HFW

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In this week's Insurance Bulletin:

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1. REGULATION AND LEGISLATION

UK: The Sky Has a Limit: Government Restricts Drone Use

The ever-growing market for commercial and recreational drones has the potential to provide dynamic growth across a whole range of sectors. The UK government is taking steps to harness the capabilities of this market by devoting its attention to creating an effective regulatory framework.

Through an amendment to the Air Navigation Order 2016, the UK government has introduced the first in a series of limitations to ensure safe drone use.[1] From 30 July 2018 drone operators will be banned from flying drones within 1km of airport boundaries, and will be subject to a height limit of 400 feet in all other areas of the UK. This is a direct response to a number of incidents and near-misses recorded in 2017. Furthermore from 30 November 2019 owners of drones weighing over 250 grams will be required to register with the Civil Aviation Authority, and it is expected that further rules will be imposed to require drone operators to register drone flights through the use of flight planning apps. A Drone Bill is expected to be published this summer, which will clarify police enforcement powers where drones are being misused.

The development of a comprehensive system for licensing and monitoring drones in UK airspace is an effective means of encouraging commercial uptake. A recent report from PricewaterhouseCoopers[2] has forecast that there will be 76,000 drones in use across the UK by 2030, potentially adding £42 billion to the UK's GDP. Whilst the largest impact is expected to be in the wholesale and retail sectors, it is predicted that £10.4 billion could be added to the finance, insurance, professional services and administrative services sectors alone. Insurers, particularly in underwriting offshore risks, could utilise drones to monitor risk at remote sites, or to carry out accurate assessments of damage. Recently, US insurers have made use of drone technology to record data and process claims in relation to storm damage.[3]

The UK government's regulations are noteworthy in that they address smaller drones than are regulated under EU Regulation 785/2004, an issue HFW has previously highlighted.[4] This is a welcome addition to the UK's legislative framework, as the establishment of safety standards will facilitate ongoing innovation in this sector.

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UK: Senior Managers and Certification Regime extended: Insurance intermediaries

The Financial Conduct Authority (FCA) has published a policy statement setting out its near final rules on how it intends to extend the Senior Managers and Certification Regime (SM&CR) to firms regulated only by the FCA (i.e. solo-regulated firms), including insurance intermediaries (Policy Statement). We published an article on how the SM&CR is being extended to insurers in our last HFW Insurance Bulletin; the article can be found at: http://www.hfw.com/Insurance-Bulletin-July-2018-Edition-2.

In March 2016, the FCA applied the SM&CR to banks, building societies, credit unions and PRA-designated investment firms. The SM&CR is now being extended to all firms authorised to provide financial services under the Financial Services and Markets Act 2000 (FSMA). Therefore, all firms regulated by the FCA will be affected by the changes brought about by the SM&CR, including EEA and third-country branches.

1 https://www.gov.uk/government/news/new-drone-laws-bring-added-protection-for-passengers
2 https://www.pwc.co.uk/press-room/press-releases/pwc-uk-drones-report.html
3 http://uasweekly.com/2018/06/03/drone-technology-can-help-insurance-companies-cut-costs-and-reduce-response-times-for-claims/
4 http://www.hfw.com/Insurance-Bulletin-12-November-2015

However appointed representatives will continue to be subject to the Approved Persons Regime (APR) and firms currently exempt from the APR will not be affected by the SM&CR.

SM&CR requirements

The SM&CR is made up of the Senior Managers Regime, the Certification Regime and the Conduct Rules. The requirements that will apply to a firm will depend on whether the firm is categorised as a "Limited Scope", "Core", or "Enhanced" firm.

A Limited Scope firm is a firm currently subject to a limited application of the APR and will accordingly be subject to fewer SM&CR requirements than Core firms. Insurance intermediaries whose principal business is not insurance intermediation and which only have permission to carry on insurance mediation in relation to non-investment insurance contracts would fall within the Limited Scope category.

Core firms will have a base line of SM&CR requirements applied and most insurance intermediaries will fall within this category. Enhanced firms are a small proportion of firms which will be subject to extra rules and include firms with total intermediary regulated business revenue of £34m or more.

The FCA has published a helpful guide on how the SM&CR is being extended to solo-regulated firms which can be found at: https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf.

Next steps

The Treasury have announced that SM&CR will commence for solo-regulated firms on 9 December 2019 so firms should be taking steps to ensure they are prepared for the SM&CR in advance of the implementation date.

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2. MARKET DEVELOPMENTS

Global: ACORD, Aon and Beazley announce first Standard for Global Cyber Data Breach

ACORD, the global standards-setting body for the insurance industry, has announced the launch of the ACORD Cyber Data Breach Standard, the insurance industry's first official standard for cyber data breaches. The ACORD data standard was developed in collaboration with Aon and Beazley. ACORD announced in a statement that Aon and Beazley collaborated to contribute cyber-related insights. Collectively, they focused on data breach, examining common challenges with different practices for sharing information in risk assessment and policy workflow. ACORD then synthesized this information to create the draft standard.

As the risk of cyber-related losses increases there has been a greater demand for cyber coverage. According to the ACORD/NAIC Cyber Insurance Survey, nearly 60% of insurers consider that the lack of uniform data standards has prevented the growth of cyber insurance.

The ACORD data standard aims to facilitate rapid and accurate data exchange among insurance industry stakeholders, including carriers, agents, brokers and software providers. The ACORD data standard also aims to increase operational efficiency and effectiveness for cyber risk stakeholders as well as establish a baseline for compliance and any audit-related activities. According to the President of U.S. Cyber Solutions at Aon, Christian Hoffman, "this question set will help organizations approach cyber risk in a united manner". The standard will also help improve connectivity and collaboration across organisations, including information security and risk management.

The ACORD data standard is being made available immediately to

POPPY FRANKS
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RUPERT WARREN
SENIOR ASSOCIATE

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ACORD members for their review and comment, after which it will be incorporated into the next release of the ACORD Property & Casualty Standards.

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Australia: Law Reform Commission seeks to curb the impact of class actions

In recent years, D&O underwriters have been hit by a number of high profile securities class actions against their Australian policyholders. Securities class actions are typically covered by "Side-C" D&O cover, which is often bolted on to the more standard Side-A and Side-B covers. Whilst these actions usually settle long before trial, the sums claimed are huge, as are the sums spent in defence costs in advance of settlement.

Australian securities class actions are usually founded on either alleged misleading or deceptive conduct, or a breach of companies' continuous disclosure obligations. The securities class action regime in Australia has developed such that a breach of these obligations is akin to strict liability – there is no need for a claimant to show he or she relied on the misleading conduct when investing in the company.

Another difficulty for underwriters arising from Australian securities class actions is that, unlike in the US, "opt-in" class actions are allowed. Thus, claimants can decide whether they can opt in to an existing class action, or commence their own action, which in turn can lead to several competing class actions based on the same cause of action.

These features make securities class actions attractive to litigation funders who, due to the likelihood of early settlement, have good prospects of a swift return on their money. Litigation funding is one target of potential reform of the class action market, with the ALRC proposing stricter regulation of funders. They also propose tighter regulation of class action law firms, including prohibiting them from having any financial interest in the litigation funder funding the claim.

The ALRC has also proposed measures for dealing with competing class actions, including requiring all actions to be brought as open (opt-out) class actions, and rules providing that only one competing class action will be permitted to proceed at any one time. It is also investigating measures to ensure a fair distribution of settlements to claimants, as opposed to funders, and one option it is looking at is permitting contingency fee arrangements to ensure solicitors and claimants are aligned. Finally, the ALRC is looking at whether the law on misleading or deceptive conduct and continuous disclosure ought to be subject to statutory reform, given the way it has developed in recent years.

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Japan: Potential for huge BI losses following floods

The worst floods for decades have caused major problems for Japan's commercial operations due to extensive shutdowns across affected areas.

Some of the country's most well-known companies, such as Panasonic and Mitsubishi Motors, are among those affected. The prolonged disruption to the country's manufacturing facilities is expected to lead to significant business interruption losses. Aon has suggested that the costs of damage to property – current reports indicate 12,000 properties have been damaged or destroyed although this figure is expected to increase – as well as to vehicles and infrastructure could cost *"substantially into the hundreds of millions of dollars, and almost certainly higher."*

The ability of Japan's manufacturing operations to recover quickly will be governed by extent of the damage to its transportation network and infrastructure. This will also be important in assessing the impact of business interruption.

Whilst numerous facilities remain closed, some due to fears for worker safety or interference with their supply chains, rather than as a result of actual property damage, the situation remains at risk of yet further deterioration as the rainy season continues.

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3. HFW PUBLICATIONS AND EVENTS

HFW partners named in The Legal 500 Hall of Fame

We are very proud to see five of our partners named in The Legal 500's inaugural UK Hall of Fame. The award recognises lawyers who receive "constant praise" from clients and are "at the pinnacle of the profession". Congratulations to Insurance Partner Andrew Bandurka and to Noel Campbell, James Gosling, Hugh Livingstone and Brian Perrott.

HFW Briefing: US/EU Covered Agreement: Can the UK benefit from Brexit?

The Bilateral Agreement between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance, or the covered agreement as it is more commonly known (Covered Agreement), was signed on 22 September 2017 and was approved by the Council of the EU on 6 April 2018.

In this Briefing[1], Partner Richard Spiller and Associate Nazim Alom discuss the covered agreement, and look at the options that might be available post-Brexit when the UK will no longer be able to benefit from its terms.

1 http://www.hfw.com/US-EU-Covered-Agreement-Can-the-UK-benefit-from-Brexit-July-2018

We're taking a short summer break and our next Bulletin will be published in September.

HFW has over 500 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about our Insurance/reinsurance capabilities, please visit http://www.hfw.com/Insurance-Reinsurance-Sectors

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