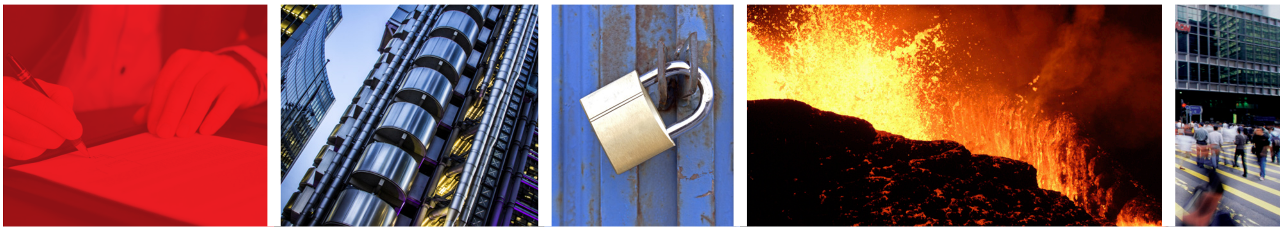
Insurance/ Reinsurance

19 May 2016

INSURANCE BULLETIN



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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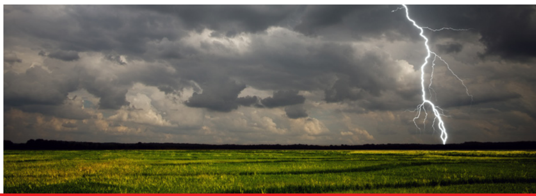
2nd MIDDLE EAST INSURANCE INDUSTRY AWARDS 2015
LAW FIRM OF THE YEAR

holman fenwick willan hfw



1. Regulation and legislation

UK: The Bank of England and Financial Services Act 2016 receives Royal Assent

The Bank of England and Financial Services Act 2016 (the Act)[1] received Royal Assent on 4 May 2016, and will be implemented by Treasury regulations. Key provisions of the Act include:

1. Cessation of the PRA's status as a subsidiary of the Bank of England and, in its place, the establishment of the Prudential Regulation Committee (PRC), a committee of the Bank of England that will exercise PRA's functions.
2. Extending the senior managers and certification regime to cover people working in any firm authorised to carry out regulated activities under the Financial Services and Markets Act 2000.
3. Granting new powers to:
   - HM Treasury to provide financial assistance with the purpose of taking action against illegal money lending.
   - The FCA to raise levies from firms to fund this financial assistance.
4. Making changes to the Bank of England's governance and the role of the National Audit Office in scrutinising it.

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UK: Proposed new reporting rules firms not subject to Solvency II – Non Directive Firms (NDFs)

The Prudential Regulation Authority (PRA) recently published a consultation paper relating to NDFs, which sets out proposals for new reporting rules with regard to the data items required under the "Insurance Company – Reporting" part of the PRA Rulebook, together with a draft supervisory statement (CP18/16). The proposals replace the rules currently in the PRA Handbook, consolidate and simplify reporting requirements, delete redundant requirements and make certain minor consequential amendments arising from changes to the prudential regime for NDFs.

CP18/16 seeks to update the current rules applying to NDFs, converting them to the Rulebook format by amending the reporting rules published in PS26/15[2] *"The prudential regime, and implementation of the Senior Insurance Managers Regime, for non-Solvency II firms"* and, rationalising and simplifying some of the requirements where possible and to introduce the new rules that the PRA had proposed to do so under CP27/15[3] *"The prudential regime for non-Solvency II insurance firms and consequential amendments"*.

The PRA proposes to consolidate the Handbook material from IPRU(INS) and IPRU(FSOC) into new or existing parts and aims to create two new Rulebook parts for the NDF sector with one relating to insurance company reporting and the other relating to friendly society reporting. The reason for the two separate parts is to reflect the current rules applicable to these two distinct types of NDFs. The proposed parts are not intended to represent a fundamental policy change.

The consultation will close on 13 June 2016 and the PRA plans to publish the final policy during the summer of 2016.

A link to the full copy of the consultation paper can be found here[4], with the PRA press release and links to all Appendices available here[5].

For more information, please contact Nazim Alom, Associate, London, on +44 (0)20 7264 8760, or nazim.alom@hfw.com, or your usual contact at HFW.

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1 http://www.legislation.gov.uk/ukpga/2016/14/pdfs/ukpga_20160014_en.pdf

2 http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2615.pdf

3 http://www.bankofengland.co.uk/pra/Documents/publications/cp/2015/cp2715.pdf

4 http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp1816.pdf

5 http://www.bankofengland.co.uk/pra/Pages/publications/cp/2016/cp1816.aspx

2. Market developments

UAE: Health insurance update

Health insurance continues to dominate the United Arab Emirates (UAE) insurance market, with health insurance accounting for 45% of total premiums in the general insurance market. At present, health insurance is compulsory for residents and citizens in the Emirates of in Abu Dhabi and Dubai. Sharjah is also planning on introducing a compulsory health insurance scheme in the near future, although further detail in this respect is not yet publically available. Abu Dhabi had introduced mandatory health insurance for all residents in 2012 and Dubai introduced its mandatory health insurance scheme in 2014. The Dubai health insurance scheme requires employers to obtain health cover for their employees and was implemented in phases as follows:

- Companies with more than 1,000 employees: from October 31, 2014.
- Companies with 100-999 employees: from July 31, 2015.
- Companies with less than 100 employees: from June 30, 2016.

Further, individuals are required to obtain health insurance for their dependents, including domestic workers, by 30 June 2016. The mandatory policy provides for a basic level of cover, and employers and individuals may obtain "enhanced" cover which is over and above the minimum basic coverage prescribed by law. To ensure compliance with the health insurance requirements, the issuance and renewal of an employee's visa will be subject to the employee having health insurance in place.

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TANYA JANFADA, SENIOR ASSOCIATE

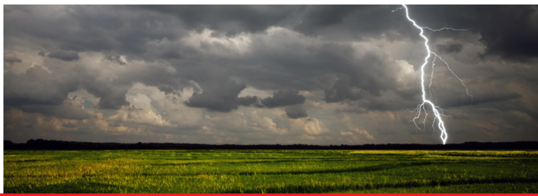
At the recent Emirates Insurance Association 2016 Health Insurance conference, attended by major industry players and representatives from the regulatory authorities, the following key challenges faced by UAE health insurers were raised:

- Abuse or unnecessary use of health insurance services, including in particular the over-prescription of antibiotics and unnecessary caesarean sections.
- Over-reliance on brand name medication over generic medication. By way of comparison, it was reported that in the UAE only 10% of prescriptions are for generic medication, compared to over 80% in the United States and the United Kingdom.
- Severe competition and price-cutting by insurers, together with lower oil prices and returns on investments have greatly reduced the profitability of health insurers in the region.

The Dubai Health Authority and the Health Authority of Abu Dhabi noted that they are reviewing the regulations in relation to health insurance premiums and will be introducing more detailed regulations in this respect in the near future. Further, the Dubai Health Authority will be undertaking reviews of data provided by insurers and service providers and will be undertaking investigations into any suspected abuse or fraudulent activities.

Ms Nabila Taha, Managing Director and Chief Actuary of Taha Actuaries & Consultants, noted that the UAE Insurance Authority's new Financial Regulations, aim to address the issue of price undercutting by requiring all insurers to appoint an actuary to provide certification of an insurer's technical reserves and solvency capital. The Financial Regulations also require that an actuary provide the Insurance Authority with an annual report that presents the immediate or future risks facing the insurer. Difficulty in complying with the new financial and solvency requirements are expected to force smaller insurers in the UAE market to consolidate over the next few years.

For more information, please contact Tanya Janfada, Senior Associate, Dubai, on +971 4 423 0527, or tanya.janfada@hfw.com, or your usual contact at HFW.

3. HFW publications and events

Emirates Insurance Association 2016 Health Insurance conference

Senior Associate Tanya Janfada attended this two day event on Health Insurance in the UAE.

HFW sponsors DIFC Insurance Association Speaker event

HFW was delighted to sponsor the most recent DIFC Insurance Association Speaker event. Michael Stephens from the Royal United Services Institute provided a fascinating insight into "The Future of Gulf Security in a Changing Region". The event was attended by representatives from the major DIFC insurance market participants and the HFW insurance team.

European Union sanctions against North Korea update

HFW has published an update[1] on the additional sanctions which the EU has imposed against North Korea in line with UN Resolution 2270 (2016) and Council Decision (CFSP) 2016/476.

Like other EU Regulations, the additional sanctions have direct effect on individuals and companies, and apply to EU nationals, EU companies, EU-flagged and registered aircraft and vessels, and to any legal person, entity or body in respect of any business done in whole or in part within the Union and therefore businesses need to be aware of the impact of these most recent sanctions.

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HFW attending Lloyd's Rugby 7s

HFW are attending the Lloyd's Rugby 7s at Richmond Athletic Ground on Thursday 19 May. We will be hosting lunch and afternoon tea in our marquee, and our team will be playing in the Plate competition.

The 2nd Anglo-Brazilian Insurance and Reinsurance Summit, São Paulo, Brazil

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On 16 March 2016, the 2nd Anglo-Brazilian Insurance and Reinsurance Summit took place in São Paulo, Brazil. The event was hosted by the UK Trade and Investment arm of the British Consulate and co-sponsored by international law firm Holman Fenwick Willan LLP ('HFW'), the Brazilian National Confederation for Insurance Companies ('CNseg') and the National Federation of Reinsurance Companies ('Fenaber'). The event was heavily subscribed with almost 300 acceptances for only 150 seats. Following Opening Remarks from Chetna Patel of the British Consulate and Flavio Girão Guimarães of SUSEP, a series of presentations and panel discussions took place, finishing with cocktails in the gardens of the Centro Brasileiro Britânico.

Why London Matters?

Dave Matcham, Chief Executive of the International Underwriting Association in London, spoke on 'Why London Matters?' Matcham highlighted some of the key actions the London market is taking in order to ensure that it has an important role in the placement of overseas risks going forward, whilst conscious of the challenges it faces from an increasingly localised global reinsurance market and the rich availability of reinsurance capacity.

Action starts with self-analysis and the London Market Group ('LMG'), which brings together the Chairmen and CEO's of the four market associations, commissioned and published a report called 'London Matters'. The report highlights the importance of the London market to the UK economy. Measured by business written in the City and not including overseas branches, the London market is nearly twice the size of Bermuda, more than twice the size of Zurich and eleven times bigger than Singapore. During 2013, its contribution equated to 3.6% of UK GDP and 21% of the City of London's GDP.

The LMG consulted nearly 300 market participants from around the globe in order to understand how global insurance trends may impact placement decisions and to inform itself of the key challenges and key opportunities faced by the London market. Although London has many competitive advantages over other markets, the report found that in terms of challenges, customers have a preference for buying insurance in their

1 http://www.hfw.com/European-Union-sanctions-against-North-Korea-update-May-2016

local market putting London premiums at risk of being written locally, that London's position in emerging markets declined more that 20% from 2010 to 2013 and that London is losing share in reinsurance (from 15% in 2010 to 13% in 2013).

The LMG has digested this feedback and, in what Matcham describes as a 'call to arms', has formed a response plan to build a market for the 21st century. Recognizing that the London market can no longer rely on business coming into London based on certain inherent advantages, the response plan is defined by 4 main inter-dependent work streams: (i) building a diverse, dynamic workforce (ii) making London an easier place in which to do business (iii) providing a case for purchasing the London market product and (iv) creating an environment for product innovation.

In terms of building a dynamic workforce and creating an environment for product innovation, an online survey has been sent to 900 executives of various specialisms and the findings are being consolidated into a final report leading to a business case for action. In the meantime, the LMG Secretariat has been empowered with managing, centrally, the 'London market proposition'. This marketing initiative, which has found government support, will include reference to the London market's appetite for complex risks, its capacity and global reach and its ability to provide creative solutions.

One further initiative is the Target Operating Model ('TOM'), which is intended to make London an easier place to do business, which its primary focus for 2016 on electronic placing, improved technology in the claims area, improvements in the area of delegated underwriting and accessibility to structured data.

Matcham insists that, in view of the above, London is responding to international needs and is very much open for business.

Why Brazil Matters?

Margo Black, the head of Swiss Re Brasil Resseguros and Head of Reinsurance for Latin America South, explained why Brazil is a regional and international heavyweight. Brazil's economy accounts for almost one third of economic regional output and is nearly twice the size of Mexico's, which is the next largest economy in Latin America. Although Brazil's primary insurance market is the biggest in the region and is nearly three times the size of Mexico's, Brazil has the second largest reinsurance market in Latin America (after Mexico), owing to its low catastrophe exposure.

By reference to detailed statistics, Margo demonstrated that Brazil's low levels of insurance and reinsurance penetration offer good prospects of market growth and that there are still important gaps for insurers and reinsurers, in particular in the life, health, motor and infrastructure sectors.

Margo explained that there is a 'silver lining' to the current economic downturn in Brazil. It is focusing attention on the need to strengthen the economy's structural underpinnings and is raising awareness about protection and competition gaps after years of commodity-driven growth. Margo added that Brazil's insurance penetration is expected to rise in tandem with GDP per capita and, over the longer-term, the outlook for reinsurers remains positive in Brazil.

Panel Discussion on Current Regulatory Environment in Brazil

A panel on the 'Current Regulatory Environment in Brazil' was led by Rafael Zornoff of UK Trade & Investment. Panel members includes Dave Matcham of the IUA and Margo Black of Swiss Re, Flavio Girão Guimarães, director of authorisations at SUSEP and Natália Souza, Legal and Compliance Manager at JLT Brasil Holdings.

Guimarães explained that under the current 'intra-group cession' rule, an insurance company or local reinsurer may not transfer more than 20% of the premium applicable to a contract to related companies, or to companies belonging to the same financial conglomerate and under the current mandatory cession rule, local insurance companies must place at least 40% of each facultative or treaty reinsurance cession with local reinsurers. He added that changes are already afoot in the form of resolution 332 which came into effect in July last year.

Under this resolution, the maximum limit for intra-group transfers (i.e. from an insurer or local reinsurer to a company belonging to the same financial conglomerate) is to be increased on an annual basis from 20% (status quo) until 31 December 2016 to 75% from 1 January 2020. The applicable percentage of each facultative or treaty reinsurance cession to be placed by insurers with local reinsurers is also to be reduced


annually from 40% (status quo) to 15% from 1 January 2020. Resolution 332 sets up an Advisory Committee with the objective of proposing measures focused on correcting asymmetry between Brazilian reinsurance regulations and best global practices.

The panel agreed that the changes are to be welcomed and are more in line with international practice.

D&O Panel Discussion

Chris Cardona, Partner, HFW London, chaired a panel on directors' and officers' liability insurance. Also on the panel were Celso Soares Junior, Head of Specialty Lines and Liability, Zurich Brazil and Ilan Goldberg, a Brazilian lawyer specialising in insurance and reinsurance and partner in Chalfin, Goldberg, Vainbom & Fichtner.

After a brief introduction of the D&O product, Cardona explained that the basis of cover was a wrongful act by a director or officer. This led to a discussion on the meaning of 'wrongful act' and Cardona highlighted the usual exclusion of fraud or deliberate dishonesty. He also referred to the growing market trend to broaden the definition of insured persons to individuals who are not necessarily directors or officers. Cardona then focused on the global tidal wave of regulatory investigations, best exemplified in Brazil by the current Lava Jato affair.

The key coverage issue which arises in the context of such regulatory investigations is typically the scope of the defence costs cover. Cardona asked whether costs associated with subpoenas would be covered by a standard policy. This would turn on whether a subpoena was a 'written demand' against the insured. Similarly, if entity cover was not included, would a D&O policy cover the defence costs of the company as distinct from those of the directors or officers? He also discussed the difficult question of allocation which arises when a regulatory investigation is brought against both insured persons and non-insured persons and when a claim involves both covered and uncovered matters. Lastly, he discussed the final adjudication clause and the ability of an insurer to recoup defence costs paid when there is a finding of criminal liability.

Mr Goldberg examined how the Brazilian courts had treated the business judgement rule and whether directors and officers were liable for damages when they had acted on the basis of a business judgement which was neither negligent nor dishonest. Mr Goldberg also highlighted the importance of the Brazilian constitutional principle of the presumption of innocence. This was particularly relevant in relation to the Lava Jato affair where the evidence of criminal conduct was strong in a number of cases.

Mr Soares focused on the issues and pressures facing D&O underwriters in Brazil. He commented on the increasing number of claims notifications flowing from the alleged bribery and corruption investigations at Brazilian state-owned companies, notably Petrobras. Mr Soares emphasised the importance of compliance and risk management functions at policyholder level.

How to Improve the Claims Handling Position in Brazil?

Geoffrey Conlin of HFW Sao Paulo chaired a panel discussion on 'How to improve the claims handling position in Brazil?' The panel was represented by each of the main parties in the insurance and reinsurance chain including Guilherme de Freitas Pinto from the claims' department of Odebrecht's captive brokers, OCS; the Chief Claims Officer for GI Latam at Zurich, Lope Garcia; Ricardo McQuattie, Head of Specialty and Marine Claims for Latin America and the Caribbean at AIG, Miami; and Hugh Sparks from loss adjusters, Charles Taylor Adjusting, in London.

The panel agreed that the complexity of international programmes often led to tension between local and international markets. In particular, overseas reinsurers tend to approach a claim wearing international lenses, in circumstances where the policy is usually under local law. This often creates differences in expectations regarding the effect of devices which are aimed at facilitating settlement, like claims control, co-operation and follow the settlement clauses, as such devices don't have the same effect under Brazilian law as they do under English law.

Owing to high levels of interest and monetary correction in Brazil, the panel agreed that claims in Brazil 'do not get better with age' and the parties should try and reach early settlement. Dialogue between all members of the insurance and reinsurance chain is essential and one mechanism to achieve this - which is gaining some traction in Brazil and in other markets in Latam - is the agreement of a claims protocol. Since Brazilian law is relatively unpredictable and the Court process is slow, panel members also agreed that Brazil is ripe for other forms of ADR.

International Insurance and Reinsurance Programmes

Paul Wordley of HFW London and Conrado Malburg of Willis Towers Watson, Rio, presented on international insurance and reinsurance programmes. Wordley and Malburg identified three key types of global programme:

- Stand alone local policies. The purchase of separate unrelated local policies in each country where the insured has exposures, underwritten by local carriers and which are tailored to local practice and regulatory requirements, with local claims servicing and payment.
- Global non-admitted programme. The purchase of a single global insurance policy issued by an insurer in an insured's home state covering the insured's worldwide exposures. Coverage is provided under one policy and claims are serviced and payments made centrally. The insurers may or may not have licences outside its own state.
- Combined or controlled master programme, in which global policies are issued in the insured's home country and local policies are issued in the local countries. A core or master wording defines the global insurance cover and DIC/DIL coverage fills the gap between local policies and the master wording and may 'top up' the local policy response.

Reference was made to compliance and regulatory issues arising under each programme in particular – as in Brazil - to the fact that local regulation may require a local subsidiary to purchase local insurance from a local licensed carrier and may dictate the policy form or content e.g. terms and conditions. Wordley also spoke about the use and advantages of captives in the oil & gas, mining, telecommunications, construction and financial sectors and the key issues, including management, claims, location and tax considerations.

Malburg spoke about the categories of reinsurer in the Brazilian market (local, admitted and eventual). He also explained and provided some placement solutions on the effect of the current rules requiring an insurer to cede at least 40% of each reinsurance cession to local reinsurers and providing that an insurer or local reinsurer cannot transfer more than 20% of the premium for each contracted coverage to the same financial conglomerate based abroad.

Closing Remarks by Carlos Caputo, CEO of Markel Latin America

Carlos Caputo, CEO of Markel Latin America, closed the forum with his amusing and light-hearted observations on the issues discussed during the course of the day. Caputo stated that the current Brazilian legal and regulatory system, with its complex intra-group and mandatory cession rules, makes the placement of global insurance and reinsurance programmes difficult, in particular in relation to the effective use of captives. Caputo noted that Brazil was now following a regulatory model which has not been tested in any other jurisdictions, although he nevertheless welcomes the reforms as moving in the right direction. On the claims front, Caputo is of the view that with good faith and good sense the parties should be able to resolve the vast majority of their claims issues: transparency and open dialogue are key ingredients to achieving early settlement.

Photos of the Summit can be found here: https://www.flickr.com/photos/ukinbrazil/albums/72157665900003882

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