# Commercial Risk Europe

EUROPEAN INSURANCE & RISK MANAGEMENT NEWS

www.commercialriskeurope.com | Volume 7 | #02 | March 2016





**INSURANCE ACT**

# Risk managers begin to feel burden of the Insurance Act

## Failure to prepare leaves companies exposed


**Stuart Collins**
news@commercialriskeurope.com


**[LONDON]**—THE APPLICATION of new insurance contract law under the UK Insurance Act is proving to be a complex and burdensome task for risk managers, involving far more work than many had anticipated.

Failure to realise the enormity of the task or prepare early for the Insurance Act will inevitably see some companies sign contracts this year that fail to comply with the new law. This will leave such firms open to disputes and litigation as insurers and the courts test the new laws.


HM Treasury, London

### NO KNOWLEDGE

Furthermore, there is concern at the Federation of European Risk Management Associations (Ferma) that continental European risk managers in particular are unaware of changes to insurance placement law under the Act and, as a result, are ill-prepared for its implementation (*see related article, below*).


Charles Beresford-Davies

Risk managers are currently preparing for the Insurance Act, with some already undergoing policy renewals with the legislation in mind. In force from 12 August, the Act has important implications for policy wordings, disclosure and the way in which risks are presented to underwriters.

Early application of the Act has already highlighted some unintended consequences, according to Charles Beresford-Davies, head of the risk management practice at Marsh in London.

Application of the Act is "proving an extremely complex process" that presents a huge burden for risk managers, he said. "For the larger, more sophisticated buyers, the Act has created a great deal more process, documentation and due diligence," he added.

According to Clive Clarke, deputy chair of the Association of Insurance and Risk Managers in Industry and Commerce (Airmic) and chair of the association's insurance steering group, much of the initial work to interpret the Act is falling on risk managers, supported by their brokers.

### BESPOKE APPLICATION

Mr Clarke noted that interpreting and applying the Act is proving to be a bespoke exercise, perhaps more so than many had expected. Given differences in corporate structures, risks and insurance arrangements, it is down to risk management teams to apply the act to their own businesses, he said.

Awareness of the Act is high among large corporates, but many risk managers have yet to fully realise the extent of the work required if their contracts are to be compliant, according to Bruce Hepburn, chief executive of insurance governance adviser Mactavish.

### CHALLENGING TASK

"The Act is very challenging and burdensome for risk managers, and they are only waking up to that late in the day," he said.

Many wrongly believe that existing market practices will meet legal requirements under the Act, believes Mr Hepburn. "Even though the Act rebalances the law in favour of policyholders, it will set new standards of disclosure and placement that won't be met by existing practices in most cases," he said.

As a result, Mr Hepburn believes that many companies will enter into insurance contracts this year that do not fully comply with the Insurance Act. This will place them at a disadvantage if it comes to a claim. He also believes that such companies will be innocent targets of inevitable litigation that will follow the Act.

With key April and June renewals

**INS-ACT:** Turn to p20

**ZURICH**

# Zurich under pressure as group seeks disposals and tough line at renewals


**Adrian Ladbury**
aladbury@commercialriskeurope.com


**[ZURICH]**—ZURICH INSURANCE Group is stepping up efforts to address "unacceptable" performance at its Global Corporate unit as it looks to cut jobs, offload businesses and take a tough stance at renewals.

The group has not hung around for the arrival of new chief executive officer (CEO) Mario Greco this month to sort itself out, following recent troubles at its Global Corporate business. It appears that current group management has accelerated remedial efforts, including possible unit sales.


Tom de Swaan

Current group management is also pulling no punches about the risk management failings at its corporate insurance unit in recent times.

Commentary released by Zurich alongside its recent results bluntly

**ZURICH:** Turn to p20

**FERMA**

# *European insureds underprepared for UK insurance law changes: Ferma*


**Stuart Collins**
news@commercialriskeurope.com


**[BRUSSELS]**—RISK MANAGERS at European companies need to urgently familiarise themselves with forthcoming changes to UK insurance contract law, according to the Federation of European Risk Management Associations (Ferma).

### NEW RULES

Commercial insurance contracts signed under English law from 12 August will be subject to the Insurance Act 2015. This new contract law addresses a number of unpopular insurer practices, but places new duties of disclosure and fair presentation of risk on buyers.

Continental European risk managers are largely unaware of the UK Insurance Act, the duties it will place on their companies and the fast-approaching 12 August implementation date, according to Jo Willaert, president of Ferma.


Jo Willaert

"There appears to be little reaction to the UK Insurance Act in the continental European market. The impression I have is that risk managers in Europe do not yet realise that the UK Insurance Act will have an impact on their business," said Mr Willaert, who is also board member at the Belgium Risk Management Association (Belrim).

Mr Willaert urges risk managers to be proactive rather than wait for brokers to inform them about the Act. While brokers have a role to play in advising clients, the ultimate responsibility falls on insurance buyers, he said.

"Brokers will probably take the lead, but they are not bound to do so. Legally, the Act is our problem as insurance buyers and is for us to find out about," said Mr Willaert.

### WAKE UP CALL

According to Bruce Hepburn, chief executive of insurance governance adviser Mactavish: "European companies buying insurance in the London market and other jurisdictions under English law have not woken up to the Act as quickly as they should."

Many non-UK companies, including those in Europe, will enter into insurance contracts this year that do not fully comply with the Insurance Act and will

**FERMA:** Turn to p22

**GLOBALPROGRAMMES**

# Pressure mounts on IAIS to act on global programmes


**Adrian Ladbury**
aladbury@commercialriskeurope.com


**[LONDON]**—PRESSURE IS mounting on the international insurance supervisory community to come up with solutions to the way global insurance programmes are treated across the world, which recognise the validity of Difference in Conditions (DIC) and Difference in Limits (DIL) clauses to help overcome capacity shortages in local markets.

Nigel Brook, partner at London-based international law firm Clyde & Co,

**GLOBAL:** Turn to p22

# GLOBAL: 'Middle way' would satisfy needs of all

CONTINUED FROM PAGE ONE

told delegates at a conference in London organised by *Commercial Risk Africa* last month that he accepts national insurance supervisors in emerging markets want to protect local insurers by not allowing all business to flow overseas, and only allowing admitted carriers to underwrite business.

Mr Brook, an expert in the field of international insurance and reinsurance, said that he also understands how risk managers and their risk transfer partners find it frustrating that attempts by local supervisors to protect their market can lead to serious capacity problems and unnecessary costs and confusion.

But the lawyer believes there is a "middle way" that would satisfy the needs of all parties.

### ENSURE SOLVENCY

"The goal of the national regulator is to ensure a solvent insurance market… if they only allow admitted carriers to underwrite the business this could limit the growth of the economy and lead to inadequate capacity. One way to address this problem is for like-minded countries to agree a Freedom of Services area, like the CIMA code in French-speaking Africa," Mr Brook told delegates.

"This could not just be limited to Africa. It certainly works in Europe. The ideal would be to offer a local policy in country that is supported by DIC/DIL. This would be nirvana for multinationals," added the lawyer.

"I think there is a middle way. Just opening the [local insurance] market up could wreck it. But if you are talking about DIC and DIL—and if the risk manager is buying the right amount of cover supported by 'just in case' DIC and DIL—then surely the local market has not been deprived because a lot of countries simply do not offer the cover," explained Mr Brook.

"I am not holding my breath as we await a response from the International Association of Insurance Supervisors (IAIS). But if it is explained properly a lot of progress could be made," he said.

The Federation of European Risk Management Associations (Ferma), the US-based Risk and Insurance Management Society, the Pan-Asia Risk Management Association, the European Captive Insurance and Reinsurance Owners' Association, the International Federation of Risk and Insurance Management Associations and multinational insurers are currently campaigning the IAIS to support changes to insurance laws around the world, which would make global programmes easier to place and manage.

Julia Graham, technical director at the UK's Association of Insurance and Risk Managers in Industry and Commerce and former president of Ferma, said that efforts to persuade the international regulatory community to push for more consistency and clarity from national supervisors on international programmes would be supported by the findings of a Ferma survey recently conducted but not yet made public.

Ms Graham reminded delegates that the matter does not just revolve around the validity of DIC and DIL clauses, adequacy of capacity, tax and transfer payments. There are more practical matters such as the resolution of claims to address, she said.

Praveen Sharma, global leader—insurance regulatory and tax consulting practice at Marsh, told delegates at the *Commercial Risk Africa* conference that regulators, in Africa at least, are willing to be flexible and work with companies on their cross-border coverages.

But he said that all too often regulators find out that rules they introduce to allow exemptions from non-admitted rules, for example, are not followed.

This leaves a bad taste in the mouth and will not help national supervisors look kindly on efforts to harmonise insurance rules on a regional or even international basis, suggested Mr Sharma and other experts at the London event.

"Regulators in African countries are keen to work with big multinationals and keen to ensure that they are properly insured and allow regulatory flexibility. Unfortunately, you find too often that companies break the rules and the regulators get very upset," said Mr Sharma.

"For example, the Kenyan regulator recently reminded oil and gas companies to apply for non-admitted insurance because they were aware that companies were not following the rules. The regulations are there and need to be complied with. Companies need to approach the regulator in good time; it's all about strategy and planning," explained Mr Sharma.

Andreas Berger, member of the board of management at Allianz Global Corporate & Specialty, agreed with Mr Sharma.

"If you have non-admitted cover, in most cases it is only after the event that the regulators and government work it out, especially in the case of high profile risks. This leaves a bad taste. You have to ask yourself what needs to be done to make this practical and easy to handle," said Mr Berger.

Despite these warnings, experts at the event agreed that, of all emerging regions, Africa could be the most sensible place to begin the process of harmonising insurance rules.

As Clyde & Co's Mr Brook noted, this is because the French-speaking nations of the continent have already signed up to a common framework—the Conférence Interafricaine des Marchés d'Assurances (CIMA) code—which makes life easier for everyone.

The code was introduced in 1995 to tackle poor regulation, inadequate solvency standards and corporate governance across the region.

The CIMA code introduced a new and improved set of standards and oversight, to which national supervisors have all signed up.

This system requires that 25% of any risk and premium is retained locally. The remaining 75% can be reinsured into a global programme or foreign reinsurer.

In October 2011, Article 13 of the CIMA code was introduced that requires cash before cover or a 'no premium, no coverage' policy.

This was introduced because policyholders often did not pay their premiums until they suffered a loss, or the premiums were paid to brokers who in turn delayed payment to insurers.

These unpaid and delayed premiums continued to appear on insurers' books and were also often carried over from one year to the next. This meant that insurers appeared to be in better financial shape than they actually were. In July 2011, CIMA issued a circular that said insurers had three years to recover all arrears and remove irrecoverable payments from their books.

The circular added that from December 2014 all arrears that appeared in insurers' books would be considered "of no value".

There has been talk of a similar effort among insurance regulators in the primarily English-speaking part of Africa to the east and south of the CIMA zone.

In 2011, South African president Jacob Zuma proposed the creation of an African Grand Free Trade Area. It was suggested that this effort could include the introduction of a CIMA-style code.

### DEVELOPMENT

Insurance market professionals in the African and international market believe such a move would help reassure local regulators that domestic markets are being given a chance to develop, while at the same time enabling insurance buyers to access international capacity for their risks.

Experts agree that the adoption of such a system beyond the CIMA zone would help bring clarity and consistency, as well as greater assurance that insurance programmes are compliant.

Mr Sharma told delegates at the Risk Frontiers Sub Saharan Africa event that now is the time to act.

The global programmes expert said the CIMA code works and should be extended across the African continent. It could even act as a catalyst for global change, he argued.

"The CIMA code is a Freedom of Services-type system and I believe that this could be easily replicated throughout Africa's English-speaking countries to ensure that standards are not compromised and attract investment and growth," said Mr Sharma.

# ZURICH

CONTINUED FROM PAGE 20

growing or retaining them at different levels. So that in itself will have an impact on the combined ratio as well. So overall, at 1 January, we saw in the Global Corporate business positive rate on the overall book, but with some very strong differentiation between the different tiers," continued Mr Terryn.

Mr Terryn added: "If I had to give an indication on the rate differentials between the different tiers, in the first and second year, which are our best risks, we see roughly flat rate development. And again, these are very good risks that we want to keep on the book. In the bottom tier, we see rates between 5% and 10%. We also see huge differentials in retention; about 60% of retention in some bottom tiers in the lines that we're targeting for improvement, and we see retention as high as 90% in the top tiers. So improvement of the portfolio and the underlying loss ratio will come as much from the differential in retention by tier as it will come from the differential in rate."

The analysts also asked about the impact of a tougher approach and exits from certain lines on top line, and whether this would place pressure on margins.

Mr Terryn said the $400m premium that would be lost by exiting business in the fourth quarter represents about 1% of the company's top line.

"In addition, I expect most of the businesses to remain flat, roughly, which is a combination of growth in some areas and slight declines in others. Global Corporate as a whole will likely see a slight decline in the top line, so if you combine that together with the exits and a higher level of reinsurance, the net premium will see a slight decline as well at the overall level," he said.

Another analyst asked whether exiting business in the US and the Middle East, along with top-line reduction, would create problems for the expense ratio that would rise proportionally and potentially have a negative short-term effect.

Mr Terryn said the primary focus is to improve the absolute combined ratio. Thus, the key improvement next year should be in the loss ratio.

"We will not make any trade-offs between top line growth and loss ratio. We've been very clear as to where the priority is. It is on the underwriting quality of the book and the rate and the improved profitability that we need to see," he said.

One final analyst's question focused on the choice of Mr Greco as CEO. The analyst pointed out that Mr Greco was in charge of Zurich's international property and casualty (P&C) business from 2010 to 2012, arguably the point at which the problems that came to light in the second half of last year were sown. "So my question is: why does the board feel comfortable that Mr Greco is the right choice to turn around the P&C business of Zurich?" asked the analyst.

Mr De Swaan chose to answer that question. He said: "As far as the CEO selection is concerned, when we discussed the profile in the board about the new CEO, we basically set two preconditions. We wanted somebody with a long and strong insurance background and we wanted a seasoned CEO who has led a large insurance company, and I think that Mario clearly lives up to both parts of the profile. So we're very pleased that he's coming over and he's very enthusiastic to start working for Zurich."

# FERMA: Belrim plans seminar on the UK Insurance Act

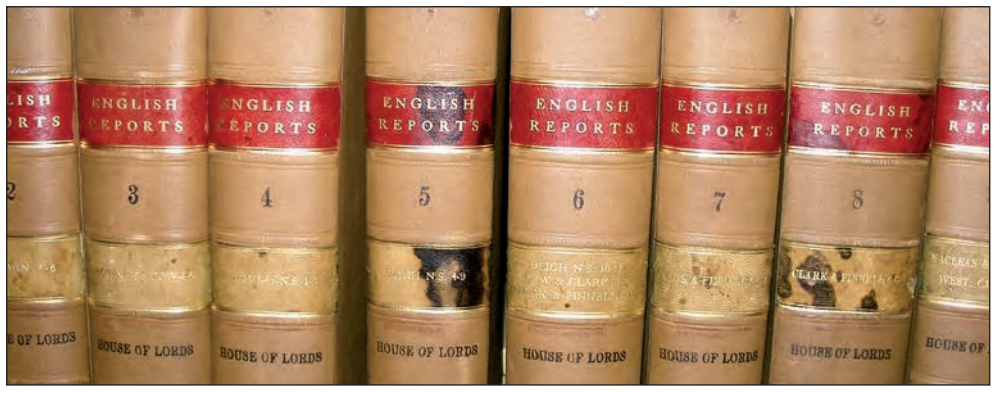
CONTINUED FROM PAGE ONE

be at a disadvantage when it comes to a claim, he argued.

He also believes that such companies will be the innocent targets of inevitable litigation that will follow the Act. Under the UK's common law system, which is less prescriptive than the civil code system favoured by most European countries, laws are tested and interpreted by the courts.

"In the long run, litigation will create certainty and UK businesses should know this. But European buyers will have the added disadvantage that they do not understand how English law evolves, and if they fail to comply with the Act for policies made after 12 August, they could find they are the target of disputes and litigation," said Mr Hepburn.

Mr Willaert noted that the Act will apply to insurance cover purchased by continental European companies in the London market. It will also apply in other domiciles that use English law, such as




Dublin and Bermuda. It may also impact reinsurance and excess insurance related to cover arranged in continental Europe, he added.

"There is urgency because of the lack of awareness of the Act among continental risk managers. The fact is many do not know about the Act, and the August implementation date will come around soon," said Mr Willaert.

"My advice to risk managers is to be informed about the Act and talk to your broker, insurer, specialised consultants or lawyers. Don't underestimate the impact of the Insurance Act on your business. It is crucial that you inform yourself, whether or not you are affected," he said.

"While companies that do not have risks in the UK market or that do not place business there need not be concerned, it is essential to be informed," Mr Willaert added.

Belrim plans a seminar on the UK Insurance Act in March.