



## LAW & ORDER

# What's in store for 2013?

As we begin the New Year, Clyde & Co looks at developments on the global horizon. The firm asked its lawyers from Europe, the Middle East, Asia Pacific and the Americas, as well as from some of its correspondent firms, about the key issues for insurers and reinsurers this year

### Canada

"For 2013, insurers will be keeping a close eye on signs of increasing severity of losses in both the financial and directors' and officers' sectors in view of a December 2012 settlement for C\$117m (\$118.6m) (awaiting approval) in a class action against auditors.

"Changes to federal privacy legislation requiring compulsory reporting of data breach, as well as a judgment on the merits concerning secondary market liability, remain issues to watch for the upcoming year.

"The Supreme Court of Canada's *Progressive Homes* judgment, which held coverage under a commercial general liability policy is not restricted to third-party property damage and may extend to the consequences of faulty workmanship, is of interest as coverage disputes are litigated."

*Carolena Gordon, partner, Clyde & Co, Montreal*

### UK

"The reinsurance market has been badly hit by a series of recent natural catastrophes culminating with hurricane Sandy in the third quarter of 2012. The size and scale of the losses (including significant business interruption losses) arising, which early estimates predict will be in the region of \$20bn in terms of industry-wide insured losses, make this a game-changing event; this was reflected in one of the most challenging renewal seasons of recent years.

"With reinsurers seemingly focused on the protection of capital and cashflow, we are beginning to witness a material change in the prevailing claims environment: increasingly reinsurance notifications are either being contested or denied.

"Against this backdrop, careful review of contracts by reinsureds and strict compliance with loss notification and claims co-operation provisions is key."

*James Burns, partner, Clyde & Co, London*

### US

"Following the decision by the US Supreme Court upholding the Patient Protection and Affordable Care Act (PPACA) and president Obama's re-election, all systems are go for the implementation of PPACA, sometimes referred to as 'Obamacare'.

"The legislation passed on to federal agencies states the authority to publish regulations which, among other things, will govern the coverage health insurers must provide. We are actively monitoring these developments for our health insurer clients.

"Also, a newly effective expansion of US sanctions laws now means US insurers and other companies are, for the first time, responsible for the conduct of foreign subsidiaries they own or control. If those subsidiaries conduct business with Iran, the US owner is in violation.

"US insurers are now obliged to monitor and govern the conduct of their subsidiaries in a way they had not been previously required.

"Given penalties for violation of these laws can be severe, even where the violation is inadvertent, we have been advising our clients to arrange for independent audits of their foreign subsidiaries' activities as a means of protecting management."

*Michael Knoerzer, partner, Clyde & Co, New York*

### Italy

"The regulation of the insurance industry will take a new turn in 2013, with a new regulator, Ivass (Istituto di Vigilanza sulle Assicurazioni (Insurance Supervision Institute)) undertaking all the supervisory and control functions previously exercised by its predecessor, Isvap.

"In contrast to the previous position, Ivass is under the control of the Bank of Italy and will oversee the insurance and reinsurance market in connection with the other bodies of the central bank.

"The insurance industry, and in particular the motor market, will be waiting to see how the new regulator tackles its responsibility to assist in combating the recent rise in insurance fraud. On the claims side, the professional lines market will be gearing up to offer compulsory professional indemnity insurance to regulated professionals (lawyers, public notaries, accountants, architects, etc) for the first time. The cover must be in place by August."

*Anthony Perotto, partner, NCTM, Milan*

### South America

"While it is too simplistic to view the entire South American market as a composite whole, the broad trend towards a combination of domestic and international capital looks set to continue.

"For example, where large losses no more than a decade ago were the exclusive preserve of international reinsurers, it is now commonplace for the markets on such losses to be a mixture of international and domestic/regional players.

"The international market has to be alive to these changes, and competition, when seeking to market products and in the management of claims. For instance, present assumptions as to the mechanics of claims control and co-operation provisions may need to be reconsidered in light of the broader spectrum of interests."

*Lee Bacon, partner, Clyde & Co, London*

### Middle East

"Regulation, regulation, regulation – the Middle East is developing at varying rates of progress when it comes to re/insurance regulation and in 2013 insurers will be closely watching how the regulatory regimes in the region evolve. While some areas are in overdrive, others are in a state of slumber.

"For example, in Saudi Arabia rapid progress continues with the issue of a range of new government laws that are contributing to growth in the area. However, in the United Arab Emirates planned reforms affecting composites have been kicked into the long grass, with the ongoing impact of the global downturn blamed for the change of pace.

"Meanwhile, in Qatar, 2013 may finally see the emergence of the long-awaited single regulator for the financial services sector."

*Wayne Jones, partner, Clyde & Co, Dubai*

**Russia**

“The trend of reducing the volume of insurers by increasing capitalisation continues. A draft bill is under discussion for the merger of the Federal Financial Markets Service (recently merged with the Federal Service for Insurance Supervision) with the Central Bank of Russia, thus creating a single regulatory authority.

“The trend of compulsory liability insurance also continues. In 2012, this was required by owner/operators of hazardous objects and facilities. In 2013 it will be required by state companies and carriers of passengers. However, the market is not ready as government decrees to support the insurance of carriers’ liability have not been issued.

“In the retail sector we may see property claims increase as a result of consumer protection legislation under which insurers are at risk of fines for wrongful refusal to indemnify.”

*Maire Ni Aodha and Constantin Saranchouk, partners, Clyde & Co, Moscow*

**France**

“In the context of an increase in the number of insurance comparison websites, the French consultative committee of the financial sector issued advice in May to improve the transparency and quality of such websites for damage insurance. It is now looking more closely at health insurance, aiming to publish equivalent advice in the first quarter of 2013.

“The French regulator published a new instruction for banks and life insurers on the prevention of money laundering and the financing of terrorism, reinforcing and detailing reporting obligations. It has also announced an instruction for non-life insurers should be published in the coming months.

“The publication comes with a warning the reporting provided by insurers will be closely scrutinised by the regulator.”

*Yannis Samothrakis, partner, Clyde & Co, Paris*

**China**

“Following the appointment of its new chairman in October 2011, the China Insurance Regulatory Commission (Circ) has committed to further regulatory reforms in the insurance sector. Various new rules have been issued to provide more flexibility for insurers’ use of insurance funds. It remains to be seen how these rules will improve the efficiency of fund use.

“There are also new guidelines on misleading life insurance sales, as well as on the corporate insurance aspect regarding remuneration to the senior management, which will come into force on January 1, 2013.

“There is a clear sign Circ will further regulate insurers’ sales activities as well as their services in order to protect the rights and interests of customers. In the meantime, corporate governance will continue to be an important aspect to be improved by insurers.”

*Carrie Yang, partner, Clyde & Co, Shanghai*

**Hong Kong**

“This year will continue to focus the minds of insurers, and insurance intermediaries, on their regulatory environment with the proposed new Independent Insurance Authority. A consultation phase is presently under way; legislation is expected to be produced during 2013, although full operation of the new regime will occur in 2015. A relatively more stringent approach is expected.

“Class action laws may also be introduced in 2013; which would potentially exacerbate the claims which financial lines underwriters have addressed. The trend of US exposed claims is continuing for Chinese companies listed on Nasdaq, although at a slower pace.

“New privacy and personal data obligations will also place a high administrative burden on the insurance industry over 2013.”

*Simon McConnell, partner, Clyde & Co, Hong Kong*

**Germany**

“A big issue for 2013 is uncertainty over whether policyholders of life insurance contracts can revoke their agreement to such contracts after many years, and whether, in those circumstances, policyholders are entitled to a full refund of premium or just the surrender value (as to the latter, there are also questions as to how this is calculated).

“The Federal Court has referred a case on this topic to the European Court, seeking clarity on whether a German statute that limits the right to revoke life insurance contracts infringes EU law.”

*Reinhard Dallmayr, partner, BLD Bach Langheid Dallmayr, Munich*

**India**

“The much-awaited Insurance Laws (Amendment) Bill 2008 did not see the light of the day in 2012. The government seems to be determined to push the bill through in the budget session of the Indian parliament scheduled for February 2013.

“The bill *inter alia* proposes to allow foreign investors to hold up to 49% of the capital in an Indian insurance company. It also paves way for nationalised general insurance companies to raise funds from the capital markets and proposes to allow foreign reinsurers to open branches in India.

“Among other proposals, the bill also provides for Lloyd’s to be included within the definition of a foreign company and is thus likely to open the doors for Lloyd’s entry into India.”

*Sakate Khaitan, partner, Clasis Law, London*

**Singapore**

“The Personal Data Protection Bill, which was approved in October 2012, is likely to come into force this month. This will significantly streamline data protection laws in Singapore, which previously were scattered into more than 150 different provisions in different acts.

“It will also introduce a Personal Data Protection Commission, as well as broaden the definition of personal data to include electronic, as well as non electronic, data. Importantly, the PDP Bill intends to impose a number of fines and enforcement mechanisms against individuals, companies and their directors and officers; this will affect the D&O landscape.

“The new legislation, combined with an increase in cyber crime, has also led to an influx of new cyber products in the region. This trend is set to continue this year.”

*Melissa Russell, senior associate, Clyde & Co, Singapore*

**Indonesia**

“Impressive growth rates look set to continue, driven by strong gross domestic product growth, a rising middle class and low penetration rates. We expect to see new global and local players enter the market over the next year. Investments into existing companies will dominate, as new licenses are hard to come by in a crowded market of small players.

“Minimum capital requirements are increasing progressively by 250% from 2010 to 2014, which will further drive mergers.

“The new regulator, the Otoritas Jasa Keuangan, is expected to favour continuity over change in 2013, but recent fees imposed on financial institutions may suggest more change is coming for insurers.

“The new Social Security Agency, born out of state-owned pension and insurance fund Jamsostek, may emerge as a competitor to private insurers. The agency will forge distribution channels with the national post office and state banks, a boon to private parties that can access these channels.

“Political uncertainty will rise between now and the 2014 national elections and merits a close watching brief.”

*Michael Horn, partner, Clyde & Co, Singapore*

**Australia**

“For directors’ and officers’ (D&O) insurers in Australia and New Zealand, the outcome of the New Zealand appeal and challenge in Australia of the New Zealand Court of Appeal’s Bridgecorp decision will be significant.

“That decision held directors could be prevented from being paid defence costs under D&O policies to preserve funds to pay any settlement or judgment which may be awarded to the plaintiff. Some insurers are offering separate companion policies to attempt to provide certainty on D&O costs and expenses.

“More generally, a royal commission has been called by the Australian government into the sexual abuse of children in institutions across Australia. The commission’s terms of reference are yet to be announced, but the investigation is expected to be wide ranging, extending to private and public institutions or organisations. The ramifications of such an inquiry will obviously be significant for Australian insurers.”

*John Edmond, partner, Clyde & Co, Sydney*