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Insurance & Reinsurance Industry Group: Global Corporate Insurance & Regulatory Bulletin

U.S. - The Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **"Act"**), which brings the most significant changes to the regulatory framework for financial services in the United States since the 1930s.

Upon enactment, the legislation will change the way financial services are delivered in the United States, and how US and non-US banks, bank holding companies, securities firms, insurance companies, and other providers of financial services are regulated. However, for the insurance and reinsurance industry, the Act is expected to have relatively limited impact. The Act will (i) create a new Federal Insurance Office (the **"FIO"**) within the US Treasury Department, which will be responsible for monitoring the insurance industry and acting as the coordinating body on international insurance issues; (ii) provide for greater uniformity in the regulation of, and easier access to, the non-admitted insurance market; and (iii) require that credit for reinsurance be regulated by the state of domicile of the ceding insurer and a US reinsurer's solvency be regulated by its domiciliary state. There is also the potential that certain large insurers or insurance holding companies could be designated as "systemically significant," which would subject them to certain types of supervision and intervention by federal financial regulators.

To view Mayer Brown's full report on this topic, please click here.

Lawrence Hamilton

U.S. - President Obama Signs Law Imposing Substantial New Sanctions on Business Dealings With Iran

On 1 July 2010, President Obama signed into law a sweeping new Iran sanctions bill – the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, HR 2194 (the **"Act"**). The Act strengthens US sanctions against Iran by restricting that country's access to, among other things, gasoline and other petroleum products, petroleum-related investment, credit and financial services; and by otherwise tightening the US trade embargo against Iran. Significantly, the Act authorises sanctions not only on those entities conducting Iran-related business but also on those that own or control such entities.

The extraterritorial provisions in the Act that may be of particular interest to non-US insurance companies are:

- underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provision of goods, services, technology, information or support that could directly and significantly contribute to Iran's ability to import refined petroleum products is a sanctionable activity under the new law. However, underwriters and insurance providers that exercise due diligence in establishing and enforcing official policies, procedures and controls to insure that they do not engage in such activity are granted a safe harbour from sanctions;
- the three new sanctions that the President may impose on entities that engage in sanctionable activities relating to Iran's petroleum and refined petroleum industry are no longer mandatory. Instead, if the President determines that an entity is engaging in sanctionable activity, he is required to choose a total of three sanctions from the nine options contained in the law. The three new sanctions are extremely harsh and would prohibit the sanctioned entity from entering into foreign exchange transactions in the U.S.; prohibit U.S. banking transactions involving any interest of the sanctioned entity; and prohibit any property transactions subject to the jurisdiction of the U.S. in which the sanctioned entity has an interest;
- the new law provides the President with a number of options to waive sanctions against an entity that engages in sanctionable activity. This includes a case-by-case waiver for companies from countries that cooperate closely with U.S. efforts to stop Iran's nuclear fuel enrichment program; and
- the new law requires that when an entity is sanctioned, the entity that owns or controls the sanctioned entity must also be sanctioned if the owner had actual knowledge or should have known of the entity's sanctionable activity.

To view Mayer Brown's full client alert on this topic, please click here.

David Sahr

Hong Kong - The End of Self-Regulation? Proposals to Establish an Independent Insurance Authority

The Financial Services and the Treasury Bureau is proposing the establishment of an independent insurance authority to strengthen regulation of the industry.

A consultation paper on the "Proposed Establishment of an Independent Insurance Authority" was released by the Government on 12 July 2010 to invite public views on a proposal to establish an Insurance Authority (**"IA"**) to oversee the entire insurance industry in replacement of the Office of the Commissioner of Insurance (**"OCI"**). The proposed IA will be responsible for regulating insurance companies as well as insurance intermediaries such as brokers and agents.

The salient points of the consultation paper are as follows:

1. the IA shall be empowered to issue licences, conduct routine supervision and inspection, and impose disciplinary sanctions for breaches etc with respect to insurance companies and insurance agents and brokers;

2. in particular, the IA shall be given additional supervisory powers (not enjoyed by the OCI) modelled on the Securities and Futures Ordinance, including powers to:
    a. enter into the premises of regulated entities to conduct inspections;
    b. initiate and pursue investigations;
    c. make enquiries;
    d. gain access to records and documents;
    e. apply for court orders to compel compliance with reasonable requirements imposed by the IA during an inspection and investigation;
    f. impose sanctions such as public reprimands and fines; and
    g. prosecute offences summarily.
3. the existing self-regulatory system for insurance intermediaries shall be replaced by the direct supervision of the IA through a licensing regime. The three self-regulatory organisations (i.e. the Insurance Agents Registration Board under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association) shall continue to perform the functions of trade bodies such as industry promotion, providing training and setting best practices;
4. however, the sale of insurance products by bank staff (which accounts for up to 30% of insurance products sold in Hong Kong at present) shall be regulated by the Hong Kong Monetary Authority (**"HKMA"**) based on the standards and procedures set by the IA as well as additional conduct requirements for bank employees imposed by the HKMA. Nevertheless, the relevant bank staff will be required to obtain a licence by the IA before engaging in any sales activities; and
5. the IA shall be funded by the following sources:
    a. a fixed licence fee payable by all insurers and insurance intermediaries;
    b. a variable licence fee payable by insurers based on their individual liabilities;
    c. user fees for specific services such as applications for transfer of business, change of shareholding structure or key personnel, etc.; and
    d. a levy of 0.1% on premiums for all insurance policies.

To reduce the impact on the industry, there will be cost-mitigating measures adopted in the first five years of the establishment of the IA, such as waiver of licence fees for insurance intermediaries directly licensed by the IA, and a gradual increase in the levy to be imposed on premiums.

The industry and the public are invited to express their views on the proposal during the 3-month consultation period, which shall end on 11 October 2010. A bill on the establishment of the IA is planned to be introduced to the Legislative Council in 2011. It is anticipated that if the market supports the proposal, the IA may be established as early as 2012 to 2013.

CONCLUSION

The Government's proposal for a single watchdog for the entire industry is a major development in insurance regulation in Hong Kong. This is a welcome development as it will streamline the regulation of the insurance industry in Hong Kong and bring the regulatory regime in line with international practice for regulators to be financially and operationally independent of the Government.

At this stage, the proposal is still subject to the consultation process. We anticipate that the regulation of the sale of insurance products by bank staff will attract attention as there will effectively be a dual watchdog over bank employees.

Tow Lu Lim & Carrie Tai

EU – CEA position paper on the revision of the Insurance Mediation Directive

On 13 July 2010, the CEA (the European insurance and reinsurance federation) published a position paper on the revision of the Insurance Meditation Directive (**"IMD"**). In particular, the paper provides the CEA's preliminary views on the European Commission's questions raised to the Committee of European Insurance and Occupational Pensions Supervisors (**"CEIOPS"**) in its request for advice regarding the revision of the IMD dated January 2010.

On the key question of the form of how the reforms should be implemented, the paper states that:

"The CEA...considers that a classic directive, such as the current one, can provide for an adequate degree of flexibility and at the same time is detailed enough to allow for ***targeted full harmonisation****. If changes to the current IMD are necessary, it should be done through a revision of its provisions, under the current legal framework, and not through a directive. Repealing the current directive may cause legal uncertainty for professionals who are just becoming familiar with its provisions."*

The paper provides further detailed feedback on the seventeen questions raised by the European Commission to CEIOPS and explores, amongst others, the following topics:

- how the revised IMD should be structured under the new supervisory framework;
- what should be the scope of insurance mediation covered by the revised IMD;
- what high-level requirements on knowledge and ability of insurance intermediaries would be appropriate; and
- what high-level principles should be adopted for the effective management of conflicts of interest.

To view the full CEA position paper, please click here.

Ian Slingsby

UK - FSA publishes mixed review of with-profits sector

On 29 June 2010, the FSA published its finding from a detailed investigation of 17 firms' governance of their with-profits funds. Commenting on the review, Ken Hogg, the FSA insurance sector director said:

"This review shows that, while there has been some progress, there is still more work to be done by firms in the with-profits sector to make sure that their policyholders are treated fairly. We expect all firms to raise their game in this area, not just the firms that we reviewed."

The FSA review concentrated on the assessed firms' compliance with COBS 20 (*With-profits*) of the FSA's Conduct of Business Sourcebook which was introduced in 2005 with the aim of increasing accountability and transparency in the with-profits sector. The findings highlighted two particular areas of concern regarding compliance with these requirements:

- inadequate independent challenge to the governance of with-profits funds, which may result in policyholders' interests not being properly protected; and
- the extent to which firms are providing their policyholders with sufficiently comprehensive, timely and clear information to ensure that they understand their policies.

Ken Hogg further stated that *"our focus on with-profits does not end with this review. Firms should make sure that their communications with policyholders are clear and manage expectations about the likely performance of their policy. They should also ensure that their with-profits committees are providing an independent challenge to their management. We will continue our intensive supervision of the with-profits sector and we expect firms to take action to address our concerns."*

The FSA will also undertake a further re-examination of certain aspects of the rules relating to with-profits which may be further strengthened to provide greater protection for policyholders. Any proposed changes are expected to be set out in a consultation paper expected by the end of 2010.

To view the FSA's full review of with-profits funds, please click here.

Ian Slingsby

UK - Pensions Act 2008

In addition to the huge range of other legislative and regulatory changes affecting the insurance market at the moment, insurers will also need to consider the recent changes regarding pension provision which will impact on all employers.

New legislation in the Pensions Act 2008 will mean that all employers will gradually have to make compulsory pension provision under the Government's personal accounts regime in the four years following October 2012. The Government now has a name for its personal accounts scheme – National Employment Savings Trust (**"NEST"**).

In summary, the personal accounts regime will require all UK employers to make arrangements for the automatic enrolment of all jobholders (which is drafted widely enough to include agency workers):

- aged between 22 and the state pension age; and
- who have "qualifying earnings" (broadly gross earnings including bonuses) between £5,035 and £33,540 (uprated in line with earnings), into a "qualifying scheme" or NEST. NEST will be a defined contribution scheme with a cap (£3600) on contributions.

For this purpose, a "qualifying scheme" can either be an occupational pension scheme or a workplace pension scheme, such as a group personal or stakeholder pension plan. The qualifying scheme must not require the member to make a choice or provide information in order to become a member. In addition, it must be of a certain standard and this means for:

- defined benefit schemes – that it is either contracted-out or provides at least 1/120th accrual and other benefits broadly equivalent to, or better than, a test scheme.

  The transitional provisions mean that the legislation will not apply to employees in a defined benefit scheme until October 2016; or

- defined contribution schemes (personal or occupational) – the employer must make minimum contributions of 3% of qualifying earnings over a 12 month period. Total contributions (including tax relief) must be at least 8% of qualifying earnings over the 12 month period.

  These mandatory contributions will be phased-in over transitional periods so that in the first four years following October 2012, when the legislation first applies, the employer needs to contribute at the rate of 1%. Larger employers will become subject to the new regime first.

Jobholders who are younger or older than the target range can opt-in and require an employer contribution. Likewise, jobholders with low qualifying earnings can also opt-in, but without the requirement for compulsory employer contributions.

Jobholders can opt-out, but employers must not offer any inducement to do so. The opt-out notice must be available only from the scheme, not from the employer unless, in the case of an occupational scheme, the administrative functions have been expressly delegated to the employer.

Martin Scott

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