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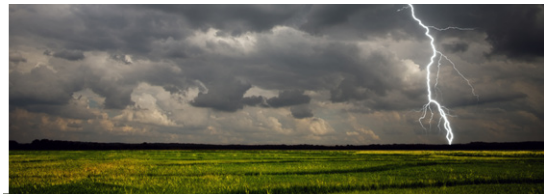
UK: Marine Insurance Week

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AWARDS 2017  
**WINNER**

**UKCAPTIVE**  
2017  
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LAW FIRM  
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## **hfw** 1. Regulation and legislation

### **EU: Expiry of the Insurance Block Exemption Regulation (IBER)**

**The IBER exempted certain types of cooperation in the insurance sector from EU competition law, subject to certain conditions. It applied to joint compilations, tables and studies and to co-insurance and reinsurance pools.**

For joint compilations, tables and studies, the IBER permitted the exchange of information which assisted insurance and reinsurance companies to develop a better understanding of insured risks and to assess them more accurately. The IBER also permitted insurers and reinsurers to pool resources to cover new or large risks. If the conditions of the IBER were met, then insurers were automatically protected.

However, the IBER expired at the end of March following the European Commission's decision not to renew it, despite the petitions of certain industry bodies. The IBER is just one of a number of sector specific exemptions



**The removal of the exemption puts the onus on individual insurers and reinsurers to carry out their own self-assessment against cross-sector guidelines to ensure that they are compliant.**

ANTHONY WOOLICH, PARTNER

which have not been renewed over recent years. Instead, the European Commission's approach seems to be for the same rules to be applied across different sectors and for the specific sector guidance to fall away.

But what does this mean for insurers and reinsurers? The advantage of the IBER was that if the conditions were met, companies would have certainty that they were compliant with EU competition laws. The removal of the exemption puts the onus on individual insurers and reinsurers to carry out their own self-assessment against cross-sector guidelines to ensure that they are compliant. As the IBER is indicative of what was the European Commission's policy until very recently, it does continue to provide useful guidance for companies to inform their self-assessment, but its expiry does remove legal certainty and requires a greater degree of review to ensure that arrangements remain compliant.

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## **hfw** 2. Court cases and arbitration

### **England and Wales: Gard Marine v China National THE OCEAN VICTORY: "is it any of your business?"**

**This case concerned a claim by a demise charterer against a sub charterer, based on the demise charterer's own liability to the head owner for the demise charterer's alleged breach of a safe port warranty. It was held that there had been no such breach, which was the end of the matter.**

However, the Supreme Court went on to consider whether, had there been a breach of the safe port warranty, the rights of the head owner or the subrogated rights of his insurer against the demise charterer would have been precluded by virtue of the demise charterer's contractual obligation to insure the vessel to protect the interests of both the head owner and the demise charterer, so that the demise charterer would have had no liability to pass on to the sub charterer.

As to this, there was a divergence of opinion.

Lord Clarke held there to be no preclusion of the rights of the head owner (or his insurer) against the demise charterer. Clear words would be required in order to exempt the demise charterer from liability for breach of the safe port warranty in exchange for paying for hull insurance. As such, the insurance was none of the sub charterer's business.

Lord Sumption held that the preclusion of the right to claim damages could either be based upon an implied term of the contract between the co-insureds or upon the insurer's payment having made good the loss as between the co-insureds. Which was the correct



This case has important ramifications in the construction industry, where it is common for contracts to provide for co-insurance of employers', contractors' and sub-contractors' interests in contract works.

NIGEL WICK, PARTNER

analysis in any case would depend upon the particular terms of the particular contract. In this case, Lord Sumption based the preclusion of the rights of the head owner (or his insurer) against the demise charterer upon the insurer having made good the loss as between the co-insureds. However, the fact that the insurer had made good the loss as between the co-insureds did not mean that it had done so as between the demise charterer and the sub charterer, and so, again the insurance payment was none of the sub charterer's business.

The majority, comprising Lords Mance, Toulson and Hodge, considered the preclusion of the rights of the head owner or his insurer against the demise charterer to be based upon an implied term of the contract between the co-insureds. The commercial purpose of co-insurance is first to create a fund which is the sole avenue for making good the loss and secondly to avoid litigation. It would be nonsensical if those parties who were co insured would nevertheless make claims against one another, whether subrogated or not. In this case, the contractual scheme between the head owner and the demise charterer,

whereby the demise charterer undertook to insure the vessel to protect the interests of both the head owner and the demise charterer, precluded any claim by the former against the latter for the insured loss of the vessel, and therefore the demise charterer had no liability to pass on to the sub charterer, and so the insurance arrangements were very much the sub charterer's business.

This case has important ramifications in the construction industry, where it is common for contracts to provide for co-insurance of employers', contractors' and sub-contractors' interests in contract works.

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## **hfw** 3. Market developments

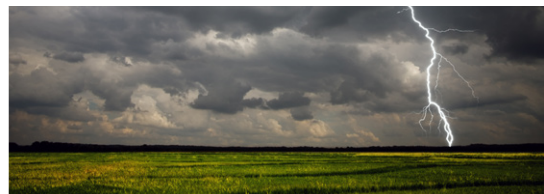
**England & Wales: *Luxemburg v Dublin*: maintaining access to the single market after Brexit**

**Luxembourg and Dublin have been competing in the battle for being the location of choice for reshuffling UK carriers following Brexit. Other EU countries in the running seem to be Belgium, the Netherlands and Malta. The verdict of Lloyd's in establishing its European foothold in Brussels is also likely to impact the decisions of others entities and potentially cause them to follow suit or push the state further up the rankings for consideration.**

Although Dublin initially stood out as the clear choice, given its proximity to London and recognised re/insurance market, following decisions by FM Global and AIG to establish a presence in Luxembourg, Hiscox is the latest insurer to endorse the same as its country of choice in the EU in order to retain access to the market following Brexit.

Hiscox announced Luxembourg as its preference *"for its pro business position, strong financial services experience and well-respected regulator"*. However, insurers should not be too quick to rule out Dublin, despite a less than welcoming statement from the Central Bank that applicants *"engaged in an efficient, open and rigorous process"*. It is reported that companies considering applications have a positive view of the jurisdiction and that Dublin has been listening to feedback and putting in the effort to entice insurers.

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## England & Wales: Energy insurers anticipate market upturn

**Energy insurers have recently been strengthening their position in the market by expanding their energy portfolios with new appointments. The thinking behind this appears to be that companies are keen to be ready in order to capitalise quickly amid expectations that market conditions will improve.**

Given the low oil prices over the last few years, there has been a noticeable downturn in both activity and returns for a number of insurance buyers in the energy sector. The knock-on effect of this has been significant contraction in premium spend. New capacity has also been pulled towards the energy market as a result of the lack of any significant events in the Gulf of Mexico.

However, it was recently reported that Zurich was the latest re/insurer to boost its offering in the sector. Others include Chaucer, Endurance, Beazley and CV Starr.

Therefore, with high capacity and low activity, the environment may not be the most encouraging in terms of growth and yet the energy sector continues to draw new entrants. It is also probable that competition will increase and there will be a corresponding pricing pressure and reduced returns.

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## 4. HFW publications and events

### UK: HFW at the Lloyd's Rugby 7s

On Thursday, 18 May, the HFW team competed in the Lloyd's 7's. After losing to DWF with a try in the very last minute of the game and losing two key players to injury, it was always going to be a tough ask to make it out of the group. Hopes were temporarily raised after the team beat Braemar but the third, and last, game of the group stage was against a very strong team from BMS. BMS proved too powerful and so HFW bowed out of the competition gracefully. There was certainly no shame as BMS went on to contest the final.

The event was particularly poignant this year as it was an event that was very dear to James Clibbon, a partner within the insurance/reinsurance team, who very unexpectedly and tragically passed away at the end of April. As a mark of respect for James all of the shirts had "Clibbon" on the back and a trophy named the "James Clibbon Memorial Award" was awarded to the HFW player of the tournament. This year the award went to Robert Lennox who scored a number of tries and was a lion in defence. In view of what an important part rugby played in James' life the award is a very fitting tribute.

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### UK: HFW attends Property Insurance Claims Group Conference

[Christopher Cardona](#) (Partner, London) and [Alison Proctor](#) (Senior Associate, London) attended the Property Insurance Claims Group Conference in London on 18 May.

### UK: HFW presents at Nigerian British Chamber of Commerce's 40th Trade Mission

[Graham Denny](#) (Partner, London) spoke on 22 May at the Nigerian British Chamber of Commerce's 40th Trade Mission focusing on the Mining Industry in London. Graham spoke on "The Importance of Insurance and Reinsurance to Business Development in Nigeria". Other presenters included the Honourable Minister of Solid Minerals Development (Dr Kayode Fayemi) and Ms Yewande Sadiku (the CEO of Nigeria's Investment Promotion Commission).

### Brazil: HFW presenting at the IBA LatAm Maritime and Transport Law Conference

[Geoffrey Conlin](#) (Partner, São Paulo) is speaking on Ports and Terminals at the IBA LatAm Maritime and Transport Law Conference on 8 June.

### UK: HFW presenting at IRLA Breakfast Briefing on the General Data Protection Regulation

[Felicity Burling](#) (Associate, London) is speaking at the IRLA Breakfast Briefing on 9 June 2017 on "Learning to Live with the General Data Protection Regulation". Felicity will be speaking alongside Dr. Yalini Pathy and Craig Skinner of PwC. They will consider the scope and application of the GDPR, how Brexit could affect compliance with and enforcement of the GDPR, and practical steps that companies can take now to aid compliance with the GDPR.

### UK: Marine Insurance Week

HFW is pleased to be hosting its first Marine Insurance Week on 26 – 30 June 2017 in London. The week long programme of events is designed for those involved in marine insurance claims and includes a variety of seminars relevant to all lines of marine



insurance (including hull, cargo, ports & terminals and liability). Marine Insurance Week 2017 will cover topics including the impact of the Arab Spring on insurers; managing claims in Latin America; detention and confiscation by authorities; polar navigation and the Polar Code; and the impact of supply chain insolvencies in the insurance market.

A copy of the full programme can be found by clicking [here](#).

If you have any queries regarding this event, or to register your interest in attending, please contact us at [events@hfw.com](mailto:events@hfw.com)

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