

Response to MIB Members' consultation: Terrorism Liabilities

10 April 2018

The MIB has recently completed a Members' Consultation in order to seek the views of the membership in relation to the issues arising from the potential claims from terrorist attacks involving the use of motor vehicles.

We specifically asked members for views on whether you would support a change to the Articles to exclude from the liability of the Article 75 insurer, claims arising from the use of a vehicle as part of an act of terrorism for events on or after 1 January 2019.

In circumstances where the member does support the change, we also asked for views on whether members would prefer the Articles to reflect that MIB would only be responsible for claims over and above a particular level and, if so, the preferred level over and above which MIB would be responsible for paying claims.

In order to assist members with their deliberations we provided a consultation document consisting of three key elements:

- A summary of the legal position, the MIB Articles and MIB Agreements. This explained the current position and option to move to mutualisation.
- The potential implications for the levy based upon modelling developed in conjunction with Willis Towers Watson
- A summary of the competition law advice received from leading Counsel George Peretz QC who was involved in the provision of advice in relation to the formation of Flood Re.

The intention of this communication is to provide members with the overall result of the consultation and to set out the next steps following discussion and agreement by the MIB Board at their meeting on 29 March 2018.

Consultation responses

There were responses from members representing 90% of the membership by voting rights.

The responses to the question of whether members would support a change to the Articles to exclude from the liability of the Article 75 insurer, claims arising from the use of a vehicle as part of an act of terrorism for events on or after 1 January 2019 were:

- Percentage of votes for: 83%
- Percentage of votes against: 7%
- No response received: 10%

The responses to the additional question relating to preference as to whether the Articles should reflect that MIB would only be responsible for claims over and above a particular level and, if so, the preferred level over and above which MIB would be responsible for paying claims, in summary, produced the following:

- There were differing views on whether MIB should be responsible from the ground up or only over a level. In total around 42% by voting rights believed that protection should be from the ground up.
Other responses range from £250k to £50m being the level above which MIB should be responsible.
- There were differing views as to whether or not MIB should increase funding prior to an incident occurring although no responses suggested more than modest pre-funding
- Some members thought that any additional levy requirements for terrorism should be apportioned between members in a different way to the current arrangement although if there is a need for this to be agreed it was not the priority. For example, some thought the levy should reflect the fact that existing events have come from the car hire / commercial market but others made the point that future claims might well come from other sectors of the market.

In addition to the responses from members, MIB have received communications from or had meetings with 13 reinsurers. We are not able to share the information acquired from individual organisations but the Board have been made aware of the aggregated results in their deliberations and in arriving at their conclusions regarding the next steps.

However, the MIB Board urges all members to have discussions directly with their own reinsurance providers to understand from them directly their views on reinsurance protection for the terrorism risk arising from the use of a motor vehicle.

Proposed next steps

In order to make any change to aspects of the MIB that are governed by the Articles, such as Article 75, the distribution of the levy charge and the objects / powers of MIB, a vote in favour of such change will have to be agreed by 75% (in voting terms) of the membership. Accordingly, offering the membership a range of alternatives to vote on would inevitably mean no single option would obtain the required number of votes.

Therefore, in the light of the response to the consultation and after careful consideration of all currently available information, the MIB Board have decided the following:

- To put a vote to the membership to exclude terrorist events from Article 75 (Terrorist events to be defined in accordance with Section 1 of the Terrorism Act 2000)
- For such exclusion to be from the ground up
- For the change to be in relation to events from 1 January 2019
- Subsequently, to explore the possibility of the MIB reinsuring some of the potential liability arising from the terrorism risk
- MIB to commence operational preparations in order to respond to an event

In the event of 75% of the membership voting in favour of the change from 1 January 2019, this will deal with the immediate issue facing the membership as we approach the 2018/19 reinsurance renewals. However, in the event of the change being approved, the MIB management will also embark on a programme of engagement with the membership to explore whether there is a possibility of an agreement that would have a realistic prospect of approval by the members for some level of risk retention by members or any other suggestion that may emerge from the discussions.

Proposed timetable

We are now engaging with our lawyers Weightmans to draw up the precise wording for the resolution to change Article 75 and any other wording adjustments required to achieve the necessary changes to remove the terrorism risk from Article 75.

It is anticipated that the special written resolution will be put to members for voting during May with 28 days allowed to complete the voting procedure.

If anyone has any question arising from this communication please do not hesitate to get in touch.