INSURANCE
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ESTONIA
LEGISLATION

Amendments to the Insurance Activities Act
Amendments to the Insurance Activities Act (IAA) (together with amendments to the Financial Supervision Authority Act and to the Personal Data Protection Act) entered into force on 1 January 2008. These transpose Directive 2005/68/EC of the European Parliament and of the Council on reinsurance and Directive 2004/113/EC of the European Council implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Thorough amendments on reinsurance mainly concern cross-border activities, solvency margin (and its calculation), investment of assets covering technical provisions of reinsurance companies and transfer of insurance portfolio. The amendments also add new terms such as *special purpose vehicle and captive reinsurance company*.

As a rule, the use of sex as a factor in calculating premiums and benefits for insurance and related financial services must not result in differences in individuals' premiums and benefits. In any event, costs related to pregnancy and maternity must not result in differences in individuals' premiums and benefits. As an exception, sex as a factor may be used in life insurance (for calculating mortality or survival risks) and in accident and sickness insurance.

The amendments also add to IAA special regulation on personal data protection. In particular, consent for processing personal data may also be in standard terms. An insurer may also process personal data (excluding most sensitive personal data) without the consent of the client (i.e. policyholder, insured person, beneficiary, injured person, or person approaching an insurer for insurance services) if necessary for fulfilment of the contract. Personal policyholder data may also be processed without consent for evaluating the insured risk. The insurer may store personal data until expiry of the limitation period for claims under the contract. The amendments also entitle a third party to impart personal data to an insurer without the consent of the client. These amendments are justified by the fact that processing of personal data is in the interests of the client.

Another important change is the right to be simultaneously engaged in life insurance and accident and sickness (i.e. some classes of non-life) insurance.

Amendments to the Motor Third Party Liability Insurance Act
Many amendments to the Motor Third Party Liability Insurance Act entered into force on 2 November 2007. Behind the draft legislation lies Directive 2005/14/EC (the so-called Fifth Directive). The most important changes related to the Directive are an increase in compensation payment limits and better protection of pedestrians, cyclists, roller-skaters, and other similar road users.

The most important amendment not related to the Directive is cancellation of the requirement that a driver must 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).

Amendments to the Consumer Protection Act
On 12 December 2007 amendments (transposing Directive 2005/29/EC of the European Parliament and of the Council) to the Consumer Protection Act entered into force. The amendments prohibit unfair commercial practices in relation to any consumer. A commercial practice is unfair if it is contrary to the requirements of professional diligence in the economic or professional activities of the trader and distorts the average consumer's economic behaviour with regard to the product or service. Under the Act, commercial practices are unfair if they mislead the consumer or are aggressive with regard to the consumer. According to the amendments the following are also considered to be aggressive:

1) requiring a consumer who wishes to claim under an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or

2) failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising contractual rights.

The fine for unfair commercial practices (legal person) is EEK 50,000 (≈EUR 3,196).

Amendments to the Money Laundering and Terrorist Financing Prevention Act
On 28 January 2008 amendments to the Money Laundering and Terrorist Financing Prevention Act (MLFTPA) came into force. The previous **MLFTPA** applied to all insurers and insurance intermediaries. The amendments restrict application of the MLFTPA only to life insurance companies and life insurance brokers (according to the Directive 2005/60/EC). The amendments also allow an insurer or broker to

identify a beneficiary after a business relationship is concluded; but the insurer or broker must identify the beneficiary before payment is made or before the beneficiary starts to exercise rights arising from the life insurance contract. The fine for breach of duty under MLFTPA is significantly increased to EEK 500,000 (≈EUR 31,956) from EEK 20,000 (≈EUR 1,278).

Draft law on taxation of unit-linked life insurance

The *Riigikogu* (Estonian Parliament) is currently considering a draft law regarding changes in taxation of investments made under unit-linked life insurance contracts. Tax exemption for a policyholder currently applies to returns received under a unit-linked life insurance contract after 12 years contract duration. Under the amendments, as of 1 January 2009 the tax exemption applies to returns earned from contributions made after 1 January 2009 and at least 12 years before receiving profit. Returns earned from contributions made before 1 January 2009 are tax-exempt if the contract has been in force for at least 12 years. Consequently, the aim of law-makers is to exempt from taxation profits earned from contributions at least 12 years old.

Proposed changes in Pillar II pension scheme

The Ministry of Finance has drafted and sent for coordinating to other institutions a draft law on amendments to the Funded Pensions Act and Insurance Activities Act regarding mandatory funded pensions (Pillar II pension).

The amendments aim to increase Pillar II benefits by improving the diversity of insurers' Pillar II pension insurance portfolios. For that purpose, the law should motivate unit owners (by stipulating certain restrictions on the succession of pension fund units) to switch their investments from pension fund units to a pension insurance contract within four years after reaching pensionable age.

The draft regulates special conditions, i.e. frames within which parties to an insurance contract can derogate from general mandatory conditions of a pension contract, and specifies risks that may be covered in a pension insurance contract.

The draft also provides a guarantee scheme covering insolvency of the insurer during the pension payment period. A separate pension contracts guarantee fund for guaranteeing transfer of pension insurance contracts portfolio in case of insolvency of the insurer will be established as a sub-fund to the Guarantee Fund.

The draft inserts a new class of life insurance – mandatory pension insurance – to the Insurance Activities Act and obligates insurers to keep committed assets corresponding to pension contracts separately from tied assets of other insurance contracts to secure continued payments of pensions. The draft also amends insurance intermediaries' notification obligations regarding intermediation of pension contracts.

RECENT CASE LAW

An injured person has no direct claim against an insurer under voluntary liability insurance

The Estonian Supreme Court in its judgment No 3-2-1-91-07 of 5 November 2007 took a position on the basic principles of voluntary (professional) liability insurance.

The Supreme Court held that Estonian law does not allow the injured party to claim compensation for damages caused by the policyholder directly from the latter's underwriter of voluntary liability insurance.

The court recognised this traditional feature of voluntary indemnity insurance by distinguishing the main objectives of voluntary (i.e. policyholder protection) and mandatory liability (protection of interests of injured persons) insurance. However, the court drew attention to the fact that in a case of the bankruptcy of a policyholder of voluntary liability insurance the injured party's interests have additional protection by giving such claim certain priority status in the bankruptcy proceedings.

Over-insurance does not extend the scope of insurer's obligations

The Estonian Supreme Court's judgment No 3-2-1-104-07 of 20 November 2007 emphasises a substantive principle of indemnity insurance: an insurer is not obliged to indemnify a policyholder for more than the actual extent of the damage even if the sum insured is higher than the amount of the damage.

In this case the court reached two important conclusions. First, in a case of over-insurance the principle of compensating actual damage applies and the insurer must in every case establish the actual damage for performing its obligation of paying indemnity. Second, the objective of regulating over-insurance is to enable the parties to an insurance contract unilateral alteration of the sum insured together with the insurance premium.

In this case the successful insurer was represented by Sorainen.

Listing insured objects on a policy creates an assumption of their existence on the happening of the insured event

The Supreme Court on 28 January 2007 decided in case No 3-2-1-106-07 on the meaning and interpretation of a list of insured items in property insurance.

In that case, the policyholder claimed that insured items had been stolen but failed to submit documentary evidence (such as purchase receipts, extracts of transfer payments) as required by the insurance standard terms supporting the claim.

The court held that if on concluding an insurance contract the insurer did not check that insured objects exist, the insurer presumed the existence of those items. According to the judgment it is reasonable for that assumption to continue so that it must be presumed that the insured objects also existed on the happening of the insured event. Thus the court places on the insurer the burden of proof of non-existence of insured movables at the time of theft or fire.

Another important statement in the judgment is that insurance standard terms containing a precondition for indemnifying insured items by requiring documentary evidence of existence (purchase) of such items is unreasonably harmful in consumer contracts and not reasonable in respect of less valuable items. Thus a policyholder may prove loss by using other evidence (e.g. witnesses).

A person responsible for damage cannot object to an insurer claiming recourse on the basis that the policyholder or insured person breached the insurance contract

The Estonian Supreme Court in its judgment No 3-2-1-2-08 of 12 March 2008 took a position on the right to respond to a claim for recourse by an insurer.

Under Estonian law a claim for compensation of damage against a third party which belongs to a policyholder or the insured person transfers to the insurer to the extent of damage to be compensated by the insurer.

The Supreme Court held that alleged breach of an insurance contract (mainly safety requirements) is of importance only in the relationship between policyholder and insurer. If the claim is transferred to the insurer, the third party responsible for damage compensated by the insurer may only use objections that he had against the policyholder or the insured person. The third party responsible for damage cannot object that the policyholder or insured person has breached the insurance contract.

LATVIA

LEGISLATION

Amendments to the Activities of Insurance and Reinsurance Intermediaries Law come into force

On 1 January 2008 amendments to the Activities of Insurance and Reinsurance Intermediaries Law came into force with the aim of increasing competition in the insurance mediation market. The amendments result from the Directive 2002/92/EC of the European Parliament and of the Council of
9 December 2002 on insurance mediation.

The amendments introduce the category of special insurance agent – credit institutions - entitled to engage in insurance mediation on behalf of or in the interests of several insurers, if the credit institution provides insurance as an additional service to its basic activities. At the same time, a credit institution may not advise or prepare an offer on the basis of analysis of offers.

A manager or employee of an insurance agent (legal entity) directly engaged in insurance mediation may not be engaged as an employee with another insurance intermediary, and an insurer must inform the FCMC on termination of a cooperation agreement with an insurance agent.

Likewise, an insurance and reinsurance intermediary must on its own decision, or if requested by the FCMC, remove their managers directly involved in insurance mediation if the manager violates the law, or has not performed their obligations for over a year, or has violated legal regulations on prevention of money laundering or other regulations. If an order issued by the FCMC regarding removal from post is appealed, the appeal does not suspend operation of the FCMC order. Similar conditions apply to annulment of entries in the registry of tied insurance agents.

An insurance broker may combine the professional activities of an insurance and reinsurance intermediary only with investment service activities.

The amendments lay down the FCMC procedure for annulling or refusing to issue a permit to a professional insurance and reinsurance intermediaries association and for a professional insurers association to provide opinions on qualifications of insurance and reinsurance intermediary managers and employees directly involved in insurance and reinsurance mediation. The FCMC may require information and documents from a professional insurance and reinsurance intermediaries association and professional insurers association regarding their activities related to verifying the qualifications of an insurance and reinsurance intermediary's manager and employees directly involved in insurance and reinsurance mediation, and if necessary to carry out tests.

Additionally, the FCMC may impose a fine up to LVL 10,000 (≈EUR 14,228) on an insurance and reinsurance intermediary for proven violations, but in cases of violating legal regulations preventing money laundering and terrorism funding the fine may be up to LVL 100,000 (≈EUR 142,287).

For non-provision of information, the FCMC may impose a fine of LVL 1,000 (≈EUR 1,422) on the insurer. In separate cases, a fine up to LVL 10,000 (≈EUR 14,228) will apply.

Amendments to Personal Data Protection Law

Amendments to the Personal Data Protection Law came into force on 1 January 2008 and allow processing of sensitive personal data if necessary for protection of rights and lawful interests requiring a fee under an insurance contract.

Unfair Commercial Practices to be prohibited

The Law On Prohibition of Unfair Commercial Practices came into force on 1 January 2008. Its aim is to ensure protection of economic interests of consumers by prohibiting use of unfair commercial practices towards consumers.

The law defines a business as an entity involved in commercial practice within its economic or professional operations. Commercial practice is an act, behaviour, or statement, commercial communication, including advertising and marketing carried out by a business and directly related to promoting or selling a product (including real estate, rights and obligations) and supplying services to consumers. Likewise, a commercial practice is unfair if it contradicts professional business diligence and materially distorts or may distort the economic behaviour of the average consumer at whom the commercial practice is aimed if the commercial practice is aimed at a specific group of consumers.

Also prohibited are practices that influence consumers so that they take or might take a transactional decision that they would not have taken otherwise. These are:

- Misleading commercial practices, for instance providing false information to consumers about products or services, or unfairly using marketing events that create confusion about products or services.
- Aggressive commercial practices, for instance influencing consumers through harassment, coercion, and undue influence.

Supervision of commercial practices will fall to the Consumer Rights Protection Centre or the State Pharmacy Inspectorate, depending on the field of business.

If grounds exist to consider that a commercial practice is unfair, the authorities may decide to provide additional information about it, suspend it, prohibit it, publish notice of its withdrawal, and impose an administrative fine. Before deciding, the supervisory authority may invite the business to ensure compliance of the commercial practice with legal requirements by a given deadline, or require the business to undertake in writing to cease a violation within a given deadline. If the business fails to honour an undertaking, the supervisory authority will take a binding decision on the unfair commercial practice, as well as imposing an administrative fine for non-performance.

Regulations on data for compulsory vehicle insurance information system

On 1 December 2007 Regulations of the Cabinet of Ministers came into force regarding the amount and types of data necessary for an information system for compulsory insurance of vehicles against civil liability ("MTPL") and the procedure for entry, exchange, and use of data. The regulations lay down the amount and type of data required by the MTPL information system, as well as the procedure used by insurers to ensure data entry in the information system and the procedure for use and exchange of data by insurers, the Motor Insurers' Bureau ("MIB"), the Road Traffic Safety Department ("RTSF"), the Office of Citizenship and Migration Affairs ("OCMA"), State Border Guards, the State Agency for Technical Surveillance ("SATS"), and the State Agency Centre of Technical Aid.

The information system uses MIB data on policy forms issued to insurers but no longer in their possession, data on insurance contracts whether in force or terminated, and duplicate insurance policies issued, data on road accidents notified to insurers or the MIB, data on insurance premiums received and returned, as well as RTSF state registry data on vehicles and drivers (vehicle, vehicle owner, lawful user and driver), SATS information system data on tractors and their drivers (vehicle, owner, lawful user, and driver), OCMA population register data (natural persons who are owners, lawful users, or drivers of vehicles), the Compulsory Health Insurance State Agency data form database (medical treatment where an injured person claims insurance indemnity for material damage), as well as State Agency Centre of Technical Aid database data (prices for prosthetics [excluding endo-prosthetics] and for supplying technical aids received by an injured person who claims insurance indemnity for material damage).

From 1 June 2008, data from the Penalty Register of the Ministry of Interior Information Centre will be available regarding:

- persons who have driven a vehicle under the influence of alcohol, narcotic drugs, psychotropic substances, toxic or other intoxicating substances;
- persons who have been sentenced for repeatedly driving a vehicle under the influence of alcohol, narcotic drugs, psychotropic substances, toxic or other intoxicating substances within one year during the previous five years, irrespective of deletion of a criminal record;
- registry data on vehicles which are searched, and
- State Social Insurance Agency database data on injured persons who claim insurance indemnity for material damage, and on income of those against whom an insurer or the MIB is entitled to raise a subrogation claim, and
- (from 1 January 2009) State Police data on road accidents registered with the State Police.

New requirements for insuring insolvency administrators' civil liability

From 1 January 2008, new provisions in force lay down the procedure for insuring insolvency administrators' civil liability for damage caused to the state, insolvent subject, creditor, or other person by an administrator's professional activity, as well as the minimum sum of civil liability insurance.

Under these provisions, a contract for civil liability insurance is concluded for a specific insolvency process and for a term not less than six months, while the administrator is accountable for validity of the contract of civil liability insurance between announcement of insolvency and completion of the process. A civil liability insurance contract must be entered into immediately but not later than three days after announcement of insolvency.

The minimum sum of insurance for the overall insurance period and for each insured event is LVL 5,000 (≈EUR 7,114), but the creditors' meeting can decide another sum.

The insurance excess in a contract of civil liability insurance may not exceed LVL 500 (≈EUR 711).

In cases when insurance indemnity has been paid the administrator restores the sum of insurance determined in the contract.

The provisions do not stipulate that in cases of administrator change the new administrator should conclude a new contract on civil liability insurance after appointment to post.

Violation of the Consumer Rights in CASCO insurance

In order to recognize noncompliance in CASCO products provided by Latvian insurers, the Latvian Consumer Rights Protection Centre has analysed the terms and conditions provided. The results reveal that violations of consumer rights such as unclear conditions, description of exceptions, principles of calculating indemnity are usual deficiencies in the Latvian insurance market.

RECENT CASE LAW

An insurer is entitled to assess and determine the liability of a person involved in a road accident for damage caused, taking into account the circumstances of the event and on the basis of documents prepared by and decisions taken by the State Police

The crux of the issue is as follows: after a road accident the insurer decided to pay insurance indemnity under a policy of compulsory vehicle insurance against civil liability ("MTPL") in the amount of 60% of the calculated insurance indemnity because experts had assessed the driver of the car insured by MTPL as responsible for 60% of total liability. The decision was also recognized as grounded by the MIB. However, the injured person considered the insurer's decision to be groundless and filed a court claim for insurance indemnity, court expenses, and lawful interest.

The court of first instance satisfied the claim only partially. The claim as to collecting lawful interest was dismissed. The injured person appealed the judgment in relation to collection of insurance indemnity.

When reviewing the case on appeal, the claim was satisfied and the court decided to collect the insurance indemnity and the litigation expenses from the insurer. The court determined that expert opinions in the case contradicted documents prepared by the Road Police, and they did not prove other circumstances causing the road accident apart from those established by the Road Police. The court considered that the expert opinions submitted by the insurer's company could not be regarded as proof of guilt of the person driving the claimant's car, and could not serve as a basis for payment of partial insurance indemnity.

In turn, the Supreme Court cancelled the court of appeal judgment and referred it for further review. The court was of the opinion that the subject of the claim was a dispute regarding the claimant's rights to receive insurance indemnity in full and the court had to decide within the scope of the subject of the claim whether refusal to pay the insurance indemnity in full was grounded by law and whether circumstances giving basis for refusal were proven, whereas the court of appeal had evaluated the claim from the aspect of administrative violation.

The Supreme Court acknowledged that the MTPL law, when regulating the issue of damage compensation, stipulated that insurers who insure the MTPL of motor vehicles involved in road accidents should assess the liability of each person involved in a road accident for damage caused when taking into account the circumstances of the road accident and on the basis of documents prepared and decisions taken by the State Police. Thus the Supreme Court was of the opinion that legal norms clearly stated that a document prepared by and decisions taken by the State Police could not be regarded as the only basis for determining liability of persons involved in a road accident.

The Supreme Court found that the legislator had enabled the insurer to assess the circumstances of a road accident in each specific case. Study of conditions of these legal norms in relation to the MTPL law leads to the conclusion that when deciding on payment of insurance indemnity the insurer is not concerned only with a decision taken in a case of administrative violation. In the specific case, the insurer based its decision in compliance with the MTPL law regarding partial payment of insurance indemnity on conclusions made after independent examinations by experts outside the court procedure. Although the conclusions cannot be regarded as expert opinion within the meaning of Sections 121 and 124 of the Civil Procedure Law, they still bear the meaning of proof in the case.

The Supreme Court determined that, although the judgment of the court of appeal concluded that both opinions of the expert examination contradicted the documents prepared by the Road Police, still they did not prove other circumstances of the road accident apart from those established by the Road Police. The Supreme Court considered that what had to be evaluated in the given case was whether circumstances giving basis for refusal to pay the full insurance indemnity were proven.

The opinion that the decision of the Road Police in the administrative case was in force was found by the appeal instance court as non-grounded, so that other proof had no significance. The Supreme Court was of the opinion that it should have been taken into account that the appeal instance court indicated facts mentioned in the decision by the administrative case and not the judgment as proven in the given case.

The Supreme Court determined that upon applying Paragraph one of Section 31 of the MTPL law regarding compensation for damages, insurers who have insured the MTPL of motor vehicles involved in road accidents assess the liability of each person involved in a road accident for damage caused when taking into account the circumstances of the road accident and on the basis of documents prepared and decisions taken by the State Police.

On happening of an insured event, indemnity may not exceed damage incurred

A warehouse insurance contract covered loss up to LVL 43,000 (≈EUR 61,183). The warehouse was destroyed by fire and the insurer paid insurance indemnity of LVL 11,955.02 (≈EUR 17,010). However, the insured claimed entitlement to indemnity in the full amount of the sum insured and issued proceedings.

The court of first instance satisfied the claim in part, ruling that the insured was entitled to indemnity in the amount of LVL 20,429.31 (≈EUR 29,068). The insurer then appealed. The court of appeal found that the building was 80% damaged in the fire, and after considering evidence and taking into account the insurance excess and indemnity already paid, concluded that the insurer should pay LVL 19,004.98 (≈EUR 27,041) of the outstanding insurance indemnity. The court noted that the insurer had not proven circumstances releasing them from contractual liability.

In response, the insurer filed a cassation claim for reversal of the judgment on the basis that the court had not taken into account the terms of the insurance contract, which allowed for indemnity by the insurer, including an undertaking to renovate the building in full bearing all costs. The insurer's case was that the court had not observed the compensation principle laid down by the law On Insurance Contracts.

The Supreme Court agreed with the insurer's grounds and that previous court instances had not taken into account all arguments brought forward by the insurer, being guided only by damage evaluation expressed as a percentage, but had failed to take into account the circumstance that in 2004 the costs of restoring the destroyed warehouse were estimated at LVL 23,695.22 (≈EUR 33,715.45), and the fact that the insured himself had undertaken to restore the building.

The Supreme Court held that the courts of previous instance should have resolved the dispute according to the conditions of the insurance contract, which included a method for assessing the amount of damage.

The case was therefore referred for review by the appeal court.

A person in whose name a vehicle is registered should be regarded as the owner of the vehicle

A natural person applied to the court under the Civil Procedure Law to establish the legal fact that in April 2001 he had disposed of a car to a third party as a result of a purchase agreement and that the car was owned by the third party at the time of a road accident on 24 March 2004.

The court of first instance satisfied the application and established as proved that the applicant had disposed of the car as a result of a purchase-sale agreement.

The judgment came into force as not appealed.

The chairman of the Civil Matters Panel of the Supreme Court filed a protest against the judgment of the court of first instance and requested its annulment on the ground of significant violations of substantive and procedural law. The protest indicated that the application had been reviewed under special adjudication procedure, whereas under the Civil Procedure Law special procedure is used only for applications not aimed at any other subject's rights but only for establishing a fact regarding the applicant. In this case the application was aimed at the rights of another person – the buyer of the car. In the circumstances the applicant was not entitled to use the special adjudication procedure.

According to a statement by the Road Traffic Safety Department, the owner of the vehicle was the applicant. Under the Road Traffic Law:

- a vehicle owner is a legal or natural person who owns a vehicle, and the vehicle is registered in the name of its owner;
- the vehicle registration certificate shows the vehicle technical records, as well as data regarding the owner.

Thus within the meaning of the Road Traffic Law, the person in whose name the vehicle is registered must be regarded as the owner, and the vehicle registration certificate is the document indicating data regarding the vehicle owner. In the circumstances, no legal fact could be established to the contrary.

LITHUANIA

LEGISLATION

Amendments to the Law on Insurance

Our autumn edition mentioned draft amendments to the Law on Insurance submitted to the Parliament on 23 August 2007. One of the primary objectives was to set provisions for implementing the Reinsurance Directive 2005/68/EC.

In exercise of the state's obligations to implement the Directive into Lithuanian legislation by 10 December 2007, the Lithuanian Parliament has approved the proposed amendments, distinctly changing previous regulation of the legal status of reinsurers, which from now on will be subject to licensing and direct supervision.

Statistical Accounts to be submitted to Lithuanian insurance supervisor by branches of EU insurers

On 8 March 2008 the State Gazette published a ruling of the Insurance Supervisory Commission. The ruling sets the same requirements for statistical accounts of branches of EU insurers as for local insurance companies.

The ruling was met with some doubt by branches of EU insurers, since under EU law statistical

accounts fall into the area of financial supervision by the home member state (i.e. where insurers are headquartered), and not the host member state (i.e. Lithuania).

RECENT CASE LAW

Supreme Court: Recourse against Insured
In the MTPL liability case *UAB PZU Lietuva v D. L.*, the Supreme Court held that where the insured leaves the scene of an accident the insurer is entitled to recourse against the insured up to 100% indemnity paid.

Supreme Court: Subrogation in Liability Insurance
In the civil case *UAB PZU Lietuva v AB Lietuvos draudimas*, the Supreme Court held that if the insured and the person liable for damage caused are not the same subject, subrogation takes effect when an injured third party receives insurance indemnity.

The Supreme Court ruled that an insurer may claim against the person liable or their insurer only after having paid indemnity. An insurer may lose the right to claim if it fails to act within the statutory limitation period.

Supreme Court: Employee Accident Insurance Benefit does not relieve Employer from Liability

An important Supreme Court ruling in civil case *R. G., E. G., D. G. v. UAB Statreksas* could change recent employee accident insurance practice.

The situation was rather standard – an employer arranged an employee accident insurance policy for its own benefit so that in case of injury to the employee the employer might use the money to compensate the employee or family members.

The court held that benefit is paid to the heirs of an employee who died due to an accident at work (as the employee had not consented that the employer should be appointed as beneficiary). In addition, the employee's heirs are not deprived of compensation, the amount of which is not diminished by benefit payable.

The idea behind the ruling is clear - employers who want protection from liability resulting from death or injury of an employee should opt for liability insurance, not accident insurance.

Supreme Administrative Court: Head of Insurance Supervisor's dismissal legal
Following the insolvency of UAB Ingo Baltic in 2005, the Prime Minister dismissed the chairman of the Insurance Supervisory Commission, citing failure to inform the Government about the pending insolvency as the reason for dismissal.

The dismissal caused public debate as to whether a "zero failure" regime forms the basis of the Lithuanian insurance supervisory system.

The dismissed chairman disputed the Prime Minister's decision. On 5 November 2007 the Supreme Administrative Court ruled that the dismissal was legal, as failure to inform the Government in due time was a material offence.

Supreme Administrative Court: Insurance Supervisor erred
UADBB Socialinės garantijos, an insurance brokerage company, disputed a decision of the Insurance Supervisory Commission to fine the company LTL 15,000 (≈EUR 4,344) for failure to keep client's money in a separate bank account. The Supreme Administrative Court, taking into account that no actual harm was done to clients and the fine was not proportional to the breach, reduced the fine to LTL 3,000 (≈EUR 868).

BELARUS

LEGISLATION

Amendments to main insurance regulatory legal act
Edict No 236, approved on 28 April 2008, amends Edict No 530 of 25 August 2006 on Insurance Activity. Henceforth, only insurance companies in which the state is the majority shareholder may service the Republic of Belarus itself, its administrative units, government-owned companies, and com-panies in which the state holds a controlling interest.

The amendments also require foreign companies supplying goods under public procurement procedures to insure cargo only through government-owned or -controlled insurance companies.

Companies established after 1 April 2008 and operating in towns with a population under 50,000 inhabitants may insure their risks with foreign insurance companies and insurance brokers with regard to manufacture and sale of goods that they produce. This does not apply to banks, investment funds, insurance agencies, residents of free economic zones and other organizations listed in Presidential Decree No 1 of 28 January 2008.

The amendments also affect the procedure and conditions for compulsory insurance against accidents at work and occupational diseases.

Compulsory insurance for shared construction cancelled
Other recent changes in insurance legislation include amendments to the Edict On Insurance Activity made by Edict No 255, approved on 31 January 2008. The most significant is cancellation of compulsory insurance under a shared construction agreement. Previously, the developer's obligation to insure its risks was regarded as mainly affecting construction costs.

INSURANCE MARKET CHANGES IN THE BALTICS

Establishment and acquisition of Seesam Life Insurance SE
On 29 October 2007 following merger, Seesam Life Insurance SE as a European company (*Societas Europaea*) was registered in Estonia with branches in Latvia and Lithuania.

On 27 February 2008 Wiener Städtische Versicherung AG Vienna Insurance Group acquired 100% of the shares of Seesam Life Insurance SE from Suomi Mutual Life Assurance Company Ltd. (More on this item under "News in Sorainen")

New name of Parex Insurance Company
As of 1 January 2008 Parex Insurance Company (*Parekss Apdrošināšanas Kompānija*) has a new name – AAS Gjensidige Baltic. This reflects acquisition of the Company by Norway's biggest insurance company, Gjensidige Forsikring.

SEB bank offers PPI cover
From 3 March 2008 SEB bank in Estonia in cooperation with leading international insurance company Genworth Financials offers payment protection insurance to natural persons taking a loan from SEB. The insurance covers involuntary unemployment, temporary incapacity for work as a result of an accident, or sickness.

Länsförsäkringar offers its services in Latvia and Lithuania
The Lithuanian branch of Swedish insurance undertaking Länsförsäkringar International Försäkringsaktiebolag is authorised to provide non life insurance services from 6 March 2008.

Coface Austria Kreditversicherung AG branch in Latvia
The Lithuanian branch of Austrian insurance undertaking Coface Austria Kreditversicherung AG is authorized to provide non life insurance services from 13 February 2008.

Branch of German non-life insurer in Lithuania
The Lithuanian branch of German insurance undertaking Vereinigte Hagelversicherung VVaG is authorized to provide non life insurance services from 4 December 2007.

Changes into pension funds accumulation
Life assurance company UAB PZU Lietuva gyvybes draudimas, has left Pillar II pension business by transferring obligations under its pension contracts to UAB Finasta investiciju valdymas, a management company.

Bankruptcy of Lithuanian insurer
On 21 February 2008 the Lithuanian Insurance Supervisory Commission decided to file for bankruptcy of Baltikums draudimas ADB. On 12 March 2008 Vilnius County Court initiated bankruptcy proceedings against the company.

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NEWS IN SORAINEN

Recent deals

Leading role in insurance market acquisitions
The second half of 2007 and beginning of 2008 were marked by numerous acquisitions in the Baltic insurance market: two insurance companies – Seesam Life Insurance SE (operating throughout the Baltics) and ADB RESO Europa (with operations in Lithuania and Latvia) and major Lithuanian insurance brokerage company UADBB Hansa draudimo brokeris were acquired by foreign strategic buyers. Sorainen advised the buyers in all three transactions, which is also a result of close cooperation between our M&A and Insurance teams.

Acquisition of Seesam Life Insurance SE
Sorainen's M&A and Insurance teams are advising Wiener Stadtische Versicherung AG Vienna Insurance Group in its acquisition of 100% shares in Seesam Life Insurance SE from Suomi Mutual Life Assurance Company. Seesam Life Insurance SE operates ten branches in all three Baltic States and provides services for 45,000 clients with a staff of approximately 200 employees. "This transaction is notable also for the fact that it is the first direct acquisition of shares in a SE (the new European company type) in the Baltics and one of the first in the whole of Europe", says Toomas Prangli, Sorainen's M&A partner in charge of the transaction along with Tomas Kontautas, head of Sorainen's Insurance team.

Advising Gjensidige Forsikring in acquisition of ADB RESO Europa
The Vilnius office of Sorainen is advising Gjensidige Forsikring, the largest Norwegian non-life insurer, in acquiring 100% of the shares of Insurance Company ADB RESO Europa, a major non-life insurance company in Lithuania which also operates in Latvia. A share purchase agreement was signed by Gjensidige's Latvian subsidiary AS Gjensidige Baltic on 4 January 2008 and the transaction is expected to be completed when required regulatory approvals are received. The project was led by senior associate Tomas Kontautas.

Advising on insuring property managed for 724 MEUR
Vilnius office advised a major local real estate manager in insuring commercial property. The sum insured was a record for the Lithuanian insurance market – 724 MEUR. The client was advised by senior associate Tomas Kontautas.

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

New market participant
Riga office is advising one of the largest European marine insurers in establishing a branch in Latvia and acquiring 100% shares in an insurance brokerage company.

Outsourcing agreement
Riga office advised a major US investment management company in respect of possibilities to conclude outsourcing agreements with Latvian insurers.

Other projects and cases
Riga office successfully assisted a policyholder (a carrier) in claiming against a leading Latvian insurance company regarding grounding of a ship.

Vilnius office has advised a major Lithuanian insurance broker company in implementing a D&O insurance model for a telecommunications company.

Vilnius office represented one of the largest Lithuanian insurance companies in settling an insurance event – damage to a warehouse during a storm.

Vilnius office represented a life insurer from a leading insurance group in a court dispute resulting from non-disclosure of precontractual information.

Vilnius office advised a major Lithuanian life assurance company in implementing the bancassurance model with a major local bank.

Other news

Sorainen launches office in Minsk
Sorainen opened an office in Minsk, capital of Belarus, on Wednesday 19 March 2008. Formerly operating in Tallinn, Riga, and Vilnius, the capital cities of the three Baltic States, Sorainen is now the first leading regional law firm in the European Union to open an office in Belarus.

According to Aku Sorainen, Managing Partner, the launch of the Minsk office was occasioned by clients' increasing interest in Belarus. "For many Western-European companies, Belarus is an entirely unexplored area of great potential as its territory exceeds the area of all the Baltic States taken together. The government of Belarus has recently taken a number of measures to open up its business environ-ment for EU businesses and to attract foreign investors to the country. This in its turn increases the demand for high-quality legal assistance in Belarus", says Aku Sorainen.

The newly opened Minsk office employs six lawyers and is already looking for new team members. The office is headed by Partner Maksim Salahub.

The Minsk office is fully integrated with Sorainen's other offices, advising clients in business, M&A, and trade law matters. The office specialises in advising on M&A, finance, banking, property, business, and tax law matters.