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INSURANCE
BALTIC LEGAL UPDATE

No. 3
Winter 2006

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ESTONIA

LEGISLATION

Amendments to the Motor Third Party Liability Insurance Act
Amendments to the Motor Third Party Liability Insurance Act (in force since 01.06.2001) came into force on 01.01.2006. Pursuant to the amendments, an insurer has been deprived from the right to apply for initiating compulsory execution on the basis of an insurance contract. Regularly a court judgement is required for the initiating compulsory execution. Until 31.12.2005, the insurer had the right to apply for initiating compulsory execution on the basis of insurance contract in case a policyholder failed to pay the insurance premium or excess amount. After 01.01.2006 an insurer must have one of the execution documents provided in the new Code of Enforcement Procedure (in force the since 01.01.2006) for applying for initiating compulsory execution.

Also, the limitation period for submission of claims for indemnity has been amended. The limitation period for submission of indemnity claims on the basis of the insurance contract is as long as the limitation period for submission of claims against the person responsible for causing the damage.

The term "arbitral tribunal" (for resolution of motor third party liability insurance disputes) has been replaced by "dispute committee". Also the regulation regarding resolution of the committee has been specified.

Supplements in the Regulation of Bankruptcy Trustee's Liability Insurance
Supplements to the Bankruptcy Act (in force since 01.01.2004) regarding bankruptcy trustee's obligatory liability insurance entered into force on 01.01.2006. The law now provides that the maximum amount of insurance indemnities payable in one insured year must be at least 5 MEEK (the requirement of the minimum of 1 MEEK as an insured amount per insured event stayed the same). The Ministry of Justice also acquired the right to implement penalty payments in the maximum amount of 10 000 EEK in case of failing to comply with the requirement of obligatory liability insurance. The Ministry of Justice may deprive the trustee from the right to act as a trustee upon failure to conclude liability insurance contract during the term established by the Ministry of Justice.

Minor Amendment to the regulation of insurance contract
The regulation of insurance contract has been provided in the Law of Obligations Act (in force since 01.07.2002). According to this Act, some provisions regulating insurance contracts are of mandatory nature (i.e. any agreement, which derogates from those provisions to the detriment of the policyholder, is void). As of 01.01.2006, the provision regulating consequences of violation of insurer's notification obligation has been added to this list of mandatory provisions. In other words, insurance terms can no longer provide that the insurance contract enters into force even if the general terms or mandatory information are not provided to the policyholder.

RECENT CASE LAW

Supreme Court clarified release of insurer from performance obligation upon violation of obligations by policyholder
In a ruling No. 3-2-1-144-05 of 19.12. 2005 the Supreme Court clarified the regulation of release of insurer from performance obligation upon violation of obligations by policyholder provided in the Law of Obligations Act. According to the Law of Obligations Act, an insurer is released from the performance obligation if the policyholder, the insured person or the beneficiary intentionally caused the occurrence of the insured event and any agreement which derogates therefrom is void. The Supreme Court clarifies that the purpose of this provision is to protect insurer's interests with preventing the obligation of the insurer to pay the insurance indemnity in case of intentionally caused insured event. The aim of this provision is not to prevent agreements according to which, for example, the insurer would be released from performance obligation if the policyholder is in gross negligence in causing the occurrence of insured event. Such agreement would not derogate from the purpose of the abovementioned provision and would therefore be effective.

Clarification to regulation of recourse against the possessor of a vehicle which caused damage
In a ruling No. 3-2-1-97-05 of 11.10.2005 the Supreme Court clarified the regulation

Estonia

Amendments to the limitation period for submission of claims in the Motor Third Party Liability Insurance

Latvia

New requirements of issuing the supervisor`s permits for reception of the outsourcing services, transferring the insurance contracts, for taking on duties of the chairpersons, etc.

Lithuania

New guidelines regarding supervision of proper realization of international sanctions

of recourse against the possessor of a vehicle which caused damage provided in the Motor Third Party Liability Insurance Act. According to this Act, an insurer has the right to file a recourse action against the possessor of a vehicle which caused damage if the driver of the vehicle left the site of the traffic accident in violation of legislation in force. In resolved case a signpost was injured by the truck. The truck-driver stopped upon hearing a noise and examined the condition of the truck, load and surrounding. As he did not discover any damage, he left the site. It was clarified in this ruling that an insurer does not have the right of recourse if the driver left the site of the traffic accident because he did not understand that vehicle driven by him caused traffic damage (i.e. the driver left the site, but not in violation of legislation in force).

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LATVIA

LEGISLATION

Amendments to the Law on Insurance Companies and Supervision Thereof
On 27.12.2005 the amendments to the Law on insurance Companies and Supervision Thereof came into effect. Under the amendments it is prohibited for the merchants to use the terms "insurance" and "insurer" in the name of the company in a misleading manner - if using such terms may confuse third persons on the merchants` right to offer the service of the insurer or the insurance intermediary.

Under the amendments the outstanding debts against the persons affiliated with the insurer may be accepted as coverage for technical reserves.

The amendments define that when entering into the unit-linked life assurance contacts, it is now imperative to include all the information that is necessary for the insured to be aware on possible risks related thereto. Besides, the amendments define several exclusions on coverage for technical reserves for unit-linked life assurance contracts. Moreover, the Law now includes additional requirements for transferring risks for reinsurance.

The Government regulations "Amount and procedure to the indemnification of the budget expenses of the national and municipality budget due to providing medical treatment, rehabilitation, remedies, payments of the pension and benefits".
On 31.01.2006 the Government accepted new Regulations "Amount and procedure to the indemnification of the budget expenses of the national and municipality budget due to providing medical treatment, rehabilitation, remedies, payments of the pension and benefits". The mentioned amendments are developed in accordance with the Law on The Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners. The Regulations define procedure, amount as well as the necessary documents, submitted for receiving the indemnification of the budget expenses due to providing medical treatment, rehabilitation, remedies, payments of the pension and benefits.

The Regulations defines that the expenses due to providing medical treatment, rehabilitation, remedies, payments of the pension and benefits to the the driver of the motor vehicle who caused the traffic accident persons will not be indemnified by the Latvian Motor Insurers' Bureau or the insurer.

The Government Regulations On the Operation, Scope and Type of the Data of the IT System of the Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners as well as Data Output, Exchange and Using Thereof
The Government of the Republic of Latvia has developed a draft of the Regulations on the Operation, Scope and Type of the Data of the IT System of the Compulsory Third Party Liability Insurance for Inland Motor Vehicle Owners (MTPL) as well as Data Output, Exchange and Using Thereof. The mentioned draft Regulations were issued pursuant to the Law On the Compulsory Third Party Liability Insurance For Inland Motor Vehicle Owners.

The Regulations will define scope and type for operation of the MTPL IT System, requirements for the data entry order in the IT System as well as order on IT System data exchange among the Latvian Motor Insurers' Bureau, Road Traffic Safety Directorate, Information Centre of the Ministry of the Interior, the Office of Citizenship and Migration Affairs, the State Police, the Border Guard, the Agency of the State Technical Supervision, the State Social Insurance Agency and the Centre of Technical Aids.

New Regulations for Preparation of Annual Reports and Consolidated Annual Reports of Insurance Joint Stock Companies, Mutual Insurance Co-operative Societies and Branch of the Non-EU Member States Insurers
The FCMC has accepted new Regulations for Preparation of Annual Reports and Consolidated Annual Reports of Insurance Joint Stock Companies, Mutual Insurance Co-operative Societies and Branch of the Non-EU Member States Insurers ("Insurers"). The mentioned amendments are developed in accordance with the Law on Insurance Companies and Supervision Thereof as well as Art.5 of the Regulation (EC) No. 1606/2002 of the European Parliament and of the Council On the Application of the International Accounting Standards.

However the Regulations include the sample of the layout of the annual reports items, it is not mandatory. The Insurers have the right to define different layout of the annual reports items, but the provided information in the form and facts must comply with the requirements of the International Accounting Standards.

The Insurers must follow the requirements on the mentioned regulations when preparing the annual reports for 2006. However, it will be appreciated by the FCMC if the annual reports and consolidated reports already for 2005 would follow to the requirements on the mentioned regulations.

Besides, the FCMC has published the information that in case of any differences between the International Accounting Standards and effective FCMC regulations on the annual reports and consolidated reports are met when the annual reports and consolidated reports for 2005 are being prepared, the requirements of the International Accounting Standards apply.

New Regulations for Obtaining Permits of the Financial and Capital Market Commission Regulating the Operation of Insurers and Foreign Reinsurers, for Making Notifications, Document Coordination and Information Provision
On 06.01.2006 new Regulations for Obtaining of the Financial and Capital Market Commission (FCMC) Permits regulating the operation of insurers and foreign reinsurers, for making notifications, document coordination and information provision for obtaining permits and making notifications became effective.

The above mentioned Regulations define procedures of issuing of the FCMC permits to the insurer, receipt of the outsourcing services, transferring to the merchant who is not an insurer, to make amendments to a loan agreement if the insurer includes subordinated capital in the calculation of own funds, to carry out reorganisation, to transfer all insurance contracts or a part thereof to another insurer, to initiate liquidation procedures, for taking on duties of the chairperson of the new officers, etc.

In addition to the above mentioned the Regulations define procedures for coordinating the plan for the improvement of Insurer`s financial situation if the amount of own funds of the insurer is less than the calculated solvency margin or the guarantee fund, payment of dividends, etc.

The Regulations provide that the insurer must inform the FCMC if the outsource service provider does not follow the contract, the reasons for the decrease in own funds, on any circumstances that may substantially affect the further operation of the insurer, on starting of the accepted reinsurance etc.

The FCMC`s explanations on the FCMC understanding of the outsource service in the management or development of the information technology (IT) and information systems (IS)
In accordance with the opinion of the FCMC the management or development of the information technology (IT) and information systems (IS) is the outsource service if all of the following requirements are fulfilled:
1) the service is provided by a third person (legal entity);
2) the function of the relevant service for the market participants is reached by the provided management and development of the IT and system. The mentioned condition related to the highly confidential systems or systems with particular value or availability classification;
3) the service includes activities that usually are included in the local perimeter of the IT service (e.g., corporative network, IS administration, etc.);
4) in the management and development of

the IT or systems a large powers are delegated to the service provider (including decision making, etc.).

The outsource service is:
1) lease of the outside data centre;
2) commitment of management of the market participant`s IS (e.g., help desk service, security service) to the another merchant;
3) using the IS, managed or owned by the third person, except IS which the market participant can not provide with its own recourses (e.g., Reuters, Bloomberg etc.);
4) using the IT infrastructure, supported by the third person (e.g., corporative network), except if the network is managed by the market participant;
5) if the development and management of the changes is delivered to the third person (e.g., if the parent company develops the corporative network, etc.).

In the FCMC opinion the outsource service is not:
1) supply of the electric energy, except if the market participant`s UPS is kept by the another merchant;
2) standard or widely distributed telecommunication service (e.g., lease of the frame relay service);
3) internet service;
4) purchase of the standard operating system, except if another merchant manages the system;
5) development of the IT system, if the development process is managed by the market participant.

RECENT CASE LAW

Removing of useful expenditures is not considered as a damage to premises

A person purchased a building and concluded an insurance policy. Under the policy the building was insured against damages caused by water, fire or natural disaster, explosion, damages caused by unlawful actions of third persons, etc. After the purchasing the building the new owner discovered an effective lease agreement on the basement of the building. As the lessee did not agree to terminate the lease agreement the lessor sued the lessee. The court resolved that the owner had the right to terminate the agreement and the lessee had to move.

After the court decision the owner realised that the plumbing, doors, flagstones, etc. were dismounted in the basement. The police initiated a criminal proceeding, but the case was closed due to lack of deliberate action of the lessee`s employees.

The owner submitted the claim to the insurance company, but the insurer refused the claim. The insurer notified that the insured risk did not occur. The owner sued the insurer.

The first instance court satisfied the claim (partly), but the appeal instance refused the claim. The appeal instance court resolved that under the policy the building was insured against damages caused by water, fire or natural disaster, explosion, damages caused by unlawful actions of third persons, etc., but police did not approve the occurrence of the insured risk. The court resolved that the unlawful actions of the lessee`s employees was not approved - the lessee had used the premises in accordance with the lease agreement and did the capital repair works during the validity of the lease agreement (useful expenditures). The owner of the building refused to compensate the useful expenditures to the lessee, therefore the lessee removed the useful expenditures- suspended ceilings, ventilation system, electric appliances, etc. The court resolved that the removing of the useful expenditures was not considered as a damage to the premises.

The Supreme Court approved the decision of the appeal court and resolved that the removing of the useful expenditures was not considered as a damage to the premises. In accordance with the Supreme Court decision the deprivation of the useful expenditures was not in causual relationship with the insured risk.

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LITHUANIA

LEGISLATION

Amendments to the Law on Insurance

On 18.10.2005, the Lithuanian Parliament adopted a Law Amending Article 210 of the Law on Insurance and Supplementing Annex of the Law. The purpose of the Law is to implement the Directive 2005/1/EC in order to establish a new organizational structure for financial services committees.

The purpose of the amendments was to establish that Insurance Supervisory Commission must provide information not only to the EC Commission, but also to the competent institutions of other EU Member States. The Insurance Supervisory Commission must provide information about the issuing of the insurance activities licence to an insurance company, which - directly or indirectly – is a subsidiary of a foreign country's company, and information about a foreign country company's purchase of insurance company's shares, if the latter becomes the subsidiary insurance company. This Law is in force as of 03.11.2005.

Guidelines regarding supervision of proper realization of international sanctions

On 02.11.2005, the Lithuanian Insurance Supervisory Commission adopted a Resolution regarding the Approval of the Guidelines regarding Supervision of Proper Realization of International Sanctions in the Field of Regulation of the Insurance Supervisory Commission.

The Guidelines set the order of realization of legal acts', which regulate supervision of proper realization of international sanctions in the field of regulation of the Insurance Supervisory Commission.

These Guidelines are applied to the insurance companies and branches of foreign country insurance companies, established in the Republic of Lithuania (hereinafter - Insurance Companies), also to the insurance companies of other EU Member States, which realize the right of establishment and (or) right to provide services, and to insurance intermediaries. The Resolution establishing Guidelines is in force as of 06.11.2005.

Order of informing about the agreements, made with other persons

On 26.07.2005, the Lithuanian Insurance Supervisory Commission (hereinafter – Supervisory Commission) adopted a Resolution regarding the Approval of the Order on the Informing Insurance Supervisory Commission about Insurance Company's Agreements, signed with other Persons.

This Order establishes that insurance companies and branches of foreign country insurance companies, established in the Republic of Lithuania, must inform the Supervisory Commission about the agreements, which are made or the essential conditions (terms, price, object, way of performance) of which are changed after the above-mentioned Resolution comes in force.

The Order stipulates that an insurance company, within 10 days after signing agreements, must inform the Supervisory Commission by providing a certified copy of the following agreements:
1) investments and (or) property management agreement;
2) accounting agreement;
3) database administration agreement;
4) internal audit agreement.

The insurance company every, calendar year from 20 June to 1 July, must inform the Supervisory Commission about the agreements which were signed after providing information to the Supervisory Commission in the previous year, by presenting written information regarding the following agreements:
1) insurance company's insured assets evaluation agreement;
2) insurance agreement's drafting agreement;
3) insurance accident administration agreement.

The presented written information should include name, address, personal or company code of the other party, title and (or) number of the agreement, object and validation period of the agreement. All the provided documents must be written in Lithuanian or translated into Lithuanian.

According to the Order, the Supervisory Commission may adopt a separate resolution, obliging the insurance companies to provide information about conducted agreements of different types from the ones mentioned above. The Resolution is in force as of 03.08.2005.

RECENT CASE LAW

Professional liability

In ruling No. 3K-3-25 of 11.01.2006, the Lithuanian Supreme Court stated that a civil liability insurance agreement by nature is a contract concluded in favour of a third person, therefore a person, who incurred

damages (third person in this case), may directly request the insurance company (insurer) to cover damages, unless the insurer and the insured have agreed otherwise. In the analysed case, the above-mentioned clause has been used in a notary's civil liability agreement and there was established that in first instance third person's claim to the notary was met and only after that insurer pays the insurance payment.

Appointment of the beneficiary
In ruling No. 3K-3-609 of 12.12.2005, the Lithuanian Supreme Court stated that mandatory provisions of the law limit freedom of the insurance agreement parties' to establish the conditions of the agreement on their discretion and are obligatory to the parties.

The practical situation was that the employer signed an insurance contract with an insurance company concerning accidents at work, according to which the employees of the company were insured against accidents at work. According to the insurance contract the employees have been nominated as insured persons and the company has been nominated as the beneficiary. The Supreme Court noted that Paragraph 1 of Article 10 of the Law on Insurance established that the policyholder (employer) could nominate himself as the beneficiary only having a written consent of the employee as the insured person. The employer did not have such consent, therefore the agreement's provision, which nominates the employer as the beneficiary without a written consent of an employee is unlawful and therefore void. Therefore the Supreme Court noted that under the insurance contract concerning accidents at work the beneficiary is the employee and in case of insurance accident (death of an employee), insurance payments should be paid out to the relatives of deceased.

Limitation of the amount of the insurance payment
In ruling No. 3K-3-427 of 26.09.2005, the Lithuanian Supreme Court noted that upon challenging the legitimacy of the insurance payments, paid on the grounds of the liability insurance, the norms of unjust enrichment or reception of property not due cannot be applied, because the challenged insurance payout was paid on the basis of the insurance agreement (legal basis). In such case the provisions, which regulate the insurance relations, and the provisions of the insurance agreement, signed between the insurer and the insured, are applied. The insurer cannot claim insurance payouts from the insured, unless it is proven that the insured had received insurance payout violating the provisions of the insurance agreement.

The practical situation was that the insured person's vehicle was damaged in an accident. The insurance company (Insurer) covered insured person's incurred damages and applied to the insurance company (third person), which insured the vehicle of the person, who was recognized liable for the accident, with a claim to cover the damage. The third person responded that he had paid out to the respondent. Therefore the insurer filed a claim against the insured person demanding to adjudge the sum, received from the insurance company (third person), which was obtained in the way of misappropriation. The court explained that the insurance payment was paid out on the grounds of the insurance agreement, therefore norms of unjust enrichment or reception of property not due cannot be applied. The insurer did not provide evidence that the insured person had violated the provisions of the agreement signed between the insurer and the insured person and this would be the cause of insurer's damages.

In ruling No. 3K-3-422 of 26.09.2005, the Lithuanian Supreme Court analysed a situation when a leasing company transferred a vehicle to the lessee. The vehicle was insured and the leasing company was nominated as the beneficiary. Since the vehicle was stolen, the insurance company paid out the insurance payment to the leasing company. According to the leasing company, the insurance payment did not cover the lessee's debt, which was estimated on the day of the insurance accident (day of theft), therefore the leasing company filed a claim demanding to cover the damages. The lessee filed a counter claim demanding to adjudge the part of the sum, paid out by the insurance company, which, according to the agreement, belonged to it. The Supreme Court explained that the lessee's debt had to be estimated not on the day of the insurance accident, but on the day, when the insurance payment was paid out. The estimation of the sum to be paid to the leasing company was linked to currency rates, and due to an unfavourable currency rate to the leasing company on the day of the insurance payment pay out, the lessee was awarded a certain sum from the leasing company.

Subrogation claims from the State Social Insurance Fund
In ruling No. 3K-3-359 of 21.09.2005, the Lithuanian Supreme Court noted that in case the State Social Insurance Fund pays sickness benefit to the aggrieved person, it has recourse right to sue out sums paid out by the insurer.

The practical situation was that a ladyperson, who was insured by social security, was hit by a car on her way to the work. The State Social Insurance Fund paid out sickness benefit to the aggrieved person. Since the liability of the driver has been covered by a motor third party liability insurance, the State Social Insurance Fund has a recourse claim for the sums, paid out as sickness benefit, from the insurance company, which insured the car.

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NEWS IN SORAINEN LAW OFFICES

Recent deals

One of the world's leading insurance and asset management companies
Assisting one of the world's leading insurance companies about freedom to provide services in the Baltic States (Lithuania, Estonia and Latvia) and compliance of documentation used by the mentioned insurance company with respective local legislation.

Underwriters of an airline
Tallinn office assisted UK underwriter in relation to a crash of an aircraft with several casualties. Both European and Estonian law regarding duties of the carrier, liability and liability insurance was analysed in this case.

One of the EU leading insurers
Riga office assisted one of the EU leading insurers to provide insurance services in Latvia under the freedom to provide services without branch opening.

Other news

Associate **Julija Jerneva** has joined the Riga office insurance team. Julija has graduated the College of Europe in Brugges (LL.M.). Julija is fluent in Latvian, Russian, English and French. This increases the ability of our Riga office to represent our insurance clients.

The Insurance Baltic Legal Update is published twice a year.
The Insurance Baltic Legal Update is also published in Latvian.
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