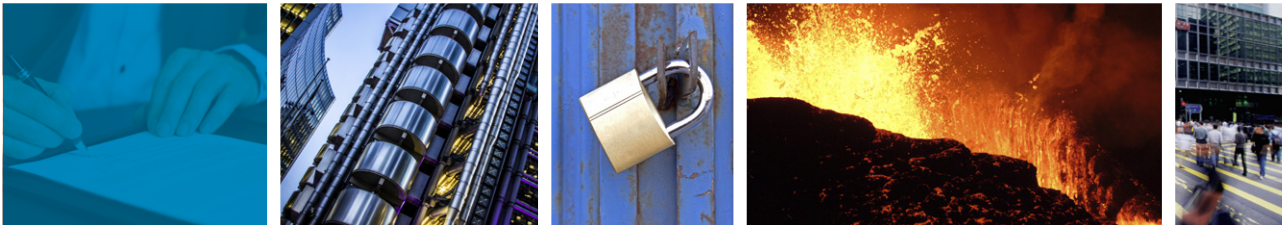




INSURANCE BULLETIN



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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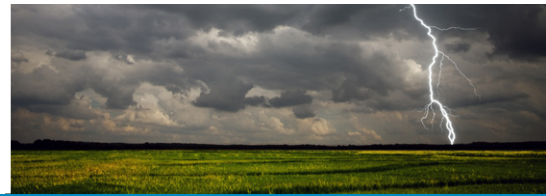
HFW publishes a briefing on new General Data Protection Regulation.

HFW publishes a briefing on the impact of bribery by associated persons.

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hfw 1. Regulation and legislation

Hong Kong: Appointments to independent Insurance Authority (iA) announced

As we reported in previous briefings, Hong Kong will shortly have a new insurance regulator – the iA. The current regulatory regime is hybrid in nature, with insurance companies regulated by the government whilst intermediaries (i.e. brokers and agents) self-regulate. iA, a statutory body, will replace this outdated structure in three stages. Last year there was much speculation on who would head iA. Now the veil of secrecy has been lifted.

On 28 December 2015, a press release was issued¹ advising that Dr Moses Cheng Mo-chi had been appointed as the Chairman of the iA, and that seven people had been appointed as Non-Executive Directors for a term of three years to 27 December 2018.

Dr Cheng is the former senior partner of a local law firm (PC Woo & Co) and is described in the press release as having areas of practice covering capital markets, corporate governance and regulatory compliance. He has served in various positions including Chairman of the Education Commission, government-appointed Director on the Board of the Hong Kong Exchanges and Clearing Limited, and founding Vice-Chairman of the Estate Agents Authority. He was also a very active and well-respected member of the Law Society where, between 1991 and 1998, he was a member of the PI Claims Committee, a position which will have involved interactions with insurance.

The seven Non-Executive Directors announced by the iA are:

- Mr Samuel Chan Ka-yan, a barrister and an incumbent member of the Consumer Council who chairs the Management Committee of the Consumer Legal Action Fund. Mr Chan sat as a Deputy District Judge in 2006 and has considerable experience as an adjudicator or member in various statutory tribunal and appeals boards.
- Professor Chan Wai-sum, an actuary and a Professor of Finance at the Chinese University of Hong Kong, with expertise covering life insurance products, retirement income arrangements and health care financing in Hong Kong.
- Ms Chitty Cheung Fung-ting who has held a number of key management positions at Cathay Pacific and is a former member of the Hong Kong Tourism Board and the Planning and Development Committee of the Travel Industry Council.
- Mr Kenneth Kwok Tsun-wa, a veteran insurance practitioner who served in senior positions in international insurance brokerage firms and general insurance companies and was a member of the General Committee of the Insurance Claims Complaints Bureau.
- Mr Ma Ho-fai, a senior partner of a local law firm (Woo, Kwan, Lee & Lo) who has having extensive experience in conveyancing-related work in Hong Kong. He is an Independent Director of the Travel Industry Council and a former Chairman of the Estate Agents Authority's Disciplinary Committee.
- Mr James Wong Chien-kuo, a former Chief Executive Officer of major life insurance companies (including Dah Sing Life Assurance) and a former Chairman of the Hong



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CAROLINE THOMAS, SENIOR ASSOCIATE

Kong Federation of Insurers. He has also been a member of the Banking Advisory Committee since 2005.

- Mr Stephen Yiu Kin-wah, the former Chairman of the Mainland China and Hong Kong operations of an international accounting firm has extensive experience in auditing listed and large corporations, particularly in the banking and finance sectors.

If you would like to read more about our views on the iA please see: <http://csj.hkics.org.hk/2015/11/an-independent-insurance-authority-for-hong-kong>.

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1 <http://www.info.gov.hk/gia/general/201512/28/P201512280307.htm>

Insurance Distribution Directive adopted by the Council of the EU

Further to our update¹ in December on the Insurance Distribution Directive (IDD), the Council of the European Union has now adopted the text of the IDD which replaces the existing Insurance Mediation Directive (2002/92/EC) (IMD).

The IDD will come into force twenty days after its publication in the Official Journal of the EU and Member States will then have two years to transpose the IDD into national laws and regulations. Based on the current timetable, firms will be required to comply with the Directive, as transposed into the law of the relevant member state, in early 2018. The existing law relating to insurance brokers, agents and other intermediaries is being updated to take into account developments in insurance markets and like the IMD, the IDD will be a “*minimum harmonising*” directive. This means that Member States will be able to supplement it with additional provisions.

IDD identifies situations in which breaches are referred back either to the competent authority of the home member state or the host member state regulator. However, this is at odds with the Financial Conduct Authority, which has the authority to take enforcement action against EEA firms passporting into the UK and UK firms passporting into other EEA states. Some of the principles in the IDD are very similar to the Financial Conduct Authority’s Principles for Business and Insurance Conduct of Business relating to disclosure of remuneration, suggesting that it may be the beginning of EU-level principles-based regulation for insurance distributors.

The full press release can be found at: http://www.consilium.europa.eu/press-releases-pdf/2015/12/40802206665_en_635856873600000000.pdf

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France: New developments for European construction companies

Readers will remember that, in June 2015, the European Commission issued a statement according to which French Law was deemed to discriminate against insurance companies established in other Member States because it had the indirect effect of requiring all construction companies operating in France, regardless of the Member State in which they were established, to take out their insurance policies with insurers established in France¹. The Commission invited France to amend the relevant provisions of its national law.

In this context, the French Federation of Insurance Companies (FFSA) has recently declared that, to comply with the requirements of French Law in relation to compulsory builders’ “decennial liability insurance”, European construction companies have the option of:

- Negotiating with their current insurer in order to adapt their insurance policies.
- Finding an insurance policy in France with the help of their insurer, in the framework of a partnership between European insurers.
- Finding an insurer in France.



The FFSA has also created a helpdesk for European construction companies which encounter difficulties working in France because of insurance issues. The helpdesk will link the company with an insurer to try to find a solution.

This is progress for European construction companies but does not really address the concerns raised by the European Commission in its June 2015 notification, which resulted from the combination of (i) the refusal of the French Insurance Guarantee Fund (*Fond de garantie des assurances obligatoires de dommages - FGAO*) to cover insurance companies operating in France under the rules of free provision of services and (ii) the reluctance of owners to give work to builders whose insurers are not covered by the French Insurance Guarantee Fund.

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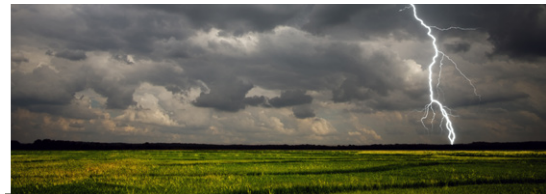


This is progress for European construction companies.

PAULINE ARROYO, SENIOR ASSOCIATE

¹ http://www.hfw.com/Insurance-Bulletin-15-December-2015#page_1

¹ <http://www.hfw.com/Insurance-Bulletin-23-July-2015>



hfw 2. Market developments

UK: PRA writes to non-Solvency II firms on the implementation of the Senior Insurance Managers Regime

The PRA has written¹ to non-Solvency II insurance firms about the implementation of the Senior Insurance Managers Regime (SIMR). It reminds firms that they have until 8 February 2016 to make grandfathering applications as SIMR will be in force from 7 March 2016. The PRA has also highlighted that firms will need to allocate certain prescribed responsibilities to senior insurance management functions and will need to produce a scope of responsibility document for each individual.

For more information, please contact [Nazim Alom](#), Associate, on +44 (0)20 7264 8760, or nazim.alom@hfw.com, or your usual contact at HFW.

UK: PRA publishes questions and answers on the application of the Senior Insurance Managers Regime to Solvency II firms

The PRA has published a series of questions and answers¹ on the application of the senior insurance managers regime to insurers falling within the scope of the Solvency II Directive (2009/138/EC). Questions were received from industry participants, however the PRA has stated that the list is not comprehensive and requires firms to be aware of the PRA's requirements and expectations.

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hfw 3. HFW news, publications and events

HFW publishes a briefing on new General Data Protection Regulation

HFW has published a briefing¹ on the new EU General Data Protection Regulation which has been agreed by the European Parliament and Council. Subject to a positive final vote by the European Parliament in the new year, the Regulation will become law in approximately two years' time.

The briefing sets out some of the key provisions of the Regulation and gives some suggestions on how to prepare for the Regulation coming into force.

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¹ <http://www.bankofengland.co.uk/pradocuments/supervision/strengtheningacc/ndf091215.pdf>

¹ <http://www.bankofengland.co.uk/pradocuments/supervision/strengtheningacc/simrqadec15.pdf>

¹ <http://www.hfw.com/New-General-Data-Protection-Regulation-December-2015>



HFW publishes a briefing on the impact of bribery by associated persons

HFW has published a briefing¹ on the impact of bribery by associated persons. The briefing looks at corporate liability under the UK Bribery Act 2010 for failure to prevent bribery by an “associated person”, considers some recent developments and enforcement decisions in relation to the offence, and provides some general anti-bribery guidance.

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¹ <http://www.hfw.com/The-impact-of-bribery-by-associated-persons-December-2015>

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