Russia has joined the World Trade Organisation in August 2102. Has the Russian insurance industry noticed this?

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The Protocol of the Accession of the Russian Federation to the World Trade Organisation (WTO) was ratified by the Russian Federation and entered into full force on 22 August 2012. Let us have a look at what the Russian insurance market has eventually faced once the country became a member of the WTO.

The quota

As of 1 January 2013 foreign investment represented 17.41% of the total amount of the charter capital of Russian insurance companies. Nevertheless, one of the conditions precedent for the Russian membership in the WTO was the increase of the foreign investment quota up to 50% of the total amount of the charter capital of Russian insurance companies.

On 25 December 2012 the Law on Organisation of Insurance Industry was amended and the quota was increased up to 50%. However, the method for calculating the total amount of foreign investment into the Russian insurance industry has not been clarified. As we reported in December 2011, according to the Report of the Working Party on the Accession of the Russian Federation to the WTO, foreign investment into the Russian
insurance sector should not include foreign investment in Russian insurers or reinsurers made prior to 1 January 2007 or into insurance companies that are going to be privatised after the date of accession of the Russian Federation, i.e. after 22 August 2012. Moreover, certain Russian insurance companies with foreign investment made after 1 January 2007 and established for more than 12 years should not be regarded as companies with foreign investment. Finally, the Report provided that an increase in charter capital of a foreign-invested Russian insurance company that has been financed by its own profits earned in the Russian Federation or repatriated to the Russian Federation from abroad, as well as investments by the Russian subsidiary companies of foreign investors would constitute domestic investment for the purposes of calculating the quota.

At present, there is no rule for calculating the quota. The older internal regulations of the Federal Service for Securities Market that provided for some guidance were abolished in September 2013. According to the law, the Central Bank as the new regulator of the Russian insurance industry has to develop the procedure for calculating the quota. The Central Bank has not yet addressed this issue so it remains unclear how it is going to calculate the quota as of 1 January 2014 and what kind of data it will use.

Cross-border supply of insurance services

Under the current legal regime, no cross-border supply of insurance services is allowed except for marine insurance in limited cases and motor liability insurance in cross-border movements. According to the most recent amendments to the Law on Organisation of Insurance Industry, these limitations will be abolished completely as of 21 January 2014 when the amendments come into full force and effect. So, one might get an impression that from this date the Russian insurance market would be completely open to foreign players and no restrictions would apply to cross-border supply of insurance services. Certainly, this is not the case. It is true that the amended Law on Organisation of Insurance Industry does not incorporate the provisions of the Protocol of the Accession of the Russian Federation to the World Trade Organisation on cross-border supply of insurance services. However, pursuant to the Constitution, the Protocol as an international treaty duly signed and ratified by the Russian Federation is a part of the Russian legal system, has a direct application and prevails over the national laws.

Under the Protocol, as of 22 August 2012, there should be no limitations on cross-border supply of insurance of risks connected with international passenger transportation and liability arising therefrom, international transportation of goods, international commercial air transportation and liability arising therefrom as well as liability within the international green card system. Within four years of Russia's accession to the WTO, there should be no limitation on insuring risks associated with domestic commercial air and maritime transportation, including insurance of goods being transported, the vehicle transporting the goods and any liability arising therefrom, except insurance of the air carrier's liability and life and health insurance of the aircraft crew.

For example, already today foreign insurers can insure cargo shipped from a foreign country to Russia all the way through. Some international companies, for instance, automotive manufacturers with subsidiaries in Russia have already started thinking of terminating local contracts with Russian insurers and covering all their risks related to logistics and transportation with preferred providers in their home countries.

Commercial presence

Russian commitments in relation to commercial presence of foreign insurers and reinsurers are more complex. They have been described in some detail in our previous reports. It would be fair to say that due to the long
transition period and because of other more pressing issues facing the Russian insurance industry this topic has not been widely discussed and the full impact of this development is yet to be assessed. The recent amendments to the Law on Organisation of Insurance Industry have reflected the provisions of the Protocol in relation to commercial presence and it remains to be seen how they will affect the Russian insurance market.

Authors

Leonid Zubarev
Senior Partner
Moscow

Expertise

Insurance