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# INSURANCE BULLETIN
JUNE 2022

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Editor
WILLIAM REDDIE
Partner, London
T +44 (0)20 7264 8758
E william.reddie@hfw.com

Co-editor
KATE AYRES
Professional Support Lawyer, London
T +44 (0)20 7264 8120
E kate.ayres@hfw.com

**WILLIAM REDDIE**
PARTNER, LONDON

**The letter says "Many consumers are feeling the impact of the rising cost of living....we need all firms to get the basics right and provide good quality support"**

# REGULATORY

## The Financial Conduct Authority (FCA) warns consumer credit firms on treating borrowers fairly in light of the cost of living crisis

**The FCA, in a Dear CEO letter dated 16 June 2022, has called upon the financial services sector to support vulnerable consumers better. This letter was addressed to upwards of 3,500 lenders, including both regulated firms (such as consumer credit firms) and currently unregulated firms offering 'Buy Now Pay Later' (BNPL) products, to encourage an appropriate degree of care towards consumers.**

Sheldon Mills, Executive Director of Consumers and Competition at the FCA, has stressed that "Many consumers are feeling the impact of the rising cost of living in their personal finances and we expect this to increase over the next few months. Early action is important for those struggling with debt. We need all firms to get the basics right and provide good quality support. Where we see more serious wrongdoing, we are already acting to ensure these firms improve."

With inflation rates at 9% (and rising), and the FCA's Financial Lives **Survey** concluding that 27% of the UK population has low financial resilience, there is an expectation of a higher demand for consumer credit. This, paired with less disposable income and higher interest rates, creates the perfect storm for rising debt amongst consumers.

### Action required

The letter reminds firms of their obligations under the FCA's Principles 6 and 7 (treating customers fairly and paying regard to information needs and communicating fairly) and obligations under the FCA Handbook. The FCA considers that the Tailored Support Guidance issued for mortgages, consumer credit and overdrafts to address the difficulties surrounding coronavirus is equally relevant here, as well as the Vulnerable Customer Guidance. The FCA's expectations include:

- Considering the level of care needed for customers with characteristics of vulnerability, which may vary;
- Giving borrowers in financial difficulty tailored forbearance;
- Offering the correct support to vulnerable customers and signposting guidance or free debt advice;
- Charging fees which are fair, and should do no more than cover the lenders' costs.

Financial service providers are being asked to ensure their arrangements for repayment of debt meet the needs of their clients, and that the repayment is sustainable. The FCA are also asking lenders to bear in mind the current financial difficulties faced by consumers and consider this when taking on new borrowers. The FCA has cautioned that serious failings in support were found in over 30 firms, the majority of which were consumer credit firms.

The FCA's circulation of the letter to lenders offering products outside the scope of current regulation, is consistent with the FCA's move to bring a greater number of BNPL products (and potentially other unregulated products) into the regulatory framework and the FCA's purview. Therefore, firms offering currently unregulated products should take advice on the regulations which in the near future they will need to comply with.

**WILLIAM REDDIE**
Partner, London
**T** +44 (0)20 7264 8758
**E** william.reddie@hfw.com

Additional research from Gaurav Jaiswal, Trainee Solicitor, London and Cleo Lines, Disputes Knowledge Management Paralegal, London

**KATE AYRES**
PROFESSIONAL SUPPORT LAWYER, LONDON

**"On climate risk management, some participants are making good progress. The Bank's assessment is, however, that insurers need to do much more to manage their exposure to climate risks."**

# What did we learn from the Climate Biennial Exploratory Scenario (CBES)?

**Last month, the Bank of England released the results of the CBES exercise, and a number of representatives have also given speeches highlighting key findings. We summarise some of the main points below.**

## Background

The aim of the CBES was to examine the climate related financial risks that banks and insurers may face over the next 30 years applying three plausible scenarios:

- An early action scenario – where an ambitious climate policy is implemented, CO2 is reduced to net zero by 2050 and temperature rise is limited to 1.8 degrees then falling back to 1.5 degrees;
- A late action scenario – where transition policy is delayed, warming is limited to 1.8 degrees;
- A no additional action (**NAA**) scenario – where no action is taken to address climate change, warming reaches 3.3 degrees.

A number of the largest life and general insurers participated (as well as a number of banks).

## Key points

Some of the key points for insurers coming out of the CBES are as follows:

- On climate risk management, some participants are making good progress. The Bank's assessment is, however, that insurers need to do much more to manage their exposure to climate risks. Insurers need to invest in their climate risk assessment capabilities, and prioritise progress on data capabilities. This will allow them to measure climate risk more effectively and reflect it more accurately in business decisions, supporting the transition.
- On the exposure to climate risk, the CBES showed that the overall costs of the transition should be bearable without substantial impact on solvency. However, the projections are, absent an effective response, that climate risks could cause a persistent and material drag on profitability of around 10-15% on average across participants and scenarios (with large uncertainty around this figure). Not surprisingly, the NAA scenario would have the greatest impact on insurers. For general insurers, the key losses materialised as a build-up of physical risks such as flood and wind damage, which would ultimately fall on households and business via higher premiums or lower availability of cover.
- The exercise asked participants to consider the London market's exposure under liability policies to climate change litigation, by considering seven hypothetical legal cases. These included a corporation sued for direct contribution to climate change, and financiers supporting carbon-intensive activities, and a greenwashing scenario. For many participants this was the first time they had drawn together this information across product lines. D&O insurance was most likely to pay out, and professional indemnity policies also responded to some of the claims. Although insurers pointed to the ability to annually re-price policies to mitigate their risk, the report points out potential for rapid shift in the legislative environment and professional standards. Once again, it is possible that such covers become prohibitively expensive or unavailable. The Bank encourages insurers to develop techniques to test whether coverage intent (on the part of insurer and policyholder) align with the policy wordings.
- As regards business models, insurers typically responded to the scenarios by following existing transition to net-zero plans. Insurers generally planned to reduce exposure to carbon-intensive sectors, although with an emphasis on supporting counterparties to transition. The report flags potential macroeconomic consequences if the supply of finance and insurance to fossil fuel producers outpaces new investment in alternatives,

and the need to handle this issue carefully. General insurers planned to increase the price of insurance to reflect physical risk, and as above, noted that cover is typically one year in duration allowing them to alter pricing relatively quickly in response to change. In the NAA scenario, around 7% of UK households may be forced to go without insurance as their properties become uninsurable or insurance unaffordable, and these households and also businesses may in turn become unable to access finance from banks. Risks could be mitigated by measures such as flood defences and flood resilience measures.

### Next steps

The Bank has indicated that the CBES is not the end of its work, but the beginning. It will work with industry on gaps identified by the CBES including gaps in data and modelling capabilities. The CBES will inform the Financial Policy Committee's thinking around financial stability policy issues and supervisory policy – the Bank is working to understand how management of these risks may affect the provision of financial services to the real economy. It will not be used to set capital requirements relating to climate risk, and the report flags that regulatory capital is not an appropriate tool to address the causes of climate change.

**KATE AYRES**
Professional Support Lawyer, London
**T** +44 (0)20 7264 8120
**E** kate.ayres@hfw.com

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**DOMINIC PEREIRA**
ASSOCIATE, LONDON

**"The FCA attributes consumer harm to poor governance and controls or insufficient focus on good consumer outcomes"**

## FCA reminds insurance intermediaries of its expectations on key risks

**The FCA has published a letter reminding firms in its personal and commercial lines insurance intermediaries (P&CLII) portfolio about the FCA's expectations on the key risks that they could pose to their consumers or markets.**

In particular, the FCA is of the view that insurance intermediaries need to address the risk of harm to customers caused by buying unsuitable or poor value products. The FCA sets out its expectations on the key risks that contribute to this potential harm to customers.[1] These are:

- **Governance and oversight:** The FCA attributes consumer harm to poor governance and controls or insufficient focus on good consumer outcomes. The FCA provides the following examples of critical components of good governance:
  - Clear accountabilities for activities which affect outcomes, with appropriate channels of escalation.
  - A robust risk framework which identifies key risks of harm, which is appropriately monitored and mitigated by accountable individuals.
  - Strong and independent board oversight and challenge.
- **Pricing practices and value for money:** Firms should seek to deliver fair value to customers through robust governance over pricing decisions. Firms should fully consider customer outcomes and improve pricing transparency and ensure that their policies do not discriminate against certain demographics of society. In particular, the FCA expects firms to:
  - have fully implemented the pricing practice requirements under ICOBS 6B;
  - have effective oversight of the commission and administration fees of product distributors and appointed representatives (ARs); and
  - implement the FCA's proposed Consumer Duty.[2]
- **Product oversight and governance:** Customers should receive insurance products that meet their demands and needs and deliver fair claims outcomes. Firms must ensure that contract terms are unambiguous

and that customers receive appropriate information that is clear, fair and not misleading to enable them to make an informed decision. This responsibility applies across the distribution chain – product manufacturers should carefully identify their target market, and distributors should regularly check their products, to ensure that products reflect the best interests of customers.

- **Client assets and orderly wind down:** Firms who hold client assets must maintain adequate arrangements, oversights and controls to comply with the rules set out in the Client Assets Sourcebook. Firms should also maintain up-to-date wind-down plans so that they can exit the market without causing significant harm to consumers.

The FCA also sets out the following additional considerations for firms in the P&CLII portfolio:

- **Diversity and Inclusion and Environmental Social and Governance:** The FCA will be consulting on new rules and guidance in Q3 2022 to achieve a more diverse and inclusive market.
- **Senior Managers and Certification Regime:** Firms are reminded to ensure that Senior Management Function holders are aware of their responsibilities.
- **Cyber threats and operational resilience:** Given the current heightened international tensions, firms should pay particular attention to their cyber security and ensure that they proactively manage any operational resilience exposure and take appropriate steps, including the necessary investment, to implement any remedies and address any gaps that may exist within their current arrangements.
- **Regulatory responsibilities:** The FCA expects firms to be able to show consistently that fair treatment of customers is at the heart of their business model and have an open and cooperative approach both with their customers as well as with the FCA.
- **Oversight of ARs:** Firms that act as principals of ARs should pay close attention to the FCA's Policy Statement on improving the AR regime that will be released in due course.
- **Post-sale verification:** Firms that carry out post-sale engagement to verify information provided during the original sales process should not treat this verification process as a substitute for appropriately clear pre-sale questioning. Firms must still ask the right questions and assess the customers' demands and needs before offering a product for sale.

**DOMINIC PEREIRA**
Associate, London
**T** +44 (0)20 7264 8194
**E** dominic.pereira@hfw.com

**Footnotes**

1 The FCA encourages firms to read its letter alongside its **2022/2023 business plan**, which identifies key themes that correlate with the risks set out in the letter. See our article discussing the business plan in the May 2022 edition of the Bulletin **here**.

2 The FCA published a second consultation paper (**CP21/36**) regarding its proposals for introducing the new Consumer Duty, which would set higher expectations for the standard of care that firms provide to consumers. CP21/36 sets out draft revised rules and draft non-Handbook guidance relating to the Consumer Duty. The FCA expects to publish a policy statement making any new rules by 31 July 2022. See our article on the new Consumer Duty in the January 2022 edition of the Bulletin **here**

# CLAIMS

**ANDREW BANDURKA**
CONSULTANT, LONDON

## You say it best, when you say nothing at all

**In a judgment which gives guidance regarding Contract Certainty principles[1], the English Court of Appeal rejected the appeal of the insureds (members of the John Wood group of engineering companies), against the prior grant of an anti-suit injunction by the High Court in London, thus preventing the insured from continuing insurance coverage proceedings against insurers in Canada.**

Contract Certainty principles and the mandatory use of the Market Reform Contract (**MRC**) have slashed the number of policy coverage disputes which reach the Courts, by ensuring that policy terms and conditions are complete and in force at the point of policy formation/inception. Nevertheless, as this case illustrates, these provide no guarantee regarding the quality of policy drafting.

**“The case highlights the dangers of incorporating primary policy terms by reference to them in the excess policies, without actually checking the primary policy terms are complete and acceptable.”**

This case revolved around standard law and jurisdiction clauses in the excess layers of a liability tower of insurance and whether jurisdiction over coverage disputes was “exclusive” to the English Courts. It decided whether these clauses conflicted with and/or deferred to other jurisdiction clauses contained in the same excess policies, which purported to incorporate the jurisdiction provision from the underlying primary policy (in circumstances where the primary policy was silent as to jurisdiction!).

One of the insureds was already engaged in defending proceedings for CAD$450 million brought by a third party in Canada in negligence and breach of contract and concerning a ruptured pipeline and a leak of bitumen into the environment. The insureds saw advantage in bringing related proceedings against insurers in the same Canadian jurisdiction, for defence cover and an indemnity against any damages awarded against them. The insurers saw things differently: they relied on what they argued were exclusive jurisdiction clauses in favour of English courts, in order to halt the Canadian coverage proceedings. Insurers had succeeded in obtaining an anti-suit injunction at first instance in England. The insureds appealed.

Jurisdiction clauses determine where a party *may* commence proceedings. Exclusive jurisdiction clauses dictate where such proceedings *must* be conducted. It is an established principle that when parties have agreed to confer exclusive jurisdiction over their contractual disputes to the Courts of a particular country (whether England or elsewhere), judicial comity is best served by giving effect to their agreement, and the grant of an anti-suit injunction (thus restraining the commencement and continuation of proceedings which breach that agreement), is a proper means of achieving this, in appropriate cases.

### The Tower of Insurance

The appeal concerned only three of the policies within a tower of liability insurance placed in the London market, which exhibited a patchwork of jurisdiction provisions. The tower was structured as follows:

- several “underlying policies”. These included a *Global Comprehensive Liability Policy* (**GCLP**) which it was found was the relevant “primary policy”. This primary policy was silent as to governing law and jurisdiction.
- Four excess policies, comprising:
  - a *Global Umbrella Policy* (**GUP**) which contained two relevant clauses:
    - a clause in the Risk Details section of MRC, entitled the “Primary Policy Jurisdiction Clause” (**PPJC**) which said:

      *“Any dispute…[is] subject to the same law and the same jurisdiction as the primary policy..”*

      However, as we have seen the primary policy was silent on these matters.
    - Clause 11 of the standard terms and conditions which said:

      *“**Choice of Law***

      *11. This Policy of insurance shall be governed by and construed in accordance with the laws of England and Wales [which]…shall have jurisdiction in respect of any dispute under this Policy.”*
  - a *First Excess Policy* that contained:
    - the PPJC
    - and a standard clause 12 as follows:

      *“The proper law of the Policy shall be English law and the Courts of England shall have exclusive jurisdiction in all disputes connected with this Policy.”*
  - a *Second Excess Policy* which contained no provision as to jurisdiction. At first instance the judge held that there was no basis for an anti-suit injunction in respect of this policy and this was not appealed.
  - a *Third Excess Policy* in materially identical terms to the *First Excess Policy*.

### First instance

The insurers had sought an anti-suit injunction in the English High Court, which had been granted in respect of the excess policies set out above, on the basis, as decided, that they each contained exclusive English jurisdiction clauses.

The insureds' argument on appeal was that there was a conflict between the PPJC and the standard terms (11 or 12) of all the excess policies and so the PPJC should prevail (thus neutering the English jurisdiction clauses in the standard terms) because it was more prominently (and necessarily, according to the MRC Guidance notes) "upfront" in the Risk Details section of the MRC, rather than being buried in the standard T&Cs at the back of the policies, and the reader who was familiar with the market would look for details of law and jurisdiction in the Risk Details and would not proceed any further to see if there were any conflicting provisions beyond these. The insured further relied upon the canon of interpretation that typed or specifically negotiated terms (such as those in the Risk Details section of the MRC) should be given more contractual weight than standard clauses (such as clauses 11 and 12).

In order to overcome the fact that the PPJC purported to incorporate the same law and jurisdiction provisions as the primary policy, which was silent on these matters, the insured further argued that the PPJC did not seek to incorporate a fixed and certain term of the underlying policy, but rather it ensured a more permissive approach to law and jurisdiction which would permit coverage proceedings to be conducted where the underlying litigation was being staged. This, it was argued, would ensure that the relevant governing law and jurisdiction regimes would apply uniformly across the tower of insurance.

### Court of Appeal judgment

Lord Justice Males gave the (unanimous) judgment, upholding the first instance judgment and the anti-suit injunction. He said as follows:

- It was clear from the language and context of the PPJC that it only applied when the primary policy contained a relevant clause which specified law and jurisdiction, otherwise it had nothing to bite on. The words of the PPJC clearly contemplated a single law and jurisdiction and referred the reader to the primary policy for the answer and none could be found there.
- If the insureds' argument for permissive law and jurisdiction were successful, it would be difficult to know which law or jurisdiction would apply to a dispute on the excess layers (particularly if there were no dispute on the primary layers, or such a primary dispute settled before proceedings were commenced). This would be hopelessly uncommercial and uncertain (and would not achieve Contract Certainty.)
- Accordingly, there was no conflict between the PPJC and the later clauses since the PPJC had nothing to bite upon and no application. Effect should therefore be given to the standard terms 11 and 12. This was enough to dispose of the appeal on the first and third excess layers, since the standard clause in those policies expressly stated that the English courts had jurisdiction.
- Clause 12 expressly provided for exclusive English jurisdiction. As for the dispute over clause 11 of the standard terms in the GUP policy: namely whether the English jurisdiction clause was intended to be exclusive (since it did not expressly use that word), Males LJ held that it was indeed an exclusive jurisdiction clause, applying a number of the reasons taken from *Compania Sud American de Vapores SA v Hin-Pro International Logistics Ltd* and noting that the use of the word "shall" and the choice of English law in conjunction with English jurisdiction is a powerful factor in favour of construing the English jurisdiction clause as exclusive, since English courts were best placed to deal with English law questions.

### Comment

As for Contract Certainty, the case highlights one danger of incorporating terms from a primary (or indeed any other) policy by referring to them in the excess (or any ) policy, as opposed to setting out such terms in full, in circumstances where the (putative) incorporated terms might not exist, be complete and/or be finalised.

Although the PPJC could not be given effect to in this case, nevertheless it is clear from Males LJ's obiter comments that the prominent location of a clause within the mandatory Risk Details of an MRC may increase the weight to be given to it, if it conflicts with a standard term located in a less prominent position.

We can therefore surmise that, if the primary policy had expressly contained a Canadian jurisdiction clause, the fact that the PPJC was situated in the Risk Details of the excess policy MRCs might well have given it precedence over the English jurisdiction clauses in the standard terms. Thus, so far as insurers were concerned and as Ronan Keating might have put it, it was a case of "you say it best when you say nothing at all".

**ANDREW BANDURKA**
Consultant, London
**T** +44 (0)20 7264 8404
**E** andrew.bandurka@hfw.com

**Footnotes**

1 AIG and others v John Wood [2022] EWCA Civ 781

# BRAZIL

## The Superior Court of Justice in Brazil defines the trigger event for limitation in general (i.e. non-liability) insurance claims

**GEOFFREY CONLIN**
PARTNER AT HFW AND FOREIGN CONSULTANT AT CAL, SÃO PAULO

**BERNARDO DE SENNA**
SENIOR ASSOCIATE, CAL, RIO DE JANEIRO

**The Superior Court of Justice (STJ) in Brazil has recently ruled on the "triggering event" for non-liability insurance claims. We discuss this development below.**

According to Brazilian statute, in non-consumer insurance claims, the limitation period for an assured to file a claim against its insurer is one year, with that time period running from different dates depending on the type of insurance (article. 206, § 1°, item II of the Civil Code). As a matter of Brazilian law, it is not possible for the parties to 'contract out' of the limitation periods (as per Article 192 of the Brazilian Civil Code). This is true even under the Large Risks regime inaugurated by **CNSP Resolution 407/2021**.

- For liability claims, the one year limitation period commences when the assured is summoned to reply to the request for an indemnity from a third party, alternatively from the date of payment of the indemnity by the assured to the third party with the insurers' consent.
- For other types of insurance, the one year limitation period commences from the assured's 'knowledge of the triggering event'. This raises an obvious question – what is the triggering event?

The Superior Court of Justice in Brazil has recently decided in Special Appeal No. 1,970,111/MG that the 'triggering event' for the purposes of article 206 non-liability claims occurs when the assured becomes aware of the insurer's refusal to provide coverage, i.e. the denial of the claim. This overturns an earlier decision in the same action which decided that the 'triggering event' was the date of loss.

Although not binding as a matter of principle, the decisions issued by the STJ, which is Brazil's highest court for non-constitutional matters, provide guidance on the interpretation of the law and are usually followed by the lower Courts.

On a practical level, one of the biggest problems faced by underwriters of risks in Brazil is the very significant level of 'monetary correction' which accrues on claims, often during a potentially lengthy adjustment process and sometimes

"The Superior Court of Justice in Brazil has recently decided … that the "triggering event" for the purposes of article 206 non-liability claims occurs when the assured becomes aware of the insurer's refusal to provide coverage"

in the context of protracted litigation. When considering their exposure, underwriters need to take into account two key metrics, in addition to the principal amount to be paid under the policy:

- Monetary correction is inflation-linked interest which usually applies on a claim from the date of loss. The rate broadly tracks the inflation rate which is currently 11-12% per annum.
- If the parties commence litigation, normal interest also accrues from the date on which the defendant is served with proceedings (although this is not beyond doubt) and can be as high as 12% per year.

The combination of interest and monetary correction can have dramatic consequences on underwriters' exposure to quantum, making the settlement of claims more difficult with the passing of time. The position is further complicated by the award of 'sucumbencia'; a payment by the losing party to the lawyers for the winning party usually between 10% and 20% of the value of the claim.

Unfortunately, the STJ's recent decision on limitation provides underwriters with no protection from increased quantum, resulting from the accrual of interest and monetary correction, arising out of an assured's delay. On its face, the STJ's clarification of the limitation framework permits an assured who 'drags its feet' in bringing a claim to suffer no prejudice at all.

However, as pointed out by the judge, in the event of an assured's delay, it is open to an insurer to rely on article 771 of the Brazilian Civil Code. This article provides that 'the insured must notify the claim to the insurer as soon as they become aware of it and take immediate steps to reduce the loss'. Although the time period to notify the claim is not defined, article 771 - as well as the obligation on both parties to act in good faith during the claims adjustment process - should provide insurers with some comfort.

**GEOFFREY CONLIN**
Partner at HFW and Foreign Consultant at CAL, São Paulo
**T** +44 (0)20 7264 8404
**E** geoffrey.conlin@cal-law.com.br

**BERNARDO DE SENNA**
Senior Associate, CAL, Rio De Janeiro
**T** +55 (21) 3550 9018
**E** bernardo.desenna@cal-law.com.br

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"Under the new regime, there is no longer an obligation on the parties to a Surety contract to be bound by the SUSEP standard wording."

## New rules for Surety in Brazil

**On 11 April 2022, SUSEP, the Brazilian Insurance Regulator, issued Circular 662/2022 ('Circular'), which entered into force on 2 May 2022. The Circular provides a new framework for Surety insurance in Brazil. It was issued after two rounds of consultations with the market (Public Consultations 24/2021 and 40/2021), which led to improvements and adjustments to the original draft, based on feedback from the market.**

Under the new regime, there is no longer an obligation on the parties to a Surety contract to be bound by the SUSEP standard wording. Leaving no scope for doubt, Circular 662/2022 expressly revokes Circulars 477/2013 and 577/2018, which regulated Surety insurance and contained the revoked standard wording as an appendix.

Article 34 of Circular 662/2022 provides that the Circular has limited applicability to the 'Large Risks' sector, which is defined and regulated by **CNSP Resolution 407/2021**. Only articles 2 and 3 are mandatory for the Large Risks sector, with the other provisions of the Circular being optional.

Articles 2 and 3 contain definitions which are applicable to Surety contracts, e.g. obligee, principal, loss, main object, etc. (article 2) and a definition of the objective of Surety insurance (article 3). Freedom of contract in the large risks surety sector is therefore widely preserved. The most innovative definition is that of 'main object', which is 'the legal relationship, whether contractual, bid noticing (tender), procedural or of any other nature, generating obligations and rights between the obligee and the principal, irrespective of the denomination used.'

## Main developments

The main developments introduced by Circular 662/2022 are as follows:

- Policy periods should follow the duration of the guaranteed obligation, save if the contract and/or statutory provisions determine otherwise. If they do not, the insurer has to continue to provide cover throughout the period in which the risk is active and create mechanisms to renew the policy periods accordingly. (Articles 7, 8 and 9)
- The guarantee can be limited to certain obligations of the main object and is not required to cover 100% of the obligations contained therein. However, any limitations of cover negotiated by the parties need to be included clearly and objectively in the policy wording. (Article 5)
- If the main object is altered, the policy must be amended accordingly, if (a) such alterations were envisaged in the main object (b) arise from a statutory obligation or (c) were provided for in the documents which led underwriters to accept the risk; or, alternatively, if the insurer accepts the alteration. (Articles 10 and 11)
- The procedures to report amendments to the main object must be clearly stated in the policy. If such amendments are not properly articulated to the insurer in the manner provided for in the policy, it will be open to the insurer to pull cover if, simultaneously, (a) the risk is aggravated, (b) the amendment is directly related to the loss and (c) the insurer can evidence that the assured acted in bad-faith in failing to report the amendment to the main object. (Article 11)
- Excesses and deductibles are now allowed, including grace periods, representing a change in approach from the regime prescribed in Circulars 477/2013 and 577/2018. (Article 14)
- Third parties can now be included in the policy as beneficiaries, in accordance with the main object and relevant statutory provisions, if default on the part of the principal causes them damage. (Article 15)
- If the policy provides for the possibility of notification of an expected loss, the policy wording must describe clearly the act or fact that amounts to an expected loss and whether its notification is mandatory to the insurer, as well as the criteria for the notification. (Article 17)
- The burden of evidencing the default of the principal falls to the obligee and not the insurer, unless otherwise provided for in the main object or specific legislation. (Article 18)
- If expressly agreed by the parties in advance, the Surety contract may provide the possibility or the obligation of the insurer to monitor and/or inspect the main object; to act as mediator of the default or of any other conflict between the obligee and the principal; or to provide support and assistance to the principal. (Article 29)

## Comments

The contents of Circular 662/2022 should be read in the context of the principles set out in the Economic Freedom Act (Federal Law 13,874/2019) and the wider efforts of SUSEP to modernise the Brazilian market's regulatory landscape (see our article **here**). SUSEP has recently sought to reduce regulatory constraints on local and international players and to move away from the previous model of mandatory standardised SUSEP-issued wordings for insurance products.

The new rules provide the framework for new wordings, leaving scope for contractual freedom and the parties' ability to tailor the policy to their needs and the characteristics of the risk, the assured interest and the underlying main object, while keeping a minimum set of fundamental requirements for a Surety policy.

This is also in line with Federal Law 14,133/2021, which regulates public tenders. In particular, article 2 of the Circular defines a subgenre of Surety insurance, i.e. 'Surety Insurance: Obligee – Public Sector'. In this sense, the Circular aims to cater for the specificities of guaranteeing contracts entered into with the government and the special conditions which are typical of administrative (as opposed to business or civil) law.

The Circular is a welcome development, as it provides more clarity to the rules applicable to Surety, enhancing the ability of the parties to exercise their freedom of contract, whilst leaving the adoption of such rules optional in the Large Risks sector.

**GEOFFREY CONLIN**
Partner at HFW and Foreign Consultant at CAL, São Paulo
**T** +44 (0)20 7264 8404
**E** geoffrey.conlin@cal-law.com.br

**BERNARDO DE SENNA**
Senior Associate, CAL, Rio De Janeiro
**T** +55 (21) 3550 9018
**E** bernardo.desenna@cal-law.com.br

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