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INSURANCE
BALTIC LEGAL UPDATE

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ESTONIA

LEGISLATION

Amendments to the Insurance Activities Act

Amendments to several articles of the Insurance Activities Act (IAA) entered into force on 2007.01.01 and 2007.01.20.

In order to implement EU insurance directives, the required solvency margin of an insurance company is no longer connected to the minimum share capital of the company. The new required solvency margin is at least 3.2 MEUR for an insurer engaged in reinsurance, life insurance or liability, credit or guarantee insurances, and at least 2.2 MEUR for an insurer engaged in other classes of insurance. Respective changes are also introduced in the IAA in relation to required available solvency margin.

For implementing International Financial Reporting Standards, the amendments specify requirements as to the work experience of the responsible actuary and branches of non-EU insurers, as well as requirements and content of the action plan and internal rules of insurance companies.

The amendments provide a new definition for insurance technical provisions (reserves) and classes of provisions. In addition to life insurance technical provision, financial obligations are defined and incorporated to calculate a life insurer's required solvency margin.

The amendments also specify restrictions on activities of managers and employees of insurance companies.

In respect of clients, the most significant news is that insurance brokers and agents must disclose to the client the fee they receive from the insurer in respect of each insurance contract being mediated. From 2007.01.07, agents are also obliged, similarly to brokers, to establish client requirements for an insurance contract on the basis of information provided by the client. The agent must submit to the client an offer to conclude an insurance contract and justify advice and recommendations provided to the client with a thoroughness that corresponds to the complexity of the insurance contract.

Draft legislation on changing Motor Third Party Liability Insurance Act

This draft legislation stems from Directive No 2005/14/EU (the so-called Fifth Directive). The most important changes are an increase in compensation payment limits and better protection of pedestrians, cyclists, roller-skaters and other road users.

According to current regulation, compensation payment limits for traffic damage sustained in Estonia are 1.6 MEEK (ca. EUR 100,000) in the case of property damage and 5.5 MEEK (ca. EUR 351,500) in the case of personal injury. The limits apply to each injured party for each insured event. According to the draft legislation these limits will be 1 MEUR (ca. 15.6 MEEK) for property damage and 5 MEUR (ca. 78 MEEK) for personal injury. Both limits will apply for each insured event irrespective of the number of injured parties. There will be a transition period for the new limits, which will entirely enter into force in the summer of 2012.

Under current law, personal injury caused to a pedestrian or cyclist by a vehicle is compensated for under MTPL (Motor Third Party Liability insurance) even if the possessor of the vehicle is not liable for the damage caused. The draft legislation further widens cover for unprotected road users. Both personal and property damage caused to pedestrians, cyclists, roller-skaters, and others will be compensated irrespective of who is liable for the damage caused.

The most important amendment not related to the Directive is repeal of the requirement that a driver always carry a written policy. The MTPL insurance contract and policy may also be in a format reproducible in writing (e.g. e-mail or other electronic form).

A number of other amendments are planned to the Motor Third Party Liability Insurance Act by this draft legislation.

Market regulatory advisory guidelines
In November 2006 the Estonian Financial Supervision Authority (EFSA) adopted advisory and non-binding guidelines "General requirements on insurance contracts" that will enter into force on 2007.06.01.

The goal of the guidelines is to protect policyholder interests by creating a market situation where insurance contracts (standard terms) are transparent, easily accessible, and comparable. The main target of the guidelines is non-life insurance contracts concluded with consumers. However, to some extent the guidelines apply to life insurance contracts as well.

The guidelines emphasise the principles of reasonableness and good faith. They contain recommendations on the structure of insurance standard terms, their wording and form of presentation, insurance policy content, etc. For example, the list of exclusions must be exhaustive; use of hidden or unreasonable exclusions is forbidden. The policy must contain all risks that are covered, including exact reference to the standard terms clause defining the insured risks and to the clause listing exclusions.

Insurers must publish on their website all standard terms and conditions and other documents referred to in the terms and conditions as a part of the insurance contract.

RECENT CASE LAW

Insurer's claim for recourse under compulsory liability insurance
In case No 3-2-1-70-06 the Supreme Court clarified regulation of recourse under a public notary's compulsory liability insurance.

After paying out indemnity under compulsory liability insurance an insurer does not acquire the legal position of the injured party. The law does not regulate the transfer of claim under the liability insurance since the policyholder or insured person is the person at fault. The policyholder may assign the claim to the insurer.

In this case a notary authenticated the transfer of a house by a representative to himself acting under a falsified owner's authorisation. The owner claimed indemnity from the notary and the court ordered the claim to be paid. The liability insurer of the notary paid out the indemnity and filed an action against the person (the unauthorised representative of the seller) who sold the house.

The Supreme Court indicated that even if the notary had joint and several liability with the unauthorised representative of the seller, the insurer does not acquire this claim under the law. According to the law, the insurer steps into the shoes of the policyholder or insured only if they are injured persons, i.e. there is no subrogation in case of liability insurance.

Sum insured and amount of compensation
The Supreme Court, in case No 3-2-1-90-06 concerning the question whether the sum insured must be expressed as a certain sum and whether a multi-stage sum insured can be stipulated in the standard terms, decided as follows:

The maximum amount of compensation (the sum insured) does not have to be determined as a certain amount of money. The standard terms of an insurance contract may set a multi-stage basis for determining the sum insured. However, the wording of such standard term must be clear to the policyholder.

The court reached two important conclusions. Firstly, the Supreme Court held that the parties to an insurance contract may, instead of the exact amount of the sum insured, agree on the basis for determining the maximum amount of compensation. The basis for determining the sum insured may also be the book value (acquisition cost) of insured objects. However, the insurer is not obliged to indemnify the policyholder more than the actual extent of the damage.

Secondly, an agreement on applying a multi-stage sum insured may appear in standard terms provided this is worded unambiguously. The standard term of a multi-stage sum insured is unambiguous if a reasonable policyholder could, on entering into the contract, clearly understand under which insured sum the compensation should be calculated. Such standard term may not be unreasonably harmful to the policyholder. A standard term may be unreasonably harmful if it excludes payment of compensation on the basis of the sum insured which served as the basis for calculating the insurance premium.

Form for concluding an insurance contract
Tallinn Circuit Court (Tallinn Court of Appeal) found on 2006.11.08 in its decision in case No 2-04-2217 that an insurance contract with a consumer cannot be considered concluded or amended by the silence or inactivity of the insurer. In that case, the plaintiff claimed that the insurer did not reply timely to the policyholder's application to change the insurance contract and thus the contract must be considered changed according to the conditions asked for by the policyholder in his application. The court decided that the law does not provide that silence of the insurer can be considered as entering into or amending an insurance contract. However, the opposite solution is not excluded, depending on the circumstances, e.g. practices which the parties have established between themselves, or if the insurer's behaviour clearly indicated acceptance of the application.

In this case, the insurer was successfully represented by our insurance attorney Andrus Kattel.

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LATVIA

LEGISLATION

Amendments to the law "On Insurance Contracts"
Amendments to the law "On Insurance Contracts", which were necessary to improve the legal regulation of insurance contracts, come into force on 2007.04.18.

The amendments introduce a lawful procedure for concluding insurance contracts by remote communication, determine regulations for situations when parties agree that an insurance premium or its first instalment is paid after the insurance contract has come into force and the premium payment is made belatedly. Further, insurers will have an obligation to deal with payments made after the term specified in the contract, by returning the insurance premium or sending the insured a request to inform the insurer on how the insured wishes to receive repayment of the insurance premium.

The amendments stipulate that absence of signatures of the parties on the policy does not affect validity of the insurance contract.

Together with adoption of amendments to the law, a system of notification prior to insurance contract termination is implemented, if contrary to the terms of the contract the insurance payment was not made in full.

The amendments provide that where the insured is a natural person, the insurer has to pay the insurance indemnity within 15 days as of the date of the decision to do so.

Furthermore, the system of claim limitation has been changed. Rights to notify the insurer on setting in of the insured risk will lapse if they have not been used within three years as of the date the insured risk set in. Other liability rights arising from an insurance contract will lapse if a person fails to use them within two years.

The amendments implement Directives 88/357/EEC, 92/49/EEC and 2002/83/EC of the European Parliament and of the Council.

Security Personnel Will Need Insurance
The Cabinet of Ministers has approved draft regulations "Regulations on Liability Insurance in Security Activity" developed by the Ministry of the Interior. The draft regulations lay down liability insurance procedure and a minimum liability limit of liability insurance in security activity. This means that security firms will have to insure for liability; the insurance covers damage caused during security activities to third party life and health, property, as well as losses arising from theft following entry and robbery.

Under the regulations, the minimum liability limit for liability insurance for security activities during one insured period will not be less than 10% of the annual turnover of the security firm but in any event not less than 100,000 LVL per year.

Simultaneously the draft regulations of the Cabinet of Ministers include liability insurance procedure for security firms.

Amendments to Law on Activities of Insurance and Reinsurance Intermediaries
The Financial and Capital Market Commission has developed amendments to the law, including a proposal to allow credit institutions as insurance agents to offer policies of several insurers. The Latvian Association of Insurance Brokers, the Latvian Association of Professional Brokers, and the Latvian Consumer Protection Association object to these amendments on the ground that they significantly limit the rights of clients (natural persons) by denying clients of credit institutions the possibility to make a free choice based on complete information between insurance policies offered by credit institutions. These organizations take the view that for consumer interests to be protected, consumers should be able to identify whether someone offering insurance represents consumer (the insured's) interests or the interests of the insurance company as would be the case for insurance company agents. Allowing credit institutions to operate on behalf of several insurance companies triggers a risk of misleading consumers in relation to receiving objective analysis of offers, thus causing a serious risk of consumers being misled. In turn, the Latvian Commercial Bank Association considers that in the light of the previous activities of credit institutions as tied insurance agents, it is acceptable to foresee their right to distribute similar insurance products of several insurers.

In addition, the draft amendments specify that a person operating as a self-employed insurance or reinsurance intermediary may not simultaneously be formally employed as an insurance or reinsurance intermediary.

Moreover, insurers will be obligated to inform the Financial and Capital Market Commission on termination of a co-operation agreement with an insurance agent, while insurance brokers and insurance agents will be obligated to inform the Financial and Capital Market Commission if they suspend or terminate insurance and reinsurance intermediation services.

Note: the requirement to master the official language is repealed for insurance brokers, individuals in charge of and employees of insurance broker companies directly involved in insurance and reinsurance intermediation, as well as tied insurance agents and individuals in charge of and employees of tied insurance agents directly involved in insurance intermediation.

Under the amendments, insurance brokers may combine the professional activities of insurance and reinsurance intermediaries with those of providers of investment services, legal services and real estate operations.

The amendments regulate the amount of penalties for violations.

Finally, the amendments still have to be adopted by the Parliament.

Rights of Latvian Vehicle Insurer's Office to aggregate detailed data on premiums of MTPL contracts concluded by insurers
It can be expected that the Latvian Vehicle Insurer's Office will be denied the possibility to collect detailed data in its MTPL information system on premiums of MTPL contracts concluded by insurers. This is stipulated by amendments to draft regulations of the Cabinet of Ministers (MK) "Regulations on Amount and Type of Mandatory Civil Liability Insurance of Owners of Motor Vehicles Information Required by System Operation, Procedure for Data Entry, Exchange and Use". The Competition Council takes the view that probably MTPL premium collection in the information system hinders or in some other way distorts competition.

The European Commission's Directorate-General for Competition indicates that data compilation could adversely affect competition in the MTPL market if these data on specific individuals become available to competitive insurers.

The amendments are soon to be reviewed by the Cabinet of Ministers.

RECENT CASE LAW

A person can be found guilty of causing a road accident only by institutions as provided by the law
Upon reviewing case No. SKC – 97, the Latvian Supreme Court decided that individuals can be found guilty of causing a road accident only by institutions as provided by law and only under the procedure set forth in the law, and by performing specific procedural activities under the procedure provided by special norms of law, the Road Traffic Law, the Administrative Procedure Law, and the Criminal Procedure Law. Part 1 of Section 31 of the Mandatory Civil Liability Insurance of Owners of Motor Vehicles Law sets forth rights of the insurer to evaluate and determine the liability of each person involved in a road traffic accident (RTA) for losses caused - but not fault, which is only one aspect of evaluating liability for losses.

In a RTA (collision between two cars) a car owned by a business was damaged. The business applied to the insurance company for the other party's MTPL for payment of insurance indemnity in relation to the RTA. The insurer carried out an examination, according to the results of

which division of fault of the drivers involved was determined at 50 : 50. As a result, the insurer decided to pay insurance indemnity in the amount of 50% of calculated losses (apportionment of liability).

The business claimed in court against the insurance company for full indemnity. The court of first and second instance satisfied the claim but the Senate of the Supreme Court (3rd instance) sent the case for review.

After being reviewed once again, the claim was satisfied. The court found that specific civil relations had been created at the moment of the RTA and thus discussion should be on the basis of the edition of the MTLP law effective at that moment. Under that law, damages were indemnified by the insurer having insured the civil liability of the motor vehicle owner who caused the damage, but if several persons caused the RTA, thus incurring mutual losses, the insurers would indemnify each victim according to the level of fault of each motor vehicle driver.

The court found in the MTPL statement on the RTA, which was included in the case materials, that the specific RTA was caused by the driver of the second car. The same arose from the administrative protocol on the RTA, which in addition described the event, the essence of the violation, victims, and vehicle damage. The Road Police upon reviewing the case of administrative violation had decided that the driver of the second car was at fault and had punished him according to Part 1 of Section 125 of the Administrative Procedure Law on violation of Road Traffic Regulations. The decision of the Road Police on the fault of a party to a RTA had not previously been challenged through legal process.

The court concluded that the technical inspection researched allocation of the car drivers' fault in the RTA and not the fact and circumstances of cause of damage. Therefore the technical inspection and its conclusions could not be referred to in the specific dispute. Moreover, as the court found, the technical inspection was one-sided in that the research used photos of only one car; indeed, information on damage to the other car was completely lacking. The research had been carried out on the basis of approximate information contained in personal explanations of facts (distance from which the obstacle was noticed on the road), which were crucial for concluding whether or not the other driver could have avoided a collision.

The court indicated that under the MTPL law, experts performing research related to mandatory civil liability insurance of owners of motor vehicles needed a certificate issued by the Traffic Office (at present, the Latvian Motor Vehicle Insurance Office). The case materials did not include information that the person who carried out the research had such a certificate.

The insurer took the view that the court had not evaluated the case evidence regarding the fault of the driver of the car owned by the business in causing the road traffic accident, and submitted a cassation complaint.

The Supreme Court decided that the judgment should remain unchanged because a person could only be found guilty of causing a road accident by institutions as provided by the law and only under due legal process, including specific procedural activities provided by special norms of law, Road Traffic Law, Administrative Procedure Law and Criminal Procedure Law.

The court had no basis within the scope of the civil procedure to re-evaluate the conclusions drawn by the police regarding fault for causing the RTA. The court evaluated the conclusion of technical inspection ordered by the insurer and included in the case and acknowledged that it could not serve as a basis for doubting the Road Police decision on the fault of the relevant driver.

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LITHUANIA

LEGISLATION

Law on Markets in Financial Instruments: additional supervision for insurance brokers and opportunities for insurers

The new Law on Markets in Financial Instruments comes into effect from 2007.11.01. Although the primary focus of the law is regulation of capital markets, certain aspects are also important for the insurance industry.

Firstly, the Law lays down provisions regulating activity of a Financial Advisory Company (a company whose primary activity is investment advice). This includes licensing and supervision of such companies by the Securities Commission, which creates uncertainty for insurance brokerage companies (already supervised by the Insurance Supervisory Commission). These are also entitled to mediate in conclusion of Pillar II pension contracts (investment contracts to which individuals divert a certain part of their social security tax for private pension funds). Thus, insurance brokerage companies, which provide investment advice related to Pillar II pension contracts, will likely also fall under the supervision of the Securities Commission.

Secondly, the Law sets a compulsory insurance requirement for Financial Advisory Companies. The sum insured is LTL 100,000 (ca. EUR 29,000) for each insured event and LTL 500,000 (ca. EUR 145,000) for all insured events in any one year. This provides new opportunities for insurers to offer personal indemnity insurance products.

Plans announced to change regulatory regime for insurance brokers

On 2007.03.09 the Insurance Supervisory Commission announced that the Draft Law amending the Law on Insurance was submitted to the Lithuanian Government. The Draft Law introduces new regulatory requirements for insurance brokers.

Firstly, an insurance brokerage company would be entitled to commission (fee) payable only by the client (policyholder, insured, beneficiary or injured third party). Until now, commission in nearly all cases has been paid by the insurer.

Secondly, tied insurance intermediaries will be allowed to sell products of either life or non-life insurers without any limitations regarding the number of insurers represented. Additionally, tied insurance intermediaries will be allowed to sell competing products of different insurers (forbidden under the existing Law on Insurance).

The Draft Law provoked a negative reaction from insurance brokers' organizations, which see amendments as a threat to the very existence of insurance broking as an institution.

Draft Amendments to the MTPL Insurance Law submitted

On 2006.12.28 the Lithuanian Government submitted to the Lithuanian Parliament a Draft Law amending the existing MTPL Insurance Law.

The Draft implements Directive 2005/14/EC of the European Parliament and of the Council of 2005.05.11

amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.

Special policyholder complaint form not necessary

On 2006.12.19 the Insurance Supervisory Commission amended its decree of 2004.03.09 on Approval of the Rules of Consumer Dispute Settlement and of the Policyholder Complaint Form.

According to the amendments, policyholders lodging a complaint against insurers will not be required to use a special form of complaint approved by the Insurance Supervisory Commission and may address the supervisor by a simple written letter.

Although recommendatory only, decisions of the Insurance Supervisory Commission over consumer disputes are observed by the insurance industry. Statistics for consumer dispute settlements appear on the website of the insurance supervisor (http://www.dpk.lt/gincai.php). The prospective publicity gives incentives to insurers to find solutions to disputes with policyholders before the supervisor's decision.

The number of policyholder disputes settled by the Insurance Supervisory Commission is growing each year. The supervisor is worrying that it spends significant time on policyholder disputes (which actually are not its primary function). The industry is worried about decisions being too consumer-orientated, not paying enough attention to risk assessment and claims handling methods acceptable in modern insurance markets.

RECENT CASE LAW

Custom bonds: insurer wins EUR 2,000,000 case

On 2007.01.29 the Court of Appeal announced its decision in the civil case of Klaipeda District Attorney (defending the interests of Klaipeda Territorial Customs Office) v. UADB "Baltijos garantas". The claim of LTL 6,800,000 (ca. EUR 1,969,000) filed against the insurer was recognized as groundless.

The Court stressed that the Customs Office, as the beneficiary under a customs bonds insurance agreement, had not properly exercised its duties under existing regulation of custom transit procedures, and therefore contributed to the loss – unpaid customs duties. Therefore there was no duty on the insurer to indemnify the Customs Office.

The decision is of crucial importance for UADB "Baltijos garantas" and the insurance market.

Firstly, the insurer avoided serious impact on its solvency. Secondly, the insurance market, which in the nineties suffered heavily from Customs Office claims (which was the cause of several bankruptcy procedures), got a breath of fresh air. Their suretyship obligations against the Customs Office have been recognized as conditional (they depend on the proper fulfilment of Customs Office obligations). Finally, the Customs Office no longer seems unbeatable in the Courts.

Nevertheless, cassation procedures are possible, i.e. the decision of Court of Appeal can be revised by the Supreme Court.

Transport Insurance: Insurance Indemnity for Car Stolen Twice

On 2006.10.11 the Supreme Court announced its decision in a civil case against UAB "PZU Lietuva" in which the insurer was obliged to pay LTL 100,620 (ca. EUR 29,000) insurance compensation.

An interesting fact about the case - a car was stolen twice. Firstly, the car was stolen within an insurance policy period in Lithuania. Afterwards the stolen car was found in Russia, in the possession of a third party with falsified car documents. The car was placed in a special protection area, and subsequently was stolen for a second time, but this time when the insurance policy period was over.

The insurer based its defence on the argument that actually the loss was caused by the second theft, which happened after expiry of the insurance policy period.

The Court held that the insurer's obligation to pay indemnity was triggered by the first theft, which happened within the policy period. The fact that the insured became aware of where the car was situated without actually repossessing it was of minor importance in deciding whether indemnity should be paid or not.

INSURANCE MARKET CHANGES IN THE BALTICS

The Estonian Branch of Codan Forsikring A/S (*Codan Forsikring A/S Eesti filiaal*) was registered in September 2006 but is not actively doing business yet.

In February 2007, the Financial Supervision Authority granted Hansa Property Insurance (*Hansa Varakindlustus*) a supplementary activity licence for offering motor third party liability insurance, accident insurance, sickness insurance, and financial loss insurance.

The Riga City Council has decided to transfer to privatisation 2,000,000 shares or 100% of insurance company "***RSK apdrošināšanas AS***" (RSK) owned by the Riga City Council by selling them at auction. Likewise, the City Council has approved the RSK privatisation project with the initial price of RSK shares at the auction in the amount of 14 million LVL. Auction bid stages are planned to be 100,000 LVL.

Norwegian life insurer Vital Forsikring ASA has opened a branch in Lithuania.

In January, insurance brokerage company UADBB Viralita merged with UADBB Aon Lietuva, which is the largest insurance brokerage company in Lithuania.

In February, the Lithuanian Insurance Supervisory Commission authorised the merger of UADB Baltic Polis with its parent undertaking Latvian company ***Parekss apdrošināšanas kompānija***. The latter company is owned by Norwegian insurer Gjensidige Forsikring.

In March, at the request of ADB Baltikums draudimas the Lithuanian Insurance Supervisory Commission withdrew the compulsory motor third party liability insurance licence of the insurer.

NEWS IN SORAINEN LAW OFFICES

Recent deals

Advising large Polish oil company in credit insurance matters
Vilnius office assisted the client in preparation, negotiations, and conclusion of a credit insurance agreement insuring the debts of Lithuanian clients.

Advising on aviation insurance
Vilnius office advised an international aviation finance company on aircraft insurance issues related to registration of aircrafts in Lithuania.

Advising large automobile manufacturer
Sorainen Law Offices advised the Estonian branch of one of the world's leading automobile manufacturers regarding their global insurance programme, insurance taxation matters, and the possibilities of payment of insurance proceeds to dealers in Estonia, Latvia, and Lithuania.

Advising large life assurance company
Vilnius and Riga offices advised one of the largest life assurance companies participating in a public tender regarding purchase of life assurance services.

Advising insurer regarding bank assurance issues
Sorainen Law Offices advised one of the largest Nordic insurance companies on providing bank assurance services in the Baltic States.

Representing insurers in court
Tallinn office successfully represented Estonian leading insurance companies as plaintiffs in several recourse claims and as defendants in large insurance indemnity claims, including proceedings in the Supreme Court of Estonia.

Other news

Doctor of Social Sciences in the insurance legal team of Sorainen Law Offices

On 2006.12.19 Tomas Kontautas, attorney-at-law with the Vilnius office, in a public session of Vilnius University Law Science Council, defended his doctoral thesis on "Lithuanian Insurance Contract Law: Theoretical and Practical Aspects", as a result of which the Council conferred on him the degree of Doctor (Ph.D.) of Social Sciences (Law).

Sorainen Law Offices in cooperation with
the Lithuanian Insurance Supervisory Commission
invites you to the international conference

"Insurance in the EU: Recent Regulatory Trends",

to take place on **16 May 2007 at the Novotel Vilnius Hotel in Lithuania**.

For more detailed information please see www.sorainen.com or www.infoklodai.lt or contact Neringa Petrauskaite (tel.: +370 52685040 e-mail: neringa.petrauskaite@sorainen.lt).