

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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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

UK: Large insurer – Eligibility for “matching adjustment” under Solvency II

PRA-regulated insurers will be able to apply to use the Article 77b ‘matching adjustment’ (MA) under Solvency II when calculating their capital requirements. This will be available from April 2015 and will remove the requirement to compensate for market volatility to which they are not exposed. The criteria under Article 77b define specific features that the portfolio of assets, and in some cases the individual assets within it, must have. Any assets that meet the eligibility criteria and have fixed cash-flows will be eligible for inclusion in the MA.

Large insurers hoping to take advantage of this “less stringent” capital requirement will nevertheless need to ensure that their application satisfies the overall broader Solvency II regulatory requirements and will also need to submit a solvency plan. Firms entering into hedging or other arrangements to secure compliance with the criteria in Article 77b of Solvency II must ensure that these arrangements also meet the Solvency II risk management requirements. This means that firms will need to demonstrate that they have assessed the hedging arrangements and that they have mitigated against the risks generated from stress and counterparty exposure.

To view Solvency II, please see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0035>

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UK: Challenges for insurance industry – PRA speech

The Deputy Head and Executive Director of Insurance Supervision at the PRA, Paul Fisher, recently spoke about his views on the challenges facing the insurance industry. In particular, he considered the impact of governance, Solvency II, environmental changes, societal changes and insurance innovation as being the next big challenges of tomorrow.

Mr. Fisher was complimentary of the insurance sector and highlighted the importance of it in “*fostering a stable economy*” but recognised that it will need to be “*confronting the challenges of tomorrow*”. Naturally, governance is the PRA’s primary focus but Mr. Fisher wanted to differentiate between governance and enforcement and stressed that the outcome of the new senior managers regime for insurers is intended to be effective governance and not enforcement.

Readers will be fully aware of the impact of Solvency II and the role the PRA plays (note the new Regulations, (SI 2015/575). For more information, please see the news section below) but the issue of environmental and

societal change is something that is slowly gaining prominence. The impact of climate change on insurers and insureds alike is something the Bank of England is currently looking into as part of a report due to be published later in 2015. Similarly, as technology advances and customers and business are more reliant on advances in information technology, there is an exponential increase in the possibility and impact of cyber-crime.

Mr. Fisher reassures the insurance sector that the PRA will not hinder innovation and recognises that insurers must adapt but insurers must demonstrate that they can mitigate against associated risks. Insurers must demonstrate to the PRA that new risk exposures are well understood and that they have the relevant capital to undertake new ventures.

To view the full speech, please see <http://www.bankofengland.co.uk/publications/Documents/speeches/2015/speech804.pdf>

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NAZIM ALOM, ASSOCIATE

2. Market developments

Australian: 2014 Year end statistics on the performance of the Australian general insurance industry

The Australian Prudential Regulation Authority (APRA) has recently released its Quarterly Insurance Performance Statistics publication for the quarter ending December 2014. The report provides insight into the financial performance and position of insurers and reinsurers in the Australian general insurance market.

By way of summary, some of the key statistics compiled in the report show that:

- There were 103 direct insurers and 12 reinsurers licensed to conduct general insurance business in Australia in 2014.
- The net premium earned by the industry in 2014 was AUS\$31.7 billion, which was a slight increase from AUS\$30.7 billion in the previous year. Of this, direct insurers wrote 95%, with the remaining 5% written by reinsurers.
- The net loss ratio for the industry in 2014 was 66%, being an increase from 61% in the previous year. Whilst there was only a marginal increase of 3% from the previous year in the net loss ratio for direct insurers (to 65%), there was a marked increase evident for reinsurers, as their net loss ratio increased from 43% in 2013 to 74% in 2014.



the industry underwriting result for 2014 was a profit of AUS\$2.7 billion, being significantly lower than the AUS\$4.1 billion profit reported for the previous year.

SUSANNAH FRICKE, ASSOCIATE

- Overall, the industry underwriting result for 2014 was a profit of AUS\$2.7 billion, being significantly lower than the AUS\$4.1 billion profit reported for the previous year. The result was largely attributed to a number of catastrophe events.

The report is invaluable reading for those operating within (or those with financial interests in) the Australia general insurance market. A full copy of the report can be accessed via the following link:
<http://www.apra.gov.au/GI/Publications/Pages/quarterly-general-insurance-statistics.aspx>

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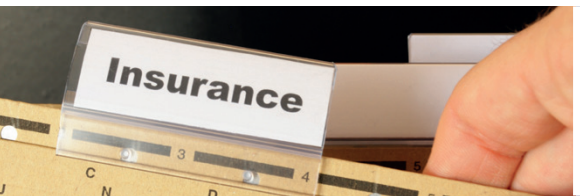
3. Court cases and arbitration

EU: Defective products: a potential defect may be sufficient for a finding of liability (CJEU, Boston Scientific Medizintechnik, C-503/13 and C-504/13)

In this case submitted to the CJEU by the German Federal Court, a German company, which sells pacemakers imported from the USA, discovered that these products could be potentially defective and might create a danger for patient safety. The company offered to supply new pacemakers, free of charge, to replace the ones previously installed. The German company then faced claims for reimbursement of the costs of the replacement. These claims are based on the German Law implementing Council Directive 85/374/EEC of 25 July 1985 concerning liability for defective products, which provides that the producer of a device (or any person who imports into the Community a product for sale) shall be liable for damage caused by this product where such product does not provide the safety which a person is entitled to expect.

The CJEU was asked to decide whether all the pacemakers from the same batch of production should be considered as defective even though the defect remained simply a potential one, since not all the pacemakers had been checked.

The Court answered in the affirmative. Given the nature of the devices and the abnormal potential for damage of these products, the Court decided that *“where it is found that products belonging to the same group or forming part of the same production series (...) have a potential defect, such a product may be classified as defective without there being any need to establish that that product has such a defect”*.



The CJEU also rules that the damage caused by a surgical operation for the replacement of a defective product “constitutes ‘damage caused by death or personal injuries’ for which the producer is liable [pursuant to article 9 of the Directive], if such an operation is necessary to overcome the defect in the product in question”.

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4. HFW events

HFW sponsor Multaqa conference (Qatar, 8-10 March)

HFW were pleased to sponsor the annual Multaqa conference (Qatar, 8-10 March), which is the MENA region’s leading risk and insurance forum. Partners Paul Wordley and Costas Frangeskides, and Consultant Carol-Ann Burton attended from HFW.

5. News

- Solvency II Regulations published (SI 2015/575). The Regulations were laid before Parliament on 9 March 2015 and are due to come into force on 1 January 2016. To read the Regulations, please see http://www.legislation.gov.uk/ukSI/2015/575/pdfs/ukSI_20150575_en.pdf. To view the explanatory memorandum, please see http://www.legislation.gov.uk/ukSI/2015/575/pdfs/ukSIEM_20150575_en.pdf; to view the transposition table, please see http://www.legislation.gov.uk/ukSI/2015/575/pdfs/ukSITN_20150575_en.pdf.
- The PRA sent two data requests to all Solvency II affected insurers. The requests are broadly the same as issued previously and related to life and general insurance. Please see link in order to review the PRA’s high-level overview, <http://www.bankofengland.co.uk/pradocuments/solvency2/summarydatacollector2015.pdf>.

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