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SRA Risk Outlook

The Solicitors Regulation Authority (“SRA”) has published its revised Risk Outlook - see [here](#). Firms should consider using this to map their own risk when developing their risk registers. We have advised major US, UK and European firms on their risk registers.

The SRA has also published papers on group contagion (of relevance to international firms and Alternative Business Structures), cloud computing and financial difficulty.

Legal Services Board publications

We mentioned the Consumer Panel Advice on Financial Protection Arrangements in our July 2013 Risk Update. The Legal Services Board has now published its response - see [here](#).

It has also published research on Consumers’ Valuation of Regulation - see [here](#).

Anti-money laundering (“AML”)

The National Crime Agency (NCA) replaced the Serious Organised Crime Agency on 7 October 2013. Next year, the Fourth EU Money Laundering directive will require firms to have written AML/Counter Terrorist Finance (“CTF”) risk assessments, policies and procedures, and a process for testing their efficacy. We have been advising a number of firms who have made a start on this.



Picture: SRA’s office in Birmingham

CROOK STREET

Problems with disbursements

Two issues arise. First, the Solicitors Regulation Authority’s Financial Stability reviews have highlighted a number of firms which have been delaying in paying counsel, medical experts and other professional disbursements, instead retaining client money in office account. In some cases this has been achieved by delay in putting cheques in the post. However, there may be questions of interpretation as to whether these are properly ‘professional disbursements’ in all cases: the definition in the SRA Glossary is not all-encompassing.

Secondly, using the term ‘disbursements’ in client care documents and bills for what are properly office overheads continues to be an issue; it is another defined term. For some years the problem has been well known in relation to telegraphic transfer fees, but it is equally applicable to postage and internal copying charges. Be warned!

Emerging markets

An [article in Bloomberg Business Week](#) (21 November 2013) warns that ‘bad loans are haunting banks from Turkey to South Africa. India is injecting money into state-run lenders facing a huge rise in soured debt, and Chinese banks have been told to increase provisions against lending losses.’ It adds that the problem is understated in India. When loans go bad, claims usually follow. Careful thought should be given to protecting the firm when transmitting funds and ensuring that in so far as risk cannot be avoided, it remains with a consenting client.



Emerging markets: The Grand Bazaar, Istanbul

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Event

Frank Maher will chair Managing Partner's 10th Annual Risk Management for Law Firms conference in London on 3-4 December 2013. Sue Mawdsley will speak on new developments in Anti-Money Laundering. For further details see [here](#).



Picture: An unrated insurer in Gibraltar takes a break from reviewing claims reserves

Mr Hariram Jayaram

We were saddened to learn of the death on 9 November 2013 of Mr Hariram Jayaram, founding partner of Malaysian firm RamRais & Partners, a distinguished Advocate and Solicitor who welcomed us warmly at his offices in Kuala Lumpur.

Professional indemnity roundup

The last fixed date renewal came and went with a flurry of activity at the end, inspired by the Balva-Berliner crisis much-reported in the press. Fewer firms than expected met the Doomsday scenario of failing to obtain replacement cover – but at what cost?

As we predicted, the renewal was relatively benign for large firms, though at least three top 100 firms had severe problems to our knowledge. The real distress was at the smaller end of the market.

Those firms which failed to obtain cover obtained a further 30 days' cover in the Extended Indemnity Period ("EIP"), during which they could obtain cover elsewhere, provided it was backdated to 1 October 2013, followed by 60 days' cover in the Cessation Period ("CP"), under which they are supposed to close down in an orderly fashion, not taking on new business.

There will be heavy reliance this year, as last, on unrated cover, from which we have witnessed many problems. The following is a selection. Solicitors are the only profession with dependency on the unrated market for cover - a consequence of the breadth of cover.

First, firms are unhappy about paying premiums to the liquidator of Balva for cover in the EIP and CP, and for the compulsory six years' run-off. Balva must survive more than six years – from the writer's experience it may take 20 years to run off the claims. There may be issues around whether the liquidator is in fact entitled to charge additional premiums.

Successor practice liability has loomed large in merger talks between firms without cover and those whom they hope will acquire them. In theory, the problem can be avoided by the closing firm electing to go into run-off and paying the run-off premium but some insurers' policy wordings suggest that firms cannot make such an election after 1 October. Space does not permit a full discussion.

We have covered the liquidation of Lemma in previous issues. The Financial Services Commission ("FSC") in Gibraltar has been investigating Lemma and reached a settlement agreement with one individual who was neither a director nor employee but provided services as Finance Manager under a contract. While he does not accept the FSC's findings, they concluded that he –

1. participated in an arrangement whereby Lemma Europe furnished to the FSC Audited Financial Statements and Annual Statutory Returns that were false and that contained incorrect information that purported to demonstrate that the Company was in compliance with solvency requirements set out in Gibraltar laws and regulations; and
2. failed to play his part in establishing appropriate controls to ensure that all liabilities or potential liabilities notified to Lemma Europe, in particular Outstanding Loss, IBNR [*Incurred But Not Reported*] and IBNER [*Incurred But Not Enough Reported*] reserves and provisions, were recorded promptly and accurately in the Company's financial statements.

The FSC continues its investigation into the role of other individuals. Among points identified in "Why insurance companies fail," a working party report given at GIRO 2002 under the chairmanship of Roger Massey, were outsourcing and delegated management authority, over-reliance on reinsurance, under-reserving and unforeseen claims, all features of Lemma.

Quinn was the first unrated insurer of solicitors to fail. Initially, the joint administrators reported to the High Court that Quinn would not have to avail itself of the Insurance Compensation Fund (set up by the Government to protect all policyholders in the event that an insurer could not meet its liabilities). That proved over-optimistic: to date, the Compensation Fund has approved drawdowns of €1.118 billion. The levy on Irish general insurance policies is expected to continue until 2030. Such a change in the position does not augur well for Balva policyholders.

European Risk Insurance Company ("ERIC"), an unrated insurer which has not failed, was briefly involved in the solicitors' market. **McManus Seddon Runhams v European Risk Insurance Company** [2013] EWHC 18 (Ch) arose from ERIC's rejection of a block notification of circumstances in an email described by the Deputy Judge as 'clearly wrong', 'misconceived and at odds with the case law'. The result of an appeal heard in October is expected imminently. ERIC has recently announced a change in its claims handling arrangements. We have advised many firms on block notifications.

For further information on any of the above, please contact info@legalrisk.co.uk

RISK UPDATE