

which carries out operations in monetary funds and other property may be prohibited from carrying out its business activities for a period of up to 90 days. Failure by a credit organization to comply with the requirements of the Anti-Money Laundering Law may serve as a basis for revocation of its banking license, or imposition of a fine in the amount of up to 1 per cent of the minimal statutory amount of charter capital (according to the Banking Law, the minimal statutory amount of the charter capital of a credit organization is 180 mln. rubles), or prohibition to perform certain banking operations for up to twelve months, or entail other administrative law liability. Furthermore, criminal liability is also applicable to persons (including company officers) for failure to comply with some of the requirements of the Anti-Money Laundering Law which, depending on the circumstances, varies from fines in the amount of up to 1 mln. rubles (approximately 35,000 USD), or the other income of the convicted person for up to five years, or imprisonment for up to 15 years (which may be applied together with the fine in the amount of up to 1 mln. rubles or the other income of the convicted person for a period of up to 5 years).

18. INSURANCE IN RUSSIA

18.1. Introduction

The insurance business and distribution of life insurance products in Russia is mainly regulated by Federal Law No. 4015-1 “On the Organization of the Insurance Business in the Russian Federation” dated November 27, 1992, as amended (the **OIB Law**) and the Civil Code of the Russian Federation (the **Civil Code**). In the cases envisaged by the OIB Law, federal executive authorities may adopt further regulatory acts governing insurance procedures. The insurance business is supervised by the Federal Insurance Supervisory Service (**FISS**), which is responsible for issuing insurance licenses and supervising the compliance of insurers with applicable regulations. The RF Ministry of Finance is in charge of developing various regulations in the insurance market.

Conducting insurance activities requires a license in Russia. Pursuant to the OIB Law, insurers must be legal entities incorporated in accordance with Russian legislation and need a license in order to conduct insurance business. Reinsurance services may be provided by foreign reinsurers not licensed locally. Foreign investors may access the Russian market via their Russian subsidiaries.

About 800 insurance companies are currently listed as possessing an insurance license and because of the current economic situation this number is reducing. There is a tendency towards consolidation of the insurance market, including as a result of FISS policy which is aimed at strengthening the financial stability of domestic insurers and decreasing the number of providers of “false” insurance or insurers not in compliance with legislation.

In reinsurance matters, Russian insurers work closely with foreign insurers and integrate into the international insurance market by establishing affiliated companies abroad.

18.2. Restrictions on Foreign Investments

Russian law places restrictions on insurance companies that are subsidiaries of foreign investors or where more than forty-nine percent (49%) in their charter capital belongs to foreign investors (with an exception discussed below). They cannot conclude personal insurance contracts in relation to property interests connected with citizens surviving until a certain age or date, death, or other events in citizens’ lives. They cannot provide mandatory liability insurance, mandatory state insurance or property insurance policies related to the performance or delivery of work under a contract for state needs as well as insurance of the property interests of state and municipal organizations.

A quota is established in respect of the foreign capital present in the aggregate capital of insurance companies operating in Russia. At present this quota is set at twenty-five per cent (25%) and is far from being exceeded. Should the foreign capital exceed this quota, the regulator must stop issuing licenses to insurance companies that are affiliates of foreign insurers or which are more than forty-nine percent (49%) foreign-owned.

An exemption from the above restrictions is provided in Clause 5 of Article 6 of the OIB Law. This exemption applies to subsidiaries of foreign companies and to companies with foreign capital exceeding the forty-nine percent (49%) limit, whose parent organizations are situated in member states of the European Communities. This exception is established in the “Agreement on Partnership and Cooperation Instituting Partnership between the Russian Federation on the One Hand and the European Community and the Member States Thereof on the Other” dated 24 June 1994.

According to various sources, there are legislative initiatives planned to allow foreign insurance companies to directly open branches in Russia. Incorporation and operation of such branches would be supervised by the FISS, and they would need to be permanent establishments for tax purposes. However, it is not clear when such legislation may be adopted.

18.3. Regulation of the Insurance Market and Products

The OIB Law contains a general description of the Russian insurance market organization, requirements in relation to licensing, operation and liquidation of insurance businesses, as well as regulation of other participants of the Russian insurance market, such as insurance brokers and dealers.

The Civil Code establishes the types of insurance, the concept and essential terms of insurance contracts, the rights and duties of parties to such contracts, rules for the change of parties and beneficiaries to insurance contracts, rules for termination of insurance contracts, as well as other fundamental insurance-related regulation. In particular, Article 934 of the Civil Code establishes the basis for personal (life and health) insurance and Article 929 the basis for property insurance (property insurance, liability insurance and business risks insurance).

18.4. Types of Insurance in Russia

Russian law provides for two basic types of insurance: personal insurance (such as life and health) and property insurance (property insurance, liability insurance and business risks insurance). The law also mentions the possibility of issuing insurance policies incorporating investment elements in the case of life insurance, however, because there is no further regulation of such instruments and for a number of other reasons, it is not clear how the investment provisions of such insurance policies would be treated in courts. A number of Russian major insurance carriers offer packages for life insurance with investment possibilities referred to as “elite”, however, no real market for such insurance products has been established so far.