

Insurance/
Reinsurance

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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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Dubai: Conferences and publications

Hong Kong and Korea: Paul Wordley presents on claims issues and the Insurance Act 2015

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

Tighter capital controls for the big nine

Global regulators have finalised new rules, which will come into force in 2019, requiring those insurers deemed by the Financial Stability Board (FSB) to be globally systemically important insurers (G-SIIs) to hold more capital in a move that is aimed at ensuring greater global financial stability. Following the global financial crisis, the FSB has sought to tighten national supervision across a range of institutions, with insurance companies the latest target. The move is seen as an attempt to prevent taxpayer bailouts of the industry in a crisis.

At the request of the FSB, the International Association of Insurance Supervisors (IAIS) has put together the two new requirements and these have been endorsed by the FSB. The first requirement, known as the basic capital requirement (BCR), follows the amount each insurer is required to hold by national law. The second requirement, the higher loss



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absorbency (HLA), is expected to be approximately 10% of the BCR but the exact level will depend on the type of business and how systemically important regulators deem the insurer to be. Non-traditional and non-insurance (NTNI) activities carry the largest surcharges, of between 12% and 25%, and industry and regulators are currently debating what constitutes NTNI. The nine G-SIIs which will be subject to the requirements are currently: Prudential, Allianz, MetLife, PingAn, Prudential Financial, AIG, Generali, Axa and Aviva. All G-SIIs must meet their combined capital requirements from 2019.

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Solvency II Regulations amended to create distinct asset class for infrastructure investments

Following the receipt of technical advice from the European Insurance and Occupational Pensions Authority (EIOPA), the European Commission (the Commission), on 30 September 2015, adopted a delegated regulation (the Amending Regulation)¹ amending the Solvency II Delegated Regulation ((EU) 2015/35) (the SII Regulation). Once the Amending Regulation is effective, the amended SII Regulation will, amongst other things, treat investments in infrastructure as an asset class distinct from other long-term investments.

Why create a distinct asset class?

By amending the SII Regulation, the Commission aims to incentivise

long-term investment in infrastructure by the insurance industry and further the Investment Plan for Europe (announced in November 2014) by removing obstacles to investment. Currently, an insurance company wanting to invest in a public project such as a motorway would be subject to the same capital charge as if it invested in any private company, even though infrastructure projects generally benefit from predictable future revenues (like motorway tolls) and therefore have a better risk profile.

Once the SII Regulation is amended, qualifying infrastructure investments will be subject to a risk calibration of 30% instead of the standard 49% for unlisted equities.

What are “qualifying infrastructure investments”?

In accordance with the EIOPA technical advice, in order for an investment to be within the asset class, it must have the following core criteria:

- The existence of a sound business plan and investor control.
- Predictable cash flows.
- Stability under stressed conditions.
- A contractual framework that ensures investor protection.

The asset class comprises equity investments as well as investment grade and unrated debt. Non-investment grade debt is excluded for prudential reasons. The category is limited to investments in special purpose vehicles that own, finance, develop or operate infrastructure assets that provide or support essential public services. This category does not, as yet, extend to corporate investments in infrastructure companies. However, EIOPA and the Commission will be examining the calibration of capital requirements for investments in infrastructure corporates.

¹ http://ec.europa.eu/finance/insurance/docs/solvency/solvency2/amendment/20150930-amendment-to-the-delegated-act_en.pdf

When do the amendments become effective?

Assuming that the European Parliament and European Council do not object to the Amending Regulation nor extend their three month consultation period, the amendments should be published in the Official Journal and become effective by the end of December 2015.

Other changes made by the delegated regulation

Importantly, the Amending Regulation will also do the following once effective:

- Extend the transitional measures in relation to equity capital charges so these measures apply to all equities purchased before the end of 2015 (currently, this only applies to equities traded on a regulated market) and clarify how insurers should apply the transitional measures to managed funds.
- Allow investments in European long-term investment funds (ELTIFs) to benefit from the same capital charges as investments in European Venture Capital Funds and European Social Entrepreneurship Funds, which benefit from the same equity capital charge as equities traded on regulated markets (lower than for other equities).
- Grant equities traded on multilateral trading facilities (MTFs) the same capital charge as equities traded on regulated markets.

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hfw 2. Court cases and arbitration

France – Cour de cassation 9 September 2015 – conflict of laws and direct action (Brussels I)

France's highest court, the Cour de cassation, has recently shed light on how article 11§2 (article 13 in the revised version) of the European Union Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as Brussels I) should be applied when a breach of contract is the basis for a direct action brought by the victim against the liability insurer of the party in breach. The judgment applies to both the original wording and the revised version of 2012.

Article 11§2 of Brussels I provides that:

“Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted”.

This gives the injured party a wide choice of courts in which to sue the insurer of the responsible party but determining whether direct actions are permitted is crucial to decide whether the chosen court has jurisdiction to rule on the direct action. Which law should apply to decide whether a direct action is possible when the action arises from a breach of contract?

This question was much-debated under French law until this case clarified matters. Here, the French claimants, whose truck and content were damaged by fire in France, decided to bring a direct-action lawsuit in France against the German liability insurer of a repairer. The repairer had agreed by contract to repair the truck and was thus in breach.



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The Cour de cassation has now clearly established that the availability of the direct action should be ascertained according to either (a) the law applicable to the underlying contract; or (b) the law applicable to the insurance policy. This solution offers an alternative, as both laws can equally apply to decide whether the direct action is permitted.

By contrast, however, only the law applicable to the insurance policy will govern the scope of the victim's rights.

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hfw 3. HFW news, publications and events

London

Today, we sponsored the **London Market Claims Conference**.

Paul Wordley was part of the panel session on Overcoming the strategic challenges facing the London Market.

For more information go to <http://www.the-insurance-network.co.uk/event/london-market-claims-2015/#programme>

Dubai

HFW sponsored the **MEA Risk and Insurance Excellence Awards**

2015 on 27 September 2015 in the Four Seasons Hotel, Dubai. Costas Frangeskides also acted as a judge.

HFW is sponsoring a series of talks organised by the **Dubai Insurance Association**. The first took place on 8 October 2015 on the subject of 'The Dynamic Geo-Political Situation

Today'. The next talk will be on 19 October 2015 and the topic will be 'DFSA strategy and developments in international regulation of insurance'.

On 8 November 2015 John Barlow, Tanya Janfada and Josianne El Antoury will attend a conference organised by the **Islamic Insurance Association of London** on the theme of 'The IIAL & UAE working in partnership to develop Islamic Insurance'.

John Barlow and Josianne El Antoury's article 'The future of claims growth in the GCC' will be published in **Premium Middle East Magazine** this month.

Hong Kong and Korea

Paul Wordley was the guest of JLT at their seminar in Hong Kong on 2 October 2015. He gave presentations on "Claims issues and getting claims paid" and the Insurance Act 2015. Paul also presented on the Insurance Act 2015 in Korea on 6 October.

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