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ESTONIA

LEGISLATION

New legislation requirements for insurers

The new Insurance Activities Act (*Kindlustustegevuse seadus*) (hereinafter IAA) entered into force on 1 January 2005. The aim of IAA is to regulate the incorporation, activity and liability of insurers and insurance intermediaries, requirements for their reliability and supervision. The main amendments in IAA compared to the previous Insurance Activities Act relate to regulation of insurers' own funds, transfer of an insurance portfolio, special regime and liquidation of an insurer, insurance mediation and supervision.

In common with the amendments to the Latvian Law On Insurance Companies and Supervision Thereof, IAA entitles the insurer to outsource certain activities (e.g. accounting, IT). Such outsourcing is also insurers' current practice, but has not been regulated by the law. Outsourcing is permitted provided that the rights of the policyholder and the insured person are not adversely affected. Also, outsourcing does not exempt the outsourced activity from supervision.

Important addition has been made in the regulation of branches. In accordance with IAA, an insurer also acting in another EEA Member State through insurer's employee or permanent representative (inter alia agent) is considered as acting as a branch. In such case the provisions of rights of establishment shall be applied and not the provisions of freedom of services.

The requirements for share capital of insurer have been amended by IAA. The amount of share capital depends on which type of insurance activity the insurer is engaged in. Depending on the type of insurance, the minimum share capital requirements for insurer's guarantee fund in Latvia. The share capital of existing insurers must be increased to meet new capital requirements by 1 January 2007.

New legal framework for insurance mediation

With the new IAA, important amendments have been made to regulation of insurance intermediation. In accordance with the new IAA, also individuals can act as insurance brokers.

Insurance intermediaries shall have professional liability insurance. This requirement existed also in the old law, but the new IAA establishes higher requirements related to the limit of liability insurance. In the new IAA, also cross-border insurance mediation is regulated.

RECENT CASE LAW

Arbitral tribunal for motor third party liability insurance is not final

In ruling No. 3-2-1-132-04 of 18 November 2004 the Supreme Court clarified among other issues the status of the arbitral tribunal for motor third party liability (TPL) insurance. According to §58 (4) of the Motor Third Party Liability Insurance Act, the ruling of arbitral tribunal enters into force on the tenth

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day from publishing the ruling on the website of the Estonian Traffic Insurance Foundation provided that the dispute participant has not filed a claim to the court against other participant.

The Supreme Court adjudged that the arbitral tribunal for motor TPL insurance is in fact not, irrespective of the misleading name, the arbitration giving final ruling. The arbitral tribunal for motor TPL insurance is a pre-court commission whose competence is similar to labour dispute commission.

Formal refusal to pay indemnity is against good faith

The Supreme Court clarified when refusal to pay the indemnity may contradict good faith. In ruling No. 3-2-1-120-04 of 29 November 2004 the Supreme Court adjudged that refusal to pay the indemnity by the insurer may contradict good faith, even if the right of refusal arises from the insurance contract. In particular case the insurer refused to compensate loss arising from stealing of a vehicle as the plaintiff (insured) had not presented all parts of the certificate of registration of the vehicle to the insurer. The insurer had such right of refusal according to the insurance contract. The policyholder could not present part B of the certificate of registration as it was stolen along with the vehicle.

The Supreme Court adjudged that court must provide an opinion in respect of effect of breach of policyholder's obligation (not submitting all parts of the certificate of registration to the insurer) on the insured event, determining the insured event and the amount of loss arising from the insured event. If the breach of the obligation to submit all parts of the certificate of registration did not have an effect on the insured event, determining the insured event or the amount of loss, the refusal of the insurer to compensate the loss may contradict good faith. If refusal contradicts good faith, the court has rights to order the compensation from the insurer.

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LATVIA

LEGISLATION

Tax incentives to use also EU based insurers

In accordance with the amendments to the Personal Income Tax Law as of 1 January 2005 taxpayers are entitled to include into justified expenses the contributions made to the EU private pension funds, as well as payments of insurance premiums effected under a life assurance contract (with accumulation of funds) to EU insurer. Before that contributions only to Latvian private pension funds could be included into justified expenses.

Furthermore, in accordance with the amendments to the Enterprise Income Tax Law, in determining taxable income, as of 1 January 2005 the taxable profit of an undertaking may be reduced by insurance premiums paid also to EU insurers. These conditions also apply to premium payments to non-EU insurers for such insurance services that are not provided by Latvian or EU insurer. Until now the taxable profit of an undertaking could not be reduced by payment of insurance premiums to foreign insurers (inter alia EU insurers) for such insurance services as are provided by Latvian insurers.

More burdensome restrictions on insurers

Amendments to the Law On Insurance Companies and Supervision Thereof establish additional conditions on the activities of the insurer in relation to its subsidiary or a company in which it directly or indirectly has acquired 20% or more shareholding. The amendments came into force on 11 January 2005.

The amendments establish procedures for outsourcing by insurers services to third parties (e.g. accounting, IT, etc.) as well as requirements for development of outsourcing procedure and policy. The amendments set out several mandatory conditions of outsourcing contracts as well as rights of the insurance supervisor to prohibit the outsourcing.

The requirements for guarantee fund of insurer have also been amended.

Depending on the type of insurance, the minimum guarantee fund (inter alia of the branch of non-EU Member State insurer) must be either EUR 3 Mio (life-assurance, motor vehicle liability insurance, aircraft liability insurance, ship liability insurance, civil liability insurance, credit insurance and financial risk insurance) or EUR 2 Mio (other types of non-life insurance).

The amount of guarantee fund of a mutual co-operative insurance association depends on which type of insurance activity the co-operative insurance association is engaged in. Here the minimum guarantee fund must be either EUR 2.3 Mio (life-assurance, motor vehicle liability insurance, aircraft liability insurance, ship liability insurance, civil liability insurance, credit insurance and financial risk insurance) or EUR 1.5 Mio (other types of non-life insurance).

The amendments also provide stricter management and shareholder control by the insurance supervisor.

The amendments should be reviewed in detail by the insurers from EU Member States, who are entitled to provide insurance services in Latvia.

New legal framework for insurance mediation

The Regulations On Activities of Insurance and Reinsurance Intermediaries (*Apdrošināšanas un pārapdrošināšanas starpnieku darbības noteikumi*) came into force on 15 January 2005 and they implement Directive No. 2002/92/EC on insurance mediation.

The Regulations establish three types of insurance intermediaries in Latvia – brokers, agents and tied agents. Insurance brokers and agents should be registered with the Register of Insurance and Reinsurance Intermediaries by the FCMC, but tied agents will be registered by the insurer. The Register of Insurance and Reinsurance Intermediaries should be publicly available in the Internet. The Regulations now expressly define that brokers represent the interests of the client, but agents and tied agents act for the insurer.

All intermediaries must have a

professional liability insurance, except those agents for whom the insurer assumes liability expressly under the contract. The new rules also set more precisely the procedure how insurance services are offered as well as the formal rules (mandatory disclosures, etc.) to be complied with by the intermediary prior to the conclusion of an insurance contract with a customer.

Although so far in accordance with the Latvian court practice, insurance is not a service for the purposes of the Consumer Rights Protection Law, the new Regulations extend the Consumer Protection Authority competence to review claims of consumers, for instance, due to unfair contract terms. Any person (including assured) is entitled to submit a complaint to the Consumer Right Protection Centre if the person considers that his consumer rights are violated. The Regulations establish also requirements for the intermediaries service process.

The Regulations implement the principle of the single registration of insurance intermediaries, as well as control over activities of an insurance intermediary in another EU Member State.

Intermediaries shall reorganise their activities complying with the Regulations until 1 March 2005.

New class of the mandatory insurance

Requirements of the Law On Safety of Hydroelectric Stations and Hydraulic Buildings (*Par hidroelektrostaciju hidrotehnisko būvju drošumu*) related to the mandatory insurance of civil liability of the possessor of classes A and B of mentioned buildings came into force on 1 January 2005.

The Government (the Cabinet of Ministers) has not accepted liability limits and general conditions of the liability insurance yet, but shall do it in foreseeable future.

RECENT CASE LAW

Car driver's tiredness is defined as a gross negligence

The Supreme Court of Latvia in its ruling No. SKC-40 of 26 January 2005

has adjudged that a gross negligence of a car driver gives rise to the insurer to refuse the payment of the indemnity in motor (vehicle) insurance.

The policyholder (a legal entity) insured its vehicle against damages caused by collision with another vehicle or any other obstacle. The insurance terms and conditions established several exclusions (*inter alia* the insurance does not provide indemnity for losses that have occurred due to gross negligence or illegal activities of the car user or driver, or in case of driving without complying with the Road Traffic Rules, etc.).

After the vehicle crash the car driver, an employee of the policyholder, admitted that he felt asleep during the driving and it was a cause of the accident.

The insurer refused the payment of the indemnity caused by gross negligence of the driver.

The Supreme Court adjudged that the car driver's action -driving the car in such an exhausted condition that he falls asleep should be considered as gross negligence.

Besides, the car driver did not appeal against the administrative penalty regarding the driving the car in moment of incapability and the Supreme Court adjudged that the car driver was in breach of the Road Traffic Rules.

Power of arbitration clause

Several insurance terms and conditions include an arbitration clause. In accordance with the Latvian Civil Procedure Law, if the contract provides that the arbitration court is authorised to hear the case, state courts have no rights to hear the case.

Notwithstanding to the arbitration clause stated in the insurance terms and conditions, state courts used to hear cases that are in competence of arbitration courts.

The Supreme Court of Latvia in its ruling No. SPC-5 of 12 January 2005 adjudged that any civil dispute is in competence of the arbitration court if the arbitration clause is included in

the contract. There is no difference if the arbitration clause specifies the arbitration court or defines competence of the arbitration court to any civil dispute in general.

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LITHUANIA

LEGISLATION

New legislation requirements for insurers

Provision of insurance services is mainly regulated by the Law On Insurance of the Republic of Lithuania (*Lietuvos Respublikos draudimo įstatymas*), which came into force on 1 January 2004. The main purpose of this Law is to unify insurance as well as insurance intermediary practice regulation in Lithuania with EU requirements. The Law thus includes several novelties, for example, clauses on: freedom of establishment, system of optional settlement of disputes between consumer and insurer, plans for restoration of financial situation, clauses on intervention measures, and other requirements of the EU law. Established novelties in the new Insurance Law impose certain obligations on insurance companies. Not all clauses entered into force simultaneously with the Insurance Law itself, and there are transitional periods established.

Under the Insurance Law, insurance companies must reorganize certain activities according to the provisions of this Law until 1 July 2005. Until the activities are reorganised, insurance companies have no rights to provide services or establish a branch in any other EU Member State.

In particular, insurance companies must increase the minimum guarantee fund until 30 March 2007. If an insurance company submits a plan for increasing the minimum guarantee fund, the insurance supervisor has rights to extend the time limit, but for no longer than till 30 March 2009.

LEGAL UPDATE

The new Insurance Law was amended establishing equal requirements for companies to finance the Insurance Supervisory Commission. Insurers are obliged to pay contributions from the total amount of premium sums received. The previous practice was that insurers had to pay contributions from the amount of voluntary premiums, but not from mandatory premiums.

On 11 January 2005, the insurance supervisor by means of approving Resolution No. N-13 determined the procedure for drawing up and submitting financial statements, other financial and statistical reports of insurance and insurance brokers' undertakings to be submitted to the supervisor.

Amendments to the requirements for intermediaries

Under the new Insurance Law, insurance intermediaries until 1 January 2005 had to reorganize their activities according to the provisions of the Law.

Recently, the new Insurance Law was amended. A dependent insurance intermediary is not obliged to insure its professional liability if the insurance company or a branch of a non-EU Member State insurance company has concluded a professional liability insurance contract on behalf of a dependent insurance intermediary or such an undertaking has taken over an obligation to compensate damages resulting from fault activities of a dependent insurance intermediary. While limiting their expenses, this change made dependent insurance intermediaries more competitive with independent insurance intermediaries and eased conditions for the former to engage into insurance intermediary activities.

On 28 September 2004, the insurance supervisor approved Resolution No. N-113, whereas it established uniform insurance rules on compulsory insurance of professional intermediaries' liability. As mentioned above, on 11 January 2005, the insurance supervisor approved Resolution No. N-13 that determines the procedure for drawing up and submitting financial

statements, other financial and statistical reports of insurance and insurance brokers' undertakings to be submitted to the supervisor. Further, on 1 February 2005, the insurance supervisor amended Resolution No. N-10 on procedure of qualifying examination of brokers. The amendments are intended to make the examination more sound and transparent.

RECENT CASE LAW

Mere breach of insurance contract *per se* does not amount to non-insurable event

The Supreme Court of Lithuania in its ruling No. 3k-3-671 of 22 December 2004 has adjudged on the matter where two Lithuanian insurers were opposing obligation to compensate damages when a cargo of an insured person was robbed. Insurers argued that the driver breached the terms and conditions of the insurance contract while he stopped in the unguarded parking-lot, and the event came outside the insurance cover. The insurance contract did include a clause that the indemnity is not paid if damages are caused by gross negligence or fault of the insured, but did not clearly define whether such event should be considered as a non-insurable event.

The Supreme Court adjudged that a non-insurable event is different from any other infringements of the requirements of the insurance contracts. In a presence of non-insurable event, insurers obligation to pay the indemnity does not rise at all. So, when an event is not clearly described in a contract as a non-insurable event (defined as an exclusion), it cannot be interpreted widely. Therefore, insurers have to obligation to cover damages when according to clauses of an insurance contract an event should be considered only as an infringement of clauses of the insurance contract.

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NEWS IN SORAINEN LAW OFFICES

Recent deals

THE BALTIC STATES

One of the world's leading insurance companies

Sorainen Law Offices are assisting one of the world's leading insurance companies starting its business in the Baltic States (including applicability of the insurance terms and conditions to the Latvian and Lithuanian law).

ESTONIA

Nordic insurer

The Tallinn office assists the Nordic insurer in issues relating to payment of insurance indemnity in case of the employer's third party liability insurance due to claim arising from the death of the employee.

Danish liability insurance company

The Tallinn office assisted a Danish liability insurance company in issues relating to payment of compensation for death.

LATVIA

Leading energy company

Recently, we have assisted the leading energy company on legal aspects of the Directors and Officers (D&O) liability insurance.

Private client in claim against the leading insurance company

The Riga office has also advised the private client in claim against the leading insurance company under the professional liability policy due to defective construction supervision.

Leading insurance company in Latvia

We have assisted a leading insurance company against excessive claim of the insured under the property insurance policy and due to damage caused by fire.

One of the Latvian leading insurance companies

The Riga office assists one of the Latvian leading insurance companies on legal aspects in the disputes with the insurance supervisor.

Nordic cargo insurers

The Riga office also handles several claims on behalf of Nordic cargo insurers in their recourse actions against local carriers. All cases pending in the courts.

LITHUANIA

One of the world's leading insurance companies

The Vilnius office assisted one of the world's leading insurance companies in insurance service tender announced by a local heating company.

Publications

Newspaper The Baltic Times, column Taking counsel:

- Gints Vilgerts: Why do insurers refuse to pay?
- Anete Rubene: Board liability insurance in the Baltics

Newspaper Dienas Bizness, annex on Insurance business:

- Anete Rubene comments in the article Still effortless in liability insurance

Newspaper Dienas Bizness, additional magazine Saldo:

- Anete Rubene: Why insurers refuse to pay?

Newspaper Latvijas Vestnesis, annex Jurista Vards:

- Anete Rubene: Insurance policyholder right to receive compensation

Other news

Conference on Project Financing and Public Private Partnership in Tallinn

Sorainen Law Offices is pleased to welcome you to the first conference that introduces possibilities and experiences of Public Private Partnership, its risks and their management, achievements and failures in Estonia, the Baltic States and Europe, held on 17 March 2005, at the hotel Viru, Viru square 4, Tallinn, Estonia.

The conference is intended for decision-makers responsible for growth from both the public and private sector.

Baltic Business Law Seminars in Riga and Vilnius

Also please be informed that Baltic Business Law Seminars in Riga on Real Estate & Construction, and in Vilnius on Litigation & Arbitration will be held on 21 April 2005 and 19 May 2005, respectively.

For more detailed information on the upcoming conference and the seminars please visit our webpage www.sorainen.com.

Next issue of the Insurance Baltic Legal Update

The next issue of the Insurance Baltic Legal Update (IBLU) is going to be released in September 2005.

If you have any comments on the IBLU, you are welcome to contact Ms Anete Rubene, e-mail: anete.rubene@sorainen.lv