Global Insurance Updates: Topical issues and news from the international insurance markets

DLA PIPER

Contents

Introduction 4

US

Colorado Division of Insurance scales back its proposed regulation of AI in the life insurance industry 5

Brazil

Insurance in Brazil 7

Ireland

New Insurance Industry Guidance on Climate Change Risk published by the Irish Regulator 9

Norway

Significant Changes to the Norwegian Insurance Contracts Act 11

United Arab Emirates

The Regulatory Landscape for Insurers in Saudi Arabia and the United Arab Emirates 13

Thailand

The Future of Insurance Business in Thailand post COVID-19 – is M&A the answer? 15

Australia

A Problem, Potential Claimants and the Possibility of a Claim: The Australian Federal Court examines what constitutes a valid notification by an insured 17

New Zealand

New Zealand: Insurance under Scrutiny 19

Authors 21

Introduction

Welcome to the first edition of *Global Insurance Updates* – a publication from our insurance team that brings you the latest legal developments from global insurance markets.

We have kept these updates intentionally brief – to give you the gist of what matters the most. To reflect the constantly evolving insurance markets, we have included updates from emerging markets such as Brazil, Saudi Arabia, the UAE, and Thailand. You will also find news from Ireland, Norway and New Zealand, as well as our more established practices in Australia and the US. Should you wish to explore any of these updates further – their authors will be happy to pick up the conversation with you. You can find their names and contacts at the back of the publication.

Of course, this list of countries is not exhaustive of DLA Piper's insurance sector coverage – we pride ourselves in being among the largest insurance teams in the world with insurance lawyers in most global insurance hubs who are keen to share knowledge with you in the following issues of this publication. However, if you have queries about countries not covered by this issue – please get in touch and we will be delighted to connect you with our colleagues.

We hope you find *Global Insurance Updates* useful, and we look forward to bringing you snapshots from different parts of the world with our next edition.

John Goulios
Global Co-Chair, Insurance Sector
Partner
Asia, Australia
+65 9187 5245
john.goulios@dlapiper.com

Leon Taylor
Global Co-Chair, Insurance Sector
Partner
UK
+44 (0)7971 14 2529
leon.taylor@dlapiper.com

Aidan M. McCormack
Global Co-Chair, Insurance Sector
Partner
US
+1 212 335 4750
aidan.mccormack@dlapiper.com

Colorado Division of Insurance scales back its proposed regulation of AI in the life insurance industry

If you have any queries on any of the below, please contact:

Bennett B. Borden
Partner
Washington, DC
+1 202 799 4357
bennett.borden@dlapiper.com

Sam Tyner-Monroe
Managing Director
Washington, DC
+1 202 799 4522
sam.tyner-monroe@dlapiper.com

Christopher Cullen
Of Counsel
Philadelphia
+1 215 656 2492
christopher.cullen@dlapiper.com

William Reichart
Associate
Baltimore
+1 410 580 4104
wes.reichart@dlapiper.com

The Colorado Division of Insurance recently released a revised draft regulation regarding governance and risk management framework requirements for life insurance companies operating in the state of Colorado that use external consumer data (including, algorithms and predictive models built on such data) in their rating practices.

The draft life insurance regulation is the first proposed regulation implementing Colorado Senate Bill 21-169, a leading-edge, first-of-its-kind statute addressing the consideration of big data and artificial intelligence (AI) in the insurance industry. SB 21-169 takes aim at potential discriminatory impacts resulting from the use of algorithms and predictive models employed in insurance rating, underwriting, claims handling, and other business practices.

The revised draft life insurance regulation significantly scales back from the prior draft release in February. Significantly, the revised draft no longer focuses on "disproportionately negative outcomes" which would have included results or effects that "have a detrimental impact on a group" of protected characteristics "even after accounting for factors that define similarly situated consumers." Removing that term altogether, the revised draft shifts focus to requiring "risk-based" governance and management frameworks.
This change is significant – not only aligning the revised draft with traditional insurance regulation, but representing a sensible, incremental step forward for such regulation.

However, while the revised draft is less burdensome than the first draft, it still places significant requirements on life insurers. Those include requirements that life insurers establish "risk-based" frameworks for the use of external consumer data and information sources (ECDIS) in any insurance practice (including claims, ratemaking, and pricing). Moreover, the regulation requires implementation of those frameworks with respect to any algorithms and predictive models using or relying on ECDIS.

Under the revised draft, life insurers must test their algorithms and models to evaluate whether any unfair discrimination results from their use and must implement controls and processes to adjust their use of AI as necessary. The regulation would make boards and senior managers hold "responsibility and accountability for setting and monitoring" overall strategy regarding the use of algorithms and predictive algorithms using ECDIS. Furthermore, the regulation would require senior manager to handle "providing direction on the use of ECDIS, and algorithms and predictive models that use ECDIS." Life insurers will be required to implement reporting structures that include "regular reporting to senior management on the performance and potential risks of ECDIS, and the algorithms and predictive models that use ECDIS."

The revised draft regulation also requires documentation be maintained by life insurers using ECDIS including descriptions and explanations of how ECDIS is being used and how life insurers are testing their use of ECDIS for unfair discrimination. This documentation must be available upon the regulator's request. Additionally, each insurer must make reports to the Colorado Division of Insurance, including a narrative report summarizing the company's progress toward complying with the regulation.

If you would like to discuss how this draft regulation affects your company and possible strategies for compliance, please contact any of the authors.
To find out more about our AI and Data Analytics work, please visit this page.

Insurance in Brazil

Campos Mello Advogados in cooperation with DLA Piper

If you have any queries on any of the below, please contact:

Marcella Hill
Partner
São Paulo
+55 11 96913 2871
marcella.hill@cmalaw.com

Jaqueline Suryan
Partner
São Paulo
+55 11 3077 3524
jaqueline.suryan@cmalaw.com

Insurance Market Overview

In recent years, the insurance market in Brazil demonstrated remarkable flexibility and resilience in overcoming several obstacles, notably the impact of the COVID-19 pandemic and the economic consequences from the Russia-Ukraine conflict. Systems and resources have been improved, while agile talent and technology strategies proved to be effective.

The outlook for the sector for the new year ahead is challenging, given the current political polarization, interest rates and rising inflation, which often create a potentially uninviting environment for business development. Yet, it is somewhat positive, given the context of growth.

We have briefly described below the most recent developments in the local market, such as changes to the legal and regulatory landscape.

Main changes in the legal and regulatory landscape

SURETY BONDS

In April 2022, the Brazilian Insurance Regulator SUSEP published Circular No 662/2022, aimed at adjusting the rules on surety bonds according to current risk management policies and hiring flexibility. The most significant changes are:

(i) the exclusion of standardized contractual conditions, with emphasis on contractual freedom and creation of new customizable clauses;

(ii) the possibility of contracting policies in phases, work instalments, or for a period shorter than the term of the insurance contract;

(iii) the introduction of transparency mechanisms and reduction of information asymmetry; and

(iv) regulating the inclusion of third parties as beneficiaries of the policy.

Such changes are viewed as initial steps towards transforming the surety bonds' policies as customizable according to the clients' needs in a more assertive way, albeit with transparency and objectivity.

REINSURANCE, RETROCESSION AND CONTRACTING OF INSURANCE ABROAD

In December 2022, a new regulation (**Regulation**) was published providing rules for the operations of assignment and acceptance of reinsurance and retrocession and its intermediation, coinsurance operations, operations in foreign currency, and insurance contracts abroad.

The Regulation removes the 50% limit of retention for reinsurance and retrocession assignments, previously provided for. Now, insurers must retain at least 10% of the premiums relating to the risks they have underwritten; however, it is possible to assign an amount greater than 90% upon presentation of a technical justification to SUSEP.

In the case of local reinsurers, the retrocession limit is now 70%, and the Regulation extends the list of exceptions to groups of financial, rural, and nuclear risk branches, which will not have a limit for assignment in retrocession.

Another change brought by the Regulation concerns the risk acceptance in retrocession by insurers: the maximum of risks accepted in retrocession by an insurer is now 2% (instead of the previous normative limit of 3%) of the insurance premiums issued relative to the risks it has underwritten, considering all its operations, in each financial year.

SUSTAINABILITY MANAGEMENT IN THE INSURANCE MARKET

Following the trend of other countries, on 27 June 2022 SUSEP issued Circular No 666/2022, which regulates the mandatory adoption of instruments for managing climate, social and environmental risks (ESG).

Based on this new regulation, insurers must create processes and control mechanisms to identify, evaluate, measure, treat, monitor, and report the risks to which they are exposed. For that purpose, three specific instruments must be adopted:

(i) policies for managing sustainability risks,

(ii) sustainability policy, and

(iii) a sustainability report.

In Summary

As a result of the newly implemented changes, and in view of some proposed regulatory updates, we are noticing that Brazil is looking to become more aligned with other countries in terms of being a better place to do business and providing a more flexible environment for innovation and foreign business.

New Insurance Industry Guidance on Climate Change Risk published by Irish Regulator

If you have any queries on any of the below, please contact:

Brian Hunt
Legal Director
Dublin
+353 1 436 5490
brian.hunt@dlapiper.com

Lindi Raath
Associate
Dublin
+353 1 588 4723
lindi.raath@dlapiper.com

The Central Bank of Ireland (**CBI**) published its *Guidance for (Re)Insurance Undertakings on Climate Change Risk* earlier this year (**the Guidance**)[1], which applies to insurers and reinsurers, including captive (re)insurers and branches of third-country insurance undertakings authorised by the CBI. The Guidance sets out one approach, but firms are free to use other approaches, provided they produce similar outcomes; noting that the principle of proportionality will apply in respect of the implementation of the Guidance.

In recognising that there is "a broad willingness in [the] industry to act" the Guidance is aimed at providing clarity on the CBI's expectations of how (re)insurers should address climate change risk in their business, without having to introduce new requirements on (re)insurers in relation to climate change risk, but simply seeking to clarify its expectations in this area[2].

1 The Guidance should be read in conjunction with the accompanying infographic.

2 Based on the existing Solvency II prudential requirements and also the Commission Delegated Regulation ((EU) 2021/1256).

Overarching Principles

The six overarching principles to which firms should have regard when assessing and managing climate change risks are:

- Firms have to adopt an **iterative approach** towards the integration of climate change risk into their governance and risk management framework.
- Climate change risk should no longer be considered by firms as an emerging risk but is now a **key risk** and should be managed accordingly.
- Firms have to consider the impact that climate change has on their business, as well as the impact that the (re)insurer's activities have on the climate (ie **double-materiality**).
- **ORSA** has a central role to play in enabling firms to develop an integrated role to climate change risk.
- Firms will have to consider the impact of climate change over the **short, medium and long term**.
- Lastly, where (re)insurers leverage **group policies** and activities relating to climate change risk, there should be appropriate adaptations for the local entity, including an assessment of the appropriateness of a group ORSA for the local entity.

The Guidance emphasizes the following six key aspects:

1. Importance of the **board, committees and senior management** in understanding and appropriately considering the risks that climate change poses to the (re)insurer, and their responsibility for identifying and managing financial and operational risks arising from climate change.

2. Preparation of a **materiality assessment**, under which firms consider the extent of their exposure to climate change risk. When developing a materiality assessment, firms are encouraged to have regard to the EIOPA Opinion[3] and Application Guidance[4].

3. **Scenario analysis and the ORSA**. Firms should quantify the financial impact of the baseline climate change scenario over short-, medium-, and long-term business planning horizons, and choose an appropriate range of climate change scenarios based on the nature, scale, and complexity of their business.

4. **Strategy and business model** of (re)insurers. The CBI expects that firms consider climate change risks in their ongoing strategic decision-making and that these are appropriately integrated into the business models.

5. **Risk appetite statement** devised by (re)insurers. Firms with a material exposure to climate change are expected to incorporate climate change risk into their risk appetite statement.

6. **Embedding climate change risk considerations across the business** utilising existing risk management frameworks. The Guidance also sets out the CBI's expectations in relation to the treatment of climate change risk in the context of Reserving and Capital, Underwriting and Pricing, and Investments.

Implementation

While it is too early to get a sense of the approach the CBI will adopt to assessing firms' level of adherence to the Guidance, we expect that through firm-specific inspections and perhaps thematic inspections, the CBI will begin to monitor the steps being taken by firms to achieve compliance with the Guidance. We expect that the CBI will be pragmatic in its approach. For instance, we note the CBI's recognition within the Guidance that there will be challenges for (re)insurers in certain areas, and that an iterative approach will be necessary as firms adapt and improve the scope, depth and sophistication of their approaches over time. Against the background of the principle of proportionality, the CBI will calibrate its expectations by reference to the nature, scale and complexity of the firm.

3 Opinion on the supervision of the use of climate change risk scenarios in ORSA. (EIOPA-BoS-21-127) (2021).

4 Application guidance on running climate change materiality assessment and using climate change scenarios in the ORSA (EIOPA-BoS-22/329) (2022).

Significant Changes to the Norwegian Insurance Contracts Act

If you have any queries on any of the below, please contact:

Mohsin Ramani
Partner
Oslo
+47 93 89 07 68
mohsin.ramani@dlapiper.com

Lars Albert Jøstensen
Lead Lawyer
Oslo
+47 41 49 94 55
lars.jostensen@dlapiper.com

Stian Ohm Netland
Associate
Oslo
+ 47 99 09 99 36
stian.netland@dlapiper.com

On 1 July 2022, the amendments to the Norwegian Insurance Contracts Act (ICA) and the new regulation on Insurance Contracts entered into force.

The Insurance Distribution Directive (2016/97/EU) (IDD) is now implemented in Norwegian law. Some of the most important amendments are:

Giving advice and assessing an insured's needs:

Insurers will have to comply with stricter duties when giving advice and recommendations in the underwriting process. If an insurer gives a "personal recommendation" – essentially advice as defined in the IDD – in connection with the distribution of an insurance product, it must also give the insured a written explanation of how the product recommended best meets the insured's wishes and needs. Further, when distributing insurance-based investment products (eg unit-linked insurance products), the insurer must always provide a personal recommendation.

Professional conduct and an insurer's liability for breach of duty:

Insurers will have a general duty to act in an honest, proper and professional manner. A failure to act in accordance with good business practice will entitle the insured to damages for any loss suffered, although an insurer's liability will be limited to reasonably foreseeable losses. The amendments to the ICA also impose a duty on insurers to identify possible conflicts of interest and to explain which measures will be introduced to reduce the risk of such conflicts.

Increased information and disclosure obligations:

For non-life insurance, a standard "insurance product information document" (IPID) will need to be given to an insured *before* a policy is issued. In addition, the insurer must provide the insured with a number of specific details before a policy is issued. These include information about the insurance company, any conflicts of interest, remuneration received in connection with the policy and any other costs – in addition to premium and planned payments – that will be charged to the customer.

System for complaints:

Insurers will have a duty by law to maintain an appropriate and effective complaints handling system. Complaints and claims regarding an alleged breach of an insurer's duties, must be answered in writing within a reasonable period of time depending on the extent and complexity of the complaint and whether there has been any previous correspondence between the parties. If insurers are unable to provide the insured with a conclusive answer within 15 business days, a preliminary answer must be given explaining why a final answer has not been given.

New rules on the burden of proof:

The insurance company will have the burden of proving that it has complied with statutory and regulatory duties owed to the insured.

Use of electronic communication:

Electronic communications will be the default choice, and the insured must reserve itself against the use of electronic communications when the insurance is obtained.

The Regulatory Landscape for Insurers in Saudi Arabia and the United Arab Emirates

If you have any queries on any of the below, please contact:

Andrew Mackenzie
Partner
Abu Dhabi, Dubai
+971 4438 6232
andrew.mackenzie@dlapiper.com

Beth Thompson
Paralegal
Dubai
+971 4438 6143
beth.thompson@dlapiper.com

This article provides a high-level overview of the main legislative and regulatory provisions governing the insurance sector within the United Arab Emirates and Saudi Arabia.

United Arab Emirates (UAE)

The UAE insurance market has demonstrated substantial growth in recent years despite the considerable impacts of COVID-19 and Russia's subsequent invasion of Ukraine. Simultaneously, legislative reforms have been enacted to help develop the insurance market in the region.

REGULATING ENTITIES

The onshore UAE insurance market was previously regulated by the Insurance Authority. However, due to the Decretal Federal Law 25/2020, the Insurance Authority merged into the UAE Central Bank (CBUAE), which now oversees any activities relating to insurers, brokers, and other insurance related service providers. By contrast, insurance companies, contracts and policies entered within other financial centres in the area (so-called free zones) are regulated by different entities. For example, insurance companies operating in the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) are regulated by DFSA and ADGM respectively.

MAIN REGULATORY FRAMEWORK

There are several UAE insurance laws and regulations which govern a wide range of products and services. The main UAE legal framework is Federal Law 6/2007 on the Establishment of the Insurance Authority and Organisation of its Operations (as amended by Federal Law No. 3/2018 (**Insurance Law**)). Under Article 4 of Federal Law 6/2007, life insurance and funds accumulation, property insurance and liability insurance are the three main types of insurance regulated by this law in the UAE.

Additionally, general laws on insurance contracts are set out in the UAE Civil Code, specifying that provisions concerning various insurance contracts not mentioned in the Insurance Law are governed by special laws.

OTHER UAE INSURANCE REGULATIONS/UPDATES

There are various other laws, regulations and ministerial resolutions governing the conduct of insurance business in the UAE, setting out guidelines on topics including ethics, corporate governance, insurance broking and insurance consultancy.

Recent examples of these legislative updates issued by CBUAE include:

- On 9 March 2023, CBUAE issued Corporate Governance Regulation for Insurance Companies (Circular No. 24/2022), to help ascertain the minimum acceptable standards for companies' approach to Corporate Governance, as well as the Corporate Governance Standards for Insurance Companies, to supplement that Regulation.
- On 24 November 2022, Regulation Regarding Takaful Insurance (ie insurance based on sharia or Islamic religious law) was issued with the aim to promote efficient development of Takaful Insurance activities.
- On 31 October 2022, Guidance for the insurance sector on Anti-Money Laundering protocols was issued to improve the UAE's status as a transparent jurisdiction.

Kingdom of Saudi Arabia (KSA)

Saudi Arabia's recent economic developments have contributed to the rapid market growth in insurance, including creating new insurable assets and new lines of mandatory coverage. KSA's three main types of insurance are health insurance, general insurance and Protection and Saving (P&S) insurance.

REGULATING ENTITIES

All insurers and reinsurers registered in KSA are regulated by the Saudi Arabian Central Bank (SACB), previously known as Saudi Arabian Monetary Authority (SAMA). However, health insurers are supervised by the Council of Cooperative Health Insurance (CCHI).

Insurers registered locally are also regulated by the Capital Markets Authority (CMA). Moreover, insurers must comply with the laws and regulations of the Ministry of Commerce (MOCI) and be established as a publicly listed joint stock company (PJSC).

Insurance and reinsurance companies with foreign shareholders must adhere to additional requirements. This includes abiding by the Foreign Investment Act and obtaining a foreign investment license from Saudi Arabia General Investment Authority (SAGIA).

MAIN REGULATORY FRAMEWORK

KSA insurance and reinsurance is governed by the Law on Supervision of Co-operative Insurance Companies, Royal Decree No M/32 (**Insurance Law**). This applies to all registered companies undertaking insurance business in KSA.

The Insurance Law provides that insurers and reinsurers must not carry out non-insurance business unless the business is complementary or necessary for the insurance or reinsurance business. If any non-insurance business is proposed to be undertaken, the appropriate approvals are required from the SACB.

The Insurance Law is supplemented by Implementing Regulations 2003, published by SAMA on 23 April 2004 (Implementing Regulations), and other regulations issued by SAMA. This includes the Insurance Market Code of Conduct Regulations 2008, Rules Governing Insurance Aggregation Activities 2020 and Implementing Regulation to the AML Law 2017.

OTHER KSA INSURANCE REGULATIONS/UPDATES

In September 2022, SACB and CBUAE signed a Memorandum of Understanding with the intention to *"establish a general framework for co-operation activities in the field of supervision and control within the insurance sector in both countries"*.

In Summary

Insurance regulation in the UAE and KSA is not too dissimilar to better known jurisdictions, and there is a clear trend to develop the market in these two countries, in line with European/US/AUS insurance market standards.

The Future of Insurance Business in Thailand post COVID-19 – is M&A the answer?

If you have any queries on any of the below, please contact:

Thananan Sangnuan
Partner
Bangkok
+66 2 686 8559
thananan.sangnuan
@dlapiper.com

The COVID-19 pandemic has driven businesses in Thailand to become more proactive about managing their risks and adopting a more strategic approach to maintain the resilience of their businesses. This is particularly true in the insurance sector, which was heavily affected by the pandemic.

When the COVID-19 outbreak started in early 2020, lump-sum COVID-19 medical insurance policies proliferated in Thailand as people and insurance companies were optimistic about the containment of the outbreak. The lump-sum policies were short-term policies which paid out a sizable lump sum when the policyholder contracted COVID-19. At the early stages of their issuances, non-life insurance companies benefitted from the high market uptake of these lump-sum policies, which generated high profits at that time.

However, when COVID-19 restrictions were relaxed in early 2021, Thailand experienced a third wave of infections. As a result, the claims for payouts under the lump-sum policies mounted throughout 2021, causing considerable strain on the balance sheets of multiple insurers.

In early 2022 the payout-driven financial strains caused some of the country's top insurers to go into liquidation as they did not have sufficient capital reserves to pay out the claims. Some insurers managed to mitigate their COVID-19 exposures through reinsurance. However, on the whole, the lump-sum policies had a severe negative impact on the industry.

In 2023, total losses related to the lump-sum policies suffered by insurance companies in Thailand are estimated at THB34 billion (USD1.1 billion), which is approximately 19% of the capital and surplus of the industry as of September 2021[1].

As the insurance market recovered from the pandemic, macroeconomic concerns arising from high inflationary pressures, high interest rates and political uncertainty have exposed the industry to new risks and challenges. Many Thai business operators are beginning to recognise the importance of diversification and asset allocation to remain resilient and gain a competitive advantage in the market to increase profit yields.

According to the Thai General Insurance Association, Thailand now has 52 insurance companies, of which 47 are non-life insurance companies, as of February 2023[2]. This is a proportionally high number given that the total population in Thailand is approximately 70.3 million as at May 2023.

The Office of Insurance Commission (OIC), as the main regulator of insurance companies in Thailand, is encouraging mergers and acquisitions among insurance companies to push firms to strengthen their financial health and boost competitiveness. Since 2007, the OIC has also stopped issuing new licences for life and non-life insurers to reduce the number of insurance companies.

Similarly, the Thai government previously announced their intention to consolidate the insurance industry by encouraging smaller insurance companies to merge and to make it easier for foreign investment into the Thai insurance industry. The purpose of this is to help local insurers to become more competitive, increase capital, facilitate knowledge transfer and to help local insurers gain a competitive advantage in the market. This is particularly critical in a slowing economy.

Under the current Insurance Act, Thai insurers can allow foreign shareholdings of more than 25 per cent, but not exceeding 49 per cent of the total voting shares, subject to the approval of the OIC. Additionally, insurers may allow foreigners to hold more than 49 per cent (up to 100 per cent) of the total voting shares if permission is granted by the Ministry of Finance (MOF). These regulatory changes have created new momentum for M&A activity within the insurance sector as more international players are looking to merge with or acquire Thai insurance businesses to penetrate the local market.

Insurers have already sought and received approval from the MOF to have foreigners hold 100 per cent of its shares since the law came into effect. The integration has allowed certain international insurance groups to leverage their international insurance businesses to increase the competitiveness of their Thai businesses.

In Summary

In a post-pandemic world, strategic M&A and portfolio optimization should be promoted as a way for insurers to increase their resilience in the market, maintain stability and growth. This will also strengthen the Thai insurance industry as a whole in the long term.

1 https://www.reinsurancene.ws/thai-insurers-under-covid-claims-pressure-am-best/

2 https://www.oic.or.th/sites/default/files/institute/course/93446/public/1.insurance_overview.pdf

A Problem, Potential Claimants and the Possibility of a Claim:

The Australian Federal Court examines what constitutes a valid notification by an insured

If you have any queries on any of the below, please contact:

Carmen Elder
Partner
Sydney
+61 2 9286 8079
carmen.elder@dlapiper.com

Jasmine Zamprogno
Solicitor
Sydney
+61 2 9286 8032
jasmine.zamprogno@dlapiper.com

Earlier this year, the Federal Court in Australia handed down an important decision on the application of a notification of circumstances by insureds to their insurers.

The case arose from a long-running dispute between the Uniting Church in Australia Property Trust (**Uniting**) and its insurer, Allianz Australia Limited (**Alllianz**). Uniting had held insurance with Allianz from 1999 to 2011.

In the years 2003, 2008 and 2009, Uniting made four 'bulk' notifications of circumstances to Allianz of facts relating to allegations of historical abuse that occurred at a school governed by Uniting. Prior to their policy with Allianz lapsing, brokers for Uniting issued a notification that there were "*likely to be claims relating to: psychiatric injury and/or physical injury arising from physical assault, sexual assault, trespass to person, breach of fiduciary duty and/or negligence*". Potential claimants included those whose identities were not yet known, and who might come forward at some point in the future making allegations of abuse.

Allianz declined indemnity (or otherwise reserved its rights) for claims made by Uniting, due to issues it perceived with the nature of Uniting's notifications. Following the declinature of indemnity, Uniting commenced proceedings against Allianz, seeking an order that indemnity be granted. In assessing Uniting's Claim, the Court considered a number of issues, but most pertinently, it considered the operation of section 40(3) of the Insurance Contracts Act, which deals with notifications by insureds.

Uniting argued that the facts they provided to Allianz in their notifications of circumstances which might give rise to a claim were sufficient, and they had notified Allianz as soon as it was practicable to do so. Uniting's position was that section 40(3) was intended to operate in a manner that enabled insureds to notify an insurer of a 'problem' that may give rise to a claim.

On the other hand, Allianz argued that Uniting could not rely upon an *"accumulation of facts"* notified to Allianz prior to the inception of the period of insurance of the policy in question. Further, Allianz argued that Uniting was aware of the abuse allegations prior to when they notified Allianz, and as they had not notified Allianz as soon as it was reasonably practicable, they should not be entitled to the benefit of section 40(3).

The key question for the Court was therefore whether notifying an Insurer of a 'problem' or 'state of affairs' would be deemed to be a valid notification for the purposes of section 40(3).

The Court noted that section 40(3) had two limbs which must be satisfied:

1. an insured must provide to the insurer notice of facts that may give rise to a claim, and

2. an insured must do this as soon as it is reasonably practicable after they have become aware of the facts.

Consequently, the Court determined that section 40(3) requires sufficient connection between the facts notified and the claim subsequently made. However, it was immaterial that the notification was in general terms, or that it lacked the identify of the claimant or the potential quantum of any claim. As a result, the Court held that under section 40(3), an insured may notify an insurer of a 'problem', as long as the 'problem' can be considered to be a notification of facts that may give rise to a claim.

In reaching this conclusion, the Court did touch on the 'hornet's nest' principle that operates in the UK, where an insured may provide a valid notification by simply communicating a 'state of affairs'. However, the Court did not provide a definitive position on the issue, as it deemed that Uniting's notifications were otherwise valid.

In Summary

The key takeaway from the decision is that a 'bulk' notification could be considered a valid notification, even if the details or scale of the 'problem' being notified are not known. It remains to be seen how other courts will engage with the decision and whether there will be further analysis of the 'hornet's nest' principle by Australian Courts, although it seems likely that this is only the beginning of judicial engagement on the issue of what constitutes a valid notification by an insured in Australia.

Case: *Uniting Church in Australia Property Trust (NSW) v Allianz Australia Insurance Ltd* (Liability Judgment) [2023] FCA 190

New Zealand: Insurance under Scrutiny

If you have any queries on any of the below, please contact:

Rachel Taylor
Partner, Corporate
Wellington
+64 27 255 5715
rachel.taylor@dlapiper.com

Emma Moran (Sweet)
Partner, Lit & Reg
Wellington
+64 21 330 040
emma.moran@dlapiper.com

Anneke Wilson
Solicitor, Corporate
Wellington
+64 4 474 3201
anneke.wilson@nz.dlapiper.com

Cameron McCracken
Solicitor, Lit & Reg
Wellington
+64 4 474 3209
cameron.mccracken@dlapiper.com

Significant changes to insurance law and insurance regulation are on the horizon in New Zealand. We set out below updates on the ongoing reviews and summaries of the confirmed changes.

Insurance (Prudential Supervision) Act 2010 (IPSA) Reforms

The Reserve Bank of New Zealand – Te Pūtea Matua (**RBNZ)** is reviewing the prudential regulation and supervision of entities carrying on insurance business in New Zealand, including:

- The scope of IPSA for overseas insurers;
- Policyholder security;
- Enforcement and distress management; and
- Governance, supervisory process and disclosure.

In 2023, RBNZ will issue a final "omnibus consultation" setting out all proposed changes.

Natural Hazards Insurance Act 2023 (NHIA)

The NHIA comes into force on 1 July 2024 to replace the Earthquake Commission Act 1993 (**EQC Act**) and overhaul the Earthquake Commission (**EQC**).

EQC provides first loss cover (up to NZ USD300,000) to residential homeowners who suffer damage or loss caused by a "natural hazard". EQC is a government entity funded by levies collected by private insurers and guaranteed by the government.

The EQC Act/NHIA covers loss or damage caused by earthquakes, landslips, volcanoes, tsunamis and hydrothermal activity, but not other natural hazard risks such as floods and storms. With recent extreme weather events such as Cyclone Gabrielle seeing industry loss estimates exceeding NZ USD1.5 billion, it remains to be seen whether the government will face calls to expand the scope of natural hazard cover.

Managing climate-related risks

The recent floods in the upper North Island and Cyclone Gabriel have prompted RBNZ to draft proposed new guidance for the financial sector on managing climate related risks.

This new guidance will apply to all RBNZ's regulated entities, including licensed insurers, and recommends that those entities develop their own climate-related scenario capabilities and manage climate-related risks within their own broader risk management frameworks. 'Submissions on the proposed new guidance closed 7 June 2023'.

Insurance Contract Law Review

The outcome from the Ministry for Business, Innovation and Employment's Insurance Contract Law Review and consultation on an Exposure Draft Bill of last year are expected later in 2023 and include the following key proposals:

Amending and codifying policyholder disclosure obligations:

- For consumers "to take reasonable care not to make a misrepresentation" and requiring insurers to ask targeted questions for information considered material.
- For non-consumers "to make a fair presentation of risk".

- Prescribing remedies available to insurers where policyholders have breached disclosure obligations that are proportional between the nature of the breach and the remedy.
- New duties on insurers to:
  - Inform policyholders:
    - Of their disclosure duties and consequences for breaching them.
    - That the insurer may rely on third-party information; and
  - Require consumer insurance contracts to be "worded and presented in a clear, concise, and effective manner."
- Increase the Financial Markets Authority's powers to monitor and enforce compliance.

Unfair Contract Terms (UCT)

Recently enacted amendments of the Fair Trading Act 1986 empower courts to determine that clauses in consumer or small trade contracts are UCTs. A term can be declared unfair only if it:

- Causes a significant imbalance between the parties;
- Is not reasonably necessary to protect legitimate interests; *and*
- Would cause detriment to a party.

In Summary

These provisions apply to:

- New consumer insurance contracts entered after 17 March 2015. However, it should be noted that for these new insurance contracts some terms are deemed to be reasonably necessary for protecting the interests of the insurer and therefore are exempted from being declared UCT;
- New small trade contracts entered into after 1 April 2025. Small trade contracts are those where both parties are in trade, and which do not comprise or form part of a trading relationship (between those parties) exceeding the annual value threshold of NZ USD250,000 when the relationship first arises.

These provisions do not apply to:

- Consumer insurance contracts entered before 17 March 2015 (including any renewals or variations of those contracts); and
- Small trade insurance contracts entered before 1 April 2025.

The Insurance Contract Law Review is considering options to strengthen protections for consumers that may include removing the current exemptions that exist for insurance contracts.

Authors

Bennett B. Borden
Partner
US
+1 202 799 4357
bennett.borden@dlapiper.com

Christopher Cullen
Of Counsel
US
+1 215 656 2492
christopher.cullen@dlapiper.com

Carmen Elder
Partner
Australia
+61 2 9286 8079
carmen.elder@dlapiper.com

Marcella Hill
Partner
Brazil
+55 11 96913 2871
marcella.hill@cmalaw.com

Brian Hunt
Legal Director
Ireland
+353 1 436 5490
brian.hunt@dlapiper.com

Lars Albert Jøstensen
Lead Lawyer
Norway
+47 41 49 94 55
lars.jostensen@dlapiper.com

Andrew Mackenzie
Partner
United Arab Emirates
+971 4438 6232
andrew.mackenzie@dlapiper.com

Cameron McCracken
Solicitor
New Zealand
+64 4 474 3209
cameron.mccracken@dlapiper.com

Emma Moran (Sweet)
Partner
New Zealand
+64 21 330 040
emma.moran@dlapiper.com

Stian Ohm Netland
Associate
Norway
+47 99 09 99 36
stian.netland@dlapiper.com

Lindi Raath
Associate
Ireland
+353 1 588 4723
lindi.raath@dlapiper.com

Mohsin Ramani
Partner
Norway
+47 93 89 07 68
mohsin.ramani@dlapiper.com

William Reichart
Associate
US
+1 410 580 4104
wes.reichart@dlapiper.com

Thananan Sangnuan
Partner
Thailand
+66 2 686 8559
thananan.sangnuan@dlapiper.com

Jaqueline Suryan
Partner
Brazil
+55 11 3077 3524
jaqueline.suryan@cmalaw.com

Rachel Taylor
Partner
New Zealand
+64 27 255 5715
rachel.taylor@dlapiper.com

Beth Thompson
Paralegal
United Arab Emirates
+971 4438 6143
beth.thompson@dlapiper.com

Sam Tyner-Monroe
Managing Director
US
+1 202 799 4522
sam.tyner-monroe@dlapiper.com

Anneke Wilson
Solicitor
New Zealand
+64 4 474 3201
anneke.wilson@nz.dlapiper.com

Jasmine Zamprogno
Solicitor
Australia
+61 2 9286 8032
jasmine.zamprogno@dlapiper.com

Editor of the publication

Kirsten Shoraka
International Insurance Knowledge Development Lawyer
+44 207 153 7079
kirsten.shoraka@dlapiper.com

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