Insurance Law Guernsey

Taking a look at the world of Insurance law, this month *Lawyer Monthly* speaks to Mark Helyar, Partner at the Bedell Cristin Guernsey Partnership. Here, Mark talks to us about the regulatory changes recently seen in insurance law, common challenges faced by clients, and the announcement that the International Association of Insurance Supervisors will now evaluate "systemic importance" to designate insurance companies.

What have been the recent changes in the regulatory environment of insurance law in your jurisdiction?

The major change from a Guernsey perspective has been the decision not to follow a path of seeking equivalence under the European Solvency II directive. Guernsey, which is Europe's largest captive insurance jurisdiction, is not part of the European Union and can therefore choose whether to implement equivalent legislation to mirror that in Europe. The decision not to seek equivalence was taken primarily because many types of insurance and reinsurance business in Guernsey are either unrelated to Europe or are specifically in place to benefit from regulatory arbitrage such as a more flexible capital regime. It remains to be seen whether the Euro crisis will bring about a rethink of the provisions of Solvency II in any event – if some form of pan European Bond is created in order to stabilise the sovereign borrowing situation, it is unlikely to carry a sufficiently high rating to enable it to count for Solvency II purposes, cutting it off from a large sector of the markets.

What are the common challenges faced by your clients when involved in the insurance and reinsurance sector?

Insurance businesses tie up a lot of capital and because of the influence of regulation on solvency and the traditional prudence of the industry; investments are generally conservative in nature. Obtaining any form of return on capital is difficult for all sectors at present and so margins are having to be built elsewhere because of circumstances – whether it be increased premiums, internal efficiency or reduced costs. Some sectors such as motor lines have unique problems associated with recession – like increases in uninsured driver losses and fraudulent claims.

Curiously, whilst insurers are struggling to see investment returns within their conservative investment confines, some investors are increasingly turning to areas such as catastrophe risk in order to try to work their capital harder and see better, faster returns. There is growing use of transformer vehicles in Guernsey to enable hedge funds and other types of sophisticated investor to underwrite catastrophe risk. With rates online of up to 30%, an investment can return that percentage in profit within 9 months. Typically these utilise licensed insurance companies formed as cellular companies where the investor "rents" an insurance cell in order to assume direct reinsurance risk in a slice of a much larger programme. We are also involved in creating more sophisticated transformers where derivatives of those CAT risks are being listed to enable secondary trading and liquidity prior to the maturity of the notes.

To help prevent a repeat of the 2008 global financial crisis, the International Association of Insurance Supervisors will now evaluate the "systemic importance" to designate insurance companies can be deemed as "systemically important". Those targeted with the label could be slapped with higher capital requirements and limits on business lines. What are your opinions on this?

Guernsey plays a leading role in the IAIS so we are very familiar with these new initiatives. Overall the insurance sector has not been nearly as affected by the crisis as could have been the case. Even the AIG bailout has resulted in the US government making a substantial profit, with Bloomberg reporting as much as $11bn profit made on the rescue proceeds. However, systemic problems can arise where the financial markets and insurance markets link together, such as in the provision of credit insurance in markets which themselves have underlying exposure to systemic risk. The provision of additional capital against that type of risk seems prudent, but insurance companies also need to be reasonably free to analyse their own risks and price it accordingly – regulators are not traditionally very good at moving at the same pace as the markets, or analysing risk. **LM**

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