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## A Boost for Business: Time to Reaffirm or Secure Terrorism Insurance

By Peter Gillon and Ashley Cowgill

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*On January 12, 2015, President Obama signed into law H.R. 26, the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA of 2015), providing a federal backstop for insurance against risks of terrorism. TRIPRA extends until 2020 the Terrorism Insurance Program established under the Terrorism Risk Insurance Act (TRIA) of 2002, which expired at the end of 2014. The measure lifts a cloud of uncertainty that was proving difficult for property owners, especially in major metropolitan areas, as there was insufficient capacity in the private insurance market to meet their needs.*

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When the Senate failed to pass an earlier version of the reauthorization bill in December 2014, the inaction set off alarm bells in the financial and real estate sectors. Without the backstop provided by TRIA, property owners and their lenders were facing the prospect of inadequate coverage or skyrocketing premiums. Industry pressure set Congressional action in motion.

In addition to extending TRIA by six years, TRIPRA includes several noteworthy changes:

- For an event to qualify as an act of terrorism, the event must be certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the U.S. Attorney General.
- Beginning in 2015, the current \$27.5 billion insurance marketplace aggregate retention amount increases by \$2 billion per calendar year, until it reaches \$37.5 billion, increasing the private insurance risk by \$10 billion
- Beginning on January 1, 2016:
  - The Federal share of compensation under the Terrorism Insurance Program (currently 85 percent) decreases by one percentage point per calendar year until it is equal to 80 percent.
  - The program trigger for federal coverage, currently set at the industry aggregate \$100 million, increases by \$20 million per calendar year until it is equal to \$200 million.
- The reauthorization increases the co-pay for private insurers from 15 percent to 20 percent.

With TRIA reauthorization, Congress has reaffirmed the federal government's (and taxpayers') role as the ultimate insurers of terrorism risks—the corollary of the premise that terrorist acts are acts against the State. Although the U.S. Government has made considerable efforts to combat domestic terrorism, businesses remain exposed to constant threats of terrorism. We need not look any further than the April 2013 Boston Marathon Bombing or the 2014 cyberattack on Sony. Data compiled by the New America Foundation shows that 39 jihadists allegedly planning attacks within the U.S. were indicted or killed between 2010 and 2014. Despite a real threat of terrorism against the United States, the senior vice president of federal affairs for the National Association of Mutual Insurance Companies (NAMIC), Jimi Grande, estimated in July 2014 that only 60 percent of companies in the United States have terrorism coverage in place.

Now that TRIA has been reauthorized, companies with sunset clauses in their Terrorism Insurance policies should contact their insurers to confirm coverage is still in place. And more importantly, new business ventures should speak to their insurance brokers to determine whether Terrorism Insurance is appropriate and should be included on their policies.

Should you have any questions about TRIPRA, please contact an experienced legal insurance counselor for more information.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Peter M. Gillon (bio)  
Washington, DC  
+1.202.663.9249  
peter.gillon@pillsburylaw.com

Ashley E. Cowgill (bio)  
Nashville  
+1.615.622.3708  
ashley.cowgill@pillsburylaw.com

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