



Australia/UAE News

March 2010

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London visit

CBP partners Gavin Creighton, Keith Bethlehem and David Miller, together with Marc Chiarella (refer Team news) will be in London between 8-12 March 2010.

They will be taking the opportunity to meet with clients and representatives of the insurance market generally.

It seeks to provide a world class regulatory regime for the creation and operation of a global financial centre. The DIFC is a capital market which promotes itself as a new global jurisdiction for financial institutions offering its participants a highly attractive investment environment.

The Dubai Financial Services Authority (DFSA) was established under Dubai law no 9 of 2004 and is the independent financial services and market regulator of the DIFC.

A.M. Best reported on 2 February 2010 that the DIFC is aiming to expand its captive insurance market to become a global domicile for local, regional and international corporations.

Chapter 12 of the Companies Regulations (made pursuant to the Companies Law being DIFC law no 2 of 2004) deals with Protected Cell Companies (PCC) which must operate for the sole purpose of conducting insurance business. A PCC is a single company consisting of a core, and an indefinite number of cells, which are legally ring-fenced from each other. The assets of each cell cannot be used to meet the liability of any other cell. A cell of a PCC can be used as a captive insurance company.

United Arab Emirates

In 2008, CBP joined forces with long-established UAE law firm Lutfi & Co to form LutfiCBP. With its head office in Dubai, LutfiCBP is supported by a branch office in Abu Dhabi and the CBP office in Sydney www.lutficbp.com

The Dubai International Financial Centre (DIFC) was conceived in February 2002 by the government of Dubai both for the benefit of the UAE and the wider region as a whole. It is a federal financial free zone which has been granted authority to self-legislate in civil and commercial areas.

United Arab Emirates (continued)

The DFSA Rulebook provides for three classes of Captive Cells which can be established by a PCC and the corresponding three classes of Captive Insurer.

Greg Skehan, with the resources of LutfiCBP, can advise businesses seeking to establish themselves in the UAE.

Beware the wounded regulator

— Impact of the GFC on Australian D&O and FI policies.

The Australian corporate regulator has signalled its intention to bring more cases against companies and their directors to better-protect retail investors.

Australia's corporate and financial services regulator, the Australian Securities and Investments Commission (ASIC), suffered a number of significant defeats in key proceedings against directors during 2009. However, it has responded by putting boards on notice that it will pursue a campaign against company directors for breaching their duties this year despite the high-profile setbacks of 2009.

In addition, on 28 January 2010 the Minister for Financial Services, Superannuation and Corporate Law announced proposed changes to the law to strengthen ASIC's investigative powers and increase penalties for market-related offences. The proposals will increase the maximum penalties that can be imposed when individuals and corporations breach market misconduct provisions.

ASIC's chairman said in an interview with the Australian Financial Review on 27 January 2010 that ASIC also planned to use special powers under the corporations law to bring more cases against companies and their directors to *"better protect retail investors ... We have taken the view that it is our job as the regulator to push the regulatory regime to the limit"*.

This aggressive approach flagged by ASIC coincides with the maturing of notifications stemming from losses sustained as a result of the GFC. Advancement of Defence Costs and Legal Representation expenses is likely to present a significant risk for insurers in affected sectors for the foreseeable future.

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Team news

CBP is pleased to announce:

Keith Bethlehem was made a partner, effective 1 January 2010. Since joining the firm in 2006, Keith has become an invaluable member of the Insurance group earning the unqualified support of both colleagues and clients alike.

Debbie Kaminkas was elevated to the position of Senior Associate, also effective 1 January 2010. Debbie joined the firm in 2006 and has demonstrated an enormous capacity to work effectively and intelligently on behalf of clients.

Marc Chiarella joined our Insurance group in December 2009. It is anticipated that Marc, who left the insurance industry to pursue a career in the law, will assist the group with his industry experience and extensive relationships, particularly in the London market.

Alexandra Dibben joined our Insurance group as a solicitor in February 2010. Alexandra brings with her a wealth of experience having specialised in corporate insurance and risk management law in her previous role with another leading Sydney insurance law practice.

Kemsley Brennan, formerly with Chubb Insurance, will be joining our Insurance group as a Special Counsel on 15 March 2010. Kemsley's role will be varied with a principal focus on coverage issues in the directors' and officers' liability area. Our firm will benefit enormously from Kemsley's excellent relationships with brokers and insureds.

Adrienne Revai will also be joining our Insurance group as a Special Counsel on 15 March 2010. Adrienne will assist partners Linda Murphy and Keith Bethlehem with their directors' & officers' and financial lines (PI) practices, and will also assist Kemsley Brennan in the development of a new insurance compliance service to the group's various clients.

David Miller, Partner, presented a paper at the Perrin Conferences' "*Cutting edge in asbestos litigation*" conference held in Los Angeles on 25-26 February 2010. David, whose practice includes product liability matters with a particular emphasis on asbestos-related claims, is a frequent presenter at conferences which focus on this specialised area.

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