



In this week's Insurance Bulletin:

1. REGULATION AND LEGISLATION

UK: The FCA's ongoing work in relation to appointed representatives

EU/US: Will the EU/US "covered agreement" fall at the final hurdle?

2. MARKET DEVELOPMENTS

England & Wales: IUA publishes Brexit aviation clause

3. HFW PUBLICATIONS AND EVENTS

UAE: HFW contribute chapter to Insurance and Reinsurance Law Review

Hong Kong: HFW briefing on Third Party Funding Bill



ALISON PROCTOR
SENIOR ASSOCIATE

“The FCA has undertaken interventions in more than a third of the intermediaries it has reviewed and has agreed that voluntary requirements be placed on the regulatory permissions of a number of those intermediaries.”

1. REGULATION AND LEGISLATION

UK: The FCA's ongoing work in relation to appointed representatives

The FCA has published an update in its Regulation round-up, June 2017, concerning its ongoing work relating to appointed representatives.

In July 2016, the FCA published the findings of its thematic review TR16/6 (the Thematic Review) relating to principals and their appointed representatives in the general insurance sector. The FCA's follow-up work has focused on insurance intermediaries in the London market, and in particular the risk identified in the Thematic Review arising from the increasing networks of appointed representatives developed by those intermediaries. The particular issues identified in the Thematic Review include:

1. Failures on the part of principals to properly oversee their appointed representatives, including inadequate consideration of the impact on their businesses of appointing appointed representatives and undertaking inadequate due diligence prior to the appointment of appointed representatives.
2. Potential mis-selling of warranty insurance by appointed representatives as a result of failure to provide adequate information.

In its follow up work the FCA has found that these issues are widespread and concerning. The FCA has undertaken interventions in more than a third of the intermediaries it has reviewed and has agreed that voluntary requirements be placed on the regulatory permissions of a number of those intermediaries. It has also commissioned two skilled persons reviews under section 166 of the Financial Services and Markets Act 2000.

The FCA remains concerned that intermediaries are not taking steps to satisfy themselves that

appropriate mechanisms are in place to protect their customers. The FCA's advice to intermediaries who have appointed representatives, is to look carefully at the Thematic Review and assess whether their current activities are consistent with both the recommendations contained in the Thematic Review and also their regulatory obligations. Intermediaries should also take steps to ensure that customers receiving products and services from their ARs are treated fairly.

ALISON PROCTOR

Senior Associate, London

T +44 (0)20 7264 8292

E alison.proctor@hfw.com

EU/US: Will the EU/US “covered agreement” fall at the final hurdle?

The landmark EU/US “covered agreement” (Agreement), a product of a year-long negotiation, is at risk of falling apart after various US stakeholders voiced serious concerns over the Agreement's ambiguity and balance in favour of the EU.

From the US perspective, the aim of the Agreement was to put in place prudential measures for the business of insurance or reinsurance that achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under state insurance or reinsurance regulation. The European council recently authorised the signing of the Agreement and it is now with the US to enact but this is proving far from easy due to significant controversy over its wording.

The Agreement was pursued in the light of the US' perceived inadequacy of Solvency II to US insurance entities active in the EU and EU's perceived strict requirements of the US on EU insurance groups. Solvency II permits the European Commission to make equivalence determinations for third countries with respect to certain areas of prudential regulation; which provide for three elements that may be deemed equivalent, that is, reinsurance, solvency assessment and

group supervision. Since 1 January 2016 the US has been granted provisional equivalence status for a period of 10 years but this only extends to EU insurance groups with US subsidiaries. However, US insurance entities have described difficulties with some EU member states' implementation of Solvency II, which has led to some that are active in the EU to argue that some EU countries are raising barriers on the basis that the US does not have a regulatory framework that is equivalent to Solvency II, whereas the US, in comparison, has lower barriers to non-US reinsurers operating cross-border in the US.

This led to the landmark Agreement and the parties' agreement on three areas of prudential insurance oversight, reinsurance, group supervision and exchange of information among supervisors. In summary, the covered agreement no longer requires reinsurers to post collateral or have a local presence, confirms that groups will be subjected to worldwide group supervision only in their home jurisdiction and lays the foundations for the exchange of information among EU and US regulators. The Agreement applies to US/EU cross border reinsurance and does not affect cedants and reinsurers operating from or in other countries.

While the European reinsurance market is supportive of the proposed arrangements and is keen to have the agreement finalised and in force, the same cannot be said for their US counterparts. The National Association of Insurance Commissioners in the US (NAIC) has sought clarification over the Agreement's interpretation due to its perceived ambiguity and claims there is significant confusion among stakeholders as to the scope of the agreement. There is a real risk that, should the NAIC not get the assurances it is seeking, both sides may need to go back to the negotiating table in circumstances where neither party has the appetite to commence another round of long and demanding negotiation.

As an aside but by no means an unimportant point, the UK may seek a similar bilateral agreement with

the US due to the UK's imminent departure from the EU, which could potentially be incorporated into a wider bilateral trade agreement between the UK and the US; but that discussion is outside the scope of this article.

NAZIM ALOM

Associate, London
T +44 (0) 20 7264 8760
E nazim.alom@hfw.com

2. MARKET DEVELOPMENTS

England & Wales: IUA publishes Brexit aviation clause

As insurers continue to grapple with the potential consequences of the UK's exit from the European Union, Aviation insurers have taken steps to provide their customers with a degree of certainty in the event that UK insurers are barred from writing business in the EU as a result of the loss of passporting rights.

The Aviation Insurance Clauses Group (AICG) has developed an EU Contract Continuation Clause, which provides that, in the event of an insurer becoming barred from writing EU risks in mid-way through a policy period, the insurer shall have the right to transfer the policy to a EU permitted insurer within the same corporate group. The transferred policy will continue on the same terms as prior to the transfer.

The clause envisages that the transfer will be completed a set number of days before the insurer is no longer permitted to write risks in the EU. In the event that no transfer of the policy will take place, the insurer's participation in the policy is terminated well in advance of the relevant date. The timeframes envisaged in the draft clause are 45 and 30 days respectively, and this will give the insured an, albeit limited, opportunity to seek alternative cover.

Whilst the AICG has taken the lead in producing the clause, the wording is relatively generic and, according to Chris Jones of the Insurance Underwriting Association (IUA), it is envisaged that it can be readily adapted for use in other lines of

business. Mr Jones also commented that, although it is still early days in Brexit negotiations, multi-year policies being written now could easily straddle the date on which the UK finally leaves the EU.

RUPERT WARREN

Senior Associate, London
T +44 (0)20 7264 8478
E rupert.warren@hfw.com

3. HFW PUBLICATIONS AND EVENTS

UAE: HFW contribute chapter to Insurance and Reinsurance Law Review

HFW partners Sam Wakerley and John Barlow have contributed the chapter on the United Arab Emirates to the new edition of the Insurance and Reinsurance Law Review. A copy of the chapter can be read [here](#).

Hong Kong: HFW briefing on Third Party Funding Bill

On 14 June 2017, the Hong Kong Legislative Council passed the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (the 2016 Bill), which, amongst other things, puts beyond doubt that third party funding of arbitration and mediation is permissible under Hong Kong law. The 2016 Bill is expected to enter force later this year. HFW's Briefing on the 2016 Bill can be read [here](#).

HFW has over 450 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>



[hfw.com](http://www.hfw.com)

© 2017 Holman Fenwick Willan LLP. All rights reserved.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Souhir Jemai on +44 (0)20 7264 8415 or email souhir.jemai@hfw.com

Beirut Brussels Dubai Geneva Hong Kong Houston Kuwait London Melbourne Paris Perth Piraeus Riyadh São Paulo Shanghai Singapore Sydney