

Legal & Regulatory Update



Welcome to the Legal and Regulatory Half-Year Update.

Our work in the first half of 2024 has centred on several key areas, including advancing Blueprint Two, all things sanctions, including engagement with US, UK and EU regulators, lobbying the Financial Conduct Authority (FCA) on consumer duty, and responding to 18 consultations. If you want more information on any topics covered or want to get involved, please [contact me](#) or [the team](#).

Sanctions

The team continues to liaise with regulatory bodies over the implementation of Russian sanctions, in particular, strengthening of the oil price cap and new sanctions with respect to the diamond trade.

There were specific discussions with OFAC and OFSI regarding the new sanctions clauses, LMA3100A and LMA3200. Having explained how the wordings work in various scenarios, OFAC and OFSI raised no objection. We held an open event with the lawyers who had helped us draft the clauses. Nearly 500 people attended. The recording of the session, as well as the FAQs and materials for the event, [can be found here](#).

We have prepared a “general documentation clause” to respond to the increasing trend in sanctions legislation to require insurers to be able to obtain documentation from the insured to demonstrate that there has been no breach of applicable sanctions. This is due to be published after the conclusion of consultation.

With Emma Hardaker and Richard Bronze, Head of Geopolitics at Energy Aspects, we gave oral evidence at the [Treasury Select Committee](#) on the effectiveness of UK sanctions imposed on Russia following its invasion of Ukraine. Other things discussed were the implementation of the oil price cap and its shortcomings, as well as the wide use of LMA sanctions clauses. We are waiting to see how the committee will be reconstituted by the new government.

Blueprint Two

The team has been fully engaged with Blueprint Two. We've been collaborating with the other areas of the LMA, and we commissioned the influential Clifford Chance Report, which answered

the question, “What do managing agent boards need to do to agree to cut over for Blueprint Two?” This was particularly in light of the TSB case, where it and its Chief Information Officer were fined for failures when they changed their IT system, which resulted in a period of chaos for their customers.

One response to the findings of the Clifford Chance report was the creation of the “Data Room”, populated with artefacts to provide evidence to assist managing agents when making the decision to cutover.

In conjunction with Bird and Bird, we also completed our review of the Digital Processing Service Agreement (DPSA), including assurance that all material outsourcing requirements had been addressed.

We are now reviewing the joint Material Outsourcing Notification (MON) and the Termination Letter, which terminates the legacy Velonetic agreements and triggers the start of the DPSA. In May, we held a Blueprint Two for Beginners session for those in legal, regulatory and risk roles. Throughout June, we also presented at education sessions geared specifically toward INEDs, Company Secretaries, and committee chairs.

Velonetic has requested that firms lodge their queries on the DPSA and termination letter before the end of September. At this point, Velonetic will request the completion of certain information that will enable Velonetic to speed up the onboarding process.

It is intended that at this point in late September, all managing agents can focus on testing and leave the contracts to one side until the PRA's review of the MON. Velonetic requests that other firms (notably brokers) target the signature of their contracts by the end of September. Broker contracts are necessarily different from insurer contracts and, from a regulatory perspective, are overseen by the FCA.

Only when the PRA review of the MON and the DPSA has been completed should the contracts (both DPSA and Termination Letter) be signed at such time as managing agents conclude that it is appropriate to do so.

Environmental, Social and Governance (ESG)

In the wake of the collapse of the Net-Zero Industry Act (NZIA), the Competition and Markets Authority (CMA) released guidance regarding its approach towards companies that wish to collaborate to promote sustainability. While there was no misapplication of relevant sections of the Competition Act 1998, they emphasised their open-door approach in discussing whether proposed agreements may benefit from potential exemptions from the Chapter 1 prohibition under s9 of the Act. You can read our article on the CMA's approach [here](#).

There has been continued focus on regulators' approach to diversity, equity and inclusion (DEI). The FCA and PRA continue with their work with the expectation that the policy on Non-Financial Misconduct will be published in H2. We have also responded to the Insurance Association of Insurance Supervisors (IAIS) consultation on the application paper for a more global approach to DEI.

Artificial Intelligence

The EU AI Act will shortly be coming into force. The Act is a legislative proposal to regulate artificial intelligence within the EU to ensure ethical and safe use. It classifies AI systems based on risk – unacceptable, high-risk, limited risk and minimal risk – imposing stricter requirements and oversight on high-risk applications. The Act seeks to promote innovation while safeguarding fundamental rights and addressing potential harm from AI technologies. [We published an article](#) detailing these categories and comparing and contrasting the approaches taken in the EU, UK and US in relation to the regulation of AI.

FCA Lobbying

The FCA recently published its eagerly awaited [discussion paper](#) on the regulation of commercial insurance. This follows extensive lobbying by the LMA and other market associations, including a [joint letter from the LMA and IUA to the FCA](#) to elaborate on concerns relating to consumer duty and the approach to regulation of Lloyd's and London's wholesale insurance market.

As part of the lobbying, we arranged a second roundtable discussion with the FCA to consider further thoughts that they had in terms of reducing the regulatory burden and duplication. We have been promised that they will be following up on proposals with a discussion paper on proposals in Q3 2024. The FCA has now reached out to other stakeholders. Our liaison continues. A link to an article on what we hope to see in this discussion paper [can be found here](#).

French Approach to Exclusion Clauses

In June 2023, the French Supreme Court handed down a decision on applying French law provisions on exclusion clauses. The Court ruled that the exclusions in the policy issued to a Dutch insured and subject to Dutch law were subject to French law exclusion clause requirements (i.e. the fact that exclusion clauses have to be specific and prominent). The reasoning behind the decision was that exclusion clauses are considered a matter of French public policy, and therefore, compliance is mandatory, and this resulted in the Court deciding that insurers were unable to rely upon the exclusions in defending the claim brought by the French claimant.

We established a working group of wordings and legal professionals to discuss the ramifications for policies issued by London insurers that might cover insureds doing business in France. Nicolas Bouckaert and Alex Potts KC attended this meeting, and we are now collaborating with the French Association on our approach to this issue. Please contact [Ray Koh](#) if you would like to discuss this further.

Trainees

We welcomed [Dorottya Tornai](#) to our team as a new legal trainee. Our other trainees have been on secondment to the following firms during the last six months: Probitas, TMK, AIG, Talbot, AXA XL, Brit and Beazley.

Both [Tara Allen](#) and [Faizan Mahmood](#) are due to qualify in September 2024 and have secured full-time positions in the market.

We are always looking for firms interested in taking a trainee for a placement, and encourage any firm interested to get in contact with [Arabella](#) or [Ray](#).

Committees

Following last year's successful launch of the LMA's Environment and Climate Litigation Committee, we have held two more meetings this year, with positive responses from members and press coverage in [Insurance Insider](#). Newsletter-style committee meeting reports have been circulated to all interested committees within the LMA. They will be available on the website shortly.

We increased the membership of the Legal Committee and welcomed Alex Kershaw (Aspen), Jo Howie (Travelers), Tammy Lewis (Tokio Marine Kiln) and Christian Taylor (SiriusPoint).

The Data Protection working group, comprised of LMA, IUA, LIIBA members and external data protection lawyers, has completed its review and update of the Market Core Uses Notice; a bulletin and market briefing will follow shortly. The working group is currently updating a number of market agreements to reflect data protection best practice and recent developments.

Talks

The LMA's Lawyers' Forum continues to provide a valuable platform for our members to discuss pressing legal issues the market faces. The Forum heard a talk on business interruption claims related to COVID-19 and the effectiveness of virus and microorganism exclusion clauses in both the UK and US and a separate talk on [the challenges of enforcing arbitration clauses in the US](#). Special thank you to Oliver Saunders and Charlie Andrews of DLA Piper, Marshall Redmon, Jay Sever and Paige Jones of Phelps Dunbar and Chris Paparella of Steptoe for their contributions.

Europe

We have been involved in considering the amended Retail Investment Strategy in the EU and the implications of additions concerning the use of third-country branch models. This will become an important topic once the new EU parliament and Commission are up and running and trilogue negotiations commence. Of concern is the introduction of a requirement that third-country branches of intermediaries should primarily deal with business in the third country, which would impact broker models introduced following Brexit.

Consultations

We responded to the following formal consultations:

- UK Space Agency – Consultation on Orbital Liabilities
- PRA/FCA – CP26/23 & CP23/30 – Critical third parties to the UK financial sector
- PRA/FCA – CP4/24 & CP24/6 – Regulatory fees and levies: Rates proposals for 2024/25
- PRA – CP21/23 – Approach to authorisation and supervision of TCBs
- PRA – CP2/24 – Solvent exit planning for insurers
- PRA – DP2/23 – FSCS General Insurance Limit
- PRA – Proposed changes to the Bank of England's approach to enforcement following FSMA
- FCA – CP23/22 – Regulatory fees and levies

- FCA – FS24/1 – Competition impacts of big tech
- FCA – CP24/02 – FCA’s new approach to publicising enforcement investigations
- FOS – Plans and budget consultation
- HMG – Call for evidence – Arbitration Bill
- EIOPA – Consultation on greenwashing in insurance and pensions
- IAIS – Public consultation on climate risk supervisory guidance
- IAIS – Application paper on supervising diversity, equity and inclusion
- Law Commission – Consultation on aviation autonomy
- Ministry of Justice – Consultation paper on reforming the Law of Apologies
- HMT – Consultation on improving the effectiveness of money laundering regulations

All our responses can be found on [our website](#).

Arabella Ramage

Legal Director

Lloyd’s Market Association

August 2024