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Global Insurance Focus

An overview of the latest developments in the global insurance and reinsurance industries

Issue 8: July 2018

Highlights in this issue include:

The future of insurance regulation

The case of Hastings v HMRC: can a service provider also be the recipient of its own services for the purposes of value added tax?

Non-consumer disclosure reforms in the United Kingdom and Australia

Further opening up of China's insurance market – it is happening!

Contents

UK

The future of insurance regulation

By Adam Levitt, UK

Brexit will not trigger a "bonfire of regulation", according to Stephen Hammond MP, speaking at the City & Financial conference we hosted at our office in London on 7 June. Mr Hammond is a member of parliament's Treasury Select Committee, which has been considering Solvency II.

On the other hand, Mr Hammond expressed concern about the cost of capital under Solvency II, for example deriving from the risk margin, as well as the matching adjustment mechanism. The committee asked the PRA to consider how the costly effects of these might be reduced. https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/324/32402.htm

Risk margin

David Rule, Executive Director for insurance supervision at the PRA, admitted the risk margin was especially bad for annuity insurers. The biggest problem with the risk margin is that it is too high at times of low interest rates. Insurers with long-dated liabilities suffer the most – and the risk margin encourages them to reinsure offshore (the risks of which have concerned the PRA for some time). However, the PRA's position is that it is unable to change the risk margin while the outcome of Brexit remains uncertain – as stated in the PRA's recent letter to the chair of the Treasury Committee. https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/PRA-Interim-Response-Solvency-II.PDF

This is a disappointment to the industry, given that the risk margin problem has been widely acknowledged. Furthermore, it is a difficulty which hits the UK's highly developed market for individual annuities (and bulk annuity contracts with pension schemes) particularly hard.

Matching adjustment

As regards the matching adjustment, Mr Rule said that Solvency II was "prescriptive" in confining eligible assets to those with "fixed" cash-flows. That internal ratings of direct (and illiquid) assets drive a greater matching adjustment than for more marketable assets seems to worry the PRA. As in the case of the risk margin, until there is a clear post-Brexit direction for regulation, we are unlikely to see any change to the matching adjustment regime. For our explanatory note on the matching adjustment, see: https://www.ashurst.com/en/news-and-insights/legal-updates/matching-adjustments-under-solvency-ii/

Contract Continuity

Another concern raised by Mr Hammond was the continuing lack of clarity about contractual continuity, once the UK leaves the EU. However, this is not something that the PRA (or EIOPA) can fix alone: the draft Withdrawal Agreement would allow UK/EEA contract servicing, but only if it is ratified – and then only until the end of 2020. In case it is not ratified, the UK government's "backstop" proposal to grant "temporary permission" would allow EEA insurers

EIOPA's "opinion on service continuity" of December 2017 does not help: it merely encourages insurers to take "necessary steps", which might include portfolio transfers or setting up a branch. For EEA insurers considering establishing a third country branch in the UK, they face being forced to establish a UK subsidiary instead, given the PRA's policy that where liabilities within the Financial Services Compensation Scheme exceed £500 million, a branch does not give it enough regulatory power. http://bit.ly/2KwWWvl

Furthermore, portfolio transfers are cumbersome procedures, particularly given the need in the UK to follow a court timetable. Both UK regulators (the PRA and FCA) are already reviewing an unusually large number of transfer proposals in the run-up to 29 March 2019, when the UK is scheduled to leave the EU. Meshing a portfolio transfer timetable with possible dates for when clarity will emerge on what the post-Brexit regime will look like is particularly difficult.

The concept of "equivalence" under Solvency II is not a solution to cross-border sales or servicing requirements, because this focuses on solvency capital and group supervision instead.

EEA regulators have not yet clarified their views on the extent to which an EEA insurer can conduct its EEA operations in the UK (although EIOPA has said it dislikes "brass plate" insurers that outsource everything). On the other hand, Solvency II is clear that a branch of an EEA insurer in a "third country" (as the UK will be post-Brexit) needs to comply with a branch-specific solvency capital requirement. This seems paradoxical, when that branch is operating in the EEA.

to continue to operate in the UK, but the duration of this remains unclear. So, overall, political decision-making is key.

Chris Beazley, Chief Executive of the London Market Group, explained that a free trade agreement is what is needed, in order to deal with cross-border sales. This would be similar to the passporting regime under Solvency II. Accordingly, achievability resides within the realm of politics.

PRA's competition objective

One bone of contention between the Treasury Committee and the PRA is how much the PRA has regard to its competition objective, which is secondary to its general objective of promoting "the safety and soundness" of regulated firms (and in the case of insurers, seeking to secure an "appropriate degree of protection" for policyholders). The problem is that the PRA is tempted to be too conservative when regulating capital requirements, because the promoting competition is not a primary requirement.

The PRA has responded that to make competition a key objective would confuse its main role https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/863/863.pdf but, as Mr Hammond pointed out, the Financial Services Authority (predecessor to both the PRA and FCA) had to have regard to the desirability of competition.

Although the PRA cites having authorised 26 "new insurance firms" since 2013 (the year of its birth), the PRA has agreed to consider the extent to which the FSCS should be taken into account when supervising. If the PRA became more relaxed about capital requirements, then there could be more insurers – and a more competitive market, to the benefit of society. On the other hand, failures of insurers lead to FSCS pay-outs (at least where retail customers are concerned) and the resultant risk of levies made against other insurers, so there is a tension between encouraging start-ups (perhaps insuretech specialists) and making the rest of the industry suffer the cost of failures.

In any case, given that insurers can predict the level and timing of their liabilities much better than banks, the risk of any insurer triggering a wider problem to the "stability of the UK financial system" should be of minimal concern to the PRA.

Perhaps, therefore, the competition objective should be promoted in relation to insurance alone.

Brexit creates an opportunity for regulation to be made more pragmatic. The outstanding question is whether the government has the desire or time.

EIOPA opinion on Brexit's effect on solvency, May 2018:

- Own risk and solvency assessments should address UK becoming a "third country" under Solvency II
- UK rating agencies falling outside Credit Rating Agency Regulation: effect on assets under solvency capital requirement (standard formula) and matching adjustment
- UK reinsurers: need for a rating (step 3 or better) under solvency capital requirement (standard formula), if UK does not obtain "equivalence" status under Solvency II
- Matching adjustment: fundamental spread automatically greater for third country government bonds
- Group supervision: UK group supervision will not necessarily be relied on by other Solvency II supervisors, if UK does not obtain "equivalence" status
- Group internal models approved by PRA to be re-assessed by other supervisors

UK

The case of Hastings v HMRC

By Nicholas Gardner and James Seddon, UK

Can a service provider also be the recipient of its own services for the purposes of value added tax?

To someone not versed in the vagaries of VAT in the EU this might sound like a strange question.

However, in the world of VAT the place where a supply is treated as being made is of central importance to analysing the VAT costs of cross-border business arrangements, particularly in the insurance and finance industries.

This is because the 'place of supply' helps determine (1) whether 'output' VAT must be charged on that supply (although this is of secondary importance in cases such as Hastings' where the supplies of insurance intermediary services would be exempt in any event) and (2) whether the supplier can recover 'input' VAT that the supplier has borne on supplies that it has received.

For VAT purposes business-to-business services are generally treated as supplied in the country where the service recipient is headquartered (its 'business establishment'), or, if the services are supplied to or used by a branch of the service recipient in another country, the country in which the relevant branch of the service recipient (the relevant 'fixed establishment') is situated.

So far so straightforward. However, there are cases in which tax authorities in the EU member states argue that a service provider constitutes a fixed establishment of the service recipient for the purposes of receiving the service provider's supplies and so determining the place of those supplies for the purposes of VAT – i.e. that the service provider is in effect supplying its services to itself as an extension of the service recipient. The case of Hastings v HMRC is one such case. Happily, the tax authority did not prevail.

The background to the case

In *Hastings Insurance Services Limited v HMRC*, the UK court had to consider the arrangements between Hastings, Advantage Insurance Company Limited, and UK customers obtaining motor insurance.

Advantage is a personal lines insurer based in Gibraltar, underwriting motor and home insurance for UK customers. Advantage and Hastings had either substantially common shareholders or were (as they are now) indirect, wholly-owned subsidiaries of a common parent company.

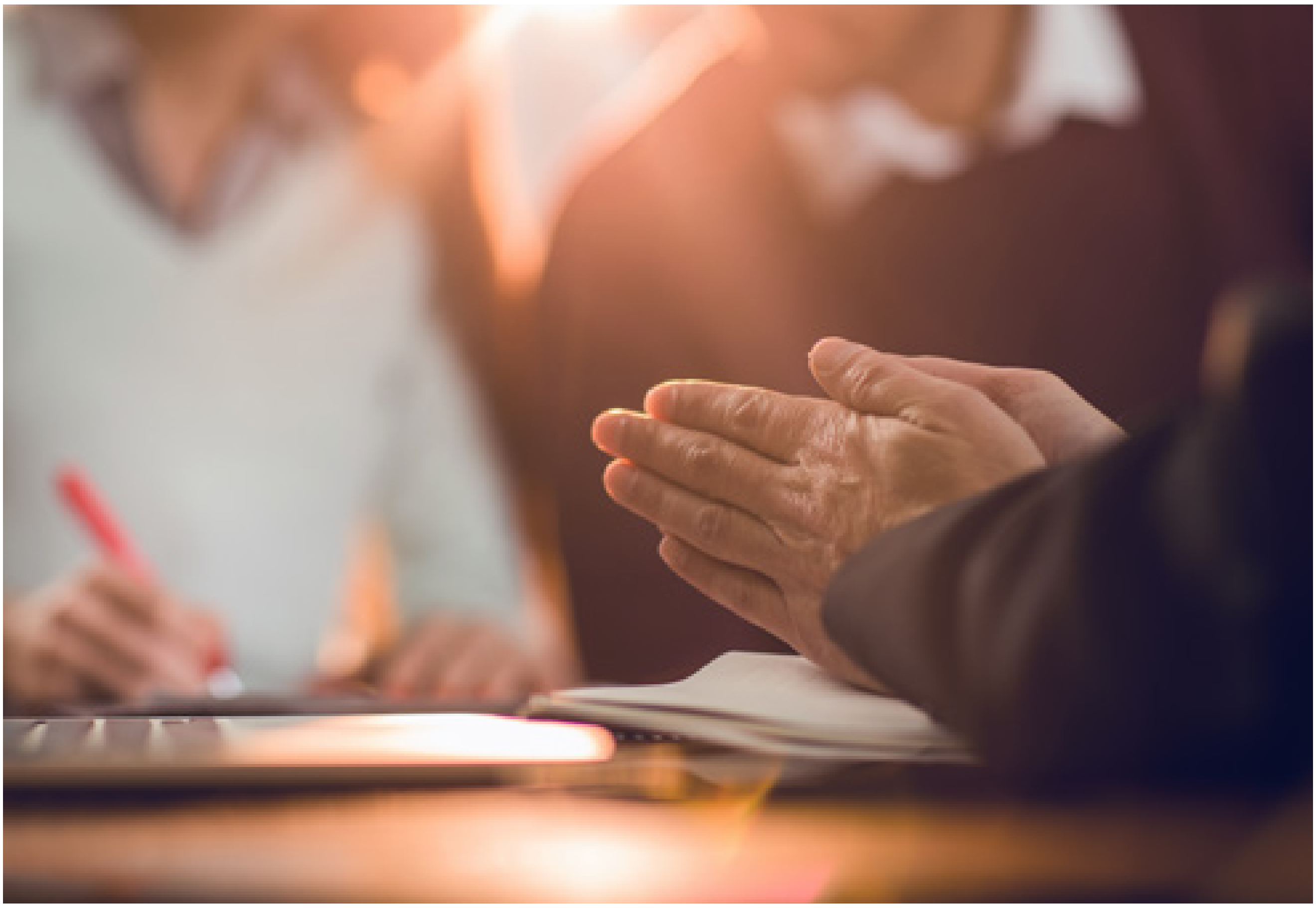
Hastings is a UK-based insurance services company, which arranges motor and home insurance policies between UK customers and a panel of insurers, which includes Advantage.

When a customer obtains insurance through Hastings, as well as the contract of insurance they enter into with a panel insurer, the customer also enters into a number of related transactions which may include: (1) contracts with other insurers for ancillary products; and (2) a credit agreement with Hastings, if the customer elects to pay by instalments.

Whether a customer obtains insurance through a price comparison website, the Hastings website or over the telephone from Hastings' call centres, Hastings is acting as an intermediary on behalf of the relevant panel insurer. To enable Hastings to provide these intermediary services, panel insurers provide Hastings with 'rating tables' – arrays of 'net premiums' for different risks (combinations of underwriting criteria, such as customer postcode, age and vehicle model). The net premiums represent the amount that the insurer has calculated that it needs to charge to underwrite a particular risk and make a profit while spreading its risk.

Generally an automated pricing system used a customer's information to generate net premiums from the insurers' rating tables. The most competitive net premium was used by Hastings to generate the 'gross premium', which, together with the insurance premium tax was the price offered to the customer for the insurance policy. The difference between the gross premium and the net premium represented Hastings' commission from the insurer. Hastings applied algorithms to determine the optimum commission to charge, having regard to the value of a customer (e.g. the other income Hastings may earn through commissions on ancillary products and interest on instalment finance); this could include charging a negative commission, but in all circumstances Hastings had to account to the insurer for the net premium (plus the insurance premium tax).

Hastings' services for Advantage also included claims handling and underwriting analysis – technical support to assist Advantage when making its net premium pricing decisions. The relationship between Hastings and Advantage was governed contractually by services agreements. During the period in dispute Hastings did not provide claims handling or underwriting analysis services to other panel insurers. Although Advantage was not obliged to use Hastings exclusively, throughout the period in dispute all of Advantage's policies were issued by Hastings (or by sub-agents of Hastings) on Advantage's behalf and all the claims made under Advantage's policies were handled (to a greater or lesser degree) on an outsourced basis by Hastings.



The court was required to determine whether Hastings was entitled to credit for input VAT attributable to its supplies of services to Advantage. This depended on whether Advantage received those services at its business establishment in Gibraltar or at a fixed establishment in the UK. It was common ground that Hastings' services would fall within the VAT exemption for insurance intermediary services and so carry no entitlement to input VAT credit if supplied in the EU. However such supplies would be 'exempt with credit' (i.e. give rise to an entitlement to input VAT credit) if supplied outside the EU (which for these purposes Gibraltar is).

Since Advantage did not have any presence of its own in the UK, HMRC's contention was that Hastings itself constituted a fixed establishment of Advantage in the UK, both in relation to Advantage's supplies of insurance to UK customers and in relation to Hastings' supplies of insurance intermediary services to Advantage.

EU VAT regulations provide that a fixed establishment is an establishment (other than a person's business establishment) which is:

> *'characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources' (when looking at the recipient) 'to enable it to receive and use the services supplied to it for its own needs' (or, when looking at a service provider) 'to enable it to provide the services which it supplies'.*

Was Hastings Advantage's UK fixed establishment for supplying insurance?

The court approached the question of determining whether Hastings was a fixed establishment of Advantage for the purposes of Advantage's supplies of insurance to UK customers by considering two aspects of the fixed establishment test developed in the European case law that underpins the rules referred to in the preceding paragraph:

1) ***Did the resources provide what was necessary or adequate for the provision of the services on an independent basis?***

   The key issue which the court had to consider was how to assess the concept of 'necessary' or 'adequate' for the purposes of this test. On a strict interpretation, an insurance company could never have a fixed establishment as the head office would be required to some extent to meet regulatory requirements and raise capital. On the other hand, the court was not persuaded that it was sufficient that the potential fixed establishment performed all the customer facing functions. The court considered that what constitutes the necessary resources will vary according to the particular context and the

court's role was to assess the particular supplies made by Advantage and determine which resources were 'directly involved'. On its analysis, the resources of Advantage in Gibraltar which determined what risks to insure and priced those risks were such a key element of the supply of insurance that it was not necessary to look to the other functions performed by Advantage. Without those resources, there would have been no Advantage insurance policies for Hastings to sell. Hastings could not be said to have the necessary resources and for that reason no UK fixed establishment could exist for the purposes of Advantage's supplies of insurance to its UK customers.

2) Did the resources have a sufficient degree of permanence?

The court considered permanence both a temporal requirement (which was accepted as satisfied) and a requirement that Hastings' resources were under some degree of Advantage's control. The court analysed the contractual arrangements to establish the degree of control or independence of the potential fixed establishment. The court did not accept that commercially agreeing the scope of the service provider's functions necessarily amounted to the required retention of control or lack of independence - closer analysis of precisely what level of control the business retains as a result of the setting of the parameters and of the functions carried out within those parameters is required. On a detailed review of the evidence, the court concluded that Hastings carried out its functions independently of Advantage, as a separate commercial enterprise.

Did Advantage have a UK fixed establishment for receiving Hastings' services?

The finding that the permanence requirement discussed above was not satisfied would have been sufficient for the court to conclude that Hastings was not a fixed establishment of Advantage to which Hastings' insurance intermediary services were supplied. The court also concluded that since it had determined that Advantage's business establishment made the insurance supplies, the resources of Hastings could not be said to represent an establishment with a suitable structure to receive and use Hastings' insurance intermediary services for its own needs.

Rationality

Even if a service provider is found to be an EU fixed establishment of the recipient for the purposes of the service provider's supplies of services to the recipient, the European case law provides that the business establishment of the recipient is to be preferred as the primary point of reference unless that leads to an irrational result or creates a conflict with another EU member state. Given the court's conclusion that Hastings was not Advantage's fixed establishment, its commentary on this point was not a decisive part of the judgment. However, aspects of its approach may be of interest to taxpayers, given VAT operates on a real-time basis and they need clear rules to determine the place of supply. Uncertainty in the system creates time-consuming administrative complexity.

- The court had doubts that the test of rationality should be interpreted as one of 'fiscal rationality' – i.e. just because there might be VAT savings if the services are treated as supplied to the recipient's business establishment, this alone is not a reason to treat those services as being supplied to a fixed establishment of the recipient.

- Where the use of the relevant supplies at the fixed establishment was not predominant, the use of the services at the business establishment could not be disregarded.

- In circumstances where services were used in an unidentifiable and unquantifiable manner between a business establishment and a fixed establishment of the recipient, guidance in EU VAT rules could be applied to treat the services as supplied to the business establishment.

Implications

The decision in Hastings was at the first stage of the UK court system; given the importance it can be expected that HMRC will appeal. In the meantime, insurers based outside the EU should consider whether their arrangements with UK service providers would, on a review of the arrangements, also satisfy the UK court's concepts of independence or control. These issues may also be relevant to non-UK investment and other entities which outsource material business functions to UK service providers. Given the detailed findings of fact by the court, businesses should be wary of suggestions that the decision in Hastings' favour represents a silver bullet.

Businesses establishing new cross-border arrangements with UK elements will also need to consider whether those arrangements give rise to any disclosure obligations under HMRC's new disclosure regime for VAT and other indirect taxes (DASVOIT), in particular whether the arrangements fall within Hallmark 6 (offshore supplies – insurance and finance) or Hallmark 7 (offshore supplies – relevant business person).

Finally, as it is not yet clear whether the UK will leave the EU VAT area as part of Brexit, nothing useful can be said about what, if anything, will change at 11pm on 29 March 2019 or, if relevant, at the end of any 'transition period'.

Ashurst has acted for Hastings on the dispute with HMRC since November 2014.

AUSTRALIA

Non-consumer disclosure reforms in the United Kingdom and Australia

By Rehana Box and Marie Vlassis, Australia

Part II: who 'knows'? – Knowledge of the insured in relation to disclosure

Following the enactment of the Insurance Act 2015 (UK) (IA UK) (as discussed in the Global Insurance Focus – Issues 5 and 7), we examine the effect of this legislative development in the UK and compare the UK position with the position in Australia under the Insurance Contracts Act (1984) (Cth) (ICA).

In this article we focus on the issue of the knowledge of the insured in the context of disclosure obligations in the UK and Australia and examine the 'reasonable search' and 'prudent insurer' tests as well as examining whose knowledge is relevant in the two jurisdictions.

The first part of this series focused on pre contractual non-disclosure in both jurisdictions, and compared the Australian concepts of 'disclosure' and 'misrepresentation' with the abrogated UK concept of 'fair representation'. (https://www.ashurst.com/en/news-and-insights/legal-updates/non-consumer-disclosure-reforms-in-the-united-kingdom-and-australia/).

The 'Anglo-Australian' Disclosure Regime

As discussed in the first part of this series, it is important to understand the 'Anglo-Australian Disclosure Regime'.[1] This encompasses:

a) the common law duty of disclosure, which was codified in the Marine Insurance Act 1906 (UK)[2] (MIA 1906);

b) the common law that remains in force for marine insurance in Australia, codified in the Marine Insurance Act 1909 (Cth)[3] (MIA 1909);

c) the common law duty of disclosure that applies to reinsurance contracts in Australia;

d) the Australian non-marine regime, set out in the ICA; and

e) the IA UK which abrogates the common law and extends to all forms of insurance, including marine insurance and reinsurance (repealing MIA 1906).[4]

1 Rob Merkin, 'What does an assured 'know' for the purpose of pre-contractual disclosure?' (2016) Insurance Law Journal 157, 158.
2 See sections 18 and 19 of the MIA 1906 which have been repealed by the IA UK.
3 Sections 24 and 25 of the MIA 1909.
4 Rob Merkin, 'What does an assured 'know' for the purpose of pre-contractual disclosure?' (2016) Insurance Law Journal 157, 158.

The Anglo-Australian approach

Knowledge requirements

Put simply, the knowledge of the insured at common law is judged on the knowledge of the individual where the insured is an individual person[5] or if the insured is a corporation, on the knowledge of the directing mind and will of the company.[6]

Under the MIA 1906, the disclosure required extended to every material circumstance known to the insured, and the insured was deemed to know every circumstance which in the ordinary course of business, ought to be known by him[7]. The common law treats 'blind eye' knowledge as actual knowledge; this has been incorporated into the IA UK.[8]

In Australia, the duty of disclosure applies only if the insured has the requisite knowledge of its relevance to the insurer in accepting the risk. That knowledge is of two types: actual knowledge; and knowledge that a reasonable person in the circumstances would possess.[9] The knowledge required by the ICA in s 21(1)(a) and 21(1)(b) should not be described as "actual" and "constructive" knowledge. The ICA provided a clean break from these common law concepts.[10]

5 Dr Wang Feng, 'Knowledge of the assured in the context of the pre-contractual duty of disclosure: A new approach under English law and prospective reform in Chinese law' (2015) 27 Insurance Law Journal, 52. Dr Feng comments that in this circumstance, the knowledge of the assured will be restricted to the actual knowledge of the assured, and the assured is only obliged to disclose what in fact he knows. In that regard, an assured cannot deliberately avoid learning a circumstances for the purpose of limiting his pre-contractual duty of disclosure: Economides v Commercial Assurance Co plc [1998] 1 QB 587; [1997] 3 All ER 636; [1997] 3 WLR 1066.
6 Ibid, 52. Dr Feng comments that the person who provides knowledge to the assured will be the directing mind and will of the company, and also can be the employees and agents who arrange insurance citing PCW Syndicates v PCW Reinsurers [1996] 1 All ER 774; [1996] 1 WLR 1136; [1996] 1 Lloyd's Rep 241.
7 Section 18(1) of the MIA 1906.
8 Section 6(1) of the IA UK.
9 Ian Enright and Robert Merkin, 'Sutton on Insurance Law, Thomson Reuters, 4th Edition 647, [7.230].
10 Ibid, 647, [7.230].

The UK's "Reasonable search" test

Interestingly, the UK expands the duty to constructive knowledge and broadens the obligation under the MIA 1906[11] from knowledge in "ordinary course business" to what the insured knows or "ought to know"[12]. Constructive knowledge at common law is primarily concerned with imputation of knowledge held by third parties.[13] However, despite the intention of a balanced reform package,[14] the IA UK introduces a "reasonable search" principle requiring the insured to conduct a reasonable search of information available to the insured as part of a good insurance placement process.[15] Merkin has commented that "quite how the 'reasonable search' is to operate is at the moment a matter of speculation. It is possible to argue that it goes no further than the common law constructive knowledge principle, namely, that a business assured is deemed to know what a reasonable assured ought to have known"[16].

Interestingly, the ICA deliberately does not reproduce the constructive knowledge extension in MIA 1909 s 24(1), strongly indicating that constructive knowledge of a fact will not suffice.[17] Under Australian law, there is also no duty on the insured to search for information that may be relevant.

This expansion of the disclosure under the IA UK may impose stricter obligations on insureds, resulting in a greater chance of a breach of the duty of fair representation. This should be carefully considered by practitioners advising in both jurisdictions.

Retention of the objective "prudent insurer" test

The IA UK has retained the objective prudent insurer test and at the same time has codified the subjective inducement test, and it remains the case that the insured's own knowledge of materiality moot.

Despite recommendations, the 'prudent assured test', long mooted in the UK as a fairer approach to disclosure, has not been adopted[18], whereas the ICA operates on the basis that it is the subjective knowledge of the insured that is relevant.

11 Section 18(1) of the MIA 1906.
12 Section 4(1) of the IA UK.
13 Above n 5, 163.
14 Ibid.
15 Law Commission Report Nos 353 (England) and 238 (Scotland): Cm 8898, at [8.78].
16 Above n 34, 164.
17 Above n 34, 164.
18 Above n 34, 163.

Clarification of who "knows"

Usefully, the IA UK distinguishes between the knowledge of the individual or individuals[19] and an insured who is not an individual[20]. The common law suggested differences, but never made them clear.[21] Furthermore, under the MIA 1906, there was a great source of confusion as to whose knowledge can be considered knowledge of an insured in a corporation.[22] In response to this ambiguity, the IA UK introduced parameters around who is deemed to have knowledge for the purposes of the duty and notably extended this to a narrow definition of "senior management";[23] it is said that the definition is intended to cover board members or their equivalent, but not regional or middle managers.[24] In following the common law, the IA UK adopted recommendations that the insured should be taken to know not only what is known by its "directing mind and will", but also what is known by the people who arrange its insurance.[25] The intention was not to extend this to employees, as this knowledge would be caught by the "reasonable search" requirement.[26]

Both under the IA UK and ICA[27], the knowledge of an agent (such as a broker) will be attributed to the insured principal where the agent is delegated the duty of disclosure as part of the process of effecting insurance, which follows the common law position.

Concluding remarks

The UK has, like Australia before it, embarked on monumental reforms to the law of insurance. The ICA, has proven itself as striking a fair balance between insureds and insurers. This is largely a result of the consumer driven nature of the ICA. The IA UK remains an uncertain model. Members of the insurance industry and insurance law practitioners operating in both the Australian and UK insurance markets should be aware of the differences in each jurisdiction as knowledge is a critical element to the duty of disclosure. It will also call upon corporations to be sure of who is designated as a person with knowledge for the purposes of disclosure.

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19 s 4 (2)(a) and (b) of the IA UK.
20 s 4 (3)(a) and (b) of the IA UK.
21 Above n 26, 56.
22 Ibid.
23 s 4(8)(c) of the IA UK. The definition of "senior management" means those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised.
24 Above n 26, page 57.
25 Above n 15, 92 [8.45].
26 Above n 15, 94, [8.60].
27 Peter Mann, 'Mann's Annotated Insurance Contracts Act' (Thomson Reuters, 7th Ed, 2016), 180. See cases Permanent Trustee Australia Limited & Anor v FAI General Insurance Company Limited (in Liq) (2003) 214 CLR 514; A & D Douglas Pty Ltd ACN 008 404 180 v Lawyers Private Mortgages Pty Ltd ACN 010 556 751 [2006] FCA 520. Blackburn Low & Co v Vigors (1887) 12 App Cas 531; Blackburn Low & Co v Haslam (1888) 21 QBD 144.

ASIA

Further opening up of China's insurance market – it is happening!

By Daniel Öhvall, Asia

Removal of the restrictions on foreign equity ownership in the life insurance sector

Foreign shareholding in China's life insurance sector has been capped at 50%. This has given international insurers no choice but to accept an operating model where the local partners control and operate their China life insurance joint ventures.

The PRC State Council foreshadowed a relaxation of the ownership cap as early as in January 2017. However, no details or timetable were then provided. This was then followed on 10 November 2017, immediately after the China-US summit, by another announcement that foreign investors will be allowed to increase their shareholding of a Chinese life insurance company to 51% within a period of three years and 100% within 5 years.

However, this timetable has since been reduced significantly. On 11 April 2018, at the final day of the Boao Forum for Asia, the People's Bank of China and its Governor Yi Gang announced that the right to increase a shareholding to 51% of a life insurer will be implemented within a few months. China Banking and Insurance Regulatory Commission ("CBIRC") formally confirmed on 27 April 2018 that the foreign shareholding limit has been raised to 51% and that the cap will be removed entirely after three years.

The Shanghai Financial Services Office has announced that the Hong Kong headquartered regional insurer FWD has applied for a life insurance licence. According to media reports, FWD wishes to hold 51% of the new life insurance joint venture. This will be an interesting test case.

Access to the insurance brokerage sector

International insurance brokers have until recently only been permitted in niche markets such as servicing large corporations, reinsurance, international shipping, aviation and transport. On 27 April 2018, the CBIRC published detailed implementing rules for the insurance brokerage

sector. The new rules will allow existing foreign invested insurance brokers in China to apply for a new business licence which will allow them to offer a much broader range of services and potentially take on local insurance brokers in the fierce competition for the larger domestic customer base.

International insurance brokers who wish to set up a licensed subsidiary in China must meet the relevant tests including having 30 years of business history, total assets of USD 200 million and having had a China representative office for at least two years.

Already on 15 May 2018 Willis Towers Watson announced that it had received an updated licence enabling it to transact all relevant insurance brokerage business in China.

Access to the insurance agency sector

Chinese insurance agencies act on behalf of insurance companies in connection with the sale of insurance products, collection of premiums, claim investigations and settlement or other agency services approved by the CBIRC.

Foreign investors have largely been restricted from participating in this sector. The exceptions have been (i) making minority-investments not exceeding 25% and (ii) certain preferential arrangements for Hong Kong and Macao investors.

In its announcement on 27 April 2018, CBIRC confirmed that qualified foreign investors will also be granted access to the insurance agency sector. The implementing rules are yet to be issued.

Access to the insurance appraisal sector

As in the insurance agency sector, foreign investors' participation in Chinese insurance appraisal firms has been restricted to 25%. CBIRC's announcement on 27 April 2018 confirmed that this sector also will be opened up but to date the implementing rules have not been issued.

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"The team is able to provide top-level service in M&A insurance transactions given its deep knowledge of the insurance industry's legal and regulatory framework."

CHAMBERS UK, 2018

"Their attention to detail is good, they work well across practices and they have good knowledge of the insurance industry."

CHAMBERS ASIA-PACIFIC, 2018

"Very knowledgeable and thorough lawyers who don't leave us vulnerable to surprises"

CHAMBERS EUROPE, 2018

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