

Welcome to HFW's insurance bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative changes of the week.

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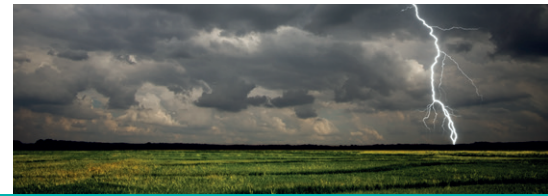
UK: HFW attend the Practical Law Insurance Law Forum

London: HFW UAE/MENA Regulatory Environment Update Workshop

Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

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## **hfw** 1. Regulation and legislation

### Hong Kong's Contracts (Rights of Third Parties) Ordinance Commencement Notice

**On 27 May 2015, the Secretary of Justice of Hong Kong gazetted the coming into operation of the Contracts (Rights of Third Parties) Ordinance on 1 January 2016. The Contracts (Rights of Third Parties) Ordinance applies only to contracts entered into on or after that date.**

The Contracts (Rights of Third Parties) Ordinance (**3rd Parties Ordinance**) is based on the current Contracts (Rights of Third Parties) Act 1999, an Act of the UK parliament which extends to England, Wales and Northern Ireland (**UK Act**) (which is due to be amended in other respects). The 3rd Parties Ordinance will give identified third parties (including those identified by class or description) the benefits (but not the burden) under a contract. In other words, the 3rd Parties Ordinance will provide an exception to the generally applicable doctrine of privity of contract. The rationale behind the new legislation is to avoid potential injustice to third parties and to give effect to the intention of contracting parties wishing to benefit third parties. Sections 6 and 7 therefore restrict variation or rescission of a contract to which the 3rd Parties Ordinance applies without the consent of the third parties concerned or an Order of the Court.

Like the UK Act, the 3rd Parties Ordinance allows parties to contract out. This has been widely done in insurance policies governed by English law by way of clauses that might read, for example: *"Unless this policy otherwise provides [the UK Act] is excluded."* (There are, of course, longer versions of this type of exclusion clause.) It is expected that the

3rd Parties Ordinance will also be widely excluded in Hong Kong insurance policies.

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### UK: FCA thematic review of delegated authorities: what do firms need to do?

**The FCA has recently published its findings from its thematic review<sup>1</sup> of delegated authority arrangements in the general insurance market. The review was based on a sample of insurers writing products for UK retail and SME customers, and also firms holding delegated underwriting and/or claims authority from those insurers. The primary focus of the review was the management and oversight of their delegated authority arrangements and the impact of any shortcomings on customer outcomes.**

#### Key findings

The FCA concluded that many firms *"did not appear to have adequately considered or recognised their regulatory obligations"* and the review raised a concern that firms could not *"demonstrate compliance with the Handbook requirements set out in SYNC and PRIN"*. The findings included:

- Failure to demonstrate clear arrangements for assessing risk.
- Failure to treat delegated authority as outsourcing.



## The FCA expects insurers outsourcing to ensure they have effective and risk-based controls mitigating conduct risks.

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- Inadequate due diligence of conduct risks.
- No consideration of whether products were treating customers fairly.
- Insufficient control over claims functions and failure to identify conflicts of interest.
- Lack of oversight, monitoring and management information (**MI**).
- Over reliance on audits.
- Deficient agreements, for example, with no clear allocation of responsibilities.
- Failing to recognise product provider responsibilities in product design.
- Shortcomings in complaint processes, handling and outcomes.
- Product providers failing to make appropriate arrangements for product distribution.

1 <https://www.fca.org.uk/news/tr15-7-delegated-authority-outsourcing-in-the-general-insurance-market>



## Next steps for firms

Those firms that were subject to the review will need to consider the specific actions the FCA requires from them to ensure compliance. Other firms are expected to consider the report, review their activities and identify what changes are required to their policies and procedures to bring them in line with the recommendations, and demonstrate implementation of these steps. This will be followed up by the FCA as part of its ongoing supervisory work.

The principal concern of the FCA in the review was poor customer outcomes. In light of this, firms are expected by the FCA to be able to respond clearly to the following questions:

- Why has the outsourced party been chosen and do they have appropriate capabilities to deliver what customers could reasonably expect?
- Is it clear who designed and “owns” the product and where the relevant responsibilities lie as a result, and have they adequately considered how the product performs for customers?
- Are the claims processes in place appropriately designed and controlled to deliver fair customer outcomes?
- Is there appropriate monitoring and management information in place to assess customer outcomes?
- Is it clear that the outputs of any monitoring and MI are reviewed, understood, shared as necessary and acted upon?
- Do firms know who is selling their product and how, and exercise any meaningful oversight of this?
- Are significant conduct issues related to the product likely to be promptly identified and acted upon?

What does the FCA expect? The FCA expects outsourcing insurers to ensure they have effective and risk-based controls mitigating conduct risks. The FCA requires both insurers and intermediaries to monitor activities (with MI) to identify and review where customers are not treated fairly, to consider if they act as a “product provider” and identify responsibilities for product design and monitoring of the performance of the products (and allocate these responsibilities where circumstances allow), and for those with “product provider” responsibilities to assess appropriateness of the distribution channel and sales activities and exercise ongoing oversight.

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## England & Wales: Counter-terrorism initiative to reduce terrorism insurance costs

**Last week, counter-terrorism police outlined details of an insurance initiative which aims to benefit businesses and other organisations that make improvements to their security arrangements under the Government’s Crowded Places Programme, in a further example of the police and the private sector co-operating to ensure public safety.**

At a briefing given to leading figures in the global insurance industry, it was announced that from October 2015 the new initiative organised by the Home Office, the Treasury and the Police, and agreed with terrorism risk insurer Pool Re, will offer companies that are actively engaged in the Crowded Places Programme the chance to apply for a Loss Mitigation Credit (**LMC**) on their Pool Re terrorism insurance costs.

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**In practice, if businesses that own commercial sites across the UK apply mitigation measures and security improvements to protect public sites and venues from terrorist attack, they will be eligible to apply for the LMC.**

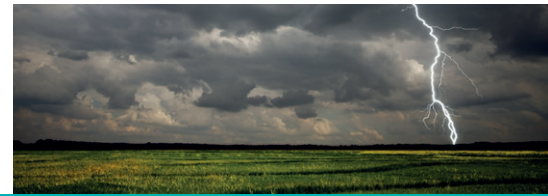
In practice, if businesses that own commercial sites across the UK apply mitigation measures and security improvements to protect public sites and venues from terrorist attack, they will be eligible to apply for the LMC. Such companies can utilise a tool that the National Counter Terrorism Security Office has already developed – the ‘Protective Security Improvement Activity’ – to review and improve their security arrangements against terrorist attacks.

This initiative, following the amendments to the Terrorism Act 2000 (as discussed in a previous HFW insurance bulletin<sup>2</sup>), demonstrates a welcome continued collaboration between the state and the private sector, and the insurance industry in particular, to work towards mitigating risk to the public while allowing businesses to benefit commercially.

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<sup>2</sup> [http://www.hfw.com/Insurance-Bulletin-21-May-2015#page\\_1](http://www.hfw.com/Insurance-Bulletin-21-May-2015#page_1)



## UK: Go away and think about it – new rules on guaranteed asset protection (GAP) insurance

**On 10 June 2015, the FCA issued a Policy Statement (PS15/13) containing rules on guaranteed asset protection (GAP) insurance which are aimed at empowering consumers when making decisions about purchasing add-on GAP insurance, and limiting the point-of-sale advantage of add-on distributors. The FCA also considers that the rules will increase competition between add-on (i.e. GAP insurance sold together with a vehicle) and stand-alone GAP insurance providers.**

Where a policyholder's vehicle is written off, his/her GAP insurance will cover him/her for the difference between the amount paid out by his/her vehicle insurance policy, and an amount stated in (or calculated under) the GAP policy, which is generally the price paid for the vehicle.

The FCA has spent nearly two years investigating the sale of GAP insurance, which it first looked at as part of its general insurance add-on market study, before issuing a specific consultation on remedies to address the issues it had uncovered. The FCA found that a large number of customers did not think about buying GAP insurance until the day they bought it, that purchasers of add-on GAP insurance had a worse understanding of the product than purchasers of stand-alone GAP

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insurance, and that the prices for add-on GAP insurance could be significantly higher than those for stand-alone products.

The new rules:

- Require firms distributing add-on GAP insurance to provide information which encourages customers to shop around and think more carefully when making decisions about purchasing GAP insurance.
- Introduce a deferral period, prohibiting firms from selling a GAP insurance policy on the same day that it is introduced to a customer.

The new rules will come into force on 1 September 2015, and can be found here: <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-13>

The FCA has identified the add-on market as an area for concern and considers that consumers may be over-paying for add-on products by at least £108 million a year, either as a result of buying inappropriate or unsuitable products, or receiving poor value for money from the products. These rules on GAP insurance are likely to be followed by further requirements relating to add-on products generally, both in the general and life sector. The FCA is currently consulting on a ban for "opt-out" sales (sales where a product is automatically added to a sale and has to be voluntarily removed by a customer, such as by unticking a pre-ticked box) and improved information requirements for add-on selling.

We also understand that the FCA is expected to publish a discussion paper shortly which will consider introducing a "value for money" measure for general insurance products.

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## 2. Market developments

### G7 countries commit to supporting disaster insurance

**Following the G7 meetings in Bavaria this month, the leaders involved committed to supporting disaster insurance as part of plans to tackle climate change. Particularly intensive support will be targeted at vulnerable countries, in order to affirm their efforts to deal with climate change-related disaster risk.**

The G7 announced that they "will aim to increase by up to 400 million the number of people in the most vulnerable developing countries who have access to direct or indirect insurance coverage against the negative impact of climate change related hazards by 2020 and support the development of early warning systems in the most vulnerable countries".

Part of this support comes in the form of a fund that the G7 leaders have agreed to establish in order to improve working conditions for those in the textile industry, and to provide compensation to those affected by disasters similar to the 2013 Rana Plaza factory collapse in Bangladesh where over 1,000 people died. The new fund will also work to reduce delays in providing this sort of compensation and will provide money to improve fire inspection and building safety regulations in general, thereby helping to develop the global supply chain. The International Labour Organisation will assist in the administration of the fund, which will require contributions from trade associations in developed countries represented by the G7.

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Bank, are well placed to deliver on these goals, to implement them by 2020 as they plan on doing will be a challenge. Further, others have said that insurance alone cannot solve the problem, but must be used as part of an integrated package of risk management interventions. This initiative should work to reinforce the recently implemented global framework developed by the UN Office for Disaster Risk Reduction (reported in a previous HFW insurance bulletin<sup>3</sup>) and generally to build resilience across the world in order to provide much needed support and in order to mitigate the risks to vulnerable countries.

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### **hfw 3. HFW publications and events**

#### **Hong Kong: Insurance Companies (Amendment) Bill 2014 may soon be passed**

HFW has published a briefing on the key amendments to the bill which will establish an Independent Insurance Authority (IIA) in Hong Kong. The Hong Kong government hopes that the bill will be passed before the summer recess in July and that the IIA will be established in October.

A copy of the briefing can be found here: <http://www.hfw.com/Hong-Kongs-Insurance-Companies-Amendment-Bill-2014-may-soon-pass-June-2015>.

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#### **UK: HFW attend the Practical Law Insurance Law Forum**

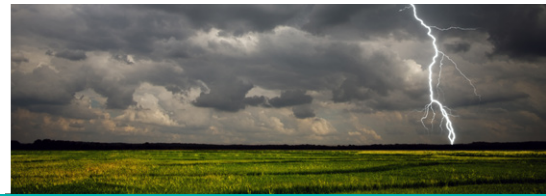
HFW Partner Richard Spiller, Senior Associate Ruth Hite and Associate Will Reddie attended the Practical Law Insurance Law Forum in London on 11 June 2015. The Forum discussed the impact of current and future regulation on the UK and European insurance market, considered practical strategies for adapting to the changing insurance landscape and gave suggestions on how to focus on the customer in order to maintain competitive advantage.

#### **London: HFW UAE/MENA Regulatory Environment Update Workshop**

HFW Partner Richard Spiller, Consultant Carol-Ann Burton and Senior Associate Tanya Janfada presented a workshop in London in relation to the insurance regulatory regime in the United Arab Emirates and the Dubai International Financial Centre. The workshop provided an overview of how international insurers, reinsurers and intermediaries can access Middle Eastern insurance markets through the UAE and the DIFC and included an update on regulatory developments.

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3 [http://www.hfw.com/Insurance-Bulletin-26-March-2015#page\\_4](http://www.hfw.com/Insurance-Bulletin-26-March-2015#page_4)



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