RUSSIAN INSURANCE LAW

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Introduction

There was a story told to the author by a leading Lloyd's underwriter specialising in Russian risks, that during one of his first visits to Russia he had been explaining the general principles of insurance to a Russian businessman. On taking his leave, the Russian asked: "All you have told me is very interesting, but you did not tell the main thing - how soon could I get my insurance premium back if nothing happens?"

This story is not uncommon in Russia, and serves as a useful example of the kind of insurance culture that prevails in Russia today. The situation has progressed a little during the last ten years but it is still a market where the question "would you like insurance?" is almost inevitably answered "what for?".

Having such a market within which to operate, it is understandable that Russian market practice has still some way to progress. There has simply not been the necessity to develop a standard practice.

In this situation it is of real benefit that Russia has a Continental (i.e. Statute) system of Law as despite the fact that there is no common market practice, Statute Law on insurance is well developed.

Lacking any real market practice, Russian insurance law takes its bases from the laws of other countries, England being foremost. However, there are significant differences where the Russian legal system has developed some original provisions and amendments. This is why foreign insurance practitioners often find themselves misunderstood not only by the general Russian public but also the Russian insurance market.

In this article the author will try to give a clear explanation of the main provisions of Russian insurance law, the aim being to provide readers with an understanding of its originalities. Having this in mind, particular attention is paid to provisions that differ from the English equivalents.

Property and marine insurances are used as suitable examples, these being the areas of insurance currently offering the most potential. Other classes of insurance deserve separate consideration.

Sources of Russian Insurance Law

The oldest statute in force is the Act "On The Organisation Of Insurance Business In The Russian Federation" 1992, which contains some definitions of insurance but is mainly concerned with the regulation of insurance companies.

The main legal statute on insurance law is the Civil Code (part two) 1996 (CC 96). It is a comprehensive act of civil law that includes a chapter on insurance, appropriately titled "Chapter 48 - Insurance". Unlike previous Russian (Soviet) statutes, the CC 96 pays considerable attention to insurance having 44 articles in this chapter.

In addition to the CC 96 there are two further Acts that include regulations governing the practice of marine and medical insurances. These are the Marine Trade Code 1999 (MTC 99) and Medical Insurance Act 1991. The former is a complex statute of marine law, and regulates marine insurance by Chapter XII "Marine Insurance Contract". The second is a special act on medical insurance. There are also two Acts on social insurance which fall out of the scope of this publication.

The relationship between the CC 96 and the Acts relating to particular types of insurance is clear and simple. These Acts always prevail over the provisions of the CC 96. Only those provisions of the CC 96 that are not in contradiction with the provisions of these Acts will apply. According to this, provisions of the MTC 99 in respect of marine insurance override those of CC 96.

This does not mean that CC 96 does not have any significance to marine insurance. When some marine insurance contract deviates from MTC 99 (this is allowed in the same manner as the Marine Insurance Act 1906), CC 96 provisions must always be fulfilled unless the relevant provision allows otherwise. That undoubtedly makes the provisions of CC 96 the basis of Russian insurance law and practice.

We can now review the main items of Russian insurance law that are of particular interest when compared to English insurance law and practice.

Disclosure and Representation

"It is duty of the insured to disclose to the insurer at the time the insurance contract is concluded, all known circumstances that have material importance to define the probability of a loss and its quantum" (CC 96, article 944).

The paragraph quoted above presents the duty of the insured as being quite restricted. The insured has a duty to disclose only what is known to him and he is not "deemed to know every circumstance which, in the ordinary course of business, ought to be known by him" (MIA 1906, section 18).

Moreover, the insured is deemed to be breaking this duty only if the non-disclosure or misrepresentation was wilful. There is no breach of duty if the insured represented all the information he knew, unaware of its being false.

The consequence of breaching this duty is the right of the insurer to apply to the courts to avoid the contract. But a contract cannot be avoided after the non-disclosed or misrepresented circumstances have passed[1]. Also, once the contract has been avoided, the insurer cannot keep the premium but is obliged to give it to the State.

Russian marine insurance law has to be mentioned separately as it differs in this respect.

The insured under a marine insurance contract has the duty "to disclose to the insurer at the time the insurance contract is concluded, circumstances which are known or ought to be known and have material importance to define the risk to be insured" (MTC 99, article 250). Under this provision the Disclosure and Representation duty of Russian marine insurance law is basically the same as its English counterpart as it also takes into account circumstances that ought to be known.

The similarities continue with the insurer's right to avoid the contract without applying to the courts in the case of non-disclosure or misrepresentation. The insurer can keep the insurance premium even after avoidance of the contract unless the insured proves that it was not through his own fault that he breached this duty.

The only difference between Russian and English marine insurance law in respect of the principle of Disclosure and Representation is that the insurer cannot avoid the contract after the non-disclosed or misrepresented circumstances have passed.

Insurable Interest

The basic principle of Insurable Interest remains as its English counterpart - "a party for whose benefit insurance is effected must have an interest to preserve the property insured" (CC 96, article 930). But in other respects this doctrine differs.

The interest is understood as a legal relation to the insured property that is based on either law or contract. An equitable relation in itself is not enough to constitute insurable interest.

There must be an insurable interest when the insurance contract is made. This may appear strange at first sight, but it becomes clear why when the Russian variant of assignment is taken into account.

1 ie., the circumstances have not contributed to a loss and are no longer the case. eg., non-disclosure of a (material) intended voyage through ice. The underwriter can avoid before the voyage is safely completed, but if it is safely completed and no further such voyage is intended, the underwriter can no longer avoid.

Russian insurance law states that with the transfer of interest in the property insured, all the rights and duties under the insurance contract are also assigned (CC 96, article 960). There is no need for expressed or implied agreement to this effect. The insurance always passes with the transfer of the property insured.

The only exclusions from the above mentioned are in the cases of marine hull and shipowner's liability insurance. The sale or bareboat-charter of a vessel automatically cancels the insurance.

Hence with such automatic assignment, the need for insurable interest at the time the insurance contract is concluded is logical. If the original insured under the insurance contract had insurable interest, then all subsequent assignees would have it, including any assignee at the time of a loss.

Beneficiary

The beneficiary is a specially appointed loss payee. But Russian insurance law also imposes on him very significant role.

The loss payee is the person who is required by law to have an insurable interest. Hence when a loss payee is not the insured it is the loss payee (beneficiary) who must have the insurable interest in the subject-matter and not the insured.

The presence of the beneficiary also adds to the doctrine of insurable interest a further implication. Russian Insurance law recognises insurance "to the proper person's account" i.e. the beneficiary of a contract of insurance maybe unnamed. This makes it possible to overcome the provision regarding the need for insurable interest to exist at the time the insurance is effected. Thus any person can claim indemnity under such policy provided he has insurable interest at the time of the loss and presents the original insurance policy.

The beneficiary is appointed by the insured at the time the contract is effected and may be freely replaced by the insured at any time with a written note to the insurer. However, the beneficiary cannot be replaced after he has confirmed his wish to benefit from the insurance. If the beneficiary fulfils any of the insured's duties under the policy or presents a claim to the insurer this is counted as such an expression.

If the insured did not fulfil some of his duties then the beneficiary will not only suffer the consequences, but also in the case of a loss he will be obliged to assume all the insured's duties.

All these provisions of Russian insurance law make the beneficiary often a more important person than the insured. The insured does not even have to have an insurable interest so long as the beneficiary has an insurable interest. If the subject matter is sold then all the rights under the insurance contract are transferred from the beneficiary to the new owner of the property.

Conclusion of Insurance Contract

Russian insurance law recognises two forms of insurance contract: either a document signed by both parties, i.e. the insurance contract, or a document issued by the insurer, again the insurance policy but this time with only one signatory.

If the form of an insurance policy is used, the contract of insurance is considered to be concluded on acceptance of the policy by the insured.

Under Russian insurance law, a contract is not in force until the insurance premium or its first instalment is paid. Having this provision it is unnecessary to cancel policies due to non-payment of the first premium. Effectively there is no insurance until the premium is paid, unless this provision is changed by the insurance contract.

Exclusions

Russian insurance law contains some standard exclusions that could be avoided by special agreement of the parties (CC 96, articles 963, 964). Thus, the insurer is usually free from liability for damages caused by or arising from:

- Deliberate acts of the insured, person insured or beneficiary,
- Nuclear explosion, radiation or radioactive pollution,
- War actions, manoeuvres or other military events,
- Civil war, civil strife of any kind or strikes, or
- Withdrawal, confiscation, requisition, arrest or destruction by order of state authorities.

Marine insurance law adds additional exclusions (MTC 99, articles 265-270), two of which are applicable to all marine insurances:

- Negligence of the insured, beneficiary or their representatives, and
- Piracy;

others applying to only marine hull insurance:

- Unseaworthiness of the vessel, unless caused by latent defect,
- Wear and tear of the vessel or her parts, and
- Loading with consent of the insured, Beneficiary or their representatives but without consent of the insurer of goods or substances dangerous in respect of fire or explosion;

and others applying to cargo insurance only:

- Deliberate act or negligence of the sender or the consignee or their representatives,
- Inherent vice or nature of the cargo (deterioration, shortage, dust, mould, leakage, breakage, spontaneous combustion and others), and
- Unsuitability of packing.

Material Changes

It is the duty of the insured and the beneficiary under Russian insurance law to notify the insurer about material changes in the risk insured, although some aspects of this duty differ between marine and non-marine insurance.

This duty is quite limited under CC 96 (article 959). The insured has to notify changes in the risk only in circumstances that had been disclosed at the time the contract was concluded. Moreover, changes have to be notified only if they increase the risk.

On receiving such notification the insurer has the right to insist either on changes to the conditions of the contract and/or payment of an additional premium. If the insured declines the insurer's offer the insurer can apply to the courts to cancel the insurance contract. Cancellation of the contract is also possible in the case of deliberate non-disclosure of material changes unless the non-disclosed circumstances have passed.

However, Russian marine insurance law states that there is a duty to notify the insurer of any material changes to the risk whether they were disclosed or not at the time of concluding the contract.

When the changes notified increase the risk, the insurer, similar to non-marine insurance, has the right to insist either on changes to the conditions of contract and/or payment of additional premium. But the consequences of an insured refusing changes or additional payment differ. The marine insurance contract is deemed to be void from the time the material changes took effect, thus there is no dependence whether the material changes (disclosed or undisclosed) have passed or not.

Non-disclosure of material changes allows the insurer to refuse any further liability under such a marine contract from the time the changes commence. In this case premium is not returnable unless failure to disclose material changes was not through the fault of the insured.

Scope of Indemnity

Insurance indemnifies the insured for loss or damage to the subject-matter insured. The measure of this indemnity is limited to the sum insured. However the application of the sum insured by insurers operating under Russian insurance law can be vary in much the same way as under English Law.

In CC 96 the sum insured is not only the limit of indemnity for each and every accident but also an aggregate limit for the whole duration of the policy (CC 96, article 947).

In marine insurance law the sum insured is a limit for each and every accident only. The total amount of indemnity paid as a result of several accidents during the policy period may go above the sum insured (MTC 99, article 275).

Other losses recoverable under Russian insurance law are sue and labour expenses. These expenses are recoverable without any limitation by the sum insured. Indemnity for sue and labour expenses is, however, subject to average in the case of under-insurance.

Russian marine insurance law also adds to the indemnity the expenses of investigation and calculation of the losses covered. In the same way as sue and labour expenses, they are again recoverable without limitation and subject to average.

Where general average is covered by a marine policy it is also recoverable without limitation by the sum insured and subject to average.

It is, however, important to note that Russian non-marine insurance law in itself does not provide coverage for expenses incurred for the investigation and calculation of losses covered.

Avoidable Contract

Neither Russian contract nor insurance law distinguishes between conditions and warranties. Thus the consequences of breaching a provision of a contract allows the injured party to claim damages. However, if there are special provisions in the contract, or are stated in law, there may be alternative remedies.

According to CC96 the insurer can apply to a court to void a contract of insurance *ab initio* in following cases:

- Wilful misrepresentation by the insured at the time the insurance contract was concluded, of known circumstances that have material importance to define the probability of a loss occurring and its quantum, or
- Wilful over-insuring by the insured.

The insurer can apply to the courts to cancel a contract of insurance in following cases:

- Non-agreement with the insured about changes in conditions of insurance, or additional premium as the result of material changes to the risk;
- Non-disclosure of material changes.

The insurer can refuse to indemnify all or part of a claim in the following cases:

- Absence of or late notification by the insured of the accident, unless the insured proves that the insurer had information of the accident in due time or that absence of notification of the accident had no influence on the indemnity payment;
- the insured refused to exercise his rights against third parties or implementation of these rights became impossible due to insured's fault.

Russian marine insurance law introduces some changes. On several occasions it makes contracts avoidable without applying to court.

Firstly, in cases of non-disclosure or misrepresentation at the time the marine insurance contract is concluded, the insurer can refuse any liability, effectively avoiding the contract. Secondly, in the case of material changes in the risk, if the parties cannot reach agreement over the changes to the contract and/or additional premium, the marine insurance contract is void from the time changes commenced.

Any other breach of the conditions of insurance by the insured will not prejudice his right to indemnity unless otherwise expressly stated in the contract of insurance.

Summary

We have looked at the main provisions of Russian insurance law. It is difficult to assess their effect. The Russian market is too young and market practice is not standard. It is not yet time to judge Russian insurance law. The author would even prefer to abstain from comments or suggestions at this stage, leaving that for the future.

For the UK insurer, the task is to understand clearly where the differences are. Knowing the differences it is always possible to take necessary measures to protect your interests or to take risk consciously at least. Foreign insurance practitioner doing business with Russia has to be fully aware of main issues that need his attention.

As an example of the application of the principles explained above, we provide below a list of some special conditions which could be included to the contract by the insurer (reinsurer) who makes the contract of marine insurance (reinsurance) subject to Russian law but wants to be closer to English law:

1. Utmost Good Faith provisions

   Russian insurance Law does not have any comprehensive legal concept corresponding to Utmost Good Faith Doctrine of English insurance law. But it is possible to put provisions into the contract, such as right of the insurer to void the contract when the insured does not present all information on an accident or does not cooperate in the investigation process.

2. Warranties

   Russian insurance law does not have the concept of warranty. It is necessary to include this definition into contract as well as warranties themselves. Attention must be paid to warranties, implied by English insurance law, such as the warranty of seaworthiness of the ship, or the warranty of legality of adventure insured.

3. Additional exclusions

   In addition to exclusions stated by Institute Clauses, some others should not be forgotten. These are losses arising from criminal acts of the insured, caused by delay, or by rats or vermin. These exclusions exist in English insurance law but not in Russian.

4. Cancellation of policy if premium installment is non-paid

   Russian insurance law states that insurance contract commences on payment of the premium or its first installment. However it states no consequences of delay in payment of further installments apart from possibility to offset delayed premium from indemnity payment. That is why the possibility to cancel the policy if premium installment is non-paid has to be included in the contract.

Other aspects of marine insurance under Russian law in many cases are same to English law. If above mentioned provisions are included to the contract of marine insurance that makes such insurance very close to provisions of English law, despite Russian law governing the contract.

But some differences stay, as they are non-avoidable provisions of Russian law. These issues are:

* The insurer cannot avoid the contract after non-disclosed or misrepresented circumstances have passed,

* If avoiding the contract due to non-disclosure or misrepresentation, the insurer must give insurance premium to the state,

* Insurance always passes with the transfer of the property insured (except marine hull and liability insurance);

* The insured does not need to have an insurable interest when effecting insurance for beneficiary who has an insurable interest.

Those who wish to insure in Russia have no choice - they have to live with the system.

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