

# LEGAL UPDATE INSURANCE



**SORAINEN**  
BALTIC LAW FIRM OF THE YEAR

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International Financial Law Review (2009)  
PLC Which lawyer? (2009)

Dear Reader,

It is a pleasure to present the Autumn issue of our Insurance Legal Update. Although the economic environment where insurers and other market players operate has become harsh, the insurance market still remains active. Insurers are trying to restructure their Baltic operations in order to find the most efficient model in the current environment. The cross-border merger of If P&C Insurance Baltic subsidiaries advised by the Sorainen team is a highlight of this process.



The regulatory environment is also subject to several amendments; however, these look rather minor in relation to anticipated implementation of the Solvency II Framework Directive, adopted in April.

Regulatory reform is also familiar to Belarusian insurers. The Belarusian insurance market faces amendments in the liability insurance regime – more types of liability insurance will be compulsory, so that the level of protection for injured third parties will become higher.

These are just a few developments out of those described below. I hope this Autumn issue will give you some important hints as to where the legal environment and market players are moving. Sorainen is proud to be with you during these processes in this challenging time!

Yours sincerely,

Tomas Kontautas  
Partner, Head of Sorainen Regional Insurance Team

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## ESTONIA

### LEGISLATION

#### Amendments to the Insurance Activities Act

Amendments to the Insurance Activities Act (IAA) to transpose Directive No 2007/44/EC of the European Parliament and of the Council on qualifying holdings entered into force on 10 July 2009, clarifying requirements on acquisition of a qualifying holding in an insurance company. The amendments extend information regarding the acquirer and future managers to be filed with the Estonian Financial Supervision Authority (EFSA), and enact clearer procedural rules and deadlines.

Other amendments to the IAA also entered into force on 10 July 2009. The minimum sum insured in liability insurance contracts of an intermediary is raised to at least EUR 1.2 million for any single claim and to EUR 1.7 million yearly for all claims.

The maximum penalty for breaching some requirements of the IAA has increased significantly (ten times). Failure to provide required information before conclusion and during the validity of an insurance contract (e.g. art 428 and 429 of Law of Obligations Act) is as of 10 July 2009 punishable by a maximum penalty of EEK 500,000 (EUR 31,956).

From 1 January 2010, the minimum solvency margin will be increased respectively from EUR 3.2 million to EUR 3.5 million and from EUR 2.2 million to EUR 2.3 million. Additionally, the calculation basis of the solvency margin is amended.

#### Planned amendments to the Insurance Activities Act

In order to comply with the obligation arising from the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO), a draft law to amend the Insurance Activities Act (IAA) and other laws in the regulated financial sector is under legislative procedure. The main aim of the draft law is to extend possibilities to provide financial services on a cross-border basis. The plan is also to apply new regulation to non-WTO countries.

An Estonian insurance company or insurance mediator that wants to engage in insurance activities in a third country (i.e. a country that does not belong to the European Economic Area) or an insurance company or insurance mediator established in a third country that wants to engage in insurance activities in Estonia on a cross-border basis, must apply for a permit from the EFSA. Requirements on co-operating with the financial supervision authorities are also supplemented.

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### RECENT CASE LAW

#### Insurer may refuse compensation only if a breach of safety requirements increased the probability of the insured risk

The Estonian Supreme Court in its judgment No 3-2-1-10-09 of 1 April 2009 gave an opinion on an insurer's right to refuse

compensation due to a breach of safety requirements by the policyholder.

The mere fact that the policyholder breached safety requirements does not automatically mean that the insurer may fully refuse compensation. The standard term granting that right is void. The insurer may refuse compensation only to the extent of the increase in the probability of the insured risk due to circumstances caused by the policyholder.

However, the Supreme Court added that driving while intoxicated presumably increased the probability of a traffic accident and it is not precluded that such a severe breach of the Traffic Code may be the direct and only cause of an accident. Thus an insurer that proves that the breach was the only cause of the accident may still fully refuse compensation.

#### Motor third party liability insurance does not cover all damage caused by a motor vehicle

The Estonian Supreme Court in its judgment No 3-2-1-76-09 of 28 September 2009 gave an opinion on coverage of motor third party liability insurance (MTPL).

According to article 2 of the MTPL Act, MTPL is civil liability insurance of a person in possession of a major source of danger (Risk Liability) or, in the cases specified in article 27 of the MTPL Act, personal accident insurance. The Supreme Court held that causing damage within the meaning of Risk Liability means that a higher danger characteristic occurs to a thing or activity constituting a major source of danger. A motor vehicle as a major source of danger may also cause damage for reasons other than realisation of that characteristic higher danger. Article 1057 of the Law of Obligations Act lists the situations when there is no Risk Liability. The Supreme Court held that such damage is not covered by MTPL.

The Supreme Court also held that obligations arising from insured events that took place before the transfer of an insurance portfolio will not automatically transfer to the receiver of the insurance portfolio. However, with approval of the creditor (injured person), these obligations may be assigned.

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### MARKET NEWS

#### New structure of If insurance

The cross-border merger of If insurance Baltic companies has been completed and If continues its insurance activities in the Baltic states via Estonian non-life insurance company IF P&C Insurance AS, which has branches in Latvia and Lithuania. The reorganisation also resulted in management changes.

#### New manager of BTA Estonian branch

As of September 2009, the Estonian branch of BTA has a new manager – Olavi Laido, former CEO of If Eesti Kindlustus.

## Fennia closing down its business in Estonia

The Estonian branch of Fennia Mutual Insurance Company is in liquidation.

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## LATVIA

### LEGISLATION

#### Amendments to the Insurance and Reinsurance Intermediaries Law

The Insurance and Reinsurance Intermediaries Law has been amended to introduce a new legal institution – assistant insurance broker, i.e., a person who performs duties related to insurance and reinsurance mediation under supervision of an insurance broker or an employee of an insurance broker. However, the assistant has no authority to take decisions relating to insurance and reinsurance mediation. By 1 January 2010, insurance brokers who have assistants should ensure that, *inter alia*, their assistants comply with the minimum requirements set out in the law and have been properly trained. Starting from 1 January 2010, each insurance broker is required to keep a register of assistants.

#### Regulation on Licensing of Insurers, Issuing of Authorisations Relating to Certain Actions of Insurers, Coordination and Submission of Information

On 2 October 2009, a new regulation of the Latvian Financial Capital Market Commission on Licensing of Insurers, Issuing of Authorisations relating to Certain Actions of Insurers, Coordination and Submission of Information came into effect. This regulation, *inter alia*, addresses: 1) the licensing procedure; 2) the procedure for obtaining permission to transfer all or part of an insurance portfolio; 3) the procedure for coordination of the dividend payable, in case the financial statement includes an auditor's opinion; and 4) the procedure for submission of information proving compliance by management with the criteria set out in the law.

#### Differentiation of insurance premiums and indemnities

According to Cabinet of Ministers Regulation No 1002 dated 8 September 2009 on Application of Different Treatment in Determination of Insurance Premium and Insurance Indemnity, starting from 12 September 2009 life insurance is the only class of insurance in Latvia where insurance premium and insurance indemnity can be differentiated on the basis of the gender of an insured. This regulation is issued on the basis of Section 5<sup>1</sup> (2) of the Law on Insurance Companies and Their Supervision.

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## MARKET NEWS

### Insurance market shrinks

During the first half-year the non-life insurance market decreased by 21%. Aigars Freimanis, board member of AAS Seesam Latvia, foresees that the non-life insurance market will continue to shrink by 10% to 15% during 2010, thus reaching its size in 2006. Total shrinkage of the non-life insurance market in 2009 and 2010 combined might reach 45% to 55%. The life insurance market experienced a decrease of 27% in the first half-year.

### Market players and their market shares

During the first eight months the market leader in terms of underwritten insurance premiums in Latvia is AAS BTA. The second is AAS Gjensidige Baltic, which has managed to increase the amount of underwritten insurance premiums by 1% under current market conditions. They are followed by AAS Balta, AAS IF Latvia, AAS Ergo Latvija, and AAS Baltikums.

In total, ten non-life insurers have underwritten insurance premiums for LVL 158.58 million (EUR 225.64 million), that is for 24% less than during the same period last year. The amount of insurance indemnities paid out, however, has decreased by 14% to LVL 95.13 million (EUR 130.67 million).

### EUR 11.4 million losses in health insurance

During the first eight months of 2009, the health insurance industry in Latvia suffered losses of LVL 8 million (EUR 11.4 million) mainly as a result of price increases for medical services and a decrease in State financing for the medical sector. Insurance indemnities paid out during the first half-year increased by 52% in comparison to the same period last year.

### Exceeding health insurance policy limits

Another alarming tendency is exceeding health insurance policy limits. As indicated by one of the market leaders, AAS RSK, during the first half year the number of natural persons that have exceeded their health insurance limits is six times higher than during the same period last year.

### Changes in Bonus-Malus system

Starting from 15 September 2009, all vehicles owned by the same natural or legal person will have the same Bonus-Malus class (Motor Third Party Liability Insurance). In addition, the same Bonus-Malus class will be automatically allocated to each vehicle bought by that person. Under the previous system, such vehicles were allocated a neutral Bonus-Malus class. The view is that this innovation will give an extra advantage to careful drivers and encourage others to be more disciplined. For legal entities, especially those engaged in the transport business, this will create an additional incentive to check employee driving skills.

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## LITHUANIA

## LEGISLATION

**New regulation on acquiring and increasing holdings in the insurance and reinsurance sector**

On 19 February 2009, the Parliament approved a package of legislative amendments, transposing into Lithuanian law Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007, partially amending Directive 92/49/EEC of the Council and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and valuation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Directive 2007/44/EC).

Transposition of the Directive also required amendments to the Law on Insurance. Upon the effective date of the amendments, persons acquiring or increasing a holding in an insurance (reinsurance) undertaking are to be assessed solely against the following criteria: their reputation, experience, financial credibility, and capability for ensuring effective supervision following acquisition. The amendments also set forth procedures and time-limits for examining acquisition or increase of holdings in supervisory institutions.

**New rules for transparent, prudent, and sound management of insurance and reinsurance undertakings**

On 19 May 2009, the Lithuanian Insurance Supervisory Commission approved new wording of the rules for transparent, prudent, and sound management of insurance and reinsurance undertakings.

The new rules set forth core principles for transparent, prudent, and sound management of insurance and reinsurance undertakings, requirements for their corporate structure, as well as provisions for risk management and internal control systems.

Insurance and reinsurance undertakings have to restructure their corporate governance system according to the new requirements by 1 January 2010.

**New instructions against money laundering and terrorist financing in insurance sector**

On 19 May 2009, the Lithuanian Insurance Supervisory Commission approved new wording for instructions against money laundering and terrorist financing for insurance undertakings and insurance brokerage companies.

The new instructions replace previous instructions and set forth more detailed requirements for suspicious cash transactions and their suspension, customer identification rules, also stipulating more precise provisions as regards administration of the register of a customer's cash transactions.

The new instructions came into force on 31 May 2009.

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## RECENT CASE LAW

**Insurer must pay insurance indemnity to lessor but not lessee**

In civil case No 3K-3-366/2009 the Lithuanian Supreme Court clearly stated that an insurer must pay insurance indemnity under a MTPL insurance contract to the lessor (legal owner of a car which crashed in a road accident) rather than to the lessee. Otherwise, if the insurer pays the insurance indemnity to the lessee, the obligation to pay insurance indemnity is not duly fulfilled.

**State Social Insurance Fund may not claim recourse against Motor Insurers' Bureau**

In civil case No 3K-3-198/2009 the Lithuanian Supreme Court decided that if the State Social Insurance Fund pays any sums to a person injured in a road accident, it does not have the right to make a recourse claim against the Motor Insurers' Bureau in cases where the latter by law has an obligation to pay insurance indemnity.

**If an insurance indemnity is paid according to the reconstruction value of property, an insurance indemnity should include VAT**

In civil case No 3K-3-12/2009 the Lithuanian Supreme Court decided that where an insurance contract provides that insurance indemnity is calculated according to the reconstruction value of a property, the insurer must include in the indemnity all sums to be spent for reconstruction, i.e. also VAT.

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## MARKET NEWS

**Conditional authorisation to merge Swedbank gyvybės draudimas AB**

On 4 August 2009, the Lithuanian Insurance Supervisory Commission issued authorisation for insurance company Swedbank gyvybės draudimas AB to merge with insurance company Swedbank Elukindlustus Aktsiaselts.

**Baltijos garantas DUAB licence revoked**

On 14 April 2009, the Lithuanian Insurance Supervisory Commission revoked licence No 00002 of insurance company Baltijos garantas DUAB. This decision was made because Baltijos garantas DUAB had not increased the required amount of the guarantee fund by 30 March 2009.

**Reorganisation of RESO Europa ADB completed**

Insurance company RESO Europa ADB has been reorganised and incorporated into Gjsidige Baltic AAS. All RESO Europa ADB activities are continued through the Gjsidige Baltic AAS Lithuanian branch. Accordingly on 31 March 2009 the registration of RESO Europa ADB in the Register of Legal Entities was revoked.

### Lietuvos draudimas AB decreases authorised capital

On 5 May 2009, the Lithuanian Insurance Supervisory Commission approved amendments to the articles of association of insurance company Lietuvos draudimas ADB relating to decrease of the insurer's authorised capital from LTL 80,562,000 (EUR 23,232,589) to LTL 10,473,060 (EUR 3,020,236).

### Indexation of minimum guarantee fund

According to Paragraph 5 Article 39 of the Lithuanian Law on Insurance, the Lithuanian Insurance Supervisory Commission decided to increase the minimum guarantee fund of insurance undertakings registered in Lithuania up to LTL 3.5 million (EUR 1 million) from 1 January 2010.

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## BELARUS

### LEGISLATION

#### Mandatory insurance instead of licensing

The Government of Belarus is working on a draft Edict which will substitute a number of licensed activities with mandatory insurance.

The draft Edict, prepared by the Ministry of Finance, provides for liability insurance for 14 types of activity including trade (except trade in alcohol and cigarettes), public catering, wood processing, bank audit, design and construction of buildings and installations of the 1st and 2nd levels, tourist activities, domestic transportation, distribution of legal information, activities in the areas of geodesy and cartography, and some others.

The draft text establishes the same minimum amount of insurance coverage for all types of activity; this is equivalent to approximately EUR 70,000. During recent discussion of the draft in the government, the Ministry of Finance agreed to differentiate the amount of insurance liability depending on the type of activity in order to satisfy the claims of the business community.

#### Amendments to Decree on Insurance Activities

In April 2009, Decree of the President of Belarus No 530 on Insurance Activities was amended. The main novelty is a prohibition on insurance companies which are subsidiaries or dependent business entities in relation to foreign investors from providing services in the area of life insurance, mandatory insurance (including mandatory state insurance, property insurance related to delivery of goods, supplying services or performing contractor works for State needs), as well as insurance of property interests of the Republic of Belarus and its administrative territorial units.

#### Amendments to Decree on Promoting Export of Goods (Work, Services)

In August 2009, Decree of the President of Belarus No 534 on Promoting Export of Goods (Work, Services) was amended. At present, Beleximgarant (the only insurer entitled to insure export risks with State support) may insure other risks related to performance of export contracts on the basis of separate insurance agreements. Such other risks can be insured by other insurance companies only in case Beleximgarant refuses to insure.

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## MARKET NEWS

#### Belarus insurance market – crisis comes late

According to the 2009 1st half report, all insurance companies in Belarus have received a positive financial result, although for some companies the ratio of the outcome to equity capital amounted to a fraction of a per cent. It seems that for larger companies the insurance market is becoming tight.

The largest insurance company, Belgosstrakh, occupies 2nd position. To compare with the 1st quarter of 2008, the financial result of this state-owned company fell by 27.2% to approximately EUR 3,291,000. The financial result of major private insurer B & B Insurance Co was down even more – by 34.3%, amounting to approximately EUR 396,000. Nevertheless, despite the financial crisis, 15 out of 25 insurance companies improved their financial results compared to the 1st half of 2008. Moreover, all four companies supplying life insurance services improved their performance.

It is anticipated that the situation in the Belarusian insurance market will change for the worse in the coming months due to extension of the economic crisis in the country and increase of competition among insurers in developed insurance sectors.

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## SORAINEN NEWS

### RECENT TRANSACTIONS

#### Advising If P&C Insurance in cross-border merger in the Baltic States

Sorainen advised the client in the first cross-border merger in the Baltic States and possibly in the EU carried out under new legal acts adopted to implement the EU Directive on Cross-Border Mergers. The transaction was performed in order to restructure the client's insurance business in the Baltic States. The project involved significant corporate and regulatory work related to the cross-border merger of the Lithuanian and Latvian companies with the Estonian company. From the insurance regulatory perspective, the case included establishing branches in Latvia and Lithuania, transfer of insurance portfolios, and applying for permits from the insurance supervisory authority for transfer of shares, for transfer of insurance portfolios, and for merger. The case included extensive communication with supervisory authorities in Estonia, Latvia, and Lithuania and implementation of novel cross-border procedures which had not yet been implemented in the three Baltic States. The Sorainen team in this transaction was led by partners Karin Madisson, Tomas Kontautas, and Eva Berlaus.

#### Representing ERGO Kindlustuse in claim for insurance compensation

Sorainen Estonia office represented the client as defendant in a claim for compensation of ca. EEK 7.2 million (EUR 0.46 million) in a dispute regarding an advocate's civil liability insurance. The case involved complex issues of professional liability and insurance law, which are unprecedented in Estonian practice. The client won the dispute in the Insurance Dispute Committee. Partner Carri Ginter and senior associate Andrus Kattel acted for the client.

#### Advising retail trading company in settlement with leading Latvian insurer

Sorainen Latvia office represented a retail trading company in settlement with the leading insurer in Northern Europe after a fire in a building where sales inventory was stored. The production value of the claim was ca. EUR 180,000. Sorainen partner Pekka Puolakka and associate Santa Selga acted for the client.

#### Drafting legal acts for the Lithuanian Ministry of Economics

Sorainen Lithuania office advised the Ministry in drafting legal acts related to an export credit insurance top-up scheme, allowing the State to step in to the export trade and provide additional cover under a credit insurance contract where the private insurer had reduced credit limits. Sorainen took

part in the working group consisting of representatives of Euler Hermes, Coface, and Atradius, credit insurers active in the Baltics. On 17 July 2009, the Seimas (the Lithuanian Parliament) passed a Law on Special State Guarantees in the Sphere of Export Credit Insurance, which establishes a top-up trade credit insurance model. Partner Tomas Kontautas advised the client.

### PUBLICATIONS

#### First book on insurance intermediaries published

Dr Tomas Talutis, a member of the Sorainen Lithuania Insurance team, also a lecturer in Insurance Law at Mykolas Romeris University, has published a book entitled *Insurance Law: Peculiarities of Activity of Independent Insurance Intermediaries*. This is the first book on the topic in Lithuanian legal history.

Please note that this legal update is compiled for general information purposes only, free of obligation and free of legal responsibility and liability. It does not cover all laws or reflect all changes in legislation, nor are the explanations provided exhaustive. Therefore, we recommend that you contact Sorainen or other legal advisor for further information. The Sorainen Insurance Legal Update is published periodically (every 4-6 months) and covers legal news related to insurance in Estonia, Latvia, Lithuania, and Belarus. Electronic versions of Sorainen Legal Updates are available and can be subscribed to on the Sorainen website – [www.sorainen.com](http://www.sorainen.com).