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An Introduction to Russian Insurance Law and Current Reforms

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An Introduction to Russian Insurance Law and Current Reforms

TABLE OF CONTENTS

I. INTRODUCTION	471
II. BASIC PRINCIPLES OF RUSSIAN TORT LAW	474
III. THE NEW INSURANCE LAW	475
A. <i>General Structure of the Industry</i>	477
B. <i>Provisions of the New Law</i>	479
1. <i>Liability Insurance</i>	479
2. <i>Coverage and Premiums</i>	481
3. <i>Compensation</i>	484
4. <i>Permissible Parties</i>	485
5. <i>The Contract</i>	487
6. <i>Reserves and Licensing Requirements</i>	488
IV. INVESTMENT CONCERNS	490
V. CONCLUSION	494

I. INTRODUCTION

Perestroika, Mikhael Gorbachev's plan to restructure the economy, instilled hope in the Russian people for the protection of individual rights through a gradual design of change,¹ including the implementation of a multi-faceted program of law reform.² More recently, Boris Yeltsin's rise to power has led to

1. See generally Peter Juviler, *Law and Individual Rights: The Shifting Political Ground, in THE IMPACT OF PERESTROIKA ON SOVIET LAW* 107, 107-32 (Arthur J. Schmidt ed., 1990) (discussing reforms regarding due process in criminal cases, psychiatric commitment, freedom of movement, rights to privacy, and freedom from harassment); cf. *Russia's Struggle*, THE ECONOMIST, Oct. 2, 1993, at 21, 22 (discussing the disruption of existing systems caused by rapid privatization in recent years).

2. William E. Butler, *Justice in Russia: Soviet Law and Russian History*, 42 EMORY L.J. 433, 441 (1993). See generally F.J.M. FELDBRUGGE, THE EMANCIPATION OF SOVIET LAW xi (1992) (discussing the emphasis placed on law by the leadership).

weekly reforms³ which serve as instruments of positive restructuring toward privatization.⁴ The new laws address issues of economic management, effective supervision of labor and consumption, and the implementation of social justice,⁵ with little guidance from history. In addition, the new laws prompt social reactions that were previously unknown⁶ as citizens quickly incur new rights and duties.⁷

One of the earliest economic reforms was the new law "On Insurance."⁸ While maintaining the tort system⁹ and basic first-party insurance coverage¹⁰ of the former Soviet Union, the new insurance law introduced third-party coverage¹¹ similar to Western liability coverage.¹² In addition, the new law mandated participation by private insurers, including foreign investors, rather than a monopolistic state-dominated system.¹³ However, the new law represents only a beginning; it may not be sufficient to meet the needs of the country.¹⁴ Russian

3. Judge Vincent Aug, Jr., *Mission to Moscow Bringing the Rule of Law to the Russian People*, 39 FED. B. NEWS & J. 572, 576 (1992) (discussing the legal reformation goals of independence in federalization of the system, increased accessibility to the court system, and a court system structured in tiers similar to the United States' system).

4. William E. Butler, *Modern Patterns of Law in the Soviet Union*, in THE IMPACT OF PERESTROIKA ON SOVIET LAW 47, 53 (A.J. Schmidt ed., 1990) (discussing the importance of a higher standard of legality and the enhanced role of law). See generally Louise I. Shelley, *Democratization and Law*, in THE IMPACT OF PERESTROIKA ON SOVIET LAW 133, 133-42 (reviewing the challenges the Russian Federation faces in its attempt to reach democracy through law); IGOR I. KAVASS, GORBACHEV'S LAW: A BIBLIOGRAPHIC SURVEY OF ENGLISH WRITINGS ON SOVIET LEGAL DEVELOPMENTS 1987-1990 ix (1991) (discussing historical use of law as a tool of reform and traditional use of the law for political affirmation).

5. CPSU CENTRAL COMM., POL. REP., 27th Cong. of the Communist Party, in 38 CURRENT DIG. OF THE SOVIET PRESS 4-5, 11-12, 23, 26 (1986) translated in ZIGURDS-L. ZILE, IDEAS AND FORCES IN SOVIET LEGAL HISTORY 480, 482 (1992) [hereinafter POL. REP.] (quoting a report delivered by M.S. Gorbachev, CPSU General Secretary).

6. Shelley, *supra* note 4, at 142 (discussing need for the government to learn "more democratic" ways of responding to populace discontent). The Russian people have organized demonstrations and active interest groups with the support of the media. *Id.* at 136-40. In response, the Russian government has reacted with strike bans and additional limitations on individual freedoms while maintaining the criminality of anti-Soviet activity. *Id.* at 138-41.

7. POL. REP., *supra* note 5.

8. Law of the Russian Federation on Insurance, Vedomosti SND RF, Item 56, No. 2 (1992) translated in WILLIAM E. BUTLER, COLLECTED LEGISLATION OF RUSSIA, Booklet X (1993) [hereinafter Insurance Law].

9. See *infra* notes 26-38 and accompanying text (describing the existing tort law system).

10. See *infra* note 43 and accompanying text (defining first-party insurance coverage).

11. "Third party" is defined as "one not a party to an agreement, a transaction, or an action but who may have rights therein." BLACK'S LAW DICTIONARY 1479 (6th ed. 1990). See also *infra* notes 44-45 and accompanying text (discussing third-party insurance coverage).

12. The New York Insurance Code serves as the comparative model for this comment. See N.Y. INS. LAW § 1113(a)(13) (McKinney Supp. 1994) (providing that "[p]ersonal injury liability insurance means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability. . ."); N.Y. INS. LAW § 1113(a)(14) (McKinney 1985) (providing that "[p]roperty damage liability insurance means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person. . .").

13. See *infra* notes 47-55 and accompanying text (describing the prior state-dominated system).

14. Paul S. Edelman, *Reflections on a Visit to Russia*, N.Y. L. J., July 2, 1993, at 3. See also *Russia: Real Reform?*, PHARMACEUTICAL BUS. NEWS, Oct. 18, 1993, available in LEXIS, News Library, Nwltrs File (interpreting a proposed new decree "On Measures For Development of Insurance in the Russian Federation")

legislators are currently reviewing American insurance legislation before making revisions to the new law.¹⁵ Because the law of New York has been a model for the new insurance legislation,¹⁶ the New York Insurance Code will be used in this comment for comparative analysis of the provisions of the new Russian law.¹⁷

Due to the political and economic uncertainty of the region,¹⁸ foreign investment must be made with patience and long term goals.¹⁹ However, the advantages of investing in the fledgling insurance industry are numerous. Russia's population of over 450 million creates a growing demand for insurance products and services.²⁰ Of course, there are disadvantages to investing as well. The country has an under-developed insurance industry and weak economy.²¹ However, early involvement by U.S. insurers will provide a strong base for the

which clarifies local licensing but intends to reduce the vast number of small insurers through high capital requirements); Adrian Ladbury, *Rough Road in Russia; Insurance Market's Growth Potential Still Hindered By Regulatory Obstacles*, BUS. INS., May 2, 1994, at 55 [hereinafter Ladbury, *Rough Road*] (discussing obstacles to success of the new insurance system because of "undercapitalized domestic insurers, burdensome tax laws and a public that still isn't sold on the need to buy insurance"); Lisa S. Howard, *Despite Turmoil, Interest in Soviet Union Rises*, NAT'L UNDERWRITER, PROP. & CASUALTY/RISK & BENEFITS MGMT. EDITION, June 6, 1994, available in LEXIS, Insure Library, Curnws File (referencing an inflation rate of 10% per month).

15. Edelman, *supra* note 14, at 3.

16. *Id.* The insurance law of Delaware has also been identified as a potential model. *Id.* See also N.Y. INS. LAW (McKinney 1985).

17. See *infra* notes 43-146 and accompanying text (comparing New York and Russian insurance law).

18. Aug, *supra* note 3, at 577 (discussing government concern with economic stabilization, poverty, and dissension in the republics, and questioning the longevity of leaders Yeltsin and Gorbachev).

19. *Opportunity Knocks in Eastern Europe*, NAT'L UNDERWRITER, Apr. 13, 1992, at 16. [hereinafter *Opportunity Knocks*]. See also Carolyn Aldred, *Opportunities Await in Eastern Europe; But Gaining a Foothold There Takes Endurance and Effort*, BUS. INS., Nov. 1, 1993, at 84 (quoting Richard Benedick, adviser for the Ost-WestWirtschafts Akademie, Berlin, "compared to most countries in the developing world, the [Russian Federation] offers unique opportunities especially in the medium and long term," adding that there are "high risks but . . . a potential for high returns").

20. Mark D. Mariska, *Pros and Cons of Entering Russia's Ins. Market*, NAT'L UNDERWRITER, Mar. 1, 1993, at 42 (listing other advantages such as reduction in government social support programs; the high level of literacy and education [literacy rate of 99%]; the general lack of limiting regulation as a positive in flexibility; increasing economic and business development; relatively insignificant domestic competition; and relatively little foreign competition). See also Howard, *supra* note 14 (discussing a cheap, well-educated and motivated workforce).

21. Mariska, *supra* note 20, at 42 (listing additional disadvantages as: slow government dissolution of elements of monopoly; evolving societal change; effects of transition to a market economy; organized crime, corruption and systemic dishonesty; the need for insurance-related systems and procedures; the necessity for insurance education and marketing programs; and banking and financial transaction procedures). See also Claude Nyssen, *Reinsurer High on Eastern Europe*, NAT'L UNDERWRITER, Aug. 30, 1993, at S20 (highlighting the necessity of a foreign insurer to overcome the image left by a "state" owned industry); Maria Kielmas, *Insurers in Russia Face More Regulatory Red Tape*, BUS. INS., Aug. 16, 1993, at 65 (discussing regulatory red tape as a hindrance to foreign investment, the poor chances for under-capitalized companies, one month insurance contracts in hard currency, an inflation rate over 1000% and interest rates between 100% and 150%); Aldred, *supra* note 19 (indicating additional problems with human resources); Howard, *supra* note 14 (discussing the problems encountered by Western and Russian insurers in preventing trained middle management employees from leaving for another company).

growth of the industry, whereas delay will risk alienation from a lucrative market in the future.²²

This comment discusses the introduction of third-party coverage in the new Russian Federation. In a country with the potential for broad liability exposure, the introduction of third-party coverage involves both social and legal implications. To ensure success, insurers should be knowledgeable about current legislation as well as possible future legislation prior to investment. Part II of this comment outlines the tort system of the former Soviet Union which has been maintained by the Russian Federation.²³ Part III presents a comparative analysis of the new insurance law and the prior Soviet insurance system.²⁴ Lastly, part IV discusses economic, social, and professional concerns for foreign investors and suggests possible strategies for successful investment in the fledgling industry.²⁵

II. BASIC PRINCIPLES OF RUSSIAN TORT LAW

The Russian Federation has not passed legislation changing the existing tort system of the Soviet Union. The system includes a combination of no-fault responsibility and adversary proceedings based on fault similar to other European civil code systems.²⁶ Ordinary tort liability imposes financial responsibility for harm caused to a person or the property of a person under conditions defined in the civil code.²⁷ A party may be subject to liability even though the harm was caused in self-defense of person or property,²⁸ in extreme necessity,²⁹ by a party

22. *Opportunity Knocks*, *supra* note 19. See also Nyssen, *supra* note 21 (discussing the potential for growth from only 5% of the world premium to a significant percentage with a market of some 450 million people).

23. See *infra* notes 26-38 and accompanying text.

24. See *infra* notes 39-146 and accompanying text.

25. See *infra* notes 147-172 and accompanying text.

26. See generally ARTHUR TAYLOR VON MEHREN, *THE CIVIL LAW SYSTEM* 339 (1957) (translating the French Civil Code of 1804 and the German Code of 1900). C. Civ. art. 1382 provides "[a]ny act by which a person causes damage to another makes the person by whose fault the damage occurred liable to make reparation for such damage." *Id.* BURGERLICHES GESETZBUCH (BGB) art. 823 provides, in part, "[a] person who, willfully, or negligently, without legal right [,] injures the life, body, health, freedom, property or any other right of another [,] is bound to compensate him for any damage arising therefrom." *Id.* at 340.

27. Grazhdanskii Kodeks RSFSR [Civil Code] [GK RSFSR] translated in JOHN N. HAZARD ET AL., *THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980s* 319 (1984) [hereinafter *SOVIET LEGAL SYSTEM*]. GK RSFSR art. 444 provides as follows:

Harm caused to the person or property of a citizen, as well as harm caused to organizations, shall be subject to compensation in full by the person who has caused the harm. One who has caused harm shall be relieved from compensating it if he proves that the harm was caused not by his fault. Harm caused by lawful actions shall be subject to compensation only in the instances provided for by law.

Id.

28. *Id.* art. 448 provides that "[h]arm caused in necessary defense, if it does not exceed its limits, shall not be subject to compensation." *Id.* (emphasis added).

29. *Id.* art. 449 provides that "[h]arm caused in extreme necessity should be compensated by the person who has caused it." The code indicates that the court, taking all circumstances into account, may impose or relieve the duty to compensate. *Id.*

deemed to lack legal capacity,³⁰ or by a party lacking the capacity to understand the significance of his or her action.³¹

Russian tort law also provides that employers are liable for the actions of their workers.³² In addition, an employer's liability for harm caused to its employees can be minimized if the employee is at fault.³³ Further, the law imposes broad strict liability for dangerous activities; the statute expressly includes automobiles as dangerous objects.³⁴ Negligent behavior³⁵ can result in both civil and criminal penalties.³⁶ The law also includes joint liability³⁷ as well as the right to indemnification from the responsible party.³⁸

III. THE NEW INSURANCE LAW

Due to Russia's relative inexperience with the concept of liability insurance, the U.S. insurance industry has offered advice in the drafting and implementation

30. *Id.* art. 452 provides "[f]or harm caused by a citizen deemed to lack legal capacity (Article 15), his guardian or the organization obliged to keep supervision over him shall be liable unless they prove that the harm arose not by their fault." *Id.*

31. *Id.* art. 453 provides that "[a] citizen having legal capacity who has caused harm in a state when he could not understand the significance of his actions nor direct them shall not be liable for the harm he has caused." However, the statute specifically excludes the abuse of alcohol or narcotics as justifications for excuse from liability. *Id.*

32. *Id.* art. 445 provides that "[a]n organization shall be obliged to compensate harm by the fault of its workers during the performance by them of their labor (or official) duties." *Id.*

33. See *infra* notes 73-75 and accompanying text (discussing the impact of the lack of liability insurance on the victim and tortfeasor alike).

34. GK RSFSR art. 454 provides that "[o]rganizations and citizens whose activity is connected with an increased danger for surrounding persons (industrial enterprises . . . owners of automobiles . . .) shall . . . compensate harm caused by a source of increased danger unless they prove that the harm arose as a consequence of insuperable force or the intention of the victim." *Id.* See also B. vs. T. Biull. Verkh. Suda RSFSR, 1982, No. 9, p. 12-3, translated in SOVIET LEGAL SYSTEM, *supra* note 27, at 329-32 (imposing liability on owner of vehicle irrespective of fault); cf. Christopher Osakwe, *Automobilization and Soviet Law: Reflections on Certain Aspects of Soviet Automobile Law*, in SOVIET LAW AFTER STALIN 139, 159 (D.D. Barry et al. eds., 1984) (noting that strict liability is imposed if only one car is involved but fault based liability is imposed if two or more cars are involved); JOHN N. HAZARD, *MANAGING CHANGE IN THE U.S.S.R.* 147 (1983) [hereinafter *MANAGING CHANGE*] (pointing out the contradiction of Soviet Law which does not believe a negligence standard is sufficient for deterrence purposes, but imposes strict liability even in circumstances where care has been taken).

35. Negligence according to Russian law has been defined as the "failure to foresee the consequences of their conduct, although they should have foreseen them or lightheartedly hoped to avoid such consequences." JOHN N. HAZARD, *LAW AND SOCIAL CHANGE IN THE U.S.S.R.* 100 (1953) [hereinafter *LAW AND SOCIAL CHANGE*].

36. See *id.* at 235 (discussing the deterrent effect of imposing criminal negligence).

37. GK RSFSR art. 455 provides that "[p]ersons who jointly cause harm shall bear joint liability to the victim."

38. *Id.* art. 456. On the other hand, parents, guardians, curators, educational establishments, children's homes, and hospitals who provided compensation for harm caused by a minor or person declared incapable do not have a right to indemnification. ENCYCLOPEDIA OF SOVIET LAW 773 (F.J.M. Feldbrugge et al. eds., 1985). See also in re R. Labazanov, Biull. Verkh. Suda RSFSR, 1983, No. 4, p. 9, translated in SOVIET LEGAL SYSTEM, *supra* note 27, at 323-24 (1984) (imposing liability on the mother of a 16-year-old boy for harm he caused since the minor had no property or earnings adequate to compensate for the damage).

of the new insurance law.³⁹ United States lawyers have a genuine interest in assisting with the new legislation due to the lack of proper insurance law or company oversight.⁴⁰ The American Bar Association (ABA) is working toward mutual cooperation between U.S. and Russian businesses as well as law reform in the Russian Federation.⁴¹

The new insurance law focuses on structure and definition with significant emphasis on administration, including financial requirements and licensing regulations.⁴² The new law includes traditional first-party coverage for "property interests which are not contrary to legislation of the Russian Federation."⁴³ First-party coverage provides compensation for damage to the policyholder's person or property, such as homeowners insurance. The new law also includes third-party coverage.⁴⁴ Third-party coverage provides compensation for damage caused

39. See *Eastern Europe: Developments in the Eastern and Middle European Countries Summarized—Insurance*, REUTER TEXTLINE, July 1, 1993, available in LEXIS, News Library, Txtnews File [hereinafter *Eastern Europe*] (discussing involvement of the Association of German Insurers (GDV) with draft legislation regarding compulsory auto insurance). See also Jack Fehr, *Helping the Privatization of Russian Insurance*, NAT'L UNDERWRITER, June 21, 1993, at 24 (discussing a non-profit organization, the Vermont Insurance Institute, which is dedicated to the education of professional organizations, students, and insurance consumers to increase their knowledge and awareness of the insurance industry). The Vermont Insurance Institute focuses on training about the fundamentals of underwriting, claims handling, actuarial skills and management using a U.S. model. Telephone Interview with Leta Finch, Director of the Vermont Insurance Institute at Champlain College, in Burlington, Vt. (Oct. 4, 1993).

40. Edelman, *supra* note 14 (referencing an ABA concern that policy holders will not be protected adequately). See generally Talbot D'Alemberte, *The Changing Face of Law Day: The Rule of Law and Democracy Must Triumph in Eastern Europe*, 78 A.B.A. J. 8 (1992). The Central and Eastern European Law Initiative (CEELI) of the ABA sponsors groups of attorneys, judges, and law professors to travel to the Russian Federation and assist in reforms of the civil and criminal code and the judiciary system. *Id.* The ABA, in conjunction with the Soros Foundation, also sponsors the Soviet Lawyer Internship Program. *Id.* See also Richard Turbin, *TIPS Meets in St. Petersburg and Moscow*, 23 THE BRIEF 6 (1993) (discussing the value of the opportunity to help the Russians). A delegation of the Torts and Insurance Practice Section (TIPS) visited Moscow and St. Petersburg in June, 1993. *Id.*

41. Robert C. Mussehl et al., *American Bar Association Section of International Law and Practice Reports to the House of Delegates*, 22 INT'L LAW. 288 (1988). See also Paul B. Edelman III, *Soviet Law and Foreign Investment: Perestroika's Gordian Knot*, 25 INT'L LAW. 741 (1991) (discussing Russian fear of foreign economic imperialism).

42. Mariska, *supra* note 20. The law is based on British insurance regulations which emphasize protection of insurer solvency rather than policy wording and rates. Stacy Shapiro, *East meets West; Russians Confer with British About Learning the Ropes*, BUS. INS., Mar. 1, 1993, at 24.

43. Insurance Law, *supra* note 8, ch. I, art. 4 provides "[p]roperty interests which are . . . connected with the life, health, capacity to labor, and pension security . . . with the possession, . . . and . . . with the disposition of property. . ."; cf. N.Y. INS. LAW § 3425(a)(2) (McKinney 1985):

"Covered policy" also means a contract of insurance, referred to in this section as

"personal lines insurance" . . . insuring any of the following contingencies:

(A) loss of or damage to real property used predominantly for residential purposes. . . ;

(B) loss of or damage to personal property in which natural persons have an insurable interest, except personal property used in the conduct of a business. . .

Id.

44. Insurance Law, *supra* note 8, art. 4 provides coverage "connected with compensating the insured for harm of the person caused to him or to the property of a natural person, and also harm caused to a juridical person." Cf. N.Y. INS. LAW § 3420(h) (McKinney 1985):

[T]he term "insurance upon any property or risk located in this state" includes insurance

by the policyholder to another person or another's property. A desire to protect assets commonly motivates a person to purchase third-party protection. However, early proposals for third-party coverage prior to the new law ignored this motivation and stressed a secondary benefit of loss-spreading for injuries caused without fault.⁴⁵ Asset protection, however, must be emphasized to encourage prospective insureds to purchase third-party coverage; otherwise, the new system will not provide the needed compensation.⁴⁶

A. General Structure of the Industry

A state-sponsored insurance program replaced all private insurance societies in the Soviet Union by decree in 1918.⁴⁷ The codification of a nationalized insurance system⁴⁸ in the civil code⁴⁹ predated the formalization of a state-sponsored program, *Gosstrakhnadzor* (*Gosstrakh*),⁵⁰ in 1958. *Gosstrakh* has been decentralized since inception, operating separately within each republic with policies valid throughout the Soviet Union.⁵¹ Overall, legislators believed that a state insurance company would be better funded to assume the costs of accidents than a private insurer.⁵² The codified structure remained intact without significant modification prior to the current reforms.⁵³ *Gosstrakh* continues to dominate the new insurance market with an eighty percent market share.⁵⁴ The Russian

against legal liability arising out of the ownership, operation or maintenance of any vehicle . . . , or arising out of the ownership, operation, use or maintenance of any property . . . , or out of any other activity which is principally carried on in this state.

Id.

45. Zigurds L. Zile, *Product Quality and Liability in the USSR: An Exploratory Essay from a Consumer Perspective*, in *LAW AND THE GORBACHEV ERA* 105, 123 (D.D. Barry et al. eds., 1988) (discussing the compensatory function of civil liability).

46. See *infra* notes 72-79 and accompanying text (discussing the inadequacies of the social insurance system).

47. I F.J.M. FELDBRUGGE, *ENCYCLOPEDIA OF SOVIET LAW* 323 (1973).

48. *Id.* Two insurance organizations were created by statute: *Ingosstrakh* handled foreign insurance matters and *Gosudarstvennoe Strakhovanie* [*Gosstrakhnadzor*] [*Gosstrakh*] handled domestic insurance matters. *Id.* at 323. *Gosstrakhnadzor* was formed with a basic fund of 100 million roubles, a reserve fund formed by allotments from profits and a life insurance premium reserve account. *Id.*

49. See *id.* at 323.

50. *Id.* *Gosstrakhnadzor* is translated as State Insurance Supervision of the USSR. See *id.* at 323. *Gosstrakh* administered the registration of property subject to obligatory insurance, the valuation of property covered, the collection of premiums, and loss assessment. *Id.*

51. *Id.* While functioning under the Ministry of Finance, the organization maintains independent economic accountability, local agencies, and an inspectorate. *Id.*

52. WILLIAM E. BUTLER, *SOVIET LAW* 192 (1988).

53. The Soviet Union initiated insurance reforms in preparation for the passage of the new law including comprehensive provisions for licensing and registration under the supervision of *Gosstrakhnadzor*. Decree on Measures of State Regulation of Insurance Activity, *Sobranie Postanovlenii Pravitel'stva SSSR* [Cabinet of Ministers][No. 397][SP SSSR], June 23, 1991, Item 75, No. 18-9, translated in WILLIAM E. BUTLER, *BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM* 331-37 (1992).

54. *Eastern Europe*, *supra* note 39. See also Ladbury, *Rough Road*, *supra* note 14 (indicating that the state insurers accounted for 40% of the premiums collected, approximately \$72.5 million).

Federation plans to eventually privatize *Gosstrakh*, but the means to achieve this goal have not been determined.⁵⁵

Rosstrakhnazdor serves as the supervising body of the new insurance program.⁵⁶ The organization maintains a single registry of insurers and mutual insurance societies,⁵⁷ enforces the insurance law,⁵⁸ and monitors insurer solvency.⁵⁹ *Rosstrakhnazdor* further maintains the authority to develop regulations for insurance company financial reporting and accounting⁶⁰ and has the right to request standardized accounts of insurance and reinsurance activities, documentation, and other information about the financial and economic activities of insurance companies.⁶¹

Recent regulations authorize thirty-one regional inspection offices⁶² to accommodate 160 inspectors accountable to the Moscow *Rosstrakhnazdor* headquarters.⁶³ The offices will monitor compliance with legislation, premiums

55. Turbin, *supra* note 40, at 7. See also F.J.M. FELDBRUGGE, *RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW* 281 (1993).

56. *Rosstrakhnazdor* is translated as the Federal Service of Russia for Supervision Over Insurance Activity. Insurance Law, *supra* note 8, ch. IV, art. 30. The director is appointed by the Russian President, and deputy directors are appointed by the Council of Ministers. *Regulations Establish How Russian State Agency Should Regulate Insurance Industry*, *RUSSIA AND COMMONWEALTH BUS. L. REP.*, July 12, 1993, vol. 4, No. 6, available in LEXIS, News Library, Nwltrs File [hereinafter *Regulations*]. Cf. N.Y. INS. LAW § 201 (McKinney 1985) which provides "[t]he insurance department of the state of New York shall be continued, and shall possess all powers, functions, and duties which it possessed immediately preceding the effective date of this chapter."

57. Insurance Law, *supra* note 8, ch. IV, art. 30, para. b, and art. 32. Since July 1992, some 1200 private insurance companies have been registered, with another 1200 formed and waiting for formal registration. Edelman, *supra* note 14, at 3. See also *Eastern Europe*, *supra* note 39 (discussing the varied reports of how many insurers are currently active and estimating only 20 to 30 of these insurers would qualify as insurers by "western standards"). In 1992, the Russian Associate of Insurance Companies was formed and now includes over 200 domestic companies. *Id.*; Mariska, *supra* note 20, at 42 (discussing a goal of self-regulation and efforts toward legislative affairs).

58. Insurance Law, *supra* note 8, ch. IV, art. 30, para. 4(c). *Rosstrakhnazdor* may also provide advice and its own interpretations on the application of legislation. *Regulations*, *supra* note 56. See also *Insurance Companies Operating Illegally In Russia*, *SUMMARY OF WORLD BROADCASTS*, Aug. 20, 1993, at A (noting that 1000 insurance companies are operating illegally without a proper license and the rejection of 780 requests for licenses based on non-observance of requirements); *Measures Taken*, *E. EUR. INS. REP.*, July 1994, available in LEXIS, Insure library, Cumwms file (noting that *Rosstrakhnazdor* permanently withdrew the licenses of five companies for failure to submit financial returns). In addition, eight companies have had their licenses temporarily suspended for similar reasons thus far. *Id.*

59. Insurance Law, *supra* note 8, ch. IV, art. 30, para. 4(a). The organization may also appoint temporary management for an insurer, or arrange the termination of its activities in the event of insolvency. Maria Kielmas, *New Insurance Law is First Ever to Cover the Russian Market*, *BUS. INS.*, Feb. 1, 1993, at 23.

60. Insurance Law, *supra* note 8, ch. IV, art. 30, para. 3(d) provides for the "establishment of rules for the formation and placing of insurance reserves, indicators, and forms of records of insurance operations and reports on insurance activity. . . ."

61. *Id.* para. 4(a). This includes requests for information from banks and other institutions, organizations, and citizens. *Id.* Cf. N.Y. INS. LAW § 309(a) (McKinney 1985) which provides "[t]he superintendent may make an examination into the affairs of any insurance corporation . . . as often as he deems it expedient . . . in addition to examination authorized by other provisions of this chapter."

62. *Russia: Supervision Expanded*, *E. EUR. INS. REP.*, Aug. 1993, available in LEXIS, News Library, Eeinsr File.

63. *Id.*

charged, solvency, placement of reserves and policyholders' complaints.⁶⁴ *Rosstrakhnazdor* may also participate in negotiating treaties and international agreements on insurance issues.⁶⁵

Although the new law does not significantly alter the existing insurance structure of the Russian Federation, the new law did create a new regulatory authority under the auspices of *Rosstrakhnazdor*. Furthermore, *Gosstrakh* remains the primary insurer. In addition, domestic insurers have established an independent organization to voice concerns and have an impact on future legislation.⁶⁶

B. Provisions of the New Law

This section presents a brief history of Soviet insurance, introduces the pertinent parts of the new Russian insurance law, and compares the new law to the New York Insurance Code.⁶⁷

1. Liability Insurance

Traditionally, Soviet legislators did not support the availability of liability insurance to allow individuals to escape personal responsibility.⁶⁸ The legislators believed personal responsibility served as an incentive to avoid further accidents.⁶⁹ In addition to deterrence value, the absence of third-party coverage requires the party at fault, rather than an insurer, to provide compensation to the victim.⁷⁰ Consequently, legislators did not permit liability insurance as it ultimately frustrated the pursuit of the party at fault.⁷¹ The structure of the "social

64. *Id.* The new inspection offices were expected to open by early 1994 but funding through the Ministry of Finance is still an issue. *Id.*

65. *Regulations, supra* note 56.

66. *Russia: Russians Form Insurance Union*, REUTER TEXTLINE, May 20, 1994, available in LEXIS, Insure library, Cumws file (noting that the new organization, the All-Russian Insurance Union, has a panel of 30 representatives and expects more than 900 state-owned and private sector insurance companies to join).

67. *See infra* notes 68-146 and accompanying text. The New York Insurance Code was selected for the convenience of the American practitioner and insurer.

68. OLYMPIAD S. IOFFE & PETER B. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* 299 (1983).

69. *Id.* *See* Zile, *supra* note 45, at 125 (referencing this concept as a major focus of Soviet legal theory and a practice based on a belief that liability for accidental injuries deters accident-causing behavior); *MANAGING CHANGE, supra* note 34, at 137-52 (discussing use of social insurance and tort law to shape the non-negligent Soviet man).

70. IOFFE & MAGGS, *supra* note 68, at 299 (discussing the highly involved role of legal scholars in the establishment of accident compensation law). *See* WILLIAM E. BUTLER, *SOVIET LAW* 192 (1988) (discussing deterrence as the primary goal of the policy); Zile, *supra* note 45, at 122 (discussing similar rationale in products liability law); *cf.* *LAW AND SOCIAL CHANGE, supra* note 35, at 238-40 (quoting a Soviet civil law textbook which indicated the same goals can be met through insurance and social security).

71. Zile, *supra* note 45, at 122 (emphasizing preference for subrogation including first-party social insurance).

insurance" program follows similar logic as it promises less than adequate compensation for the victim.⁷²

Broad liability exposure and the lack of third-party coverage severely affected both the victim and the tortfeasor.⁷³ An individual could be liable without fault and the lack of liability protection imposed substantial financial risk in many daily activities.⁷⁴ Furthermore, as most individuals lacked funds to pay a judgment, the victim rarely received full economic compensation unless the tortfeasor was a state enterprise.⁷⁵

State employers have unlimited liability exposure with partial protection through social insurance.⁷⁶ However, this protection extends only to employee claims, unless the victim dies.⁷⁷ Overall, the social insurance system was wholly inadequate to compensate for basic economic loss due to a nonwork-related injury and offered no recovery for noneconomic losses.⁷⁸ Unfortunately, the new law does not alter the social insurance system at this time.⁷⁹

The introduction of third-party coverage cannot fulfill all of the compensation and deterrence goals addressed under the former system,⁸⁰ and it may not be an optimal solution for the Russian Federation.⁸¹ The division of wealth in the

72. MANAGING CHANGE, *supra* note 34, at 137-38 (discussing reliance of uninsured citizens, including all those not employed by public enterprise, on civil suits to recover damages).

73. IOFFE & MAGGS, *supra* note 68, at 300 (discussing substantial uncompensated losses and broad liability exposures based on automobile accidents).

74. *Id.* (listing two forms of liability including fault based or ownership of a dangerous object, such as an automobile).

75. *Id.* at 301 (indicating state organizations must reimburse social insurance agency for benefits paid). Social insurance covers harms caused by a vehicle operated by a state enterprise. *Id.*

76. GK RSFSR art. 460, para. 1 provides, in part, that if a worker in connection with the performance by him of his labor duties causes mutilation or other injury to health by the fault of the organization or citizen, the organization or citizen should compensate the victim for the harm in that part exceeding the amount of benefit received by him or assigned to him after the injury to his health and the pension actually received by him; however, exceptions from this rule may be established by USSR legislation. *See also* SOVIET LEGAL SYSTEM, *supra* note 27, at 319. Social insurance is a state sponsored program which provides a minimum level of recoupment for a victim's expenses and loss of earnings. *Id.*; BUTLER, *supra* note 52, at 191-92 (discussing the emphasis of social insurance on work-related injuries); Turbin, *supra* note 40, at 7 (discussing administrative decisions determined and administered by the police); LAW AND SOCIAL CHANGE, *supra* note 35, at 227-30. *Cf.* N.Y. INS. LAW § 1113(a)(15) (McKinney Supp. 1994) (providing, in relevant part, as follows: "[w]orker's compensation and employer's liability insurance, means insurance against the legal liability, under common law or statute or assumed by contract, of any employer for the death or disablement of, or injury to, his employee. . .").

77. GK RSFSR art. 460, para. 2 provides, in part, "[t]he harm shall be compensated to the said persons to the extent of the share of the earnings of the victim which they received or had the right to receive for their support during [the victim's] life." *Id.*

78. IOFFE & MAGGS, *supra* note 68, at 299-300 (listing drugs, special devices, and pain and suffering as losses remaining substantially uncompensated).

79. Insurance Law, *supra* note 8, ch. 1, art. 1, para. 3 provides "[t]he operation of the present Law shall not extend to State social insurance."

80. Zile, *supra* note 45, at 125 (indicating a single legal device may not handle both goals). *See generally* MANAGING CHANGE, *supra* note 34, at 137 (1953) (noting the departure of the Soviet Union from the general trend of incorporating liability insurance in the West).

81. Zile, *supra* note 45, at 125 (discussing the minimal impact of third-party coverage).

Russian Federation differs from the division of wealth in the United States.⁸² A primary motivation for U.S. citizens to purchase third-party coverage is the protection of assets, but if the Russian citizen does not have assets, insurance protection may not be a significant concern.⁸³ In the United States, many people buy insurance for reasons other than asset protection, such as the socialization that it is needed or a legal requirement. These reasons are lacking in Russia today. This situation may change in the future; however, establishing private property rights will be a slow process because the affordability of homes and vehicles will not improve quickly.⁸⁴ Conversely, existing medical compensation methods through social insurance may satisfy the goal of compensation⁸⁵ while punishment of the tortfeasor can be established through existing criminal, administrative, and disciplinary sanctions.⁸⁶

2. Coverage and Premiums

Under the state-sponsored program, there were two primary forms of first-party coverage, compulsory and voluntary.⁸⁷ The government required the purchase of compulsory insurance while the citizen could choose to purchase voluntary insurance or not. Compulsory fixed-rate insurance policies⁸⁸ provided all citizens with basic, widespread and permanent first-party coverage for specific risks such as property of collective and state farms, houses and other buildings, and cattle.⁸⁹ Voluntary insurance provided first-party coverage, excluding individual protection for crops and produce, or against theft, loss or civil liability.⁹⁰ A citizen

82. IOFFE & MAGGS, *supra* note 68, at 301. For a Russian citizen to own a car, the citizen must pay in cash and wait several years. *Id.* Compare Russian statistics with recent U.S. statistics indicating 64.4% home-ownership and 84% automobile ownership. U.S. BUREAU OF CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 476 (113th ed. 1993). See also Turbin, *supra* note 40, at 7 (discussing civil liability and financial burdens in the Soviet Union).

83. See generally Ladbury, *Rough Road*, *supra* note 14 (discussing the public's lack of awareness of the need for insurance at this time).

84. See IOFFE & MAGGS, *supra* note 68, at 300.

85. See Zile, *supra* note 45, at 125.

86. *Id.*

87. Vedomosti SSSR, ch. 13, art. 386 (1964) translated in WILLIAM B. SIMONS, THE SOVIET CODES OF LAW 488 (1980) (providing that "[s]tate insurance may take the form of compulsory or voluntary insurance").

88. *Id.*, ch. 33, art. 387 provides, in part, as follows:

Compulsory insurance covers the property specified by statute on the conditions there laid down. In the case of compulsory insurance, the insurance organization on the occurrence of the event provided for in the state (event insured against) compensates the assured . . . for the loss suffered by him; in the case of a total loss of the property, [this will be] the full amount of insurance cover, and in the case of a partial loss [it will be] in the proportion it bears to the total cover.

Id. at 488-89. See also FELDBRUGGE, *supra* note 47, at 324 (discussing the setting of compensation by law and the effects of delinquency in premium payments).

89. FELDBRUGGE, *supra* note 47, at 324. Premiums are paid voluntarily by citizens or are collected by the state. *Id.* See generally OLYMPIAD S. IOFFE, SOVIET CIVIL LAW 293-96 (1988).

90. FELDBRUGGE, *supra* note 47, at 324. The maximum coverage for any loss on these items is limited to 80% of the State price. *Id.* The premiums are slightly higher than obligatory premiums. *Id.* See also IOFFE & MAGGS, *supra* note 68, at 300 (defining coverage as fire insurance for houses, life insurance, and collision

could insure property other than buildings, collective farm crops, whole livestock, agricultural machinery, and vehicles.⁹¹ The insurer was obligated to issue a voluntary insurance policy to a requesting party.⁹²

Voluntary insurance could be purchased for a risk in addition to compulsory coverage.⁹³ In addition, chattel was insurable, but compensation could not exceed the value of loss estimated by State retail prices.⁹⁴ The insurable risks under vehicle insurance excluded damage caused by serious wrongdoing, which included a serious breach of the highway code or faulty repair.⁹⁵ Furthermore, voluntary personal insurance developed in 1942; however, it was only payable for the loss of general working capacity.⁹⁶

The new insurance law maintains the dichotomy between voluntary and compulsory insurance for first-party coverage and applies it to third-party coverage as well,⁹⁷ however, compulsory coverage has yet to be defined.⁹⁸ The

coverage for autos excluding damage caused by fault of insured).

91. FELDBRUGGE, *supra* note 47, at 325. Coverage was provided with exclusions for damage caused by the farm, its members or other persons, and bad husbandry. *Id.*

92. *Id.* at 324. Vedomosti SSSR, ch. 33, art. 388, provides, in part, as follows:

Under the contract of voluntary insurance, the insurance organization binds itself, on the occurrence of the event indicated in the contract (event insured against):

(1) in the case of property insurance to reimburse the assured or any other person in whose favor the contract was made, for the loss suffered (pay the insurance indemnity) within the limits of the sums stipulated in the contract (insurance sum), and if the property was not insured for its full value, a corresponding proportion of the loss, unless the insurance rules otherwise provide;

(2) in the case of personal insurance to pay the assured or any other person in whose favor the contract was made, the sum stipulated in the contract, irrespective of any sums to which he is entitled under state social insurance or social security, or under a claim in tort.

Id.

93. *Id.* Livestock could also be insured simultaneously under the voluntary and obligatory program with a maximum coverage of 50% of State purchase prices. *Id.* at 325.

94. Decree on State Voluntary Insurance of Property Belonging to Citizens, Sobranie Postanovlenii Pravitel'stva SSSR [Council of Ministers][SP SSSR], 15 April 1982, No. 13, Item 71, translated in SOVIET LEGAL SYSTEM, *supra* note 27, at 326. See generally FELDBRUGGE, *supra* note 47, at 325. Documents, money, precious objects, and watches are not insurable. *Id.* at 325. Premiums for chattel varied depending on the risk. *Id.* at 324.

95. FELDBRUGGE, *supra* note 47, at 325. See also IOFFE & MAGGS, *supra* note 68, at 299 (discussing exclusions for damage caused by the fault of the insured). Foreigners could insure against all potential liability arising from transportation. IOFFE, *supra* note 89, at 294. See generally Osakwe, *supra* note 34, 159-61 (discussing the ability to purchase insurance, to cover oneself in case of death or injury for any accident, including automobile accidents).

96. FELDBRUGGE, *supra* note 47, at 325. Coverage included accident insurance, endowment, disability, and death. *Id.*

97. Insurance Law, *supra* note 8, ch. I, art. 3.

1. Insurance may be effectuated in voluntary and obligatory forms.

2. Voluntary insurance shall be effectuated on the basis of a contract between the insurant and the insurer. The rules of voluntary insurance determining the general conditions and procedure for carrying it out shall be established by the insurer autonomously in accordance with the provisions of the present Law. The specific conditions of insurance shall be determined when the insurance contract is concluded.

3. Insurance effectuated by virtue of law shall be obligatory. The types, conditions, and procedure for carrying out obligatory insurance shall be determined by

law provides a blanket definition of an insurable risk⁹⁹ and includes provisions for co-insurance¹⁰⁰ for first-party coverage, and reinsurance¹⁰¹ for first and third-party coverage.¹⁰²

Another area of the law, rate regulation, will need additional development in the future.¹⁰³ Private insurers, domestic and foreign, set their own rates for non-compulsory property and liability coverage; however, *Rosstrakhnazdor* must approve the rates for life insurance and pension coverage.¹⁰⁴ It may be premature for the government to implement set rates for domestic and foreign insurers in an inexperienced market that needs foreign investment for it to expand. In

the respective laws of the Russian Federation.

Id.

98. *Hidden Agendas*, FIN. TIMES E. EUR. INS. REP., May 1993, available in LEXIS, News Library, Einsr File (suggesting that automobile insurance may be compulsory in the future). See also *Eastern Europe*, supra note 39 (discussing work with GDV towards compulsory automobile insurance). See *infra* note 148 (quoting Mr. Vedernikov's statement regarding compulsory auto insurance).

99. Insurance Law, supra note 8, ch. I, art. 9, provides as follows:

1. An insured risk shall be the presupposed event, in the event of the ensuing of which the insurance is carried out. An event considered as an insured risk must possess the indicia of the probability and fortuitousness of its ensuing.
2. An insured event shall be an event which has occurred, provided for by the insurance contract or law, with the ensuing of which the duty of the insurer arises to make an insurance payment to the insurant, insured person, beneficiary, or other third parties.
3. In the case of an insured event with property, the insurance payment shall be made in the form of insurance compensation, and in the case of an insured event with the person of the insurant or a third person, in the form of insurance security.

Id.

100. In the United States, "co-insurance" is defined as a relative division of risk between the insurer and the insured, dependant on the relative amount of the policy and the actual value of the property insured, and less than the amount of the policy; the insurer being liable for a loss equal to or in excess of that amount. BLACK'S LAW DICTIONARY 260 (6th ed. 1990).

101. In the United States, "reinsurance" is defined as a contract by which an insurer procures a third person to insure against loss or liability by reason of original insurance; a contract that one insurer makes with another to protect the latter from a risk already assumed. *Id.* at 1287. See e.g., N.Y. INS. LAW § 1114 (McKinney 1985) (defining whom is authorized as a reinsurer). See Ladbury, *Rough Road*, supra note 14 (discussing the need of domestic insurers to cede a large-proportion of premiums to non-Russian reinsurers).

102. Insurance Law, supra note 8, art. 12-13. See also Shapiro, supra note 42 (discussing *Rosstrakhnazdor's* request for more information from British regulators regarding the reinsurance market).

103. See Ladbury, *Rough Road*, supra note 14 (indicating that premium retention may help stabilize the market and help new Russian insurers with inadequate reserves).

104. See also Maria Kielmas, *New Insurance Law is First Ever to Cover the Russian Market*, BUS. INS., Feb. 1, 1993, at 21-23 (discussing rate regulation by *Rosstrakhnazdor*). See generally Insurance Law, supra note 8, ch. 1, art. 11.

1. An insurance contribution shall be payment for insurance which the insurant is obliged to make to the insurer in accordance with the insurance contract or law.
2. The insurance tariff shall represent the rate of insurance contribution per unit of insurance sum or object of insurance. Insurance tariffs relating to obligatory types of insurance shall be established in law on obligatory insurance. Insurance tariffs relating to voluntary types of personal insurance, property insurance, and insurance of responsibility may be calculated by the insurers autonomously. The specific amount of insurance tariff shall be specified in the insurance contract by agreement of the parties.

Cf. N.Y. INS. LAW § 9101 (McKinney 1985) provides "[p]remium includes all amounts received as consideration for insurance contracts or reinsurance contracts . . . and includes premium deposits, assessments, policy fees, membership fees, and every other compensation for such contract."

comparison, individual states in the United States establish rate regulation independently,¹⁰⁵ and future Russian legislation may incorporate this structure beyond compulsory insurance to establish more control of the insurers.

3. Compensation

Prior to the reforms, social insurance provided compensation for injuries resulting from industrial and automobile accidents.¹⁰⁶ The social insurance program specifically focused on accident prevention, worker health restoration, and support for the permanently disabled.¹⁰⁷ Compensation through the social insurance program depended on the tortfeasor's duty to contribute to the state on behalf of the victim and the victim's qualification for benefits.¹⁰⁸

Unlike the U.S. system, the state insurance program did not require indemnification of an employer as a tortfeasor,¹⁰⁹ although the employer maintained responsibility for damage absent a showing of fault.¹¹⁰ A showing of fault allowed the employee to recover additional out-of-pocket expenses and the insurer could subrogate¹¹¹ against the employer.¹¹² Furthermore, the employer could be indemnified by an employee who was at fault.¹¹³

If the social insurance program did not cover a first-party claim, Soviet courts generally apportioned damages according to the respective financial statuses of the victim and the tortfeasor.¹¹⁴ The court would order a party to provide repairs,

105. See, e.g., N.Y. INS. LAW § 2307(a) (McKinney 1985) which provides "[n]o insurer or rate service organization shall use a rating classification or territory unless it has been filed with the superintendent and either he has approved it, or ninety days have elapsed and he has not disapproved it as unfairly discriminatory or violative of public policy." *Id.* § 2303 (providing in relevant part, that "[r]ates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers").

106. See Osakwe, *supra* note 34, at 159 (noting that automobile accidents constitute the second largest source of tort liability after industrial accidents).

107. IOFFE & MAGGS, *supra* note 68, at 299 (referencing the inability of free medical care and social insurance to take care of all needs). Compensation for personal injury included awards for lost earnings or reduced earning capacity, and medical expenses. BUTLER, *supra* note 52, at 194. There was no compensation for noneconomic loss such as mental stress or pain and suffering. *Id.* Future earnings were taken into account and burial expenses were reimbursed. *Id.* See generally MANAGING CHANGE, *supra* note 34, at 141 (discussing that damages were limited to earning capacity excluding mental pain and suffering, unlike the system in the United States).

108. BUTLER, *supra* note 52, at 194.

109. See Zile, *supra* note 45, at 123.

110. See *id.*

111. "Subrogate" is defined as "the substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities." BLACK'S LAW DICTIONARY 1427 (6th ed. 1990).

112. IOFFE & MAGGS, *supra* note 68, at 301-02.

113. *Id.* at 302.

114. GK RFSFR art. 458 provides, in relevant part, that "[a] court may reduce the amount of compensation for harm caused by a citizen, depending on his financial status." See also BUTLER, *supra* note 52, at 191.

replace the damaged article with one of the same kind or quality,¹¹⁵ or require the party to pay in full for the losses caused, including expenses incurred, loss or damage to property, and lost profits.¹¹⁶ However, contributory gross negligence could diminish or cancel any compensation due.¹¹⁷

The contract between the insurer and insured determines the amount of compensation, or coverage, under both the New York law and the Russian law.¹¹⁸ For property coverage, the amount of compensation may not exceed the actual value at the time the contract is signed.¹¹⁹ A life insurance contract defines the agreed upon amount of coverage.¹²⁰ At this time, the Russian law does not establish minimum or maximum liability limits.

4. Permissible Parties

The permissible parties to the insurance contract under the new Russian law and the New York Insurance Code are similarly defined, although the characterization of an insurant (insured) is more extensive under the Russian

115. *Id.* art. 457 provides:

In awarding compensation for harm, a court, *arbitrazh* [informal dispute resolution hearings], or conciliation court shall in accordance with the facts of the case oblige the person liable for the harm to compensate it in kind (give over a thing of the same kind and quality, rectify the thing damaged, etc.) or to compensate in full the losses caused (Article 219).

See also BUTLER, *supra* note 52, at 194 (discussing the imposition of liability).

116. *Id.* art. 457. *See also* BUTLER, *supra* note 52, at 194 (discussing methods of compensation).

117. GK RSFSR art. 458 provides, in relevant part:

If the gross negligence of the victim himself facilitated the origin or the aggravation of the harm, then depending on the extent of the victim's fault (and if the person who caused the harm is at fault, also depending upon the extent of his fault), the amount of compensation unless otherwise provided for by a law of the USSR, should be reduced or compensation of the harm should be denied.

Id. *See also* V. v. Collective Farm, *Biuell. Verkh. Suda RSFSR*, No. 2, at 5-6 (1982) *translated in* SOVIET LEGAL SYSTEM, *supra* note 27, at 321-22 (defining what constitutes gross negligence).

118. Insurance Law, *supra* note 8, ch. I, art. 10, para. 1 provides "[a]n insurance sum shall be the monetary sum specified by the insurance contract or established by law, proceeding from which the amounts of insurance contribution and insurance payment shall be established. . . ." *Cf.* N.Y. INS. LAW § 1101(a)(1) (McKinney 1985).

"Insurance contract" means any agreement or other transaction whereby one party, the "insurer," is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary," dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.

Id.

119. Insurance Law, *supra* note 8, ch. I, art. 10, para. 2. In addition, parties may not dispute the insurance value specified in the contract unless the insurer proves intentional deceit by the insurant. *Id.*

120. *Id.* para. 4.

law.¹²¹ In addition, foreign persons are allowed the right to obtain insurance protection.¹²²

Both the New York and Russian laws recognize the insurance company, or underwriter, as a legal person who promises to indemnify the insured if a contemplated contingency arises.¹²³ Under Russian law, the underwriter has a duty to familiarize the insurant with rules of the insurance and allow reassessment of risk based on an insurant's actions toward reducing such risk.¹²⁴ In addition, the underwriter in Russia will make insurance disbursements within the time frame established in the contract, compensate for contractually specified expenditures toward aversion or reduction of damages, as well as other duties pursuant to the contract.¹²⁵

Both systems recognize that insurance agents operate on behalf of the insurance underwriter;¹²⁶ however, the Russian law does not recognize "independent insurance agents."¹²⁷ Both laws also similarly define insurance brokers;¹²⁸

121. *Id.* art. 5. Article 5 provides as follows:

1. Juridical persons and natural persons who have dispositive legal capacity and have concluded insurance contracts with insurers or who are insurants by virtue of law shall be deemed to be insurants.
2. Insurants shall have the right to conclude contracts with insurers concerning insurance of third persons to the benefit of the latter (insured persons).
3. Insurants shall have the right when concluding insurance contracts to designate natural or juridical persons (beneficiaries) in order to receive insurance payments under the insurance contracts, and also to replace them at their discretion until the insured event ensues.

Id.; cf. N.Y. INS. LAW § 3420(j)(2) (McKinney 1985) provides as follows: "[t]he term 'policyholder' as used in this subsection shall be limited to an individual or individuals as defined by the terms of the policy. . . ."

122. Insurance Law, *supra* note 8, ch. V, art. 34 provides that "[f]oreign citizens, stateless persons, and foreign juridical persons on the territory of the Russian Federation shall enjoy the right to insurance protection equally with citizens and juridical persons of the Russian Federation."

123. *Id.* ch. I, arts. 6 & 7 and ch. II, art. 15. Cf. N.Y. INS. LAW § 107(a)(10) (McKinney 1985) (providing that an "[a]uthorized insurer [is] an insurer authorized as such to do an insurance business in this state. . ."). See also *id.* § 1101 (defining an insurance contract and determining who is in the business of insurance).

124. Insurance Law, *supra* note 8, ch. II, art. 17.

125. *Id.*

126. *Id.*, ch. I, art. 8, para. 2 provides that "[i]nsurance agents shall be natural or juridical persons operating in the name of the insurer and on his behalf in accordance with the powers granted." Cf. N.Y. INS. LAW § 2101(a) (McKinney Supp 1994).

127. N.Y. INS. LAW § 2101(b) (McKinney 1985) provides a definition of independent insurance agent. "[I]ndependent insurance agent" means an "insurance agent" who is not owned or controlled by any insurer or group of insurers and whose agency agreement does not prohibit the representation of other insurers or groups of insurers and which provides that upon termination of the agreement the agent's records and use and control of expirations remain the property of the agent.

Id.

128. Insurance Law, *supra* note 8, ch. I, art. 8, para. 3, provides, in part, that "[i]nsurance brokers shall be juridical or natural persons registered in the established procedure as entrepreneurs effectuating intermediary activity relating to insurance in their own name on the basis of commissions of the insurant or insurer." Cf. N.Y. INS. LAW § 2101(c) (McKinney 1985).

"[I]nsurance broker" means any person, firm, association or corporation who or which for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself

however, the Russian law expressly precludes insurance brokerage activity on behalf of foreign insurance organizations, subject to specific agreements.¹²⁹

5. The Contract

Chapter two of the Russian insurance law discusses the insurance contract and certificate.¹³⁰ The regulations include a writing requirement¹³¹ and identification of the effective date of coverage "from the moment of the insurant's payment of the first insurance contribution, unless provided otherwise by the contract or the law."¹³² The required terms of the insurance certificate look similar to a declarations page of a Western policy.¹³³ In addition, the Russian law incorporates obligations of the insurant (insured) regarding loss similar to those imposed on New York insureds.¹³⁴

or itself or on behalf of any licensed insurance broker. . . .

Id.

129. Insurance Law, *supra* note 8, ch. I, art. 8, para. 4 (providing that "[i]ntermediary activity relating to in-surance connected with the concluding of insurance contracts in the name of foreign insurance organizations . . . shall not be permitted unless inter-State agreements with the participation of the Russian Federation have provided otherwise").

130. *Id.* ch. II, art. 15.

A contract of insurance shall be an agreement between the insurant and the insurer by virtue of which the insurer shall be obliged when the insured event occurs to make an insurance payment to the insurant or other person to whose benefit the contract of insurance is concluded, and the insurant shall be obliged to pay the insurance contributions within the established periods. A contract of insurance may contain other conditions determined by agreement of the parties and must correspond to the general conditions for the validity of a transaction provided for by civil legislation of the Russian Federation.

Id.

131. *Id.* art. 16, para. 1 (providing that "[i]n order to conclude a contract of insurance the insurant shall submit to the insurer a written application according to the established form or by other permissible means state his intention to conclude a contract of insurance").

132. *Id.* para. 2.

133. *Id.* para. 3.

An insurance certificate must contain: a) the name of the document; b) the name, legal address, and bank requisites of the insurer; c) the surname, forename, and patronymic or name of the insurant and his address; d) indication of the object of insurance; e) amount of insurance sum; f) indication of the insurance risk; g) amount of insurance contribution and the periods and procedure for making it; h) period of operation of the contract; i) procedure for changing and terminating the contract; j) other conditions by agreement of the parties, including additions to the rules of insurance or [sic] exclusions therefrom; k) signatures of the parties.

Id. Cf. N.Y. INS. LAW § 3404 (McKinney 1985 and Supp. 1994) (describing the requirements of a fire policy).

134. Insurance Law, *supra* note 8, ch. II, art. 18. An insurant is required to pay the insurance contributions on time, notify the insurance underwriter of all circumstances known to him of significance for an assessment of the insurable interest upon the conclusion of an insurance contract and also of all insurance contracts concluded or being concluded in respect to the given object of insurance, and to adopt the necessary measures for the purpose of averting and reducing damage to the insured property given the contingency insured against and to notify the insurance underwriter of the happening of the contingency insured against within the timeframe established by the insurance contract. *Id.* The contract may provide for additional requirements as well. *Id.* Cf. N.Y. INS. LAW § 3106(a) and (b) (McKinney 1985).

(a) In this section "warranty" means any provision of an insurance contract

The Russian law describes the procedures, conditions, and denial of disbursements by the insurer,¹³⁵ as well as provisions for termination¹³⁶ and nullification of the contract.¹³⁷ In addition, the insurance reforms allow for assignment of an insurance policy in the event of death or for other reasons upon consent of the insurance underwriter.¹³⁸

6. Reserves and Licensing Requirements

With concerns for a new capitalist economy, the Russian law comprehensively discusses financial and administrative requirements. The new law outlines basic

which has the effect of requiring, as a condition precedent of the taking effect of such contract or as a condition precedent of the insurer's liability thereunder, the existence of a fact which tends to diminish, or the non-existence of a fact which tends to increase, the risk of the occurrence of any loss, damage, or injury within the coverage of the contract. . . .

(b) A breach of warranty shall not avoid an insurance contract or defeat recovery thereunder (unless such breach materially increases the risk of loss, damage or injury within the coverage of the contract). . . .

Id.

135. Insurance Law, *supra* note 8, ch. II, art. 20 provides that an "[i]nsurance payment shall be effectuated by the insurer in accordance with the insurance contract or law on the basis of an application of the insurant and insurance act (accident certificate)." The acknowledged grounds for refusal to make an insurance disbursement include premeditated actions of the insurant, perpetration of an intentional act, and communication of knowingly false information. *Id.* art. 21.

136. *Id.* art. 23.

1. An insurance contract shall terminate in instances of:
 - a) expiry [expiration] of the period of operation;
 - b) performance by the insurer of the obligations to the insurant under the contract in full;
 - c) failure by the insurant to pay insurance contributions within the periods established by the contract. . . .
2. An insurance contract may be terminated before or at the demand of the insurant or the insurer if this has been provided by the conditions of the insurance contract, and also by agreement of the parties.
3. The parties shall be obliged to inform one another about the intention to terminate an insurance contract before time not less [*sic*] than 30 days before the proposed date of termination of the insurance contract unless provided otherwise by the contract.

Id. The article further indicates the duties of the insurer regarding refunds. *Id.*

137. *Id.* art. 24.

1. A contract of insurance shall be considered to be void from the moment of concluding it in instances provided for by civil legislation of the Russian Federation.
2. In accordance with the present Law a contract of insurance also shall be deemed to be void in instances:
 - a) when it was concluded after the insurance event;
 - b) when the object of insurance is property subject to confiscation on the basis of respective decision of a court which has entered into legal force.
3. A contract of insurance shall be deemed to be void by a court or by *arbitrazh* or arbitration courts.

Id.

138. *Id.* art. 19.

reserve,¹³⁹ solvency guarantee,¹⁴⁰ and accounting and reporting requirements.¹⁴¹ The law also requires licensing of insurers¹⁴² and reinsurers¹⁴³ for the practice of voluntary and compulsory insurance for first-party and third-party contracts.¹⁴⁴

139. *Id.*, ch. III, art. 26 provides, in part, “[t]o ensure the fulfillment of insurance obligations accepted, insurers shall . . . form from insurance contributions received by them insurance reserves for future insurance payments. . . .” See also *Russia: Real Reform?*, *supra* note 14 (discussing that minimum paid in capital requirements for local insurers have been increased to 200 million roubles for licenses issued after Jan. 1, 1994 with existing licensed insurers given 12 months (Jan. 1, 1995) to meet same requirement). Cf. N.Y. INS. LAW § 1402(a) (McKinney Supp. 1994) (providing in part, “[b]efore investing its funds in any other investment[s], every domestic insurer shall invest [and maintain] an amount equal to the greater of the minimum capital required by law or the minimum surplus to policyholders required to be maintained by law. . .”). See also N.Y. Ins. Law § 1403 (McKinney 1985) (establishing reserve requirements and additional fiscal requirements); *id.* § 1413 (authorizing the superintendent of insurance to refuse a new or renewal license to any foreign insurer who fails to comply with requirements). Section 1413 provides that “[t]he superintendent may refuse a new or renewal license to any foreign insurer, if he finds that its investments do not comply in substance with the investment requirements and limitations imposed by this chapter upon like domestic insurers. . . .” *Id.* See also *Minimum Capital Raised*, WORLD INS. REP, June 17, 1994, available in LEXIS, Insure Library, Curnws File (announcing new regulation on Conditions for the Licensing of Insurance Activity in Russia which was approved June 1, 1994, to take effect upon publication in *Rossiskiy Gazeta*). The minimum share capital has been increased and all pending and future license applications must comply. *Id.* Existing insurers must comply by January 1, 1995. *Id.*

140. Insurance Law, *supra* note 8, ch. III, art. 27 (providing, in part, “[t]o ensure their solvency, insurers shall be obliged to comply with normative correlations between assets and insurance obligations accepted by them”). Cf. N.Y. INS. LAW § 307(a)(1) (McKinney 1985) (providing that “[e]very insurer and every fraternal benefit society which authorized to be an insurance business in this state . . . shall file in the office of the superintendent, annually . . . a statement, to be known as its annual statement . . . showing its condition at last year-end”).

141. Insurance Law, *supra* note 8, ch. III, art. 28, para. 1 provides as follows:

The plan of accounts and bookkeeping rules, indicators and forms of records of insurance operations, and reports of insurers shall be established by the Federal Service of Russia [sic] for Supervision Over Insurance Activity by agreement with the Ministry of Finances of the Russian Federation and the State Committee of the Russian Federation for Statistics.

Id.

Insurers shall publish annual balance sheets and profit and loss accounts within the periods established by the Federal Service of Russia for Supervision Over Insurance Activity after audit confirmation of the reliability of the information contained therein.

Id., ch. IV, art. 29.

142. *Id.*, ch. IV, art. 32, para. 1 (providing that licenses for the effectuation of insurance activity shall be issued by the Federal Service of Russia for Supervision Over Insurance Activity to insurers on the basis of their application with the following appended: constitutive documents; certificates concerning registration; information concerning the amount of paid up charter capital; economic substantiation of insurance activity; rules regarding the types of insurance; calculations of insurance tariffs; information concerning the directors and their deputies).

143. *Id.* para. 1(b), provides “to insurers, the subject of whose activity is exclusively reinsurance, on the basis of their applications with the following appended: constitutive documents; the certificates concerning registration; information concerning the amount of paid up charter capital; information concerning the directors and their deputies.”

144. *Id.* para. 2 provides that “[l]icenses shall be issued for the effectuation of voluntary and obligatory personal insurance, property insurance, and responsibility insurance, and also reinsurance.” The licenses indicate the specific types of insurance which the insurance underwriter has the right to produce. *Id.* Cf. N.Y. INS. LAW § 1102(a) (McKinney 1985) (indicating that “[n]o person . . . shall do an insurance business in this state unless authorized by a license in force pursuant to the provisions of this chapter from such requirement”).

Companies licensed prior to the passage of the new law are allowed a grace period to obtain a license under the new requirements.¹⁴⁵

Foreign and domestic insurers should find the licensing system similar to the regulatory requirements of any insurance system.¹⁴⁶ The regulations should not present an obstacle to the majority of foreign carriers seeking to enter the market.

IV. INVESTMENT CONCERNS

In an effort to protect the market from foreign domination, the decree implementing the new law provided a restriction on foreign investment to forty-nine percent ownership.¹⁴⁷ Although the government indicated that the limitation was an effort to "take into account various extreme points of view and create a compromise,"¹⁴⁸ the limitation was not accepted by Russian or foreign businessmen.¹⁴⁹ A proposed elimination of the limitation did not take effect.¹⁵⁰ At

145. Decree of the Supreme Soviet of the Russian Federation: On the Introduction into Operation of the Law of the Russian Federation "On Insurance," translated in WILLIAM E. BUTLER, COLLECTED LEGISLATION OF RUSSIA, Booklet X.1 (1993) [hereinafter Decree] (noting a deadline of Jan. 1, 1995 for obtaining the new license, but waiving the licensing fees).

146. See generally N.Y. INS. LAW, art. 3 (McKinney 1985) (discussing administration and procedure). *Id.* art. 11 (discussing licensing requirements). *Id.* art. 14 (discussing investments).

147. Decree, *supra* note 145 (quoting paragraph 5 of the Decree which reads: "[f]or the purpose of protection of the insurance market . . . foreign legal persons and foreign citizens have the right to create insurance organizations . . . only in the form of limited-liability partnerships or stock companies. Foreign investors' share of the charter capital . . . may not . . . exceed 49 percent in total." *Id.*

148. *Hidden Agendas*, *supra* note 98 (quoting Edward Vedernikov, Deputy to the Supreme Soviet Committee on Budget, Plans, Taxes and Prices at the First International Insurance Rendezvous held outside Moscow from April 27-29, 1993). The goal of the Rendezvous was to address three primary concerns over the new law: financial stability, foreign investment, and the participation of brokers. *Id.* During the discussions, the deputy also indicated that the plan represented a step forward from a complete ban and may only last three years. *Id.* In discussing future legislation, Mr. Vedernikov noted that compulsory auto insurance will be introduced applicable only to new vehicles because the drivers and population generally view insurance as a form of additional taxation and there is an enormous need for training to develop the requisite infrastructure. *Id.* The First International Insurance Rendezvous was organized by the Russian Insurance Supervisory Board (*Rosstrakhnazdor*), the Insurance Union of Russia and Langton Syndicate Management Ltd., London, and sponsored by American International Group (AIG), CE Heath, Chubb Group Inc., Clyde & Co., Cologne Re, General Re, Graham Miller, Ince & Co. Hymans Robertson, International Adjusters, Johnson & Higgins, Le Boeuf Lamb Leiby & MacRae, Lloyds, Marine Risks Inc, Swiss Re, Globeks, *Ingosstrakh*, *Rosgosstrakh* and *Stinvest*. *Id.* The Rendezvous was attended by representatives of the sponsors. *Id.*

149. See *id.* *Rosstrakhnazdor* Chairman, Yuri Bugaev, indicated that 3 years was too long. *Id.* Anatoly Zlobin, Chairman of the new Generalnoye Perestrakhovochnoye O (General Reinsurance Co.), demonstrated concern that the 49% quota was a prohibition and questioned if it is truly temporary. *Id.* The chairman noted that it was not to the advantage of "the country, the population or the insurance market." *Id.* Bengt Westergren of AIG (New York) indicated that the "49% rule is detrimental. It is not protecting the emerging market but delaying the emergence of the same." *Id.* Guy Levie, Deputy Head of the Insurance and Pension Fund Division of the EC Commission, warned that the lack of control and management to investors would discourage foreign investment in general. *Id.*

150. See *Russia: Real Reform?*, *supra* note 14 (discussing the purpose of the proposed legislation "[t]o allow foreign insurance companies registered in accordance with national legislation to set up insurance organizations on the territory of the Russian Federation acting in accordance with Russian Federation legislation and without any restriction on participation in paid up capital"); *Proposal to Open Market*, WORLD INS. REP., Oct. 22, 1993, available in LEXIS, News Library, Nwltrs File (suggesting that the new decree will also clarify the new law with express declarations that property of Russian legal and natural persons can only

this time, the limitation continues to be an obstacle to foreign investors.¹⁵¹ In addition, the clause of the new law which authorized "the prevention, limitation, and curtailment of monopoly activity and unfair competition on the insurance market" is maintained without alteration.¹⁵²

Businessmen are understandably cautious regarding the new market. In addition, unsuccessful recent legislation to relax minimum capital requirements for jointly held insurance companies and eliminate the forty-nine percent limitation creates further tension.¹⁵³ Furthermore, the new law recognizes the immediate need for further legislation,¹⁵⁴ and foreign insurers should be encouraged to wait for such legislation to reduce the financial risks involved in an undefined market.¹⁵⁵ The current status of the Russian economy requires

be insured by locally registered companies, subject to a separate arrangement). Some classes of insurance will remain subject to the 49% limitation. *Id.* Maria Kielmas, *Russia Weighs Proposal; Decree May Draw More Foreign Insurers into the Market*, BUS. INS., Oct. 25, 1993, at 31 (indicating that the new decree is expected to include new legislation regarding taxation and solvency regulations). *But see Insurance Union Supports Party of Russian Unity and Accord*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 4, 1993, available in LEXIS, News Library, Txtnews File (reporting the Insurance Union of Russia's dissatisfaction with Russian leaders who advocate foreign insurance company access to the Russian market).

151. Adrian Ladbury, *AIG Exec Blasts Russia's Cap on Foreign Stake in Insurers as Against its Best Interests*, BUS. INS., May 2, 1994, at 55 (quoting an executive with AIG who states that the limitation is "hypocritical" and counter to the "self-interest" of the Russian Federation). Bengt Westergren, AIG's Vienna-based Senior Representative President, indicates that the Russians will be "unable to increase capacity, investment and training without the help of the Western world." *Id.* See also *Second Moscow International Rendezvous*, WORLD INS. REP., May 6, 1994, available in LEXIS, Insure Library, Curnws File (discussing the Second International Insurance Rendezvous held April 19-21, 1994). Russian insurer resistance to the lifting of the 49% limitation has only increased in the past year. *Id.* See generally, *2nd Moscow Rendezvous*, E. EUR. INS. REP., May 1994, available in LEXIS, Insure Library, Curnws File (discussing problems with taxation, new regulations, and foreign investment).

152. Insurance Law, *supra* note 8, ch. IV, art. 31. The State Committee of the Russian Federation for Antimonopoly Policy and Support of New Economic Structures will enforce compliance. See generally Law on Competition and Limitation of Monopolistic Activity in Goods Market, Vedomosti RSFSR, Mar. 22, 1991, Item 499, No. 16, translated in BUTLER, *supra* note 52, at 229-45.

153. *Russia: Real Reform?*, *supra* note 14 (reprinting the (Draft) Decree "On Measures For Development of Insurance in the Russian Federation," which amends the new insurance law to eliminate any capital requirement for foreign insurance companies and limits capital requirements for joint companies to US\$500,000). *But cf.* Vera Rachkova, *Insurance Agents Protest Draft Presidential Decree*, TASS, Oct. 12, 1993, available in LEXIS, News Library, Tass File (recognizing an unfair advantage given to foreign insurers which will undermine the success of domestic companies); V. Kruglyak, *Do Not Be Naive Opening Doors to Foreign Insurance Giants*, RUSDATA DIALINE-BIZEKON NEWS, Nov. 20, 1993, available in LEXIS, News Library, Sbe File (discussing the criticisms of the Draft Decree by the head of *Ingosstrakh* regarding protection of the domestic insurance market); O. Kokorev, *Insurance in Russia Was Nearly Finished*, RUSDATA DIALINE-BIZEKON NEWS, Nov. 19, 1993, available in LEXIS, News Library, Sbe File (indicating that no other country has disregarded the national interest as wholeheartedly as the Draft Decree proposes); N. Kushelman, *Russia: Insurance Companies Scorn Presidential Decree*, NOVECON, Oct. 19, 1993, available in LEXIS, News Library, Txtnews File (discussing the Russian Union of Insurance Companies' (RUIC) dissatisfaction with the draft decree as it may result in foreign insurance domination of the market).

154. See Decree, *supra* note 145 (discussing enactment of future legislation within three months; however, this legislation has not been forthcoming).

155. See generally Beverly A. Holmes, *A First-Hand Look at Russia's Fledgling Industry*, NAT'L UNDERWRITER, Jan. 11, 1993, at 8 (discussing the views of the ABA Citizen Ambassador Program Insurance Delegation noting the most serious problems facing the fledgling insurance industry are regulatory problems and currency concerns).

Russian reliance on foreign investment,¹⁵⁶ however, substantial reforms are necessary to encourage foreign investment.

Tax laws present a sincere threat to the success of domestic and foreign insurers. As businesses cannot deduct insurance as an expense, businessmen consider insurance a luxury rather than a necessity.¹⁵⁷ Furthermore, a recent decree significantly increased the marginal tax rate of insurers as well.¹⁵⁸ Overall, the government views taxation as a means of sustenance for the state regardless of the impact on the insurers.¹⁵⁹

Recent political unrest does not provide a safe climate for foreign insurers without clear protection in case of retrogression to former Soviet policies.¹⁶⁰ Furthermore, an inadequate legal infrastructure leaves the country struggling to

156. EUGENE THEROUX & ARTHUR L. GEORGE, *JOINT VENTURES IN THE SOVIET UNION: LAW AND PRACTICE*, 2-3 (rev. ed. 1989) (discussing the need of the Russian Federation to attract foreign investment that will allow profitable returns for both parties). See also Cassandra Sociological Services, *Collective Opinion of Insurance Experts*, RUSDATA DIALINE-BIZEKON NEWS, Oct. 29, 1993, available in LEXIS, News Library, Sbe File (reporting results from an opinion poll taken of specialists in Russia's insurance business at the Financial Stability of Insurance Companies Seminar of September 1993). The overwhelming majority felt business was improving (47%) and referenced a high rate of inflation (75%) as a primary cause. *Id.*

157. Ladbury, *Rough Road*, *supra* note 14 (describing the businessman's perspective of liability insurance as a luxury).

158. *Id.* (referencing a rate of 25% prior to January 1, 1994, and a current rate of 13% federal taxation and 30% regional taxation). See also *Russia: 1994 Budget*, E. EUR. INS. REP., July 1994, available in LEXIS, Insure Library, Cumws File (confirming the tax rates).

159. Ladbury, *Rough Road*, *supra* note 14.

160. Edelman, *supra* note 14. See also Sara Marley et al., *Aftermath of Uprising; Multinationals in Russia "Cautiously Optimistic" of Future*, BUS. INS., Oct. 11, 1993, at 1 (indicating that the recent uprising is a reminder of the "continuing differences between Russian and Western politics"). But see Melissa Schwartz, *OPIC in the Republics*, 3 SOVIET LAW: THE BOTTOM LINE 10 (1992) (discussing the Overseas Private Investment Corporation (OPIC), a U.S. government agency, which assists private U.S. investors in the development of less developed countries, including the newly formed Russian Federation; however, services are limited to new investments which would not be initiated otherwise). The policies provide a maximum of 20 years of coverage for loss of investment due to expropriation, nationalization, or confiscation by action of a foreign government as well as loss of income and assets due to political violence, such as war or civil strife. *Id.* See also *Russia Seen Moving Ahead with Reforms, Steps to Encourage Foreign Investment*, BNA INT'L BUS. & FIN. DAILY, Oct. 8, 1993, available in LEXIS, News Library, Bnaibf File (discussing the Russian Investment Insurance Co., created by Yeltsin's decree, titled "On Perfecting Work with Foreign Investment," which provides protection from political risk for foreign investors backed by Russian cash, precious metals, and securities deposited in foreign banks); Maria Kielmas, *Political Risk Coverage Program Established for Russian Projects*, BUS. INS., Nov. 23, 1992, at 53 (indicating that the European Investment Guarantee Agency and the Russian Agency for International Cooperation and Development have established a new political risk insurance facility with policies, underwritten by a panel of Lloyd's of London, that will cover business originating from the European Union or European Free Trade Area, but not to investors domiciled in or maintaining subsidiaries in countries with an investor protection agreement with Russia). The coverage is structured to cover loss incurred due to the Russian Government's failure to honor its obligations under an investor protection agreement. *Id.* The Russian government is contributing \$100 million to fund this program designed to counter the political and economic uncertainty forestalling Western investment into the insurance industry. *Id.* See also Arthur Quinlan, *Scheme to Cover Investment in Russia Planned*, THE IRISH TIMES, Aug. 30, 1993, at 7 (discussing the Irish political risk company based on barter system to cover Irish investments in Russia).

discover the means to provide a favorable environment for investment.¹⁶¹ The lack of specificity in the new laws provides advantages to U.S. businessmen and attorneys by allowing flexibility for the foreign investor to establish a joint venture company.¹⁶²

A lack of a sufficient stake of the Russian partner serves as the primary obstacle to investment in the Russian Federation insurance market.¹⁶³ The risks for a U.S. investor are substantially greater than for the Russian investor. A U.S. investor should start with a clear goal and avoid noneconomic reasons, such as friendship, that will expire with good will.¹⁶⁴ In light of the distinct disadvantages of a Russian counterpart based on the lack of financial, political and business knowledge, it may be premature for foreign insurers to invest at this time.¹⁶⁵

Assessing the value of the new risks will be difficult,¹⁶⁶ and a foreign insurer must choose its Russian counterparts well, and plan long-term goals.¹⁶⁷ Innovative risk management techniques are required to meet the situation presented by

161. Edelman, *supra* note 41, at 741. See also Nyssen, *supra* note 21, at S20 (discussing the new legislation to handle taxation, accounting, exportation, repatriation of profits, dispute resolution, terminations and transfers); Robert K. Meyers, *Europe's Insurance Frontier; Developing Markets Offer Opportunities and Dangers*, BUS. INS., Oct. 25, 1993, at 23 (indicating the notable absence of an effective reporting mechanism for insurer solvency like a ratings guideline such as A.M. Best Co. in the United States).

162. THEROUX, *supra* note 156, at 2-3. Joint ventures in the Soviet Union were established by the Joint Venture Decree of January 12, 1987, to facilitate the acquisition of foreign technology, equipment, and know-how through methods such as licensing and cooperation agreements. *Id.* The goals of the Joint Venture Decree as referenced in Article 3 of the Decree are to satisfy domestic requirements of industrial and consumer goods; to attract foreign capital, modern equipment, advanced technologies, and management expertise; and to foster the expansion of exports and reduction of superfluous imports. *Id.* One of these goals must be satisfied before Soviet authorities will permit a joint venture to be formed. *Id.* See also Brian Zimble, *Soviet Foreign Investment Laws and Practices, 1987-1990: A Practitioner's Perspective*, 4 TRANSNAT'L LAW. 85, 91-100 (1991) (discussing the goals of the Decree and the Soviet investors themselves); *The St. Paul Companies, Rosgosstrakh Form Jointly-Owned Insurer*, PR NEWSWIRE, June 6, 1994, available in LEXIS, Insure Library, Curnws File (discussing the formation of a jointly owned insurance company to be incorporated as the "New World Insurance Company," which will provide reinsurance brokerage, management services and additional insurance services).

163. THEROUX, *supra* note 156, at 2-3.

164. *Id.* at 10. The following considerations have been suggested during preliminary negotiations with a Russian partner:

1. Is there a genuine agreement?
2. What is the potential for profitability for the foreign investor? [What is the potential] for the Russian counterpart?
3. What are the managing roles of the partners?
4. What are the contributions of each partner towards capital, equipment, personnel, and knowledge?
5. [What is the] [a]vailability of outside financing?

Id.

165. See Journal of Commerce, CHI. TRIB., *Consulting Now Global Enterprise*, Aug. 2, 1992, at 5D. See also Holmes, *supra* note 155 (noting that success of the industry must come from within due to Russian hesitancy to welcome foreign involvement and foreign investor hesitancy to initiate business and work through the regulatory problems, as well as the trial and error development of the program). See also Howard, *supra* note 14 (noting that Russian workers need education in Western insurance and accounting concepts).

166. Holmes, *supra* note 155. Risks must be reassessed on a 3-6 month basis to combat rapid inflation. *Id.*

167. See UK: *Expect the Unexpected—LIRMA Warned on Eastern Market*, INS. RES. LETTER, June 1, 1993, available in LEXIS, News Library, Txtwns File.

markets lacking U.S.-style insurance.¹⁶⁸ Rapid industrialization rarely encompasses loss control and the risks are often passed directly to the insurers.¹⁶⁹ In addition, existing risk management techniques function to promote other social and political goals.¹⁷⁰ Furthermore, insurable interests will be difficult to determine.¹⁷¹ "Insurance firms have to plan on a pan-European outlook and how to market their products and streamline operations to meet with increased demand."¹⁷²

V. CONCLUSION

It remains unclear if liability insurance has a viable future in the Russian Federation. On one hand, the government continues to face problems with economic stabilization, poverty, and dissension in the republics.¹⁷³ On the other hand, foreign investors face problems with capital investment limitations, taxation, and inexperienced peers and consumers.¹⁷⁴ Unfortunately, relatively few foreign insurers actively participate in the Russian insurance market at this time.¹⁷⁵ Despite these obstacles, domestic and foreign insurers alike must continue to contribute to development of the system, as a stable insurance system can significantly assist in economic reform, capital formation and business development.¹⁷⁶ At this time, further development of the insurance system will not be a high priority for a Russian Parliament attempting to restructure most of the country.¹⁷⁷

In addition to economic and political concerns, social factors must also be considered. Victim compensation laws are among one of the greatest concerns of

168. Gavin Souter, *Managing Project Risks in Developing Countries; Loss Control Crucial—Though Locals May Disagree*, BUS. INS., May 10, 1993, at 26.

169. *Id.*

170. *Id.* See generally LAW AND SOCIAL CHANGE, *supra* note 35, at 224-27 (discussing the use of tort law to redress the balance between rich and poor as a means of caring for the incapacitated at the expense of the wealthy employer or tortfeasor).

171. Nyssen, *supra* note 21.

172. Journal of Commerce, *supra* note 165 (quoting Edward Hendricks, president of the New York based Association of Management Consulting Firms).

173. See Aug, *supra* note 3, at 577. See also Meyers, *supra* note 161 (discussing the recent political problems which recognize the persisting preference for traditional management structures of the past). But see John M. Covaleski, *After the Bloodshed, Russia Holds Promise; Insurance Industry Ready to Expand Rapidly*, BEST'S REVIEW—PROPERTY/ CASUALTY, Dec. 1, 1993, at 20 (discussing the expectations of rapid growth of foreign investment based on Yeltsin's latest political victory).

174. See *supra* notes 147-65 and accompanying text (discussing various investment concerns).

175. Ladbury, *supra* note 151 (noting that only 25 foreign insurers are licensed in Russia, of which only 4 are Russian-U.S. joint ventures).

176. Mariska, *supra* note 20 (specifically noting that the Russian Government's decisions to reduce government social support programs, the growing demand for insurance products for new industries entering the Russian market, and the ability of the insurance industry to function in the rouble-dominated economy). Cf. Ladbury, *Rough Roads*, *supra* note 14 (noting that only 1.3% of Russia's 1993 gross national product was generated from insurance premiums).

177. Nyssen, *supra* note 21.

the legal reform movement,¹⁷⁸ however, there is anxiety that the new insurance industry is not sufficiently developed to provide adequate security for even the most fairly common loss in the country, a stolen vehicle.¹⁷⁹ Furthermore, the citizenry must be educated to understand insurance and incorporate it into their lives.¹⁸⁰ Currently, the low volume of sales indicate that liability insurance lacks sufficient value for the majority of citizens.¹⁸¹

Furthermore, the introduction of U.S. liability concepts will have a direct effect on the judiciary.¹⁸² Claims arising out of traffic accidents were traditionally handled in criminal trials and were not considered civil cases.¹⁸³ The introduction of coverage for such liability will transmute such claims to the civil court system with foreign insurers facing a new-found problem with different rules and regulations in the court system.¹⁸⁴ Consequently, the concept of U.S.-style liability in the Russian Federation may introduce another U.S. concept, severe caseload crisis.¹⁸⁵

Foreign investors should beware of entering the Russian Federation insurance market at this time. Although it is rare that a new market of 450 million persons becomes available, a prudent insurer must carefully assess the risks involved. The insurance structure remains closely tied to the government and past experience with other markets will be of little assistance in a country so vast and culturally diverse. The workforce needs education and foreign investors need familiarization with Russian customs and work ethic. Current government policy sends mixed signals regarding the involvement of foreign investors and this should serve as a signal to remain cautious. The Russian government clearly fears domination by foreign investors, yet, needs the assistance of these same investors in establishing a viable system. The slow pace of foreign investment and increased pressure to remove the obstacles to foreign investment, such as the forty-nine percent rule,

178. Aug, *supra* note 3, at 576.

179. *Id.*

180. See *supra* notes 82-86 and accompanying text (referencing the wealth classifications and difficulty in acquiring assets to protect).

181. Ladbury, *Rough Road*, *supra* note 14 (reporting that 44% of the total volume was personal insurance including life, accident and health coverage, 28% was property insurance, and only 18% was liability insurance).

182. Insurance Law, *supra* note 8, ch. V, art. 35 provides that "[d]isputes connected with insurance shall be settled by a court of law, or an *arbitrazh* or arbitration courts in accordance with their competence." See generally Juviler, *supra* note 1, 107-32 (discussing judicial reforms in protecting due process through an independent judiciary, full right to counsel, trial by some form of independent jury, and effective judicial and constitutional review).

183. GER P. VAN DEN BERG, *THE SOVIET SYSTEM OF JUSTICE: FIGURES AND POLICY* 158-60 (1985).

184. See *id.* at 162-63.

185. *Id.*

must be continued. The new insurance law presents a rare opportunity and, if handled correctly, it will prove beneficial to both the Russian Federation and the foreign investors.

*Jennifer McGrath**

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