



**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.

Carol-Ann Burton, Consultant, [carol-ann.burton@hfw.com](mailto:carol-ann.burton@hfw.com)

Brendan McCashin, Special Counsel, [brendan.mccashin@hfw.com](mailto:brendan.mccashin@hfw.com)



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

### **United Arab Emirates: New Commercial Companies Law promulgated – changes will benefit foreign investors and local interests**

**After several years of speculation, the new United Arab Emirates (UAE) Commercial Companies Law (Federal Law No. 2 of 2015) (the Companies Law) was promulgated in UAE Federal Official Gazette No. 577 on 31 March 2015. Most importantly for foreign investors, the restrictions on foreign ownership in the previous Commercial Companies Law (Federal Law No. 8 of 1984) remain in place; that is, UAE nationals must hold at least 51% of the share capital of a company established in the UAE. Nonetheless, the new Companies Law introduces the following key changes in relation to the regulation of companies in the UAE which will benefit foreign investors and local interests alike:**

- **Accounting and auditing requirements:** All companies are now required to maintain for at least five years accounting records showing their transactions. Companies must prepare annual financial accounts (including balance sheets and profit and loss accounts) in accordance with the International Accounting Standards and Practices. Joint stock companies and LLCs are also required to appoint one or more auditors to audit the company's accounts each year.
- **Single shareholder:** A limited liability company (LLC) can now be established by a sole legal person. Previously, an LLC required a minimum of two shareholders.

- **Unlimited directors:** Under the new Companies Law, there is no maximum number of directors which an LLC can have. Previously, an LLC could have up to five directors.
- **Quorum requirements:** The minimum quorum for a general assembly of an LLC has been increased from 50% to 75%. This amendment will benefit foreign investors who hold 49% of an LLC and ensures that a general assembly will not be quorate without the foreign investor's presence. However, foreign investors need to be aware that the new Companies Law provides that if a quorum is not present the first time, the quorum for a subsequent meeting decreases to holders of 50% of the share capital in the LLC. This would mean that in a typical 49% foreign owned LLC, the UAE national shareholder would be able to hold a meeting and pass any resolution without the foreign shareholder's involvement the second time a meeting is convened.

- **Share pledges:** A partner in an LLC may now pledge shares in a company to another partner or third party, although such pledge must be registered in the commercial register at the Department of Economic Development in the relevant Emirate. Previously, a partner was only permitted to transfer his or her shares to another partner or third party. Share pledges must be in accordance with the company's Articles of Association. Therefore, existing companies wishing to allow their shareholders to make share pledges will need to amend their Articles of Association.



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CAROL-ANN BURTON, CONSULTANT

- **Minimum float requirements:** The minimum float requirements for companies listed on UAE exchanges has been reduced from 55% to 30% of company equity. This will be of particular interest to entities looking to establish an insurance company in the UAE, which pursuant to the UAE Insurance Law (Federal Law No. 6 of 2007) must be established either as a public joint stock company established in the UAE or a branch of a foreign insurance company.
- **Holding companies:** The new Companies Law allows the establishment of holding companies (either as an LLC or as a Joint Stock Company).





The new Companies Law will come into effect 3 months from the date of publication in the Official Gazette, that is, 1 July 2015. Therefore, existing companies in the UAE would be well advised to review their memorandum and articles of association and corporate governance policies and procedures to ensure compliance with the new Companies Law before 1 July 2015.

For more information, please contact [Carol-Ann Burton](#), Consultant, on +971 4 423 0576, or [carol-ann.burton@hfw.com](mailto:carol-ann.burton@hfw.com), or [Tanya Janfada](#), Senior Associate, on +971 4 423 0527, or [tanya.janfada@hfw.com](mailto:tanya.janfada@hfw.com), or your usual contact at HFW.

#### **UK: Lloyd's publishes consolidated advice on Solvency II data collection requirements**

**The Society of Lloyd's has issued a Market Bulletin explaining the new data collection requirements under the Solvency II Directive (2009/138/EC). The new data collection requirements will apply from 1 January 2016, from which date managing agents will be required to collect more data from coverholders and third party administrators.**

The Market Bulletin consolidates previous advice on data collection requirements and also includes advice to managing agents and Lloyd's brokers as to the steps that they should take to prepare for the introduction of the new requirements.

It also explains what the new requirements mean for coverholders/TPAs, as well as setting out the means by which the LMA and Lloyd's will facilitate the data collection requirements. For example, the LMA will, through its Delegated Authorities Operations Committee (DAOC), be

releasing revised coverholder premium and claims data standards at the end of May 2015.

The new requirements will apply:

- To "high product risk" products.
- To business underwritten by a coverholder through a binding authority from 1.1.16 onwards.
- Where the Lloyd's customer is domiciled or registered in the UK or EEA.

The Market Bulletin is a helpful consolidation of the previous advice published by Lloyd's on the new data requirements and will be of interest to managing agents, brokers, coverholders and TPAs who are likely to be subject to them. It will be important for such parties to work with their advisors to ensure that they are properly prepared for the introduction of the new requirements. A copy of the Market Bulletin can be found here: <http://www.lloyds.com/~-/media/files/the%20market/communications/market%20bulletins/2015/05/y4898.pdf>.

For more information, please contact [Ben Atkinson](#), Associate, on +44 (0)20 7264 8238, or [ben.atkinson@hfw.com](mailto:ben.atkinson@hfw.com), or your usual contact at HFW.

#### **UK: ABI position paper on Solvency II regulatory reporting**

**The Association of British Insurers (ABI) has issued a position paper concerning the principles of materiality and proportionality for the purposes of regulatory reporting under the Solvency II Directive (2009/138/EC).**

The paper summarises the discussion that took place at a meeting on 26 January 2015 of the PRA's Solvency II regulatory reporting industry working

group and sets out the industry views that have been developed in response.

The paper identifies a general industry view that this is an area of continuing uncertainty and that, in the absence of further guidance from the European Insurance and Occupational Pensions Authority (EIOPA), it would be helpful for the PRA to form a view on what is material and proportionate in terms of reporting requirements. It proposes that the PRA engage in dialogue with industry, to ensure a common understanding between it and firms.

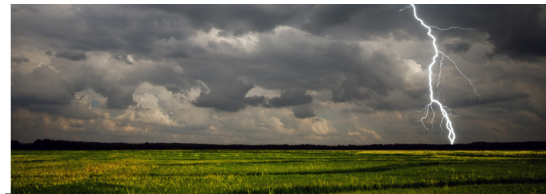
Five priority areas for firms are identified (in order of priority) as follows:

- Asset look-through.
- Intra-group transactions.
- Risk concentration reporting for groups.
- Reinsurance recoveries and reinsurance treaties analysis.
- Units of reporting and cross-check tolerances.

The paper reports that overall, the industry considers it essential for the PRA to adopt a pragmatic approach to the implementation of Solvency II reporting requirements, particularly during the initial reporting periods. The ABI also encourages the PRA to acknowledge that, initially, firms will be implementing these requirements on a "best efforts" basis.

The following are identified as specific actions for the PRA to take in this regard:

- Allowing for appropriate simplifications and approximations in the initial reporting periods.
- Providing clarity and confirmation as soon as possible on the PRA's approach to those initial reporting periods.



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BEN ATKINSON, ASSOCIATE

- Identifying “priority templates” for 2016 that are fundamental to solvency monitoring.

It appears that the ABI’s position paper is no longer available online.

For more information, please contact Ben Atkinson, Associate, on +44 (0)20 7264 8238, or ben.atkinson@hfw.com, or your usual contact at HFW.

#### UK: New BIBA Code of Conduct

Following a clear mandate from its members, the British Insurance Brokers’ Association (BIBA) recently published a voluntary code of conduct for its members (the Code), which is intended to allow “BIBA to lead the way in interpreting the Financial

**Conduct Authority’s Principles for Businesses, the CII’s Code of Ethics and to lead the standards debate for the benefit of members and their customers”. BIBA has commenced discussions with the Insurance Brokers’ Standards Council with the long-term aim of creating a single voluntary code of conduct for the market, which it hopes to publish before Spring 2016.**

BIBA’s chief executive, Steve White, told delegates at the BIBA 2015 conference that the Code would “codify existing requirements rather than creating new obligations”. The Code is broken up into four principles, covering regulation, conduct, client-care and professionalism, together with a brief description of the expectation.

The full text of the code of conduct can be found here: <http://www.biba.org.uk/UploadedFiles/1341bibacodeofconduct2015.pdf>.

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

#### UK: PRA consults on board responsibilities (CP18/15)

**The PRA published a draft supervisory statement relating to those aspects of board governance to which the PRA attaches particular importance. The draft statement complements the individual accountabilities which the PRA is introducing through the Senior Managers and Senior Insurance Managers regime. The paper and draft statement will be of particular interest to board members of all PRA-regulated firms but the PRA recognises that**

**different governance models may apply depending on the nature and size of the firm.**

The paper focuses on a range of matters which the PRA considers to be essential elements of an “effective board”. This includes the board’s role in (i) setting the strategy, (ii) the culture, (iii) risk appetite and management, (iv) setting executive and non-executive roles, (v) use of knowledge, experience, time and resources, (vi) succession planning, and (vii) remuneration. The degree of supervisory attention paid to governance issues for particular firms may vary according to the firms’ risk profile and potential impact of failure.

It is not intended that the draft statement is to be treated as a comprehensive guide to “good corporate governance”, but the PRA is mindful that the areas covered by the PRA are vital ingredients in creating an environment of collective responsibilities. The PRA is looking for feedback on the consultation by 14 September 2015. The full text of the consultation paper CP18/15 can be viewed here <http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp1815.pdf>.

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



## **hfw** 2. Market developments

### England and Wales: Emerging markets and protectionism

**Inga Beale, Lloyd's chief executive, has called for less protectionism in emerging market economies in order to encourage these markets to open up and the flow of global capital. Speaking at Insurance Europe's seventh international insurance conference, Beale expressed concern that local markets' capacity capabilities were being limited by controls which also prevented them from benefitting from the expertise of more mature markets.**

Beale offered a comparison between the recovery processes in New Zealand and Haiti, both of which suffered major earthquakes in 2010. Approximately 80% of losses in New Zealand were insured, where global capital flow aided in recovery, whilst in Haiti, almost 99% of losses were uninsured and the recovery process is still ongoing.

Beale continued by expressing her optimism about the number of opportunities for Lloyd's globally, despite the hurdles associated with closed markets. She stated that insurance is providing for less than 10% of the risks faced by businesses, leaving much opportunity for specialist insurance.

For more information, please contact [Lucinda Rutter](#), Associate, on +44 (0)20 7264 8226, or [lucinda.rutter@hfw.com](mailto:lucinda.rutter@hfw.com), or your usual contact at HFW.

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

### England and Wales: Supreme Court makes landmark ruling on insurers' liability for mesothelioma – *Zurich Insurance PLC UK Branch v International Energy Group Limited*

**HFW has published a briefing on the landmark Supreme Court case of *Zurich Insurance PLC UK Branch v International Energy Group Limited*, which considers fundamental issues concerning the way in which the insurance industry is obliged to meet mesothelioma claims. The case will be of significant interest to employers' liability insurers and reinsurers with potential involvement in mesothelioma claims.**

A copy of the briefing can be found here: <http://www.hfw.com/Supreme-Court-makes-landmark-ruling-on-insurers-liability-for-mesothelioma-May-2015>.

For more information, please contact [Andrew Bandurka](#), Partner, on +44 (0)20 7264 8404, or [andrew.bandurka@hfw.com](mailto:andrew.bandurka@hfw.com), or [Ben Atkinson](#), Associate, on +44 (0)20 7264 8238, or [ben.atkinson@hfw.com](mailto:ben.atkinson@hfw.com), or your usual contact at HFW.

## **hfw** 4. HFW publications and events

### **UK: An update on Directors and Officers liabilities – Senior Managers Regime and Small Business, Enterprise and Employment Act 2015**

**HFW has published a Briefing on the new Senior Managers Regime for financial institutions, and on the new director compensation orders that the Small Business, Enterprise and Employment Act 2015 will introduce into the Company Disqualification Act 1986.**

A copy of the briefing can be found here: <http://www.hfw.com/An-update-on-Directors-and-Officers-liabilities-May-2015>.

For more information, please contact [John Barlow](#), Partner, on +44 (0)20 7264 8188, or [john.barlow@hfw.com](mailto:john.barlow@hfw.com), or your usual contact at HFW.

### **France: HFW Sanctions Seminar**

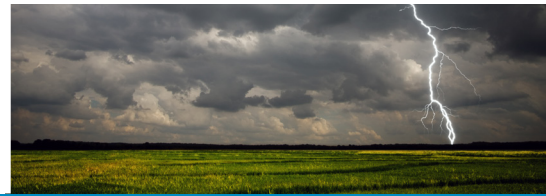
HFW is hosting a seminar in Paris on 11 June 2015 to discuss recent sanctions developments. Further information about the seminar can be found here: <http://www.hfw.com/HFW-Sanctions-Seminar-2015>.

### **London: HFW UAE/MENA Regulatory Environment Update Workshop**

HFW, Friary Court  
23 June 2015  
Presenting: Carol-Ann Burton, Tanya Janfada and Richard Spiller.

Spaces are limited. 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).





## **hfw** 5. HFW news

### **Shipping and cyber attack: understanding the risks**

**Underwriters and brokers are becoming increasingly concerned with hull and machinery losses suffered as a result of cyber attack. Important considerations, such as identifying the actual risk posed by cyber attacks and how policy wordings respond, should be kept in mind.**

The shipping industry's reliance on the internet, operating across a global network and various jurisdictions, creates problems when it comes to identifying and locating cyber criminals. The volume of information, often shared across a network of suppliers, means that the potential for the breakdown of an entire supply chain is high. In addition, not only is the data valuable but also the loss of it can lead to a severe disruption of business activity, as well as reputational damage.

At present, many hull and machinery policies incorporate the standard cyber attack exclusion clause (CL380). However, it is likely that this standard exclusion clause will only be triggered if it can be established that the actions of the cyber attacker were maliciously motivated. Therefore, it would seem that the attacker, and its motives, must also be identified, which could prove to be a very difficult task. Damage caused by accident or by mistake would not appear to trigger the CL380 exclusion and is therefore potentially covered by the policy.



## **The shipping industry's reliance on the internet, operating across a global network and various jurisdictions, creates problems when it comes to identifying and locating cyber criminals.**

LUCINDA RUTTER, ASSOCIATE

This ambiguity leaves the parties in uncertain territory. Given that there is no case law on this subject, any dispute would involve looking closely at the wording of the clause.

In other news:

- During the year 2014/15 FOS went through 1.8 million enquiries and resolved 448,000 cases; more than half of which were resolved in favour of consumers. There were no surprises in the overall figures; two-thirds of all complaints related to PPI, with four of the UK's largest banks accounting for 58% of all complaints.
- The IUA and the LMA warn that high regulatory fees are a threat to the UK insurance industry's competitiveness. The PRA and the FCA are both proposing to raise their charges by 7.7% and 7.9% respectively.

- The FCA website on benchmark pricing was recently updated with new information relating to the benchmarks regulated by the FCA, a timeline and key milestones section on the UK, EU and international initiatives, and a section on future policy reforms. The FCA will open a consultation in the second half of 2015 with a view to modifying the rules for benchmark pricing.

For more information, please contact [Lucinda Rutter](#), Associate, on +44 (0)20 7264 8226, or [lucinda.rutter@hfw.com](mailto:lucinda.rutter@hfw.com), or your usual contact at HFW.

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