

# INSURANCE SORAINEN LEGAL UPDATE

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 **SORAINEN**  
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## ESTONIA

### LEGISLATION

#### Amendments to MTPL Act

The Estonian Parliament is currently considering a draft law to amend the Motor Third Party Liability Insurance Act (the MTPL Act). The draft law extends MTPL insurance cover. Under the current MTPL Act, a traffic accident on a ship is not covered by MTPL insurance. However, under the draft law an accident taking place on a passenger ferry providing regular domestic carriage services is covered.

#### Insurance refunds for agricultural producers

On 5 July 2008, a regulation of the Ministry of Agriculture entered into force on insurance refunds for agricultural producers that insure themselves against natural disasters, disadvantageous weather, animal and plant disease, or pests.

### RECENT CASE LAW

#### Insurer must pay at least partial indemnity if policyholder breaches security requirements and the prohibition on increasing insured risk

Estonian Supreme Court Judgment No 3-2-1-17-08 emphasises the principle that under indemnity insurance the insurer is freed from the obligation to pay indemnity only if the insured event is caused intentionally.

If a policyholder violates the prohibition on increasing probability of insured risk, the insurer may be partially released from the obligation to pay indemnity - to the extent of increase in probability of insured risk due to circumstances caused by the policyholder. In that event, the court must (1) decide whether, by violating its obligations, the policyholder increased the probability of risk insured and if so, (2) assess the extent of increased probability of insured risk.

The Supreme Court held that the insurance standard term that allows an insurer to refuse payment of indemnity in full if the policyholder violates the prohibition on increasing probability of insured risk is inconsistent with insurance contract law and therefore not applicable. As to motor insurance practice, even significant speeding by the policyholder does not automatically release the

insurer from the obligation to pay indemnity under a motor insurance contract. The burden of proof lies with the insurer, i.e. the insurer must prove whether and how speeding increased the probability of insured risk and caused the accident. Consequently, insurers' discretion is significantly limited by this decision.

## LATVIA

### LEGISLATION

#### New law regulating the reinsurance industry

On 16 July 2008, a new Reinsurance Law enters into force, which lays down requirements for providing reinsurance services and the procedure for providing reinsurance services in Latvia.

The law defines reinsurance as activities carried out by a person accepting assigned risks from an insurer, reinsurer, or private pension fund. The law provides for supervision of reinsurers by laying down requirements for commencing and undertaking activities in Latvia, as well as for extending them by launching activities in other EU Member States. The aim of the law is to introduce requirements of directives of the European Parliament and Council, ensuring unified regulation of reinsurance company supervision in the European Community, as well as investing in securing international financial stability.

Under the new law, a reinsurance company may carry out reinsurance in branches indicated in the licence issued by the Financial and Capital Market Commission (FCMC), as well as business directly related to reinsurance or its intermediation.

A reinsurer will be allowed to commence reinsurance only after it is registered in the Commercial Register and after receiving a licence to carry out reinsurance. The licence for carrying out reinsurance will be issued for an indefinite period. State supervision and additional supervision will be carried out by the FCMC.

The law is directed at integrating Latvia into the EU and adjusting the international financial sector providing for introduction of reinsurance company supervision, and uniform regulations for their activities in EU Member States.

## Estonia

Insurer must pay at least partial indemnity if policyholder breaches security requirements and the prohibition on increasing insured risk

## Latvia

New law regulating the reinsurance industry

## Lithuania

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## Belarus

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Advising AB Lietuvos draudimas in the largest investment transaction in the Baltics

The law, which introduces Directive 2005/68/EC of the European Parliament and of the Council on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, ensures proper formation of regulating provisions for reinsurance transactions.

### **Amendments to the law On Insurance Companies and Their Supervision**

In order to implement Directive 2005/68/EC of the European Parliament and of the Council on reinsurance, amendments to the law On Insurance Companies and Their Supervision entered into force on 16 July 2008.

In future, an application to use only the services of insurance or reinsurance intermediaries who are authorised to provide such services in Latvia, will also apply to reinsurers.

The amendments forbid insurers and insurers subject to additional supervision from owning a captive reinsurer.

In case of a Latvian insurance company being a branch of a non-Member State insurer, the FCMC will be able to determine a higher solvency margin where the nature of assigned reinsurance (retrocession) contracts and reinsurance conditions have significantly changed since the previous financial year, or if no risks are transferred under assigned reinsurance (retrocession) contracts of respective insurers or the scope of transferred risks is insignificant.

The amendments increase the amount of the minimum guarantee fund for insurers whose annual reinsurance premiums received exceed 10% of the total sum of insurance and reinsurance premiums received, if their annual reinsurance premiums received exceed EUR 50 million or if the technical reserves established under reinsurance contracts exceed 10% of the total sum of technical reserves established under their insurance and reinsurance contracts. From now on, the amount of the minimum guarantee fund for insurance companies active in reinsurance and corresponding to the above criteria will be EUR 3 million.

The FCMC is not entitled to object to a reinsurance (retrocession) contract with a reinsurer or an insurer which has been assigned by a branch of an insurance company or a non-Member State insurer due to the financial stability of the respective reinsurer or insurer.

Under the amendments, changes in relation to the Insured Protection Fund include one concerning deductions to the Insured Protection Fund. These cannot be made for life assurance linked to the market, where the sum insured depends only on the value of assets chosen under the conditions of an insurance agreement.

The amendments specify requirements in relation to limited-access information. In particular, the FCMC will be entitled to exchange limited-access information with supervision institutions of financial and capital market members in the EU Member States. Moreover, the FCMC is entitled to conclude

information exchange contracts with supervision institutions of non-Member States insurers. If an insurer is declared insolvent or to be liquidated, limited-access information, which does not refer to third parties involved in attempts to improve the state of the insurer, will be available during investigation of civil or criminal cases.

### **Introduction of one-stop agency principle in insurance**

On 1 July 2008, amendments to the Law on Insurance Companies and Their Supervision came into force, ensuring observance of the one-stop agency principle when providing annual reports and consolidated annual reports.

Until now, an insurance company - or a branch of an insurer - from a non-EU country (insurance company) had to file a copy of a prepared, approved, and audited annual report to the regional institution of the State Revenue Service according to the place of registration of the insurance company, and to the Register of Enterprises. Additionally, it had to publish a copy of the annual report in full or its shortened form in the Latvijas Vestnesis gazette at its own expense.

In order to facilitate the one-stop agency principle and decrease the administrative burden and costs of insurance companies, the amendments to the Law on Insurance Companies and Their Supervision stipulate that:

- 1) From now on, insurance companies will have to file an annual report (consolidated annual report) only with the State Revenue Service, which will forward an electronic copy of the annual report (consolidated annual report) to the Register of Enterprises.
- 2) The Register of Enterprises will publish a notice in the Latvijas Vestnesis gazette that information on the annual report (consolidated annual report) is publicly available at the Register of Enterprises.
- 3) The insurance company may use its own internet homepage for publishing the annual report (consolidated annual report) audited by a certified auditor or by a company of certified auditors.

## LITHUANIA

### LEGISLATION

#### **New system for filing information on investment fund-related life insurance**

On 20 May 2008, the Lithuanian Insurance Supervisory Commission resolved to amend the Practice Statement on informing policyholders about investment fund-related life assurance, when investment risk is borne by policyholders. The decision resulted in change of regulation, previously approved by Resolution No N-74 on 11 July 2006.

Under the new measures effective from 1 April 2009, the reporting period must be covered by a report on investment life assurance contracts. The maximum reporting period is twelve months.

In some cases, the reporting period for investment life assurance contracts for first-time policyholders may exceed twelve months. This applies only to newly-concluded investment life assurance contracts coming into effect no more than three months before the end of the reporting period selected by the insurer. However, the longer period may not exceed fifteen months.

#### **New insurance indemnity measures for natural droughts**

The Lithuanian Minister of Agriculture has passed an order (No 3D-333) setting rules for partial compensation of insurance costs for damages claimed for natural droughts.

The order introduces criteria to clarify expectations of both insurers and policyholders in cases of this specific event. The measure came into force on 20 June 2008.

## RECENT CASE LAW

#### **Delimitation of suretyship and suretyship insurance**

In civil case No 3K-3-320/2008 the Lithuanian Supreme Court for the first time indicated elements highlighting the distinction between suretyship insurance and simple suretyship.

The Court held that seven significant features distinguish substantively between suretyship relations and suretyship insurance, while suretyship insurance is a contractual security instrument which should not be confused with surety. The decision ends a long era of ambiguous Lithuanian court practice treating suretyship insurance as a dual contractual relationship (suretyship between insurer and beneficiary, and insurance between insurer and policyholder).

#### **Owner of uninsured vehicle is jointly liable with driver for road accident damage**

On 16 June 2008, in civil case No 3K-3-325/2008, the Lithuanian Supreme Court stated that if a vehicle owner fails to comply with the compulsory MTPL insurance cover requirement, both the vehicle owner and the person who used the vehicle causing the insured event are jointly liable for compensation to the victim.

## BELARUS

### LEGISLATION

#### **Strengthening position of state-owned insurance companies**

At the moment the position of state-owned insurance companies in the Belarusian insurance market is extremely strong. The main reason is that many types of mandatory insurance are established by law (the list is extended almost every year), and it is mostly state-owned companies (especially Belgosstrakh) that may provide these types of insurance.

Legal acts adopted in the first half of 2008 further strengthen the position of state-owned insurance companies. In particular, state-owned and state-controlled enterprises can now be insured only by state-owned insurance companies (a more detailed outline of this update was published in the previous issue of the Insurance Legal Update). Further, since 1 January 2008 a new type of compulsory insurance is introduced: insurance of crops, cattle, and poultry.

According to Belgosstrakh, its share in total receipts of Belarusian insurance companies comprised 50.1 % in the first six months of 2008. Its share in the total amount of insurance contributions collected by domestic insurance companies was 59.4 %.

### **Screws being tightened**

Tougher requirements are aimed at insurers undertaking voluntary insurance of civil liability of aircraft owners, civil liability of organizations endangering the public, insurance of aircraft and inland vessels. In particular, the minimal amount of own capital of such insurers is increased to the equivalent of not less than EUR 500,000, compared with EUR 350,000 previously. Further, the requirement of EUR 500,000 of own capital is now also applied to civil liability insurers of ship owners, business and financial risks, risks of default under loans, sea vessels, inland and river-sea vessels, and organizations undertaking marine insurance.

Requirements are laid down for organizations intending to undertake voluntary insurance of space risk or voluntary insurance of cargo (in public procurement or public supply of goods under Incoterms CIF and CIP). These organizations should, inter alia, have provided insurance services in Belarus for at least three years, and have a minimal amount of no less than EUR 2 million own capital.

The minimal amount of own capital for companies undertaking compulsory insurance of civil liability of vehicle owners is increased from EUR 400,000 to EUR 950,000.

The minimal amount of own capital of companies undertaking compulsory medical insurance of foreign citizens and stateless persons residing temporarily in Belarus, and compulsory insurance of carrier liability to passengers, is increased from EUR 800,000 to EUR 5 million.

The maximal amount of remuneration for services rendered which can be paid to insurance brokers is increased from 21 % to 25 % of the amount of insurance contributions.

Application of the requirement to have a reinsurance tariff preliminarily approved by the state reinsurance organization was extended. This requirement used to apply only to foreign insurance companies which assume an obligation exceeding the established liability threshold and therefore requiring reinsurance. Since 23 July 2008, this requirement applies to any insurance company that assumes these obligations.

The changes were approved by Belarus Ministry of Finance No 104 Resolution of 20 June 2008.

### **Insurance of export risks with government support eased**

Regulation of insurance of export risks with government support has changed by Edict of the President No 354 of 26 June 2008. From 1 January 2007, the system of preferential insurance of export risks with governmental support was established by Edict of the President No 534 of 25 August 2006. Since 7 September 2008, the preferential insurance mechanism also applies to leasing transactions. The procedure for obtaining a budget loan for repayment of insurance compensation will be eased.

At present, the insurer of export risks with government support is the Republic of Belarus, represented exclusively by the state-owned insurance company Beleximgarant. Under the amendments, Beleximgarant obtains the right to define terms of insurance and approve respective insurance regulations after obtaining consent from the Ministry of Finance.

## **INSURANCE MARKET CHANGES**

### **Cross-border merger of If non-life insurance companies**

Sampo Group has announced its plan to merge AS If Eesti Kindlustus, AAS If Latvia, and UAB If Draudimas. After the merger, non-life insurance activities in the Baltic States will continue via Estonian company AS If P&C Insurance with branches in Latvia and Lithuania.

### **New trademark of Estonian branch of Codan Forsikring A/S (Member of Royal&SunAlliance Group)**

As of April 2008, the Estonian branch of Codan Insurance operates under the trademark "RSA" instead of the former "Royal & SunAlliance".

### **RSA offers MTPL cover**

From July 2008, RSA offers motor third party liability (MTPL) insurance, thus further tightening competition on the Estonian MTPL market.

### **Increasing insurance fraud trend**

The Estonian insurance market is facing an increasing trend in insurance frauds as a side-effect of the economic depression. According to insurers, since the second half of 2007 the number of insurance fraud cases and attempted frauds has significantly risen.

### **Conflicts between brokers and leading insurers in Estonia**

Since spring 2008, strains can be detected in relationships between insurance brokers and leading insurers. The scope of countercharges stems from brokers' misleading advertising to an alleged cartel (according to the brokers' complaint) and theft of customer data by a leading insurance broker. However, these accusations are not confirmed by the authorities.

### **Merger of Baltic life and health assurance, and pension fund insurance companies of ERGO Group**

A restructuring of Baltic ERGO Group companies will take place by 2009. This will result in three new companies: life and health assurance European companies (SE), and a Pension fund centre.

### **A new player in the credit risk insurance market**

The Latvian branch of Coface Austria Kreditversicherung has begun to offer a new service – credit risk insurance. This facilitates businesses in stable management, insuring against possible losses which may be caused by transaction partners' default in obligations. These will be settled by the insurer, so that businesses are not harmed by unpaid debts.

### **BTA introduces "speeding" insurance in Latvia**

A Speeding Policy, or insurance against driving in excess of the speed limit, can be insured against under certain conditions to assure against losses due to speeding fines.

### **Krajbanka terminates cooperation with life assurance company GRAWE**

From 30 June 2008, Latvijas Krajbanka has ceased cooperation with insurance company Grazer Wechselseitige Versicherung Aktiengesellschaft, in that the bank will not now be selling GRAWE insurance products.

### **Hansabanka to enter non-life insurance market in 2009**

Hansabanka has decided to become active in the fiercely competitive Latvian non-life insurance market by establishing a non-life insurance company branch to launch in the first half of 2009.

### **Withdrawal from Pillar II pension annuity activities**

UAB Hansa gvybes draudimas, the largest Lithuanian life insurer, has announced that it is ceasing activities in Pillar II pension annuity insurance.

### **Withdrawal from bailiffs' and notaries' compulsory liability insurance**

UAB PZU Lietuva has announced that it is ceasing to provide bailiffs' and notaries' compulsory liability insurance.

### **New CEO for PZU Lietuva**

Saulius Tiskevicius was appointed as the new CEO of UAB PZU Lietuva. Former CEO, Gintautas Mazeika, has become the CEO of energy company RST.

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## NEWS IN SORAINEN

### Recent deals

#### AB Lietuvos draudimas outsources management of EUR 153.5 million investment portfolio

Sorainen Vilnius team advised AB Lietuvos draudimas (Lithuanian Insurance), a member of Royal & Sun Alliance (RSA) group and the leader in the national insurance market, on outsourcing management of its investment portfolio worth EUR 153.5 million to SEB investiciju valdymas. This is the largest such transaction in the Baltic States to date. Our team in this project was led by partner Dr Tomas Kontautas.

#### Significant transaction in Lithuania insurance market - transfer of branch of insurance company to another group company

Sorainen Vilnius office team advised Lithuanian branch of the world's largest credit insurance company on internal reorganisation of its group companies, including transfer of Lithuanian branch to another group company (this transaction was the first of a kind in Lithuanian market), and entering factoring business in Lithuania. The client was advised by partner Dr Tomas Kontautas, senior associates Algirdas Peksys and Raminta Karlonaite.

Sorainen has advised **a large US insurance company** on issues related to aviation insurance and reinsurance activity in Lithuania, Latvia, and Estonia.

Sorainen has advised **a major car dealership** in implementing an insurance mediation activities model with a foreign insurer on a cross-border basis in the Baltics.

The Sorainen Riga team advised **a life insurance company** regarding implementation of the bancassurance scheme with a financial institution.

The Sorainen Riga team advised **a major international insurer** on insurance and reinsurance activity on a cross-border basis in Latvia.

### Lawyers

#### Head of Insurance Team becomes a partner at Sorainen Vilnius office

Recent development of Sorainen in the Baltics and Belarus is surmounted by one more solemn event – with effect from 1 July 2008 Attorney-at-Law Dr Tomas Kontautas became the fifth partner at Sorainen Vilnius office, which now employs nearly 40 lawyers.

Dr Kontautas has been working with the firm since 2006, when he led the pan-Baltic – Belarus Insurance practice group and Vilnius office Banking & Finance Team. Tomas Kontautas studied at the Vilnius University as well as at the University of Hamburg and the Erasmus University Rotterdam, where he obtained a European Master's degree in Law and Economics (EMLE). In 2006 he was awarded a doctor's degree in Social Sciences (Law) at the Vilnius University. During his professional career Dr Kontautas was a lawyer with the law firm Lideika, Petrauskas, Valiunas ir partneriai LAWIN, deputy chairman of the Insurance Supervisory Commission, and deputy head of the Legal Division of the State Insurance Supervisory Authority. He was also actively involved in drafting insurance laws and regulations in Lithuania and the European Union.

