This update from Clyde & Co’s Corporate Insurance Team summarises new developments as reported by the FSA, Lloyd’s of London, ABI, BIBA and other sources, with links to the full documents where these are available.

Entering new insurance markets – Clyde & Co Report
The map of the insurance world is changing rapidly, with re/insurance businesses looking further afield for opportunities – whether that means investing in emerging markets, or looking for new opportunities in the mature economies. However, one thing is crystal clear: insurers are operating in a complex environment. As they look to expand their businesses, they are encountering a range of challenges – legal, regulatory and commercial – which require local knowledge and industry expertise in order to navigate safely through uncharted waters.

As a result, we have compiled a brief introduction – outlining the essential information around regulatory authorisation, capital requirements and the ability to do business – for the markets in Asia, Europe, Latin America, Middle East, North America and Russia.

To request a copy of the full report, please click here.

Insurance transfers in Europe – Book
Clyde & Co has produced a new book, Insurance Transfers in Europe, looking at some of the procedures available for transferring insurance portfolios across Europe. The book, edited by Clyde & Co partner Geraldine Quirk, contains contributions from lawyers in a host of jurisdictions including Belgium, Denmark, France, Germany, Ireland, Italy, The Netherlands, Portugal, Spain, Sweden, and the UK.

To obtain a free copy of the book, please click here to download an order form.
**Regulatory**

**EIOPA publishes the outcome of the public consultation on the ORSA**

The European Insurance and Occupational Pensions Authority (EIOPA) published its Final Report on draft Guidelines for Own Risk and Solvency Assessment (ORSA). In the report it says that proportionality is a key feature of the Own Risk and Solvency Assessment (ORSA) and that insurer’s assessment of the overall solvency needs should be forward-looking.

Read more

**EIOPA Publishes the outcome of the public consultation on solvency II**

The European Insurance and Occupational Pensions Authority (Eiopa) has eased the regulatory reporting requirements for smaller insurers in its draft reporting guidelines for Solvency II. Eiopa has advised insurers to start using the proposed reporting templates and that these will improve efficiency.

Read more

**Regulating in a new era of professionalism – what does the FSA want to see from the industry**

In June the FSA published a speech by Clive Adamson, Director of Supervision at the FSA, which he presented at the IEA’s 15th Annual Conference. Adamson outlines the current and ongoing changes that the FSA is undergoing to separate its prudential and conduct regulatory functions. He focuses specifically on the role of the incoming Financial Conduct Authority (FCA) and its new approach to supervision. Adamson also addresses professionalism and the FCA’s desire to continue the work of the FSA to improve the clarity of the service provided to consumers, to create a transparent and fair charging system for advice received and to ensure that advice is provided by respected and professional advisers. He concludes by setting out the FSA’s and FCA’s expectations of the industry in relation to these issues.

Read more

**UK Law Commission new Insurance law consultation**

On the 26th June 2012 the third and final Consultation Paper entitled ‘Insurance Contract Law: The Business Insured’s Duty of Disclosure and the Law of Warranties’ was opened. The proposed new reforms will target the level of information disclosed by businesses to insurance companies when buying policies and that breach of warranty should suspend an insurer’s liability for the duration of the breach. The Consultation Paper covers:

– The business insured’s duty of disclosure
– The law of warranties

For the Law Commission consultation website please click here.

**Consumer Panel Chair has called for the FSA and its successors to drive a change in firm culture to deliver better outcomes for people**

In his speech to the FSA’s Annual General Meeting Adam Phillips set out the Panel’s expectations for the Financial Conduct Authority. The regulator must deliver better outcomes for people said Phillips.

Read more

**Europe**

**FSCS publishes 2011/12 Annual Report and Accounts**

The Financial Services Compensation Scheme (FSCS) published its accounts on 5th July 2012. According to the report it paid out £347m in compensation to more than 86,000 claimants in 2011/2012. It also received a significantly increased number of new claims during the year.

Read more

**European Parliament decides Solvency II starts January 2014**

Finally the European Parliament has decided that Solvency II will be implemented on 1 January 2014. EU member states now have until 30 June 2013 to enact it into national law. This follows on from a period of indecision and uncertainty which was mainly due to continued delay to the Omnibus II Directive, which will amend Solvency II by adapting it to the “new” European Supervisory Architecture. The European Parliament plenary vote on Omnibus II has been pushed back to 22 October 2012.

**European Commission**

The European Commission has published an updated document setting out its agenda and timetable for the legislative proposals and non-legislative acts that it expects to adopt between 31 May 2012 and 31 December 2012. It includes the Insurance – Solvency II (Directive 2009/138/EC) Level 2/implementing measures on page 43 with a November 2012 timescale.

Read more

**Eurozone: Should UK organisations be making contingency plans?**

Philip Prowse a partner in the trade and commodities group takes part in a Q&A for Lexis Nexis regarding what contingency plans contingency business should make in respect of a potential Eurozone exit. Philip notes that it is advisable for banks and companies to review all Euro-denominated contracts, particularly those from troubled jurisdictions, and also have a strategy for new contracts.

Read more
Sanctions

Sanctions microsite
To help you keep up to date with the latest sanctions developments that may affect your business we have developed a dedicated Sanctions Microsite where you will find all our sanctions articles and events and useful information relating to Iran, Libya, North Korea, Syria, Cuba and Burma/Myanmar.

Japan allows Iran oil imports
Japan’s parliament has approved a new law on the insurance for crude oil cargoes from Iran making it the first of Iran’s big Asian oil buyers to get round new European Union sanctions. According to a government official the law will take effect on 27 June. It allows the Japanese government to provide cover of up to £4.8 billion for each tanker carrying Iranian crude bound for Japan in the event of accidents.

New executive Order 13608 Targets Foreign Sanctions Evaders
On 1 May 2012, President Obama issued Executive Order 13608 “Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with respect to Iran and Syria” (“EO 13608”). This order expands the “extraterritorial” authority of the US Treasury Department’s Office of Foreign Assets Control (“OFAC”) by imposing new sanctions upon foreign individuals and companies concerning transactions relating to Iran or Syria. Read more

Corporate

A UAE reprieve for composite insurers
Article by James O’Shea, partner and Allison Beirne, associate, in our Dubai office on the “three year solvency reprieve” for UAE insurance companies carrying on composite business (life and non-life) within the same corporate entity. Read more

Global news in brief from the industry
– Lloyd’s is looking towards new markets for growth and financing as part of its long-term strategy, Vision 2025. Read more
– The Lloyd’s Market Association has published guidance for London’s managing agents on handling premium and claims on policies in countries withdrawing from the euro. Read more
– The Home Office Equalities department has confirmed that certain provisions in the Equality Act 2010 will be brought into force on 1 October 2012 relating to age discrimination. Specifically, these ban service providers from unjustifiably discriminating against customers and consumers on the basis of their age. Read more
– China suspends approving new insurance intermediaries. On 26 June 2012, China Insurance Regulatory Commission (“CIRC”) released the Notice on Further Regulation of Market Entry of Insurance Intermediaries (“Notice”). Read more

Cases

A UAE settlement clause is considered by the English
A review by Mark Beswetherick, Partner and Alfred Thornton, Senior Associate of English Commercial Court’s decision in Aizkir Navigation Inc v Al Wathba National Insurance Company, which held that the word settlement could have a dual meaning in an English insurance context and dealt with the circumstances in which an English Court may accept jurisdiction over a dispute notwithstanding a jurisdiction clause in favour of another court. Read more

Elafonissos Fishing v Aigaion: Whether insured had proved its claim/breach of warranty allegation Read more

Reed Smith for claimant, Clyde & Co for defendant (Martin Hall and Neil Bailey)
The insured sought to claim for damage which it said its fishing vessel had suffered in a port when a cyclone struck the port. Shortly before trial, the insurer confirmed that it would not be putting forward a positive case but that, instead, the insured should be put to “strict proof”.

Blair J acknowledged that certain issues could not be clarified at trial by oral evidence and cross-examination because all the insured’s factual evidence was tendered under the Civil Evidence Act. However, he held that limited (rather than no) weight should be given to the Civil Evidence Act statements. He concluded that the insured had succeeded in proving its case (except in relation to a salvage claim – see below).

As part of his judgment, the judge found that an amount paid for wages and maintenance of crew should be allowed even though the insured had to have crew on board anyway (because the payment was allowable pursuant to the Rules of Practice of the Association of Average Adjusters).

However, the insured had not proved its claim for salvage by another vessel. Unlike the rest of its claim, this part of the claim had not been intermediated through a third party and so there had been no element of outside scrutiny. Furthermore, there had been no explanation as to why insurers had not been asked in advance to agree a payment to the vessel owners. In any event, taking into account Greek law on the point, the amount paid had not been reasonable.
Insurers had also sought to rely on a breach of warranty. The relevant warranty was “Warranted laid up...in the Port of Mahajanga”. Insurers were unable to prove a breach on the facts, but Blair J held, in any event that there was no basis for implying into the warranty further requirements on the insured to comply with the port regulations: “because of the potentially draconian effects of the breach of promissory warranties (i.e. that breach discharges the insurer as from the moment of breach regardless of whether the breach causes or contributes to the loss), they will be construed narrowly.”

Further information
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