



In this week's Insurance Bulletin:

1. REGULATION AND LEGISLATION

Brexit: House of Commons Treasury Committee asks for government plans on insurance contracts sold under passporting arrangements

Brexit: Insurance Europe calls for "grandfathering" of existing insurance contracts

2. HFW PUBLICATIONS AND EVENTS

HFW Partners recognised in Expert Guides – Insurance and Reinsurance

Bermuda: HFW at the International Association of Claims Professionals Conference

Indonesia: HFW at the Asian Offshore Energy Conference

UK: HFW at Falconbury Advanced Wordings Course

UK: Hurricane Aftermath Presentation and Q&A session

UAE: HFW presentation on Re/insurance Law in Saudi Arabia at DIFC Insurance Association

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“One possible solution identified in the letter would be for an insurer potentially caught by this dilemma to establish a subsidiary elsewhere in the EEA, and use the provisions of Part VII of the Financial Services and Markets Act 2000 to transfer the contracts to the new entity. However, as the letter notes, this would be costly and may not be achievable for all in the time available.”

1. REGULATION AND LEGISLATION

Brexit: House of Commons Treasury Committee asks for government plans on insurance contracts sold under passporting arrangements

A letter from Nicky Morgan MP, Chair of the House of Commons Treasury Committee, to Philip Hammond MP, Chancellor of the Exchequer, concerning the potential impact on cross-border insurance contracts of the United Kingdom’s proposed withdrawal from the European Union, has been published on the UK Parliament’s website.

The letter refers in particular to insurance contracts extending beyond 29 March 2019 (the date of the proposed withdrawal), which have been sold under current EU passporting arrangements. The letter notes that, if insurers were to lose their legal right to service these contracts, they would have to terminate the contracts or be in breach of the law.

One possible solution identified in the letter would be for an insurer potentially caught by this dilemma to establish a subsidiary elsewhere in the EEA, and use the provisions of Part VII of the Financial Services and Markets Act 2000 to transfer the contracts to the new entity. However, as the letter notes, this would be costly and may not be achievable for all in the time available.

The letter requests answers to the following questions:

- Does the Treasury consider that this problem poses risks to a smooth and orderly exit from the EU, and does it therefore consider it to be a matter for the first phase of the Article 50 negotiations?
- What proposals are being considered to preserve stability and certainty in respect of insurance contracts that straddle “Brexit day”? In particular, does the Treasury wish to see arrangements that allow contracts written before “Brexit day” to retain the same regulatory treatment for their duration? This

concept of “grandfathering” is discussed further below.

- Does the government intend to publish a position paper on this issue?

The letter requests a response by 21 September 2017. At the time of writing no such response has been placed into the public domain. It therefore remains to be seen how the government intends to tackle these important issues.

A copy of the letter may be found here: <http://www.parliament.uk/documents/commons-committees/treasury/Morgan-to-Hammond-Brexit%20-Insurance-Contracts-140917.pdf>

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Brexit: Insurance Europe calls for “grandfathering” of existing insurance contracts

On 11 September, Insurance Europe published a position paper calling for the “grandfathering” of existing insurance contracts after Brexit. The paper makes an important point: that a transitional deal will not resolve the problems that many insurers face if passporting rights are lost as a result of Brexit.

The paper (which at the time of writing is no longer available on Insurance Europe’s website) warned that, following Brexit, passporting rights between the EU and the UK will cease to apply, and that UK insurers may require authorisation in relevant EU member states (and vice versa) in order to continue to service existing contracts after Brexit.

This analysis is not new, but the position paper goes one step further, identifying that a transitional arrangement (which would most likely last for only two or three years) will not be sufficient to enable insurers to fulfill completely their obligations under policies that have already been written. Not only will many of these policies relate to long-tail liabilities, some insurers have already issued policies which do not even incept until after Brexit.

Our preliminary discussions with counsel in other EU member states suggest that many member states will (at least unilaterally or on an individual basis) permit UK insurers to service existing business, on the basis that allowing claims to be paid is in the interests of policyholders. However, assuming that the UK's exit deal will not preserve passporting rights indefinitely, it must be hoped that insurers will not have to rely on individual member states making this decision, and that instead a grandfathering deal is agreed.

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2. HFW PUBLICATIONS AND EVENTS

HFW Partners recognised in Expert Guides – Insurance and Reinsurance

We are delighted to announce that ten HFW Partners have been named in the Insurance and Reinsurance Expert Guides "The World's Leading Lawyers Chosen by their Peers". Congratulations to Andrew Bandurka, Jonathan Bruce, Christopher Cardona, Christopher Foster, Costas Frangeskides, Nick Hughes, Giles Kavanagh and Richard Spiller in London, and to Guillaume Brajeux and Olivier Purcell in Paris. HFW's Australian and UAE offices were also named in the Guide.

Bermuda: HFW at the International Association of Claims Professionals Conference

Partner Adam Strong attended the International Association of Claims Professionals Conference in Bermuda from 24 to 27 September.

Indonesia: HFW at the Asian Offshore Energy Conference

From 27 to 29 September, Partner Sam Wakerley and Associate Thomas Neighbour will attend the Asian Offshore Energy Conference in Jimbaran, Indonesia.

UK: HFW at Falconbury Advanced Wordings Course

On Thursday 28 September in London, Partner Andrew Bandurka will chair the Falconbury Advanced Reinsurance Wordings Course, and lead a session on "Drafting Watertight Reinsurance Clauses", and Partner Christopher Foster will lead a session on follow the settlement clauses.

UK: Hurricane Aftermath Presentation and Q&A session

HFW is holding a presentation and Q&A session to discuss the insurance and reinsurance aspects of Hurricanes Harvey and Irma in our London office on 4 October.

HFW's Houston office has, over the last 15 years, handled up to 10,000 insurance claims arising out of hurricane, tornado, flood, hail and storm events in the US South West. Partners Jerry Kimmert and Sheshe Taylor Evans from our Houston office will be speaking.

HFW's London office has, over the last 25 years, handled insurance and reinsurance issues arising out of Hurricanes Katrina/Wilma/Rita, Thai floods, Queensland/NSW/Victoria floods, and other natural disasters. Partner Andrew Bandurka from our London office will be speaking.

During this seminar, our expert speakers will be able to share their expertise and knowledge in how to deal with the insurance and reinsurance issues caused by these devastating Hurricanes.

For more information or to register for this event, please contact events@hfw.com.

UAE: HFW presentation on Re/insurance Law in Saudi Arabia at DIFC Insurance Association

Partners Sam Wakerley, John Barlow and Wissam Hachem will be giving a presentation on 4 October at the DIFC Insurance Association on Re/insurance Issues in Saudi Arabia.

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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