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ESTONIA

LEGISLATION

New regulations adopted on the basis of the Insurance Activities Act

On the basis of the Insurance Activities Act (*Kindlustustegevuse seadus*, in force since 01.01.2005, please see Insurance Baltic Legal Update No.1) following regulations of Minister of Finance have been adopted:

- **Annual Reporting Procedure for Insurance Brokers** (*Kindlustusmaaklerite majandusaasta aruande kord*), in force since 27.03.2005. Pursuant to this regulation, an insurance broker is under obligation to submit its annual report to Estonian Financial Supervision Authority within seven working days as from approval of annual report, but not later than by May 1st of the year following the financial year.

- **Subclasses of Insurance Activities** (*Kindlustustegevuse liikide alaliigid*), in force since 03.04.2005. In this regulation the subclasses of insurance activities have been listed.

- **Establishment of Surveillance of Financial Reporting of Insurers and Requirements Regarding Preparation and Disclosure of Interim Reports** (*Kindlustusandja järevalvelise raamatupidamisaruandluse kehtestamine ning vahearuannete koostamise ja avalikustamise nõuded*), in force since 24.04.2005. This regulation sets forth reporting obligation and reports to be submitted to the Estonian Financial Supervision Authority, also requirements for the content, format, preparation and submission of the reports. The preparation and publication of insurer's public interim reports is also regulated by this regulation.

- **Establishment of Report Forms for Insurers and Their Contents and Deadlines of Submission** (*Kindlustusandjate aruannete vormide ning nende sisu ja esitamise tähtaegade kehtestamine*), in force since 29.04.2005. This regulation sets forth what kind of reports, in which format and for which period insurers have to

submit to the Estonian Financial Supervision Authority.

News relating to supervisory authority

The Estonian Financial Supervision Authority (*Finantsinspeksioon*) has adopted Advisory Guidelines on Disclosure to the Policyholder of Information regarding Life Insurance Contract (*Elukindlustuslepingu teabe avaldamine kindlustusvõtjale*), in force since 01.04.2005.

The website of the Estonian Financial Supervision Authority (www.fi.ee) includes lists of insurers, insurance brokers, and insurance agents authorised to act in Estonia. Insurance brokers are entered on the list by the Estonian Financial Supervision Authority, while insurance agents are entered by insurers.

RECENT CASE LAW

Circumstances not influencing occurrence of an insured event do not release insurer from payment obligation despite contrary indication in the insurance contract

In ruling No. 3-2-1-59-05 of 01.06.2005, the Estonian Supreme Court clarified the impact of unreasonable provisions of an insurance contract on the insurer's payment obligation. The insurer Seesam Rahvusvaheline Kindlustuse AS and the policyholder had agreed in the insurance contract that if the insured car was stolen by using car-keys, then the insurer would be obliged to indemnify damage only in case the thief had acquired possession of the keys through robbery or breaking into a building and leaving break-in marks. In this particular event, the car was stolen by using keys stolen from a building, but no break-in marks were left. The Supreme Court concluded that such insurance contract provision did not comply with the Law of Obligation Act because the existence of break-in marks did not influence the occurrence of the insured

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event (theft of the car). Therefore, the insurer should not be released from its payment obligation on the basis of non-existence of break-in marks.

Calculation of insurance indemnity in case of under-insurance

In its ruling No. 3-2-1-28-05 of 19.04.2005, the Estonian Supreme Court clarified how to calculate insurance indemnity in case of under-insurance. A building, insured in the amount of MEEK 1, was completely destroyed. Expert assessment put the insurable value of the building at EEK 2 583 912. Therefore, the building was under-insured and the proportion of the insured sum to the insurable value was 0,4. The insurer agreed to pay indemnity in an amount corresponding to 0,4 of the insured amount (EEK 400 000). The Supreme Court adjudged that the insurer should pay indemnity in the amount of MEEK 1, because it was the damage (EEK 2 583 912), and not the insured amount, that should be multiplied by 0,4.

Assessment of both parties' fault is necessary in motor accident: collision between car coming from side street and car driving on priority street

The Supreme Court in its ruling 3-2-1-26-05 of 13.04.2005 adjudged that in order to decide whether indemnity was to be paid, the fault of both parties participating in a collision between a car moving into a priority street from a side street and a car driving on the priority street must be assessed by percentage share.

A car driving into a priority street from a side street collided with a car moving in the opposite direction on a one-way priority street. The Supreme Court concluded that although one of the cars was driving into the priority street from the side street and did not give way to the car driving on the priority street, there also had to be assessed whether and which rules were violated by the car-driver driving in the opposite direction on the one-way priority street, and in particular whether his violation caused the crash and how much he could be held at fault by percentage share in the crash.

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LATVIA

LEGISLATION

Additional powers to supervisory authority Amendments to the Law On Insurance Companies and Supervision Thereof (*Apdrošināšanas sabiedrību un to uzraudzības likums*) have come into force on

12.07.2005. Before the amendments entered into force, the activities of financial conglomerates in Latvia were not subject to adequate regulation.

The main purpose of the amendments is to create a solid base for the supervision of such institutions and companies that are part of financial conglomerates with a view to protecting consumers. The additional supervision as provided for by the new amendments will be provided by way of controlling sufficiency of capital and concentration of risky transactions at conglomerate level.

The amendments also provide for preferential treatment of insurance companies from EC Member States, branch formation in Switzerland, as well as preferential treatment of Swiss insurance companies planning to establish a branch in Latvia.

Regulations on non-material loss amount

On 17.05.2005 the Government of Latvia has adopted "Regulations on Amount and Procedure for Calculating Insurance Indemnity in Compulsory Civil Liability Insurance of Motor Vehicle Owners for Non-Material Personal Loss" (*Noteikumi par apdrošināšanas atlīdzības apmēru un aprēķināšanas kārtību par personai nodarītajiem nemateriālajiem zaudējumiem*).

The Regulations establish the amount of insurance indemnity, and the procedure for calculating indemnity for non-material loss caused to a person in a road accident. This relates to pain and moral suffering arising from bodily injury, maiming, or disabling of a victim, arising from death of support, dependant or spouse of a victim or due to the fact that support, dependant or spouse of a victim has become a disabled person.

The regulations establish the amount of insurance indemnity, cases when the insurer or the Motor Insurers' Bureau should (or need not) indemnify, as well as principles for calculating the amount of indemnity and the documents necessary to obtain indemnity.

Civil liability insurance for real estate valuers

The Licensing Regulations for Real Estate Valuers (*Licencēšanas noteikumi nekustamā īpašuma tirgus vērtības noteikšanai*) have come into force on 01.08.2005. The regulations establish that – in addition to other documents – real estate valuers will have to submit a copy of a civil liability insurance contract for professional activity, in order to obtain a licence. Upon beginning licensed activity, real estate valuers will have to insure against civil liability arising from professional activity

appropriate to the risks related to establishing the market value of real estate.

New legal framework for civil liability insurance in construction

On 07.04.2005 amendments to the Latvian "Construction Law" (*Būvniecības likums*) have come into force. These oblige contractors and constructors additionally to insure for third party liability against loss caused during the warranty period stated in the General Construction Regulations. Loss caused to a third party's property is assessed on the basis of the principle of compensation. The law now establishes that the issuer of a construction permit has to ensure that construction companies have insured their civil liability as required by law.

The Governmental Regulations on Compulsory Civil Liability in the Construction Field (*Noteikumi par civiltiesiskās atbildības obligāto apdrošināšanu būvniecībā*) define the procedure for third party liability insurance and the minimum liability cover in construction.

When an insurance contract is concluded in respect of a specific construction project, the minimum insurance sum is 10% of the construction contract amount but in any event cannot be less than LVL 10,000.

When an insurance contract is concluded for a one-year period, then the sum insured for the totality of construction projects must amount to 10% of the one-year turnover of the constructor but in any event not less than LVL 50,000. The minimum liability level for each construction project is LVL 5,000.

Minimum insurance cover for sworn bailiffs

On 09.04.2005 new Latvian Cabinet of Ministers Regulations have come into force covering Minimum Insurance Cover and Compulsory Conditions Applicable to Insurance of Individual Sworn Bailiffs and Groups of Sworn Bailiffs (*Noteikumi par zvērinātu tiesu izpildītāju individuāla apdrošināšanas līguma un grupas apdrošināšanas līguma minimālo apdrošinājuma summu un apdrošināšanas līguma obligātajiem nosacījumiem*). The Regulations establish the minimum amount of insurance cover to be taken out by sworn bailiffs. Where an individual sworn bailiff is insured, minimum insurance cover is LVL 30,000 and the minimum amount of insurance cover for a group of sworn bailiffs is LVL 500,000.

Minimum insurance cover for reliable certification services providers

On 27.04.2005 Latvian Governmental Regulations have come into force on

Minimum Insurance Cover Applicable to Civil Liability Insurance of Reliable Certification Services Providers (*Noteikumi par uzticama sertifikācijas pakalpojumu sniedzēja civiltiesiskās atbildības minimālo apdrošināšanas summu*). The Regulations establish that where the civil liability of a reliable certification services provider is insured, the minimum insurance cover shall be LVL 300,000 per year.

New regulation for insurance and reinsurance intermediaries

On 15.04.2005 a new Law On Activities of Insurance and Reinsurance Intermediaries (*Apdroš-ināšanas un pārapdrošināšanas starpnieku darbības likums*) has come into force in Latvia.

The new law defines types of insurance and reinsurance intermediaries:

- a) Insurance brokers.
- b) Insurance agents.
- c) Tied insurance agents.

It also defines the scope of activities of each class of intermediaries, requirements for intermediaries, their activities, as well as qualification criteria for intermediaries' employees and officers (directors).

According to information from the Financial and Capital Market Commission, an intermediary may outsource self-employed persons to sell insurance products if the contract concluded between the tied insurance agent (legal entity) and the insurer defines liability of the insurer to include activities of self-employed persons. The provisions on commercial agents of the Commercial Law can be interpreted so that they apply to intermediaries, provided they are entrepreneurs or entities.

RECENT CASE LAW

Summary of the Supreme Court of Latvia

In May 2005 the Supreme Court of Latvia issued a summary of the Senate Civil Cases Department (final instance) practice when settling disputes connected with the performance of insurance contracts on motor vehicles and compulsory motor vehicle owners' third party liability insurance.

The summary focuses on one of the most unclear issues when settling disputes on disbursement of insurance claims, i.e., the policyholder's or authorized user's gross negligence. So far, an unambiguous assessment by the court concerning when the policyholder's actions are considered to be gross negligence, has not been published.

According to Latvian Civil Law, negligence is gross if somebody is acting with utmost recklessness and negligence, or

starts such activities in a state of mind where he must have been aware throughout of the potential harm and danger posed. The Supreme Court indicated that driving a car through an intersection when the red light is on and thus causing a traffic accident should be considered gross negligence on the part of the car driver.

1) Falling asleep while driving a car

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. One of these was that the policy does not provide indemnity for losses occurring due to gross negligence or illegal activities of the car user or driver. Another is driving in violation of the Road Traffic Rules.

The Supreme Court indicated that a driver, when sitting at the wheel of a car is so tired that there is a risk of falling asleep, is guilty of gross negligence within the meaning of the Civil law, in addition to violating the Traffic Rules of the Law on Road Traffic. The Senate accepted the insurer's right to refuse to pay an insurance claim on a car damaged in a traffic accident where the cause of insured risk occurrence was triggered by malicious intent or gross negligence of the policyholder, the insured, the beneficiary, or a third person.

2) Increase of insured risk

The Senate has ruled that pledging a car during a car insurance contract and failure to notify this fact to the insurer should be considered gross negligence and therefore the insurer is entitled to refuse to pay an insurance claim on a stolen car.

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LITHUANIA

LEGISLATION

New instruction against money laundering

Following the Lithuanian Law on Prevention of Money Laundering, the Insurance Supervisory Commission adopted a resolution on Approval of Instructions Against Money Laundering for Insurance Companies and Insurance Brokerage Companies.

These instructions set money laundering prevention measures for insurance companies and insurance brokerage companies, as well as implementing measures in their daily operation. The instructions apply to insurance companies, branch offices of insurance companies based in non-EU Member States and established in the Republic of Lithuania, and insurance companies of EU Member States that are

exercising the right of establishment and/or the freedom to provide services within the Republic of Lithuania. The Instructions also apply to insurance brokerage companies, branch offices of insurance brokerage companies based in non-EU Member States and established in the Republic of Lithuania, and to insurance brokerage companies of other EU Member States that are exercising the right of establishment and/or the right of providing services within Lithuania.

The Instructions establish:

- what transactions should be treated as suspicious and reported to the Financial Crime Investigation Service,
- customer identification requirements,
- requirements for administering the register of customer cash transactions, and
- other obligations of insurers and brokerage firms on preventing money laundering.

RECENT CASE LAW

Construction claims

During 2005, the Lithuanian Supreme Court has resolved fewer cases involving issues related to construction company liability insurance. However, two cases in this field are worthy of mention.

1) Liability insurance policy

In one case, Lithuanian court practice revealed that a liability insurance policy and performance guarantee issued by an insurance company concerning insurance of contractor's liability does not cover subcontractors if this is not specifically stated in the performance guarantee and the insurance policy.

The practical situation was that during the process of construction works a new subcontractor was hired for the execution of works that according to the initial construction contract fell under the scope of works to be carried out by the contractor. Since the client, the contractor, and the subcontractor made an additional agreement on construction works, the court decided that the additional agreement was not covered by the insurance since the insurance policy did not specifically refer to the new arrangements. The court held that the contractor's liability insurance did not cover its relationship with the subcontractor because the insurance policy had not been amended accordingly.

2) Professional liability insurance

Another Lithuanian case related to engineers' professional liability insurance and applicability of joint and several liability of the insured and the insurance company in cases of liability insurance. Court practice established that insurance cover should apply and insurers should cover losses resulting from non-performance of

duties by service providers even though the exact performance of the obligations was not explicitly indicated in the service contract and liability insurance policy. Furthermore, the court decided that in the case of professional liability there is no joint liability and that the insurer has to cover losses.

The practical situation was that a security service provider concluded an agreement with the client on installation of security equipment and provision of security services for a warehouse. The warehouse was burgled. Before the burglary the installation wires of the security equipment were cut and the security firm received no signal about intruders. Even though expert examination confirmed that the alarm system was installed in accordance with technical requirements, the court decided that it was the professional duty of the security firm to advise the client and to check whether the installation of the alarm system was secure enough. The court also established that since the issue was over provision of professional security services, the insurer had to cover losses according to the professional liability insurance policy, irrespective of the fact that the professional liability policy did not explicitly cover such risks.

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NEWS IN SORAINEN LAW OFFICES

Recent deals

A world-leading insurance brokerage
Colemont Holdings Ltd., one of the world's leading groups of insurance brokers - has established a subsidiary brokerage company, Colemont Eesti Kindlustusmaakler OÜ in Estonia. The team led by associates Jane Eespol and Kai Kaljaste from the Tallinn office provided legal advice and assistance to Colemont in entering its Estonian subsidiary into the list of insurance brokers kept by the Estonian Financial Supervision Authority. Entry in the list of insurance

brokers is mandatory for providers of insurance brokerage services in Estonia.

A global insurance leader

The Riga office is assisting one of the world's leading insurance companies starting business in Latvia, including revision of agency contracts, insurance terms and conditions.

One of Europe's leading insurance brokerage companies

The Riga office is assisting one of Europe's leading insurance brokerage companies in starting business in Latvia, including registration of the company, assisting on legal aspects related to Latvian legal requirements.

A leading Latvian insurance company

The Riga office is assisting one of Latvia's leading insurance companies on legal aspects in disputes with the insurance supervisor.

Assistance to the one of Latvia's leading insurance companies on competition issues

The Riga office is maintaining the interests of one of Latvia's leading insurance companies on aspects in cooperation between Latvian insurers and dealing with competition-related enquiries from EU institutions.

Recourse claims against local carriers

The Riga office settled recourse claims on behalf of a Nordic cargo insurer against local carriers.

Claims against local insurers

The Riga office is handling several claims against local insurers.

Scandinavian insurance company and its subsidiaries acting in life and non-life insurance business

The Vilnius office advised the client on the legal requirements and legal

environment in Lithuania. Advice included both life and non-life insurance businesses, representation of the client and its subsidiaries at the supervisory institutions. The client was advised on corporate, corporate governance, supervisory aspects and was provided with the opinions in respect of handling the insurance claims.

One of the largest international life insurance companies

The Vilnius office assisted the client in establishment of the first branch of foreign insurance company in Lithuania as well as on various issues related to insurance, employment, intellectual property and corporate matters. The client was also advised in possible acquisition of local life insurance company.

A company belonging to the group of the world's largest company in the sphere of environmental services and world's leading reinsurance companies

The Vilnius office assisted the client in insurance and reinsurance matters related to the public insurance tender announced by a local heating company.

Publications

Journal Eesti Majanduse Teataja:

- Jane Eespol: Management's liability insurance

Journal of Estonian Economy:

- Anete Rubene: Board liability insurance in the Baltics

Saldo, magazine of the newspaper Dienas Bizness:

- Anete Rubene: Meaning of insurance terms and conditions