

# 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 participates in round table discussions on mining, energy and agro-business at the Instituto Mineiro de Mercado de Capitais in Brazil

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## **hfw** 1. Market developments

### **Australia: Lloyd's builds its presence in Australia**

**Lloyd's is establishing a stronger presence in Australia and as part of this initiative, it has officially opened up a new office in Sydney.**

Lloyd's is currently the fifth largest insurer in the Australian market, with over AUS\$2 billion of business written in Australia in 2014. Lloyd's has been writing business in Australia for 160 years. Lloyd's is licensed under the Australian Insurance Act 1973 to write insurance and reinsurance business. Its primary functions are to represent the Lloyd's market at all levels, promote and protect its brand and ensure compliance with local legislation and licensing obligations. In addition, Lloyd's functions include providing legislative guidance to its syndicates, dealing with disputes, providing market updates and approving new coverholder applications.

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**Lloyd's is currently the fifth largest insurer in the Australian market.**

LUCINDA RUTTER, ASSOCIATE

## **hfw** 2. Court cases and arbitration

### **England & Wales: What is the appropriate forum for an English law contract which does not have a jurisdiction clause? *Axa Corporate Solutions Assurance SA v Weir Services Australia Pty Ltd***

**In the recent case of *Axa Corporate Solutions Assurance SA v Weir Services Australia Pty Ltd*<sup>1</sup> the Commercial Court concluded that England was the appropriate forum to construe the key provisions of a global insurance policy which did not contain a jurisdiction clause, but had been issued in England and was governed by English law.**

The claimant applied for an anti-suit injunction which sought to prevent the defendant from pursuing an indemnity claim in Australia insofar as the claim related to the global policies. Meanwhile the defendant sought to set aside an order which permitted service of the English proceedings in Australia.

The liability insurance programme which the claimant provided to the defendant consisted of both global and local policies. While the global policies were governed by English law, there was a local Australian policy insuring a subsidiary of the defendant which was governed by Australian law. The intention was for the local policy to take precedence and then one would look to the global policy for additional cover.

The court, in refusing the applications, held that the key provisions of the global policy should be considered by the English courts because it had been entered into in England, was subject to English law and it stood at the apex



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LIZZIE GRAY, ASSOCIATE

of a worldwide, integrated liability insurance programme, widely used by the claimant, with the local policies standing beneath. However, there were no grounds for granting an anti-suit injunction against the proceedings in Australia as the defendant had taken a legitimate tactical step which did not amount to unconscionable conduct. The proceedings would therefore continue in both England and Australia, although the proceedings in England would be stayed pending the resolution of the claim in Australia under the Australian policy.

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1 [2016] EWHC 904 (Comm)



**UK Supreme Court rules that consequential loss is not covered under the Riot (Damages) Act 1886: *The Mayor's Office for Policing and Crime v Mitsui Sumitomo Insurance Co (Europe) Ltd & ors (England & Wales)***

**The issue in this case concerned the proper interpretation of the Riot (Damages) Act 1886 (the Act) and its application to the 2011 London riots. The High Court initially ruled that the Act provided compensation only for physical damage and not for consequential losses, but the Court of Appeal reversed that judgment, as discussed in our briefing of June 2014<sup>1</sup>. However the Supreme Court has now unanimously allowed Mitsui Sumitomo's appeal.**

The question before the Supreme Court was whether, in addition to compensation for physical damage to a building, the claimants were also entitled to compensation for consequential losses, for example, lost profits arising out of business interruption.

The Supreme Court held that the words of the Act must be construed in the light of its legislative history. As a result, there was no entitlement to consequential losses on the basis that, under the Act, there was no intention to equate compensation to damages or to provide compensation beyond physical damage to property. The Act sets out a self-contained statutory compensation scheme which does not extend to cover consequential losses.

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### **hfw 3. HFW publications and events**

#### **A Guide to the Australian Securities Exchange (ASX) – General Admissions**

HFW has published a guide<sup>1</sup> to the Australian Securities Exchange (ASX) which examines why companies choose to list on the ASX. The guide also analyses the initial listing procedure and the continuing obligations which apply to listed companies.

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#### **HFW meets Brazilian insurance regulator with Lord Mayor of the City of London**

On Tuesday 3 May, [Geoffrey Conlin](mailto:geoffrey.conlin@hfw.com), Partner in the São Paulo office, accompanied the Lord Mayor of the City of London, members of UK T&I and representatives from Lloyd's Brazil, to meet with the Brazilian insurance regulator, SUSEP, in Rio de Janeiro to discuss the current regulatory environment from an international perspective and potential areas of reform.

#### **HFW participates in round table discussions on mining, energy and agro-business at the Instituto Mineiro de Mercado de Capitais in Brazil**

On Wednesday 4 May, HFW Partner [Geoffrey Conlin](mailto:geoffrey.conlin@hfw.com) travelled to Belo Horizonte in Minas Gerais to participate in round table discussions on mining, energy and agro-business in Brazil at the Instituto Mineiro de Mercado de Capitais. The event was chaired by the Lord Mayor of the City of London and was attended by the Ambassador to Brazil and representatives from various mining, energy and agro companies. Geoffrey presented on mining, insurance and reinsurance.

<sup>1</sup> <http://www.hfw.com/Rioting-our-way-to-a-change-in-the-law>

<sup>1</sup> [http://www.hfw.com/A-Guide-to-the-Australian-Securities-Exchange-\(ASX\)-General-Admissions](http://www.hfw.com/A-Guide-to-the-Australian-Securities-Exchange-(ASX)-General-Admissions)

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