

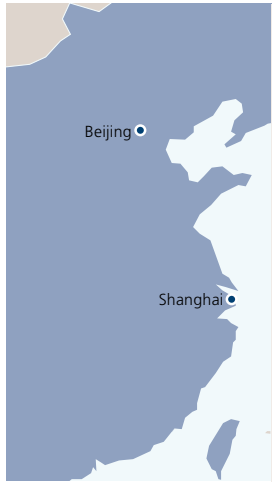
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# Advising the insurance industry: insurance regulation



March 2014



# CMS regulatory coverage across insurance sectors

The team provides support to insurers and risk carriers but also acts for brokers and other intermediaries (including those selling retail insurance as a secondary activity). Our lawyers are familiar with broad range of insurance sectors and the regulatory issues involved in each.

Although the insurance sector was not a cause of the financial crisis and proved relatively resilient, it has not escaped the subsequent move to tougher more intrusive regulation. This can be seen in both prudential and financial regulation and in the regulation of insurance sales.

The CMS experts are closely involved with these developments at the level of both the EU rulemaking and the national supervisors. They are very familiar with the development of the Solvency II rulebook and the continuing debacle over the timetable for these new rules. We advise on many aspects of the pre and post S2 requirements as well as reforms in the broker sector in areas such as conflicts of interest, client money, remuneration structures and the debate over commission disclosure under IMD II.

We advise on the regulatory regime for:

- Personal lines and all forms of retail insurance products
- Commercial insurance
- Wholesale business including subscription markets and reinsurance
- Both life and general insurers
- Both protection and investment products.

We also have in-depth expertise on regulation that impacts the assets, investments and balance sheet of insurers including the regulatory environment for our specialist transactional assignments such as longevity risk transfer and alternative lending.

## Our insurance sector regulatory team

At CMS, we pride ourselves on putting the needs and wants of our clients first. Our clients benefit from our lawyers’ in-depth knowledge of the insurance industry. Our deep-rooted insurance sector expertise enables us to deliver relevant, practical and commercially astute legal solutions to our clients.

Lawyers in our group cover a large range of contentious and non-contentious areas:

- Corporate
- Regulatory
- Commercial
- Competition
- Employment
- Real Estate
- Finance and lending
- Outsourcing and procurement
- Intellectual property
- Information technology and communications
- Tax
- Claims
- Product development

With over 2,800 lawyers, across 56 offices, CMS is the largest European law firm. Our insurance group is truly international and we have a great understanding of the cultural and business variations that apply across the territories that we cover. We combine strong local presence and capability with international delivery. This enables us to deliver services where our clients need it. Leading domestic and international organisations work with us because of our legal expertise and industry sector knowledge, combined with our extensive geographical scope.

This document focuses on our capability in the field of insurance regulation and our ability to assist the insurance industry in these areas.



They (CMS) know the (insurance) market and they know the law,” making it a “real heavyweight firm” in this field.

*Chambers and Partners, 2013*

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## Advisory – prudential and authorisation

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We handle assignments in these areas for insurers, brokers and other intermediaries. We advise on new operations and start up and on the development of the optimum corporate and group structures for cross border/international insurance.

We handle or support applications to the regulators for authorisation and a wide variety of other approvals. We advise on a wide range of prudential issues such as corporate governance, solvency, capital requirements and outsourcing.

Our experience includes:

- Assisted two large London based insurers in all corporate, regulatory and compliance issues associated with the establishment of their subsidiary operations in France, including liaising with the French Control Authority on all aspects of compliance with the regulations.
- CMS advised a major insurer and life and pensions provider on its multinational outsourcing of sales, customer relationship management, and complaints handling to a leading financial services outsourcing provider.
- Advised a major international insurance company on the establishment of an insurance business in the Czech Republic, as well as on insurance and social security (pension, sickness, unemployment insurance and benefits) regulation.
- CMS advised a large UK IFA on a pan-European group reorganisation to de-subsidiarise closing subsidiaries in EEA member states and transferring business to local branches of one entity operating under the single passport under MiFID.
- Advising foreign insurers on establishment of branches & subsidiaries in Belgium including all dealings with Belgium regulators.
- A reduction of capital by a UK authorised insurer, involving innovative creditor protection solutions as well as accommodating regulatory and tax imperatives.
- Colemont Global Group Limited on establishing operations as an insurance and re-insurance broker in Bulgaria, including representing Colemont before the competent regulatory authorities.
- Working with insurers on optimising capital management. We assisted a general insurer in obtaining an FSA rule waiver enabling it to save over £400 million in capital.
- Advising foreign – EU and non-EU –insurance companies on German regulatory issues such as the establishment of permanent representatives, appointment of the main agent (Hauptbevollmächtigter) and opening of German branches.
- Advising the Willis Group in Spain on the incorporation and authorisation of a new insurance intermediary to carry on insurance intermediation services linked to the affinities business;
- Reviewing insurers' governance. We advised one insurer on its overall governance framework, another on the governance of its with-profits funds and a third on the restructuring of its governance and organisational structures. We have also performed board effectiveness reviews for insurers.
- AIG United Guaranty – advised on lobbying the Hungarian regulators for the recognition of mortgage insurance as a credit risk mitigant under CRD rules.
- Non EU based insurers and brokers - advising non EU based insurers and brokers on the Dutch regulatory and tax issues of cross border outsourcing of back office activities and claim handling.

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## Advisory – insurance products and distribution

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Our experts advise on the rules impacting the design, distribution, sale and claims regime for a wide variety of insurance products including most types of personal line products that are subject to the retail sales rules. We have teams that combine product and coverage expertise with regulatory know how; they provide insurers with a holistic review of insurance products, wordings and distribution arrangements to mitigate both regulatory and coverage risk.

Our insurance lawyers handle a wide variety of insurance distribution arrangements acting for both insurers and for intermediaries; they handle the distribution contracts and advise on the regulatory regime. We deal with cross-border sales and provide teams to advise on distribution across multiple jurisdictions.

Our experience includes:

- Advised an international financial services organisation on the distribution of insurance services in Austria.
- CMS regularly advises financial services companies on expanding their distribution channels and developing new products for European markets. We have handled many regulatory assignments of this kind, for clients such as MetLife, and XL Insurance. These frequently involve a large number of jurisdictions.
- Acting for a variety of insurers, including CAN Europe, ACE , Beazley AGF and Chubb, on policy reviews and on a D&O drafting liabilities policies for use in Belgium.
- CMS advised a major life office on the establishment of its Retirement Portfolio product (including guaranteed growth funds, SIPP and income withdrawal options) and on the distribution of variable annuity products around Europe.
- Organised a complex workshop for a leading international life insurance provider on all aspects of regulatory issues regarding running a life insurance business in the Czech Republic.
- Advising a global life group on the development of a variable annuity product and its introduction into new European territories.
- Advised a consumer goods vendor in respect of preparation of a project for the sale of insurance/extended warranty to consumers upon the sale of consumer goods to consumers, including regulatory issues related to insurance brokerage and drafting of agreements with brokers and insurance company.
- Advising the legal team of a major insurer in relation to the wording of consumer insurance policies, including travel, death plans, sports cover and credit card products. In various instances, we were also asked to provide input on regulatory issues and to draft Key Features Documents.



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## Advisory – compliance

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Our insurance regulatory lawyers provide compliance advice to many firms in the insurance sector and assist in house counsel, compliance departments and business teams. CMS has a long track record in providing compliance advice on cross-border and pan-European assignments using a regulatory team from across the CMS network. We provide regular compliance advice, expert opinion and benchmarking.

Our experience includes:

- Helping insurers deal with regulatory events. We have prepared the senior management of a dozen insurers for FSA ARROW visits, have coached numerous senior managers for FSA SIF interviews and assisted with a change of control to which FSA was raising objections.
- Regulatory advice encompassing advice on compliance and enforcement work in the Netherlands on issues of EU passporting, permanent establishment (in cooperation with tax department) and policy drafting.
- Reviewing insurers' adequacy of compliance. We reviewed the call centre processes of a major UK insurer to assess the impact of the insurance conduct of business rules on the call handling times for its general insurance products; we have also carried out TCF reviews for several major retail firms.
- Helping insurers improve regulatory compliance. We have drafted countless compliance manuals and procedures, conducted staff training on a variety of topics and assisted in establishing and reviewing systems and controls.
- Dealing with specific issues, such as advising an international life assurance group on its privacy policy, handling of customer data and data export; and advising an insurer on the adequacy of the client money protections offered on its wrap platform.
- Project managing regulatory advice in 14 jurisdictions for a major insurance company.
- Advising a major insurer in relation to legal, regulatory and tax issues involved in structuring a multinational programme co-ordinated across eight jurisdictions and calling upon the expertise of CMS offices in Germany, Italy, Spain, the Netherlands and Switzerland.
- First Title Insurance and Land America (Europe) with respect to its contemplated offering of title insurance products in Bulgaria.
- Advising an insurer on global schemes, differences between master policy and local policies, status of DIL/DIC clauses.
- Advising a UK-insurer regarding its business in Germany on the requirements which according to German law have to be fulfilled to have an "Insurance Business" in the sense of the German Insurance Supervision Act (especially on whether Debt Cancellation Products are "Insurance Businesses").
- We have for a number of years advised insurers and intermediaries with regard to issues arising out of travel insurance and books of travel business. This includes scheme business and direct consumer business, as well as advising the bond market who participate in ABTA/IATA business.
- Advising a number of life insurance companies regarding development, draft and review of innovative life insurance products e.g. MetLife, Sun Life of Canada, Canada Life, Continentale, UBS, Genworth.



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## Regulatory support for transactional assignments

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Our insurance regulatory specialists are often a key component in our teams for insurance sector transactional work. They are particularly important for clearance and structuring advice on insurance M&A transactions, mergers and joint ventures.

They also advise on the optimum group and corporate structures for insurance operations across Europe. Our experts handle major international insurance carrier re-organisations including those driven by capital efficiency ahead of Solvency II. These often involve extensive insurance business transfers where we are familiar with court and regulator approval processes.

Our experience includes:

- Advising MetLife on its \$15 billion acquisition of ALICO from AIG in seven European jurisdictions (Bulgaria, Czech Republic, Hungary, Romania, Serbia, Slovakia, and Ukraine).
- Advising Canada Life Assurances Europe Ltd. On the take-over of the German wing of Prudential with special focus on the assumption of the portfolio and regulatory aspects as well as on the validity of range of products on the German market
- "Route to market" joint ventures, particularly for brokers, joint venturing with intermediaries in other jurisdictions and in other markets (such as real estate services).
- Advised a major international insurance group on its joint venture with a Czech insurance company to establish one of the Czech Republic's first insurance brokers with foreign participation.
- Acting for a financial insurance company on the acquisition of business (life and general) involving three insurance carriers (one in run-off) established in different member states with branches in a number of other countries - involving CMS offices in Luxembourg, Germany, Italy, Spain, the UK and elsewhere.
- A major regional insurance company with respect to an extensive legal due diligence review of a Bulgarian financial and insurance services group in the context of a proposed acquisition of that group.
- In the insurance sector, we have significant experience in Solvency II driven reorganisations and other insurance related transactions. 15 of our network offices handled what we believe is the largest pan-European insurer reorganisation to date.

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## Regulatory investigations, enforcement and disputes

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We assist insurers, brokers and insurance intermediaries when they are faced with regulatory investigations and enforcement action and with Ombudsman claims and other disputes. CMS has advised on some of the major contentious issues in the insurance sector, particularly in the UK market where the investigation and enforcement regime is perhaps most developed.

We help firms mitigate the risk of adverse enforcement action and of large compensation claims. Our experts are familiar with both their national regulatory regimes and with their domestic court processes. We are able to field a team of national experts for cross-border cases involving multiple jurisdictions.

Our experience includes:

- Firms in over 350 enforcement proceedings brought by the FCA, its predecessors and overseas regulators, on issues ranging from market abuse, fraud and handling conflicts through to appointment of a skilled person and retail mis-selling.
- Defending a major UK insurer in the investigation and enforcement proceedings started by the Spanish insurance Regulator (DGS) in respect of issues including marketing structures and sale process
- Assisting a life insurer in resisting an FSA investigation into its derivatives trading; and assisting another insurer in an FSA investigation into the role of its non-executive directors.
- Dutch insurance and EU based insurance – contentious cases ranging from regulatory (insurance or warranty) to plain insurance work/ interpretation of contracts
- An international brokerage company on an internal investigation of its local management on issues of non-compliance with Bulgarian anti-corruption and money laundering laws.
- The major fund manager and major broker involved in FSA's longest and largest-ever investigation, into split capital investment trusts, which resulted in no findings of regulatory misconduct.
- Advised a US Hedge Fund before French courts in the context of the breach by French listed issuers of its regulatory obligations
- A number of insurers on innovative product restructurings to avoid the need for FSA regulation. This included a large distributor of Chartis products. We have designed similar structures for other European markets.
- Representing one of the largest Czech insurers in administrative proceedings commenced by the Czech Insurance Market regulator against the insurer.

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## Coming soon – the new CMS RegZone

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RegZone is a unique on-line guide to financial services regulation and reform. It has been designed by CMS regulatory experts - for use by CMS lawyers and by their financial institution clients.

RegZone will provide coverage of regulatory developments in the insurance sector and includes:

- An insurance topic page with news updated daily and a mix of reports, alerts, training materials and regulatory data delivered via our new regulatory toolkit.
- The daily news feed written by RegZone's own researchers who monitor developments every day.
- RegZone e-Alerts delivered by e-mail as they are published.

If you have any questions or if you would like to be notified by us when the RegZone website goes live please send an e-mail to [regzonesupport@cmslegal.com](mailto:regzonesupport@cmslegal.com).

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