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Analysis

Review into insurance comparison websites

It is fair to say that insurance comparison websites have grown significantly as a distribution channel of personal lines insurance over the past couple of years. For example, in 2007, almost 25% of all private motor insurance was sold through an aggregator site.

On 12 November 2008, the FSA published its detailed findings into general insurance comparison websites following the publication in May 2008 of its initial desk-based findings.

The key reasons for the FSA's investigation were to check whether consumers were being treated fairly and to determine whether there were any other regulatory concerns.

On the whole, the FSA found the firms it investigated were providing clear, fair and not misleading information. However, the FSA did identify the following specific concerns:

- better information needs to be disclosed about the level of excesses that apply to policies (and, in particular, around the split between compulsory and voluntary excess) - if this information is not available, this should be made clear; and
- where assumptions are made, they are not always set out clearly – these should be clearly and prominently sign-posted at all relevant stages of the customer's online journey.

December 2008

In order to assist firms, the FSA has published examples of good and bad practice. Examples of good practice include:

- providing consumers with key information about the products and services available from the site before providing consumers with the full list of quotes; and
- providing a broad basis of product comparison and policy summary information which provides a clear overview of what is included within the policy.

Finally, in respect of advertising, the FSA noted that, amongst other matters, firms must ensure that any statements are factually correct, accurate and up-to-date, and that consumers are not given an unrealistic perception of the market coverage of the aggregator.

Regulation

On 28 November, the FSA published a paper providing further clarification on the ICOBS requirement for the disclosure of total premium by firms selling regular premium mortgage payment protection insurance and other general insurance and protection products. The paper mirrors similar papers previously published by the FSA in connection with shorter term PPI policies such as personal loans.

The FSA has reaffirmed that in order to satisfy ICOBS 6.1.5R (which requires firms to take reasonable steps to enable a customer to make an informed decision about the nature of the proposed financial commitment under the insurance policy including by setting out the price), the provision of a monthly price is inadequate and firms will need to provide total premium.

In practice, annually renewable contracts will satisfy the disclosure requirement but so called ‘monthly renewable’ contracts will not as the information provided does not represent the total amount payable by the customer. Such firms must make changes to the way the pricing information is communicated, for example, by illustrating the cumulative cost of the insurance policy for milestone durations (such as 1, 5 and 10 years).

HM Treasury’s consultation on implementation of the Acquisitions Directive

HM Treasury published a consultation paper in September 2008 on the implementation of the Acquisitions Directive. The consultation paper highlights that the process introduced by the Acquisitions Directive is an explicit approvals process for all four thresholds of 10 per cent, 20 per cent, 30 per cent, and 50 per cent and is consistent with the EC Transparency Directive (2004/109/EC). The aim is to allow supervisory authorities to examine proposals at significant stages while trying to avoid placing unnecessary burdens on firms.

The Acquisitions Directive also allows Member States to require notification by a proposed acquirer at a level that is below the 10 per cent threshold. The UK does not currently have a threshold below 10 per cent and the consultation paper states that the UK does not propose to create one. Both the Government and the FSA consider that a 10 per cent interest is the lowest level at which significant influence can generally be exerted over a firm.

The consultation is open from 22 September 2008 to 12 December 2008.

Company/commercial

Financial assistance – matters to be aware of despite its partial abolition

The prohibition on a company giving financial assistance for the purpose of an acquisition of its own shares or the shares in its holding company was repealed with effect from 1 October 2008, but only for situations involving private companies. The prohibition remains where a public company is involved, whether as the company giving the assistance or the company whose shares are being acquired. The whitewash procedure, a statutory procedure by which private companies could get around the prohibition, is, therefore, redundant and has also been abolished.

The categories of conduct which constitutes financial assistance are wide and include gifts, indemnities, guarantees, security, certain loans and other transactions which materially reduce the company's net assets, if entered into for the purposes of an acquisition of shares in the company or its holding company. The repeal of the prohibition (in so far as it goes), and the abolition of the costly and time-consuming whitewash procedure, is good news for companies, particularly in sectors where there is, or is likely to be, consolidation.

However, the change in the law does not mean that private companies can now give financial assistance with impunity. First, as already stated, the prohibition continues to apply if the company whose shares are being acquired is a public company. Secondly, each director must be satisfied that he is fulfilling his duty to act in the way that he considers in good faith is most likely to promote the success of the company for the benefit of its members as a whole. Thirdly, the directors need to be especially careful if the company is approaching insolvency: not only is there the possibility that the transaction might be unwound under the Insolvency Act 1986, but the directors might find themselves liable for wrongful or fraudulent trading. Finally, the directors need to make sure that the transaction does not constitute an unlawful distribution or an unlawful reduction of capital.

Please contact us if you need further advice on any of these issues. For further information on the common situations in which the financial assistance regime will continue to apply, see our Corporate Legal Alert "Who cares about financial assistance now?".

http://www.mayerbrown.com/publications/article.asp?id=5842&nid=6

International

The Competition Commission's proposals in relation to retail payment protection insurance

On 24 November 2008, the Competition Commission published its proposed remedies in relation to retail payment protection insurance ("PPI") (protection for repayments for shopping through home catalogues). The two main differences between remedies for retail PPI and general remedies are:

- retail PPI does not have to be offered separately from merchandise cover, where catalogue shoppers are offered both at the same time; and
- there is no prohibition on single-premium policies (all retail PPI policies are covered by monthly premiums).

Please find a link to the Competition Commission's website attached below.

http://www.competition-commission.org.uk/Inquiries/ref2007/ppi/index.htm

CEA's eight key messages for European insurance industry on global financial crisis

On 14 November 2008, the European Insurance and Reinsurance Federation (CEA) published a paper setting out eight key messages from the turmoil from a European insurance industry perspective which can be summarised as follows:

1. the specific characteristics of the business model of the insurance industry and the management of assets and liabilities by insurers have protected insurers from the worst impacts of the global financial crisis;
2. the European insurance industry has not been directly affected by the credit crunch as insurers had not taken significant exposure to credit risks. However, insurers have suffered from significant asset write downs in their capacity as large institutional investors;
3. the implementation of Solvency II should allow insurers and supervisors to handle financial crises better;
4. risk management systems should be developed and strengthened in all financial institutions;
5. the financial turmoil demonstrates the need for financial institution supervision at group level which is comparable to that at solo level, enabling a comprehensive understanding of the risk profile of a group and addressing risk concentration issues;
6. the market-consistent valuation of assets should remain the principle that underpins financial information and prudential oversight, although procyclicality in accounting and prudential rules should be avoided;

7. the current market turmoil should not lead to undue constraints on insurance-linked securitisation, which has so far withstood the financial crisis; and
8. better information disclosure about the ultimate risks associated with complex securities and structured products is essential in order to restore investor confidence.

Reform of Lloyd's Act 1982

Legislation to reform the Lloyd's Act 1982 officially came into force on 19 November 2008. The Legislative Reform Order updates provisions in the legislation that governs Lloyd's with the aim of reflecting changes in the regulatory environment, and to remove restrictions which could impede the future development of the insurance market. These updates include:

- the removal of restrictions that requires managing agents to accept business from Lloyd's brokers only - this is a move that could open up the market to a broader range of intermediaries. HM Treasury's explanatory document suggests that this will allow for greater competition (both from non-Lloyd's brokers, and, where this develops, through new methods of direct access to the market). As responses to the consultation noted, this reform will, therefore, promote efficiency savings and encourage innovation, which should benefit policyholders and the market as a whole; and
- reversal of the part of the Lloyd's Act prohibiting prescribed associations between Lloyd's brokers and managing agents. HM Treasury's explanatory document suggests that this should open up new opportunities for managing agents and brokers, allowing them to consider strategic associations. However, the proposed mechanism for managing conflicts of interest will ensure there are no adverse effects on the market as regards conflicts of interest.

Takaful insurance

Takaful, or Islamic, insurance has for sometime had the potential to become increasingly significant. On 4 December 2008, the Islamic Financial Services Board announced it had signed a working agreement with the International Association of Insurance Supervisors ("IAIS") to explore adapting IAIS Insurance core principles and to develop prudential standards and guidelines for Takaful. This is undoubtedly a helpful development for the Takaful industry.

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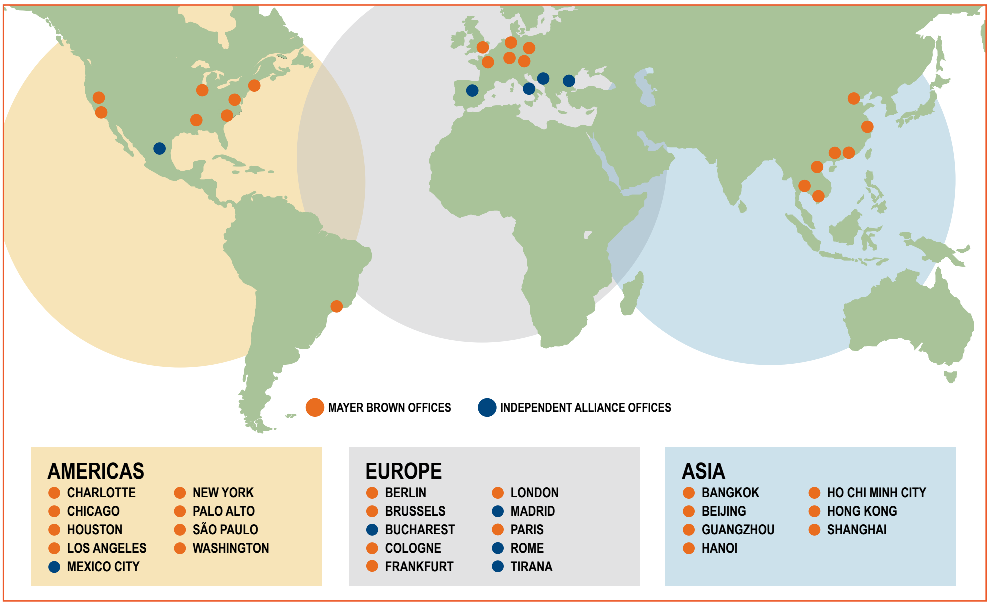

If you have any query in connection with anything in this Bulletin, please do not hesitate to get in touch with your usual Mayer Brown contact or one of the contacts referred to below.

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