordinary shareholders' meeting of 25.09.95" as the one being against the law.

At the same time, the court's reasoning was based on the premise that by virtue of art. 12 of the Russian Civil Code, failure to apply the act of a state body contradicting the law is an independent method of exercising the defence of civil rights, along with the other one: to declare an act of the state body invalid.

When adopting this legal act, the Arbitrash court followed the provisions of Russian legislation, taking into account the fact that the relationships involving the registration of securities and transactions with them are public and legal control exerted by the state (RF) over private and legal relationships.

The relationships involving the registration of securities and transactions involving securities being established between the entities and persons, on the one hand, and the state body, on the other hand, are not subject to the regulation of the civil law, hence the counterparties on both sides of the transaction may not subject the order of the state registration established by laws and other legal acts of the Russian Federation and legal consequences of the parties' failure to meet the requirements set in terms of the state registration to the legislation of a foreign state, in particular, legislation of Iceland.

In view of the above circumstances, the conclusions reached by the court of the first instance that the decision of the extraordinary shareholders' meeting of BBP dated 25.09.95 is invalid is legal and well-grounded. Its decision is not subject to revision. Following articles 134, 157-159 of the APC, par. 49-51 of the Regulation "On Issuance for Circulation and Circulation of Securities and Stock Exchanges in the RSFSR", the Appellate Tribunal -

DECIDED:

To leave unchanged the decision of the Arbitrash court of St. Petersburg and the Leningrad region dated 18.04.96 in action No 638/96 and that the appeal was not subject to satisfaction.

chairman - M. Kuznetsov  
judges- I. Serikova, M. Nikitusheva

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## ПОСТАНОВЛЕНИЕ

АПЕЛЛЯЦИОННОЙ ИНСТАНЦИИ ПО ПРОВЕРКЕ  
ЗАКОНОСТИ И ОБОСНОВАННОСТИ РЕШЕНИЙ  
АРБИТРАЖНОГО СУДА, НЕ ВСТУПИВШИХ В ЗАКОННУЮ СИЛУ

г.Санкт-Петербурга

04-05 июня 1996 г.

№ 638/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,  
в составе:

председательствующего Кузнецова М.Б.

судей: Сериковой И.А., Никитушевой М.Г.

при участии в заседании:

от истца юр. Попондопуло Б.С., юр. Гутов В.В., юр. Ертов Н.В.,  
юр. Вершинин А.П., г-ж Ингимар Х.И.

от ответчика ген.дир. Ъорголфссон Б.Т., юр. Лебедев К.К., юр. Стнев Д.Г.,  
юр. Ференс-Стоцкий, предст. Торсен С.С.

З-е лицо: нач.отл. Шульга О.Н.

рассмотрев в судебном заседании апелляционную жалобу

~~АССТ "Болтик Ботлинг Плант"~~ АССТ "Болтик Ботлинг Плант"

(наименование лица, подавшего апелляционную жалобу)

на решение ~~Арбитражного~~ арбитражного суда г.Санкт-Петербурга и Ленинградской области  
от "18" 04 1996 г. по делу № 638/96  
судьи Мальшева Н.Н., Пастухова И.В., Сролова Е.А.

(фамилии судей, принявших судебный акт)

принятое по иску Компании "Болтик Груп Лтд"

к АССТ "Болтик Ботлинг Плант"

З-е лицо: Территориальное управление ГКАП РУ по СПб

установил: В арбитражный суд Санкт-Петербурга и Ленинградской области обратилась Компания "Болтик Груп Лтд" Британские Виргинские острова, с иском к АССТ "Болтик Ботлинг Плант" СПб, Россия, о признании недействительным решения собрания акционеров АССТ "Болтик Ботлинг Плант" от 29.09.95, в связи с тем, что Компания "Болтик Груп Лтд", будучи учредителем и акционером 75% акций АССТ "Болтик Ботлинг Плант" на данное собрание не вызывалось, и, соответственно, участия в нём не принимало.

В процессе рассмотрения дела, истец изменил предмет иска, указав, что просит признать недействительным решение чрезвычайного собрания акционеров АССТ "Болтик Ботлинг Плант" от 25.09.95г. в связи с тем, что протокол собрания акционеров, датированный 29.09.95г. исправлен на дату 25.09.95г. (л.д.91).

Факт проведения общего собрания 25.09.95г. подтверждался представителем в процессе, а также бланком протокола (л.д. 94) и протоколом заседания акционеров АОЗТ "Болтик Плант" от 22.11.95 (л.д. 96).

В соответствии со ст.37 АК РФ, судом принято изменение предмета иска, заявленного истцом.

Решением суда от 18.04.96г., решение чрезвычайного собрания акционеров АОЗТ "Болтик Плант" от 25.09.95г. признано недействительным, т.к. лица, принимавшие участие в нём в качестве акционеров: Компания икинг Бруури Лтд" (изменившая название на (общество "Ханса Лтд" - л.д. 48), гражданин Исландии Б. Гудмундссон на момент проведения собрания - 25.09. гражданами АОЗТ "Болтик Плант" не являлись, т.к. регистрация соглашений о присобретении акций АОЗТ "Болтик Плант" в соответствии с п.3 ст.35 Закона о ССР об иностранных инвестициях в РСФСР на дату проведения собрания отсутствовала.

В апелляционной жалобе АОЗТ "Болтик Плант" просит решение изменить и в иске отказать с учётом представленных доводов в судебном заседании по следующим мотивам:

- в соответствии с п.3 ст.52 ГК РФ, учредители, участники юридического лица не вправе ссылаться на отсутствие регистрации изменений учредительных документов в отношениях с третьими лицами, действовавшими с ёю этих изменений;

- с момента регистрации Регистрационной палатой мэрии СПб изменения в учредительных документах АОЗТ "Болтик Плант" (от 10.10.95 №067, л.д. 63) Компания "Болтик Груп Лтд" Британские Виргинские острова, акционером АОЗТ не является и, следовательно, не вправе предъявлять иски обжалованием решений собраний акционеров общества;

- включение новых акционеров в реестр акционеров АОЗТ "Болтик Плант" (далее - АОЗТ "ЕБП") произведено в соответствии с временным положением о ведении реестра;

- в соответствии с п.1.3 Инструкции о правилах совершения регистрации сделок с ценными бумагами, утвержденной Письмом Минфина РФ от 06.07.92 №3, регистрация соглашений об уступке участниками закрытого акционерного общества принадлежащих им акций не требуется;

ст.35 Закона об иностранных инвестициях о регистрации приобретения иностранными инвесторами акций относится только к случаям присобретения ими предприятий, не являющихся предприятиями с иностранными инвестициями и поэтому к приобретению акций отечеством не применяется;

- ст.35 Закона об иностранных инвестициях противоречит ГК РФ. Самое главное заявление подписано по доверенности господином Тором Кристианом, однако, доверенность выдана не от имени истца, а от имени двух других юридических лиц (Компания "Форст Икзекьютив Директорз Инк" и его Секретаря Лтд), отношения к делу не имеющих;

- решение общего собрания акционеров было признано недействительным смотря на то, что договор о продаже акций бывшими акционерами, в силу ст.146, 382 ГК РФ повлек за собой изменения состава акционеров общества на дату проведения собрания.

В своих возражениях на апелляционную жалобу представители ответчика указали следующее:

- в АОЗТ "ЕБП" отсутствовала эмиссия акций, следовательно, отсутствует возможность их продажи;

- сделка по отчуждению акций могла быть совершена только после регистрации выпуска ценных бумаг, которая, на момент проведения общего собрания не осуществлялась;

- сделки по отчуждению акций противоречат п.10 ст.1 Закона О взыскании долгов и исполнении обязательств и оценке имущества.

- Закон РСФСР "Об иностранных инвестициях в РСФСР" не противоречит ПК РФ, а именно ч.4 п.1 ст.2, предусматривающей, что федеральным законом могут быть установлены иные правила, чем установлены гражданским законодательством для отношений с участием иностранных граждан и иностранных юридических лиц.

Третье лицо без самостоятельных требований - Территориальное управление ГКАП РФ по СПб, вступившее в дело, также представило возражения против жалобы по следующим мотивам:

- согласно письма Комитета по экономике и финансам мэрии СПб, первичная эмиссия акций АСТ "БЕЛ" зарегистрирована только 25.10.95г., следовательно, в нарушение п.п. 49, 50 Положения о выпуске и обращении ценных бумаг и фондовых биржах в РСФСР, утверждённого Постановлением Правительства РСФСР от 28.12.91г. №78, сделки с акциями АСТ "БЕЛ" до их регистрации являются недействительными, и следовательно, лица, участвующие в чрезвычайном собрании акционеров от 25.09.95г. акционерами не являются, а само собрание является неправомочным.

Выслушав и обсудив доводы представителей сторон и 3-го лица, а также исследовав материалы дела в судебном заседании, апелляционная инстанция установила следующее.

В соответствии со Свидетельством от 08.06.93г. за реестровым номером АСП-5108 Комитетом по внешним связям мэрии СПб зарегистрировано и внесено в государственный реестр акционерное общество закрытого типа "Болтик Ботлинг Плант" (в дальнейшем - АСТ "БЕЛ").

В соответствии с Уставом и учредительным договором, учредителями АСТ "БЕЛ" являются: Компания "Болтик Груп Лимитед" (в дальнейшем - Компания "БГЛ"), являющаяся юридическим лицом в соответствии с законодательством Соединенного Королевства Великобритании и Северной Ирландии и акционерное общество открытого типа "Ремонтно-механический завод", являющееся юридическим лицом в соответствии с законодательством РС.

В соответствии с п.3.2 учредительного договора между ними, акции между участниками распределяются следующим образом: Компания "БГЛ" - 750 акций, что составляет 75% уставного капитала, АО "Ремонтно-механический завод" - 250 акций, что составляет 25% уставного капитала, а в совокупности оба учредителя имели 100% уставного капитала (л.д. 11, 16).

В соответствии с соглашением от 24.03.95г. Компания "БГЛ" передала гражданину Исландии Бьоргодфуру Гудмундссону право собственности на 325 простых именных акций (32,5%) АСТ "БЕЛ", а также передает все удостоверяемые акциями права: право участвовать в управлении делами "БЕЛ", включая право участия в голосовании на собраниях акционеров, право на получение части имущества "БЕЛ" после его ликвидации, а также все другие права, предусмотренные законодательством России.

Соглашением от 24.03.95г. Компания "БГЛ" передает Компании "Бикинг Бруири Лимитед" (измененное название на "Ханса Лтд") г. Рейкьявик, Исландия, право собственности на 325 простых именных акций (32,5%), а также передает все удостоверяемые акциями права (л.д. 59, 60).

В соответствии с протоколом чрезвычайного собрания акционеров АСТ "БЕЛ" от 14.02.95г. (л.д. 92), Компания "БГЛ" и Ремонтно-механический завод решили передать 100 простых именных акций, которыми владеет Компания "БГЛ" гражданину России Хомскому Г.М. Соглашение между Компанией "БГЛ" и гражданином России Хомским Г.М. о передаче акций и прав, удостоверяемых акциями, отсутствует.

Решением чрезвычайного собрания акционеров АСТ "БЕЛ" от 25.09.95г. (протокол ошибочно датирован 28.09.95г.) в котором участвовали в качестве акционеров: "Бикинг Бруири Лтд", гражданин Исландии Б. Гудмундссон, АСТ "Ремонтно-механический завод", гражданин России Хомский Г.М. с указанием, что присутствуют акционеры, владеющие 100% акций, было произведено перераспределение акций между указанными лицами, с соответствующими внесениями изменений в Устав и учредительный договор.

решением Регистрационной палаты мэрии СПб №26067 от 10.10.95г. о чрезвычайном собрании акционеров, состоявшемся 25.09.95г., яты к сведению изменения и дополнения учредительных документов "ББП" с внесением в Единый государственный реестр государственной регистрации соответствующих изменений учредительных документов (л.д.63).

На основании установленных обстоятельств по делу, апелляционная инстанция даёт следующую правовую оценку этих обстоятельств.

Соглашение от 24.03.95г. между Компанией "БГЛ" и гражданином Ильи Б.Гудмундссоном и между Компанией "БГЛ" и Компанией "Викинг при Лтд" (Ханса Лтд) о передаче права собственности на 325 простых иных акций соответственно по каждому соглашению и передача всех доверяемых акциями прав, является обращением ценных бумаг на территории РФ. Оба соглашения заключены в СПб, Россия. Данный вывод сделан на основе п.2 Положения о выпуске и обращении ценных бумаг и фондовых бирж в РСФСР, утвержденного Постановлением Правительства РСФСР от 28.12.1992г., в соответствии с которым под обращением ценных бумаг понимаются купля и продажа, а также другие действия, предусмотренные законодательством РСФСР, приводящие к смене владельца ценных бумаг. Данное соглашение приводит к смене владельца ценных бумаг.

В соответствии с п.6 данного Положения, к выпуску и обращению на территории РСФСР допускаются только те ценные бумаги, которые прошли государственную регистрацию в Министерстве экономики и финансов РСФСР и были в установленном порядке государственный регистрационный номер,

в соответствии с п.3 данного Положения, его действие распространяется на акции акционерных обществ.

На момент заключения названных Соглашений от 24.03.95г., акции АОЗТ "ББП" прошли государственную регистрацию в Министерстве экономики и финансов.

В соответствии с заключениями Комитета экономики и финансов мэрии от 18.04.95г. №05-26/729 и 13.05.95г. №05-25/1087 первый выпуск обыкновенных именных акций АОЗТ "ББП" на сумму уставного фонда 20 МЛН рублей нальной стоимостью 20 000 рублей каждая в количестве 1000 штук зарегистрирован 25.10.95г. за №72-1-2293.

В соответствии с Постановлением Совета Министров РСФСР от 25.12.90г. "Акционерное общество может быть открытым или закрытым.

Следовательно, требование о государственной регистрации в Министерстве экономики и финансов РСФСР акций акционерных обществ относится как к открытым обществам открытого типа, так и к акционерным обществам закрытого типа.

Данное правило подтверждается ч.2 п.40 данного Положения, в соответствии с которым регистрация закрытого акционерного общества является основанием для регистрации выпуска акций, размещаемых среди учредителей. Статья о регистрации ценных бумаг, выпускаемых в обращение в форме частного эмиссии не допускается.

Ответчиком не представлены доказательства освобождения Министерством экономики и финансов РСФСР от регистрации проспекта эмиссии акций АОЗТ "ББП" до и при наличии такого освобождения.

Следовательность государственной регистрации ценных бумаг акционерного общества (в том числе - закрытого АО) предусмотрена Инструкцией о правилах выпуска и регистрации ценных бумаг на территории РФ от 03.03.92г. №2, утвержденной письмом Министерства финансов РФ от 03.03.92г. №3, разработанной в изменение Постановления Правительства РФ от 28.12.91г. №78 (б) утвержденного Положения о выпуске и обращении ценных бумаг и фондовых биржах на территории РСФСР.

В соответствии с п.2 данной Инструкции, первичная эмиссия ценных бумаг, имеющая государственную регистрацию (п.1) осуществляется при учреждении

акционерного общества и размещении акций среди его учредителей.

В соответствии с ч.2 п.4 данной Инструкции при учреждении акционерного общества, в соответствии с Положением об акционерных обществах, утвержденным Постановлением Совмина РСФСР от 25.12.90г. №601, регистрация ценных бумаг осуществляется на основании представляемых нотариально заверенных копий учредительных документов. С учетом последующих изменений нотариальная форма удостоверения учредительных документов была отменена.

В соответствии с п.5, регистрация ценных бумаг производится городским финансовым отделом Санкт-Петербурга в случае регистрации ценных бумаг выпускаемых в порядке учреждения акционерного общества, независимо от суммы эмиссии.

Поскольку указанная процедура государственной регистрации акций АОТ "ЕБП" на момент заключения соглашения от 24.03.95г. не была произведена, в результате данных соглашений имело место обращение на территории РСФСР ценных бумаг, которые не прошли государственную регистрацию в Министерстве экономики и финансов РСФСР и не получили в установленном порядке государственный регистрационный номер, что в силу п.6 Положения о выпуске и обращении ценных бумаг и фондовых биржах в РСФСР не допускается, а сами акции(соглашения) являются не соответствующими требованиям указанного Положения.

В соответствии со ст.168 ГК РФ, сделка, не соответствующая требованиям закона или иных правовых актов, ничтожна.

В соответствии с п.6 ст.3 ГК РФ, Указы Президента РСФСР и Постановления Правительства РФ отнесены к иным правовым актам.

В соответствии со ст.9 Водного закона о действиях ч.1 ГК РФ, нормы Кодекса об основаниях и последствиях недействительности сделок(ст.ст.165-180) применяются к сделкам независимо от времени совершения соответствующих сделок.

Поэтому соглашения от 24.03.95г. между Компанией "ЕБП" и гражданином Исландии Б.Гудмундссоном и между Компанией "ЕБП" и Компанией "Викинг Брувири Лтд"(Ханса Лтд) как не соответствующие требованиям Постановления Правительства РСФСР от 28.12.91г. №78 являются ничтожными сделками.

Судом также установлено, что гражданином Б.Гудмундссоном и Компанией "Викинг Брувири Лтд"(Ханса Лтд) каждым в отдельности по указанным соглашениям было приобретено более 15% акций одного эмитента(32,5% каждый акций АОТ "ЕБП"), которые, в соответствии с п.49 Положения о выпуске и обращении ценных бумаг и фондовых биржах в РСФСР требуют уведомления Министерства экономики и финансов РСФСР в пятидневный срок.

В соответствии с п.51 данного Положения, нарушения требований п.49 настоящего Положения в части, касающейся уведомления(согласия) Министерства экономики и финансов РСФСР является основанием для признания сделок недействительными.

Таким образом, данные Соглашения от 24.03.95г. являются недействительными, как не соответствующие требованиям п.п.49,51 данного Положения.

В соответствии с п.1 ст.167 ГК РФ, недействительная сделка не влечет юридических последствий, за исключением тех, которые связаны с её недействительностью и недействительны с момента её совершения.

Следовательно, соглашения от 24.03.95г. не влекут передачу от Компании "ЕБП" соответственно Б. Гудмундссону и Компании "Викинг Брувири Лтд"(Ханса Лтд) право собственности на 32,5 простых именных акций каждому из них, а также не влекут передачу всех удостоверяемых акциями прав(п.2 данного Соглашения).

Таким образом, гражданин Исландии Б. Гудмундссон и Компания "Викинг Брувири Лтд"(Ханса Лтд) не вправе были участвовать в качестве акционеров чрезвычайном собрании АОТ "ЕБП", состоявшемся 25.09.95г., само собрание было неподпомочено в силу отсутствия кворума и не могло состояться при

существии надлежащего уведомления и участия учредителя и акционера ГТ "БГЛ", а именно - Компании "БГЛ".

Таким образом, вывод апелляционной инстанции о недействительности решения чрезвычайного собрания акционеров АССТ "БГЛ", состоявшегося 25.09.95г. в результате, в соответствии со ст.155 п.1 АПК РФ, повторного рассмотрения дела, основан на ничтожности соглашений от 24.03.95г. не породивших прав акционеров у Компании "Ханса Лтд" и гражданина Исландии Б.Гудмундссона.

Судом I-й инстанции также правильно сделан вывод о недействительности решения чрезвычайного собрания АССТ "БГЛ" от 25.09.95г. на основании отсутствия перехода права собственности на акции от Компании "БГЛ" в связи с тем, что собрание проведено до момента регистрации сделок.

Данный вывод правомерно сделан на основе п.6( в решении допущена опечатка в номере пункта) ст.35 Закона РСФСР "Об иностранных инвестициях в РСФСР".

Вместе с тем, возникновение права собственности на акции, а также удостоверяемых акциями прав по данным сделкам, независимо от государственной регистрации произойти не может в силу их ничтожности.

Судом проверена подлинность подписания искового заявления представителем Компании "БГЛ" Тором Кристянссоном.

Последний подписал исковое заявление, принятое судом 07.02.96г. по доверенности от 23.01.96г.

Доверенность от 23.01.96г. (л.д.23) подписана директором "Ферст Икзекьютив Директорс Инк" Валери Эллен Хаксли как уполномоченным представителем Компании "БГЛ". Доверенность нотариально удостоверена публичным нотариусом Джейри С. Корнуэллом, а также заверена печатью "БГЛ". Срок действия доверенности - 6 месяцев с момента её подписания.

В материалах дела представлено официальное уведомление государственного нотариуса Джейри С. Корнуэлла в силу полномочий, переданных ему 03.04.74г. Его Святейшеством Архиепископом Кентерберийским Артуром Майклом, зарегистрированных чиновником Королевского Камцдерского суда 06.05.74г. и зарегистрированных Церковным судом острова Джерси в акте, датированном 20.05.74г., где он удостоверяет и свидетельствует, что компания "Ферст Икзекьютив Директорс Инк" является единственным директором Компании "БГЛ" и что в соответствии со ст.77 Меморандума и Уставом Компании Валери Эллен Хаксли уполномочен давать полномочности от имени "БГЛ".

Данное уведомление официально заверено апостилем Её Королевского Величества губернатором провинции Джерси за номером JU (A) 19562 в соответствии с Гаагской Конвенцией от 05.10.61г. Исходя из п.3 ст.165 основ гражданского законодательства Союза ССР и республик, согласно которой форма и срок действия доверенности определяются по праву страны, где выдана доверенность, суд признаёт полномочия господина Тора Кристянссона на подписание искового заявления от имени Компании "БГЛ", выраженных в доверенности, выданной и оформленной в соответствии с законом иностранного государства - Исландии.

При этом арбитражный суд руководствовался п.1 ст.12 АПК РФ о применении иностранного права арбитражным судом.

Арбитражный суд отклонил ходатайство ответчика о приостановлении производства по делу в связи с предъявлением Б.Гудмундссоном исковых требований в Окружной суд г.Рейкьявика о признании действительности соглашения от 24.03.95г. о приобретении истцом 325 акций АССТ "БГЛ", СПб, Россия.

При этом суд исходил из следующего: в подпункте I п.1 ст.81 АПК РФ о конституционных, уголовных, гражданских, административных судопроизводством в силу ст.118 Конституции РФ. понимается правоосуждение осуждаемого.

емое судом в Российской Федерации, входящим в судебную систему РФ.

Поскольку международным договором не предусмотрено иного, суд, руководствуясь подпунктом 1 п.1 ст.81 АПК РФ, не обязан приостанавливать производство по делу в связи с рассмотрением другого дела в порядке гражданского судопроизводства на территории иностранного государства.

Сделка от 24.03.95г., в том числе - соглашение с Б.Гудмундссоном о приобретении 325 акций АОЗТ "ЕБЛ", как установлено судом, не соответствует требованиям нормативно-правовых актов РФ, т.е. ничтожна.

В силу п.1 ст.166 ГК РФ, ничтожная сделка недействительна по основаниям, установленным настоящим Кодексом, независимо от такового признания судом.

Апелляционная инстанция не признавала соглашения от 24.03.95г. недействительными сделками, а только установила факт их несоответствия требованиям нормативно-правовых актов РФ, т.е. их ничтожность.

Поэтому, независимо от результатов рассмотрения дела в Окружном суде г.Рейкьявика, апелляционная инстанция имела возможность рассмотрения данного дела по существу.

Судом отклонены ходатайства Б.Гудмундсона, Компании "Ханса Лтд" и гражданина РФ Хомского Г.М. о привлечении в качестве заинтересованных лиц либо как 3-х лиц, не имеющих независимых притязаний (лиц, не заявлявших самостоятельных требований).

При этом суд исходил из требований п.1 ст.39 АПК РФ, в соответствии с которой 3-и лица, не заявляющие самостоятельных требований на предмет спора, могут вступить в дело на стороне ответчика до принятия арбитражным судом решения.

Поскольку ходатайство о вступлении в дело указанными лицами заявлено после принятия арбитражным судом решения, апелляционная инстанция не вправе удовлетворять такие ходатайства.

Установливая факт ничтожности соглашения от 24.03.95г., арбитражный суд не принимал решения о правах и обязанностях господина Б.Гудмундсона и Компании "Ханса Лтд", поскольку, в силу п.1 ст.167 ГК РФ, недействительная сделка не влечёт возникновения гражданских прав и обязанностей и, следовательно, суд не может принять решение о правах и обязанностях указанных лиц, т.к. такие права и обязанности по данным сделкам у этих лиц отсутствуют.

В отношении прав и обязанностей, которые связаны с недействительностью сделки, а именно реституции, арбитражный суд решение не выносил и не выносит.

Судом отклонено ходатайство ответчика о принятии к рассмотрению жалобы АОЗТ "Ремонтно-механический завод" как лица, не привлечённого к участию в деле, решение о правах и обязанностях которого вынес суд, поскольку арбитражный суд не выносил решение о правах и обязанностях АОЗТ "Ремонтно-механический завод" как учредителя и акционера АОЗТ "ЕБЛ", признавая эти права и обязанности и не ставя их под сомнение в рамках данного арбитражного дела.

Апелляционная инстанция отклонила довод представителей ответчика об отсутствии права истца на предъявление иска, т.к. с момента регистрации изменений в учредительных документах АОЗТ "ЕБЛ" Регистрационной палатой, истец не являлся акционером по следующим основаниям.

Как следует из текста решения Регистрационной палаты от 10.10.95г. №26067, изменения и дополнения учредительных документов АОЗТ "ЕБЛ" только приняты к сведению, а не зарегистрированы.

Как установлено судом, само решение Регистрационной палаты принято на основании недействительного решения чрезвычайного собрания акционеров, состоявшегося 26.09.95г., т.е. противоречит закону.

В заседании апелляционной инстанции представители истца заявляли о изменении данного акта Регистрационной палаты как акта государственного органа, противоречавшего закону.

В силу ст. 12 ГК РФ, защита гражданских прав осуществляется, в том числе путём неприменения судом акта государственного органа, противоречавшего закону.

Поэтому, руководствуясь ст. 12 ГК РФ, апелляционная инстанция не меняет решение Регистрационной палаты мэрии СПб от 10.10.95г. № 6667 в связи с изменениями и дополнениями учредительных документов ОАО "ББП", внесённых решением чрезвычайного собрания акционеров, состоявшимся 25.09.95г., как противоречавшего закону.

При этом суд исходил из того, что в силу ст. 12 ГК РФ неприменение акта, противоречавшего закону является самостоятельным способом защиты гражданских прав наряду с другим способом: признанием недействительным государственного органа.

Принимая данный судебный акт, арбитражный суд руководствовался законодательством РФ, принимая во внимание, что отношения по регистрации ценных бумаг с ними является публично-правовым контролем государства (Российской Федерации) за частно-правовыми отношениями участников гражданского оборота.

Отношения по регистрации (ценных бумаг, сделок с ними) возникающие у участниками гражданского оборота, с одной стороны, и государственным органом - с другой стороны, не является предметом гражданского права, соответственно, стороны по сделке не могут подчинить установленные законами и иными правовыми актами РФ порядок регистрации и юридические последствия его несоблюдения законодательству иностранного государства, в частности, законодательству Исландии.

С учётом установленных обстоятельств, вывод суда I-й инстанции о недействительности решения чрезвычайного собрания акционеров АООТ "ББП", состоявшегося 25.09.95г. является законным и обоснованным и пересмотру подлежит.

Руководствуясь ст.ст. 134, 157-159 УДЛХ АК РФ, п.п. 49-51 Положения о курсе и обращении ценных бумаг и фондовых биржах в РСФСР, апелляционная инстанция

#### ПОСТАНОВИЛА:

дение арбитражного суда Санкт-Петербурга и Ленинградской области № 638/96 от 18.04.96г. оставить без изменения, а апелляционную - без удовлетворения.

Председательствующий

М.Е. Кузнецов

Судьи

И.А. Серикова

Н.Г. Никитушева

КОПИЯ ВЕРНА
Консультант

## EMBLEM

FEDERAL ARBITRAZH COURT OF THE NORTH-WESTERN CIRCUIT  
12 Admiralteisky prospect, 190000 St. Petersburg, Russia

## COURT ORDER

29 July 1996

No 947/96

The Federal Arbitrazh court of the North-Western Circuit

in the composition of a panel of three judges headed by:

chairman - T. Shpatcheva

judges- O. Vetoshkina, I. Yakovleva

with the participation in the course of the Court Hearing

on behalf of the plaintiff: A. Vershinin, V. Popondopulo

on behalf of the defendant: Baltic Bottling Plant Y. Karpovitch, V. Ferense-Sorotsky, I. Makarov

on behalf of the persons impleaded in the capacity of the third parties by the court:  
Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support  
of New Economic Structures: O. Shulga

considered in the course of an open hearing the cassation appeal filed by the Closed Joint-Stock Company Baltic Bottling Plant ("BBP") in which Baltic Bottling Plant petitioned the court to revoke the decision of the Arbitrazh court of St. Petersburg and the Leningrad region dated 18.04.96 (judges Malysheva, Pastukhova, Orlova) and decision of the Appellate Tribunal of the Arbitrazh court of St. Petersburg and the Leningrad region dated 04-05.0696 in action No 638/96 (judges Kuznetsov, Serikova, Nikitusheva).

Having heard the representatives of Baltic Group Limited, Baltic Bottling Plant, Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures, having reviewed the materials of the matter and having discussed the arguments outlined in the cassation appeal, the Federal Arbitrazh Court of the North-Western Circuit

### ESTABLISHED:

The company Baltic Group Limited (the British Virgin Islands) as one of the founders of BBP with 75% of shares of BBP filed its statement of claim in the Arbitrazh Court of St. Petersburg and the Leningrad region against BBP in which Baltic Group Limited has petitioned the court to declare invalid the decision of the extraordinary shareholders' meeting of 29.09.95, subsequently pursuant to art. 37 of the Russian Arbitration

Procedural Code (the "APC") specified the date of the meeting more precisely as 25.09.1995. In order to substantiate its claims, the plaintiff has stated that since the moment of the defendant's foundation it did not sell its shares and its stake in the charter capital did not change. The disputed decision of the shareholders' meeting was taken in violation of par. 95-97, 99, 103, 105 of the then effective Guidelines on Joint-Stock Companies, insofar as the invitation to take part in the shareholders' meeting was not served upon the plaintiff and it did not take part in the shareholders' meeting, unlawful changes to the foundation documents whereby the plaintiff was excluded from the charter as a founder had been made without the knowledge and consent of the plaintiff.

The defendant did not accept and agree with the statement of claim. It has referred to the fact that the plaintiff transferred the title in 650 shares owned by the plaintiff by force of two sales-purchase agreements of 24.03.95 entered into with Viking Brewery Ltd, an Icelandic company, and B. Gudmundsson, a citizen of Iceland, so that it was not a shareholder at the moment of the disputed shareholders' meeting.

On 14 March 1996 the court made a ruling to implead the Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures in the capacity of a third party.

The third party has upheld the statement of claim and referred to the circumstances as follows (sheet 35-37 of the case file). The sale of 65% of the shares of BBP to Bjorgolfur Gudmundsson and Viking Brewery Ltd, wholly owned and controlled by the aforementioned Bjorgolfur Gudmundsson required the preliminary approval of the Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures and this approval was not received in violation of art. 18 of the Federal Law "On Competition and Limitation of Monopolistic Activity in the Commodities Markets", par. 50 of the Regulation "On Issuance for circulation and Circulation of Securities and Stock Exchanges in the RSFSR" approved by Resolution No 78 dated 28.12.91 of the Government of the RSFSR. The issuance for circulation and sale of BBP's shares is against the law, since the prospectus was not registered with the Economic and Finance Committee of the Mayoralty of St. Petersburg.

In its decision of 18.04.96 the court found for the plaintiff and satisfied the statement of claim. The court has recognised that the rights of the plaintiff were violated, since the two agreements on the sale of the shares by BGL to Viking Brewery Ltd and Bjorgolfur Gudmundsson were registered in accordance with the established procedure on 28.09.95 and only since that moment the ownership right of the shares was transferred to the purchasers by virtue of art. 223 of the Civil Code of RF and art. 35 (3) of the Federal Law "On Foreign Investment in Russia". At the same time, the court did verify the legality of the said agreements.

The Appellate Tribunal in its decision of 04-05 June 1996 upheld the decision of the court of the first instance and left it unchanged. Having agreed with the conclusions reached by the court of the first instance, the Appellate Tribunal additionally verified the

legality of the two agreements of 24.03.95. When assessing the agreements, the court recognised them as the ones involving the circulation of securities in accordance with par. 2 of the Regulations "On the Issuance for Circulation and Circulation of Securities and Stock Exchanges inside the Russian Federation". In accordance with par. 6 thereof only those securities are eligible for the issuance and circulation inside the Russian Federation that have been registered with the Economy and Finance Ministry of Russia (the securities are subject to the state registration and the relevant registration number should be assigned to the securities in accordance with the established order).

Instruction No 2 of 03.03.92 "On the Rules of Issuance and Registration of Securities inside the Russian Federation" approved by the Finance Ministry of the Russian Federation also provides for the mandatory state registration of securities issued by joint-stock companies.

Since the state registration of the shares of Baltic Bottling Plant did not take place (the registration of the shares was carried out only on 25.10.95), thus the court declared void the agreements whereby they had been allegedly sold dated 24.03.95 in accordance with art. 166, 168 of the Russian Civil Code. The court also has pointed out that B. Gudmundsson and Viking Brewery Ltd. (currently Hansa Ltd.) (each of which acquired over 15% of shares of one issuer (32.5% each)) failed to give a 5 days' prior notice to that effect to the Economy and Finance Ministry of Russia in violation of par. 49 of the Regulations above. This violation provides a legal basis to invalidate the transaction in accordance with par. 51 of the Regulations.

In its cassation appeal Baltic Bottling Plant has petitioned the court to declare invalid the court order and court decision, since they were taken in violation of the relevant substantive and procedural laws. At the same time, BBP in its cassation appeal has petitioned the court to leave the statement of claim without examination, insofar as the statement of claim was signed by T. Kristiansson (unauthorised to do so).

When overruling the motion made by the defendant in which it requested the court to suspend the proceedings with respect to this matter until the statement of claim, in which B. Gudmundsson petitioned the court to declare valid the agreement on purchase of 325 shares of BBP by him, would have been examined by the Circuit Court of Reykjavik, the Appellate Tribunal incorrectly applied the provisions of art. 81 (1) par. 1 of the APC.

The court has violated provisions of art. 155 (3) of the APC of Russia providing that the Appellate Tribunal should not accept and examine new claims that have not been filed in the court of the first instance (when examining the matter in the court of the first instance). There is no claim to declare the agreements of 24.03.95 void in the lawsuit. The plaintiff filed this claim only in its response to the appeal, so that when declaring the two agreements void, the court had surpassed the scope of issues that fall within the competence of the Appellate Tribunal. At the same time, the court has violated the principle of competitiveness provided by art. 7 of the APC of Russia, insofar as the court

did not seek the opinion of the defendant with respect to this issue in the course of the hearing.

The court took a decision with respect to rights and responsibilities of the persons not impleaded in the capacity of a third-party to the proceedings by the court (the shareholders of BBP). In violation of the rule that the Appellate Tribunal should re-examine the matter in the second instance relinquished the right of the said persons to step in in the capacity of a third-party. The court had no legal basis to refer to the fact that the said persons had not participated in the proceedings in the court of the first instance.

The court wrongly construed art. 35(3) of the Federal Law "On Foreign Investment". The law establishes the order of acquiring shares of joint-stock companies by foreign investors. Foreign investors acquire shares either at the moment of foundation of a joint-stock company, or acquire them from Russian residents but not when the company having a status of the enterprise with foreign investment has already been carrying out its activities. The reference to art. 35 (3) of the said law providing for the mandatory state registration of securities is irrelevant and groundless, since the Russian Civil Code does not require that the mandatory state registration of transactions involving the sale of shares should be carried out. In accordance with art. 3(2) of the Russian Civil Code all norms of civil legislation contained in other laws should be in line with the Civil Code.

In accordance with par. 1.3 of the Instruction "On the Rules of Carrying out and Registration of Securities Transactions" approved by Letter of the Russian Finance Ministry No 53 dated 06.07.92 the state registration of agreements on sale of shares by shareholders in a closed JSC is not required.

The Court did not take into account the provisions of art. 52 (3) of the Russian Civil Code providing for a different meaning of the state registration of changes to the foundation documents with respect to founders and third parties.

In the course of the hearing before the Appellate Tribunal the representative of the defendant gave additional reasons in support of his position that lawsuit had been signed by an unauthorised person. He indicated that Baltic Bottling Plant upon being presented with the agreements of 24.03.95 made relevant entries in the company's shareholders' register as the holder of the company's shareholders' register which is fully in line with Decree No 1769 of 27.10.93 "On Measures Aimed at Ensuring the Rights of Shareholders". Pursuant to par. 6 thereof making an entry of an owner of shares, who acquired the rights attached to the shares as a result of the transaction in question, in a company's shareholders' register means to carry out the state registration.

The court had no legal basis to apply Regulations "On the Issuance for Circulation of Securities and Stock Exchanges inside the Russian Federation" and Letter of the Russian Finance Ministry No 3 of 03.03.92 "On the Rules of Issuance for Circulation and Registration of Securities inside the Russian Federation", insofar as in accordance with Decree of the Russian President No 1466 (2) of 27.09.93 "On Improvement of Handling

Foreign Investments" "... limitations on the activities of foreign investors inside the Russian Federation may be imposed only by federal laws and decrees of the Russian President. All normative (regulatory) acts of the Council of Ministers, Government of RF, state committees, ministries and government agencies ... imposing additional limitations on the activities of foreign investors inside the Russian Federation that are not stipulated by Russian laws and decrees of the Russian President are invalid and should not be applied". Decree of the Russian President No 2063 of 04.11.94 "On Measures Aimed at State Regulation of Securities Market in Russia" is to the same effect.

In accordance with art. 35 of Russian Federal Law "On Foreign Investment in Russia" Baltic Bottling Plant carried out the state registration of its shares with the Foreign Relations Committee of the Mayoralty of St. Petersburg when registering the joint-stock company. The company was entered into the state register of enterprises with foreign investment, since the said Committee was the then authorised government body empowered to do so.

In its response to the cassation appeal Baltic Group Limited has petitioned the court to leave both the decision of the court of the first instance and the one of the Appellate Tribunal unchanged.

Having verified the correctness of application by the court of the first instance and Appellate Tribunal of the provisions of the substantive and procedural law, the Cassation Tribunal found no legal basis to revoke the court decisions in the action in question.

The statement of claim filed by Baltic Group Ltd was signed by Thor Kristiansson within the scope of authority granted to him under the power of attorney dated 23.01.96 (volume 1, sheet 23 of the case file). The said power of attorney was granted by Valerie Ellen Huxley and Mungo Connor acting in the capacity of authorised representatives of Baltic Group Limited. There is a letter of Jeffry Saint-Claire Cornwell, a notary public, confirming the right of either Valerie Ellen Huxley or Maureen Donovan to grant powers of attorney on behalf of Baltic Group Limited. The plaintiff's representatives in the course of the court hearing confirmed the willingness and commitment of the plaintiff to file the said statement of claim.

Under these circumstances, the court had legal basis to accept the statement of claim and examine its substance. The arguments that the power of attorney had defects and that the statement of claim should be left without examination put forward in the cassation appeal are unconvincing.

The court also found no violations of procedural law.

Art. 81 (1) (1) of the Russian APC binds the Arbitrash Court to suspend the proceedings with respect to the matter in the event that the matter could not be examined until the decision with respect to another issue or matter being considered within the framework of constitutional, civil, criminal or administrative proceedings is taken. These provisions do

not stipulate the examination of the matter by the court of a foreign state. On top of that, the decision of the Icelandic court may have no impact whatsoever on this dispute, since such a decision is not subject to mandatory application inside the Russian Federation. The court declared void the agreements of 24.03.96 as made inside the Russian Federation and governed by the laws of Russia.

Therefore, the court had legal basis to dismiss the motion made by the defendant in which it had requested the court to suspend the proceedings with respect to this matter until the statement of claim in which B. Gudmundsson petitioned the court to declare valid the agreement on purchase of shares of BBP by him would have been considered by the Circuit Court of Reykjavik.

As far as the reference to the decision taken with respect to rights and responsibilities of the persons not impleaded in the capacity of a third-party by the court is concerned, it is irrelevant and groundless. No decision as such was taken by the court, there are no conclusions made with respect to rights and responsibilities of G. Khomsky, B. Gudmundsson, Viking Brewery Ltd. in the disputed court orders. The said persons had not been impleaded in the capacity of a third-party by the court before it took the decision in accordance with art. 39 of the Russian APC, therefore they could not have been impleaded in the capacity of a third-party by the Appellate Tribunal.

The reference made by the petitioner that the court had wrongly construed art. 35(3) of the Federal Law "On Foreign Investment in Russia" providing for the mandatory state registration of transactions, as well as that the said article was in contradiction with the Russian Civil Code that (in the opinion of the petitioner) did not require that the mandatory state registration of the said transactions should be carried out was irrelevant and had no legal basis.

In accordance with art. 164 (2) of the Russian Civil Code the law may introduce the state registration of transactions involving dealing in movable property of a certain type. The Russian Federal Law "On Foreign Investment" provides for the state registration of acquisition by foreign investors of ownership interests, stocks, shares or other securities with the Finance Ministry of Russia or other government bodies authorised to do so. Pursuant to art. 223 of the Russian Civil Code in the event that the transaction involving the sale of property is subject to the state registration, only the state registration gives rise to the ownership right of the property and the ownership right becomes effective from the moment of this state registration, unless otherwise provided by the law.

As at the date of the disputed shareholders' meeting the transfer of shares under the two agreements of 24.03.95 was not registered in line with the established order. Thus, even on the presumption that the said agreements are valid, the plaintiff remained the owner of the shares in question.

However, the Appellate Tribunal rightfully examined the issue with respect to the validity of the said transactions and reached a correct conclusion that they were void given the

requirements set by the Instruction "On the Rules of the Carrying Out and Registration of Securities Transactions" and the Regulations "On the Issuance for Circulation and Circulation of Securities and Stock Exchanges inside the Russian Federation".

At the same time, no violations of art. 155 (3) of the Russian APC are found, since the plaintiff filed no new claims in the Appellate Tribunal. In its statement of claim the plaintiff stated that it had never purported to sell its shares, so that the court had to verify the rightfulness of the two agreements submitted by the defendant evidencing to the contrary. The Appellate Tribunal rightfully declared the two agreements on the transfer of the shares dated 24.03.95 void. This conclusion is in line with art. 168 and art 166 (2) of the Russian Civil Code.

Additional reasoning of the cassation appeal filed by Baltic Bottling Plant by way of references to the fact that the challenged court orders are inconsistent with the provisions of Decree No 1769 of 27.10.93 "On Measures Aimed at Ensuring the Rights of Shareholders", No 1466 of 04.11.94 "On Improvement of Handling Foreign Investments", No 2063 of 04.11.94 "On Measures Aimed at Regulating the Securities Market in Russia".

Decree No 1769 of 27.10.93 applies to Open Joint-Stock Companies, the two others also have no relation to the dispute in question, since in this case it has nothing to do with limitation of a foreign investor's activities.

Under these circumstances, there no grounds to satisfy the cassation appeal.

In view of the above and following articles 174, 177 of the Russian APC, the Federal Arbitrash court of the North-Western Circuit -

DECIDED:

To leave unchanged the decision of the Arbitrash court of St. Petersburg and the Leningrad region dated 18.04.96 and decision of the Appellate Tribunal of the same court dated 04-05.06.1996 in action No 638/96 and that the cassation appeal was not subject to satisfaction.

Chairman

signature

T. Shpatcheva

Judges

signature

I. Yakovlev

signature

O. Vetoshkina

the copy is true

[seal]

Judge [signature] T. Shpatcheva

Leading specialist [signature] N. Katchnova



ФЕДЕРАЛЬНЫЙ АРБИТРАЖНЫЙ СУД СЕВЕРО-ЗАПАДНОГО  
ОКРУГА

ПОСТАНОВЛЕНИЕ

Санкт-Петербург

29 июля 1996 года

Дело № 947/96

Федеральный арбитражный суд Северо-Западного округа в составе:  
председательствующего Шпачевой Т.В.

судей Ветошкиной О.В. и Яковлева И.А.

при участии в заседании:

истца: Компания "Болтик Груп ЛТД"-Попондопуло В.Ф., Вершинин А.Г.

ответчика: АОЗТ "Болтик Ботлинг Плант"-Карпович Е.И., Ференс-Сороцкий В.

Макаров И.А.

Злиса:Санкт-Петербургское территориальное управление ГКАП РФ-Шульг

О.

рассмотрел в открытом судебном заседании кассационную жалобу АОЗТ "Болтик Ботлинг Плант" на решение от 18 апреля 1996 г. (судьи Малышева Н.Н., Пастухова М.В., Орлова Е.А.) и постановление от 04-05 июня 1996 г. (судьи Кузнецова М.В., Серикова И.А., Никитушева М.Г.) по делу №638/96 Арбитражного суда Санкт-Петербурга и Ленинградской области

Выслушав объяснения представителей АОЗТ "Болтик Ботлинг Плант", Компании "Болтик Груп ЛТД", Санкт-Петербургского территориального управления Государственного комитета Российской Федерации по антимонопольной политике и поддержке новых экономических структур, проверив материалы дела, обсудив доводы кассационной жалобы, Федеральный арб

суд Северо-Западного округа

УСТАНОВИЛ:

мпания "Болтик Груп ЛТД" (Британские Вирджинские острова), явля-  
ем из учредителей АОЗТ "Болтик Ботлинг Плант" с 75% долей в  
капитале обратилась в Арбитражный суд Санкт-Петербурга и Ле-  
ской области с иском к АОЗТ "Болтик Ботлинг Плант" о признании  
зительным решения чрезвычайного собрания акционеров от 29 сен-  
1995 г.. Затем в порядке статьи 37 Арбитражного процессуального  
Российской Федерации уточнила дату проведенного собрания на 25  
1995 г. В обоснование своих требований истец указал, что с мо-  
щущдения ответчика не производил отчуждения своих акций и его  
ставном капитале не изменялась. Оспариваемое решение собрания  
ров принято с нарушением пунктов 95-97, 99, 103, 105 действовавше-  
ния об акционерных обществах, поскольку истец на собрание не  
лся и в нем не участвовал, без его ведома и согласия в учреди-  
документы внесены незаконные изменения об исключении сведений  
как учредителе.

ветчик иск не признал, ссылаясь на то, что истец передал права  
ености на принадлежавшие ему 650 акций путем заключения двух  
ий от 24 марта 1995 г. с Исландской компанией "Викинг Брури"  
и гражданином Исландии Бьорголфуром Гудмундссоном, а потому на  
проведения оспариваемого собрания акционером не являлся.

ределением суда от 14 марта 1996 г. в качестве 3 лица без са-  
ельных требований на стороне истца было привлечено Санкт-Петер-  
территориальное управление Государственного комитета Российской  
Федерации по антимонопольной политике и поддержке новых экономи-  
структур (СПб ТУ ГКАП РФ).

иск поддержало, ссылаясь на следующие обстоятельства (лист дела  
нарушение статьи 18 Закона Российской Федерации "О конкурен-  
траннических монополистической деятельности на товарных рын-  
ка 50 "Положения о выпуске и обращении ценных бумаг и фондо-  
ах в РСФСР", утвержденного Постановлением Правительства РСФСР  
кабря 1991 г. N 78, не было получено предварительное согласие  
территориального управления) на продажу 65% акций Бьорголфуру

Гудмундссону и принадлежащей и контролируемой им же фирме "Викинг Ири Лимитед". Сам выпуск и обращение акций АОЗТ "Болтик Ботлиг Плант" является противозаконным, поскольку акции не были зарегистрированы Комитете экономики и финансов мэрии Санкт-Петербурга.

Решением суда от 18 апреля 1996 г. иск был удовлетворен. Суд признал права истца нарушенными, поскольку соглашения от 24 марта 1995 об отчуждении акций "Болтик Груп ЛТД" компании Викинг Бруири Лимитед и Б.Гудмундссону были зарегистрированы в установленном порядке 28 сентября 1995 г. и только с этого времени в силу статьи 223 Гражданского кодекса Российской Федерации и пункта 3 статьи 35 Закона Российской Федерации "Об иностранных инвестициях в РФ" право собственности перешло к приобретателям. Суд при этом не проверял правомерность указанных соглашений.

Постановлением апелляционной инстанции от 04-05 июня 1996 г. решение суда оставлено без изменений. Соглашаясь с выводами суда первой инстанции, суд апелляционной инстанции дополнительно исследовал правомерность вышеназванных соглашений от 24 марта 1995 г. Оценивая эти соглашения, суд признал их в соответствии с пунктом 2 "Положения о выпуске и обращении ценных бумаг и фондовых биржах" обращением ценных бумаг на территории Российской Федерации. Согласно пункта 6 названного Положения к выпуску и обращению на территории Российской Федерации допускаются только те ценные бумаги, которые прошли государственную регистрацию в Министерстве экономики и финансов Российской Федерации получили в установленном порядке государственный регистрационный номер.

Обязательность государственной регистрации ценных бумаг акционерных обществ предусмотрена также Инструкцией о правилах выпуска и регистрации ценных бумаг на территории Российской Федерации от 03.03.95 № 2, утвержденной Министерством финансов Российской Федерации.

Поскольку акции АОЗТ "Болтик Ботлинг Плант" не прошли государственную регистрацию (зарегистрированы только 25.10.95), то соглашения по их отчуждению от 24.03.95 суд признал ничтожными в соответствии с статьями 166, 168 Гражданского кодекса Российской Федерации.

Суд также указал, что в нарушение требований пункта 49 Положения Б.Гудмундссон и компания "Викинг Бруири ЛТД" (в настоящее время "Ханс

ЛДТ"), каждый из которых приобрел более 15% акций одного эмитента (32,5%), не уведомили об этом Министерство финансов и экономики Российской Федерации в пятидневный срок, что в соответствии с пунктом 51 Положения является основанием для признания сделки недействительной.

В кассационной жалобе АОЗТ "Болтик Ботлинг Плант" ставится вопрос об отмене решения и постановления суда как принятых с нарушением норм материального и процессуального права. При этом податель кассационной жалобы просит оставить иск без рассмотрения, поскольку исковое заявление подписано Тором Кристианссоном, не имевшим на то полномочий.

Суд апелляционной инстанции неправильно применил пункт 1 части статьи 81 Арбитражного процессуального кодекса Российской Федерации, отказав ответчику в его ходатайстве о приостановлении производства дела до рассмотрения Окружным судом г. Рейкьявика требования Б. Гудмундссона о признании действительности соглашения о приобретении им 32 акций АОЗТ "Болтик Ботлинг Плант".

Судом нарушены требования части 3 статьи 155 Арбитражного процессуального кодекса Российской Федерации, в соответствии с которыми апелляционной инстанции не принимаются и не рассматриваются новые требования, которые не были предъявлены при рассмотрении дела в первом инстанции. В исковом заявлении отсутствуют требования о признании соглашений от 24.03.95 ничтожными, об этом истец заявил только в отзыве на апелляционную жалобу, поэтому, признавая эти соглашения ничтожными, суд вышел за пределы рассмотрения дела в апелляционной инстанции. При этом судом нарушен закрепленный в статье 7 Арбитражного процессуального кодекса Российской Федерации принцип состязательности сторон, поскольку мнение ответчика по этому вопросу в судебной заседании не выяснялось.

Суд принял решение о правах и обязанностях лиц, не привлеченных участию в деле - акционеров АОЗТ "Болтик Ботлинг Плант" и в нарушении правила о повторном рассмотрении дела в апелляционной инстанции отказал этим лицам в их праве вступить в дело, необоснованно сославшись на то, что они не участвовали в рассмотрении дела на первой инстанции.

Судом неправильно истолкован пункт 3 статьи 35 Закона РСФСР "о иностранных инвестициях", поскольку он регламентирует порядок приобретения иностранными инвесторами акций акционерных обществ при их учреж-

дении либо у лиц, являющихся резидентами РФ, а не в процессе деятельности общества, уже имеющего статус предприятия с иностранными инвестициями. Ссылка на пункт 3 статьи 35 указанного закона о необходимости регистрации несостоятельна и потому, что по Гражданскому кодексу Российской Федерации не требуется государственная регистрация сделок по купле-продаже акций. В соответствии с частью 2 статьи 3 Гражданского кодекса Российской Федерации нормы гражданского права, содержащиеся в этих законах, должны соответствовать Гражданскому кодексу.

Согласно пункта 1.3 Инструкции "О правилах совершения и регистрации сделок с ценными бумагами", утвержденной письмом Минфина РФ 06.07.92 N 53 регистрация соглашений об уступке участниками закрытого акционерного общества принадлежащих им акций не требуется.

Судом не учтены положения части 3 статьи 52 Гражданского кодекса Российской Федерации о различном значении регистрации изменения учредительных документов для учредителей юридических лиц и 3 их лиц.

В судебном заседании кассационной инстанции представитель ответчика дополнительно обосновал свои доводы об отсутствии у лица, подавшего исковое заявление, полномочий на это. Указал, что АОЗТ "Бол-Ботлинг Плант" после предъявления соглашений от 24.03.95 внес соответствующие изменения в реестр как его держатель, что соответствует Указу Президента Российской Федерации от 27.10.93 N 1769 "О мерах обеспечению прав акционеров". Согласно пункта 6 данного Указа внесены в реестр акционеров записи о собственнике акций, приобретшим соответствующие права в результате сделки, является регистрацией сделки.

Применение "Положения о выпуске и обращении ценных бумаг и фондовых биржах в РСФСР" и письма Минфина Российской Федерации 03.03.92 N 3 "О правилах выпуска и регистрации ценных бумаг на территории РФ" неправомерно, поскольку согласно пункта 2 Указа Президента Российской Федерации от 27.09.93 N 1466 "О совершенствовании работы иностранными инвестициями" "...ограничения в деятельности иностранных инвесторов на территории РФ могут быть установлены только законами и Указами Президента. Все нормативные акты Совета Министров, Правительства РФ, государственных комитетов, министерств и ведомств..., устанавливающие дополнительные, не предусмотренные законами РФ и Указами Прези-

дента ограничения в деятельности иностранных инвесторов на территории РФ, не действительны и не подлежат применению". Об этом же говорится и в Указе Президента Российской Федерации от 04.11.94 N 2063 "О мерах государственному регулированию рынка ценных бумаг в РФ".

АОЗТ "Болтик Ботлинг Плант" в соответствии со статьей 35 Закона РСФСР "Об иностранных инвестициях в РСФСР" произвело регистрацию акций комитете по внешним связям мэрии Санкт-Петербурга в момент регистрации акционерного общества и было внесено в государственный реестр предприятий с иностранными инвестициями, поскольку указанный комитет на тот период являлся уполномоченным на то государственным органом.

В отзыве на кассационную жалобу компания "Болтик Груп Лимитед" просит решение и постановление суда оставить без изменений.

Проверив правильность применения судом норм материального процессуального права, Федеральный арбитражный суд не находит оснований для отмены обжалуемых судебных актов.

Исковое заявление компании "Болтик Груп ЛТД" подписано Торо Кристианссоном в соответствии с предоставленными ему полномочиями доверенности от 23.01.96 (том 1 лист дела 23). Данная доверенность выдана Валери Эллен Хаксли и Мунго Коннором как уполномоченными представителями компании "Болтик Груп ЛТД". На листе дела 13 (том 2) имеется письмо государственного нотариуса Джеки Сент-Клер Корнуэлл, которое подтверждает право Валери Эллен Хаксли либо Морина Донована выдавать доверенности от имени "Болтик Груп ЛТД". В заседании кассационной инстанции представители истца подтвердили волеизъявление истца на подачу данного иска.

При таком положении суд обоснованно принял и рассмотрел по существу исковое заявление, а доводы кассационной жалобы о порочности доверенности и необходимости оставления иска без рассмотрения являются неубедительными.

Нарушений норм процессуального права также не усматривается.

Пункт 1 части 1 статьи 81 Арбитражного процессуального кодекса Российской Федерации обязывает арбитражный суд приостановить производство по делу в случае невозможности его рассмотрения до принятия решения по другому делу или вопросу, рассматриваемым в порядке конституционного

туционного, гражданского, уголовного или административного судопроизводства. В данной норме закона не говорится о рассмотрении дела в иностранного государства. Кроме того, решение Исландского суда не может никак повлиять на рассмотрение данного спора, поскольку это решение не будет обязательному применению на территории Российской Федерации. Соглашения от 24.03.95 признаны ничтожными как заключенные на территории Российской Федерации и в соответствии с ее законами.

Поэтому суд правомерно отказал в ходатайстве ответчика о приостановлении производство по делу до рассмотрения судом г. Рейкьявика (Исландия) заявленного Б. Гудмундссоном требования о признании действительности соглашения о приобретении им акций АОЗТ "Болтик Ботл Плант".

Что касается ссылки на принятие решения о правах и обязанностях привлеченных к участию в деле лиц, то она является необоснованной. Суд такого решения не принимал, в обжалуемых судебных актах отсутствуют выводы в отношении прав и обязанностей Г.М.Хомского, Б.Гудмундсона, компании "Ханса Лтд". Указанные лица не вступили в дело до принятия решения суда в соответствии со статьей 39 Арбитражного процессуального кодекса Российской Федерации, поэтому и не могли быть привлечены апелляционной инстанцией.

Ссылка на неправильное применение к соглашениям от 24.03.95 требований пункта 3 статьи 35 Закона РСФСР "Об иностранных инвестициях РСФСР" об обязательной регистрации сделок, а также на противоречие между этой нормой закона и Гражданским кодексом Российской Федерации, который по мнению подателя кассационной жалобы не предусматривает обязательность регистрации данных сделок, необоснована.

В соответствии с частью 2 статьи 164 Гражданского кодекса Российской Федерации законом может быть установлена государственная регистрация сделок с движимым имуществом определенных видов. Закон РСФСР "Об иностранных инвестициях в РСФСР" установлена регистрация приобретения иностранными инвесторами долей участия, паев, акций и иных ценных бумаг в Министерстве финансов Российской Федерации или иных уполномоченных на то государственных органах.

Согласно статье 223 Гражданского кодекса Российской Федерации

случаях, когда отчуждение имущества подлежит государственной регистрации, право собственности у приобретателя возникает с момента такой регистрации, если иное не установлено законом.

На дату проведения оспариваемого собрания акционеров передача акций по соглашениям от 24.03.95 не была зарегистрирована в установленном порядке. Поэтому даже если исходить из действительности указанных соглашений, то собственником акций продолжал оставаться истец.

Однако суд апелляционной инстанции правомерно исследовал вопрос действительности данных сделок и сделал правильный вывод о их ничтожности с учетом требований "Положения о выпуске и обращении ценных бумаг и фондовых биржах", Инструкции "О правилах совершения и регистрации сделок с ценными бумагами".

При этом нарушений части 3 статьи 155 Арбитражного процессуального кодекса Российской Федерации не усматривается, поскольку нового требования в апелляционной инстанции истцом не предъявлялось. В исковом заявлении истец указал, что никакого отчуждения акций не производил, поэтому суд должен был проверить правомерность представленных ответчиком соглашений, свидетельствующих об обратном. Апелляционная инстанция обоснованно признала два соглашения от 24.03.95 о передаче акций ничтожными. Данный вывод соответствует требованиям статьи 168 и пункту статьи 166 Гражданского кодекса Российской Федерации.

Дополнительная аргументация кассационной жалобы АОЗТ "Болтик Ботлинг Плант" ссылками на несоответствие обжалуемых судебных актов Указам Президента Российской Федерации: от 27.10.93 N 1769 "О мерах по обеспечению прав акционеров", от 27.09.93 N 1466 "О совершенствовании работы с иностранными инвестициями", от 04.11.94 N 2063 "О мерах по государственному регулированию рынка ценных бумаг в РФ" несостоятельна.

Указ от 27.10.93 N 1769 относится к акционерным обществам открытого типа, два другие Указа отношения к рассматриваемому спору также не имеют, поскольку в данном случае не идет речи об ограничении деятельности иностранного инвестора.

При таком положении оснований к удовлетворению кассационной жалобы не имеется.

На основании изложенного и руководствуясь статьями 174, 177 Арбит-

режного процессуального кодекса Российской Федерации, Федеральный арбитражный суд Северо-Западного округа

ПОСТАНОВИЛ:

Решение от 18 апреля 1996 года и постановление от 04-05 июня 1996 года по делу №638/96 Арбитражного суда Санкт-Петербурга и Ленинградской области оставить без изменений, а кассационную жалобу АОЗТ "Бол-Ботлинг Плант"-без удовлетворения.

Председательствующий

Т. В. Шлачева

И. А. Яковлев

О. В. Ветошкина



EMBLEM  
In the name of the Russian Federation

DECISION

Saint-Petersburg

January 20, 1997

11554/96

No A56-

The Arbitration court of Saint-Petersburg and Leningrad Region  
in the composition of:

chairman -Malisheva N.N.

judges- Levchenko Y.P., Pastukhova M.V.

having considered in the course of the Court Meeting the materials on the law-suit of the company  
"Baltic Group Limited" (the name of the plaintiff)  
against the Registration Chamber (the name of the defendant)

the third parties: JSC "Baltic Bottling Plant Ltd",

St. Petersburg Territorial administration of the "State Committee of the  
Russian Federation on Antimonopoly policy and support of new  
economic structures"

concerning the invalidation of the act of the registration  
with the participation:

on behalf of the plaintiff: rep. Vershinin A.P., rep. Popondopulos V.F.

on behalf of the defendant: chief jurist Nesterova A.B.

the third parties: JSC BBP- representative Lebedev K.K., representative Ferense-Sorotsky  
V.V.

St. Petersburg Territorial administration of the "State Committee of the Russian  
Federation on Antimonopoly policy and support of new economic structures"-did not  
present itself

established:

The company "Baltic Group Limited" brought in the law-suit against the Registration Chamber concerning the invalidation of the Registration Chamber's decision No 26067 of 10.10.95 regarding the registration of the changes to the Articles of the JSC "Baltic Bottling Plant Ltd."

Prior to the examination of the substance of the dispute the JSC "Baltic Bottling Plant" had submitted the following solicitations, which were examined by the court.

1. To postpone the hearing of the case in connection with the default of the Antimonopoly Committee.

The plaintiff objected believing that the default of the Antimonopoly Committee did not affect the examination of the dispute and did not touch the rights and interests of the parties.

The defendant left the examination of the solicitation to court discretion.

The solicitation was overruled due to the fact that the default of the party duly notified of the time and place of the examination of the case (notification No. 181 of 03.12.1996 is indicative of this fact) did not prevent from examining of the present dispute.

2. To halt the legal proceedings in terms of the case until the application of the JSC "Baltic Bottling Plant" with the request to lodge a protest by way of supervision regarding case No 638/96 will be examined. This application was accepted on 25.12.96 by the Supreme Arbitration court (ref. No 5360/96).

The defendant left the examination of the solicitation to court discretion.

The plaintiff objected in accordance with the following motives:

-the decision concerning case No. 638/96 was taken by the Arbitration court and supported by the Appellate and Cassation instances and the duty to halt the legal proceedings in terms of the case appears only if it is impossible to examine the given case prior to taking a decision concerning another case.

Besides, the mark of the office certifying that the application was accepted did not witness that the protest had been lodged.

If the decision concerning case No 638/96 is revoked, the party can utilise the right to submit an application with the request to reconsider the decision for the circumstances newly discovered. For the time being the decision is valid.

Under such circumstances according to articles 81,82 of the Arbitration Code of the Russian Federation the court has no grounds to sustain the solicitation.

3. To attract the shareholders of the DISC "Baltic Bottling Plant Ltd" into the case as third parties

-JSC of the opened type "Remontno-mekhanitchesky zavod"- 25% of the share capital,

-Mr. Khomsky G.M"-10% of the share capital,

-"Hansa h.f." "- 32,5% of the share capital,

-Mr.Gudmundsson B. "- 32,5% of the share capital

due to the fact that the decision in terms of this case immediately affects the rights and responsibilities of all the company's shareholders and in case the court finds on behalf of the plaintiff, it deprives these shareholders of the right of the shares, consequently deprives them of the share in the share capital of the company.

The plaintiff objected.

The defendant left the examination of the solicitation to court discretion.

The solicitation was overruled on the grounds of art.39 of the Arbitration Code of the Russian Federation, in so far as the decision in terms of this case could not affect their rights and responsibilities in respect of any party in the litigation.

"Baltic Group Ltd." is the plaintiff and the Registration Chamber is the defendant in the litigation.

There are no grounds in the solicitation on the basis of which one can deduce that the invalidation of the act of the registration of the changes to the Articles would affect the rights and responsibilities in respect of the plaintiff and especially in respect of the defendant-the body of the state.

The rights and responsibilities follow from the foundation documents and from the fact of the shares ownership but not from the decision of the authorised body concerning their registration. The JSC of the opened type "Remontno-mekhanichesky zavod" submitted a solicitation with the request to attract the company as a third party without the claims of its own in connection with the fact that the company was a shareholder and a founder of the JSC "Baltic Bottling Plant Ltd" and would help the court to establish the real circumstances under which the changes had been inserted to the foundation documents. The plaintiff objected.

The defendant left the examination of the solicitation to court discretion.

The solicitation was overruled by the court in accordance with the grounds mentioned above.

The court examined the materials of the case, listened to the opinions of the parties and established that:

- the Arbitration court of Saint-Petersburg and Leningrad Region had invalidated the decision of the Shareholders meeting of the JSC "Baltic Bottling Plant" of 25.09.95 (case No 638/96),

- by virtue of art.16 of law "On the foreign investments in RF" changes and additions to the foundation documents of the enterprises with foreign investments are subject to registration,

- the Registration Chamber of the Mayor's Office of Saint-Petersburg had adopted decision No 26067 of 10.10.95 concerning taking into account of the changes and additions to the foundations documents of the JSC "Baltic Bottling Plant Ltd" and entering of the changes and additions into the Single register of the state registration,

- entering of the changes into the foundation documents is drawn up by the decision -not normative act of the governmental body. The general term of the prescription of a law-suit- 3 years established by art. 196 of the Civil Code of the Russian Federation is applied to such decisions. In connection with that the application of the JSC "Baltic Bottling Plant" concerning the lapse of the term of the prescription of a law-suit was overruled,

- the reference of the third party to the fact that the changes of the Shareholders meeting of 29.09.95 had been registered was groundless, in so far as it followed from the letter to the Registration Chamber of Saint-Petersburg (ref. No. 407 of 05.02.96) that the date had been wrongfully stated by mistake of the JSC "Baltic Bottling Plant Ltd". In connection with that the registration of the changes to the Articles adopted by the Extraordinary Shareholders meeting of 25.09.95 was carried out. The decisions of this shareholders meeting had been invalidated by the court.

Under such circumstances of the case in connection with the invalidation of the shareholders meeting of 25.09.95 the claims of the plaintiff concerning the invalidation of decision No 26067 of 10.10.95 regarding the registration of the changes to the foundation documents of the JSC "Baltic Bottling Plant Ltd" are subject to satisfaction.

Following articles 124-127, 132,94 of the Arbitration Code of the Russian Federation-

THE COURT DECIDED:

1. To overrule the solicitations of the third party.
2. To invalidate decision of the Registration chamber of the Mayor's Office of Saint-Petersburg No. 26067 of 10.10.95
3. To recover from the defendant in favour of the plaintiff 759000 roubles of the court fee expenses.

Chairman

N.N. Malisheva

Judges

Y.S. Levtchenko

Pastukhova

M.V.

TRUE COPY

Consultant /illegible signature/



Именем Российской Федерации

## РЕШЕНИЕ

г. Санкт-Петербург

10 января

1997 г.

№ А56-41554/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,  
в составе:

председательствующего Мальцевой И.Н.

судей: Денисюко Т.Л., Бастуловой И.В.

рассмотрев в судебном заседании дело по иску

Компания "Балтик Груп Лимитед" (наименование юрлица)

Регистрационный № 16067

З-й лицо: ОГБ ТУ ГКАД (наименование ответчика)

2. АОЗТ "Балтик Волхов Грант"

о признании недействительным акта регистрации

при участии в заседании:

от истца: предст. Юонисонце В.С., представ. Вершакин Р.О.

от ответчика: пр-р. Бицлером А.Н.

З-й лица: АОЗТ "Балтик Волхов Грант" - предст. Дободев А.Н.,  
представ. Сорокин - Сородин В.В.

ОГБ ТУ ГКАД - № №

установил: Компания "Балтик Груп Лимитед" обратилась с иском к Регистрационной палате ОГБ о признании недействительным решения № 26067 от 10.10.96 г. о регистрации изменений в учредительные документы АОЗТ "Балтик Волхов Грант".

До рассмотрения спора по существу АОЗТ "Балтик Волхов Грант" были заявлены ходатайства, которые рассмотрены судом.  
I. Об отложении слушания дела в связи с заявлением ОГБ ТУ ГКАД.

Истец возражал, полагая, что отсутствие ОГБ ТУ ГКАД не влияет на рассмотрение спора и не затрагивает их права и интересы.

Ответчик рассмотрение ходатайства оставил на усмотрение суда.

В удовлетворении ходатайства отказано в связи с тем, что иная сторона, надлежащим образом извещенное о времени и месте разбирательства дела, о нем сведомствует уведомление в АИ от 08.12.98 г. не препятствует рассмотрению настоящего спора.

2. О приставлении производство по делу до рассмотрения заявления АОЗТ "Волгик Водкокг Шант" о принесении протеста в порядке надзора по делу в АБ6/98, которое 20.12.98 г. пришло Высшему Арбитражному суду (жалоба в АБ6/98).

Ответчик рассмотрение ходатайства оставил на усмотрение суда.

Итог: возврат по следующим мотивам:

- решение по делу в АБ6/98 принято судом перворуководящим и поддержано апелляционной и кассационной инстанциями, с обоснованием приставленным производство по делу возможностей в случае невозможности рассмотрения данного дела до принятия решения по другому делу.

Кроме того отметка замечания о приеме выписки не свидетельствует о принесении протеста.

В случае отказа решения по делу в АБ6/98 стороне может воспользоваться правом иска о пересмотре решения по новым открывшимся обстоятельствам, в настоящий момент решения не действует.

При таких обстоятельствах, согласно ст.61, ч2 Ад.Р. у суда нет оснований для удовлетворения ходатайства.

3. О привлечении к участии в деле в качестве 3-их лиц, включая АОЗТ "Волгик Водкокг Шант"

- АОТ "Ремонтно-технический завод" - 5% уставного капитала
- АОО "Ланос ИФ Ф" - 32,5% уставного капитала
- гражданин Гудумидсон Б. - 12,5% уставного капитала.

В связи с тем, что решения по настоящему делу непредставляют интереса к обеим сторонам всех лицом кроме Общества и в случае удовлетворения иска не имеют их права на судах и следовательно на доказывание в устном ходящею Обществу.

Итог: брак в удовлетворении ходатайства.

Ответчик не просит рассмотрение иска на усмотрение суда.

Ходатайство отклонено на основании ст.61 Ад.Р., поскольку заявление по делу не может повлиять на их право или обязанности по отношению к какой либо стороне в споре.

Итогом в споре является Компания А "Волгик Груп Инвест".

• ответчиком Регистрация не связана.

В ходатайстве нет ни одного основания из которого следова-

до бы, что признание недостатками решения о регистрации изменений к Уставу повлияет на права и обязанности по отношению к лицу в том более к отвратику - органу государства.

Права и обязанности акционеров вытекают из учредительных документов и из факта владения акциями, а не из решения уполномоченного органа о их регистрации.

От АОЗТ "Ремонтно-механический завод" поступило ходатайство о признании его в участке в деле в качестве лица с самостоятельными требованиями, в связи с тем, что он является акционером и учредителем АОЗТ "Болтих Водлинг Шент" и позволяет суду установить доказательные обстоятельства иска и изменений в учредительные документы.

Истец возражает.

Ответчик рассмотрел ходатайство оставши на усмотрение суда.

Ходатайство отклонено судом по нахождениям выше оснований.

Судом исследованы материалы дела, вслухованы мнения сторон, установлено, что:

- арбитражным судом СИЗ к Ачинской администрации недостаточными признаны недостатки в решении собрания акционеров АОЗТ "Болтих Водлинг Шент" от 25.09.98 г. (дело № 888/98),

- в силу ст. 16 Закона "Об иностранных инвестициях в Российской Федерации" в учредительные документы предприятий с иностранными инвестициями подлежат регистрация,

- Регистрационной палатой № 46 при принятии решения в деле от 10.10.98 г. же принятых к сведению изменений и дополнений в учредительные документы АОЗТ "Болтих Водлинг Шент" в реестре Единого городского реестра государственного регистрации,

- внесение изменений в учредительные документы оформляется решением - менюриальным актом государственного органа к которому применяется ст. 108 ГК Р. срок исходя из длительности - 3 года, в связи с чем оставлено без удовлетворения АОЗТ "Болтих Водлинг Шент" с пропуском срока исходя из длительности,

- несостоятельна ссылка третьего лица на то, что зарегистрированы изменения чрезвычайного собрания акционеров от 27.09.98 г., поскольку, их следует из ссыпки в Регистрационную палату (запись в АЛ № 46 от 05.12.98 г.) возврату указана дата по ошибке АОЗТ "Болтих Водлинг Шент", в связи с чем производится регистрация изменений в Уставе принятых на чрезвычайном собрании акционеров от 25.09.98 г., решения которого были признаны судом недостаточными.

тальщик.

При таких обстоятельствах заявка, в связи с признанием недействительных решений собрания акционеров от 25.10.18 г. требованием истца о признании недействительным решения № 3057 от 10.10.18 г. о регистрации изменения в учредительные документы АОЗТ "Болты Болты Болт" подлежит удовлетворению.

Руководствуясь ст.ст.124-127, 132, 35 АК РС.-

### С У Д А Р В Е Н И Е

1. Ходатайство З-го лица отклонить.
2. Признать недействительным Решение Регистрационного комитета № 3057 от 10.10.18 г.
3. Высчитать с ответчика в пользу истца 70 000 руб. расходов по представлению.



КОПИЯ ВЕРНА
Консультант <i>С. С. БЕЛКОВСКОГО</i>

*Н. Н. Калашникова*

*А. А. Лебедев*

*Н. В. Гастурова*

**EMBLEM**  
**APPELATE TRIBUNAL OF THE ARBITRAZH COURT OF**  
**ST. PETERSBURG AND THE LENINGRAD REGION**

**COURT ORDER**

St. Petersburg

28 March 1997

No A56-11554/96

The Arbitrazh court of St. Petersburg and the Leningrad region

in the composition of a panel of judges headed by:  
chairman - L. Blinova  
judges- I. Serikova, A. Tregubova

with the participation in the course of the Court Meeting

on behalf of the plaintiff: A. Vershinin (power of attorney dated 13.12.96)  
V. Popondopulo (power of attorney dated 13.01.97)

on behalf of the defendant: A. Nesterova (power of attorney dated 28.03.97 No 1038-ph)  
on behalf of the persons impleaded in the capacity of a third-party: No 1 Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures O. Shulga, head of the department, power of attorney dated 28.03.97, No OV-605, A. Soboleva, specialist, power of attorney No OV604 dated 28.03.97,

No 2 BBP: K. Lebedev (power of attorney dated 07.03.97),  
V. Ferense-Sorotsky (power of attorney dated 07.03.97),

having considered in the course of an open hearing the appeal filed by the Closed Joint-Stock Company Baltic Bottling Plant in which Baltic Bottling Plant petitioned the court to revoke the decision of the Arbitrazh Court of St. Petersburg and the Leningrad region dated 20.01.97 (judges: Malysheva, Pastukhova, Levchenko) in action No A56-11554/96 taken with respect to the statement of claim filed by BGL against the Registration Chamber in which the plaintiff petitioned to declare invalid the act of state registration.

established:

The Arbitrazh Court of St. Petersburg and the Leningrad region found for plaintiff, sustained the lawsuit filed by Baltic Group Limited by virtue of its decision dated 20.01.97 and declared invalid decision No 26067 of 10.10.95 of the Registration Chamber of the Mayoralty of St. Petersburg.

A third party (BBP) objects to the court order and requests to revoke the court decision in its appeal. To substantiate its appeal it refers to the circumstances as follows:

- fact of violation of the plaintiff's rights and vested interests following the decision challenged by BBP is non-existent;
- decision was taken by the Registration Chamber with respect to issues falling within its competence (it "took note" of changes and additions to the constituent documents);
- decision is not a regulatory and administrative act giving rise to any legal relationships of an administrative character between the parties;
- court illegally did not implead in the capacity of a third-party the persons clearly interested in this lawsuit as follows: RMZ, Hansa, Mr. Khomsky and Mr. Gudmundsson;
- according to certificate R-6018.16 evidencing the registration and entrance into the State Register of the State Registration Chamber under the Economy Ministry of Russia dated 31.07.96 the changes made to the charter of BBP which the Registration Chamber of St. Petersburg had taken note of on the basis of the decision being challenged by BBP a new edition of the charter is effective and registered by the regulatory body mentioned above, thus decision No 26067 is not effective, therefore there is no subject matter of the law-suit filed in terms of this dispute (the law-suit is groundless).

BGL requests to leave unchanged the decision and considers it grounded.

The Registration Chamber, the Territorial Agency of the State Committee on Anti-Monopolistic Policy and the Support of New Economic Structures request to revoke the decision and uphold the arguments outlined in the appeal.

The Appellate Tribunal examined the legality of the decision.

The motion made by BBP in which it had petitioned the court to adjourn the hearing date of this matter, since the general director was not able to participate in the court hearing was overruled, in view of participation of a Russian citizen duly authorised by the general director when examining the appeal (sheet 86 of the case file).

The motion made by the Registration Chamber in which it petitioned the court to adjourn the hearing date of this matter, due to necessity to request for the certificate evidencing the registration of the changes in question to the charter of BBP by the State Registration Chamber under the Economy Ministry of Russia was also rejected, insofar as the court had been presented with the said documents.

Having reviewed the evidence in the case and arguments outlined in the appeal, having heard the representatives of the parties, the court found the decision grounded and legal.

As it follows from the materials of the case, in accordance with decision No 26067 dated 10.10.95 of the Registration Chamber of the Mayorality of St. Petersburg it took note of changes and additions to the constituent documents of CJSC Baltic Bottling Plant on the

basis of the decision of extraordinary shareholders' meeting of 29.09.95 (sheet 7 of the case file).

Since the decision taken by the Registration Chamber is a non-normative act of the government body, this disputed decision is eligible for submission to the jurisdiction of arbitrazh courts according to art. 22 of the APC.

The decision of the extraordinary shareholders' meeting of 25.09.95 was declared invalid by virtue of the decision taken on 18.04.96 by the Arbitrazh Court of St. Petersburg and the Leningrad region in action 638/96 (sheet 23 of the case file).

In its decision the court established that the shareholders' meeting had been held on 25.09.95 and not on 29.09.95 (as indicated in the decision of the shareholders' meeting) (sheet 24, 34 of the case file).

The Registration Chamber took note of the changes and additions to the foundation documents made by the decision of BBP's extraordinary shareholders' meeting of 25.09.95.

The Appellate Tribunal of the Arbitrazh Court of St. Petersburg and the Leningrad Region of 04-05 June 1996 and the Federal Arbitrazh Court of the North-Western Region of the Russian Federation in its decision arising out of the cassation hearing in its own action No 947/96 on July 29, 1996, left unchanged the decision of the court of the first instance in action No 638/96 of April 18, 1996.

Thus, the decision of the Registration Chamber to take note of changes and additions to the foundation documents of CJSC Baltic Bottling Plant was made on the basis of an invalid decision of the shareholders' meeting and is against the law.

The said decision violates and infringes the rights and vested interests of the plaintiff, insofar as the latter as a founder of BBP and owner of its 75% of voting shares did not take part in the invalidated shareholders' meeting whereby a disputed decision of the Registration Chamber to take note of changes and additions to the constituent documents of CJSC Baltic Bottling Plant was made. The decision gives rise to legal relationships of an administrative character between the parties: the information of the Registration Chamber to take note of changes and additions to the foundation documents has been sent to the Tax Inspectorate for the purpose of entering them into the State Enterprise Register, the relevant changes which are in line with the changes to the foundation documents have been entered into the city register of the state registration. It also evidences that the decision of the Registration Chamber violates the rights and vested interests of the plaintiff given that the changes to the composition of the shareholders of BBP were made and the shares belonging to BGL were allegedly transferred to other shareholders (as indicated) with the relevant changes made to the charter and foundation documents on the basis of the invalid shareholders' meeting of BBP of 29.09.95 (the minutes are erroneously dated 29.09.95) and BGL never took part in this meeting.

Given that the court in its decision of 18.04.96 in action No 638/96 invalidated the decision of the shareholders' meeting of 25.09.95 in which Viking Brewery Ltd, B. Gudmundsson, a citizen of Iceland, RMZ, G. Khomsky, a citizen of Russia, took part in the capacity of the company's shareholders, the foregoing provided a sound basis to overrule the motions in which it was requested to implead them in the capacity of a third-party, in view of non-existence of any violation of their rights and vested interests.

It follows from certificate R-6018.16 issued by the State Registration Chamber under the Economy Ministry of Russia dated 31.07.96 submitted to the court that the changes and additions made to the foundation documents of BBP were registered and entered into the State Enterprise Register on the basis of minutes No 7 of the shareholders' meeting of 25.07.96.

The said decision does not revoke the decision of the Registration Chamber of the Mayoralty of St. Petersburg of 10.10.95.

On top of that, it was taken on the basis of another minutes of the extraordinary shareholders' meeting, which is to say, the one of 25.07.96.

The said disputed decision was taken on the basis of the extraordinary shareholders' meeting of 25.09.95 (the minutes are erroneously dated 29.09.95).

Thus, the court finds the arguments set out in the appeal to the effect that the disputed decision is not in force and effect due to subsequent registration of changes to the charter on 31.07.96 and non-existence of subject of the dispute inappropriate and groundless

In view of the above, the court decision of 20.01.1997 is legal and grounded. The appeal is not subject to satisfaction.

Following articles 157-159, 134 of the Arbitration Procedural Code of the Russian Federation, the Arbitrash Court -

DECIDED:

To leave unchanged the decision of the Arbitrash Court of St. Petersburg and the Leningrad region dated 20.01.97 that the appeal was not subject to satisfaction.

Chairman	signature	L. Blinova
Judges	signature	I. Serikova
	signature	A. Tregubova
the copy is true	[seal]	



**ПОСТАНОВЛЕНИЕ**  
АПЕЛЛЯЦИОННОЙ ИНСТАНЦИИ ПО ПРОВЕРКЕ  
ЗАКОННОСТИ И ОБОСНОВАННОСТИ РЕШЕНИЙ  
АРБИТРАЖНОГО СУДА, НЕ ВСТУПИВШИХ В ЗАКОННУЮ СИЛУ

г. Санкт-Петербург

« 23 » марта 1997 г.

№ А56-II554/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,  
в составе:

председательствующего Елиновой Л.В.

судей: Сериковой И.А., Трегубовой А.И.

при участии в заседании:

от истца Вершинин А.П. - предст., дов. от 13.12.96;

Попондопуло В.Ф. - предст., дов. от 13.01.97

от ответчика Нестрова А.В. - юр., дов. от 28.03.97 № 1038/н

З-е лицо-ТУ ГКАП: Щульга О.Н.-нач. отд., дов. от 28.03.97 № ОВ-605;

Соболева А.А.-спец., дов. от 28.03.97 № ОВ-604. З-е лицо-АОЗТ "БЕГ"

Ференс-Соронский В.В.-предст., дов. от 07.03.97; Лебедев К.К.-предст.

рассмотрев в судебном заседании апелляционную жалобу дов. от 07.03.97

АОЗТ "Болтик Ботлинг Плант"

(наименование лица, подавшего апелляционную жалобу)

на решение (определение) арбитражного суда г.Санкт-Петербурга и Ленинградской области  
от « 20 » января 1997 г. по делу № А56-II554/96

Малышева И.Н., Пастухова М.В., Левченко Ю.П.

(фамилии судей, принявших судебный акт)

принятое по иску Компании "Болтик Груп Лимитед"

к Регистрационной палате Санкт-Петербурга

З-и лица: ТУ ГКАП РФ по СПб

АОЗТ "Болтик Ботлинг Плант"

О признании недействительным акта регистрации

установил: решением суда от 20 января 1997г. исковые требования компании "Болтик Груп Лимитед" к Регистрационной палате мэрии Санкт-Петербурга, З-и лица - ТУ ГКАП СПб, АОЗТ "Болтик Ботлинг Плант" о признании недействительным решения от 10 октября 1996г. № 6067 удовлетворены.

З-е лицо - АОЗТ "Болтик Ботлинг Плант" с решением не согласилось, в апелляционной жалобе просит его отменить.

В обоснование просьбы ссылается на следующие обстоятельства:

- отсутствует факт нарушения прав и законных интересов истца принятием оспариваемого решения;

- решение Регистрационной палатой принято в соответствии с ее

компетенцией, приняты к сведению изменения и дополнения учредительных документов;

- решение не является распорядительным актом, порождающим какие-либо административно-правовые отношения;
- судом неправомерно не привлечены в качестве З лиц, не заявляющих самостоятельных требований - АО "Ремонтно-механический завод", фирма "Ханса", граждане Хомский и Гудмундссон;
- согласно свидетельству № Р-6018.16 о регистрации и внесении в Государственный реестр Государственной Регистрационной палатой при Министерстве экономики РФ от 31.07.96г., изменения, внесенные в Устав АОЗТ "Болтик Ботлинг Плант", принятые к сведению оспариваемым решением, действуют в иной редакции и являются зарегистрированными вышеназванным полномочным органом, а решение № 26067 не имеет юридической силы и отсутствует предмет спора.

Компания "Болтик Груп Лимитед" просит решение оставить без изменения, считая его обоснованным.

Регистрационная палата, Территориальное управление ГКАП РФ по Санкт-Петербургу просят решение отменить, поддерживая доводы, изложенные в апелляционной жалобе.

Законность решения проверена в апелляционном порядке.

Заявленное АОЗТ "Болтик Ботлинг Плант" ходатайство об отложении рассмотрения дела в связи с невозможностью присутствия в судебном заседании генерального директора Б.Т.Баргольфссон отклонено, ввиду участия в рассмотрении апелляционной жалобы уполномоченным генеральным директором представителя гражданина России Ференс-Соронского В.В. (л.д.86).

Ходатайство Регистрационной палаты об отложении рассмотрения жалобы в связи с необходимостью истребования свидетельства о регистрации этих же изменений в учредительные документы АОЗТ "Болтик Ботлинг Плант" Государственной Регистрационной палатой при Министерстве экономики РФ также отклонено, ввиду представления суду названных документов.

Исследовав доказательства по делу, доводы апелляционной жалобы, заслушав представителей сторон, суд находит решение законным и обоснованным.

Как следует из материалов дела, 10 октября 1995г. решением Регистрационной палаты № 6067 приняты к сведению изменения и дополнения учредительных документов АОЗТ "Болтик Ботлинг Плант", внесенные решением чрезвычайного собрания акционеров от 29 сентября 1995г. (л.д.7).

Решение Регистрационной палаты является ненормативным актом государственного органа, поэтому в соответствии со ст.22 АПК РФ спор о признании его недействительным подведомственен арбитражному суду.

Решением арбитражного суда Санкт-Петербурга и Ленинградской области от 18.04.96г. по делу № 638/96 признано недействительным решение чрезвычайного собрания акционеров от 25.09.95г. (л.д.23).

Решением суда установлено, что собрание акционеров проводилось 25.09.95г., а не 29.09.95г., как было указано в решении собрания акционеров (л.д.24,34).

Оспариваемым решением Регистрационной палаты приняты к сведению изменения учредительных документов, внесенные собранием акционеров от 25.09.95г.

Постановлением апелляционной инстанции арбитражного суда Санкт-Петербурга и Ленинградской области от 04-05 июня 1996г. по делу № 638/96 и постановлением Федерального арбитражного суда Северо-Западного округа от 29 июля 1996г. по делу № 947/96, решение суда от 18 апреля 1996г. оставлено без изменений.

Следовательно, решение Регистрационной палаты принято на основании недействительного собрания акционеров, состоявшегося 25.09.95г., чем оно противоречит закону.

Названное решение нарушает права и законные интересы истца, поскольку последний, являясь учредителем и акционером 75% акций АОЗТ "Болтик Ботлинг Плант", не принимал участия в собрании акционеров, которое признано недействительным, и именно на основании данного решения собрания акционеров принято оспариваемое решение Регистрационной палаты о принятии их к сведению. Решение порождает административно-правовые отношения: информация о решении Регистрационной палаты об изменениях и дополнениях учредительных документов направлена в налоговую инспекцию для внесения в Государственный реестр предприятий, внесены в Единый Городской реестр государственной регистрации соответствующие изменения по учредительным документам. Это также свидетельствует о том, что решение Регистрационной палаты нарушает права истца, учитывая, что собранием акционеров АОЗТ "Болтик Ботлинг Плант" от 25.09.95г. (протокол ошибочно датирован 29.09.95г.), в котором истец не участвовал, было произведено перераспределение акций между другими, как указано, акционерами, с соответствующими внесенными изменениями в Устав и учредительные документы.

Учитывая, что решением суда от 18.04.96г. по делу № 638/96, признано недействительным решение собрания акционеров от 25.09.95г., в котором участвовали в качестве акционеров: "Викинг-Бруиди Лтд", гражданин Исландии Б.Гудмундссон, АОЗТ "Реюнтио-механический завод", гражданин России Хомский Г.М., то судом обосновано отклонены ходатайства о привлечении их в качестве З лиц по данному делу, виду отсутствия нарушения их прав и законных интересов.

Из представленного суду свидетельства № Р-6018.16 Государственной палаты следует, что зарегистрированы и внесены в Государственный реестр коммерческих организаций изменения и дополнения к учредительным документам АОЗТ "Болтик Ботлинг Плант" на основании протокола № 7 внеочередного собрания акционеров от 25.07.96г.

Названное свидетельство не аннулирует решение Регистрационной палаты мэрии Санкт-Петербурга от 10.10.95г.

Кроме того, оно принято на основании другого протокола внеочередного собрания акционеров, а именно от 25.07.96г.

Оспариваемое решение принято на основании чрезвычайного собрания акционеров от 25.09.95г. (в протоколе указано ошибочно от 29.09.95г.).

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Поэтому доводы апелляционной жалобы о том, что оспариваемое решение не имеет юридической силы, в связи с последующей регистрацией от 31.07.96г. изменений в Уставе и отсутствии предмета спора признаются судом неправомерными.

При таких обстоятельствах решение суда от 20 января 1997г. является законным и обоснованным. Апелляционная жалоба удовлетворению не подлежит.

Руководствуясь ст.ст.157-159, 134 Арбитражного процессуального кодекса Российской Федерации, арбитражный суд  
ПОСТАНОВЛЯЕТ:

решение суда от 20 января 1997г. оставить без изменения, апелляционную жалобу АОСт "Волтик Ботлинг Плант" без удовлетворения.

Председательствующий

Л.В. Елинова

Судьи

А.И. Трегубова

И.А. Серикова

ПОСТАНОВЛЕНИЕ  
ПРЕДСЕДАТЕЛЯ СУДА  
Л.В. ЕЛИНОВА

## EMBLEM

FEDERAL ARBITRAZH COURT OF THE NORTH-WESTERN CIRCUIT  
12 Admiralteisky prospect, 190000 St. Petersburg, Russia

## COURT ORDER

28 May 1997

No 11554/96

The Federal Arbitrazh court of the North-Western Circuit

in the composition of:

chairman - N. Kuznetsova

judges- O. Korpusova, A. Shevtchenko

with the participation in the course of the Court Meeting

on behalf of the plaintiff: A. Vershinin (power of attorney No 64953 dated 13.12.96)

V. Popondopulo (power of attorney dated 13.01.97)

on behalf of the defendant: A. Nesterova (without powers)

on behalf of the third persons: No 1 was not able to attend the meeting

No 2 K. Lebedev (power of attorney dated 07.03.97),

V. Ferense-Sorotsky (power of attorney dated 07.03.97),

having considered in the course of an open hearing the cassation appeal filed by the Closed Joint-Stock Company Baltic Bottling Plant in which Baltic Bottling Plant petitioned the court to revoke the decision of the Arbitrazh court of St. Petersburg and the Leningrad region dated 20.01.97 (judges Malysheva, Pastukhova, Levchenko) and decision of the Appellate Tribunal of the Arbitrazh court of St. Petersburg and the Leningrad region dated 28.03.97 in action No A56-11554/96 (judges Blinova, Serikova, Tregubova).

established:

The company Baltic Group Limited filed its statement of claim in the Arbitrazh court of St. Petersburg and the Leningrad region in which Baltic Group Limited has petitioned the court to declare invalid decision No 26067 of 10.10.95 of the Registration Chamber of St. Petersburg to register changes to the foundation documents of CJSC Baltic Bottling Plant.

The Arbitrazh court of St. Petersburg and the Leningrad region found for plaintiff, sustained the law-suit by its decision dated 20.01.97 and declared invalid decision No 26067 of 10.10.95 of the Registration Chamber of the Mayoralty of St. Petersburg. Such a decision was taken by the court on the premise that the decision challenged by the

plaintiff had been taken by the Registration Chamber on the basis of the invalid decision of the shareholders' meeting of CJSC Baltic Bottling Plant of 25.09.96. The said decision was declared invalid on the strength of the court order of the Arbitrash court of St. Petersburg and the Leningrad region dated 18.04.96 in action No 638/96 in full force and effect.

The decision of 20.01.97 was left unchanged on the same grounds by virtue of the court order of the Appellate Tribunal of 28.03.97. At the same time, the Appeal Instance underscored in its written reasons for its decision that the decision by the Registration Chamber on the basis of the invalid decision of the shareholders' meeting was against the law.

In its cassation appeal CJSC Baltic Bottling Plant has petitioned the Court to revoke the decision of the court of first instance of 20.01.97 and decision of the Appellate Tribunal of 28.03.97 with respect to the matter due to the following violations by the courts of the substantive and procedural law:

- decision of the Registration Chamber is not a regulatory and administrative act giving rise to any legal relations of an administrative character between the parties and violating any rights and vested interests of the plaintiff. In view of the above and on the basis of art. 22(2) of the Arbitration Code of Russia and par. 4 (3) of the Resolution of the Plenary Session of the Russian Supreme Court and Russian Highest Arbitrash Court No 12/12 18.08.92 "On certain aspects of submission of disputes to the jurisdiction of courts and arbitrash courts", the legal proceedings arising from and related to the matter should be terminated, since the dispute is not eligible to submission to the jurisdiction of courts;
- court orders should be revoked by virtue of art. 176 (3) par. 5 of the Arbitration Code, in so far as these decisions were taken with respect to those parties who had not been attracted into the case (not impleaded in the capacity of a third party). In the opinion of the claimant, motions with the request to attract into the case shareholders of CJSC Baltic Bottling Plant (two legal entities and two natural persons) were unreasonably (unruly) overruled;
- CJSC Baltic Bottling Plant claims in its appeal that there is no subject matter of the law-suit filed in terms of this dispute (the law-suit is groundless), in so far as the edition of the Chapter which is a subject matter of this dispute was changed again and these changes were registered with the State Registration Chamber under the Economy Ministry of Russia.

Having verified the correctness of application by the court of first instance and Appellation Tribunal of norms of the substantive and procedural law, the Cassation Tribunal found no grounds to satisfy the Cassation Appeal and revoke court decisions in the action in question.

In accordance with decision No 26067 dated 10.10.95 of the Registration of the Mayoralty of St. Petersburg it took note of changes and additions to the charter of CJSC Baltic Bottling Plant on the basis of the decision of extraordinary shareholders' meeting

of 29.09.95 related to the composition of shareholders, distribution of their stakes in the charter capital and changes to the list of founders entered into the foundation documents.

The Arbitrash court of St. Petersburg and the Leningrad region in its decision of 18.04.96 in action No 638/96 declared invalid the decision of the shareholders' meeting of 25.09.95. The court established that the shareholders' meeting had been held not on 29.09.95 but on 25.09.95. The Appellate and Cassation Tribunal left unchanged the decision of 18.04.96.

The circumstance above evidences (as it was rightly stated in the decisions with respect to the matter by the court of first instance and appellate tribunal of the Arbitrash court of St. Petersburg and the Leningrad region) that the decision by Registration Chamber of St. Petersburg of 10.10.95 is illegal and invalid, in so far as the decision had been based on the invalidated decision of the shareholders' meeting.

The recognition by the court of first instance and Appellate Tribuanl instance of the decision by the Registration Chamber as a non-normative act and their conclusions with respect to how the said decision violates rights and vested interests of the plaintiff, what sort of legal relations of an administrative charachter it gives rise to are also true and correct.

The Cassation Tribunal considers it correct that the court dismissed the motion with the request to attract shareholders of CJSC Baltic Bottling Plant third parties without the claims of their own (to implead BBP's shareholders in the capacity of a third party): the examination of legality of the Registration Chamber's decision in the event that there is a court order that declared the decision of the shareholders' meeting invalid (based on the said decision the changes had been made to the charter that were registered by the Registration Chamber and executed in the form of the decision in question) and this decision has a prejudicial meaning (should be taken into account by all the other courts) in the process of examining the said dispute with a view to invalidating the decision of the Registration Chamber does not nesseciate the participation of the said persons in the court hearings, in so far as there is no possibility of having their rights and vested interests infringed or violated under the said circumstances.

The courts reasonably did not take into account the claimant's reference to the fact the law-suit was groundless (there was no subject matter). Subsequent registration of a new edition of the Charter carried out by the State Registration Chamber under the Economy Ministry of Russia, which was further amended in the aftermath of the decision by the Registration Chamber of St. Petersburg dated 10.10.95, does not revoke the latter. Moreover, subsequent changes registered by the State Registration Chamber under the Economy Ministry were made by those shareholders who (in accordance with decisions regarding case No 638/96 that came into full force) do not act in the capacity of shareholders.

Under the said circumstances, the decision by the Registration Chamber of St. Petersburg No 26067 dated 10.10.95 was reasonably declared invalid by the court of first instance and Appellate Instances of the Arbitrash court of St. Petersburg and the Leningrad region. In view of the above and following articles 174, 175 (1) of the Arbitration Code of the Russian Federation, the Federal Arbitrash court of the North-Western circuit -

DECIDED:

To leave unchanged the decision of the Arbitrash court of St. Petersburg and the Leningrad region dated 20.01.97 and decision of the Appellate Instance of the same court dated 28.03.97 regarding case No A56-11554/96 and that the cassation appeal was not subject to satisfaction.

Chairman	signature	N. Kuznetsova
Judges	signature	O. Korpusovaya
	signature	A. Shevtchenko
the copy is true	[seal]	
Judge [signature] N. Kuznetsova		
Leading specialist [signature]		



# ФЕДЕРАЛЬНЫЙ АРБИТРАЖНЫЙ СУД СЕВЕРО-ЗАПАДНОГО ОКРУГА

190000, Санкт-Петербург. Адмиралтейский пр., 12

## ПОСТАНОВЛЕНИЕ

25 мая 1997 года

дело № А56-11654/96

Федеральный арбитражный суд Северо-Западного округа в составе:  
председательствующего Кузнецовой Н.Г.  
судей Корпусовой О.А.  
Шевченко А.В.

при участии в заседании представителей

от истца:  
- Вершинин А.В. (дов. от 13.12.96 № 64958)  
- Попондопудо В.Ф. (дов. от 13.01.97)

от ответчика:  
- лицо без полномочий - Неостерова А.В.

от 3 лиц: 1-го  
- не явился  
2-го  
- Лебедев К.К. (дов. от 07.08.97),  
- Ференц-Сороцкий В.В. (дов. от 07.08.97),

рассмотрев в открытом судебном заседании кассационную жалобу акционерного общества "Болтик Ботлинг Плант" на решение Арбитражного суда города Санкт-Петербурга и Ленинградской области от 20.01.97 (судьи Малышева Н.Н., Пастухова М.В., Левченко Ю.П.) и постановление апелляционной инстанции того же суда от 28.08.97 по делу № А56-11654/96 (судьи Еликова Л.В., Серикова И.А., Трегубова А.И.),

### УСТАНОВИЛ:

Компания "Болтик Груп Лимитед" обратилась в Арбитражный суд города Санкт-Петербурга и Ленинградской области с иском о признании недействительным решения Регистрационной палаты Марии

Санкт-Петербурга от 10.10.95 N 26067 о регистрации изменений учредительных документов АОЗТ "Волтик Ботлинг Плант".

Решением суда от 20.01.97 иски был удовлетворен, и решение Регистрационной палаты Марии Санкт-Петербурга от 10.10.95 N 26067 признано недействительным. Принимая такое решение, суд исходил из того, что опровергаемое решение было принято Регистрационной палатой на основании решения собрания акционеров АОЗТ "Волтик Ботлинг Плант" от 28.08.96, которое вступившим в законную силу решением Арбитражного суда города Санкт-Петербурга и Ленинградской области от 19.04.96 по делу N 629/96 признано недействительным.

Постановлением апелляционной инстанции от 29.02.97 решение от 20.01.97 оставлено без изменения по тем же основаниям. При этом апелляционной инстанцией было подчеркнуто, что решение Регистрационной палаты, принятое на основании недействительного собрания акционеров, противоречит закону.

В кассационной жалобе АОЗТ "Волтик Ботлинг Плант" просит принять по делу решение суда первой инстанции от 20.01.97 и постановление апелляционной инстанции от 29.02.97 отменить ввиду нарушения судом норм материального и процессуального права, выразившихся в следующем:

- решение Регистрационной палаты не является "реконструтивным" актом, порождающим какие-либо административно-правовые отношения и нарушающим права и законные интересы истца, в потому и не основанным ч.1 ст.22 АПК РФ и абз.2 п.4 Постановления Пленума Верховного РФ и Пленума Высшего Арбитражного Суда РФ от 18.08.98 N 12-12 "О некоторых вопросах подведомственности дел судам и арбитражным судам" производство по делу - в связи с неподведомственностью данного спора арбитражному суду - должно быть прекращено;
- судебные акты должны отменены на основании п.б ч.3 ст.176 АПК РФ как принятые с правами и обязанностями лиц, не привлеченные к участию в деле, искажающие о привлечении к участию в деле в качестве третьих лиц без самостоятельных требований акционеров АОЗТ "Волтик Ботлинг Плант" - двух юридических и двух физических лиц - были недобросовесны, по мнению подателя жалобы, отклонены судом;
- иск по данному делу является беспредметным, как утверждает в жалобе АОЗТ "Волтик Ботлинг Плант", поскольку редакция статей Устава, являющаяся предметом данного спора, вновь изменена, и эти изменения зарегистрированы Государственной Регистрационной Палатой.

вой при Министерстве экономики РФ.

Кассационная инстанция, проверив правильность применения судом первой и апелляционной инстанций норм материального и процессуального права, не находит оснований для удовлетворения кассационной жалобы и отмены принятых по делу судебных актов.

Решением Регистрационной палаты Санкт-Петербурга от 10.10.96 № 26067 были приняты к сведению изменения и дополнения в Устав АОЗТ "Болтик Вотлинг Глент", учрежденным чрезвычайного собрания акционеров от 29.09.95, насавшиеся составе акционеров (участников) и распределения их долей в уставном капитале, а также изменения по составу учредителей (участников), внесенные в кредиторский договор.

Решением Арбитражного суда города Санкт-Петербурга и Ленинградской области от 18.04.96 по делу № 688/96 решение чрезвычайного собрания акционеров от 29.09.95 было признано недействительным. Судом было установлено, что собрание акционеров проводилось не 29.09.95, а 25.09.95. Суды апелляционной и кассационной инстанций решение суда от 18.04.96 оставили без изменения.

Изложенное обстоятельство свидетельствует - как правильно указали в принятых по настоящему делу судебных актах первой и апелляционной инстанции Арбитражного суда города Санкт-Петербурга и Ленинградской области - о неверности решения Регистрационной палаты Санкт-Петербурга от 10.10.96 как принятого на основании признанного недействительным решения чрезвычайного собрания.

Является правильным признание судом первой и апелляционной инстанций решения Регистрационной палаты ненормативным актом государственного органа и выводы относительно того, каким образом данное решение нарушает права и законные интересы истца, какие административно-правовые отношения порождает.

Кассационная инстанция считает правомерным отклонение судом ходатайства о привлечении к участию в деле в качестве третьих лиц без самостоятельных требований акционеров АОЗТ "Болтик Вотлинг Глент": проверка законности решения Регистрационной палаты Санкт-Петербурга при наличии судебного акта, которым признано недействительным решение чрезвычайного собрания (на основании чартерского решения собрания были внесены изменения в Устав, которые заняты к сведению Регистрационной палатой и оформлены соответствующим решением), имеющего прецедициальное значение при рассмотрении настоящего спора о признании решения Регистрационной палаты

недействительным, не требует участия в деле названных лиц, поскольку какая-либо возможность нарушения их прав и законных интересов при указанных обстоятельствах отсутствует.

Ссылка подателя кассационной жалобы на беспредметность рассмотренного иска обоснованно не принята судами во внимание: последующая регистрация Государственной Регистрационной Палатой Минэкономики РФ новой редакции соответствующих статей в Уставе АОБУ "Волтич Ботлинг Грант", вновь измененных после принятия Регистрационной палатой Санкт-Петербурга решения от 10.10.95, не аннулирует последнее. Более того, последующие изменения, зарегистрированные Государственной Регистрационной Палатой Минэкономики РФ, были приняты с участием акционеров, которые в соответствии с решением суда по делу № 629/96, вступившим в законную силу, не являются таковыми.

При перечисленных обстоятельствах решение Регистрационной палаты Санкт-Петербурга от 10.10.95 № 26067 правомерно признано первой и апелляционной инстанциями Арбитражного суда города Санкт-Петербурга и Ленинградской области недействительным.

На основании изложенного и руководствуясь статьями 174, ч. 1 ст. 175 Арбитражного процессуального кодекса Российской Федерации  
Федеральный арбитражный суд Северо-Западного округа

П О С Т А Н О В И Л :

Решение Арбитражного суда города Санкт-Петербурга и Ленинградской области от 20.01.97 и постановление апелляционной инстанции того же суда от 28.03.97 по делу № А56-11554/96 оставить без изменения, а кассационную жалобу без удовлетворения.

Председательствующий

Голова Н.Г. Кузнецова

Судья

Модилько А.В. Шевченко

О.А. Корпусова

Копия верна:

Судья

Н.Г. Кузнецова

Вер. специалист

Джон

**EMBLEM  
IN THE NAME OF THE RUSSIAN FEDERATION**  
**THE DECISION**

Saint-Petersburg  
26.06.96

No 4079/96

The Arbitration Court of Saint-Petersburg and Leningrad Region

in the composition of:  
the chairwoman: Semenkova  
judges:

having considered in the course of the Court Meeting the materials on the law-suit of the company RMZ against BGL

the third person: JSC "Baltic Bottling Plant Ltd",

concerning the annulment of the Agreement

with the participation in the Court Meeting of:  
on behalf of the plaintiff: Ferense-Sorotsky  
on behalf of the defendant: Suprunenko  
the third person: B.T.Bjorgolfsson- the general director, Lebedev, Perevoztchikova- the translator.

Established:

The plaintiff asks to annul the agreement of 04.12.92 regarding the establishment of the joint-stock company BBP (an enterprise dealing in production of plastic bottles and bottling of soft-drinks) in St.-Petersburg and the foundation agreement of 04.06.93 regarding the establishment and the activities of BBP.

The defendant did not admit the law-suit referring to the facts that the agreement had been fulfilled according to the Statement of transfer and acceptance of 03.01.94 for the sum determined by the agreement, the Statement was signed by the parties; another list of the equipment being subject to transfer is absent and such a list had not been determined by the agreement.

The hearing had been postponed until 19.06.96 in order the Court could obtain additional documents and from 19.06.96 till 26.06.96 due to the vacation of the judge.

In the course of the Court Meeting on June 26, 1996 the Court found necessary to attract the JSC BBP as the third person (not laying the claims of its own) on the side of the defendant.

The decision was announced in the course of the Meeting, in the presence of the plaintiff's and defendant's representatives, of BBP's General Director B.T.Bjorgolfsson and his attorney Lebedev acting on the grounds of the Power of Attorney of 21.02.96.

The copy of the law-suit was given by the plaintiff to the third person at the Meeting, this fact is confirmed by Mr. B.T.Bjorgolfsson's signature to the law-suit.

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According to art.46 of the Arbitration Code the third person was provided with a translator. The translator (Perevozchikova) arrived in court together with B.T.Bjorgolfsson. The translator was warned about criminal liability for the deliberately wrongful translation. A 15-minute break was announced in order the third person could prepare the explanations concerning substance of the claims stated in the law-suit. After the break the Meeting recommenced.

Having listened to the representatives of the plaintiff, of the defendant and of the 3d person, having considered the presented materials of the case, the Court does not find the grounds to annul the agreement.

On December 4, 1992 BGL and RMZ entered into the agreement regarding the establishment of the joint-stock company BBP (in accordance with the Letter of Intent of 03.12.92) for the purposes of provision of foodstuff production and distribution of foodstuff in St.-Petersburg, production of plastic bottles and bottling of soft-drinks.

The parties determined their contributions in par. C. In particular, BGL had to provide a complete set of equipment for production of soft-drinks, including equipment for production of plastic bottles, bottling, water purification, equipment for refining of raw-materials and packing, office equipment and office furniture, soft and hardware systems, as well as to provide know-how for production of plastic bottles and bottling, raw-materials, materials, vehicles, funds for completing the construction of BBP's building, funds for the company's operations, BGL was responsible for marketing and management.

RMZ is obliged to provide the plant's building: the production and administrative buildings that are 13600 m. square.

The terms of the agreement's execution were established from 04.12.92 till September 1993.

The execution of par. A of BBP's foundation agreement is confirmed by the agreement of 04.06.93 regarding the establishment and the activities of BBP registered in the St.-Petersburg Mayor's Office Committee for External Relations on 08.06.93, No АИЕ-5.108. The JSC BBP as an independent subject of the economic activity was granted the right of a legal entity with an independent balance.

In the foundation agreement of 04.06.93 the size of the company's charter capital was established as RR 15,000,000 that comprised 1000 ordinary registered shares with a value of RR 20,000 each.

The participants distributed the shares as follows: BGL- 750 shares that was RR 15,000,000 or 75% of shares, RMZ-250 shares for the sum of RR 5,000,000 that was 25% of the Statutory Fund.

By par.3.3 of the said foundation agreement the parties determined that as for the payment for their shares the parties were bound to provide raw materials, materials, equipment, know-how, monetary resources, the building and so on that is stipulated in Clause C of the agreement of 04.12.92.

Taking into account par. 3.2 and par.3.3 of the foundation agreement, the demands of the plaintiff concerning transfer of Equipment, materials and other assets go beyond the limits of the sum of the contribution.

The concrete list of equipment according to its quality, price or types is not stipulated either by the one or by the other agreements.

The notion of "know-how", as know-how was estimated, what experience or technical knowledge had to be utilised neither were determined. Therefore the claims regarding transfer of concrete equipment and know-how were laid groundlessly. This is also confirmed by the letter of the company "Inaudit" of 19.06.96, No 1-216.

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As it follows from the Statement of transfer and acceptance, BGL transferred and BBP accepted the equipment necessary for organisation of production (Clause 1 of the Statement) with a value of RR 15,000,000, i.e. BGL's share of BBP's Statutory Fund contributed according to the agreement of 04.06.93 (par. 2.1, 2.2, 2.3).

Besides, it is stipulated by par. 4 of the Statement that BGL is being exempted from the obligation to provide raw materials, materials, know-how as its share of BBP's Statutory Fund. The Statement is signed without any provisos by the representatives of the parties and the 3d person, therefore there is no grounds to consider that the conditions of the agreements are not fulfilled. As it follows from the presented documents the plant is built, the drinks are being bottled and the questions, whether the contributions correspond each other or not, whether the agreements are executed or not, were not being considered by the Board of Directors or by the General Shareholders Meeting since 1994.

Following art. 450 of the Civil Code of RF, arts. 39,46,95,124-128 of A. Code,

The Arbitration Court decided:

to reject the law-suit.

Judge A. Semenkova



Именем Российской Федерации  
РЕШЕНИЕ

г.Санкт-Петербург

« 16 » 06 1996 г.

№ 4079/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,

в составе:

председательствующего

Семенковой А.В.

судей:

рассмотрев в судебном заседании дело по иску

(наименование истца)

АОУТ "Ремонтно-механический завод" СПб

Компании "Болтик Групп АТЛ"

(наименование ответчика)

3-е лицо: АОУТ "Болтик Вотлинг Плант"

о расторжении договора

при участии в заседании:

от истца: Беренс-Сороцкий В.В.-юр.по дов.

от ответчика: Супруненко А.В.-юр.по дов.

3-е лицо: Бьорголфссон Б.Т.-ген.дир., Лебедев К.Н.-юр.по дов.,

Перевозчикова В.А.-переводчик

Истец просит расторгнуть договор от 04.12.94г. о создании  
установил: в Санкт-Петербурге АОУТ "Болтик Вотлинг Плант"/-предприятия по производ-  
ству пластиковых бутылей и безалкогольных напитков и по разливу на-  
питков в бутыли, металлические банки и учредительный договор от 04.  
06.94г. о создании и деятельности АОУТ "Болтик Вотлинг Плант".

Ответчик иск не признал, ссылаясь на то, что договор исполнен  
в соответствии с актом приемки-сдачи имущества от  
03.01.94г. на сумму, определенную договором, акт подписан сторонами;  
другой перечень оборудования, подлежащего передаче, отсутствует и до-  
говором не определялся.

Слушание откладывалось до 19.06.96г. для представления до-  
полнительных документов, в с 19.06.96 по 20.06.96 в связи с отпус-  
ком судьи.

В заседании 20.06.96 суд нашел необходимым привлечь в качес-  
ти 3-го лица, не заявляющего самостоятельных требований на стороне  
ответчика АОУТ "Болтик Вотлинг Плант" (далее сокращенно БВП).

Определение объявлено в присутствии представителей истца и  
ответчика, генерального директора АОУТ "БВП" г-на Бьорголфссона Б.Т.  
и его адвоката Лебедева К.Н. по доверенности от 21.04.96г. в судеб-  
ном заседании.

копия искового заявления вручена истцом 3-ему лицу в заседании, что подтверждено росписью г-на Бьорголфссона Б.Т. на исковом заявлении.

3-е лицо в порядке ст. 46 арбитражного процессуального кодекса обеспечено переводчиком Перевозчиковой В.А., которая прибыла с г-ном Бьорголфссоном Б.Т. Переводчик Перевозчикова В.А. предупреждена об уголовной ответственности за заведомо неправильный перевод. Для подготовки 3-им лицом пояснений по существу заявленных исковых требований объявлен перерыв на 15 минут, после чего заседание возобновлено.

Заслушав представителей истца, ответчика и 3-его лица, рассмотрев представленные материалы дела, арбитражный суд не находит оснований для расторжения договоров.

04.12.94г. "Балтик Груп АТЛ" и Ремонтно-механический завод заключили договор о создании компании АОЗТ "Балтик Ботлинг Плант" (в соответствии с протоколом о намерениях от 03.12.94г.) в целях обеспечения производства продуктов питания и их распределения в С-Петербурге, производства пластиковых бутылок и безалкогольных напитков и разлив этих напитков в пластиковые бутылки и металлические банки.

Стороны определили вклады каждой из них в разделе "С" со стороны Балтик Груп АТЛ, в частности: комплект оборудования по производству безалкогольных напитков, включая оборудование по производству пластиковых бутылок, оборудование для разлива напитков, очистке воды, обработка сырья и упаковки, офисную мебель и оргтехнику, системы компьютерного обеспечения, а также "Ноу-Хау", организацию обеспечения завода сырьем, упаковочными и транспортными средствами, ответственность за менеджмент, маркетинг и организацию финансирования работы компании, организацию реконструкции завода и административно-бытового здания на Парнасе.

Ремонтно-механический завод обязан обеспечить здание завода: производственный корпус и административно-бытовой корпус площадью 15.600 кв.м.

Сроки исполнения договора устанавливались с 04.12.94 по сентябрь 1995г.

Исполнение раздела "А" договора о создании АОЗТ "Балтик Ботлинг Плант" подтверждено договором о его создании и деятельности от 04.06.95г., зарегистрированном в комитете по внешним связям С-Петербурга 08.06.95г. в АЮЛ-б.108. Созданному АОЗТ "ББП" предоставлены как самостоятельному хозяйствующему субъекту право юридического лица с самостоятельным балансом и от своего имени приобретать имущественные и личные нематериальные права.

Учредительным договором от 04.06.95г. уставной капитал предприятия составил 20.000.000р., что составляет 1.000 обыкновенных именных акций по 20.000р. каждая.

Участники распределили их следующим образом: "Балтик Груп АТЛ" - 750 акций, что составило 15.000.000р. или 75% акций, а Ремонтно-механический завод - 250 штук на сумму 5.000.000р., что составляет 25% уставного капитала.

П. 3.3 данного учредительного договора стороны определили, что в счет оплаты своих акций стороны обязуются внести сырье, материалы, оборудование, "Ноу-Хау", денежные средства, здание и пр., что предусмотрено в разделе "С" договора от 04.12.94г.

С учетом п.3.2 и 3.3 учредительного договора требования истца о передаче оборудования, материалов и другого имущества выходят за пределы суммы вклада.

Как этим, так и другим договором не определен конкретный перечень оборудования по его видам, качеству и цене. Нет определения и

"ноу-хау", как оно было оценено и какой опыт или технические знания должны быть использованы, поэтому требования в части передачи конкретного оборудования и "Ноу-Хау" заявлены необоснованно. Это же подтверждено письмом АКП "ИнАудит" от 19.06.96г. № I-216, где указано, что основной причиной явилось отсутствие подробного перечня оборудования и согласования по стоимостной оценке вкладов участников договора.

Как следует из акта сдачи-приемки от 03.01.94г. "Болтик Групп ЛТД" передало, а "Болтик Ботлине Плат" приняло оборудование, необходимое для организации производства (п.1 акта), стоимость которого составляет 15.000.000р., т.е. его часть уставного капитала во исполнение договора от 04.06.93г. (п.2.1, 2.2, 2.3).

Кроме того, п.4 акта предусмотрено, что "Болтик Групп ЛТД" освобождается от обязательства внести в счет вклада уставный фонд "ББЛант" сырье, материалы, "ноу-хау". Акт без оговорок подписан представителями сторон и З-его лица, поэтому нет оснований считать, что условия договоров не выполнены. Как следует из представленных документов, завод построен, продукция выпускается и вопрос о несоответствии вкладов или неисполнения договоров не рассматривался на Совете директоров или общем собрании учредителей с 1994г.

Признание иска третьим лицом, не заявляющим самостоятельных исковых требований, не может быть принято в соответствии с п.2 ст.39 Арбитражного процессуального кодекса РФ.

Именем Российской Федерации,  
руководствуясь ст.450 ГК РФ, ст.39, 46, 95, I24-I28 Арбитражного процессуального кодекса,

арбитражный суд РЕШИЛ:

в иске отказать.

Судья



Семенкова А.В.

## EMBLEM

FEDERAL ARBITRAZH COURT OF THE NORTH-WESTERN CIRCUIT  
12 Admiralteisky prospect, 190000 St. Petersburg, Russia

## COURT ORDER

17 December 1996

No 1302/96

The Federal Arbitrazh court of the North-Western Circuit

in the composition of a panel of judges headed by:

chairman - M. Vlasova

judges- A. Yakovleva, T. Shpatcheva

with the participation in the course of the Court Meeting

on behalf of the plaintiff: Y. Karpovitch (acting on the grounds of the power of attorney dated 10.12.96), V. Ferense-Sorotsky (acting on the grounds of the power of attorney dated 26.02.96), I. Makarov (acting on the grounds of the power of attorney dated 10.12.96),

on behalf of the defendant: A. Vershinin (acting on the grounds of the power of attorney dated 25.07.96, V. Popondopulo (acting on the grounds of the power of attorney dated 25.07.96)

on behalf of the defendant: failed to attend the hearing

considered in the course of an open hearing the cassation appeal filed by the Open Joint-Stock Company Remontno-Mekhanitchesky Zavod ("RMZ") in which RMZ has petitioned the court to revoke the decision of the Arbitrazh court of St. Petersburg and the Leningrad region dated 26.06.96 in action No 4079/96 (judge Semenkova).

Having heard the arguments of the parties and reviewed the materials on the matter,

### ESTABLISHED:

RMZ filed its statement of claim in the Arbitrazh court of St. Petersburg and the Leningrad against Baltic Group Limited (hereinafter referred to as "BGL") in which RMZ has petitioned the court to revoke and annul the agreement dated 04.12.92 on the establishment of Closed Joint-Stock Company Baltic Bottling Plant ("BBP or the Company") and the constituent agreement of BBP dated 04.06.92 on the foundation of BBP and scope of its activities.

The court impleaded BBP in the capacity of a third party without the claims of its own.

The court found for the defendant and dismissed the statement of claim.

The Appellate Tribunal did not verify the correctness of the court order.

In its cassation appeal RMZ has petitioned the court to revoke the court order and find for the plaintiff. RMZ argued that allegedly the court incorrectly applied the norms of substantiative laws.

The defendant objects to the arguments outlined in the cassation appeal and requests the court not to change the decision and confirm its effectiveness. The reasoning of the defendant is spelled out in its response to the statement of claim.

In the course of the legal proceedings in cassation instance the court verified the legality of the court order and correctness of application by the court of procedural and substantiative laws.

On 4 December 1994 BGL and RMZ entered into the agreement on the establishment of BBP. The said agreement is not a foundation one, insofar as it does not define and provides for the status of the company. While providing for the scope and sequence of obligatory activities to be carried out by the company's shareholders, the agreement above elapses upon achieving the end specified therein, i.e. upon the state registration of a new joint-stock company.

On 4 June 1993 the parties concluded the agreement on the foundation and scope of activities of BBP. The said agreement is to be attributed to the foundation (constituent) documents. On 8 June 1996 Closed Joint-Stock Company Baltic Bottling Plant was registered with the Committee for Foreign Relations of the Mayoralty of St. Petersburg.

Pursuant to art. 3 of the agreement on the foundation and scope of activities of BBP the charter capital of the Company totals RUR 20 million resulting from the issuance of 1000 common registered shares, each having a nominal value of RUR 20000.

The share of the defendant amounts to 750 common registered shares worth of RUR 15 million or accounts for 75% of the Company's charter capital.

BGL undertook to contribute as payment for its shares "raw materials, equipment designed for setting up the production facilities, know how required for producing plastic bottles and bottling beverages, as well as monies necessary for completing the construction of the building being contributed by the plaintiff (RMZ) as payment for its shares and providing training for specialists who are to handle the equipment transferred by BGL". As far as the quantity, quality, value or other parameters of the property contribution are concerned, the agreement above provides for no specific terms and conditions.

The fact of transfer of the property contribution to the charter capital of the Company that is equivalent to the value of 750 shares is substantiated by the statement of transfer and acceptance dated 3 January 1994 signed by representatives of RMZ, BGL and BBP. The plaintiff's arguments to the effect that those persons, who signed the statement above, were not authorised to do so (had no powers to sign it) are not substantiated by materials of the case.

Under these circumstances, the court of the first instance reached a correct conclusion that there was no legal basis to revoke or annul the agreement dated 04.12.92 on the foundation and scope of activities of BBP.

The court fully and multifacetedly examined the evidence presented by the parties, the decision complies with the materials of the case, there is no legal basis to have it revoked or annulled.

Following art. 174, 175, 177 of the Russian APC the Federal Arbitrash Court of the North-Western Circuit -

**DECIDED:**

To leave the decision of the Arbithrazh court of St. Petersburg and the Leningrad Region in action No 4079/96 unchanged, the cassation appeal was not subject to satisfaction.

Chairman  
Judges

signature      M. Vlasova  
signature      I. Yakovleva  
signature      T. Shpatcheva

the copy is true

[seal]

Judge [signature] M. Vlasova

Leading specialist [signature] N. Katchnova

КОПИЯ



ФЕДЕРАЛЬНЫЙ АРБИТРАЖНЫЙ СУД СЕВЕРО-ЗАПАДНОГО ОКРУГА  
190000, Санкт-Петербург. Адмиралтейский пр., 12

ПОСТАНОВЛЕНИЕ

дело № 1302/96

г. Санкт-Петербург

17 декабря 1996 г.

Федеральный арбитражный суд Северо-Западного округа в составе:

председательствующего Власовой М.Г.

судей: Яковлева И.А., Шпачевой Т.В.

при участии в заседании:

от истца: Карпович Е.И. (по доверенности от 10.12.96), Макаров И.А.  
(по доверенности от 10.12.96), Ференс-Сороцкий В.В. (по доверенности  
от 26.02.96)

от ответчика: Попондопуло В.Ф. (по доверенности от 25.07.96), Вершинин  
А.П. (по доверенности от 25.07.96)

от третьего лица: не явился

рассмотрел в открытом судебном заседании кассационную жалобу акционер-  
ного общества открытого типа "Ремонтно-механический завод" на решение  
Арбитражного суда города Санкт-Петербурга и Ленинградской области от  
26 июня 1996 года по делу № 4079/96 (судья Семенкова А.В.).

Выслушав объяснения сторон и исследовав материалы дела,  
Федеральный арбитражный суд Северо-Западного округа

УСТАНОВИЛ:

Акционерное общество открытого типа "Ремонтно-механический завод"  
обратился в Арбитражный суд города Санкт-Петербурга и Ленинградской  
области с иском к Компании "BALTIC GROUP LIMITED" (далее - Компания  
"BGL") о расторжении договора от 04.12.92 о создании акционерного об-  
щества закрытого типа "Болтик Ботлинг Плант" (далее - АОЗТ "ББП") и уч-  
редительного договора от 04.06.93 о создании и деятельности АОЗТ "Бол-  
тик Ботлинг Плант".

Для участия в деле в качестве третьего лица, не заявляющего  
мостоятельных требований привлечено АОЗТ "Болтик Ботлинг Плант".  
Решением суда в иске отказано.

В апелляционной инстанции правильность решения не проверялась.  
В кассационной жалобе АОЗТ "Ремонтно-механический завод" про-  
рещение отменить и исковые требования удовлетворить, ссылаясь на н-  
правильное применение судом норм материального права.

Ответчик с доводами кассационной жалобы не согласен и просит  
тавить решение в силе по мотивам, изложенным в отзыве.

Законность решения и правильность применения судом норм процес-  
сального и материального прав проверены в кассационном производстве.

4 декабря 1994 г. между компанией "BALTIC GROUP LIMITED"  
АОЗТ "Ремонтно-механический завод" заключен договор о создании  
АОЗТ "Болтик Ботлинг Плант". Данный договор не является учредительным  
поскольку он не определяет статус общества, а определяя порядок совер-  
шения необходимых действий учредителей, он утрачивает силу по достиже-  
нии своей цели - регистрации нового акционерного общества.

4 июня 1993 г. между сторонами подписан договор о создании и де-  
ятельности АОЗТ "ББП", который относится к числу учредительных доку-  
ментов общества. 8 июня 1996 г. Комитетом по внешним связям мэр-  
това Петербурга зарегистрировано АОЗТ "Болтик Ботлинг Плант".

В соответствии со статьей 3 договора о создании и деятельнос-  
ти АОЗТ "ББП" уставный капитал общества составляет 20 000 000 рублей  
разделен на 1000 именных обыкновенных акций, номинальной стоимостью  
1000 рублей каждая.

Доля ответчика составляет 750 акций общей стоимостью 15 000 000  
рублей, что составляет 75% уставного капитала.

Компания "BGL" в счет оплаты своих акций обязалась внести "сырец  
материалы, оборудование, необходимое для организации производств  
"ноу-хай" по производству пластиковых бутылок и розливу напитков,  
также денежные средства, необходимые для завершения строительства зда-  
ния, вносимого в счет оплаты акций истцом, и для подготовки специалис-  
тов по работе с переданным оборудованием". Никаких конкретных данных  
характеризующих количество, качество, стоимость и другие параметр  
вклада, в договоре не содержится.

Факт передачи в уставный капитал имущества, эквивалентного стои-  
мости 750 акций подтверждается актом сдачи-приемки от 3 января 199  
г., подписанным представителями АОЗТ "Ремонтно-механический завод"  
Компании "BGL", АОЗТ "ББП". Доводы истца о том, что у лиц подписавши-  
х отсутствовали полномочия на его подписание, не подтверждены мате-  
риалами дела.

При таких обстоятельствах судом первой инстанции сделан правомер-  
ный вывод об отсутствии оснований для расторжения договора от 04.12.92

и договора о создании и деятельности АОЗТ "ББП".

Судом полно и всесторонне исследованы представленные сторонами доказательства, решение соответствует материалам дела и основания для его отмены отсутствуют.

Руководствуясь статьями 174, 175, 177 Арбитражного процессуального кодекса Российской Федерации, Федеральный арбитражный суд Северо-Западного округа

П О С Т А Н О В И Л:

Решение Арбитражного суда города Санкт-Петербурга и Ленинградской области от 26 июня 1996 года по делу N 4079/96 оставить без изменения, а кассационную жалобу АООТ "Ремонтно-механический завод" - без удовлетворения.

Председательствующий

подпись

М.Г.Власова

Судьи

подпись

И.А.Яковлев

подпись

Т.В.Шпачева

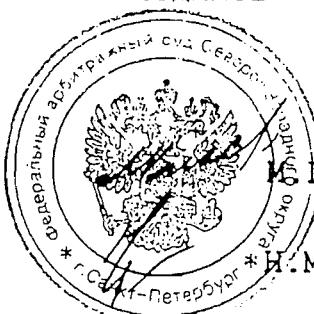
Копия верна:

Судья

М.Г.Власова

Вед. специалист

И.М.Качнова



**EMBLEM**  
**In the name of the Russian Federation**

**DECISION**

Saint-Petersburg  
October 22, 1996

No A56-9632/96

The Arbitrzh court of Saint-Petersburg and the Leningrad Oblast'

in the composition of:  
chairman – E. Zaitseva  
judges-

having considered in the course of the Court Meeting the materials on the statement of claim filed by AOOT Remontno-Mekhanitchesky Zavod ("RMZ") against 1) Baltic Bottling Plant ("BBP")

2) Baltic Group Limited ("BGL")  
in which RMZ has petitioned the court to declare invalid a sales-purchase contract

with the participation in the course of the Court Meeting

on behalf of the plaintiff: representative K. Lebedev,  
representative A. Tchistiakova  
on behalf of the defendant: 1) V. Ferense-Sorotsky  
2) V. Popondopulo

established:

the plaintiff has petitioned the court to invalidate the Contract involving the buying and selling of the technological equipment (unnumbered) dated 24.03.95.

The parties failed to attend the hearing. The defendant provided the court with its respond to the statement of claim. Having reviewed the materials on the matter and having heard the representatives of the parties, the court established the following:

On 24.03.95 BBP ("Defendant 1") and BGL ("Defendant 2") entered into the Contract (unnumbered) involving the buying and selling of the technological equipment designed for manufacturing plastic PET-bottles, bottling and corking bottles for soft-drinks.

The total value of the contract amounted to US\$ 2.1 million.  
The ownership right of the equipment (the title) sold under the above Contract was transferred to Defendant 1 under the statement of transfer and acceptance of 23.03.95.

The value of the equipment totalling US\$ 2.1 million was transferred by Defendant 1 to Defendant 2 over the period from 26.03.95 (?) to 22.09.95.

RMZ as one of the founders of BBP has petitioned the court to declare the said contract void and invalid due to its following features falling within the ambit of art. 188 and art. 170 (2) of the Russian Civil Code and recognise the transaction as a fraudulent and pretended agreement and inasmuch as it contradicts Russian legislation on the grounds as follows:

- the equipment being the subject matter of the Contract dated 24.03.95 was earmarked for contribution to the charter capital of BBP as property contributed as payment for shares by BGL;
- the terms and conditions on which the Contract dated 24.03.95 had been concluded made were extremely unfavourable for BBP;
- when delivering the said equipment into the territory of the Russian Federation, a certain number of legal norms regulating the order of paying customs duties and taxes were broken;
- in fact, the transaction executed in the form of the Contract involving the buying and selling of the equipment disguised and covered up the operation aimed at illegally repatriating capital over a border of Russia;

Defendant 1 – BBP – acknowledged the claims of the plaintiff as to the invalidation of the transaction (only in this part). Defendant 1 agreed that the transaction in question contradicted the provisions of laws and other legal acts on the grounds as follows. The equipment brought into Russia was declared as property contributed to the charter capital of a newly-established company, further the equipment was not transferred to the company during its foundation as payment for shares but leased to the newly-established company. Defendant 1 did not question the validity of the transaction executed in the form of a lease contract and it never raised the issue with a view to declaring it valid.

Defendant 1 denied the statement that the transaction executed in the form of the Contract involving the buying and selling of the equipment dated 24.03.95 was fraudulent and pretended. The parties concluded the sales-purchase contract with the end for buying and selling the equipment in view and achieved that very end upon making this contract.

Defendant 2 – BGL – did not acknowledge the claims of the law-suit on the grounds set out by the Defendant 2 in its response to the statement of claim. It referred to the fact that the disputed equipment had been brought in into Russia for the production purposes of the buyer.

The Defendant 2 owns the disputed equipment that is free and clear from any encumbrances and legal limitations hindering its alienation:

- Defendant 2 considers the statement that the said limitations follow from and are conditioned by the fact that the said equipment was destined for contribution to the charter capital of BBP to be inappropriate and groundless, insofar as it was recognised by virtue of the decision of the Arbitrash court dated 26.08.96 in action No 4079/96 that the charter capital of BBP had been paid up in full, thus, the claim filed by RMZ is groundless;
- Defendant 2 considers inappropriate and groundless the statement of the plaintiff alleging that the transaction is fraudulent and pretended, since the flow (transfer) of

funds represents not the hidden transaction but the very substance and subject matter of the contract of 24.03.95 and is aimed at making a payment for the equipment.

On the evidence on the matter the court considers the claims of the plaintiff to be unfounded on the grounds as follows:

- in accordance with the decision of the Arbitrash court dated 26.06.96 in action No 4079/96 it was established that the share of the charter capital subject to contribution by BGL under the foundation agreement of 04.06.93 totalling RUR 15 million had been paid up in full. The disputed equipment is not included in the composition of the property to be contributed to the charter capital.

On 01.11.93 BBP and BGL entered into the lease agreement on the lease of production equipment. That very equipment, part of which was subsequently sold to Defendant 1 under the sales-purchase contract dated 24.03.95, had been the subject matter of the lease agreement above.

The reference of the plaintiff to the fact that when bringing in the disputed equipment into the territory of the Russian Federation the provisions of the Russian customs, tax, investment and other laws were violated can not be used as the legal basis in order for the court to declare the transaction involving the buying and selling of the equipment invalid and void as the one contradicting Russian laws, since allegedly purported violations of this type may give rise to the legal proceedings to be instituted by the competent authorities and entail administrative liability but they do not affect the validity of the transaction involving the buying and selling of the equipment itself.

From the perspective of art. 166 of the Russian Civil Code the transaction involving the buying and selling of the equipment executed in the form of the Contract dated 24.03.95 complies with generally accepted standards and meet the requirements set by the laws and other legal acts.

- as for the statement made by the plaintiff that the transaction was a fraudulent and pretended one are not substantiated by the documents reviewed by the court, since when concluding the contract on the sales-purchase of the equipment dated 24.03.95, the parties intended to achieve that very end which resulted from the conducted transaction: Defendant 1 acquired the ownership rights of the disputed equipment, while Defendant 2 received the value of the sold equipment.

The genuineness of the parties' intentions is confirmed by the recognition of the purchased equipment in the company's balance sheet and actuality of the transfer of funds as the payment for the purchased equipment.

The statement of the plaintiff that the terms and conditions on which the transactions was conducted were extremely unfavourable for Defendant 1 can not be examined within the ambit of this dispute, insofar as following the provisions of art.179 of the Russian Civil Code it is only a sufferer that is entitled to petition the court to declare the transaction in question as such.

On the premise of the above, the court rules that the statement of claim of the plaintiff in which it has petitioned the court to declare the transaction executed in the form of the Contract on the sales-purchase of the technological equipment dated 24.03.95 invalid. The statement of claim is not subject to satisfaction.

Following articles 166, 168, 170 (2) of the Russian Civil Code, articles 124, 127 and 134 of the Russian APC -

DECIDED:

To dismiss the statement of claim.

The payment of the court fee shall be borne by the plaintiff.

Chairman  
the copy is true

signature  
[seal]

E. Zaitseva



Именем Российской Федерации  
РЕШЕНИЕ

г. Санкт-Петербург

« 22 » 10 1996 г.

№ А26-9632/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,  
в составе:  
председательствующего Зайцевой Е.Н.  
судей:

рассмотрев в судебном заседании дело по иску АОУТ "Ремонтно-механический  
(наименование истца)

заявц.

к АОУТ "Болтик Ботлинг Плант"

(наименование ответчика)

Компания "Болтик Груп Лимитед"

о признании контракта недействительным.

при участии в заседании:

от истца: Григорьев Д.Н.

предс. Истякова А.С.

от ответчика: Григорьев Ференс Сидорико В.И.

2 предст. Попондопуло В.Ф.

установил: истец просит признать недействительным контракт купли-продажи технологического оборудования б/у от 24.03.95г.

Стороны к заседанию явились. Ответчиком представлены отзывы на иск.

Заслушав объяснения представителей сторон, изучив представленные материалы, суд установил следующее:

24.03.95г. между АОУТ "Болтик Ботлинг Плант" ответчиком 1 и компанией "Болтик Груп Лимитед" - ответчиком 2 был заключен контракт б/у о купле-продаже технологического оборудования для производства пластмассовых бутылок, бутылочного разлива и хакиажки укупорки бутылок для приходильных напитков.

Общая стоимость контракта составила 2.100.000 долларов США.

Произанное по указанному выше контракту оборудование было передано в собственность ответчику 1 по акту сдачи-приема от 23.03.95г.

Стоимость проданного оборудования истцом в целях приобретения отвечавшим ответчиком в отчетном квартале с 01.01.2010 по 30.09.2010.

Данный контракт именуем "Ремонтно-механический завод", один из учредителей имен "Болтик Ботлайн Грант", просит признать ненадлежащей выставкой по приложенным требованиям и О ч.2 ГК РФ - противоречиям законам и иным правовым актам, а также сделки по следующим основаниям:

- оборудование, являющееся предметом контракта от 24.03.2010, единственный для внесения в уставный капитал ОАОЗИ "Болтик Грант" в качестве акций компании "Болтик Групп Лимитед";

- контракт от 24.03.2010, заключен не вправе иностранных граждан "Болтик Ботлайн Грант" условиях;

- при продаже данного оборудования на территории России нарушили правила правовых норм, регламентирующих порядок вывоза таможенных грузов и налогов;

- сделка, оформленная контрактом купли-продажи оборудования от 24.03.2010, фактически прикрыла сделку по вывозу капитала за пределы РФ.

Ответчик 1 - АОЗИ "Болтик Ботлайн Грант" требования истца признает частично, признание сделки ненадлежащей - не соответствующей требованиям закона и иных правовых актов по тем основаниям, что проданное оборудование было обозначено как имущество в уставный капитал именем зарегистрированного предприятия, а затем не было передано в собственность предприятия как долг в уставном капитале, а было снято с баланса в связи с ликвидацией предприятия в сроки. Сделка оформлена договором аренды и отсутствует выявление сомнений в своей lawfulness и вопрос о признании ее таковой ответчик 1 не выдвигал.

Правомерность сделки оформлением контрактом купли-продажи от 24.03.2010, ответчик 1 отрицает. Стороны преследовали цель купли-продажи имущества и достигли имевшую этой цели при заключении данного контракта.

Ответчик 2 - компания "Болтик Групп Лимитед" исключил требования истца не признав в по материи изложенным в отзыве, состоявшемся на том, что спорное оборудование было передано в РФ с использованием имеющейся для целей производственной покупательской.

Спорное оборудование является собственностью ответчика с именем от законных ограничений, связанных с его отчуждением;

Утверждение о том, что такое ограничение вытекало из необходимости внесения данного имущества в уставный капитал АОЗИ "Болтик Грант", ответчик 2 считает напротивным, поскольку реальная рыночная стоимость выше от 24.03.2010, по суду 44073, в признании, что уставный капитал ответчиком - компанией "Болтик Групп Лимитед" числится, в требование имен "Ремонтно-механический завод" - недобросовестно;

- ответчик 2 считает недобросовестным и утверждение истца о приобретении заключенной сделки, поскольку прижение денежных средств является собой не сделку, а совершение контракта от 24.03.2010, по оплате оборудования.

С учетом изложенных по каждому показателю суд находит требования истца не обоснованными по следующим основаниям:

- решение арбитражного суда от 05.06.2009, по делу №4073/09, твердит о том, что часть уставного капитала, подлежащая внесению компанией "Болтик Групп Лимитед" по договору от 04.03.2010, в размере 1000.000 руб. является недостатком. Спорное оборудование в составе имущества, предназначенного для внесения в уставный капитал, не включено;

02.11.2010, между АОЗИ "Болтик Ботлайн Грант" и компанией "Болтик Групп Лимитед" заключен договор о лизинге производственного оборудования, предметом которого являлось именно то оборудование, частью его правообладателем была компания ответчиком 2 по контракту купли-продажи от 24.03.2010.

- заявки истца на нарушение норм таможенного, налогового, иного административного и иного законодательства при вывозе спорного имущества не

территории РФ не могут являться основаниями к признанию сделки купли-продажи ничтожной, как несоответствующим требованиям закона, поскольку такие рода допущенные нарушения могут привести к приключению к виновности ответственности соответствующими органами, но не влияют на действительность самой сделки купли-продажи оборудования.

С точки зрения ст.160 ГК РФ сделка, оформленная контрактом купли-продажи оборудования от 24.03.95г., соответствует всем требованиям, предъявляемым законом или иными правовыми актами.

- Утверждение истца о приличности совершенной сделки также не находит своего отражения в исследованных документах, поскольку стороны при заключении контракта купли-продажи оборудования от 24.03.95г. не достигли именно того правового результата, который возник из совершенной сделки, а именно: ответчик 1 приобрел в собственность спорное оборудование, а ответчик 2 получил стоимость приобретенного оборудования.

Подъемить камеры сторон подтверждается также якочением купленного оборудования в баланс предприятия и реальностью перечисления денег с расчета в оплату его стоимости.

Утверждение истца, что данная сделка совершена на крайне незначительных для ответчика условиях не может являться предметом рассмотрения по явноциальному спору, т.к. в силу требования ст.173 ГК РФ, требование о признании сделки такой может быть заявлено только потерпевшим.

С учетом изложенного суд считает требование истца о признании сделки оформленной контрактом купли-продажи технологического оборудования от 24.03.95г. недействительной, не подлежащими удовлетворению.

Руководствуясь ст.ст.160, 163, 170, ч.2 ГК РФ, ст.ст.124, 127 и 134 АПК РФ

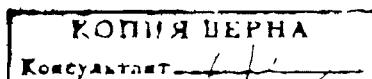
Суд, Решил:

В ИСКЕ ОТКАЗАТЬ.

Расходы по оплате Госпошлины оставить за истцом.

Судья

Е.К.Зайцева



## DECISION

Saint-Petersburg  
11 March 1997

No 4404/96

The Arbitrzh court of Saint-Petersburg and the Leningrad Oblast'

in the composition of the panel of judges headed by  
chairperson – N. Malisheva  
judges- Y. Levchenko, M. Pastukhova

having considered in the course of the Court Meeting the materials on the statement of claim filed by AO OT Remontno-Mekhanitchesky Zavod ("RMZ") against Baltic Bottling Plant ("BBP")

on behalf of the persons impleaded in the capacity of the third parties by the court: Baltic Group Limited ("BGL")

in which RMZ has petitioned the court to declare invalid a decision of the shareholders' meeting

with the participation in the course of the Court Meeting

on behalf of the plaintiff: failed to attend the court meeting  
on behalf of the defendant: failed to attend the court meeting

established:

RMZ has petitioned the court to declare a decision of the shareholders' meeting of BBP dated 26.04.96.

BGL made a motion requesting to suspend the legal proceedings on the matter until the matter in action 4404/96 have been considered by the Appellate Tribunal.

The court examined the motion and decided to reject it.

The duly notified plaintiff (the advice of delivery issued by post office No 108 evidencing that the notice to the effect that the legal proceedings on the matter had been resumed was served upon the plaintiff on 13.02.97) failed to attend the court meeting and did not make a motion requesting to consider the matter in absentia of the plaintiff.

Under the circumstance above, the statement of claim should be dismissed and left without examination.

Following art. 87(2) of the Russian APC the court -

DECIDED:

1. To dismiss the statement of claim.

chairperson – N. Malisheva  
judges- Y. Levchenko, M. Pastukhova  
the copy is true [seal]

# ОПРЕДЕЛЕНИЕ

г.Санкт-Петербург

«II» марта

1997 г.

№ 4404/96

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,  
в составе:

председательствующего Морищево Н.Н.  
судей: Д.В.ЧИЧКО В.П., Гастухово Н.Б.

рассмотрел в судебном заседании дело по иску

АОУТ "Ремонтно-Механический завод"  
(наименование истца)

к АОЗТ "Болтик Ботлинг Грант"

с - лицо: Компания "Болтик Групп Лимитед"  
(наименование ответчика)

о признании недействительным решения собрания акционеров

при участии в заседании:

от истца: № ЯВ.

от ответчика: № ЯВ.

с - лицо: представ. Ингимирсон И.Л.

установил: АОУТ "Ремонтно-Механический завод" обратилось с иском о признании недействительным решения внеочередного собрания акционеров АОЗТ "Болтик Ботлинг Грант" от 20.04.96 г.

Компанией "Болтик Групп Лимитед" заявлено ходатайство о приостановлении производства по делу до рассмотрения дела № 4404/96 в апелляционной инстанции.

Ходатайство рассмотрено судом и признано подлежащим отклонению.

Истец, надлежащим образом извещенный, о чем свидетельствуют уведомления отделения связи № 198, о вручении ему 18.02.97 г. определения о возобновлении производства по делу, в заседание арбитражного суда не явился и не заявила о рассмотрении дела без его участия.

При таких обстоятельствах иск подлежит оставлению без рассмотрения.

Руководствуясь п.6 ст.87 АПК РСФСР

СУД ОПРЕДЕЛЯЕТ:

I. Составить иск без рассмотрения.

Председательствующий



Г.И. Малышев

КОПИЯ ВЕРНА  
Консультант С.С.А.

М.В. Пастухова

Л.Н. Девченко

**EMBLEM**  
**In the name of the Russian Federation**

**DECISION**

St Petersburg  
17.03.97

No A56-3144/97

The Arbitrash Court of St Petersburg and the Leningrad Oblast'

In the composition of a panel of judges headed by S. Nesmiyan  
Judges

Having examined in the course of court hearings the statement of claim filed by the St Petersburg City Property Management Committee against AOOT RMZ

Persons impleaded in the capacity of the third party"

1. Baltic Bottling Plant
2. Baltic Group Limited

In which the plaintiff petitioned to declare invalid the transaction (agreement on foundation of Baltic Bottling Plant dated 04.06.93)

With the participation in the court hearings

On behalf of the plaintiff: S. Arkhangelsky, power of attorney dated 13.01.97

On behalf of the defendant: M. Avdeyeva, power of attorney dated 14.03.97,  
Grebneva power of attorney dated 14.03.97

On behalf of BBP Ference-Sorotsky, power of attorney of 07.03.97

In its statement of claim the plaintiff petitioned to declare invalid the agreement on foundation of Baltic Bottling Plant dated 04.06.93 (transaction) as violating another legal act (art. 168 of the Civil Code of Russia). The defendant accepted the plaintiff's statement of claim and referred to the fact the transaction had been concluded due to its insufficient knowledge of legislation in force and effect. The third party (BBP) also has no objection to the statement of claim. The response of BGL to the statement of claim was not received. There are no documents in the court file evidencing that a summons to court has been served upon BGL. However, taking into account recommendations No 10 of 25.12.96 made by the Presidium of the Supreme Arbitrash Court, the court found it possible to examine the substance of the matter. Pursuant to art. 11 of the APC of Russia the international treaty takes priority over Russian laws. BGL is registered in the British Virgin Islands. Great Britain is not a member of the Hague Convention on issues of civil legal proceedings, Russia and Great Britain has not entered into the legal aid treaty. However, Great Britain joined the World Postal Convention of 14.09.94 (the "Convention"). According to article 20 (1) of the Convention when dispatching a registered letter, the Sender may require that an advice of receipt should be sent to the Sender, i.e. the procedure that is in line with that established by the Russian Postal Guidelines is applied.

The summons to court was dispatched to BGL by registered mail with an advice of delivery No 105 of 12.03.97 which is fully in line with provisions of art. 113 of the APC of Russia. The Arbitrash Court is not entitled to take any other actions with a view to summoning a party to appear in court. Art. 119 of the APC limits the right of

**EMBLEM**  
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The summons to court was dispatched to BGL by registered mail with an advice of delivery No 105 of 12.03.97 which is fully in line with provisions of art. 113 of the APC of Russia. The Arbitrash Court is not entitled to take any other actions with a view to summoning a party to appear in court. Art. 119 of the APC limits the right of

the Arbitrash Court to resolve the dispute only in the absence of a plaintiff or a defendant from court. Provisions of art. 185 (3,4) of the APC correspond with the provisions above and stipulate that a person is duly notified if such a person has been given a notice by a registered letter with an advice of delivery. It is seen from the evidence submitted by the parties than on 04.06.92 the agreement on foundation of BBP and specifying its activities was entered into between BGL and RMZ. The transaction was conducted in violation of limitations imposed in terms of transactions of this type by virtue of Decree of President of Russia No 721 dated 01.07.92. Paragraphs 6.3 and 6.4 of the Sample Charter of a joint-stock company provide that alienation of real estate property and participation in the charter capital of other companies (equity investments) fall within the competence of the general shareholders' meeting. It is also required that a decision to conclude such a transaction should be taken by the general shareholders' meeting by a two-thirds' majority vote of voting shareholders. At the moment when the transaction with respect to the establishing of the joint-stock company Baltic Bottling Plant was concluded, the St Petersburg City Property Management Committee was the sole owner of 100% of the voting shares of RMZ and solely could take decisions with respect to issues falling within the exclusive competence of the general shareholders' meeting and give a preliminary to conclude a major transaction.

Without the consent of its sole shareholder - the St Petersburg City Property Management Committee – RMZ represented by its general director took a decision to participate in the charter capital of another company and transfer to the charter capital of the company in question a building in process of construction located at 3 Proezd, Industrial Zone Parnas. In accordance with art. 26 of the law On foreign investment in Russia joint-ventures could own the equipment they needed for the purposes of carrying out their economic activities set out in their constituent documents. However, such equipment could have been acquired only in accordance with the procedure stipulated by Russian legislation and in the event that it was specified by Russian legislation. The forming of the property owned by BBP was carried out in violation of the then effective procedure as a result of a void transaction concluded by its founders.

Following art. 95, 119, 124, 127 of the APC of Russia, art. 168 of the Civil Code of Russia and Decree No 72 dated 01.07.92 of the Russian President  
the Court decided to declare invalid the agreement on foundation (transaction) made between BGL and RMZ on 04.06.93;  
to recover from RMZ a RUR1669800 of litigation (court) fee in favor of the budget of RF.

Judge                    S. Nesmiyan

the Arbitrazh Court to resolve the dispute only in the absence of a plaintiff or a defendant from court. Provisions of art. 185 (3,4) of the APC correspond with the provisions above and stipulate that a person is duly notified if such a person has been given a notice by a registered letter with an advice of delivery. It is seen from the evidence submitted by the parties than on 04.06.92 the agreement on foundation of BBP and specifying its activities was entered into between BGL and RMZ. The transaction was conducted in violation of limitations imposed in terms of transactions of this type by virtue of Decree of President of Russia No 721 dated 01.07.92. Paragraphs 6.3 and 6.4 of the Sample Charter of a joint-stock company provide that alienation of real estate property and participation in the charter capital of other companies (equity investments) fall within the competence of the general shareholders' meeting. It is also required that a decision to conclude such a transaction should be taken by the general shareholders' meeting by a two-thirds' majority vote of voting shareholders. At the moment when the transaction with respect to the establishing of the joint-stock company Baltic Bottling Plant was concluded, the St Petersburg City Property Management Committee was the sole owner of 100% of the voting shares of RMZ and solely could take decisions with respect to issues falling within the exclusive competence of the general shareholders' meeting and give a preliminary to conclude a major transaction.

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Judge                    S. Nesmiyan



Именем Российской Федерации  
РЕПЛИКА

" 17 " 03 1997 г.

№ А56-3144/97

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,

в составе:

председательствующего С.И. Несмияна

судей:

рассмотрев в судебном заседании дело по иску

КУГИ СПб.

(наименование истца)

к АООТ "Ремонтно-механический завод"

(наименование ответчика)

третьи лица: 1. АОЗТ "Болтик Ботлинг Плант"

2. Компания "Baltic Group Limited"

признании сделки недействительной

при участии в заседании:

от истца: гл. спец. Архангельский С.Ю. дов. от 13.01.97г.

от ответчика: юр. Авдеева М.В. дов. от 14.03.97г., юр. Гребнева С.В.

доп. от 14.03.97г.

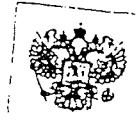
от АОЗТ "Болтик Ботлинг Плант" - юр. Ференс Сорецкий В.В. дов.

от 07.03.97г.

Чацковид: Истец просит признать недействительным договор (сделку) № 93г. о создании и деятельности АОЗТ "Болтик Ботлинг Плант" противоречащий иному правовому акту (ст. 168 ГК РФ). Ответчик иск признал указывая, что сделка совершена из-за недостаточно знания действующего законодательства. Третье лицо АОЗТ "Болтик Ботлинг Плант" также не возражает

От компании "Baltic Group Limited" отзыв не поступил. Но отсутствуют документы, подтверждающие вручение компании в суд.

Однако суд, с учетом рекомендаций Президиума Высшего Арбитражного Суда РФ от 25.12.96г. №10 признал возможным рассмотрение по существу. Согласно ст. II АПК РФ установлен приоритет национального договора над нормами внутреннего права России. "Болтик Групп Лтд" расположена на Британских Виргинских островах. Великобритания не является участником Гаагской конвенции о гражданском процессе и не имеет с Россией договора о взаимной почтовой конвенции. Согласно п. Iст. 20 Конвенции при подаче заказа в суде Великобритания может требовать направления ему уведомления отправителя в момент подачи, то есть применяется сходный



Именем Российской Федерации  
Р Е С П О Б

" 1 " 03 1997 г.

№ А56-3144/97

Арбитражный суд г. Санкт-Петербурга и Ленинградской области,

в составе:

председательствующего \_\_\_\_\_ С.И. Несмияна

судей:

рассмотрев в судебном заседании дело по иску

КУГИ СПб.

(наименование истца)

АООТ "Ремонтно-механический завод"

(наименование ответчика)

третьи лица: 1. АОЗТ "Болтик Ботлинг Плант"

2. Компания "Baltic Group Limited"

признании сделки недействительной

при участии в заседании:

от истца: гл. спец. Архангельский С.Ю. дов. от 13.01.97г.

от ответчика: юр. Авдеева М.В. дов. от 14.03.97г., юр. Гребнева С.В.

дов. от 14.03.97г.

от АОЗТ "Болтик Ботлинг Плант" - юр. Ференс Сорецкий В.В. дов.

от 07.03.97г.

Печать: Истец просит признать недействительным договор (сделку) № 93г. о создании и деятельности АОЗТ "Болтик Ботлинг Плант" ответившему иному правовому акту (ст. 168 ГК РФ). Ответчик иск признал указывающим, что сделка совершена из-за недостаточно знания действующего законодательства.

Третье лицо АОЗТ "Болтик Ботлинг Плант" также не возражает против иска.

От компании "Baltic Group Limited" отзыв не поступил.

Ле отсутствуют документы, подтверждающие вручение компании в суд.

Однако суд, с учетом рекомендаций Президиума Высшего Арбитражного Суда РФ от 25.12.96г. №10 признал возможным рассмотрение по существу. Согласно ст. II АПК РФ установлен приоритет народного договора над нормами внутреннего права России.

Ниже "Болтик Груп. лтд" расположена на Британских Виргинских островах. Великобритания не является участником Гаагской конвенции о гражданском процессе и не имеет с Россией договора о взаимной помощи, однако участвует во Всемирной почтовой конвенции 14.09.1994г. Согласно п. Iст. 20 Конвенции при подаче заказа направления ему уведомления отправитель может требовать направления ему уведомления в момент подачи, то есть применяется сходный

с внутренними Почтовыми правилами России порядок. Вызов в суд направлен компании "Болтик Групп лтд" заказным письмом с уведомлением о вручении №105 от 12.03.97г., что полностью соответствует п.2ст.113 АПК РФ. Иных мер к вызову Арбитражный суд принимать не яправе.

Статьей 119 АПК РФ ограничено право суда на разрешение спора только в отсутствие истца и ответчика. С этой нормой корреспонтируется п.3.4 ст.185 АПК РФ, в котором упоминается об извещении надлежащим образом путем только направления заказного письма с уведомлением о вручении.

Из представленных сторонами доказательств видно, что 04.06.97г. между компанией "Baltic Group Limited" и АООТ "Ремонтно-механический завод" заключен договор о создании и деятельности Акционерного общества закрытого типа "Болтик Ботлинг Плант".

Сделка совершена с нарушением ограничений, установленных для сделок данного вида Указом Президента РФ от 01.07.92г. №721. Пунктами 6.3 и 6.4 Типового устава акционерного общества предусмотрено исключительное право собрания акционеров на принятие решений об отчуждении недвижимого имущества и об участии общества в иных предприятиях, а также требуется согласие не менее трех четвертей владельцев обыкновенных акций на совершение таких сделок.

На момент совершения сделки о создании АОЗТ "Болтик Ботлинг Плант" Комитет по управлению городским имуществом С-Петербурга является владельцем 100% акций АООТ "Ремонтно-механический завод" и только единолично мог принимать решения по относящимся к исключительной компетенции собрания акционеров вопросам и давать согласие на совершение крупных сделок.

Без согласия единственного акционера КУГИ СПб. АООТ "Ремонтно-механический завод" в лице генерального директора принял решение об участии в другом предприятии и передаче ему в уставный капитал незаключенного строительством здания в Промзоне Парнас, Зареезд. Согласно ст.26 Закона "О собственности в РСФСР" совместные предприятия могли иметь в собственности имущество, необходимое для осуществления деятельности, предусмотренной учредительными документами, однако оно могло быть приобретено только в порядке исключений, предусмотренных законодательством РФ.

Формирование собственности АОЗТ "Болтик Ботлинг Плант" осуществлялось в нарушение действовавшего порядка в результате незаконной сделки учредителей. Руководствуясь ст.ст. 95, 119, 124, 127 Арбитражного процессуального кодекса РФ, ст. 168 ГК РФ и Указом Президента РФ от 1.07.92г. №721

### СУД РЕШИЛ:

Признать недействительным в целом договор (сделку) между Компанией "Baltic Group Limited" и АООТ "Ремонтно-механический завод" от 04.06.97г. о создании и деятельности АОЗТ "Болтик Ботлинг Плант". Взыскать с АООТ "Ремонтно-механический завод" в доход бюджета Р.С.Ф.С. 1.669.800руб. госпошлины.

Судья

С.И. Несмийн

Копии решения, полученные  
г. Санкт-Петербург по адресу:  
60 стр. 14.03.97г. Телефон 03  
19.03.97г. 03

Копии посланы	
истцу	19.03.1997г.
ответчику	19.03.1997г.
другим организ.	19.03.1997г.

С внутренними Почтовыми правилами России порядок. Вызов в суд направлен компании "Болтик Групп Лтд" заказным письмом с уведомлением о вручении №105 от 12.03.97г., что полностью соответствует п.2ст.113 АПК РФ. Иных мер к вызову Арбитражный суд принимать не яправе.

Статьей 119 АПК РФ ограничено право суда на разрешение спора только в отсутствие истца и ответчика. С этой нормой корреспондируется п.3.4 ст.185 АПК РФ, в котором упоминается об извещении надлежащим образом путем только направления заказного письма с уведомлением о вручении.

Из представленных сторонами доказательств видно, что 04.06.1997 между компанией "Baltic Group Limited" и АООТ "Ремонтно-механический завод" заключен договор о создании и деятельности Акционерного общества закрытого типа "Болтик Ботлинг Плант".

Сделка совершена с нарушением ограничений, установленных для сделок данного вида Указом Президента РФ от 01.07.92г. №721. Пунктами 6.3 и 6.4 Типового устава акционерного общества предусмотрено исключительное право собрания акционеров на принятие решений об отчуждении недвижимого имущества и об участии общества в иных предприятиях, а также требуется согласие не менее трех четвертей владельцев обыкновенных акций на совершение таких сделок.

На момент совершения сделки о создании АОЗТ "Болтик Ботлинг Плант" Комитет по управлению городским имуществом С-Петербурга является владельцем 100% акций АООТ "Ремонтно-механический завод" и только единолично мог принимать решения по относящимся к исключительной компетенции собрания акционеров вопросам и давать согласие на совершение крупных сделок.

Без согласия единственного акционера КУТИ СПб. АООТ "Ремонтно-механический завод" в лице генерального директора принял решение об участии в другом предприятии и передаче ему в уставный капитал незаключенного строительством здания в Промзоне Парнас, Зироезд. Согласно ст.26 Закона "О собственности в РСФСР" совместные предприятия могли иметь в собственности имущество, необходимое для осуществления деятельности, предусмотренной учредительными документами, однако оно могло быть приобретено только в порядке, предусмотренном законодательством РФ.

Формирование собственности АОЗТ "Болтик Ботлинг Плант" осуществлялось в нарушение действовавшего порядка в результате незаконной сделки учредителей. Руководствуясь ст.ст. 95, 119, 124, 127 Арбитражного процессуального кодекса РФ, ст. 168 ГК РФ и Указом Президента РФ от 1.07.92г.

### СУД РЕШИЛ:

Признать недействительным в целом договор (сделку) между Компанией "Baltic Group Limited" и АООТ "Ремонтно-механический завод" от 04.06.93г. о создании и деятельности АОЗТ "Болтик Ботлинг Плант". Взыскать с АООТ "Ремонтно-механический завод" в доход бюджета РСФСР 1.669.800 руб. госпошлины.

Судья

С.И. Несмиян

Копии посланы

истцу  
ответчику

19.03.1997 г.

другим организ.

Михаил - 34-30

Ходатайство подано  
19.03.97 г.  
в 10.00 ч.  
за подписью  
19.03.97 г. 000

19.03.97 г. 000