HFW

INSURANCE BULLETIN
JULY 2017 EDITION 3

In this week's Insurance Bulletin:

1. REGULATION AND LEGISLATION

UK: Free trade restrictions for UK not certain following Brexit

2. COURT CASES AND ARBITRATION

England/EU: Third party rights against insurers

3. MARKET DEVELOPMENTS

Argentina: Argentina's insurance regulator declares the country open for business

Ben Atkinson, Senior Associate, ben.atkinson@hfw.com
Andrew Bandurka, Partner, andrew.bandurka@hfw.com

POPPY FRANKS
ASSOCIATE

"The FCA's objective is to create a clear functioning regulatory regime that gives certainty to all interested parties. "

1. REGULATION AND LEGISLATION

UK: FCA and Brexit

The chief executive of the FCA, Andrew Bailey, has stated EU free trade would be possible even without single market membership following the UK's departure from the EU.

Bailey said that free trade restrictions were not "inevitable" following Brexit and that Britain does not require membership of the European single market to participate in free trade with the EU. He cited the agreement between the EU and the US on covered agreements, which he described as "ground-breaking", as an example of the scope for international agreement to facilitate open financial markets.

Bailey commented that "open markets, freedom of location and free trade in financial services matter a lot and should be preserved". Bailey also emphasised the importance of freedom of location to preserve public interest and promote consistency when dealing with regulatory outcomes to ensure a functioning global economy that encourages competition and reduces the cost of access. Bailey warned against taking freedom of location for granted, stating that "authorities should not dictate the location of firms; rather, we should allow open markets to shape those choices, always subject to our public interest objectives".

The FCA's work on Brexit is threefold: it involves giving technical advice to support the Government in its Brexit negotiations, working with authorised firms to understand plans for future cross-border operations into and out of the EU and, lastly, working with the Government on its repeal legislation, which involves line-by-line analysis of each piece of EU legislation and rule-making for which the FCA is the lead regulator. The FCA's objective is to create a clear functioning regulatory regime that gives certainty to all interested parties.

In the coming years, commitment from the UK and EU will be crucial to avoid sacrificing free trade. Maintaining relationships and learning from effective structures already well-established in the EU and globally will be crucial to ensure the exchange of information on an open basis, ensuring transparency and confidence for the future.

POPPY FRANKS
Associate, London
T +44 (0)20 7264 8065
E poppy.franks@hfw.com

2. COURT CASES AND ARBITRATION

England/EU: Third party rights against insurers

In a recent case[1] the English court has confirmed that in order to add an insurer as co-defendant under section 2 of the Third Parties (Rights against Insurers) Act 2010[2] (the Act), the claimant need not prove the insured was liable for and insured for the claim, since the Act provides a mechanism for establishing such liability after joinder.

The defendant in this case was allegedly responsible for defects in the design and construction of a warehouse floor, and had gone into administration after proceedings against it were commenced.
The applicant applied to join the defendant's liability insurer as co-defendant following the statutory transfer of rights under the Act.The policy itself contained provisions for resolution of any disputes in the French Courts and/or arbitration.

The insurer argued that there was no cover due to the breach of a policy condition and that the English court had no jurisdiction over coverage disputes, which had to be determined in France or in arbitration.

The application to join the insurer was upheld. In order to determine the insurers' liability the applicant must prove the defendant was liable, and that it was insured for that liability. The Act provided a mechanism for

1 *BAE Pension v Bowers & Kirkland Ltd & Others* (2017) QBD
2 http://www.legislation.gov.uk/ukpga/2010/10/contents

doing this in due course, but it was not necessary to establish this in order to successfully join the insurer as co-defendant.

Apart from cases covered by the Act, it is generally not possible in the UK for a third party to sue a defendant's liability insurer directly. However, in a separate recent case which has significant implications for P&I Clubs and other liability insurers, the European Court of Justice has allowed a third party claimant to bring its action directly against the insured defendant's insurer in the Danish Court (where such direct actions are ordinarily permitted), notwithstanding that the insurance policy taken out by the defendant was governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales. For more information please read our Briefing here.

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

3. MARKET DEVELOPMENTS

Argentina: Argentina's insurance regulator declares the country open for business

Argentina's insurance regulator, Superintendencia de Seguros de La Nación (the SSN), the state-run entity that supervises the operations of all insurance and reinsurance companies in the local financial system, has declared the country's insurance market open for business. This comes after years of heightened restrictions in Argentina during the 2003 – 2015 governments of Néstor and Cristina Kirchner.

Argentina's current president, Mauricio Macri, who came to power at the end of 2015, is known to be more market-friendly. He has implemented changes to encourage rather than restrain the market and to achieve the goal of attracting foreign investment. The superintendent of the SSN, Juan Pazo, recently visited London and indicated that further measures would be introduced to help put the country firmly on the international insurance and pensions stage, including a risk-based supervisory model and the reduction of bureaucracy in an effort to stimulate the introduction of new policies in the market. Mr Pazo stated:

"President Marci's policies aim to reconnect Argentina to the world economy and that goes as well to the insurance sector. Our goal is to carry on implementing changes that will enable us to modernise our relationship with the market. We have started to produce a risk map of the sector and of SSN itself...we want to reduce red tape and costs to make it easier for insurers to do business in Argentina."

LUCINDA RUTTER
Associate, London
T +44 (0) 20 7264 8226
E lucinda.rutter@hfw.com

LUCINDA RUTTER
ASSOCIATE

"Argentina's current president, Mauricio Macri, who came to power at the end of 2015, is known to be more market-friendly."

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

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