

## Insurance and reinsurance in the Russian Federation: overview

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### MARKET TRENDS AND REGULATORY FRAMEWORK

#### 1. What were the main trends in the insurance and reinsurance markets over the last 12 months?

The number of companies in the market reduced in 2013-2014, due to several liquidations. However, there was a significant increase in transactions in the insurance market, despite the general economic slowdown.

Most experts note a slowdown and high loss ratio for retail insurance in 2013-2014, but with growth in corporate insurance products.

In 2013 the Federal Finance Market Service (FFMSC), which supervised and controlled insurance activity in Russia, was incorporated into the Central Bank of the Russian Federation (Bank of Russia) becoming the largest regulator in Russia.

#### 2. What is the regulatory framework for insurance/reinsurance activities?

##### Regulatory framework

Insurance activities (including reinsurance) are primarily regulated by the following legislation:

- Law "On the Organisation of Insurance Activity in the Russian Federation" of 1992 (Insurance Law), which is main source of regulation regarding insurance activities.
- Civil Code of the Russian Federation.
- Code of Merchant Shipping of the Russian Federation.
- Air Code of the Russian Federation.
- Federal Law "On the Basis of Obligatory Social Insurance".
- Federal Law "On Mutual Insurance".

As set out in the legislation, insurance activity involves the following parties:

- **Insurers.** These are legal entities that perform insurance activities, reinsurance activities and mutual insurance activities under a licence. Insurers can only perform either individual insurance or individual and property insurance.
- However, some insurers operating on the basis of foreign investment are limited in their insurance activities. For example, an insurer that is a subsidiary of a foreign investor, or that has more than 49% foreign investment in its charter capital, cannot, among other things, perform individual life insurance or property insurance connected with supply and contract work for the state, state and municipal entities.

- In addition, such an insurer, as a subsidiary of a foreign investor, can perform insurance activity only if the foreign investor is an insurance company with at least five years' practice in the foreign jurisdiction.
- **Insurance agents/ insurance brokers.** These are individual entrepreneurs or legal entities providing intermediary services to insurers or insured persons in relation to insurance activities (such as the selection of a counterparty under an insurance agreement and negotiation of its terms and conditions).

Insurance activity is also subject to general legal principles. For example, insurers are prohibited from insuring illegal interests, damages caused by gambling, or expenses related to hostage recovery.

##### Regulatory body

Insurance activity was previously controlled and supervised by the Federal Finance Market Service (FFMSC). However, as a result of administrative reforms in 2013, the FFMSC was incorporated into the Bank of Russia. The regulatory functions of FFMSC are now performed by the relevant department of the Bank of Russia.

### REGULATION OF INSURANCE AND REINSURANCE CONTRACTS

#### 3. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

##### Insurance contract

Under a contract of insurance, the insurer is obliged to cover the insured's damages and other negative consequences (such as loss of property, payment of contractual damages to third parties, disability and personal injuries), if an event stipulated in the contract occurs. The exact amount of compensation paid to the insured must be indicated in the insurance contract as well as the amount of premium paid to the insurer for its services.

The contract of insurance must be in a simple written form executed by the parties. In practice, most insurers offer standard drafts of insurance contracts which may be non-negotiable.

##### Reinsurance contract

A reinsurance contract creates an obligation for the insurer to cover the insured's damages or other negative consequences. Such contracts may be entered into between the initial insurer under the insurance contract and a subsequent insurer which undertakes to cover the initial insurer's expenses related to payments to the insured under the insurance contract.

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#### 4. Are all contracts of insurance/reinsurance regulated?

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The following types of insurance contracts are regulated by the legislation:

- Property insurance contracts.
- Individual insurance contracts (covering life and health).
- Social insurance contracts (covering retirement or disability).
- Civil responsibility insurance contracts (covering responsibility towards third parties).
- Business risks insurance.

### CORPORATE STRUCTURE

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#### 5. What form of corporate organisation can insurers take?

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An insurer can take any form of corporate organisation recognised under the applicable law. In practice, Russian insurers usually take the form of:

- An open joint stock company (commercial corporation).
- A limited liability company (commercial corporation).
- A mutual insurance company (non-commercial organisation similar to an association or union).

### REGULATION OF INSURERS AND REINSURERS

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#### 6. Are all insurers and reinsurers regulated? Are they all regulated in the same way?

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All insurers and reinsurers are regulated under the same principles and provisions of the legislation.

#### 7. Can insurers and reinsurers carry on non-insurance business? Are there any restrictions on their business activities?

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Insurers and reinsurers cannot carry on non-insurance business activity under mandatory provisions of the legislation.

#### 8. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

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In general, obligations under an insurance contract (insurance portfolio) are transferable. However, such transfers can only be performed on certain conditions being fulfilled, for example:

- The new insurer must comply with the rules of financial stability and assets requirements stipulated in the Insurance Law.
- The new insurer's licence must allow the insurance activity of the transferred insurance contracts.

### OPERATING RESTRICTIONS

#### *Authorisation or licensing*

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#### 9. Does the entity or person have to be authorised or licensed?

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##### **Insurance/reinsurance providers**

All insurance or reinsurance activities must be licensed by the Bank of Russia. A party seeking a licence must provide a number of documents specified in the Insurance Law to the Bank of Russia (such as licence application, foundation documents, legal entity state registration documents and shareholders information, among others).

Within 60 days of receiving these documents, the Bank of Russia will grant a licence or decline an application on a limited number of specific grounds. The grounds for refusal of the grant of a licence are, among others:

- Using a company (applicant) name that is already used by another insurance company.
- Outstanding breach of the legislation.
- Discrepancies or false information in the licence application documents.
- A non-expunged conviction record of the sole executive body or chief accountant.

##### **Insurance/reinsurance intermediaries**

All insurance or reinsurance activities (including mutual insurance activities and broker insurance activities) are subjects to licensing by the Bank of Russia.

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#### 10. What are the main exemptions or exclusions from authorisation or licensing?

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There are no exemptions or exclusions from the licensing of insurance or reinsurance activities.

##### *Restrictions on ownership or control*

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#### 11. Are there any restrictions on the ownership or control of insurance-related entities?

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##### **Insurance/reinsurance providers**

There are no expressly stated restrictions on ownership or control of insurance-related entities. However, Russian governmental bodies have a right to refuse acquisition of control over an insurance-related entity in certain circumstances:

- The Federal Anti-monopoly Service (FAS) can prohibit the purchase of shares in a major insurance company if this transaction breaches anti-monopoly requirements.
- The Government Commission has a veto right over transactions related to the acquisition of Russian companies by foreign investors.

##### **Insurance/reinsurance intermediaries**

See above, *Insurance/reinsurance providers*.

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## 12. Must owners or controllers be approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

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### Insurance/reinsurance providers

Owners or controllers of an insurer must obtain such approval from the Bank of Russia before:

- Increasing the insurer's charter capital through foreign investment.
- Selling the insurer's stocks and shares to foreign investors.

In addition prior approval of the FAS or Government Commission may be needed if changes in control or ownership over the insurer fall under anti-monopoly or foreign investment legislation.

### Insurance/reinsurance intermediaries

See above, *Insurance/reinsurance providers*.

### Ongoing requirements for the authorised or licensed entity

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## 13. What are the key ongoing requirements with which the authorised or licensed entity must comply?

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### Insurance/reinsurance providers

Entities that perform insurance activities must:

- Provide reports regarding their activities and financial stability to the Bank of Russia every three months.
- Comply with the legislation (*see Question 2*) and respond to warnings from the Bank of Russia (*see Question 14*).
- Provide the Bank of Russia with any information that it requests from time to time.

### Insurance/reinsurance intermediaries

See above, *Insurance/reinsurance providers*.

### Penalties for non-compliance with legal and regulatory requirements

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## 14. What are the possible consequences of an entity failing to comply with applicable legal and regulatory requirements? What recourse do policyholders have if they have done business with a non-approved entity?

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### Insurance/reinsurance providers

The Bank of Russia can issue a warning to an insurer if it fails to comply with applicable legal and regulatory requirements by, among other things:

- Performing a prohibited activity.
- Violating the insurance funds set-up requirements.
- Violating statutory rules on providing reports to the Bank of Russia.

If the insurer fails to comply with the warning requirements, the Bank of Russia can either:

- Limit the insurer's licence, so that they cannot conclude certain types of insurance agreements.
- Suspend the insurer's licence, so that they cannot conclude any insurance agreements, reinsurance agreements or broker insurance agreements.

If the insurer fails to comply with the warning requirements after a licence is limited or suspended, the Bank of Russia can recall the licence altogether. In the case of a licence recall, the insurer can apply for a new insurance licence in the future. However, this is unusual as a licence recall usually leads to insolvency.

Within six months after its licence has been recalled, the insurer must:

- Adopt a corporate decision to cease insurance activity.
- Perform any outstanding obligations under existing contracts of insurance.
- Perform the transfer of its obligations following from the contract of insurance or terminate its contract of insurance, for example, by transferring all insurance policies to another licensed insurer or terminating insurance contracts (if allowed by the applicable legislation/contract terms).

A policyholder who has done business with a non-approved entity can both:

- Ask for a criminal investigation to be undertaken in relation to a non-approved entity.
- Claim damages arising from business with a non-approved entity.

### Insurance/reinsurance intermediaries

See above, *Insurance/reinsurance providers*.

### Restrictions on persons to whom services can be marketed or sold

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## 15. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

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There are no specific restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold.

## REINSURANCE MONITORING AND DISCLOSURE REQUIREMENTS

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## 16. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

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Reinsurance companies are not obliged to monitor the claims, settlements and underwriting of the cedant company. However, some information may be obtained from public sources, such as information regarding claims and court proceedings, accounting reports and major transactions.

## 17. What disclosure/notification obligations does the cedant company have to the reinsurance company?

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Once a contract is concluded, the cedant company's disclosure and notification obligations to the reinsurance company depend on the contract. However, the cedant company must disclose the fact of the reinsurance agreement on the internet.

## INSURANCE AND REINSURANCE POLICIES

### *Content requirements and commonly found clauses*

#### 18. What are the main general form and content requirements for insurance policies? What are the most commonly found clauses?

##### **Form and content requirements**

Insurance contracts must be concluded in writing. They can be either:

- Individually negotiated and signed by both parties.
- A standard policy of the insurer that the insured agrees to and signs.

In addition, insurance contracts must include the following terms:

- The insured property, property interest or individual.
- The event that triggers the insurance.
- The amount of insurance.
- The insurance agreement's duration.

##### **Commonly found clauses**

Clauses commonly found in insurance policies include:

- A provision that the insurance does not cover moral damages, lost profit and other implicit damages.
- A provision that insurance coverage should not exceed the real value of the property.
- A one-year term for the contract of insurance.

#### 19. Is facultative or treaty reinsurance more common? What are the most commonly found clauses in reinsurance policies?

##### **Facultative/treaty reinsurance**

Facultative reinsurance is more common. Treaty (or obligatory) reinsurance is not recognised under Russian law.

##### **Commonly found clauses**

Commonly found clauses are the same as for insurance policies (see Question 18, *Commonly found clauses*).

Russian law does not recognise the concept of follow-the-fortune as a separate doctrine, but in practice when risks have been ceded, the reinsurer takes on the same terms as the ceding company for that risk.

##### ***Implied terms***

#### 20. Are there any terms that are implied by law or regulation (even if not included in the insurance or reinsurance contract)?

Principles of the Civil Code apply to insurance and reinsurance contracts. For example, a principle of good faith that (in the context of a contract of insurance) means, among other things, the insured's obligation to disclose to the insurer significant information related to the insured event.

### *Customer protections*

#### 21. How do customer protections in the general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

The insured can terminate the insurance contract at any time. If this is the case, the insurance premium may be retained by the insurer (although the insurance agreement may provide otherwise).

The insurance contract can stipulate the cancellation procedure and the exact rules for policy cancellation by the insurer. However, this is not common.

##### ***Standard policies or terms***

#### 22. What are the main standard policies or terms produced by trade associations or relevant authorities?

The insurance trade associations have work groups and committees that participate in the legislative process. The Ministry of Finance has some standard policies, such as policies for compulsory third party liability car insurance.

Insurance companies usually have standard framework contract terms.

## INSURANCE AND REINSURANCE POLICY CLAIMS

### *Establishing an insurance claim*

#### 23. What must be established to trigger a claim under an insurance policy?

The insured must notify the insurer without delay if an event specified in the insurance contract occurs. The law does not specify the form of notification and what proof must be provided. The insurance contract usually stipulates that the insured must both:

- Notify the insurer as soon as possible when an event specified in the insurance contract occurs (by phone, e-mail or fax).
- Provide the insurance company with supporting documents within the period specified in the contract. The contract usually specifies the documents that must be provided.

If the insured fails to notify the insurance company in time, the insurance company can refuse to pay insurance compensation under the contract, unless the insured proves in court that either:

- The insurance company became aware of the insured event in good time.
- Failure to notify the insurance company could not have influenced the obligation of the insurance company to pay insurance compensation.

##### ***Third party insurance claims***

#### 24. What are the circumstances in which third parties can claim under an insurance policy?

Third parties can claim under an insurance policy if they are beneficiaries under the policy (for example, in the case of civil responsibility insurance contracts that cover responsibility towards third parties).

### Time limits

#### 25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

There are time limits outside of which the insured/reinsured is barred from making a claim:

- Under property insurance contracts: two years.
- Under contracts insuring liability for damage caused to the life, health or property of other persons: three years.

The parties cannot amend the statutory limitation periods by agreement.

### Enforcement

#### 26. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

The original policyholder cannot enforce the reinsurance contract against the reinsurer. Under a reinsurance contract, the insurer under the main insurance contract is responsible to the original policyholder.

In relation to insolvent insurers, see *Question 29*.

### Remedies

#### 27. What remedies are available for breach of an insurance policy?

If there is a breach of an insurance policy, the non-defaulting party can seek termination of the insurance contract and damages.

There is no concept of aggravated damages in Russian law and recovery of damages is generally difficult.

If the insurance company fails to provide insurance compensation, the insured can bring a claim for recovery of insurance compensation plus interest. These claims are usually dealt with within nine to 12 months in commercial courts (including consideration of the case by the court of appeal and the court of cassation).

### Punitive damage claims

#### 28. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

Punitive damages are not recognised in Russia except for certain provisions in consumers' legislation. Therefore, generally punitive damages are not insurable.

## INSOLVENCY OF INSURANCE AND REINSURANCE PROVIDERS

#### 29. What is the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services? What regulatory and/or other protections exist for policyholders if the insurance company is insolvent?

The Federal Law "on Insolvency" regulates insurance companies' insolvency. The policyholder can both:

- Terminate the insurance contract within one month from notification of the insurer's insolvency.
- Seek a proportional rate of insurance compensation.

The insolvency procedure can be started under any of the following circumstances:

- The insurance company is not in a position to satisfy creditors' claims in the amount of RUB100,000 in 14 days.
- The insurance company is not in a position to satisfy creditors' claims under a court decision in 14 days.
- The insurance company's assets' value is not enough to satisfy creditors' claims.

#### 30. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

Whether excess coverage can "drop down" depends on the terms of the contract. There is no relevant established court practice.

#### 31. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

This is possible but the right to set off mutual debts and credits in an insolvency proceeding involving an insurer or reinsurer is significantly limited.

## TAXATION OF INSURANCE AND REINSURANCE PROVIDERS

#### 32. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services?

Insurance companies are subject to federal, regional and local taxation. Therefore, insurance companies must pay income tax, value added tax (VAT), property tax, transport tax and land tax. Income tax is charged at 20% (on profit minus business expenses).

## INSURANCE AND REINSURANCE DISPUTE RESOLUTION

#### 33. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

There are no special procedures or venues for dealing with insurance or reinsurance complaints or disputes. Parties can agree to settle a dispute by mediation or arbitration, or through the court system.

### 34. Are arbitration clauses in insurance and reinsurance agreements enforceable?

Arbitration clauses in insurance and reinsurance contracts are generally enforceable. Under recent court practice, if the court finds that the arbitral institution that the parties have agreed on financially depends on one party (which raises reasonable doubts regarding impartiality), then an arbitration clause is not enforceable.

### 35. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

#### Arbitration

The parties can choose any arbitration centre or ad hoc arbitration to resolve their dispute.

#### Court system

The parties are free to agree on a venue to resolve their dispute within the Russian court system (a particular court of general jurisdiction or a particular commercial court can be agreed on). The parties are also free to choose any foreign law as an applicable law, if there is a foreign element in the contract (for example, one of the parties to the contract is a foreign company). If parties to the contract come from different jurisdictions, they can agree that a dispute will be resolved by the court of a foreign jurisdiction.

## REFORM

### 36. What proposals are there for reform of the law, regulation or rules relating to the provision of insurance or reinsurance services?

Proposals for reform of the law include:

- Adoption of an Insurance Code in order to organise a significant number of legal acts.
- Elimination of discrepancies between the Insurance Law and the Civil Code.
- Introduction of legal definitions of insurance concepts such as franchise and abandon.
- Legal definition of the principle of damages compensation.
- Elimination of discrepancies in tax legislation regarding insurance companies.
- Implementation of insurance principles regarding insurance of nuclear, space, aero and military risks.
- Harmonisation of the legislation with Directive 2002/83/EC on life assurance, Directive 73/239/EEC on direct insurance and Directive 2001/17/EC on the reorganisation and winding up of insurance entities (Insurers Reorganisation and Winding-up Directive).

## MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

### VTB Insurance (*ВТБ Страхование*)

**Main activities.** Property insurance, private insurance, third party general and professional liability insurance.

**W** <http://vtbins.com/>

### Ingosstrakh (*Ингосстрах*)

**Main activities.** Property insurance, private insurance, mortgage insurance, life insurance, transport insurance.

**W** [www.ingos.ru/en/](http://www.ingos.ru/en/)

### Sogaz (*Согаз*)

**Main activities.** Property and personal insurance, including special insurance programmes for enterprises in different industries.

**W** [www.sogaz.ru/eng/](http://www.sogaz.ru/eng/)

## ONLINE RESOURCES

**W** [www.pravo.gov.ru](http://www.pravo.gov.ru)

**Description.** The site is maintained by the Government of the Russian Federation as an official public source of legislation published in Russian.

**W** [www.garant-center.ru/sistema-garant-na-angliyskom-yazyke](http://www.garant-center.ru/sistema-garant-na-angliyskom-yazyke)

**Description.** The site is unofficial and maintained by the commercial organisation "Garant". It is relatively trusted and up-to-date, however it is not free of charge.

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#### Recent transactions

- Acting for Vítkovice Power Engineering a.s. in a dispute with one of Russia's largest commercial banks regarding collection of EUR6.5 million under a bank guarantee issued in the form of a SWIFT message.
- Representing one of Russia's largest banks in a famous IP case. The claimant alleged that the bank infringed the claimant's copyright. The claimant's case was dismissed.
- Acting for M. Video Management in a dispute in an arbitration court with a Russian developer regarding the execution of a preliminary lease agreement.

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