

The Law Commission and Scottish Law Commission
52 Queen Anne's Gate
London
SW1H 9AG

FAO: David Hertzell, Law Commissioner for Commercial and Common Law

By email (commercialandcommon@lawcommission.gsi.gov.uk) and post

2 July 2014

Dear Sirs

Re: Insurance Contracts Law draft Bill

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This letter in respect of the Insurance Contracts Law draft Bill has been prepared by the CLLS Insurance Law Committee (the "Committee").

The Committee has reviewed the Insurance Contracts Law draft Bill dated 17 June 2014. We would like to record our general support for the comments made by the British Insurance Law Association ("BILA") in its letter dated 18 June 2014 to the Law Commissions, and have little further to add to these comments.

The Committee does wish to make the following additional comments on the draft Bill:

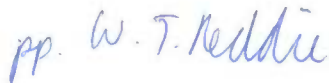
1. We support BILA's comments on clause 6(3)(b), and recommend that the practical effect of this clause is considered carefully before it is legislated.
2. For the following reasons, it is unclear whether the Bill applies to reinsurance:
 - (a) The Bill does not mention reinsurance.

- (b) The Bill draws a distinction between a 'consumer insurance contract' and a 'non-consumer insurance contract'. The inference is that the Bill does not apply to reinsurance because it applies to the latter and, to a lesser extent, the former. We do not consider that a reinsurance contract can easily be regarded as a 'non-consumer insurance contract'. 'Insurer' is also defined as the party to the contract who is the insurer or would be if the insurance were entered into.
- (c) The Bill is not intended to be a codifying statute as it expressly seeks to change the common law and the Marine Insurance Act 1906 (the "MIA"). There would be no reason, as there was with the MIA, to apply it to contracts that it does not govern.
- (d) Part 2 applies to 'non-consumer insurance contracts' only. In circumstances where 'non-consumer insurance contracts' are contrasted with 'consumer insurance contracts', it seems a stretch to say that Part 2 is intended to apply to reinsurance.
- (e) We are unsure whether parties would consider that clause 14 was intended to apply to reinsurance.
- (f) We question whether the transparency requirements in Part 5 would be appropriate for reinsurance.

We understand from previous discussions with David Hertzell that the Bill is intended to apply to reinsurance but, in light of the above, we recommend that this is clarified beyond doubt in the Bill.

We trust that these comments are found to be helpful, and would welcome further opportunities to provide our input on the draft Bill.

Yours faithfully



Richard Spiller
Chairman
CLLS Insurance Law Committee

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**THE CITY OF LONDON LAW SOCIETY
INSURANCE LAW COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Richard Spiller – Holman Fenwick Willan LLP (Chair)

Michelle Bramley – Freshfields Bruckhaus Deringer LLP

Simon Brooks – Eversheds LLP

Robert Carr – Greenwoods Solicitors

Helen Chapman – Hogan Lovells International LLP

Beth Dobson – Slaughter and May

Christopher Foster – Herbert Smith Freehills LLP

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Simon Cooper of Ince & Co International LLP was also involved in preparing this letter.