

Insight

2 – 15 September 2013

Russian Legislation Update

Insurance

On 23 July 2013 the President signed Federal Law No. 234-FZ amending the Law of the Russian Federation "On Insurance Activities in the Russian Federation."

The purpose of the amendments is to bring Russian insurance laws into conformity with the international practice and to clarify the requirements and conditions for insurance activities in Russia. The key changes touch upon access of foreign investors to insurance activities in Russia, joint activities of insurers based on a contract, and solvency and financial stability of insurers.

The Law revises the list of insurable items; introduces the concept of insurance agents and insurance brokers, and establishes the requirements they are to meet and the conditions they are to follow to render their services. It introduces the concept of a franchise and its types (conditional and unconditional); develops licensing provisions for various types of insurance activities; introduces the system of internal controls and internal audit of the insurer.

On 1 September 2013, the Central Bank became the Insurance Supervision Authority. The Unified State Register of Insurers is posted on the website of the Central Bank Service for Financial Markets.

Access of foreign investors. An insurance company that is a subsidiary of a foreign investor (as defined in the Law) or where a foreign investor owns more than 49% of the charter capital may perform insurance activities in Russia if the foreign investor has been performing insurance activities according to the laws of the state of its incorporation for at least five years (before the amendments – at least 15 years). The Law removes certain limitations related to the types of insurance that such companies may provide.

Insurers where a foreign investor owns more than 51% of the charter capital are prohibited to insure life and auto civil liability. These limitations apply until 22 August 2017.



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In This Issue:

- Insurance
- Public Procurement
- Securities

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The limitations do not apply if an insurance company was established or reorganized under Russian law before 22 August 2012 and was entitled to provide these types of insurance in Russia.

Joint activities of insurers. *Coinurance.* The Law details the concept of coinsurance and, in particular, lays down that, at the occurrence of an insured event, the insurant and other beneficiaries may claim insurance compensation from any coinsurer. The coinsurers are jointly and severally liable for paying the insurance compensations unless the contract provides for the rights and obligations of each insurer.

Reinsurance. The Law introduces detailed regulations for reinsurance activities. Foreign insurance and reinsurance organizations may insure the obligations of Russian insurers to pay the insurance compensations under the main insurance contract. According to the amendments, reinsurance may be optional, obligatory, optional-obligatory and obligatory-optional (the regulation for these is based on the "may" – "must" principle as applicable to the main insurance contract).

The contract between the assigning insurer and the reinsurer may provide for the payment of a *bonus* – the obligation of the reinsurer to pay the assigning insurer part of the positive difference between the profits and the expenses of the reinsurer related to the reinsurance contract (a group of contracts). It is prohibited to reinsure the obligations under the life insurance and under the civil liability auto insurance contracts.

Insurance group. The Law defines an insurance group as an alliance of insurers that is not a legal entity, and where one or several participating insurers are under the control or significant influence of one insurance company (the head insurance company of the insurance group). For the purposes of the Law, control and significant influence are determined according to the International Accounting Standards applicable in Russia.

Insurance (reinsurance) pools. The Law broadens the concept of insurance pools and introduces specific regulations for the operation of reinsurance pools. According to the amendments, information about the insurance pools is to be posted on the pool's or the pool's leading insurer's website.

The insurer's solvency. The amendments establish (i) the structure of the insurance portfolio; (ii) the grounds for the insurance portfolio transfer; (iii) the specific features of the insurance portfolio transfer with a raise or discount; (iv) the requirements for notification on the intention to transfer the insurance portfolio; (v) the rights and obligations of the insurers transferring and accepting the insurance portfolio, and other things.

The insurer may invest its capital and/or actuarial reserves on the terms of diversification, liquidity, recoverability and profitability. The Central Bank shall determine a list of investable assets, the procedure for investing, and the requirements for the securities issuers and/or securities issues and asset structure in which such investment is allowed.

Specialized depositary. If the insurer provides, in particular, pension insurance and types of compulsory insurance, the securities accepted to cover its capital and actuarial reserves are to be recorded and/or kept by a specialized depositary. The amendments set out the requirements to the specialized depositary, its liability, rights and obligations under the contract on rendering the services of a specialized depositary, as well as the grounds for and consequences of the termination of such contract.

The Law will enter into force on 21 January 2014, save for certain provisions which enter into force on 1 January 2015.

Public Procurement

On 4 September 2013 the Government adopted Resolution No. 775 establishing the ceiling contract price exceeding which the supplier is to disclose additional information to the customer.

According to the Law on the Contractual System (Federal Law No. 44-FZ dated 5 April 2013), if the ceiling contract price is higher than the amount fixed by the Government, the supplier must provide the customer with information about (i) its beneficiaries, the company's sole executive body and the members of the board of directors; and (ii) its co-performers (subcontractors) if the subcontract price (total price of several subcontracts) exceeds ten percent of the contract price (please refer to our legal update for 18 March – 14 April 2013).

According to the Resolution, the supplier submits such information if the contract price exceeds RUB 1 billion (for federal needs) or RUB 100 million (for regional and municipal needs).

The Resolution will enter into force on 1 January 2014.

On 26 August 2013 the Government adopted Resolution No. 728 appointing executive authorities in the sphere of public procurement.

Pursuant to the Law on the Contractual System, the Government has established, among other things, that in the sphere of public procurement, the Ministry of Economic Development of the Russian Federation exercises the regulatory functions; the Federal Antimonopoly Service – the controlling functions (except for defense order and procurement information on which constitutes a state secret).

The Resolution will enter into force on 1 January 2014.

Securities

On 4 July 2013 the Federal Service for Financial Markets ("FSFM") issued Order No. 13-55/pz-n approving the Standards of the Securities Issue and Registration of Securities Prospectuses (the "Issue Standards").

The Order was registered with the Ministry of Justice on 30 August 2013.

Following the entry into force of Federal Law No. 282-FZ dated 29 December 2012, which was adopted to streamline the procedures of securities issuance, the Issue Standards have now been amended to be in compliance with this Law.

The Issue Standards regulate the issue of shares, issuer options, Russian depositary receipts and bonds of legal entities (except for state and municipal securities and bonds of the Central Bank), and the procedure for registration of the prospectuses of certain securities.

The Issue Standards now contain a detailed procedure for the issue of shares, bonds and issuer options, in the following stages:

- (i) approval of a resolution on the placement of securities (or other resolution constituting grounds for the placement of securities);
- (ii) approval of a resolution on the issue (additional issue) of securities; (iii) state registration of the issue (additional issue) of securities or assignment of the identification number to the issue (additional issue) of securities; (iv) placement of securities; and (v) state registration of a report on the results of the issue (additional issue) of securities or submission of a notification on the results of the issue (additional issue) of securities.

The Issue Standards, in particular, provide for a (i) procedure for the preliminary consideration of documents necessary for the state registration of the issue (additional issue) of securities; (ii) procedure for making amendments to the issue (additional issue) of securities or (and) the prospectus of securities; (iii) distinctive features of the issue of securities placed during the reorganization of legal entities and registration of the prospectus of securities, including in parts (main and additional parts); and (iv) new requirements to the execution of a range of documents to be submitted by the issuer for registration.

The Standards of the Securities Issue and Registration of Securities Prospectuses approved under FSFM Order No. 07-4/pz-n dated 25 January 2007 will cease to exist after the entry into force of the new Issue Standards.

The Order will enter into force 10 days after the date of its official publication.