



Association Internationale de Droit des Assurances
International Insurance Law Association
Associazione Internazionale di Diritto delle Assicurazioni
Internationale Vereinigung Versicherungsrecht
Asociacion Internacional de Derecho de Seguros

12th AIDA CLIMATE CHANGE WORKING PARTY MEETING

Main Theme: *“Insurance Challenges presented by Climate Change post-COP 21”*

**15:00 hrs-17:00 hrs - THURSDAY 16 JUNE 2016
THE UNIVERSITY OF HELSINKI, FABIANINKATU 33 HELSINKI**

MINUTES OF MEETING

1. Welcome and Introduction

- 1.1 Tim Hardy as Chair of the AIDA CCWP welcomed everyone, thanking Taisto Hujala and all at the Finnish Insurance Lawyers Association and at the University for the staging of the event and our meeting and for such an enjoyable celebratory dinner the previous evening.
- 1.2 As the middle session of the meeting was to be assigned to an Open Forum discussion all attending were invited to identify on slips being circulated both their own identity as well as any question they wished to ask or contribution they wished to make during that part of the meeting. A register of attendance was also circulated to permit new attendees to be added to the WP's email list. A number of apologies had been received, as well as materials advanced and other contributions produced for the benefit of the CCWP. All presentations and materials would as ever be posted on the AIDA website as soon as possible.
- 1.3 Before concentrating upon insurance challenges in the wake of last December's COP 21 a few headline points about its significance were perhaps timely. First, in establishing the agreement to which all 195 countries were to become eventually legally bound there is a shift away from mitigation (reducing the impact of inevitable emissions) towards more practical climate risk management. By a third pillar of climate policy, "Loss and Damage", historical responsibility for past emissions is recognised and efforts directed to establishing how best finance and insurance may be applied to enable all countries to move towards greenhouse gas neutrality by 2050 and assist those countries least able to reduce emissions or recover from severe unexpected impact. Paragraph 49 of the Paris Agreement put a priority on establishing a "clearing house for risk transfer" (exchanging information about insurance and risk transfer and enhancing circumstances where risks cease to be "uninsurable").
- 1.4 To assist under-resourced countries which were most vulnerable the G7 InsuResilience Initiative saw USD 420m pledged to increase the availability of risk transfer and insurance solutions being made available for over 400m people by 2020. The widespread recognition of the role both traditional and innovative forms of risk transfer and insurance may play in tackling the impact of Climate Change has never been more manifest.

2. **FIRST PRESENTATION:**

Climate Change in the Nordic Region – post-COP 21 (Esko Kivisaari, Federation of Finnish Financial Services (FFI) – Finland)

Response of governments, insurers, financial service providers and regulators to the impact of Climate Change. Nationally determined contributions of Finland and Nordic neighbours compared and contrasted. Major challenges for insurance to play effective role.

- 2.1 The financial protection afforded by the pooling of risks by insurance is long-established, but in the context of Climate Change it is critical to monitor the evolution of the number of catastrophes, the comparison of uninsured and insured catastrophes and the breakdown of past insured catastrophe losses. Mitigation of the impact of Climate Change is increasingly important in the financial sector agenda.
- 2.2 Climate is distinct from weather and requires measurement over many years: a challenge to scientists, governments and insurers alike and projections are necessarily inexact. In Finland projected changes between now and 2040 bring mixed consequences for the country and its inhabitants. Rising temperatures in winter and greater and more intense periods of precipitation are foreseen. So, too, sea level rises and reduced ice cover. The Nordic Insurance Industry issued a statement in 2009 pledging active involvement in encouraging mitigation and adaptation efforts, spanning the development of climactically sustainable products in the life and non-life sectors, devising appropriate investment strategies and developing loss prevention techniques.
- 2.3 By exceeding the strategic business planning time horizon and those also of politicians, authorities and central banks, climate risks pose particular challenges and involve more than simply catastrophic losses. A general increase in precipitation can impact upon all types of physical risk. Liability exposures can materialise as failures to address the impact of climate risks become manifest. Abrupt changes in asset valuations can result from the transition from carbon dependence to renewables.
- 2.4 The insurability of such climate risks depends upon insurers acquiring the expertise and forms of modelling to equip them to rate and cover even existing classes to cope with potentially unimagined losses. Affordability of investment in loss prevention or new products is threatened by the fact that according to the UNCTAD World Investment Report of 2014 different investments connected to the SDG (Sustainable Development Goals) for infrastructure, clean energy, water, sanitation, agriculture etc require annually UDS 5-7bn, not necessarily additional investment, but possibly involving reductions in existing investments.
- 2.5 An important initiative is the establishment in connection with COP 21 of an FSB (Financial Securities Board) task force chaired by Michael Bloomberg which aims to develop consistent, comparable, reliable and clear disclosures around climate-related financial risks. An index which has afforded valuable guidance in the past is the Actuarial Climate Index monitoring climactic changes/physical impact of various kinds.
- 2.6 A number of further specific challenges apply to insurance: correlation/causality; adverse selection; moral hazard. The target of COP15 to limit global warming to a 2° increase may have been ambitious, but nonetheless essential.

3. **OPEN FORUM – Chaired by Tim Hardy (UK) and Chris Rodd (Australia)**

- 3.1 The Open Forum session commenced with questions being posed of Esko Kivisaari arising from his presentation and with reference to issues of particular pertinence to the Nordic region/markets.

- 3.2 Despite 30-40 minutes having been originally set aside for the Forum to discuss a wide range of possible topics from flood protection and coverage, air pollution, microinsurance and topics the subject of previous sessions (such as agricultural risks/food security and fracking) and future areas of activity for the CCWP, a very wide-ranging discussion with contributions made from many present had to be curtailed to permit time to receive the second formal presentation of the meeting, which served to illustrate some specific challenges being faced in some countries post-COP 21.
- 3.3 Topics discussed included the implications of flood-mapping and other modelling techniques involving satellite imagery which had the potential both to make risk assessment more geographically specific, but also raise alarms in terms of property values and planning considerations, particularly for high-value urban areas potentially vulnerable to projected long-term sea level rises or surges.
- 3.4 Before handing over to Gloria Faria, Tim Hardy specifically drew attention, among other materials he had received, to the 51-page Report prepared specifically for the benefit of the meeting and the CCWP by the Mercosur Group: *Post-COP 21 Actions – Argentina/Brazil/Chile/Peru/Uruguay*, which would be made available on the website.

4. **SECOND PRESENTATION:**

Rupture of Fundão Dam in Brazil (Nov 2015) – Maria da Gloria Faria (CNseg, Federation of Insurance Companies – Brazil) (with the help of Pery Saraiva Neto, Advogado, Brazil)

Environmental, Insurance, Regulatory Implications for Mining Operations in post-COP21 era

- 4.1 The rupture of the Fundão Dam (operated by Samarco Mining S.A., controlled by Vale S.A. and by BHP Billiton Brasil Ltda) and its consequences last November had a significance well beyond the tragic loss of life and property in the area most immediately affected. The biggest tragedy in the history of Brazilian mining had caused a flood of 34m cubic metres of mud to cause major environmental devastation to an area of 680km and to three rivers.
- 4.2 Over 320,000 people were directly affected – 18 of them killed – with over a thousand animals perishing and major damage caused to water supplies, fish stocks, the paralysation of milk production and farming activities. Contamination extended to 170km of beaches.
- 4.3 More tellingly, it exposed an outdated mining code, a stalled new code and a poor regulatory system governing one of Brazil's largest export industries. Inspection of dams is the responsibility of the National Department of Minerals Research (DNPM). Investigations suggest that only around 400 of the country's 15,000 dams were surveyed last year. The National Water Agency found only 11pc of the registered dams in Brazil to have been classified according to the degree of potential damage. The Fundão dam had a mid-level rating, in terms of structural risk and potential for damage. The disaster has brought draft legislation for a new code into focus once again as campaigners call for tighter environmental regulations.
- 4.4 Pursuant to the Federal Constitution of Brazil and the National Environmental Policy (Law # 6,938 of 1981) and the Law # 9,605 of 1998 a polluter owes strict liability to indemnify or provide compensation for pollution caused to the environment and third parties. On 2 March 2016 a CAD (Conduct Adjustment Declaration) was entered into by the state governments and the dam owners and controllers, involving the payment of huge fines for various breaches and offences and the payment of a minimum of R\$1.1 billion Reais for the restoration of the forest and the production of water. Additional annual payments ordered to be paid by the dam controllers between 2016-8 also exceeded R\$4 billion Reais and a further R\$240 million Reais over 15 years.
- 4.5 Litigation to obtain compensation and mitigation has been filed in the 12th Federal Court of the Judiciary Section of Minas Gerais and progresses.

5. Closing remarks

Time did not allow for any further discussion or preparation for future meetings of the AIDA CCWP, but the dates of Tuesday 4 October 2016 in Lima and Thursday 3 November 2016 in Vienna were duly noted as the dates for the next two meetings of the year. Thanks were recorded for the valuable contributions made by our two presenters and by many of those participating from the floor or by relayed contributions.

Meeting closed at 17:00hrs.