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## Legal Alert

# ANTITRUST REGULATION OF INSURANCE

August 2010

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### Permissibility of agreements between insurers operating in the same product market

Significant changes in Russian Government policies in connection with antitrust regulation of the insurance industry have come into legal force this month. Government Resolution No. 504, dated 5 July 2010, establishes certain general exclusions in regard to joint insurance and reinsurance agreements between insurers operating in the same product market. Agreements signed after the date that the Resolution came into effect will now be permissible for 10 years, subject to the following conditions.

First, the agreements will be required to fulfill joint insurance or reinsurance activities of a specific insurance type, or which are drawn from a list of insurance types, as well needing to cover specific insurance risk or several insurance risks in the respective product market. Second, a procedure is required to be established to permit a voluntary, unilateral exit from the agreement, and a joint and several liability is required to pay an insurance claim or an insured amount to the specified beneficiary. Third, an agreement can not prohibit the signatories from having insurance or reinsurance for the same types of risk with other insured parties and on other terms and conditions. Finally, the aggregate of an insurance premium for certain type(s) of insurance or for an insurance risk(s) as part of the agreement can not exceed 20% of the total insurance premium collected by insurers in a relevant product market, and the aggregate can not exceed 25% of said amount in terms of reinsurance.

It is important to note that if the above-stated aggregates are exceeded, an agreement would only be permitted for a period of either 2 years (if less than 2% in excess) or 1 year (if 2% or higher in excess) following the year in which the excess occurs. In connection with terms of agreements signed prior to the effective date of the Resolution, and for which the aggregate of the insurance premium exceeds the above-stated thresholds, such agreements would only be permitted for up to 1 year from the effective date of the Resolution. In addition, in relation to agreements that insure new types of risks which were not previously insurable in

the Russian Federation or which are only insured for a year, an agreement would be permitted for a period of 3 years.

Underwriters may enquire with the antimonopoly authorities to ascertain whether a draft agreement is in compliance with the antimonopoly laws.

### Federal antimonopoly service proposes general exclusions for mortgage lending

In spite of the general prohibition under Russian Antimonopoly on agreements which may limit competition or which may result in collusive actions of business entities, Article 13 of the Federal Law "On the Protection of Competition" allows for specified exceptions to be introduced into Russian law. On 30 April 2009, the Russian Government, exercising its right to decide whether such agreements are permissible, approved general exclusions for agreements between lending institutions and insurers. Currently, however, these exclusions do not apply to the actions of the parties when insuring borrower risk associated with mortgage lending. This position has now changed, with the Russian Federal Antimonopoly Service proposing general exclusions for mortgage lending.

Taking into account the special features of mortgage lending, the FAS has proposed clarifying specific provisions of the general exclusions. For example, a lending institution is not permitted to require a borrower to enter into an insurance agreement for a period of longer than a year; however, in terms of mortgage lending, the FAS has suggested allowing for this condition, if the insurance agreement stipulates paying an insurance premium in instalments rather than in one lump sum once per year as is generally the situation with a standard insurance premium.

In addition to making amendments to take into account the specifics of mortgage lending, the antitrust authorities have proposed rendering a number of adjustments to the general exclusions to prevent

lending institutions from providing their prospective borrowers with only a very narrow selection of insurers. The FAS believes a procedure should be in place for a bank and a borrower first to conclude a loan agreement, and then a borrower and an insurer to conclude an insurance agreement in connection with the loan when drawn. The draft amendment to require a two-day minimum waiting period to enter into an insurance agreement, following entering into a loan agreement, ensures that a borrower has a wider selection of insurers. Consequently, the conditions required to include insurers in the list of those who meet a specific bank's specifications must be exhaustive, and a bank is allowed up to 60 days to review an insurer's information and documents. The proposals are intended to prevent lending institutions from delaying assessments on whether potential insurers meet the set requirements as well as to expand the list of insurers whose services a borrower may select once a loan agreement is made.

The Federal Antimonopoly Service sent the draft resolution to the Government on 13 July and, in the current context, we would expect its enactment and implementation to be effected within the year.

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If you have any questions on the matters referred to in this Alert, please do not hesitate to contact CMS Partner *Maxim Boulba* at +7 (495) 786 4000 or your regular contact at CMS.

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*MAXIM BOULBA*  
*MAXIM.BOULBA@CMSLEGAL.RU*



**CMS, RUSSIA**

Gogolevsky Blvd, 11  
119019, Moscow  
Russia  
T +7 495 786 4000  
F +7 495 786 4001  
[www.cmslegal.ru](http://www.cmslegal.ru)

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