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LEGAL AND INSURANCE CONSIDERATIONS IN THE MINING SECTOR

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The attitude to insurance of organisations in mining and other commercial sectors has changed in the last decade. The development of knowhow and increased awareness of risk management and corporate governance has seen a shift in insurance buying, and insurance is perceived to be an essential tool for improved corporate governance and business continuity. In this article, we will consider the shift in attitude and highlight what considerations are necessary to ensure contract and coverage certainty. We will also suggest some ideas to ensure effective claims handling processes that could help minimise disputes between policyholders and insurers, and to identify coverage issues early to avoid protracted and distressed claims.

Trends in the mining sector

There has been an unprecedented level of losses in the mining sector in recent times. In the last five years, over US$5 billion of property damage and business interruption claims were produced to the global insurance industry on an annual premium base of US$500 million to US$750 million. These losses were caused by a series of severe weather events and natural catastrophes such as floods, earthquakes and cyclones as well as operational incidents, including major equipment break-downs. The effects on the mining sector and associated industries, including suppliers and customers has been significant and complex. As key production and supply chain points were affected, interruptions were often lengthy and significant. In some cases, reduced output has been argued to have caused price spikes in the global cost of commodities. This gave rise to coverage issues regarding the calculation of business interruption claims and other issues. The losses also gave rise to increased claims and protracted coverage disputes.

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- **Insurance complexity:**
  The unprecedented losses have increased awareness at a corporate level of the importance of insurance and the need to get the cover right. This is particularly true for business interruption insurance. However, the complicated way in which mining houses get their product from mine to market makes such claims, when they happen, extremely complicated. This in turn makes the claim investigation process complex and time consuming. This has led to mining houses seeking to simplify the basis on which the indemnification of such losses is calculated, so as to reduce the frictional cost of claims that is the time and resources required to deal with such an investigation, and to carry out increased due diligence on service providers and suppliers.

- **Rising costs of insurance:**
  Commodity prices have increased considerably as a result of the huge demand from China and India for raw materials. Despite the economic downturn and consequential reduction in demand for materials, commodity prices still remain historically high. This has increased the financial exposure of mining companies if their business is interrupted, and contributed to the rising cost of business interruption claims and insurance in the mining sector. The increased levels and size of insurance claims has negatively impacted traditional insurers' appetite for risk in the sector. This has resulted in the reduction of available capacity and, in turn, increased premiums, more onerous conditions and broader exclusions.

- **Increased use of captives:**
  Captives are typically formed to provide insurance to a parent company, though they can offer

  insurance to third parties such as Joint Venture partners and, on major projects, contractors, suppliers and service providers. In the past, insureds have typically turned to captives in response to a hardening market when there is a shortage of insurance capacity and increasing costs. However, captive insurers can have important risk management benefits and are increasingly seen as a risk management tool. They are proving increasingly attractive to larger organisations who have grown significantly and due to their wider geographical spread invariably become more complex corporate structures.

  Traditionally, captives have been located offshore. Bermuda, Cayman Islands, Isle of Man and Guernsey have historically been the most popular, as have Singapore and Labuan more recently in the Asia Pacific regions. In recent years the trend has been towards onshore domiciles in the USA, Europe and Australia as jurisdictions pass specific captive legislation. Tax benefits are often no longer the key driver to establishing a captive, partly because the traditional tax benefits of offshore captives have been eroded by controlled foreign corporation legislation. Captives still offer tax benefits through the treatment given to an insurer's loss reserves for incurred but not reported claims, but the use of captives has matured. Their use has evolved steadily to reflect changing risk management practices, insurance regulation, the vagaries of the insurance market and international tax legislation. Captives remain a prudent safeguard against violent shifts in insurance pricing and most companies now view them as having a broader use and benefit, providing increased risk management, controls and optimising insurance purchasing whilst making costs savings.

  Other trends resulting from the increased use of captives are rising levels of self insurance, and the development by organisations of insurance products specifically tailored to their business needs which are not available in the market. For example, companies can use captives to provide business interruption insurance that insurers are no longer willing to provide at adequate limits and on acceptable terms. This ability to be flexible enables them to approach complex risks and situations in new and different ways.

  As organisations have grown larger and more globalised, captives can also be useful tools for centralising and pricing risk management and underpinning international insurance programmes. As part of a global programme, captives can help to provide consistency of cover, in particular between local subsidiaries and the corporate centre. Claims protocols can also be put in place within a captive to better suit the characteristics and shape of the organisation, reduce insurance coverage disputes and protracted or distressed claims.



Contract certainty and quality

With the increased focus on insurance in the corporate governance arena and its growing risk management influence on business continuity and balance sheet protection, organisations need to focus on contract certainty, contract quality and efficient claims handling.

The English Court of Appeal judge, Longmore LJ, said in WASA v Lexington [2008] that:

"Some contracts are actually incapable of being understood at any point in time because they are so badly drawn, but ... the court's endeavour is always to make some sense out of nonsense ... As opposed to a corporate or property transaction, the approach has been one of deal now, detail later."

It was previously not uncommon for insurers to sign policies and for the exact terms of cover (including the policy wording) to be agreed at a later date. The lack of evidence and inconsistency or ambiguity of terms and conditions gave rise to many disputes between brokers, policyholders, insurers and reinsurers regarding the scope of cover. One example was the World Trade Centre dispute in the aftermath of 9/11. In that case, the owners of the World Trade Centre and its insurers disagreed on the terms of cover. Final policies had not been issued at the date of loss, the definition of "Occurrence" was not defined in most of the contracts or binders and there was competing "Occurrence" language.

In December 2004, John Tiner, then Chief Executive of the Financial Services Authority (FSA), challenged the London insurance market and the "deal now, detail later" approach it had to insurance. There were increasingly more complex risks being placed through the London market and, with increasing competition from other jurisdictions, clarity was needed in relation to policy wordings and the placing and claims processes. John Tiner deemed that the market needed to modernise and set the challenge of achieving contract certainty within two years, and if it failed the FSA would impose its own regulatory regime. The market responded by creating the Market Reform Group (MRG) which led the charge for change. The MRG had four aims:

1. Contract certainty: Achieving clarity in insurance contracts so both the insured and insurers are aware of all the terms from the outset. It was hoped this would reduce coverage disputes, legal bills and improve downstream processing.
2. Process efficiency: Establishing efficient processes to store data that could be accessed by the market. The intention was also to reduce error rates.
3. Service to clients: Adopting processes that led to insurance contracts being agreed quicker, and the faster issuing of contractual documentation, processing and agreement of claims.
4. Global standards: Achieving accepted international standards for accounting, business processes and technology.

A target was set for the end of 2006 for the London market to achieve contract certainty in at least 85% of cases. This was attained and surpassed by implementing the following three main areas of change:

- A consolidated Contract Certainty Code of Practice was published in June 2007 for the entire UK insurance industry, including subscription/non-subscription markets, commercial and retail risks. It was a code of best practice to apply across all offices and branches.
- The London Market Principles (LMP) slip was introduced to ensure a common format and content for insurance policies, which would influence how business was conducted and transacted. The LMP slip was followed by the Market Reform slip in an attempt to further increase the efficiency of the placement process. In June 2007, this was replaced with the Market Reform Contract (MRC), the use of which was mandatory for the London market from 1 November 2007. It was intended the MRC would be the precedent standard for a contract of insurance between an insured and insurer.
- The Insurer's Market Repository was developed during 2006 to speed up the accounting and claims processes to allow insurers to view all the documentation submitted by brokers in a secure central database that enabled premiums and claims to be processed.

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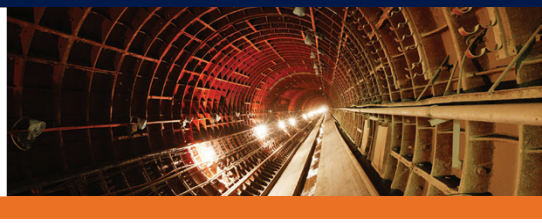

As a result, there has been a significant transition in the London market towards contract certainty. The situation is much improved. Parties know the terms upon which they are contracting by the time the risk is placed, so the potential for disputes is reduced. There have also been significant advancements in increasing the knowledge and experience of the person entrusted to buy insurance, often the risk manager, who in larger organisations needs to have considerable experience in risk management and insurance programmes. This improvement is at least on a quantative basis, namely that, as at the date of inception of a policy, it is now most likely that there will be an issued policy. However, on a quantitative level, the policy that is in place may leave a lot to be desired. Many mining policies are historical in nature and, accordingly, often "grandfather in" drafting errors and uncertainties. These can still be a source of dispute in a major claim.

So these contract certainty changes do not necessarily mean the terms are clear and unambiguous. We still see problems arising from poorly worded policies, conflicting provisions caused by "cut and paste" exercises, and there is still a lot of case law emerging to determine the scope of cover and what specific terms and conditions mean.

The push for contract certainty is being driven by corporate governance issues and the identification of procurement risk in the insurance contracting process. This governs not just the contracts utilised for risk transfer, but also the contracts used for service providers such as insurance brokers and loss adjusters. As a result, more needs to be done to clarify the terms of these contracts and avoid disputes arising. Insurance contracts are usually only tested once large and difficult claims arise, when parties will exploit

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any ambiguities or discrepancies they can. As a result, a rising trend has been increased legal input, by the insured and insurer, at both the claims stage and, increasingly, the product/insurance wording development stage to ensure the insurance wordings do what they are intended to do.

Contract certainty is not simply focussed on the quality of the core or master policy wording. Mining houses often operate in multiple jurisdictions, some requiring local/fronting policies with penalties (both financial and commercial) for failing to meet the local regulatory insurance requirements. Also, of paramount importance is the contractual risk transfer from local/fronting policies to global programme captive insurers and reinsurers. Consequently, when reviewing a policy to develop a better product, there are certain clauses that should be given particular attention.

The following is a list of the clauses that are regularly involved in coverage disputes:

1. Jurisdiction: It is important to ensure a jurisdiction is selected where there is sufficient legal precedent and expertise at a judicial level to ensure disputes will be decided or resolved in a manner that is relevant and consistent so as to limit the chances of inappropriate or unpredictable decisions being made.
2. Proper law: The chosen law will govern and construe the terms and conditions of the policies. For jurisdictions where local/fronting policies are required, a policyholder may not have a choice of law. In our experience, outside of North America, Europe and Australia there are few jurisdictions where insurance law is developed to the extent that there is extensive and settled legal precedent to guide both policyholders and insurers on the terms and conditions of an insurance policy. We are increasingly being instructed to advise on coverage disputes from an English law perspective notwithstanding the fact that the governing law of the insurance is a different law. This is because English law is one of the most developed for insurance law and so emerging jurisdictions will often be guided by the English law approach and interpretation. Also, often the key to a claim being indemnified is for the reinsurance policies to be successfully triggered thereby allowing funds to flow down to the insurers or captive and on to the policyholder. Often that reinsurance will be placed into the London insurance market and governed by English law, although the local policy may be subject to a different governing law.

3. Misrepresentation/non disclosure: There have been extensive discussions over the past few years to lessen the draconian nature of non disclosure. Under English law, the best position for a policyholder is to eliminate by a contractual provision the remedy of avoidance in the case of an innocent or negligent non disclosure or misrepresentation. This may not be attractive from an insurer's perspective. Also, as the terms inserted into the insurance wording will often be the result of extensive negotiation with the insurance market, it is important to understand the effect of the governing law on such issues as misrepresentation/non disclosure.

4. Notice requirements/knowledge holders: There is a significant amount of English case law considering and deciding issues that have arisen from notification provisions. Under English law it is often the case that the notification provisions are drafted as condition precedents where the effect of breaching such terms permits insurers to deny paying the claim. Notification clauses often contain temporal limits within which notifications are required to be made, some may even be more prescriptive as to what a notification should contain and how it should be made. Issues that arise from notification provisions include: when is a policyholder required to notify (what level of awareness is required before the notification conditions trigger an obligation on the policyholder to notify)? Who has to have the relevant awareness before the clock starts ticking on the notification (it is often appropriate to specify the risk manager or person empowered to make the notifications, otherwise it could be considered that the knowledge of an employee, sometimes in a different jurisdiction, is sufficient to start the clock running)?

5. Warranties: Under English law a breach of warranty entitles an insurer to void the policy from the date of breach. Other jurisdictions may take a different approach and it is important to know how relevant jurisdictions deal with warranties and breach of warranties. Of equal importance is to identify all warranties within a policy to ensure the policyholder is in a position to provide the warranty required. If warranties are not recognised in other jurisdictions, it may be possible to draft a clause which will have the same effect, especially if the precise consequence of a breach is spelled out.

6. Subrogation: This is often a commercially sensitive issue. Whilst it is normally the case, certainly under English law, that waivers of subrogation are usually provided to all insureds and co-insureds under policies, broader waivers of subrogation to ensure commercial relationships are not put at risk following the indemnification of a claim and subsequent subrogation action is usually the subject of negotiation between insurers and policyholders and can often lead to an increase in premiums.

7. Conditions precedent: Such terms under English law provide insurers with the draconian remedy of allowing insurers to deny paying a claim even if the breach was not causative of the loss. It is important to identify all such clauses and to understand how different laws treat such terms.

8. Absolute exclusions/resultant damage: Insurance wordings contain exclusions. There are often, particularly in property damage and business interruption policies, exclusions that are not absolute but which write back certain covers. Examples include: defective design, workmanship and material exclusions, which often exclude the part/portion which is defective in design etc., but provide cover for the remaining property damaged. Inherent defect exclusions can also provide resultant damage cover. It is important to identify the exclusions that are more likely to be relevant to any claim from a policyholder's perspective to make sure it understands and accepts the restrictions on cover.

9. Limitation of actions/time bar: Limitation periods can differ from jurisdiction to jurisdiction as to when time starts to run and the actual period before a claim is

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time barred. Different insurance products (for example property policies as compared to liability policies) also differ as to when time starts to run for limitation purposes. Some insurance policies may contain clauses reducing limitation periods from the regulatory norm of a particular jurisdiction, but whether these will be effective may depend on local laws.

10. Policy trigger: To trigger a policy certain criteria will need to be met. The policy trigger criteria will indicate which policy is on risk. This should be checked to ensure the trigger is relevant to the insured's business.

11. Back to back cover: Whether the insurance and reinsurance policies for facultative risks are truly back to back depends on the wording, and whether the same law and/or jurisdiction applies. If the law is different, the insurer could be exposed if the scope of cover is wider under the insurance policy than the reinsurance.

12. Attachment language: This concerns incorporating newly constructed property assets onto a policy, and the language will be particularly important if different property is becoming operational at different times, for example during a construction project. The focus will be on the attachment criteria that needs to be met for property to transfer from say the construction all risks policy to the operational policy/programme. Transfers can take place automatically, but larger plant and assets will often not transfer automatically so insurers, policyholders and insurance brokers all have to be agreed on the attachment language to ensure the property transfers successfully and that no disputes arise or assets become uninsured due to differences in understanding between the parties.

13. DIC/DIL: Complex global programmes may incorporate policies to plug gaps in policies, for example where there are differences in conditions leaving the possibility of uninsured assets or difference in limits in cover. However, before knowing whether such terms are required, a deeper understanding of the interaction of the policies is important

14. Interface between local/fronting policies, global programmes and reinsurances: The differences between the covers or different legal constructions of terms can lead to discrepancies in coverage. To provide seamless cover can often take a considerable amount of time with all parties: insurers, insurance brokers and policyholders working together, all of whom have to have a detailed understanding of the insurance programme and what it is that the policyholder is needing coverage for.

To achieve contract certainty it is important that good communication takes place between the policyholder, broker, insurer, and reinsurer to ensure each is aware of the terms agreed and how the policies are intended to work and fit together. The starting point is an understanding of what the policyholder wants or needs to achieve. This can incorporate simple practical issues (i.e. to safeguard property; the locations of those assets) and regulatory issues (what duties and obligations are required to be complied with from a regulatory perspective in the relevant jurisdictions); commercial issues (what is the risk appetite of the policyholder? This will influence the level of self insurance and the way in which that is structured); accounting and tax issues (are there any mechanisms that can be used to legally minimise the level of tax on the policyholder?); control, understanding and agreement of the claims process (how does the policyholder want this to work? Is the insurer in agreement? Perhaps a detailed claims protocol is required and set out in the insurance policy for the efficient handling of claims and to ensure all the interested parties are aware of the process).

The increased size of organisations and international expansion has increased the need for complex policy wordings and insurance solutions on, where possible, a global scale. We have noticed a significant increase in instructions to advise on policy wordings in order to help increase the level of contract certainty. This stems from the increasing legal influence and need for legal advice required in the insurance procurement process.

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Claims handling

As discussed above, wordings are usually not tested until claims are made. As part of the risk management process, it would be beneficial to have in place an agreed, robust, mining industry claims protocol to project manage the claims handling process effectively. Such protocols would identify who acts for who, the role of and appointment of loss adjusters, how the engagement and cooperation between parties will take place and include a plan for the efficient flow of information/documentation and reporting. This could help manage and progress the myriad of issues and uncertainties that can arise when handling large, complex claims in often unpredictable foreign jurisdictions. We set out below some examples and suggestions for how a claims handling protocol could assist.

Requests for and provision of information

The regular flow of information between the parties and an open exchange of concerns regarding a claim is key to maintaining trust and facilitating an effective and efficient resolution of a claim. This is a two-way process as neither side will want to feel it is providing potential "ammunition" to the other side without receiving something in return. It is therefore in all parties' interests to set up a protocol for the exchange of information. This could include the appointment of a single loss adjuster who would identify the issues and manage the process. The insured could be required to respond to document requests within a set period of time, say 30 days, in return for which the insurer will identify any coverage issues within a set time following the loss adjuster's report. The terms of such a protocol should be agreed at the underwriting stage as they will be more difficult to agree in a post loss environment.

Issues arising in different jurisdictions

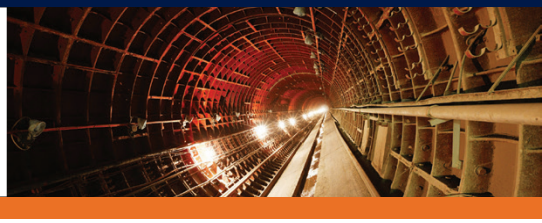
It is important to be aware of and have regard to local laws when handling claims to avoid waiving rights to raise potential issues at a later stage. Following are some examples of particular peculiarities parties can experience when handling a loss in foreign jurisdictions:

- Chile: Under Chilean Decree No. 863, of 1989, the loss adjuster's report (which may contain conclusions regarding coverage and quantum of the loss) may be objected to by any of the parties to the insurance or reinsurance contract within a 10 day period. The adjuster shall respond to the objection within five days, If objections are made, the controversy shall be resolved in accordance with the conflict resolution provision in the policy. Undisputed amounts must be paid by the insurer to the insured.

  Whilst the consequences of not objecting to the adjustment report within the prescribed period are not clear, it could be that the party implicitly accepts the findings of the adjustment report so the "undisputed" amounts become payable. While a failure to comply may not deprive the parties of their rights in court proceedings, it is important to be aware of this provision in Chilean law and what impact it could have.

- Argentina: In Argentina, an insurer must decide on the right of the insured to be indemnified within 30 days from receiving notice of the loss. If the insurer does not reject the claim in a timely manner, it will be deemed to have accepted the loss and be required to pay the claim, unless it asks for additional information. If so, the 30 day period will be postponed until (i) the insurer has received information to reject the claim or (ii) the insured has provided all the information requested by the insurer. However, the start of the 30-day period will only be postponed if the information the insurer requests is relevant to its decision.

  All relevant questions must be put to the insured at the same time. After the insurer has received answers to the questions put, the insurer may realise that further information is required. The new questions must have arisen as a consequence of the information the insurer obtained. Once the relevant information has been received, the insurer must report to the insured its decision on coverage within 30 days, otherwise it will be deemed to have accepted the loss.



- England and Wales, Canada and other common law jurisdictions (not Australia): In jurisdictions where an insurer can avoid the policy for material non-disclosure or misrepresentation, the insurer must not take steps which may affirm the contract with the insured, as its rights to avoid may then be waived. The insurer will have affirmed the contract if it acts in a manner consistent with the policy remaining in force, even if it is refusing to pay the claim on the grounds of non disclosure/misrepresentation. Examples of action (or inaction) by an insurer which have been held by the English courts to affirm the contract include:

  (i) A failure to act after the discovery of a potential non-disclosure;

  (ii) Cancellation of the policy pursuant to cancellation provisions after discovery of a non-disclosure;

  (iii) Acceptance of premium;

  (iv) Investigating and paying claims under the policy;

  (v) Relying on rights under the policy (such as the inspection of documents).

  This is a difficult area for insurers. Once they have the required level of knowledge of the potential non disclosure or misrepresentation they must be careful not to affirm the contract if they want to avoid. Therefore, if a claims protocol is in place and issues arise that may give insurers grounds to avoid, they will need to act quickly and decide at an early stage whether they wish to pursue avoidance of the contract or not.

The insurer was given the benefit of a short period in which to make further investigations, after which, interest began to accrue. The fact that there was a bona fide dispute on coverage between the parties was not relevant to the fact that the insured had essentially established its claim when the loss adjuster submitted its initial findings.

Interest

An issue which is often overlooked, or at least treated as an afterthought, when handling large complex claims is the interest which can accrue on claims. Under English law, there is no statutory regime which requires interest to be paid if a claim is paid late. If matters proceed to litigation or arbitration, there are statutes which govern the award of interest - s35A of the Senior Courts Act 1981 and s49 of the Arbitration Act 1996. However, judges and arbitrators have wide discretion under these rules and interest awards are usually calculated by reference to base rates.

Under English law, insureds are not typically entitled to damages arising out of the late payment of claims unless interest can be said to have been triggered by a breach of contract, for example the failure of an insurer to make a payment on account. This issue is currently being considered by the Law Commission in its review of Insurance Contract Law so the position may change. The situation, however, is significantly different in other jurisdictions, and the following are examples of countries that often surprise insurers.

- Australia: Under Australian law, interest on insurance claims is governed by s57 of the Insurance Contracts Act 1984, which provides that:

  (2) The period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for the insurer to have withheld payment of the amount and ending on whichever is the earlier of the following days:

  (a) the day on which the payment is made;

  (b) the day on which the payment is sent by post to the person to whom it is payable.

  (3) The rate at which interest is payable in respect of a day included in the period referred to in subsection (2) is the rate applicable in respect of that day that is prescribed by, or worked out in a manner prescribed by, the regulations.

The Supreme Court of Victoria has held that the date for commencement of the interest period is a question of fact. The Court referred to the "essential nature" of the claim, which it said was established when the insured

first submitted the majority of its claim (on which it was eventually successful) to the insurer, via its loss adjuster. The insurer was given the benefit of a short period in which to make further investigations, after which, interest began to accrue. The fact that there was a bona fide dispute on coverage between the parties was not relevant to the fact that the insured had essentially established its claim when the loss adjuster submitted its initial findings.

This follows the general trend in the Australian courts of interpreting s57 in favour of the insured. On this basis, insurers should consider regularly if and when it is appropriate to make payments on account to reduce the potential liability for interest.

- Brazil: In Brazil, interest on insurance claims starts to run from the date of loss (although there are some conflicting authorities on this issue). The rate of interest is governed by Article 406 of the Brazilian Civil Code, which provides that interest will be fixed according to the rate which is in effect for late payments of taxes to the National Treasury, unless a rate has been agreed, or when it arises due to some other legal provision. Article 161 of the National Tax Code determines that, unless a legal provision provides otherwise, 1% interest rate a month applies (i.e. 12% per annum).

  It is also worth mentioning that in Brazilian disputes the costs award will be based on the size of the award against the losing party. Article 20 of the Brazilian Civil Procedure Code determines that the losing party is liable to pay the expenses of the winning party and the court usually fixes fees at between 10% and 20% of the amount of the award. Further, awards given by Brazilian courts are subject to "monetary correction" which is an attempt to account for inflation in the lifetime of claims. So, for a claim of US$100 million an insurer could be facing interest of US$12 million per year plus a costs award of up to US$20 million if the matter was to go to trial.

- Norway: Norway is a further example of a jurisdiction in which interest can start to accrue quickly. Section 8-4 of the Norwegian Insurance Contracts Act provides that, "The Assured is entitled to interest on outstanding claims owed when two months have passed since notification of the insurance event was sent to the Insurer". The rate is currently 8.5% per annum.

  There are many other examples we could cite, but the overriding message in relation to interest is that in many jurisdictions parties cannot afford to sit back and delay the settlement of claims without good reason. To the extent possible, insurers and reinsurers should attempt to identify the interest provisions in the relevant jurisdictions early on so they are borne in mind when handing a claim. They should also regularly address the issue of whether a payment on account is appropriate to stop high levels of interest accruing on unpaid claims.

RIMS mining forum

Of particular relevance to the mining sector is the RIMS Mining Forum initiative. This is a forum set up to consider the lessons learnt from the

major business interruption losses of the last five years, in terms of both the adequacy of policy wordings and the claim investigation process. A number of significant players in the mining and insurance sectors have been involved, including insureds, insurers, brokers, loss adjusters and lawyers (the last including Holman Fenwick Willan LLP). The group has been working to produce (i) a bespoke mining industry claims handling protocol which can be endorsed to a policy or operate as a best practice guidance note and (ii) a bespoke mining property damage and business interruption policy. It will be interesting to see how the market responds to these efforts to improve standards and minimise the potential for disputes.

Stress testing of the risk management process

As part of the due diligence to be undertaken in the insurance procurement process, in addition to contract certainty, consideration should also be given to stress testing the notification and claim process. The concept is to assess the likely claim scenarios that a mining house may face and to proactively assess how the insured might respond to a particular claim scenario. The following issues may be of particular relevance:

1. Cross department liaison and reporting: For the efficient handling of large, complex claims there often needs to be an efficient cooperation between the risk management, legal and insurance departments.

2. Claim notification: An organisation's internal processes and procedures need to be robust enough to ensure that employees are aware of the reporting lines for the effective notification of claims and provide relevant information and documentation when necessary. Whilst this sounds a fairly straightforward issue, with

large global organisations, different offices in different jurisdictions can be involved, creating issues of different time zones and sometimes language barriers which can slow down the reporting of losses and the safeguarding/capture of evidence/documentation vital to support claims.

3. Claims protocol: As we have eluded to above, it is essential to have in place an agreed claims handling protocol with insurers to insure that the process is managed with all the parties knowing steps that are required to be taken to minimise disputes and claims becoming distressed.

4. Mobilisation of resources: This involves not only internal but also external resources. In terms of internal resources, teams need to be put in place to secure witness, documentary and hard evidence where required to support an insurance claim. Such evidence needs to be secured as quickly as possible to guard against evidence being misplaced, memories fading and employee witnesses moving jobs. Similarly, external technical resourcing is likely to be required to aid the formulation of a claims submission and it is not uncommon for this to involve lawyers, engineers/technical consultants and forensic accounting services.

5. Project management: From a project management perspective, it should also be recognised that there are other parties who are likely to require information and who have an interest in the indemnification of an insurance claim. These may include shareholders and capital providers. Furthermore, thought has to be given, where relevant, to updating and reporting to authorities/ regulators.

The input of a legal team (internal or external) who are used to dealing with large, complex, multi-jurisdictional claims can provide invaluable insight into the robustness of an organisation's reporting and claims handling abilities.

HFW has a large international team of lawyers experienced in advising stakeholders connected with the mining industry on a full range of issues, including risk management, insurance and reinsurance, projects, joint ventures, M&A, capital markets, service engagement, regulation, dispute resolution, corporate governance, logistics and political risks.

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