

**Insurance/
Reinsurance**

**26 January
2017**



In this week's Insurance Bulletin:

1. Regulation and legislation

EU and US: No consensus among industry experts on EU-US reinsurance agreement

2. Court cases and arbitration

England: Supreme Court rules against Government on Brexit parliamentary vote

3. Market developments

UK: Proposed insurance linked securities regime – the City of London Law Society's Insurance Law Committee responds to HM Treasury Consultation

4. HFW publications and events

Dubai: HFW nominated for MENA Law Firm of the Year in the MENA Insurance Awards

France: AMRAE Rendez vous, Deauville

UK: IRLA Breakfast Briefing

James Clibbon, Partner, james.clibbon@hfw.com

Andrew Bandurka, Partner, andrew.bandurka@hfw.com

Will Reddie, Associate, william.reddie@hfw.com





hfw 1. Regulation and legislation

EU and US: No consensus among industry experts on EU-US reinsurance agreement

The EU and the US have concluded an agreement on insurance and reinsurance prudential matters which will remove the requirement for international reinsurers to post collateral, such as placing assets as security against future reinsurance liabilities, for example a letter of credit, when reinsuring US risks thereby facilitating trade in reinsurance on both sides of the Atlantic. The agreement also implements measures to remove the restrictions which had been placed on US firms as a consequence of US states not being approved as “equivalent” to Solvency II. Non-EU firms may be able to calculate their solvency positions using local rules if their jurisdiction is deemed “equivalent”.

It has taken nearly two years of negotiations to achieve this agreement, which covers three areas:

- **Reinsurance:** as mentioned above, the requirement for international reinsurers to post collateral when reinsuring US risks will be eliminated. The consistent application of prudential rules in both markets should lead to enhanced consumer protection.
- **Group supervision:** US and EU (re)insurers will only be subject to worldwide prudential supervision by their respective domestic supervisory authorities. Some limitations will be imposed on this in relation to matters concerning



Some industry participants have taken a cautious approach to the agreement. The National Association of Insurance Commissioners said that it would be thoroughly reviewing the agreement “to ensure consumer protections are not compromised”¹.

DAVINIA COLLINS, ASSOCIATE

solvency and capital, reporting and governance.

- **Exchange of information between supervisors:** the EU and the US will encourage their own supervisory authorities to cooperate in exchanging information on companies that operate in the respective other markets.

Some industry participants have taken a cautious approach to the agreement. The National Association of Insurance Commissioners said that it would be thoroughly reviewing the agreement “to ensure consumer protections are not compromised”¹. It seems unlikely that the agreement would do this, directly or indirectly, but from the NAIC’s perspective, the agreement is a means for forcing “foreign regulations on US companies”, and therefore of significant concern.

However, the American Council of Life Insurers and the Reinsurance Association of America both welcomed the agreement, identifying that the reduced regulatory requirements

for US (re)insurers would benefit consumers and economies and help to support bilateral trade². Similarly, the International Underwriting Association welcomed the news, saying that “a more level playing field can now be established between EU and US reinsurers”³.

The US Congress and the EU will need to approve the agreement formally. Congress was provided with the final legal text of the agreement on 13 January 2017 and the EU Commission will involve the Council and the European Parliament in order to execute the agreement.

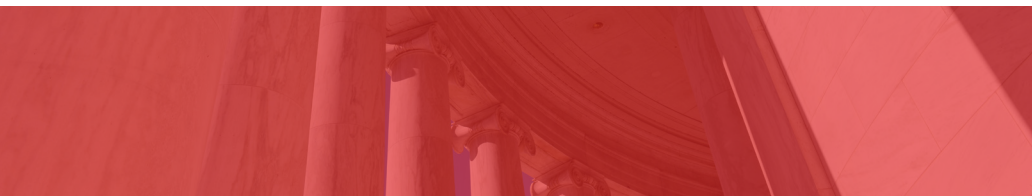
A regulatory system which works positively for (re)insurance companies in both the US and the EU should encourage competition but in light of Brexit, the UK will at some point in the future need to form its own separate agreement on these terms if it is to benefit from the presence of US (re)insurers.

For more information, please contact **Davinia Collins**, Associate, London, on +44 (0)20 7264 8276, or davinia.collins@hfw.com, or your usual contact at HFW.

1 Reinsurance News, 17 January 2017

2 *Ibid.*

3 Insurance Day, 13 January 2017



hfw 2. Court cases and arbitration

England: Supreme Court rules against Government on Brexit parliamentary vote

On Tuesday 24 January, the UK Supreme Court handed down its long awaited decision on whether an Act of Parliament is required before Article 50 can be triggered. In summary, it ruled by a majority of 8-3 that the Government cannot trigger Article 50 without an Act of Parliament and unanimously that the Government does not need to consult with Scotland, Wales and NI in order to trigger Article 50. Although the Bill triggering Article 50 will now need to be debated in both Houses of Parliament, this process is likely to be fast tracked and so we consider it unlikely that this will delay the original timetable set out by the Prime Minister. For further details, please see our briefing note [here](#).

hfw 3. Market developments

UK: Proposed insurance linked securities regime – the City of London Law Society's Insurance Law Committee responds to HM Treasury Consultation

The Insurance Law Committee of the City of London Law Society (the Committee) has published its response to HM Treasury's latest consultation on the UK's proposed insurance linked securities (ILS) regime. ILS offer (re)insurers a way to manage risk which is different to conventional reinsurance cover – (re)insurers effectively transfer the (re)insurance risk to the capital markets.

HM Treasury first consulted on a regulatory and tax framework for ILS business in the UK in early 2016. Following supportive responses to this consultation from (re)insurers and other stakeholders, late last

year HM Treasury published drafts of the two statutory instruments which would implement the proposed ILS framework: the Risk Transformation Regulations 2017 and the Risk Transformation (Tax) Regulations 2017.

The Committee's response to the consultation on these statutory instruments primarily concerns insolvency issues involving ILS. In particular, the Committee raised concerns in relation to two insolvency scenarios involving insurance special purpose vehicles (ISPVs) – the vehicles which assume (re)insurance risks, and suggested some measures which might assist in providing comfort to stakeholders.

The response also includes comments on how the regime would interact with existing financial services legislation and regulations, including Solvency II, the applicability of the insurance business transfer regime, and taxation.

The full text of the Committee's response may be found [here](#). It is understood that the Committee intends to respond separately to the Prudential Regulation Authority and the Financial Conduct Authority on their related consultation on the authorisation and supervision of ISPVs.



...the Insurance Law Committee raised concerns in relation to two insolvency scenarios involving insurance special purpose vehicles (ISPVs) – the vehicles which assume (re)insurance risks, and suggested some measures which might assist in providing comfort to stakeholders.

BEN ATKINSON, SENIOR ASSOCIATE



The regulators' consultation is open until the end of February and no doubt the responses to both consultations will need to be considered and discussed by HM Treasury and the regulators before the draft statutory instruments are revised to take into account feedback from the consultations. With this in mind, it seems likely that it will be some months before amended versions of the statutory instruments are put before Parliament.

For more information, please contact **Ben Atkinson**, Senior Associate, London, on +44 (0)20 7264 8238, or ben.atkinson@hfw.com, or your usual contact at HFW.

hfw 4. HFW publications and events

Dubai: MENA Insurance Awards – HFW nominated for Insurance Law Firm of the Year

HFW has been nominated for Insurance Law Firm of the Year in the MENA Insurance Awards. **Sam Wakerley** (Partner, Dubai), **John Barlow** (Partner, Dubai) and **Wissam Hachem** (Partner, Riyadh) will be attending the Awards Dinner on 1 February at the Ritz Carlton DIFC.

France: AMRAE Rendez Vous, Deauville

Pierre-Olivier Leblanc (Partner, Paris) will be taking part in a round table discussion on D&O Liability Insurance in France and the impact of recent French legislation in this area and the Deauville AMRAE Rendez Vous on 2 February.

UK: IRLA Breakfast Briefing

On 3 February, **Andrew Bandurka** (Partner, London) will be giving an IRLA Breakfast Briefing on “Where are we on aggregation of claims”.

<http://www.irla-international.com/event/irla-breakfast-briefing-where-are-we-on-aggregation-of-claims>

Lawyers for international commerce

hfw.com

© 2017 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

Houston São Paulo London Paris Brussels Geneva Piraeus Beirut Riyadh Kuwait Dubai
Singapore Hong Kong Shanghai Perth Melbourne Sydney