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(articles and book review included in this part are linked to the LexisNexis platform)

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Articles

Some issues with permanent establishment and the taxation of foreign insurance business in Australia
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Overseas insurance business has complex residence issues, because of the cross border nature of the business and the nature of insurance and reinsurance arrangements. Permanent establishment rules can also have an impact upon branches and service companies. This article discusses Australia's taxation regime as it relates to overseas insurers and their business in Australia. The article discusses the relevant international conventions, legislation and case law, and applies those to the various ways in which foreign insurers can conduct business in Australia.

Not drowning — waiving: Waiver of the duty of disclosure Under s 21(2)(d) of the *Insurance Contracts Act 1984* (Cth) and at common law
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This article discusses the circumstances under which the policyholder's duty of disclosure under Australian law at common law, and as prescribed by s 21 of the Insurance Contracts Act 1984 (Cth) for contracts of insurance to which that statute applies, may be waived by the prospective Insurer explicitly or by conduct. More specifically, it considers the circumstances and the pre-contractual conduct of each party that may give rise to such a waiver, and the contractual terms that may constitute waiver through the operation of the Insurance Contracts Act. It does so in the context of both inadvertent and fraudulent breaches of the duty of disclosure, and the principles governing interpretation of policy terms, in order to determine whether they give rise to a partial or total waiver of that duty.

The outcome of *Cendor Mopu*: New scenario for 'inherent vice' and 'perils of the sea'
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On 1 February 2011, the United Kingdom Supreme Court handed down its decision in *Global Process Systems Inc v Syarikat Takaful Malaysia Bhd*. The ruling created a shock wave in the London and Australian marine insurance markets as the Supreme Court decision changed the boundaries of doctrine in respect of the meaning of the words 'perils of the sea' and 'inherent vice'. The Supreme

Court interpreted the ‘inherent vice’ exclusion in the Institute Cargo Clauses (A) policy and its equivalent exclusion in s 55(2)(c) of the Marine Insurance Act 1906 (UK) as an example of the situation where there are no perils of the sea. As the Marine Insurance Act 1909 (Cth) is for all intentions and purposes identical to the Marine Insurance Act 1906 (UK), and because of the widespread regular usage of the Institute Cargo Clauses, the case is important to all practitioners in the marine insurance market.

Book Review

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