

Activity of foreign insurers in Belarus through insurance intermediaries

May 20 2010

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The Belarusian insurance market is still heavily controlled by the state. Foreign insurers, except for some cases, are prohibited from conducting insurance activity in Belarus without establishing and licensing in Belarus. This means that there are only few possibilities for foreign insurers to act in Belarus through insurance intermediaries. On that basis, the article aim to describe the general situation regarding the activities of insurance intermediaries in Belarus as well to consider these few possibilities which may be used by foreign insurers.

Two types of insurance intermediaries are known to Belarusian legislation: insurance brokers and insurance agents.

Activity of insurance brokers

Insurance brokers are insurance intermediaries that act on their own behalf. Edict of the President of the Republic of Belarus No. 530 as of 25 August 2006 (the **Edict on insurance**) obligates insurance brokers to assist policyholders in conclusion of insurance agreements with the insurers possessing stable credit standing. The insurance broker may act as an intermediary only in respect of voluntary insurance and reinsurance. Moreover, insurance brokerage is only one type of commercial activity which may be engaged in for the company acting as an insurance broker.

The insurance broker may operate on the insurance market upon registration with the Ministry of Finance of the Republic of Belarus (the **MoF**) and obtaining the license on the intermediary insurance activity issued by the MoF. Likewise establishment of subdivisions of the insurance broker may only be done upon permission of the MoF.

Belarusian laws impose certain restrictions in respect of the offices of director, deputy directors and chief accountant of insurance brokers. These offices can be taken either by Belarusian citizens or by foreigners permanently residing in Belarus. All candidates must undergo examination of their professional qualification by the MoF. In addition, the director, his deputies, chief accountant and heads of departments of the insurance broker are not allowed to combine jobs, except for teaching, scientific or other creative activity.

Activity of insurance agents

Insurance agents carry out intermediary insurance activity on behalf of insurance companies and act within the limits established by them. The insurer possesses rights and obligations resulting from the activity of insurance agents. If the insurance agent acts *ultra vires*, an insurance agreement is considered effective if the insurer subsequently approve that agreement.

Legal entities – insurance agents act on behalf of insurers under civil contract. Natural persons conduct their intermediary activity either on the basis of labour agreement, or on the grounds of civil contract (e.g. contractor's agreement). Belarusian laws allow insurance agents to act on behalf of several insurance companies only with regard to life insurance. All other types of insurance activities should be performed by the insurance agent in connection with one insurer (as a tied insurance intermediary).

In contrast to insurance brokers, insurance agents are entitled to deal with compulsory types of insurance. Whereas natural persons are not restricted in their ability to exercise intermediary activity in the sphere of compulsory insurance, legal entities may do so only if they are state-owned.

Limitations for foreign insurers

Although insurance legislation in the Republic of Belarus is constantly developing, the regulator remains cautious to foreign players. Foreign insurers are expressly prohibited from conducting insurance activity in Belarus without state registration with the MoF and obtaining respective license.

Belarusian legal entities and citizens, as well as foreign legal entities engaged in activity on the territory of the Republic of Belarus are allowed to insure their material interests on the territory of the Republic of Belarus only with the insurers registered in Belarus. As there is no official interpretation of the wording “valuable interests on the territory of the Republic of Belarus”, its meaning remains unclear and no official clarifications or established courts practice exists on that regard.

The only existing legal exception is provided by the Edict on insurance and allows to contract with the foreign insurers and/or brokers only for legal entities that:

- *are established after April 1, 2008;*
- *are registered and may conduct its activity in the locality with the population size less than 50,000 people;*
- *are producing their own goods or services.*

The declared rationale for such exemption is the need to create incentives for production of goods and services in regions.

The Administrative Code of the Republic of Belarus set forth administrative responsibility for conclusion of insurance agreements on behalf of insurance companies established outside Belarus. Penalty for such violation is the fine in the amount of twofold income gained in the result of illegal activity. Public authorities entitled to carry out investigation and to impose penalties are tax inspections.

In reality some foreign insurers offering personal and particularly retirement and life insurance maintain their unofficial agents in Belarus and many Belarusians do insure their interests with the foreign insurers either by entering into insurance contracts outside Belarus, or doing that in Belarus but paying insurance premiums from abroad.

Furthermore, Edict on insurance forbids any intermediary activity connected with conclusion of insurance agreements on behalf of foreign insurers in Belarus. Thus the only legal way to enter Belarusian insurance market available for the foreign insurer or broker until now is to establish a branch or subsidiary in Belarus and obtain appropriate license from MoF.

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