

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 hosts the "Deutscher Anwaltsverein" (German Bar Association)

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1 [2016] EWHC 1327 (QB)



hfw 1. Regulation and legislation

France: Energy - enactment of the law on the 'blue economy' on 20 June 2016. New insurance regime for Marine Renewable Energy Installations

On 20 June 2016, the law on the 'blue economy' which introduces an insurance regime tailor-made for Marine Renewable Energy Installations (MRE) was finally enacted (after being adopted by the senate). In February, we published a detailed briefing on the draft law¹.

Article 84 of the law on the 'blue economy' now classifies MRE installations as "large risks" as defined by decree in the *Conseil d'Etat*, and it excludes them from the mandatory regime applicable to terrorist risks and natural catastrophes. These changes will therefore allow the market freely to fix the terms of cover for such installations in order to meet the desired objective of reducing the insurance cost for MRE projects, as well as supporting development of this sector in France. As "large risks", these installations can now choose the law applicable to their insurance policy and are no longer required to make them subject to French law.

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According to article 21 of the draft law, an insurance company that encounters significant financial difficulties would be ordered by the ACPR to submit a portfolio transfer request in accordance with article L. 324-1 of the French Insurance Code and within not less than four months.

GHISLAIN LEPOUTRE, SENIOR ASSOCIATE

France: Draft law to allow ACPR to supervise the prudential transfer of an insurance company portfolio

On 6 February 2015 the French Constitutional Court held that article L. 612-33 §8 of the French Monetary and Financial Code was contrary to the principle of constitutional protection of property, insofar as it granted the French Prudential and Financial Regulatory Authority (ACPR) the right to order the transfer of all or some of the insurance contracts of a company facing severe difficulties, without consultation with the insurance company or provision of any compensation.

In response to this, a draft law *for transparency and modernisation of the economy*, known as the *Sapin II* draft law, has been put forward. This aims to reinstate the possibility of automatic portfolio transfer, but this time in accordance with the French Constitution, by giving the insurance company the opportunity to organise a transfer itself in exchange for appropriate compensation.

According to article 21 of the draft law, an insurance company that encounters significant financial difficulties would be ordered by the ACPR to submit a portfolio transfer request in accordance with article L. 324-1 of the French Insurance Code and within not less than four months. An authorisation request would then be addressed by the insurer to the ACPR before being notified to the insurance company's creditors.

Under the draft law, the creditors would have two months to submit their comments to the ACPR, and the ACPR would then endorse the transfer provided that creditors' and insureds' interests were preserved. In this respect, the ACPR would have still the last word on the transfer of a company's portfolio.

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¹ <http://www.hfw.com/The-wind-of-change-emergence-of-an-insurance-regime-appropriate-for-French-marine-renewable-energy-projects-February-2016>



hfw 2. Market developments

Latin America: Lloyd's opens Colombian office

In an effort to expand Latin American trading relationships, on 21 June 2016, Lloyd's opened its first Colombian office, located in Bogotá. Colombia is recognised as a quickly developing hub for facultative reinsurance and Lloyd's has been established in the Colombian market for many years particularly property, energy, aviation, financial lines, liability and construction lines.

In addition, two Lloyd's insurers, Advent and Brit, will be on the Lloyd's Colombia platform and it is hoped that more Lloyd's insurers will join in the future.

The Chairman of Lloyd's, John Nelson, commented:

"Colombia is an important part of Lloyd's future growth strategy, both as a fast-growth market and as a gateway to Latin America, and I am delighted to be opening our office today....Colombia is a growing economy which is making significant investments for the future. However, insurance penetration is one of the lowest in Latin America, at only 1.6% of GDP....As Colombia realises its economic potential, insurance and reinsurance can play a key role in supporting this economic growth by improving resilience, taking risks out of the country, and helping the economy recover after catastrophes."

Lloyd's believes that there is considerable opportunity for growth since insurance penetration rates in Colombia currently stand at approximately 1.6% compared with 6.1% global average. In addition, a report by Lloyd's on underinsurance noted that Colombia has an



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LUCINDA RUTTER, ASSOCIATE

underinsurance gap of \$570 million against its natural catastrophe exposures.

A recent study by Lloyd's and Cambridge University, the City Risk Index, found that Bogotá and Medellín will generate \$2.5 trillion in economic growth over the next ten years but could have \$44 billion at risk from a series of threats. The top threats for both cities are: earthquake; market crash; human pandemic; terrorism; and volcano.

For guidance on Colombian insurance and reinsurance law and claims handling considerations to underwriters, claims handlers and their representatives who have business in Colombia, please see HFW's interactive guide to managing claims and re/insurance law in Latin America, which can be found at: <http://www.hfw.com/insurance-latin-america-map>.

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hfw 3. Court cases and arbitration

England & Wales: Court allows amendments to statement of case after the limitation period has expired in order to correct the description of the defendant Lloyd's syndicates – Mr Danny Maman (trading as Fine Watches and Jewellery) v Certain Lloyd's Underwriters¹

In a judgment handed down on 27 May 2016, Master Kay QC held that Rule 17.4 of the Civil Procedure Rules (CPR) which applied where a party sought to amend his statement of case after a limitation period had expired could be used to correct the description of a party irrespective of the fact that it referred to only correcting the name of a party.

The claimant, a jeweller, made a claim under his insurance policy following the theft of several valuable items in two separate incidents: the first on 17 February 2009 and the second on 15 March 2009. Following a rejection of the claim by underwriters, the claimant issued a claim form on 16 February 2015. This was just before expiry of the limitation period according to the well-established principle that the cause of action in a claim against insurers would arise at the time when the loss against which the insured was to be indemnified actually occurred. However the claim form incorrectly named the insurance brokers and brokers' agent as the first and second defendants and the third defendant as "Lloyd Syndicate Members". Upon realising their mistake after the limitation period had expired, the claimant's solicitors applied to the court to amend and re-issue the claim form such that the only defendants named were "Certain

1 [2016] EWHC 1327 (QB)



The misdescription in the claim form was a genuine mistake and there could have been no reasonable doubt as to the identity of the party to be sued.

LIZZIE GRAY, ASSOCIATE

Lloyd's Underwriters subscribing to policy number DCAL/08320".

The order to amend the claim form was subsequently granted. However, the defendant underwriters applied to set aside the order, raising issues as to whether the CPR permitted the court to allow such an amendment. CPR Rule 17.4 states that the court may exercise its discretion to allow an amendment to correct a mistake as to the name of a party after a limitation period has expired, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

Master Kay QC allowed the amendment to stand. This was a case where the defendants had been described rather than named, but r.17(4) could be used to correct the description of a party, even though it

referred only to correcting the name of a party. The misdescription in the claim form was a genuine mistake and there could have been no reasonable doubt as to the identity of the party to be sued. The claim form as a whole made it clear that the parties to be sued were the syndicate members who had accepted a premium from the claimant. The exercise of discretion involved weighing all the circumstances and balancing the prejudice to each party. Here, the defendant had been aware of the claim throughout and while it had suffered some prejudice this was remedied on the condition that the claimant paid a sum into court by way of security for the defendant's costs.

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4. HFW publications and events

HFW hosts the “Deutscher Anwaltsverein” (German Bar Association)

On Wednesday 29 June, HFW Senior Associate [Iris Vögeding](#) hosted a breakfast seminar for the “Deutscher Anwaltsverein” (German Bar Association) on jurisdiction and conflict of law in relation to direct action against civil liability insurers in international private law, based on recent case law in France and Germany. There was great interest in these questions, which are complex as they mix insurance law and international private law aspects. The seminar also included a discussion of the delegates' experiences in several jurisdictions.

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