50 Predictions: Reinsurance

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Enterprise Act will impact reinsurers

Whether damages for late payment by insurers resulting from the Enterprise Act 2016 are covered by reinsurance will not always be clear cut. Cases where the reinsurer itself is liable to a reinsured for damages for late payment are expected to be rare. The bigger question is when reinsurers will be expected to indemnify a reinsured who has paid out such damages to the underlying insured. Disputes about this are expected as different approaches will be required depending on the circumstances. Where a reinsurer exercises claims control, it can expect to indemnify the reinsured if this has led to the liability. But if there are follow-the-settlements provisions, it may be reasonable for the reinsurer to exclude this liability, taking care to conform with the provision of the Insurance Act where it seeks to do so. It is unlikely that one approach will fit all with differences arising for particular classes of business or types of reinsurance.

Accumulated losses from corporate scandals may affect reinsurers

With the apparently ever-increasing number of high profile corporate scandals, there is a significant risk of accumulation of losses in particular sectors. Benchmark interest rate rigging in financial services, diesel emission cheat devices in the motor industry and bribery and corruption in sporting bodies are just a few of the headline-grabbing scandals we have seen recently. Aggregation issues are nothing new in the reinsurance market, and underwriting analysis and wordings have developed to protect against catastrophic accumulation of risk. Losses arising from a widespread corporate scandal, though, may aggregate in unexpected ways. At an insurance level, for instance, in the Directors' & Officers' market, market-wide problems are often excluded. However, that will not in itself stop an accumulation at the reinsurance level.

Untested cyber exposure will impact reinsurers

Drafting new wordings and adapting existing policies to include cyber cover has been a key focus over the last year and will continue to be so. This reflects significant activity in the London Market, where such cover is largely untested. It will take time for claims to arise and disputes to emerge where the parties' expectations over the cover provided are not aligned.

This will in turn impact reinsurers. The media is filled with reports of cyber breaches, and company directors across all lines of commerce must consider the necessity of cover. As and when claims come in, they have the potential to trigger reinsurance protections. The questions which arise will reflect reinsurance concerns more generally. Will the cover be back-to-back, especially in relation to exclusions? How will claims aggregate? Will conditions precedent in the reinsurance protections be satisfied? Will the reinsuring clauses align with the cover provided?

Inevitably some carriers and reinsurers will be in for unwelcome surprises and it is important to ensure that wordings are tightly drafted and coherent, and reviewedregularly, as this class of business matures.

Key developments in 2015/16

- Insurance Act 2015
- Enterprise Act 2016
- AXA Versicherung AG v Arab Insurance Group (B.S.C.)

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