

Insurance/
Reinsurance

23 June 2017



INSURANCE BULLETIN



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hfw 1. Regulation and legislation

UK: PRA publishes boardroom diversity proposals – but do they go far enough?

The PRA has published a consultation¹ containing rules which, if adopted, will require insurers to take steps to encourage board diversity. However, the question which springs to mind on reading the proposals is: should the proposals have gone further to improve diversity in an industry with a reputation for being dominated by white, middle-class men?

The PRA's proposals are contained in a consultation paper which sets out various changes to the Senior Insurance Managers Regime (SIMR). If the proposals are adopted, all Solvency II firms and large non-Directive firms will be required to implement a policy which promotes diversity among board members. However, the PRA has not provided any guidance on what the diversity policy should contain, so it will be leaving insurers with significant discretion.

As the PRA is proposing to adopt for insurers a requirement which has been in place for banks and building societies for over two years, we might have expected the PRA to have analysed the diversity policies which banks and building societies have adopted in that time, and explained whether these policies have helped to improve board diversity in practice.

If the requirement has not seen positive results, even small, within two years, it is difficult to shake the feeling that

the PRA is missing a great opportunity to impose a stronger requirement for insurers to take action to improve diversity.

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EU: EIOPA publishes MoU with World Bank

EIOPA has published a new memorandum of understanding (MoU) agreed with the International Bank for Reconstruction and Development and the International Development Association (together, the World Bank).

The MoU reinforces the co-operation between EIOPA and the World Bank, providing a framework within which those organisations can develop and undertake collaborative activities and thereby pursue more effectively the following common objectives:

1. Contributing to the process of promoting a more risk-based regulatory and supervisory framework, and to the dissemination of knowledge and policy experiences.
2. Fostering efficient and effective supervision.
3. Promoting consumer protection, financial literacy and education initiatives by competent authorities.
4. Contributing to financial stability and identification of systemic risk.

In particular, the MoU covers areas of activity including the following:

1. Sharing knowledge, ideas, best practice and lessons learned on matters of interest.
2. Providing facilities for seminars, workshops or conferences, providing access to seminars organised by each party and sharing training material.
3. Organising and providing speakers at events of mutual interest.

The MoU will be effective for three years from 15 June 2017.

A copy of the MoU may be found here: <https://eiopa.europa.eu/Publications/Protocols/MoU%20World%20Bank-EIOPA.pdf>

EIOPA's press release regarding the MoU may be viewed here: <https://eiopa.europa.eu/Pages/News/EIOPA-reinforces-its-cooperation-with-the-World-Bank.aspx>

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¹ CP8/17: <http://www.bankofengland.co.uk/prd/Documents/publications/cp/2017/cp817.pdf>



hfw 2. Court cases and arbitration

Claims, professional activities and wrongful acts: Aquagenics v Certain Underwriters at Lloyd’s

This Australian case¹ concerns a claim made by a water treatment engineering company under a claims made professional indemnity policy.

The assured was employed by a local council to design and construct a wastewater treatment plant. A dispute arose after the assured stopped work at the pre-commissioning stage. The assured maintained that it could not continue the work because the council had not performed its own obligations under the contract, while the council claimed that the assured had not performed the pre-commissioning work as required by the contract.

The council wrote to the assured to inform it that it was engaging another company to complete the contract and would exercise its rights to claim compensation from the assured, although the amount of compensation claimed was not set out in the letter. The dispute resulted in an arbitration award obliging the assured to pay damages. The assured then claimed under its professional liability policy.

The policy provided cover for *“any claim first made against...the Insured... during the period of the policy and notified...during the period of the policy arising out of any wrongful act committed by you...”*. *“Claim”* was defined as *“a written demand...for money or compensation...”*.

Among other issues, the court was asked to consider whether a “claim” had been made by the local council against the assured during the policy period, and if so, whether the claim arose out of a *“wrongful act”* committed by the assured *“in the course of its professional activities”*.

The court found that although the claim letter from the council did not make an express demand for money, it was a claim that fell within the policy. It was necessary to consider underlying facts rather than the manner of drafting.

Although the assured had decided to stop work on the project, this still constituted a *“wrongful act”* under the policy as this was not restricted to unintentional acts. Furthermore, although the assured had abandoned the works and was no longer working on the site, this fell within *“in the course of”* activities and when the assured left the site it had not demonstrated an intention no longer to be bound by the contract.

Accordingly, the assured was entitled to recover under the policy.

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hfw 3. HFW publications and events

Hong Kong: HFW presents to Gard (HK) Ltd

On 27 June 2017, Peter Murphy (Partner, Hong Kong) and Rosie Ng (Consultant, Hong Kong) are leading a seminar for Gard (HK) Ltd on the Insurance Act 2015 and the Enterprise Act 2016

Panama: HFW sponsors LatAm Ports Forum

On 28 and 29 June, HFW is sponsoring the second Latin American Ports Forum in Panama. Alex Kyriakoulis (Partner, London) will be taking part in a panel on Financial & Risk Management in a New Environment and Francisco Gross (Legal Assistant, Sao Paulo) will be attending.

1 Aquagenics Pty Limited (in liquidation) v Certain Underwriters at Lloyd’s [2017] FCA 634



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