



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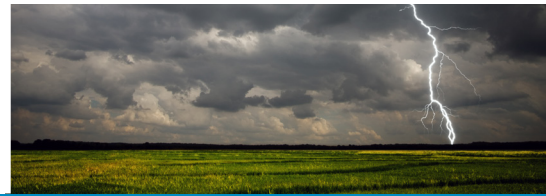
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Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

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

### **EU: European Insurance and Occupational Pensions Authority (EIOPA) raises concerns with Solvency II Internal Models**

**EIOPA published a new opinion in which it raises its concerns regarding inconsistency between EU Member States when considering and approving applications by insurers to use their own internal models to calculate new capital requirements. EIOPA identified areas where national regulators could potentially jeopardise a new EU-wide regulatory regime without a harmonised internal model approval process and recommended the preferred options in dealing with (i) risks related to sovereign exposures; (ii) risk-free interest rates; (iii) presumption of third country equivalence; and (iv) use of comparative studies.**

EIOPA is concerned that different approaches to internal modelling could affect convergence and ultimately lead to an imbalance as the internal model is one area that is particularly prone to inconsistent approaches. EIOPA intends to continue monitoring the approach taken to improve internal models and will engage with national competent authorities to understand what actions have been taken following EIOPA's opinion and will consider what further measures are required to ensure consistent approaches. Under EIOPA's mandate it has the power to respond to instances of incorrect or insufficient application of EU law and can issue recommendations and decisions to offending Member States.



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NAZIM ALOM, ASSOCIATE

EIOPA's complete opinion can be found here: <https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-15-083%20Opinion%20on%20IMs%20%28April%202015%29.pdf>.

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## **hfw** 2. Market developments

### **UK: Tokio Millennium Re: authorisation of UK branch**

Tokio Millennium Re has received authorisation from the Prudential Regulation Authority to operate a branch office in the UK and will begin writing business from 1 July 2015 out of its London office.

### **Dubai: Lloyd's targets Islamic insurance market**

Following Lloyd's' recent opening of an office in the Dubai International Finance Centre, Lloyd's has set its sights on Islamic insurance. No doubt it is aware of Moody's report that Saudi Arabia's insurance market is the second-fastest growing in the Gulf Cooperation Council, and is looking to expand in Saudi Arabia, Malaysia and United Arab Emirates.

### **UK: Surge in cyber insurance cover spurred by recent major data breaches and the prospect of bigger data breach penalties under new EU data protection laws**

Lloyd's recently reported a 50% increase in demand for cyber insurance products. Recent studies showed that only 2% of large businesses in the UK have "explicit cyber cover", with approximately half saying that they were not aware "that cyber risks can even be insured".

HFW has delivered internal and external presentations on cyber security/risks to various industry groups, led by Partners John Barlow, Elinor Dautlich and Andrew Bandurka, and Consultant Peter Schwartz.

### **hfw** 3. Court cases and arbitration

#### **Mauritius: Judicial Review of suspension of insurer's registration by the Financial Services Commission**

**The Judicial Committee of the Privy Council (the Judicial Committee) delivered judgment on 20 April 2015 upholding the judgment of the Supreme Court of Mauritius, which set aside Rainbow Insurance Company Limited's (Rainbow's) application for Judicial Review and confirmed the decision of the Financial Services Commission, Mauritius (FSC) to suspend with immediate effect Rainbow's registration for both its general and long term business.**

Rainbow mounted a wide-ranging challenge to the decision of the FSC, on the basis of:

1. Procedural unfairness because the decision to suspend registration
2. Illegality and abuse of power as the FSC had no lawful basis to suspend Rainbow's registration, having, in its preliminary letter to Rainbow, claimed only that it had "reason to believe" that Rainbow had not conducted its business in accordance with sound insurance principles and because of an improper delegation of powers.



**The Judicial Committee found that there was no improper delegation. The individual to whom Rainbow alleged the improper delegation had been made was a "fact finder" and the FSC responded appropriately to the report he had produced.**

ALISON PROCTOR, SENIOR ASSOCIATE

was effectively made without proper consultation.

The Judicial Committee dismissed the challenge, confirming that there is no general common law duty on a public body to consult persons who may be affected by a proposed measure before it is adopted. There may be an obligation to consult arising out of a statutory scheme or as a consequence of having created a legitimate expectation. The Judicial Committee considered that the statutory scheme did not envisage such consultation in all circumstances before the FSC reached a determination. The Judicial Committee concluded that the statutory scheme envisaged that the insurer had an opportunity to engage with and make representations. It did not provide for consultation and fairness did not require such consultation, especially where the ultimate sanction was prohibition.

The Judicial Committee concluded that there was no substance to either branch of this challenge.

In relation to whether the FSC had a lawful basis to suspend Rainbow's registration, the Judicial Committee found that the FSC's preliminary letter made only temporary (although very significant) directions and proposed the suspension of Rainbow's registration.

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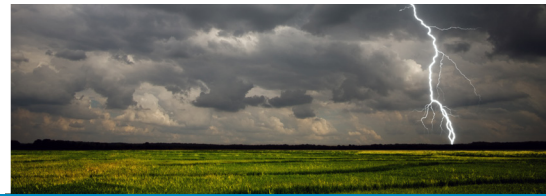
3. Irrationality because Rainbow was treated in a discriminatory manner in the calculation of its expected recoveries from third parties by subrogated claims, and because of the speed with which the FSC acted.

The Judicial Committee concluded that there was no substance to either branch of this challenge, based upon the facts presented to it.

4. Breach of Rainbow's legitimate expectation that it would be given sufficient time to adapt to the FSC's new regulatory requirements.

The Judicial Committee summarised that the courts have developed the principle of legitimate expectation as part of administrative law to protect persons from gross unfairness or abuse of power by a public authority. The Judicial Committee concluded that there were formidable hurdles, both legal





and factual, which this challenge could not surmount. Further, the fact that the FSC was exercising regulatory powers in the interests of policyholders and others made this challenge difficult to sustain.

The Judicial Committee reiterated that judicial review is not an appeal on the facts. Only in rare cases (and not in this instance) will the court have to examine questions of disputed fact.

This case illustrates the difficulties in mounting a successful application for judicial review.

The full judgment can be found here: [https://www.jcpc.uk/decided-cases/docs/JCPC\\_2013\\_0065\\_Judgment.pdf](https://www.jcpc.uk/decided-cases/docs/JCPC_2013_0065_Judgment.pdf).

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#### **4. HFW publications**

##### **Dubai: The wait is over: the UAE Insurance Authority's new Financial Regulations**

HFW has published a Briefing on the long awaited financial regulations for conventional insurance companies which have been issued by the United Arab Emirates (UAE) Insurance Authority. The Financial Regulations mark a new era in insurance regulation in the UAE with a move to a more complex and risk-based approach to prudential regulation of the UAE insurance market.

A copy of the Briefing can be found here: <http://www.hfw.com/The-wait-is-over-April-2015>.

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##### **UN: Iran: no immediate lifting of sanctions; but negotiations under way**

HFW has published a Briefing on the meeting between the five permanent members of the United Nations Security Council (China, France, Russia, UK and US), German and Iranian officials earlier in April. Although there is no immediate relief from sanctions, an initial statement of intent has been produced by each of the US and Iranian governments which

summarises the framework for an agreement, with the purpose being to provide a path for the sanctions on Iran to be suspended and eventually terminated.

A copy of the Briefing can be found here: <http://www.hfw.com/Iran-no-immediate-lifting-of-sanctions-April-2015>.

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