Insurance/ Reinsurance

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INSURANCE BULLETIN

Welcome to HFW's Insurance Bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative changes of the week.

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Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

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1. Regulation and legislation

UK: Counter-Terrorism and Security Act 2015 creates new offence impacting upon insurance in terrorism demands

Further to our November and December 2014 Bulletins (in which we reported that the Counter-Terrorism and Security Bill had been published following the British Government's widely-publicised Intelligence and Security Committee report into the murder of Lee Rigby), the Counter-Terrorism and Security Act 2015 (CTSA 2015) was passed into law on 12 February 2015 after a fast-track enactment.

Of particular importance to the London insurance industry, Section 42 the CTSA 2015 adds a new Section (Section 17A) to the Terrorism Act 2000 (TA 2000) which makes it an offence for an insurer to make payments in response to terrorist demands. Specifically, the new Section 17A(1) of the TA 2000 provides that it is an offence for an insurer to make a payment under an insurance contract (or purportedly under it) if:

- That payment is in respect of any money or other property that has been, or is to be, handed over in response to a demand made wholly or partly for the purposes of terrorism; and
- The insurer (or the person authorising the payment on the insurer's behalf) knows or has reasonable cause to suspect that the money or other property has been, or is to be, handed over in response to such a demand.

Unfortunately, (as foreshadowed in our November 2014 Bulletin) some ambiguity is introduced into the TA 2000 by the unhelpfully vague words "wholly or partly for the purposes of terrorism" in Section 17A(1)(b).

The CTSA 2015 provides that the new legislation applies to all reimbursements made by insurers on or after 12 February 2015, even if made under, or purportedly under, a contract entered into before then. Insurance payments made in respect of money or other property handed over before 27 November 2014 are not caught by the offence, although other rules may still be applicable.

A person guilty of an offence under this new section of the TA 2000 is liable on conviction on indictment to imprisonment for up to 14 years and/or a fine, or on summary conviction to imprisonment up to six months and/or a fine. In addition, the court may order the forfeiture of the amount paid under, or purportedly under, the insurance contract.

Whilst the CTSA 2015 can be praised for aiming to reduce terrorist funding during a time of apparently heightened threat from terrorism, it is open to question whether Section 17A itself tackles the real problem of terrorist financing. In terms of its practical impact within the insurance market, Section 17A of the TA 2000 may mean that insurers and reinsurers will have to take further steps when carrying out due diligence in relation to payments made to assureds in this context. Insurers should consider taking professional advice where necessary in light of these changes.

HFW will be producing a full briefing on the further implications of the CTSA in due course.

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France: Regulatory authority updates its guidelines on anti-money laundering

The French financial and prudential regulatory authority (ACPR) published, on 12 February 2015, an updated version of its practical guidelines of July 2010 on anti-money laundering and prevention of terrorism financing. The purpose of these guidelines is to set out the expectations of the regulatory body in respect of implementation, by the regulated entities of the insurance sector, of their obligations in relation to anti-money laundering and the prohibition to finance terrorism.

The guidelines are organised in five categories, with practical advice on compliance procedures, and also contain examples of various types of money laundering situations. The updated guidelines contain in particular a new chapter dedicated to non-life insurance, further to the bill passed by Parliament in 2012 extending some aspects of the duty of vigilance to most non-life insurance products.

A copy of the updated guidelines can be found here: https://acpr.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/20150218-Principes-d-application-sectoriels-ACPR-LCB-FT.pdf

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2. Market developments

Worldwide: UN Office for Disaster Risk Reduction issues new global framework including a role for contributions from the insurance industry

Following what the UN Office for Disaster Risk Reduction (UNISDR) has reported as "marathon 30-hour negotiations", on 18 March 2015, a new global framework for disaster risk reduction has been adopted by 187 UN member states at the UN World Conference on Disaster Risk Reduction.

In the past decade, average economic losses from disasters totalled approximately US$190 billion per year, with average insured losses totalling approximately US$60 billion per year. More than one million people have lost their lives to disasters so far this century.

The new framework, which is to provide guidance on disaster risk reduction for the next 15 years, outlines seven global targets to be achieved within this period, as follows:

- A substantial reduction in global disaster mortality.
- A substantial reduction in numbers of affected people.
- A reduction in economic losses in relation to global GDP.
- Substantial reduction in disaster damage to critical infrastructure and disruption of basic services.
- An increase in the number of countries with national and local disaster risk reduction strategies by 2020.
- Enhanced international cooperation.
- Increased access to multi-hazard early warning systems and disaster risk information and assessments.

For the first time, such a framework provides a role for the private sector to contribute to disaster resilience, and highlights that the insurance industry is well placed to understand the economic and social impact of disasters. In recognition of this, a statement in support of disaster risk reduction has been published by the United Nations Environment Programme Finance Initiative (UNEPFI), and has been signed by some of the largest insurance and reinsurance companies, including AXA and Swiss Re. The statement sets out the industry's support for the new framework in line with the following "five private sector visions":

1. Strong public-private partnerships drive disaster risk reduction and resilience at the local and national levels.
2. Resilience in the built environment is driven by the public sector setting adequate minimum standards, and the private sector voluntarily working towards optimal resilience.
3. All financial investment and accounting decisions, public and private, are risk-sensitive.
4. A resilience-sensitive public and resilience-sensitive businesses drive each other towards resilient societies.
5. The identification, disclosure and proactive management of risks carried by companies and public sector entities are standard practice.

It is hoped that with the new framework, insights and data from the insurance industry will contribute to the reduction of disaster risk worldwide, protect investments and economies, and create long-term value and efficiency in order to reduce the financial impact of disasters on societies and their governments.

The full text of the framework can be downloaded from the UNISDR here: http://www.wcdrr.org/uploads/Sendai_Framework_for_Disaster_Risk_Reduction_2015-2030.pdf

The full statement from the insurance industry can be found on the UNEPFI website here: http://www.unepfi.org/psi/united-for-disaster-resilience/

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3. News

Vanuatu: insurance pool payments triggered by Cyclone Pam

The Pacific Disaster Risk Financing Insurance Program (PDRFI Program) may make a rapid insurance payout following the catastrophic damage to Vanuatu caused by Cyclone Pam. The PDRFI Program is a joint initiative between the World Bank Group, the Secretariat of the Pacific Community and their partners, with funding from Japan's government. It builds on the Pacific Catastrophe Risk Assessment and Financing Initiative (PCRAFI), the purpose of which is to increase the financial resilience of the Pacific Island Countries against natural and climate-related disasters, as part of their broader disaster risk management and climate change adaptation agenda.

Vanuatu is ranked as one of the most at-risk countries in the world for natural disasters due to its vulnerability and exposure to cyclones. The category five storm, Cyclone Pam (which hit Vanuatu on 14 March 2015), was one of the biggest cyclones ever experienced by the country. A state of emergency has been declared as a result. In consideration of such an extreme weather event and the severity of the damage suffered, the World Bank is investigating the possibility of a quick payout to the Government of Vanuatu under the PDRFI Program.

The replacement value of all of Vanuatu's assets has been estimated by the catastrophe modeller, AIR, to be $3.3billion, with buildings and infrastructure (including major ports, the International Airport, power plants, bridges and roads) representing approximately 86.5% and 12.5% of this figure respectively. AIR advised that current indications suggest

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insured losses will be low because of the limited exposure and insurance penetration.

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4. HFW publications

Hong Kong: Countdown to full implementation of the Hong Kong Competition Ordinance

HFW has published a Briefing on the Hong Kong Competition Ordinance. The Briefing recaps the key provisions of the Ordinance and highlights some actions which businesses operating in Hong Kong should consider taking in anticipation of the Ordinance coming into force. The Hong Kong Government intends to announce the date for implementation in the third quarter of 2015.

A copy of the Briefing can be found here: http://www.hfw.com/Countdown-to-full-implementation-of-the-Hong-Kong-competition-ordinance-March-2015

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