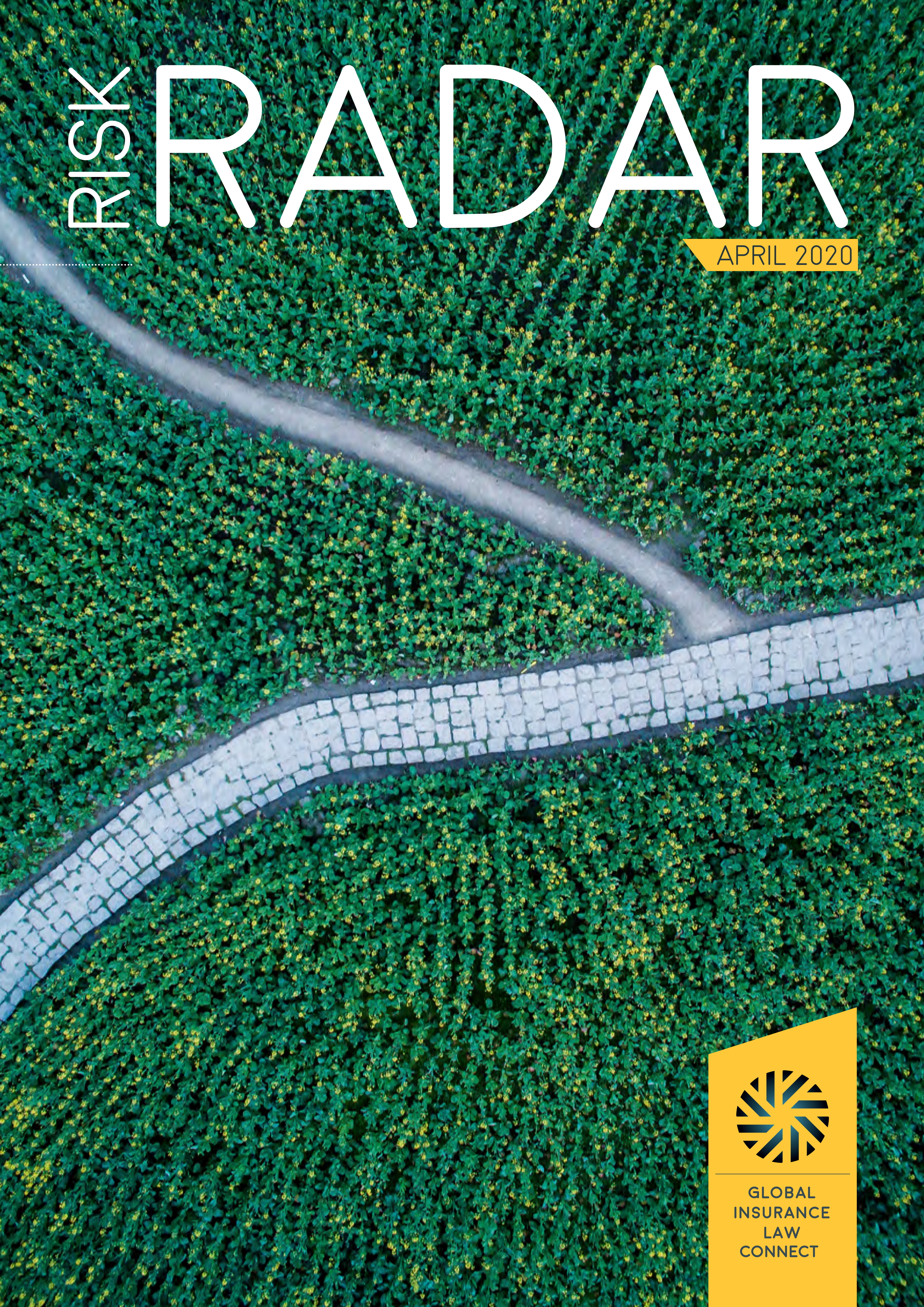


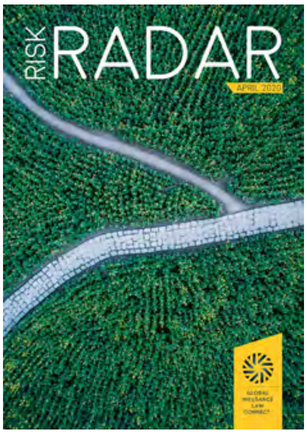
RISK RADAR

APRIL 2020

GLOBAL INSURANCE LAW CONNECT

IN THIS ISSUE

RADAR
APRIL 2020



This document does not present a complete or comprehensive statement of the law, nor does it constitute legal advice.
It is intended only to highlight issues that may be of interest to customers of Global Insurance Law Connect. Specialist legal advice should always be sought in any particular case.

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Dear Clients

This is the second edition of Global Insurance Law Connect's RADAR report, in which we try to capture the important legal, regulatory and socio-economic issues facing insurers in each country that we operate. However, this year is different. Shortly after our members drafted this year's report, the world was shocked by the advent of the COVID-19 pandemic.

There is no doubt that COVID-19 will introduce a completely new set of priorities for insurers. Already, we have seen a huge impact across multiple lines of cover. The immediate issues arose around business interruption insurance, where pandemic cover was in some cases valid, and in some cases not. In several countries, notably the US, there have been calls for insurers to be forced to pay many more claims by retrospectively rewriting insurance contracts. The question of what is and isn't covered has generated, and will continue to generate, legal activity across the world.

Event cancellation is another contentious issue, with every major sporting event in 2020 cancelled or put on hold. This includes the largest sporting event in the world, the Olympics, whose re-scheduling has generated a near $1bn loss event for insurers.

Meanwhile, beyond the industry, the economic shock of the COVID-19 shutdown is causing a contraction in jobs and GDP across the globe that is completely unprecedented. While governments struggle to support workers in their local economies, many businesses are failing and this will impact insurers through D&O cover and investor litigation.

Of course, all of this pales into insignificance compared to the lives that are being lost in the pandemic, stretching the health systems of every country almost to breaking point. Against this rapidly moving backdrop, we found it impossible in April 2020 to quantify every impact that COVID-19 will have. We have decided that we will tackle the specific legal issues raised by coronavirus in a separate report, and we look forward to sharing that with you in the coming months.

Meanwhile, other market forces still exist, some of them hugely significant in their own right; and some, such as climate change, brought into new focus by the notable climate impact of the global economic shutdown. These issues remain important and are the focus of this year's RADAR report.

GILC remains, as ever, a network of like-minded specialist firms, many with a unique and well-recognised expertise in insurance law in their own markets, as this report demonstrates. Whatever the environment, we continue to provide clients with unrivalled expertise and a personal service that we think few other networks can match.

We hope that our guide is a useful country-by-country reference point, and I am delighted to be able to share it with you.

Jim Sherwood

Jim Sherwood,
Chairman, Global Insurance Law Connect

TOP ISSUES:

- Climate risk
- Technology
- War for talent

SPARKE HELMORE LAWYERS

AUSTRALIA

The Australian insurance market continues to experience extreme volatility driven by an unprecedented level of natural disasters, ongoing uncertainty post the Financial Services Royal Commission, the fickleness of customer behaviours as well as the unpredictable nature and pace of technological change magnifying the impacts of cybercrime and the challenges of big data. This volatility has been exacerbated by lingering trust issues around competence and ethical behaviour – with business at least being considered competent but coming up short on ethics.

Among this combination of challenges, there are three issues that stand-out as creating significant headwinds for the local industry. Climate risk tops the list, closely followed by the maelstrom that is technology. Throw into the mix the increasing demand for talent, which has to be at the heart of remedying these challenges as well as many others facing the industry right now, and you have the perfect storm.

A bird's eye view of Sydney.

INSURANCE INDUSTRY AT A GLANCE

95

General and Re insurance businesses

A$64.4 BILLION

in revenue

CLIMATE RISK

Natural disasters – whether bushfires, flood, storms, cyclones or earthquakes – are a way of life for more Australians than at any other time in our history. And with a catastrophic 2020 bushfire season devastating great swathes of the country, insurers have their backs to the wall.

With the increasing losses experienced in recent years due to the sheer magnitude and frequency of extreme weather events and the resultant reduced availability and affordability of insurance, there is a real danger that markets will shrink and expose consumers and governments to additional financial burden. Insurers are having to manage the intersection between policies, risk premiums and price to strike a balance between the viability of business and societal expectations.

> "WE KNOW THAT THE NARRATIVE ON CLIMATE RISK HAS SHIFTED AS BOARDS AND INSURERS ARE WARNED OF THE DANGER OF UNDERESTIMATING THE INCREASE IN THE COST OF NATURAL DISASTERS."
>
> CHRIS WOOD, PARTNER, SPARKE HELMORE

WAR FOR TALENT

It will come as no surprise that with the continuing fallout from the Financial Services Royal Commission, the series of natural disasters that consumed Australia in early 2020, and the coronavirus pandemic that has ravaged the world, the war for talent in the insurance industry is hotter than ever.

With the complex claims function a particular focus – and seen as an area of insurance lacking in quality career progression – there is a sizeable gap between qualified professionals and the demand for them. The demand for experienced brokers will only increase as well as for those with niche skills in risk, compliance and analytics as well as experts in climate change. It's worth also keeping in mind that consolidation in the insurance industry could scare away those who might have otherwise considered the insurance industry as an attractive opportunity.And with the human touch now being a differentiator and the antithesis to what is fundamentally a technology-driven industry, attraction and retention of the right people with the right skills is only going to get harder for insurers.

> "INSURERS ARE UNDER SIGNIFICANT PRESSURE WITH ALL THESE EXTREME EVENTS, TAKING HIT AFTER HIT. THIS HAS A HUGE IMPACT ON THEIR WORKFORCE. TO GET PEOPLE INTO THE INDUSTRY, AND KEEP THEM, INSURERS WILL NEED TO INVEST IN THE MARKET LEADING WELLBEING PROGRAMS TO DEMONSTRATE A BEST PRACTICE COMMITMENT TO THEIR EMPLOYEES."
>
> GILLIAN DAVIDSON, PARTNER, SPARKE HELMORE

TECHNOLOGY

Dramatic change is stirring the insurance industry, transforming the way organisations operate and engage with their customers. At the forefront of this revolution is technology – it's about personalisation, big data, analytics, AI, automation and blockchain. Customer-centricity will continue to be the buzzword, deeper interrogation of customer behaviours will be the norm, bots will become more mainstream, AI will drive the claims function, and advanced drone technology will play a huge part in assessment of affected areas post a catastrophic event.

But with advances in technology comes the potential for a disruptive threat landscape, characterised by significant privacy and cyber risks – regulatory intervention, supply disruption and reputational damage. The Board and C-suite need to have enterprise wide oversight of every current conceivable eventuality and have strategies in place to mitigate and/or respond – it's become so much more than an IT or a Legal Department problem. And with legislation and regulation struggling to keep up with the pace of change, and cyber risk premiums on the rise as well as GDPR-like legislation potentially about to hit the Australian market, insurers need to be one step ahead in what is a competitive and consolidating market.

TOP ISSUES:

Political and economic issues: Brexit

Claims: impact of Covid-19 crisis

Regulation: possible introduction of new Insurance Code

LYDIAN

BELGIUM

The Belgian insurance market is part of the wider European insurance market, in which many EEA insurers and intermediaries are active through branch offices or via freedom of services in Belgium (passporting rights), as well as vice versa. As is the case for all EU member states, the insurance sector in Belgium has been impacted by the United Kingdom's planned exit from the European Union (Brexit). In application of the strict EU conflict of law rules, many policies are governed by Belgian insurance contract law, which offers a broad protection to the policyholder and can be quite unfavourable towards the insurer.

The Belgian regulator responsible conduct of business rules, the Financial Services and Markets Authority (FSMA) has in recent years become quite strict in its application of information and publicity requirements, taking a rather consumer-friendly approach. Navigating the complexities of both the insurance contract legislation and the growing number of conduct of business rules applicable in the Belgian insurance sector is become increasingly challenging and demanding for insurers and intermediaries.

Cycling and footpath bridge, Antwerp.

INSURANCE INDUSTRY AT A GLANCE

240

Registered firms

€30 BILLION

Value of Premia

BREXIT

The United Kingdom's planned exit from the European Union has led the Belgian legislator to introduce a framework in which specific transitional measures in preparation of Brexit can be taken with regard to the insurance sector. Specifically, the legislator has delegated powers to the king to adopt measures to ensure proper performance of insurance contracts concluded before the loss of passporting rights of UK insurance undertakings or insurance intermediaries. However, up to date, the king has not yet taken any initiative to introduce such specific measures. Unless the king does take such an initiative, there will be no transitional regime applying in Belgium from the date on which the implementation period under the Brexit Withdrawal Agreement ends (currently 31 December 2020) which would permit UK non-life insurers and reinsurers with no local establishment to continue administering and paying claims to policyholders in Belgium. Only in very limited cases can third country insurers (i.e. UK insurers after 31 December 2020) carry out activities of insurance based on freedom of services in Belgium. Unless the King adopts specific transitional measures, Brexit will pose particular challenges for UK insurers and intermediaries, as well as their partners, that want to be active on the Belgian insurance market.

> **"THE GROWING UNCERTAINTY OVER THE CONTINUATION OF COVERAGE AND PASSPORTING RIGHTS FOR UK INSURERS AND INTERMEDIARIES IS BECOMING INCREASINGLY CHALLENGING FOR THE BELGIAN INSURANCE SECTOR."**
>
> SANDRA LODEWIJCKX, PARTNER

COVID-19

Firstly, the worldwide Covid-19 crisis has led to a surge in claims under several types of insurance policies, e.g. business interruption, event cancellation or travel insurance policies. Discussions on coverage of such claims will continue throughout the coming months and years. Secondly, the Belgian financial regulators (National Bank of Belgium – NBB and Financial Services and Markets Authority – FSMA) have announced temporary measures for the insurance sector, to help avoid financial difficulties for policyholders (both commercial undertakings as individuals), that include among others payment deferral for premiums. The increase of claims combined with a possible reduction in premium income will likely prove to be a huge challenge for the Belgian insurance sector.

> **"THE COVID-19 CRISIS WILL LIKELY RESULT IN A HUGE INCREASE IN CLAIMS, BUT WILL ALSO LEAD TO COMPLEX REGULATORY QUESTIONS."**
>
> SANDRA LODEWIJCKX, PARTNER

POSSIBLE INTRODUCTION OF A NEW BELGIAN INSURANCE CODE

A new Belgian Insurance Code has been in preparation for quite some time now. While this new Code would leave many topics unchanged, it would also drastically change other issues of Belgian insurance contract law, e.g. a new regime for the modification of the premium and the terms and conditions and new rules for collective contracts. The delay in the formation of a new government, has slowed down but not halted the introduction of the new Insurance Code.

> **"THE INTRODUCTION OF A NEW BELGIAN INSURANCE CODE WOULD PRESENT A HUGE CHALLENGE TO ALL INSURANCE COMPANIES AND INTERMEDIARIES."**
>
> TINE MEURS, ASSOCIATE

TOP ISSUES:

Implementation of a more liberal and flexible regulation by the new Government

Impacts of new investments and privatizations after a three-year economic recession

Public pensions system reform

INSURANCE INDUSTRY AT A GLANCE

313

Registered firms

This number includes authorized insurers, pension companies, local reinsurers and registered foreign rensurers

R$ 74.8 BILLION

Value of non-life premia

R$ 149.8 BILLION

Value of life premia

R$ 199.5 BILLION

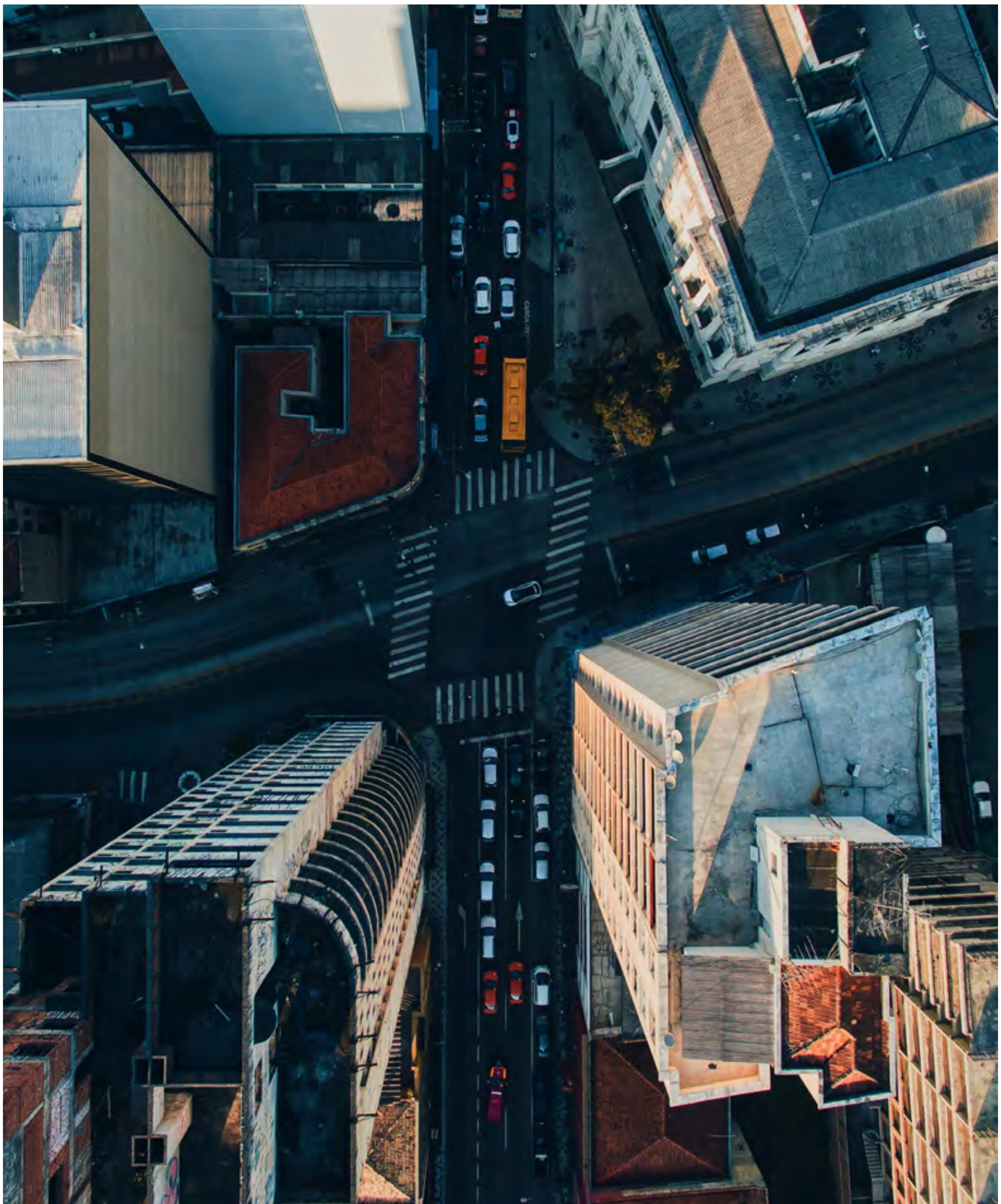
Value of private health insurance and plans

SANTOS BEVILAQUA ADVOGADOS

BRAZIL

The new right-wing and economically liberal Government which came to power in 2019 is changing the regulation of the Brazilian insurance market.

We also expect, without considering the unpredictable (at the moment this report is written) impacts of Covid-19, the resumption of economic growth, after almost three years of recession, with much more public and private investments.



Curitiba, Brazil.

IMPLEMENTATION OF A MORE LIBERAL AND FLEXIBLE REGULATION BY THE NEW GOVERNMENT

The very bureaucratic regulation in Brazil is now beginning to become more liberal and open to innovation, with less intervention from the government, which still controls the IRB, the largest local reinsurer authorised to operate in Brazil.

New rules have created a sandbox to incentivise (reducing the operational cost) the incorporation of innovative insurance companies and increase the limits of risks that can be ceded to foreign reinsurers without a local presence.

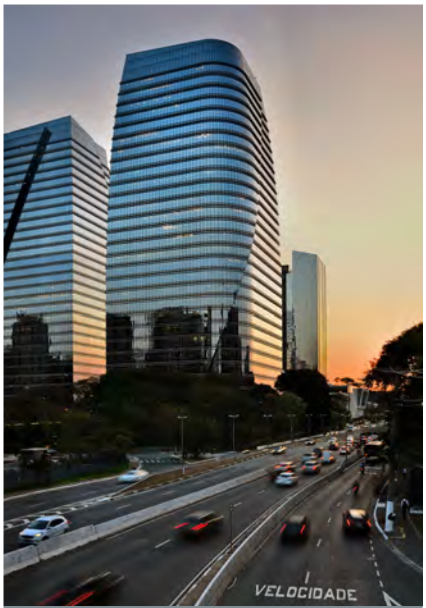
There are, as expected in a changing environment, sensitive issues under discussion, like the deregulation of brokers and the end of mandatory motor civil liability insurance, but overall it is clear that the development of new insurance products is a goal for the insurance regulator.

> **"OUR CLIENTS WILL NEED MORE SOPHISTICATED ASSISTANCE IN A MARKET WHERE THEY WILL HAVE SOON MORE OPPORTUNITIES TO DIFFERENTIATE THEMSELVES FROM THEIR COMPETITORS."**
>
> JOÃO MARCELO DOS SANTOS, SANTOS BEVILAQUA ADVOGADOS

PUBLIC PENSIONS SYSTEM REFORM

The Brazilian public pension system is unequal and very expensive, even considering that Brazil has a very young population. The reform of this system, currently being discussed in Congress, will necessitate an increase in private pension plans.

> **"THE BRAZILIAN LIFE AND PENSION MARKET HAS BEEN INCREASING A LOT IN THE LAST 20 YEARS, SINCE OUR FIRST TAX INCENTIVES WERE CREATED. NOW, MORE THAN EVER, COMPANIES WILL BE ASKED TO MAKE ACCESSIBLE AND EFFICIENT PRODUCTS AVAILABLE TO THE CLIENTS."**
>
> JOÃO MARCELO DOS SANTOS, SANTOS BEVILAQUA ADVOGADOS



IMPACTS OF NEW INVESTMENTS AND PRIVATIZATIONS AFTER A THREE-YEAR ECONOMIC RECESSION

Brazilian property and casualty insurance market, and the local reinsurance market seem likely to be heavily impacted by new investments and privatizations after a three-year economic recession.

> **"THE AMOUNT OF BRAZILIAN RISKS TO BE INSURED AND REINSURED WILL INCREASE SIGNIFICANTLY, AND CLIENTS WILL NEED TO UNDERSTAND THE LOCAL INSURANCE AND REINSURANCE REGULATIONS IN ORDER TO TAKE ADVANTAGE OF THE BUSINESS OPPORTUNITIES THAT EXIST IN BRAZIL, WHILE BEING FULLY AWARE OF THE RISKS TO BE COVERED, OF THE REGULATORY AND CONTRACTUAL RISKS AND IN ORDER TO GET THE BEST ASSISTANCE IN MANAGING CLAIMS."**
>
> JOÃO MARCELO DOS SANTOS, SANTOS BEVILAQUA ADVOGADOS

TOP ISSUES:

- Fast-tracking new products
- Insurance claims
- Digital disruption

BUREN

CHINA

After experiencing a low year-on-year growth rate of 3.9% for gross written premium in 2018, the only year with less than double-digit growth in the past years, China's insurance market bounced back in 2019. Meanwhile China further opened up and developed its financial markets. Diversified insurance demands have also emerged, from macroeconomic changes to social risk management perspectives.

However, the global outbreak of COVID-19, has impacted economics, as well as the insurance industry. Coronavirus has caused a decline in life insurance business for Chinese insurers. The life insurance business has been adversely affected by the virus outbreak in the first half of 2020. Across the industry, there will certainly be an impact on claims, as new issues arise from the virus.

China is forcing people to work from home, and as a result, more insurers are likely to invest in digital capacity, which could accelerate industry digital transformation. Experiencing the health crisis, people are also likely to increase their awareness of the need for health insurance.

We can see a likelihood that more need-based insurance products will come out, while insurers could be advised to design products covering the costs of future infectious diseases and vaccines.

Shen Zhi Plaza, Jiangan District, Wuhan City, Hubei Province, China.

INSURANCE INDUSTRY AT A GLANCE

240

Registered firms

RMB4.2 TRILLION

Total premium income 2018

FAST-TRACKING NEW PRODUCTS

China is nudging insurers to work on cheaper medical cover linked to the coronavirus and is assuring them of fast-track approval for these new products. On February 2020, China Life, China Pacific Insurance, Ping An Insurance Group and Zhong An Online P&C Insurance, among others, have included coverage for the virus in their existing medical insurance products. In total, there are now more than 600 insurance products that can cover risks related to the new coronavirus.

The outbreak of coronavirus promotes the development of new health insurance products. The innovation around these new insurance products connects to the demand for protection from infectious diseases. A vaccine for the new coronavirus will be available soon. But when it is, there's no guarantee that it will be affordable for all people. In terms of this kind of demand, new health insurance products based on coronavirus vaccine will come out and become popular in the future.

In terms of the enterprise-related insurance products, the impact of the virus will further trigger the demand for government insurance (public liability insurance for a public health emergency), commercial property insurance (business interruption insurance and cancellation insurance) and liability insurance (employer's liability insurance).

However, due to the lack of pricing data, and for the protection against violation of consumer rights, the China Banking and Insurance Regulatory Commission prohibits companies from issuing single-liability products relating to coronavirus.

"WHILST THE CURRENT CORONAVIRUS SITUATION HAS HAD NEGATIVE IMPACT ON OPERATIONS, NEW PUBLIC AWARENESS – AND THE DEMAND WHICH IT HAS CREATED – MEANS THAT BOTH LIFE AND NON-LIFE INSURANCE COMPANIES WILL START TO DEVELOP NEW HEALTH INSURANCE PRODUCTS."

LI JIAO, COUNSEL, BUREN

INSURANCE CLAIMS

The spread of the coronavirus means that many claims arising out of severe illness and death caused by the virus will be made in 2020.

To assist people in affected areas to overcome this crisis, many insurance companies have opened a green channel for insurance claims. It is proposed that insurance companies will actively check out their customers through various channels, especially in areas seriously affected by the epidemic, such as Hubei Province, and strive to take the initiative to settle claims. Some insurers have introduced 24-hour handling of claims reporting and 24-hour handling of claims applications, and ensured that professional hotline personnel provide consulting services. For the customers who are infected with coronavirus, insurers will pay monies due first, then can catch up on paperwork, and expand the scope of liability properly afterwards.

The disease has given full play to the role of insurance technology, and vigorously promoted flash compensation and second compensation, so that patients can get faster and more convenient claim settlement services.

"AFFECTED BY THE VIRUS, MORE MEDICAL CLAIMS WILL APPEAR, THE CHINA INSURANCE ASSOCIATION IS PUSHING INSURERS TO OPEN A GREEN CHANNEL OF INSURANCE CLAIMS TO SUPPORT EPIDEMIC PREVENTION AND CONTROL."

LI JIAO, COUNSEL, BUREN

DIGITAL DISRUPTION

As coronavirus continuously rages, it will accelerate the speed of insurance industry digitalization. To avoid contamination and crowds, more consumers are embracing the signature of insurance contracts online without face-to-face interaction. As for the operating pattern, sales representatives can also conduct online marketing to potential customers.

In terms of the internal management, many insurers in China have already instructed their employees to work remotely and even receive online training. Drawing on these experiences, in the near future, cloud collaboration patterns in insurance industry will become critical in product development, business operations, information technology support and so on. It is foreseeable that, in response to the changing circumstances, total digital transformation in the insurance sector will occur. However, it remains virgin territory because no one in insurance has yet completed a transformation – it could take as long as a decade.

"PUSHED BY THE VIRUS, CHINA'S INSURERS HAVE ACCELERATED THE PACE OF DIGITAL TRANSFORMATION – BOTH TO REAP ITS REWARDS AND FEND OFF THREATS."

JAN HOLTHUIS, PARTNER, BUREN

TOP ISSUES:

- Brexit
- Regulatory activity
- Whiplash reform

BLM

ENGLAND AND WALES

Easily the most significant political event of 2019 was the December election which returned the Conservative government with a strong majority and one which ensured the UK left the EU at the end of January 2020. Any political honeymoon was cut short by the onset of the Coronavirus pandemic in Q1 2020, causing significant changes in government priorities and widespread disruption to all the economy. Unfinished reforms to whiplash claims are now expected to bite in April 2021 – with the expectations of lower premiums for customers – could be further delayed. The FCA has necessarily refocused on protecting customers and ensuring firms are resilient, meaning its important work on dual pricing is temporarily postponed. The effects on the market of the severe wet winter will work through to results and perhaps further scrutiny of the Flood Re model.

UK INSURANCE INDUSTRY AT A GLANCE

375

Registered firms

£50.9 BILLION

Value of Premia

Big Ben, London.

REGULATORY ACTIVITY

The impact of FCA activity will remain a key theme despite former CEO Andrew Bailey being appointed as the new Governor of the Bank of England. The regulator's ongoing investigation into dual pricing in the retail general insurance market in particular had been expected to evolve significantly in 2020. The publication of the FCA's business plan in early April confirmed that this work had been postponed because of changes in priorities due to the pandemic but it would be naïve in the extreme to think it has 'gone away'. At the heart of industry concerns are the nature, extent and cost of any suite of remedies for past consumer detriment and any requirement for future behaviour changes. The idea of imposing a statutory – and actionable – duty of care on providers to use reasonable care and skill in providing regulated services was the subject of an FCA discussion paper in 2019. Feedback on that was neutral and momentum then appeared to stall, but more recent indications from the regulator are that this remains a live topic, although the pandemic means that further publications on it are not expected before Q3. The proposed duty is also the subject of a speculative Private Member's Bill introduced in January.

> **"IT'S NOT YET CLEAR WHETHER THE NEW LEADERSHIP AT THE FCA ADDS A LAYER OF FURTHER UNCERTAINTY TO THE VERY REAL RISKS TO SOME SECTORS OF THE MARKET FROM ITS WORK ON DUAL PRICING."**
>
> ALISTAIR KINLEY, DIRECTOR OF POLICY DEVELOPMENT & GOVERNMENT AFFAIRS, BLM

WHIPLASH REFORM

Reforming whiplash claims has been one of the industry's key asks in recent years and enabling legislation was put in place in 2018 (Civil Liability Act). On 27 February 2020 Ministers had indicated that the reforms would take effect from 1 August, but on 2 April a further COVID-related postponement to April 2021, was announced. Following implementation, damages for whiplash will be reduced and legal costs will no longer be recoverable in claims under £5,000. The industry has already built and tested a new online platform to process claims which will be 'tweaked' whenever the final legal rules are published. The Act requires insurers to account to the FCA for savings realised by the reforms, something which could prove challenging now that the cost of damage on-board to vehicle technology (eg ADAS) and the effect of Brexit/currency fluctuations on parts prices appear to be driving motor premiums upwards.

> **"I'M WORRIED ABOUT WHIPLASH AS THERE'S A BIG EXPECTATION THAT INSURERS WILL PROVIDE GREAT SERVICE AND FAIR OUTCOMES FOR UNREPRESENTED PEOPLE. I THINK THEY CAN, BUT THESE ARE THINGS THEY REALLY NEED TO BE SEEN TO DELIVER."**
>
> KERRIS DALE, HEAD OF MOTOR, BLM

BREXIT

Brexit inevitably dominated the political and business agenda in the UK in 2019. The December election returned the Conservative government, now with an eighty seat majority described by Prime Minister Johnson as "stonking". His key promise to the electorate was to "Get Brexit done" and the UK duly left the EU on 31 January 2020.

While this bought a welcome end to uncertainty in the short term, further clarity will be required by many businesses – and the financial services sector in particular – on the overall future trading relationship with the EU which should kick in at the end of the year when the transition period in which the UK is bound by EU law ends. But the pandemic could lead to that being extended; an option provided for in the Withdrawal Agreement but one which current legislation prevents the government from requesting.

Many UK insurers selling into EU markets have long since made arrangements to preserve passporting rights and to be able to deliver across the claims supply chain for customers. During 2020 they will be monitoring these and looking carefully at the evolving negotiations on the regulation of financial services. In addition, we expect a spike in litigation towards the end of the transition period as parties seek to preserve the application of EU law to ongoing disputes.

> **"WHILE THE UK INSURANCE SECTOR IS UNLIKELY TO BE A 'RULE TAKER' FROM EUROPE. HARD COMMERCIAL PRAGMATISM POINTS TOWARDS SOME DEGREE OF MATCHING IN ORDER TO PROVIDE PRODUCTS AND COVER ACROSS THE EU. WHAT THIS REALLY LOOKS LIKE AND HOW IT IS SPUN POLITICALLY WILL BE CRITICAL."**
>
> JONATHAN CLAY, HEAD OF GENERAL INSURANCE, BLM

TOP ISSUES:

- Arbitration regime goes towards more cross-border disputes
- Tough D&O market
- Insurance distribution – stricter local rules and open questions

INSURANCE INDUSTRY AT A GLANCE

51

Registered firms

€23.6 BILLION

Value of Premia

SOCRATES ATTORNEYS LTD

FINLAND

Despite a relatively turbulent political year, the regulatory scheme for the insurance sector remains rather stable in Finland. As elsewhere, the local insurance market has hardened, especially around many large-scale risks, whereas new global phenomena such as cyber risks and coronavirus have gained notable attention both in terms of risk management and also insurance products.

The importance of global insurers in the market is steadily increasing, although the Finnish insurance market is still relatively consolidated and the levels of statutory insurance as a percentage of overall annual premium flow are high compared to other countries.

The Hakaniemi district in Helsinki.

ARBITRATION REGIME MOVES TOWARDS MORE CROSS-BORDER DISPUTES

Although Finland has a long tradition of both domestic and international arbitration, major steps have been taken recently in order to provide a more convenient and established place for arbitrations especially for cross-border disputes. The recent developments focus on two important fronts. The Arbitration Institute of the Finland Chamber of Commerce (FAI) is a prominent body for institutional arbitration in Finland and it is aiming at growing its importance as a platform for cross-border arbitration. FAI revised its rules in 2013, modernizing them and introducing many new elements compared to the preceding rules that had been in force for two decades. The new rules contain, for example, new solutions for multi-party disputes. The essential purpose of the change was to better serve foreign corporations by following best international practises.

Now that the current rules have been in force for around five years, a new modification round has been conducted. New, slightly revised rules became effective as of 1 January 2020. The new modifications concern, among others, the rules on confidentiality in arbitration process.

In addition to developments under FAI, and in many ways as a public response to the work done at the institutional level, the Ministry of Justice has now also initiated a project to modernize arbitration legislation. The current Arbitration Act is from 1992. Although it has served as a decent tool for almost three decades, it will now be replaced with more 'state of the art' regulations that will most likely follow the UNCITRAL rules and best practises in Europe. The target is thus mostly the same as with the revision of the rules of FAI. The Ministry is starting its work by conducting an extensive comparison of arbitration legislation and practises in certain European countries.

Whether related to this development or not, global insurers providing coverage in Finland often accept the local policyholder's home ground as their venue.

> **"DESIRE TO HAVE INCREASING VOLUME OF COMPLEX INTERNATIONAL DISPUTES SOLVED IN ARBITRATION IN FINLAND IS OBVIOUS AT MANY LEVELS OF LEGAL DECISION-MAKING. GLOBAL INSURANCE BUSINESS IS AN IMPORTANT TARGET GROUP IN THAT RESPECT."**
>
> JUSTUS KÖNKKÖLÄ, PARTNER, SOCRATES ATTORNEYS LTD

TOUGH D&O MARKET

The global trends in D&O markets have also landed to the Nordic market and are also now affecting Finnish businesses. Recent reports from the field suggest that large global insurers and smaller insurers have reduced their underwriting capacity, increased premiums, and been restrictive with the writing of certain risks. As a result, local companies might find problems in placing or renewing large D&O programs. One of the reasons for a hardening market is the emergence of so called "event-driven" cases arising from negative events, such as a serious cyber incidents, causing a negative effect to company's value or a regulatory investigation. Having said all this about the market, the normative framework has not essentially changed recently and the rules on individual liability of the directors are still relatively modest.

> **"TO LESSEN THE EFFECTS OF THE D&O MARKET THE INSUREDS SHOULD ACTIVELY PLAN AHEAD FOR THE PURCHASE OR RENEWAL OF D&O INSURANCE."**
>
> ROBERT BÜTZOW, SOCRATES ATTORNEYS LTD

INSURANCE DISTRIBUTION – STRICTER LOCAL RULES AND OPEN QUESTIONS

Finland implemented the Insurance Distribution Directive by enacting new legislation. The former Act of Insurance Mediation was replaced by a new Act of Insurance Distribution which came into force on 1 October 2018. The act contains the minimum criteria of the directive but also goes beyond these in many areas, for example adopting stricter rules concerning cross-selling and extending the scope of administrative pecuniary sanctions.

Whilst the local regulation is meant to provide relatively strict rules on various issues in order to protect insurance customers, it also leaves many essential topics subject to interpretation. To start with, even the concept of insurance mediation – which naturally is central to applying the regulation – is described in rather broad terms. This has left room for diverging views especially when the distribution channel is the internet and/or a complex contractual structure. The established practise under the preceding regulation has helped in some occasions, but not comprehensively.

Ultimately, it is the supervisory authority, Finanssivalvonta (Financial Supervisory Authority) that decides on where to draw the borderline in each individual case (not ignoring the fact that the courts formally have the last word). Luckily, the local authority has been rather service-minded and open also to straightforward discussions with local insurance lawyers on the application of the regulation in concrete setups.

> **"DISTRIBUTION OF MASS INSURANCE PRODUCTS IS TODAY NOT WHAT IT USED TO BE. EVEN IF THE CURRENT EU DRIVEN REGULATION IS DETAILED, THERE IS A LOT OF ROOM FOR CASE BY CASE INTERPRETATION BOTH FOR OFFICIALS AND LOCAL LAWYERS."**
>
> JUSTUS KÖNKKÖLÄ, PARTNER, SOCRATES ATTORNEYS LTD

TOP ISSUES:

Orientation of Mobilities (LOM)

CAT NAT

New Procedural Rules in effect as from 1 January 2020

INSURANCE INDUSTRY AT A GLANCE

716

Registered firms

€211 BILLION

Value of Premia

BYRD & ASSOCIATES

FRANCE

The main challenge in the French insurance sector in 2020, as in other jurisdictions thoughout the world, will be to deal with the fallout from Covid-19. In March this year, France took draconian measures to impose travel and quarantine restrictions, closing non-essential commercial businesses and schools, closing courts, cancelling public events, etc. All these measures will have untold consequences on businesses and individuals, and naturally on the involved insurers. It is inevitable that the courts, once open, and ADR bodies, will be swarmed with claims not only on liability issues, but also on policy coverage issues, which will test force majeur defences, triggers of cover, exclusions for BI cover, event cancellation cover, travel losses, medical malpractice claims, delayed construction claims, etc.

A detailed discussion of the fallout from Covid-19 is beyond the scope of the present contribution to this publication. However, other important issues remain: access to data in automated and connected vehicles, the reform of the natural catastrophe regime and the substantial modification of French procedural rules.

Rue De Rivoli, Paris.

LOM

The law governing mobilities (la *loi d'orientation des mobilités*), known as the "LOM", was published on 24 December 2019. This is a broad-reaching law with the general goal of providing alternative solutions to using motor vehicles, in particular fossil fuel vehicles which are to be phased out by 2040. These include increased use of electric bicycles, electric scooters and other non-motorized means of transportation.

LOM empowers the Government to take all measures by simple ordonnance to adapt legislation to govern the use of autonomous or connected vehicles and will include, in particular, rules governing access to data. It sets out some general rules governing the right to access vehicle data which will be detailed in the subsequent implementing legislation. This is expected to be a hotly debated subject in 2020 both in France, as well as at the European level.

The future implementing legislation will include a series of measures in the event of an accident to make relevant data accessible to insurers, police and investigative bodies, as well as the guarantee fund, when no insurance is available, to allow these parties to consider liabilities and compensation. The new legislation will also aim to combat cyber attacks on connected vehicles and to allow non-discriminatory access to relevant vehicle data for the development of vehicle related services.

> **"VEHICLE DATA ACCESS IS EXPECTED TO BE A HOTLY DEBATED SUBJECT IN 2020 BOTH IN FRANCE, AS WELL AS AT THE EUROPEAN LEVEL."**
>
> ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

CAT NAT

The bill on the reform of the natural disaster regime (CAT NAT) was unanimously adopted in the French Senate on 15 January 2020. The bill has now been submitted to the National Assembly for a vote. The law is expected to be adopted later this year with implementing regulations to follow.

This bill introduces a number of amendments to the Insurance Code and the Construction and Housing Code which are intended to strengthen the legal framework of the natural disaster compensation regime, provide for fairer treatment of insureds and provide incentives for prevention measures. The main highlights are as follows:

- The legal framework of the scheme has been amended in order to improve the operation and transparency of the procedure for recognising a state of natural disaster;
- The main changes for the treatment of insureds include: the improvement of the quality of repairs carried out after a natural disaster; the inclusion of emergency re-housing for disaster victims; control over premiums and limitation of deductibles;
- The main preventive measures include: a tax credit allowing private owners of property to deduct from their income 50% of the costs of reinforcing their property against natural disasters; specific rules for construction on land exposed to the risk of land slides due to drought and soil rehydration; the requirement of a systematic soil survey prior to the sale in the case of the sale of undeveloped land intended for the construction of single-family homes.

NEW CIVIL PROCEDURAL RULES IN EFFECT

A decree published in December 2019 in effect as from 1 January 2020 substantially modified the civil procedural rules in France. The major changes include interim enforcement of lower court decisions (1) alternative dispute resolution (2).

1. *Interim enforcement of lower court decisions:* One of the major reforms with practical consequences for litigators and insurers concerns the interim enforcement of lower court decisions. Under the previous rules, the interim enforcement of lower court decisions had to be expressly requested by the plaintiff and the lower court judges had the sovereign power to order interim enforcement at their discretion. Typically, lower court judges would only order interim enforcement in cases where there was little likelihood of a successful appeal. Under the new rules, lower court decisions will be subject to interim enforcement by law, subject only to certain exceptions, and ultimately subject to appeal.

2. *Alternative Dispute Resolution.* The new rules provide for compulsory prior recourse to alternative dispute resolution for claims not exceeding 5,000 euros and for disputes between neighbours, save for certain specific cases.

For disputes exceeding 5,000 euros, the rule remains that the parties must show the court that they have attempted to settle the matter through conciliation or mediation before starting legal action, but there is no sanction if they fail to do so. Once the action is before the courts, the judge may, under previous rules in effect since 2019, still recommend mediation or in some cases impose mediation on the litigants. There is clearly a movement in France to promote mediation and other ADRs over litigation.

> **"THERE IS CLEARLY A MOVEMENT IN FRANCE TO PROMOTE MEDIATION AND OTHER ADRS OVER LITIGATION."**
>
> ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

TOP ISSUES:

D&O Market hardening

Credit insurance

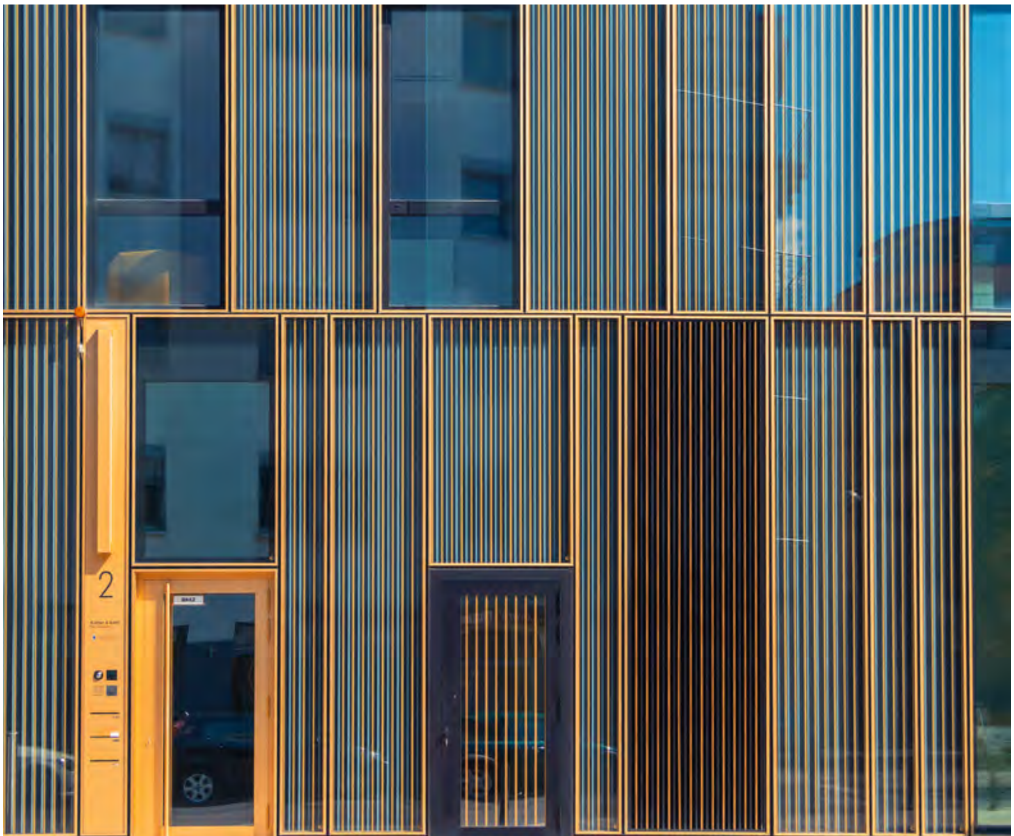
Business shutdown insurance

ARNECKE SIBETH DABELSTEIN

GERMANY

At the beginning of the year, the German insurance market was still looking forward to a relatively quiet and stable business development for the year 2020. Admittedly, even at that time there were already various uncertainties (e.g. Brexit) regarding future developments. But overall, the market took a positive view of the near future and addressed the following issues, among others: climate change, digitalisation, further spread of cyber insurance, and hardening of the D&O market.

However, the outbreak of the COVID 19 pandemic has now fundamentally changed the picture. Since the beginning of March at the latest, this event has also been at the centre of all considerations with regard to the insurance industry, especially since the effects are still unforeseeable. However, it is already clear that various market sectors will be massively affected by the COVID-19 pandemic. In addition to the obviously affected areas such as business closure insurance, these include, for example, credit default and D&O insurance. Market participants now no longer compare the effects with those of a tsunami, but with the impact of a meteoroid.



A modern building in Cologne.

INSURANCE INDUSTRY AT A GLANCE

528

Registered firms

€250 BILLION

Value of Premia

D&O INSURANCE

In the course of last year, the German D&O market showed signs of a hardening market for the first time in many years. This was a consequence of an ever-increasing expansion of cover and rising claims expenditure. Insurers had therefore gradually begun to raise premiums, reduce capacities or withdraw from certain business areas in the course of 2019. Most market participants expected this trend to continue in 2020 and anticipated a cautious reduction in the coverage.

Whether this expectation is still justified, COVID 19 cannot be predicted at this time. However, it is already to be expected that numerous claims in the area of D&O insurance will also arise in connection with COVID 19. A scenario that in Germany is of greatest relevance within the scope of D&O insurance anyway is the insolvency of the policyholder. For in nearly each insolvency case liability claims are raised against directors and officers due to a delayed filing for insolvency. The German government now has temporarily suspended the obligation to file for insolvency. However, this only applies if the pandemic is responsible for the insolvency maturity, which will lead to further disputes in the event of a claim. If one also takes into consideration the recent trend towards so-called "event-driven litigation", it is easy to imagine that in the coming months and years there will be claims under D&O insurances that are at least indirectly related to the pandemic.

> "THE IMPACT OF THE PANDEMIC ON THE HARDNESS OF THE MARKET CANNOT YET BE ASSESSED. HOWEVER, IT SEEMS LIKELY THAT THE NEW LOSS SCENARIOS WILL LEAD TO AN ACCELERATION OF HARDENING OF THE D&O MARKET."
>
> QUIRIN VERGHO, ASD, PARTNER

BUSINESS SHUTDOWN INSURANCE

Until a few months ago business shutdown insurance, was known only to specialists in Germany. Now, due to COVID-19, this insurance has become the focus of attention and is being field-tested nationwide. Usually this offers cover if an insured business is shut down by an official order to prevent the spread of communicable diseases. Whilst business interruption insurance is widespread, market estimates show that even in relevant economic sectors only about 10% of companies have business shutdown insurance.

Although COVID-19 is undoubtedly a communicable disease, it is unclear whether insurance cover applies, as many contracts only offer protection for specifically named communicable diseases, which excludes COVID-19. Secondly, many affected businesses are not completely closed, as they are still allowed to offer delivery services, for example. Moreover, due to the state support, it is not possible at present to determine the exact amount of the damage of the companies either.

Insurance companies have refused cover in many cases, but policyholders are dependent on the payments, prompting political pressure on insurers to make voluntary payments. Even if these efforts are successful, many policyholders will try to enforce their claims in court.

> "THE DEMAND FOR BUSINESS SHUT DOWN INSURANCE WILL INCREASE IN THE FUTURE. IN ORDER TO MEET THIS DEMAND, HOWEVER, THE EXISTING PRODUCTS AND THEIR DISTRIBUTION SHOULD BE REVISED TO ENSURE GREATER CLARITY IN THE EVENT OF A CLAIM."
>
> QUIRIN VERGHO, ASD, PARTNER

CREDIT INSURANCE

Germany as a trading country relies heavily on credit insurances and according to the German Insurance Association's information, the last years' trend showed that credit insurances were doing well, reflecting the decrease in business insolvencies in Germany. Now, however, these numbers are expected to increase significantly due to COVID-19. In order to enable credit insurers to uphold insurance cover of this kind, and thereby avoid major disruptions of trading chains, credit insurers and the German Federal Government on 16 April 2020 agreed on a 30 billion Euro protective shield.

Furthermore, COVID-19 also influences credit insurers with regard to the prerequisites of cover:

A credit insurance covers the assured's risk in case of default of payment of its contract partners. The insured event usually occurs when the customer becomes insolvent (and particularly when insolvency proceedings are opened) or when he is in default of payment (so called "protracted default").

With the Corona crisis, the German Legislator, on 27 March 2020, passed the Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law, and this can affect the prerequisites for the insured event. The new Act particularly postpones the duty to file for insolvency so that situations are likely to arise where the contract partner of the assured is de facto insolvent, but the insolvency proceedings can neither be started nor rejected for lack of assets, because the application for insolvency proceedings is not filed (nor can be filed by the creditors).

To what extent these unforeseen situations affect the obligations under the credit insurance contract naturally depends on its specific terms and conditions.

> "GERMAN CREDIT INSURANCES ARE HEAVILY IMPACTED BY THE COVID-19 CRISIS, IN PARTICULAR REGARDING BUSINESS INSOLVENCIES."
>
> OLAF HARTENSTEIN, ASD, PARTNER

TOP ISSUES:

- Regulatory changes
- Changes to pricing
- Disruptors

KHAITAN LEGAL ASSOCIATES

INDIA

The last decade has been kind to the Indian insurance sector. Gross written premiums have crossed USD 100 billion, overall insurance penetration has increased. On a macro level, the insurance market has largely opened up to foreign players in all categories of business – direct insurance, intermediation and reinsurance.

The insurance industry is extremely critical to a country's economic development. It enables risk taking while at the same time securing growth. Additionally, since the assets under management of insurance companies represent long-term capital, they also act as a pool in which to invest in long-term projects such as infrastructure development.

The changing regulations and initiatives of the Indian government are leading to improvement of demographic factors such as growing middle class, young insurable population and growing awareness of the need for protection and retirement planning which will support the growth of Indian insurance. Economic reforms such as demonetization, Jan Dhan accounts, Unified Payment Interface (UPI) and Aadhaar integration have set the ground for a digital and cashless economy. Such a digital revolution is set to impact the value proposition of insurance services too. For instance, the need for strategic changes in developing a more relevant and better digital distribution model has become clear, and change is invevitable.

1947 Ten Rupees Note.

INSURANCE INDUSTRY AT A GLANCE

72

Registered firms

$98 BILLION

Value of Premia

REGULATORY CHANGES

The Indian Government is committed to a mission of "ease of doing business" and "make in India" and is bringing new changes to the regulatory framework around the Indian business sector including the insurance sector. Various initiatives and policies are being introduced by government in order to expand insurance penetration to rural areas and to boost the insurance industry.

Recently, permitted foreign direct investment (FDI) for insurance intermediaries was raised from 49% to 100%. Further, the Insurance Regulatory and Development Authority of India (IRDAI) plans to issue redesigned initial public offering (IPO) guidelines for insurance companies in India, which are to looking to divest equity through the IPO route.

Moreover, the data privacy framework in India is also undergoing an overhaul. Insurers, being large carriers of personal data of individuals, would be extensively impacted by enactments of data protection laws.

> **"WHILE SIGNIFICANT INITIATIVES HAVE BEEN TAKEN BY THE INSURANCE REGULATOR TO BOOST INNOVATION AND TECHNOLOGICAL INTERVENTIONS. WE ARE YET TO SEE WHETHER THE GOVERNMENT WILL BITE THE BULLET AND OPEN THE INSURANCE MARKET FURTHER WITH RELAXATIONS TO FDI CEILINGS."**
>
> SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

CHANGES TO PRICING

The Indian insurance industry is beginning to see a rise in the insurance rates after languishing at historic lows for several years. This turnaround began when India's leading domestic reinsurer GIC Re refused to book business from general insurers where the insurers have quoted very low rates. Further, under the extant insurance regulations, general insurance companies operating in India have to mandatorily cede 5% of their books to GIC Re.

IRDAI in its journal has highlighted that "uncertainties associated with the increasing impact of climate change on natural catastrophes, man-made factors and soft market conditions make it a difficult challenge for reinsurance underwriters to evaluate, model and price catastrophic excess of loss covers. Existing models use historical loss data of 100 years to arrive at a result. Nevertheless, increased frequency and severity of cat events in the recent years is making such modelled results ineffective. As a compromise, using a shorter period of 25-35 years is being considered by underwriters."

However, the more immediate threat is that by the time India understands the requirement of widespread nat cat insurance, the available capacity of reinsurance, the willingness of reinsurers to support such exposure may drastically reduce or may only be available at elevated prices.

> **"PRICING FOR CATASTROPHIC LOSSES INVOLVES PREDICTING THE UNPREDICTABLE. THIS DECADE HAS BEGAN WITH THE GLOBAL OUTBREAK OF THE COVID-19. THREATS ARE MULTI-FACETED AND WE ARE FACING INCREASING EXPOSURE."**
>
> SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

DIGITAL REVOLUTION

The digital revolution in India has disrupted the business environment of the insurance industry. Digital technology has the potential to break down the traditional barriers of the insurance sector such as product awareness levels, limited customer touchpoints, access to knowledge, service availability and payments. Insurers are also investing in the digitisation of business processes to achieve efficiency and cost reduction.

Customers now need interaction points instead of just one-way communication channels. When it comes to buying insurance, the ease of buying, maintaining, renewing and claiming an insurance policy is of utmost importance. Leading Indian insurers are testing digital prototypes and thinking along the value chain. Further, prudent regulations and newer government initiatives such as 'Modicare' are reinforcing the need to digitise operations, from front to back.

Insurance companies are now embracing Insurtech disruptors instead of combating them and are developing enterprise innovation models. IRDAI is granting access to start-ups and aggregators and is also enabling the innovation sandbox experiment.

Mechanisms such as intelligent virtual assistants/chatbots, artificial intelligence and wearable devices are all used in the market.

Newer channels such as retail aggregators (Amazon, Flipkart, etc.), telecommunication providers (Airtel, Vodafone, Jio, etc.), smart home devices manufacturers, AR/VR device providers, telematics device manufacturers, sharing economy providers (Uber, Ola, OYO, etc.), transportation providers (IRCTC, bus providers), and messaging apps (WhatsApp, Facebook messenger, etc.) are being developed in the insurance distribution space.

> **"THE OPPORTUNITY FOR DIGITAL DEVELOPMENT IN THE INSURANCE SECTOR IS IMMENSE. A "TECH-FORWARD" ATTITUDE HAS REPLACED TRADITIONAL THOUGHT PROCESSES."**
>
> SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

TOP ISSUES:

- Legislation – Judicial Council Act 2019
- Consumer Insurance Act 2019
- Brexit

INSURANCE INDUSTRY AT A GLANCE

135

Insurance businesses

€15 BILLION

Value of Premia

BLM

IRELAND

The Irish insurance market has seen some major developments in 2019. With several smaller businesses finding they were unable to obtain insurance due to the relatively high level of Personal Injuries Awards being made and a number of insurers exiting the market, political pressure has been brought to bear. The outgoing government has recently passed the Judicial Council Act 2019 with a view to reviewing the level of damages awarded for personal Injuries in the Courts of Ireland and publishing guidelines setting out the principles for assessment.

The Consumer Insurance Contracts Act was also enacted in 2019. This represents one of the biggest changes to the law surrounding insurance contracts in Ireland over the last few decades.

Britain has finally exited the EU. This has resulted in several insurers moving their claims handling operations to offices based within the EU.

Grand Canal Dock, Dublin, Ireland.

LEGISLATION – JUDICIAL COUNCIL ACT 2019

The Judicial Council includes a Personal Injuries Guidelines Committee which is to publish draft Personal Injuries Guidelines within six months of establishment.

In preparing its guidelines, it is to have regard to the need to promote consistency in the level of damages awarded for Personal Injuries. Coming only two years after the Mediation Act 2017, the Judicial Council Act 2019 should have a major impact on the cost of litigation in Ireland.

> **"THE ESTABLISHMENT OF THE JUDICIAL COUNCIL'S PERSONAL INJURIES COMMITTEE IS TO BE WELCOMED. GREATER CONSISTENCY IN THE LEVEL OF AWARDS SHOULD RESULT IN EARLIER RESOLUTION OF CLAIMS AND LOWER LEGAL COSTS FOR INSURERS. THE GUIDELINES SHOULD ALSO REDUCE THE HISTORIC TENDENCY TOWARDS THE LEVEL OF AWARDS PROGRESSIVELY INFLATING OVER TIME."**
>
> ANNE STAUNTON, PARTNER, BLM

CONSUMER INSURANCE ACT 2019

The Consumer Insurance Act 2019 represents one of the most significant legislative changes to the Irish insurance market in recent decades. The Act only applies to insurance contracts entered into by "Consumers" but the definition of consumer is wide. The most significant changes can be summarised as follows:

- Claims by a Consumer on an otherwise valid Contract shall not be rejected by reason only that the consumer did not have an insurable interest in the subject matter of the contract;
- The principle of "Utmost Good Faith" is replaced with a pre-contractual duty of the Consumer to only answer the specific questions raised by the Insurer honestly and with reasonable care.
- Proportionate remedies are introduced for Innocent, Negligent or Fraudulent mis-representation
- A right to withdraw from the contract by notice during a cooling off period.

> **"WHILE THE CONSUMER INSURANCE ACT 2019 HAS PLACED MORE OF A BURDEN ON INSURERS TO ASK THE RIGHT QUESTIONS WHEN OFFERING INSURANCE, THIS SHOULD BENEFIT CONSUMERS AND INSURERS ALIKE. POLICY DISPUTES OUGHT TO BE LESS FREQUENT AS ONE WOULD ONLY EXPECT TO SEE COVER DECLINED IN CASES OF FRAUDULENT MIS-REPRESENTATION."**
>
> GARRETT CORMICAN, PARTNER, BLM

BREXIT

Britain has finally left the EU. It remains to be seen how this will affect the insurance market within Ireland. Historically, many British based insurers have passported their services into Ireland. While several of these have chosen to establish bases in Ireland or the EU, others have chosen to leave the market. A smaller number of insurers operating in the Irish market and less competition is likely to mean that the cost of insurance will remain high in Ireland for the foreseeable future.

TOP ISSUES:

- Changes to the make-up of the industry
- Claims
- Disruptors

INSURANCE INDUSTRY AT A GLANCE

190

Registered firms

€124 BILLION

Life

€39 BILLION

Non-life

BTG LEGAL

ITALY

The Italian insurance market still faces economic and political uncertainty, low interest rates, regulatory challenges, rising competition, new products and technological innovation. As a consequence, insurers are rethinking their strategies.

On the life side, sales of traditional guaranteed products are declining but this is partly offset through increased sales of unit-linked products, in which insurers carry no investment risk. New players, mainly private equity funds or banks, are entering the life market through the direct acquisition of existing insurance companies and closed books. Non-life insurers are challenged by a very competitive pricing environment and low investment returns.

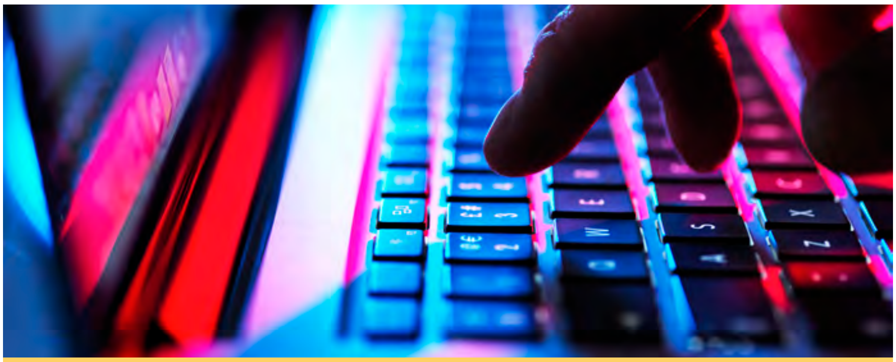
Insurers are therefore focused on improving operating efficiency and profitability. That's why many insurers have launched specialised products, such as cyber insurance and weather risks coverages, to boost sales. Finally, claims management is currently under the spotlight. Insurers need to focus on implementing best practice in order to minimise the impact and costs of claims litigation.

Food market, Turin.

CHANGES TO THE MAKE-UP OF THE INDUSTRY

Italy's banks are turning to the insurance market for new opportunities (for life and non-life business). This will open the door to new consultancy requests from insurers (compliance, regulatory and claims related).

> **"ON THE OTHER HAND, THE PRESENCE OF BANKS WILL REDUCE THE PROFIT COMMISSIONS. ORDINARY INSURERS SHOULD LOOK AT MEASURES TO MAXIMISE THEIR PROFITS: SUCH AS A COST EFFECTIVE CLAIMS MANAGEMENT AND NEW DISTRIBUTION STRATEGIES."**
>
> ALBERTO BATINI, SENIOR PARTNER, BTG



CYBER RISK

Italian cyber risk is not yet mitigated because corporations do not understand the real impact of cyber and, on the other hand, intermediaries are not well prepared to explain the real benefits of such coverage. An increasing number of incidents will lead to more demand.

> **"IN 2020 INSURERS SHOULD BE PREPARED TO OFFER (I) SIMPLE POLICY WORDINGS AND (II) GOOD SERVICES IN RESPONSE TO DATA BREACH THROUGH A TESTED PANEL OF VENDORS (LEGAL CONSULTANCY, EXPERT FORENSICS, NOTIFICATION PLAYERS, PR, ETC.)."**
>
> GIORGIO GRASSO, SENIOR PARTNER, BTG LEGAL

CLAIMS

Claims management is a topic to be followed with close attention, due to the high volume of claims in Italy. It seems the secret could be implementing simple best practices and partnering with experienced and structured law firms.

> **"THEREFORE, INSURERS SHOULD RE-THINK TO THEIR CLAIMS PANELS AND PUT PRESSURE ON INTERMEDIARIES TO ACCEPT TO OFFER BINDERS ALONG-WITH PRE-AGREED PANELS, AS IS USUAL IN OTHER MARKETS."**
>
> SILVIA TRAVERSO,
> SENIOR PARTNER,
> BTG LEGAL

TOP ISSUES:

- The FATF's visit to Luxembourg
- DAC 6 implementation
- Draft bills under discussion

INSURANCE INDUSTRY AT A GLANCE

766

Registered firms

This number includes insurance and reinsurance companies, insurance agencies, professionals of the insurance sector and brokerage firms.

39 BILLION

Value of Premia

MOLITORLEGAL

LUXEMBOURG

The effects of Brexit continued to be felt in the sector throughout 2019 with the arrival of a number of new insurance companies, mostly non-life, and brokerage firms, as well as an unprecedented number of foreign branches being established. However, the year 2020 will also have an impact on operators in the sector, but rather because of the changes of a legislative nature that they will have to face, as well as because of the carefully planned and much feared visit of the FATF (the Financial Action Task Force, the global money laundering watchdog), over 17 days from 26 October to 11 November 2020.

In addition, insurers hope that the bill n# 7511 tabled at the very end of 2019 will be adopted as quickly as possible in order to put an end to the legal insecurity that persists with regard to the processing of health data. They also continue to fear the impacts, particularly in terms of implementation costs, especially IT costs, that would result from the adoption of the bill on dormant insurance contracts, which is currently at a standstill after having come in for a lot of criticism.

Luxembourg.

THE FATF'S VISIT TO LUXEMBOURG

Ten years after being slapped on the wrist by the FATF the Luxembourg financial centre is apprehensive about the visit of the FATF inspectors next autumn. However, since then, the country has caught up well and has significantly improved its AML/CFT arrangements. The visit is inducing careful preparation in order to avoid a negative assessment that would be detrimental to the entire financial sector, including insurers. Like the other members of the FATF, the country has adopted the famous risk-based approach which has demonstrated a high risk attached to the economic sector of the financial centre. In this context, Luxembourg's insurance regulator (CAA) plays a key role. Insurance players have seen a strengthening of the supervision of their regulator which has introduced new rules on the scoring of insurance contracts and has implemented new questionnaires, quantitative for life insurance companies and qualitative for brokers.

> **"THE FATF'S VISIT IN 2020 IS CAUSING PARTICULAR CONCERN BECAUSE IT INVOLVES, FOR THE FIRST TIME, INTERVIEWS THAT WILL BE CONDUCTED DIRECTLY WITH PROFESSIONALS."**
>
> MICHEL MOLITOR, MANAGING PARTNER, MOLITOR LEGAL

DRAFT BILLS UNDER DISCUSSION

Two draft laws are currently under discussion and are of particular interest to insurers. The first aims at explicitly legitimising the processing of health data by insurance companies in accordance with Article 9(2)(g) of the GDPR. Luxembourg insurers are eagerly awaiting the enactment of this future law, as they cannot currently rely on another appropriate basis for data processing. The second aims to provide Luxembourg with a specific legal framework for dormant life insurance contracts, which are currently governed by ordinary law and by applicable contractual provisions. The objective is twofold: firstly, to strengthen the protection of beneficiaries of certain insurance benefits by making it easier for them to find their insurance contracts and, secondly, to increase legal certainty for insurers by specifying their professional obligations.

> **"THE PROCESSING OF HEALTH DATA IN THE CONTEXT OF, AMONG OTHER THINGS, HEALTH, LIFE OR ACCIDENT INSURANCE CONTRACTS IS INDISPENSABLE FOR INSURANCE COMPANIES AND SHOULD BE RECOGNISED AS SUBSTANTIALLY CONTRIBUTING TO THE PUBLIC INTEREST."**
>
> ARIANE WOURWOUKAS, SENIOR ASSOCIATE, MOLITOR LEGAL

DAC 6 IMPLEMENTATION

DAC 6 is on everyone's lips, especially those of unit-linked life insurers. Luxembourg implemented the Directive by the law of 25 March 2020 on cross-border arrangements. Concretely, insurers – when acting as intermediaries within the meaning of the said law – will have to, where applicable, declare a whole range of information (concerning in particular the policyholder's identification data, the hallmarks on which the declaration is based, the value of the contract, the Member State of residence of the policyholder, etc.) relating to any insurance contract that would meet the definition of "reportable cross-border arrangement " to the Direct Tax Administration. The law will enter into force on 1 July 2020.

> **"THE REPORTING OBLIGATIONS WILL HAVE RETROACTIVE EFFECT AND INSURERS WILL HAVE TO REPORT INFORMATION ON REPORTABLE CROSS-BORDER ARRANGEMENTS, THE FIRST STEP OF WHICH WAS IMPLEMENTED BETWEEN 25 JUNE 2018 AND 30 JUNE 2020 TO THE DIRECT TAX ADMINISTRATION BY 31 AUGUST 2020 AT THE LATEST."**
>
> JACQUES WOLTER, PARTNER, MOLITOR LEGAL

TOP ISSUES:

- Changes to pricing
- Claims
- Political or economical issues

INSURANCE INDUSTRY AT A GLANCE

110

Registered firms

$28.6 BILLION

Value of Premia

OCAMPO 1890

MEXICO

With a new economic policy, most people in Mexico are anxious to understand how wealth will be distributed. The insurance sector will be affected and will need to develop new affordable products to satisfy the market.

The Angel of Independence, Mexico City.

CHANGES TO PRICING

Mexico is facing a new economic policy aimed at distributing wealth amongst the poorest people, meaning that the state is directing public resources to public programs rather than investing in new infrastructure to develop the economy.

> **"MEXICO'S INSURANCE MARKET NEEDS TO UNDERSTAND THE NEW POLICIES AND ADAPT TO THEM. PERIOD."**
>
> ALDO OCAMPO, PARTNER, OCAMPO LAW

POLITICAL OR ECONOMICAL ISSUES

Mexico's President, Lopez Obrador, hasn't defined where the public policies related to the financial market are going. He has promised that the poorest will have access to financial services but there are no clear signals actions signalling this.

> **"INSURERS MUST BE READY TO RESPOND AS SOON AS THE PRESIDENT RELEASES THE POLICIES."**
>
> ALEJANDRO OCAMPO, PARTNER, OCAMPO LAW

COVID-19

Covid-19 will cause large losses across Mexico. Mexican President Lopez Obrador is not treating the virus as an international pandemic situation, but instead, he is underestimating the situation. This will cause a huge health problem.

> **"HEALTH INSURERS WILL HAVE TO WAIT FOR LARGE CLAIMS RELATED TO COVID-19."**
>
> DIANA ANGELES, ASSOCIATE, OCAMPO LAW

TOP ISSUES:

- Amendments to the Insurance Contract Act
- Approaching revision of Norwegian Standard construction contracts
- Large increase in insurance fraud

RIISA & CO

NORWAY

The market in insurance is hardening. After a long period of tough competition between the insurance companies which drove artificially low prices, we are now seeing an overall increase of rates, especially in construction, where companies have experienced an increase in the frequency of large-scale damages.

Liability insurance for lawyers was long seen as a good risk, but several recent claims have led to large pay-outs and this has driven a shift towards ever-more stringent professional responsibilities, with greater demands from re-insurers that have changed the risk assessment of larger companies. This shift in the market has also resulted in stricter wording interpretations and more narrowly drafted policies.

Art Nouveau buildings from above, Alesund, Norway.

INSURANCE INDUSTRY AT A GLANCE

27

Registered firms

€59 BILLION

Value of Premia

AMENDMENTS TO THE INSURANCE CONTRACT ACT

The Insurance Distribution Directive 2016/97/EU (IDD) entered into force in the EU in 2018. The directive has not yet been implemented in Norwegian law, but the Norwegian authorities are currently working on drawing up rules for the implementation of the directive. The background for the directive is to increase consumer protection when selling insurance, both non-life/general insurance and life insurance. The changes entail, among other things, increased requirements for product control and for information and advice on sales.

In addition to the implementation of IDD in Norwegian law, the Norwegian authorities have proposed a restructuring of the Norwegian Insurance Contract Act. Furthermore, several new rules have been proposed. In this connection, the Norwegian Bar Association has also proposed that a further revision of the Insurance Contracts Act should be carried out

> "THE CURRENT INSURANCE CONTRACT ACT IS NOT SUITED FOR MODERN INSURANCE PRODUCTS, AND A RESTRUCTURING OF THE INSURANCE CONTRACTS ACT IS HIGHLY APPRECIATED."
>
> TORALF WÅGHEIM, PARTNER, RIISA

APPROACHING REVISION OF THE NORWEGIAN STANDARD CONSTRUCTION CONTRACTS

There is an approaching revision of Norway's standard contracts in the field of building construction and civil engineering. Norwegian standard contracts are generally used by building and construction contractors who work on a large scale in Norway. There are two main types of construction standard contracts, NS 8405:2008 (Norwegian building and civil engineering contract) and NS 8407:2011 (General conditions of contract for design and build contracts), with their corresponding sub-contracts NS 8415:2008 and NS 8417:2011. These standards provide general terms of contract, and aim to secure predictability between the contracting parties by placement of risk. The standards also regulate an obligation to insure the risk of damage to the contractual elements, as well as liability insurance.

These main standards are now about to be revised. In addition there are ongoing negotiations on a new standard for large contracts, new consumer forms and standard performance descriptions for architects and advisers. One of the probable areas to be reviewed is the placement of risk. A new standard for large contracts will possibly regulate placement of risk differently from previous standards, with a move to a knock-for-knock system. This is likely to alter the insurance obligation, and hence have a substantial impact on the assessment of insurance risk and premium, policy wording, as well as to claims handling and after-event recourse.

> "THE RESULTS OF THIS SIGNIFICANT CONTRACT REVISION ARE HIGHLY INTERESTING NOT ONLY FOR CONTRACTORS AND OTHER OPERATING PARTIES IN THIS FIELD, BUT ALSO FOR THE INSURANCE COMPANIES."
>
> JOACHIM SKJELSBÆK, PARTNER, RIISA

INCREASE IN INSURANCE FRAUD

Recent numbers from the industry organization Finance Norway (March 2020), show that a record number of attempts at fraud have been revealed. The numbers seem to have been increasing for the last ten years, despite an increased effort from insurance companies to prevent and reveal fraud. In total, fraud was valued at almost half a billion NOK last year (50 million Euros). Unrecorded cases of fraud are likely to be much larger in numbers.

> "IN ADDITION TO THE ONGOING WORK TO ACHIEVE ATTITUDE CHANGE AMONG CONSUMERS AND ENSURING THAT POLICYHOLDERS PROVIDE CORRECT INFORMATION WHEN TAKING OUT POLICIES, IT IS IMPORTANT THAT INSURANCE COMPANIES ENSURE SUFFICIENT THOROUGHNESS IN THE CLAIMS HANDLING PROCESS IN ORDER TO REVEAL ATTEMPTS AT FRAUD."
>
> YNGVE SKOGRAND, PARTNER, RIISA

TOP ISSUES:

- Brexit
- Scottish independence
- Scottish legislative initiatives

UK INSURANCE INDUSTRY AT A GLANCE

375

Registered firms

£50.9 BILLION

Value of Premia

BLM

SCOTLAND

In December 2019 the Conservative government gained a strong majority and led the UK through its EU exit in January 2020. With Scotland however having voted by a significant majority to remain in the EU and also returning a large majority of pro-independence MPs at the December election, the subject of independence remains highly topical in Scotland. Unfinished reforms to whiplash claims now start to take shape in April 2021, but not in Scotland, which continues along its own legislative paths in the devolved powers of the Scottish Parliament.

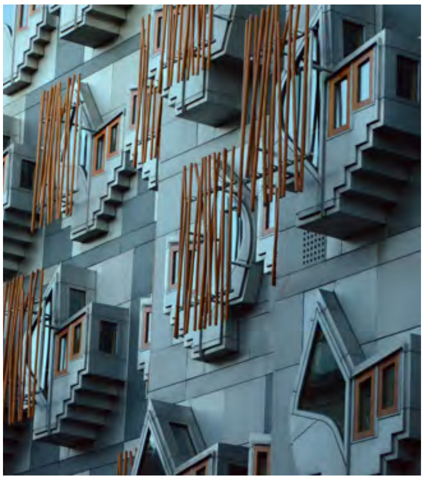
Crag Lough and Hadrian's Wall at Sunset.

BREXIT

Scotland remains part of the UK and so has left the EU on 31 January 2020 along with the rest of the UK. There are however additional complications in Scotland for several reasons, not least since Scotland voted by a significant majority to remain in the EU and has now also voted at successive Scottish and UK elections to return a large pro-independence majority, in the SNP. With this party being pro EU as well as pro independence, it is not surprising that the immediate future in Scotland looks uncertain as the implications of Brexit unfold throughout 2020.

At a domestic level in Scotland many of the Brexit related issues mirror those faced elsewhere in much of the UK, such as uncertainty concerning future trading relations, including upon financial services (Scotland having the largest number of workers in the insurance sector out with London) but there are issues where a divergent effect can be seen in the Scottish economy, such as upon immigration, with pro independence Scottish politicians promoting different post Brexit immigration policies for Scotland given the disproportionately ageing Scottish demographic. Whatever these potential divergences however, overall certainly it seems highly likely the transition period for Scotland leaving the EU and the establishment of its future trading relationships will be no different from the rest of the UK, taking effect at the end of 2020, but the issue for Scotland will be whether the end of 2020 marks not only the end of the Brexit chapter but also a significant staging post in a renewed clamour for independence.

> "WHILE SCOTLAND'S PATH IS PRESENTLY SET BY THE DRIVE TO 'GET BREXIT DONE', IT MAY BECOME CLEAR IF 2020 WILL ALSO MARK A RENEWED DRIVE FOR SCOTTISH INDEPENDENCE IN CONSEQUENCE."
>
> FRANK HUGHES, PARTNER, BLM



LEGISLATIVE INITIATIVES

The devolved Scottish Parliament and Scottish Government are intent on maintaining a different legislative path from Westminster, notwithstanding the issue of Scottish independence remains unresolved. This separate ways legislative path is seen in the lower Discount Rate in Scotland, driving up the costs of claims in England and Wales, whilst also showing no appetite whatsoever for introducing the English Whiplash reforms north of the Border

The Scottish Government too can be seen setting out to take a trailblazing path, at least in the UK, in the subject of Redress legislation for non recent Abuse claims , with a draft Bill likely by Summer 2020 raising a number of challenges for insurers in responding to such innovations given policy wordings. With the introduction of QOCS and DBAs too into Scotland in 2020, it is an expensive jurisdiction.

The cumulative effect of the above can lead to occasional rumblings across the sector about the appetite for writing business in the Scottish market at all, and on pricing considerations.

> "WHETHER RUMBLINGS GROW CONCERNING THE CLAIMS' COSTS IN SCOTLAND, WITH ITS DISTINCT LEGISLATIVE INITIATIVES, WILL BE WORTH WATCHING IN 2020."
>
> TONY MURRAY, PARTNER, BLM

SCOTTISH INDEPENDENCE

Whilst Scotland remains part of the UK and voted to remain so in the 2014 Scottish Independence Referendum, this vote took place when the UK was still firmly within the EU. Following the UK now entering its transitional phase for exiting the EU, the question of a further Scottish Referendum on independence (Indyref2) is rarely far from the headlines in Scotland. This clamour is perhaps not too surprising given Scotland voted by a substantial majority to remain in the EU so it is an open question in some quarters whether the 2014 independence referendum settled matters 'for a generation'. This mood amongst the Scottish electorate was reinforced in the December UK General Election when it returned an overwhelming majority of pro-independence SNP MPs to the Westminster Parliament, inevitably raising the clamour again for a Second Scottish Independence Referendum. For now such requests have been resisted by the UK Westminster Government but such requests are unlikely to diminish, and inevitably such continuing uncertainty can have a dampening effect on predictions.

> "FOLLOWING BREXIT, CONSTITUTIONAL POLITICS, IN THE SHAPE OF A CLAMOUR FOR INDYREF2 WILL REMAIN A CORE SCOTTISH ISSUE IN 2020."
>
> KAREN DANCE, HEAD OF SCOTLAND, BLM

TOP ISSUES:

Insurance Distribution Directive

Claims

New products

INSURANCE INDUSTRY AT A GLANCE

208

Registered firms

€68 BILLION

Value of Premia

B&A BLANCO Y ASOCIADOS ABOGADOS

SPAIN

The Spanish economy grew by 2% annually in 2019, maintaining the downward pace of the past five years. The constitution of the new government represents a breakthrough in terms of stability and overcoming in the existing political blockade. It is early to analyse the impact of their political programs, since they have not yet materialized.

Any economic slowdown will affect the development of the non-life and life risk business lines of the insurance market which are already slowing down. In regards to life cover and traditional annuities insurance, the low interest rate scenario will continue to be a structural factor that limits the growth of this market.

Metrosol Parasol, Seville.

INSURANCE DISTRIBUTION DIRECTIVE

On February 4th, 2020, the EU Directive on insurance distribution was transposed to the Spanish market (pending final approval by the Spanish Congress). In this regard, there are various developments which undoubtedly give the market greater transparency. For example, the client must be informed of all the costs, expenses and risks that he assumes in all investment products based on insurance. Also, it has established the obligation to provide a periodic evaluation of the suitability of the investment product. Sanctions for non-compliance with reporting obligations have been tightened.

In addition, combined practices are now regulated in insurance. When an insurance contract is part of a package with other services or products, the insurance distributor must inform the client whether the different components can be purchased separately and provide an adequate description of the different products and their costs. Before the sale, the distributor must also inform the user clearly and comprehensively of the effects that the early cancellation would have on the cost. The new regulation applies to all insurance distributors, including those who distribute insurance directly.

The new Insurance Distribution Law sets out rules and regulations for the insurance market, including the requirements that distributors must meet to maintain authorization, rules of conduct to protect clients and controls of their activity.

A gigantic turning point compared to the previous regulation comes with the regulation of insurance and reinsurance distributors. These are now not only intermediaries, but also insurers and reinsurers when they sell insurance through their employees, as well as distributors (such as travel agencies or car rental companies), viewed as complementary insurance brokers. Banking-insurance operators are also regulated within the agent category.

In short, we are facing a regulatory law that serves the end customer with greater and more efficient legal certainty.

> **“FINALLY, THE LONG-AWAITED EUROPEAN IDD HAS BEEN TRANSPOSED TO LOCAL LAW, WHICH GIVES THE MARKET GREATER LEGAL CERTAINTY AND ADAPTS OUR REGULATIONS TO MEET THE NEEDS OF SOCIETY.”**
>
> FERNANDO BLANCO GIRALDO, MANAGING PARTNER AT B&A

NEW PRODUCTS

In the last few months we have had various cases in Spain of malware attacks on major companies generating losses of several millions of Euros as a consequence of data damage & theft, denial of service and business interruption. No claims have been filed for now, but businesses and insurers must consider their cyber cover.

New technologies have caused the appearance of insurance products that as a whole generate added benefits to companies (i.e. insurance for mobile phones or computers, insurance for electric scooters, etc.) The market is tending to grow in these areas.

In this sense, the life insurance segment has been channelled through insurance banking operators as the predominant brokers. Internet sales continue to be very slow in this field.

> **“DIFFERENT LINES OF BUSINESS CREATED IN RECENT YEARS COULD SAVE COMPANIES' BALANCE SHEETS.”**
>
> SANTIAGO MARTIN, PARTNER AT B&A

PANDEMIC

The COVID-19 pandemic will trigger a flood of claims as a result of the cancellation of events, delay in industrial production plants, risk of default etc. This situation will also impact on certain types of insurance such as travel, healthcare, casualty or credit.

In this regard, due to the declaration of the state of emergency in Spain, both the Government and the General Council of the Judiciary decided on March 14 to suspend all judicial activity, and the suspension remained in place for well over a month. This, of course, will mean a delay in all jurisdictions, especially in the most affected by Covid-19 (labour, corporate and contentious-administrative). In addition, on the part of the Ministry of Justice, a series of procedural measures had already been advanced in order to prevent the Courts of First Instance taking longer than a year to resolve any cases (a situation that had been normal for years).

Some of these measures could be: the enablement of the month of August in the civil, corporate and contentious-administrative jurisdictions in order to file/handle judicial matters; issue judgments in voce; increase to €20,000 the value below which a claim can follow the verbal trial course (until now the limit was €6,000), which is faster than the ordinary procedure, etc.

In short, companies and lawyers are faced with a conjunctural situation that could extend the term of resolution of judicial issues from the filing of a lawsuit to more than 2 or 3 years.

> **“THE CORONAVIRUS CRISIS IS NOW TRANSFERRED TO THE SPANISH COURTS AND TRIBUNALS, WHICH MAY COLLAPSE IN THE COMING MONTHS DUE TO THE AVALANCHE OF CLAIMS IN ALL JURISDICTIONAL ORDERS.”**
>
> FERNANDO BLANCO GAMELLA, PARTNER AT B&A

TOP ISSUES:

- Disruptors
- Regulation
- New insurance products

GBF ATTORNEYS-AT-LAW LTD

SWITZERLAND

The Swiss insurance market has seen a slow but steady growth in recent years. Insurance companies have stepped out of the shadow of banks, their share of economic output rising steadily and overtaking other financial market participants in overall economic output. As the potential for growth is however reaching its limits and, in some cases, remains possible only at the expense of other market participants, the insurance market is being heavily challenged by increasing disruption by new and non-traditional players, the wave of digitization and the strengthening of supervision.

Reinsurers and insurers have recognized the signs of the times and started building complex value chains around insurance products on their own or with the help of start-ups and BigTech players. Those who cannot keep up with digitization will not be able to keep up with the rest of the market. But while market entry for new players remains easy, regulatory hurdles make market exit rather difficult.

Jet d'Eau Geneva.

INSURANCE INDUSTRY AT A GLANCE

200

Registered firms

CHF115 BILLION

Value of non-life premia

DISRUPTORS

The traditional Swiss insurance market is increasingly being challenged by new players or experimental vehicles of existing players. Technology driven modular platforms which automatically collect and analyse market data enable insurers to develop, test, deploy, readjust and, if unsuccessful, cancel products within weeks at relatively low costs. The result is that product cycles are becoming ever faster. Non-traditional and big tech companies bundle their unique resources, inject AI mixed with big data analytics and create bespoke insurance products within their closed ecosystems. The Swiss based Blockchain Insurance Industry Initiative (B3i) builds applications using distributed ledger technology and recently launched a catastrophe excess of loss product to the reinsurance market, lowering administration costs dramatically. Traditional insurers who have not anticipated these developments or ignored them for too long are left behind and must adapt quickly in order to not become the "Nokia" of the insurance market.

> **"INSURERS MUST DIGITIZE OR DIE. THE NEW MARKET REALITIES DO NOT FAVOUR DINOSAURS."**
>
> DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

FINMA REGULATION

The Swiss insurance market is becoming painfully aware of the tightened grip of the Swiss Financial Market Supervisory Authority (FINMA). Switzerland is not spared from the increasing trend of enforcing the controlling and mitigating of conduct risks. This is reflected in a shift in FINMA's audit strategy towards on-site inspections. Although the Swiss approach of principles-based supervision is often praised as being modern and market-friendly, the reality looks quite different, as FINMA has been increasingly assuming a legislative role in the recent past which was seen critically in the market. Also, insurers were of the view that FINMA has often given formal legal criteria precedence over market economy considerations. This has led to a new FINMA ordinance that now severely restricts FINMA's role in law-making. The fact remains, however, that insurers must keep their house in order so as not to subsequently tie up considerable resources in dealing with problems that could have been avoided if conduct risks had been diligently managed.

> **"A STIFF WIND IS BLOWING IN THE AREA OF INSURANCE SUPERVISION. WHAT WAS PERMISSIBLE YESTERDAY MAY NO LONGER BE TOLERATED TODAY."**
>
> DOMINIK SKROBALA, GBF ATTORNEYS AT LAW

INSURANCE-AS-A-SERVICE

While new risk transfer solutions among insurers and other corporate players are naturally also gaining a foothold in Switzerland, bundled products are becoming increasingly popular with consumers and small and medium sized enterprises while the inertia of policyholders is gradually decreasing. The long frowned upon bancassurance is gaining momentum in Switzerland again, as banks are looking for new sources of revenue and insurers are looking into new ways of distributing products aimed at start-ups and homeowners. Since traditional insurance products are not compatible with the new gig and sharing economy, insurers are pushed into transforming easy-to-model annual contracts into insurance contracts which provide cover at the push of a button and only for short periods of time. The changes run through the entire value chain, and as insurers may have the experience and data sets required for such products, brokers and reinsurers step in and offer sophisticated solutions while also occupying key positions. It is only a question of time until industrial insurers will have to offer other services in addition to insurance in order to survive in the market.

> **"INSURANCE-AS-A-SERVICE WILL BECOME THE NEW REALITY. CUSTOMERS WILL WELCOME THIS DEVELOPMENT, AS IT STIMULATES THE MARKET AND PROMOTES INNOVATIVE SOLUTIONS."**
>
> DOMINIK SKROBALA, GBF ATTORNEYS AT LAW

TOP ISSUES:

- The role of foreign life insurance companies in the Taiwanese market
- Development trend of blockchain technology in the insurance Industry
- Investment restrictions for insurance enterprises gradually lifted

INSURANCE INDUSTRY AT A GLANCE

45

Registered firms (life and non-life)

NTD 3.64 TRILLION

Value of Premia (life and non-life)

LEE AND LI ATTORNEYS-AT-LAW

TAIWAN

Taiwan is seeing several signifcant changes in 2020. The role of foreign insurers in the Taiwanese market has been reducing in the last decade, but it seems likely that the advent of new technology may bring foreign insurers back into the market at some point. Taiwan itself is deploying technology through a shared blockchain initiative developed by eight local life insurers. The focus on technology has been helped by the lifting of restrictions on insurers by the regulator.

Shi-men Ting, Taiwan.

THE ROLE OF FOREIGN LIFE INSURANCE COMPANIES IN THE TAIWANESE MARKET

In the past decade, foreign insurance companies have withdrawn from the Taiwanese insurance market one by one. The reasons behind this is government policy changes that led to the lifting of barriers within the market, which in turn has led to increased competition from local companies, and made business less lucrative for foreign firms. However, the new local players in the industry have successfully grown their businesses, which indicates that the life insurance market in Taiwan remains full of energy. Overall GWP in the Taiwanese market remains remarkably large and is still growing.

In response to the withdrawal of foreign firms, local insurance companies need to learn from the experiences of foreign insurance companies. As technology advances changes, new opportunities for life insurance companies are emerging in Taiwan, such as insurance policies for long-term care and senior housing. Even though the Taiwanese insurance market has become more and more localized, foreign insurance companies with novel technology and new products may bounce back into the market again at some point soon.

> **"OPPORTUNITIES COME WITH COMPETITION AND ELIMINATION IS THE NATURAL RESULT OF COMPETITION. THE TAIWANESE INSURANCE INDUSTRY IS STILL VIBRANT. WE ARE OPTIMISTIC ABOUT THE STRENGTH OF GROWTH OF THE LOCAL INDUSTRY."**
>
> CT CHANG, LEE & LI, ATTORNEYS-AT-LAW

DEVELOPMENT TREND OF BLOCKCHAIN TECHNOLOGY IN THE INSURANCE INDUSTRY

As a result of advanced blockchain technology, Taiwan's insurance industry has made attempts to apply blockchain to optimise operations in their businesses. In the past year, eight life insurance companies have been working with the Life Insurance Association of the Republic of China (Taiwan) and the Institute of Financial Law and Crime Prevention to form an alliance which aims to build a shared platform to improve customer experience, security and transparency.

Through proper authentication of policyholders' identity, the sharing platform will facilitate the so-called policy passbook concept: enabling policyholders to manage their policies across different insurers; creating a "one-step-submission" function to allow policyholders to avoid making the same claim with different insurers and to expedite the claims handling process on the insurer side.

The sharing platform is also expected to link with the database of the Institute of Financial Law and Crime Prevention to prevent insurance fraud as well as to monitor post-fraud activities. This "Insurance Blockchain" is expected to be officially launched by the end of this year. Stepping from the testing phase, the insurers, policyholders, and the government are ready to put the concept of blockchain into practice, and are optimistic about a broader application of the new technology. However, we are also mindful of the challenges brought by the new technology, including the difficulty of realizing complete information sharing (given the asymmetric information on the two sides of insurers and policyholders); the barrier for one platform to suit for various insurance products with different business models; the potential risk of invading privacy; the conflict with the regulatory restriction on personal data transmission and the right to be forgotten (given the nature of Blockchain), etc.

> **"THE PRESSURE OF COMPETITION IN THIS FINTECH ERA IS AN INEVITABLE ISSUE FOR EVERY FINANCIAL INDUSTRY BUSINESS."**
>
> CT CHANG, LEE & LI, ATTORNEYS-AT-LAW

LIFTING RESTRICTIONS ON INVESTMENT

The regulator has been gradually lifting the investment restrictions applicable for Taiwan insurance enterprises, providing flexible investment choices, diversifying investment portfolios and increasing investment income. With respect to foreign investment, Taiwan's insurance companies are now allowed to invest in Sukuks, a type of Islamic fixed income financial instrument, and privately placed corporate bonds issued by foreign listed companies that are not traded on secondary markets or over-the-counter markets. With respect to the local investment, to attract insurance funds to the long-term care industry, the applicable regulations now permit insurance enterprises to invest in real properties used for long-term care.

> **"TAIWAN IS GENERALLY RANKED TOP 10 FOR THE AGGREGATE OF LIFE AND NON-LIFE PREMIUM INCOME IN THE WORLD. THE LIFTING OF INVESTMENT RESTRICTIONS FOR INSURERS COULD BRING OPPORTUNITIES FOR FINANCIAL MARKETS."**
>
> CT CHANG, LEE & LI, ATTORNEYS-AT-LAW

UNITED STATES

The US insurance market has endured years of extreme weather, and this means that climate change, and its impacts are high on the agenda for the industry in 2020. Climate change claims are pushing the industry forward on a number of fronts, including the increasingly sophisticated use of big data to manage risk; and the likely growth of new parametric products for climate events, such as earthquakes.

Elsewhere in the US, the Bermudan market has seen a seismic change over the last couple of years; which has caused some significant ripples. As the dust begins to settle, 2020 looks set to be the years when we see the reality of the 'new Bermudan' model.

Dust will not be settling in many other corners of the US in 2020. With tumultuous economic times, led by the coronavirus shock, and an election looming, much of what happens in the US insurance market will be driven by the fallout from these huge events.

City traffic at night, New York.

TOP ISSUES:

- The new reality in Bermuda
- Parametric pricing comes to the market
- US economic turmoil in an election years

INSURANCE INDUSTRY AT A GLANCE

5965

Registered firms

$1.22 TRILLION

Value of Premia

NEW PRODUCTS DRIVEN BY DATA AND CLIMATE CHANGE

The US market is set to see a wave of innovation in 2020 driven by the double impacts of climate change. Big data has at last become a usable tool for US insurers, and is helping them to model catastrophes, including hurricanes and earthquakes; but also other risks, such as cyber. Parametric insurance could also finally come on to the scene. As an insurance that doesn't need anyone to make individual claims, it could significantly cut costs for insurers. The market has hesitated because of regulatory uncertainty around parametric cover. However, regulators are now softening, especially in California for earthquake residential insurance, as well as in Florida.

In California it also seems likely that the state may provide a public backstop – in the form of cat bonds – to provide reinsurance backing behind the first parametric products. This step change could lead other US states with climate-change related flooding problems to look towards parametric cover as a new tool.

> "DATA IS THE KEY TO UNLOCKING CLIMATE-RELATED WEATHER PROTECTION FOR THE US, AND 2020 COULD BE THE YEAR WHERE IT STARTS TO DELIVER FOR INSURERS."

A YEAR OF TURMOIL FOR THE US

The stage was already set in the US for a dramatic year, with a fiery Presidential election likely to dominate US politics and economics for much of 2020. However, there is now another challenge facing the whole nation. The advent of the COVID-19 pandemic has given the US an economic shock from which it may take much more than a year to recover. With the unemployment rate, growing over 17 million in the month of March alone, few would care to predict how long-term US economics might play out, what an economic contraction might do to the insurance market, or how the US's insurance markets will be changed by the claims (paid and unpaid) from coronavirus. All this, set against the backdrop of an election year, will certainly bring turmoil to insurers – along with the rest of the US business community.

> "COVID 19 IS A GAME CHANGER FOR POLITICS, ECONOMICS AND MARKETS IN THE USA. WE CANNOT YET TELL HOW DEEP THE SHOCK WILL GO, BUT IT HAS THE POTENTIAL TO CHANGE ALL PARAMETERS FOR INSURERS AND THEIR CLIENTS."

BERMUDA FIGHTS TO RETAIN ITS INSURANCE TALENT

Over the past few years Bermuda has faced numerous challenges as a reinsurer hub. It has been deprived by the US of parts of its tax-shelter status, and seen regulatory challenges from both EU and the US, including a (short) spell on the EU Tax Haven Blacklist in 2019. Some of the biggest Bermudan companies have been acquired by, or merged with, global conglomerates, and firms have been forced to look for a wider range of reinsurance deals to maintain profits. Bermuda has seen some success in its fightback to these challenges. It remains the world's default centre for ILS deals, in spite of competition from London and Singapore, and has begun to successfully shift the range of products it offers, including offering reinsurance for life markets.

However, there is another issue rising onto the horizon. The last two years of uncertainty have taken their toll on Bermudan companies, and most importantly, on its pool of people. Much insurance talent has drained away from the island, driven partly by the economic challenges, and partly by the high cost of living (Bermuda has the second highest cost of living in the world). New start-ups, such as Convex, continue to use Bermuda as a domicile, but are now placing most of their staff elsewhere. That fact gives Bermuda quite a problem. Its status as a mature insurance marketplace rests on the quality of the staff available to those who domicile there. While Bermuda continues to shake down into a new broader reality, it must work hard to ensure that the bedrock of its continuing status does not quietly leak away.

> "BERMUDA IS AN IMPORTANT INSURANCE DESTINATION, AND THE HOME OF INNOVATIVE CAPITAL, BACKED BY EXPERT DEAL-MAKERS. BERMUDAN FIRMS MUST WORK HARD TO CONTINUE TO DRAW TALENT TO THE ISLAND AND MAINTAIN ITS STATUS FOR THE NEXT DECADE AND BEYOND."

RADAR: CONTACTS

Sparke Helmore Lawyers
Gillian Davidson
Gillian.Davidson@sparke.com.au

Lydian
Sandra Lodewijckx
Sandra.Lodewijckx@lydian.be

Santos Bevilaqua Advogados
João Marcelo Santos
jmsantos@santosbevilaqua.com.br

Arnecke Sibeth Dabelstein
Dr. Quirin Vergho
q.vergho@asd-law.com

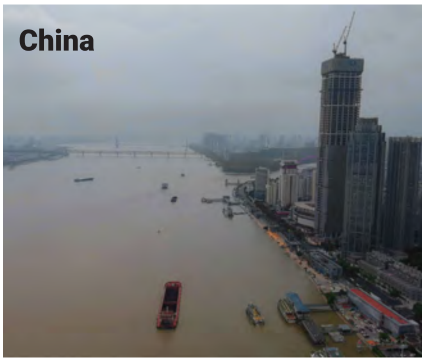
Khaitan Legal Associates
Sakate Khaitan
sakate.khaitan@khaitanlegal.com

BLM Ireland
Garrett Cormican
garrett.cormican@blmlaw.com

Riisa & Co
Joachim Dahl Wogstad Skjelsbæk
jdws@riisa.no

BLM
Jim Sherwood
Jim.sherwood@blmlaw.com

B&A Blanco y Asociados Abogados
Fernando Blanco Giraldo
fblanco@bya.abogado

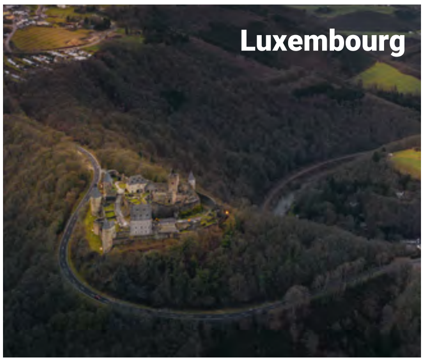


Buren
Jan Holthuis
J.Holthuis@burenlegal.com

Socrates Attorneys Ltd
Justis Könkkölä
justus.konkkola@socrates.fi

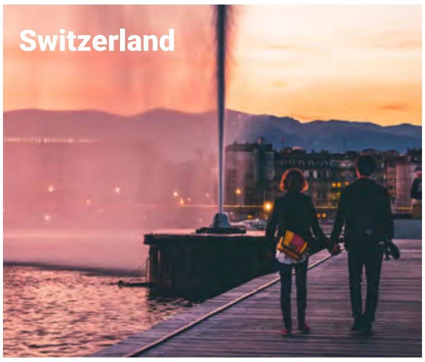
Byrd & Associates
Robert Byrd
robertbyrd@byrdassociates.net

BTG Legal
Alberto Batini
a.batini@btglegal.it



Luxembourg
Michel Molitor
michel.molitor@molitorlegal.lu

Ocampo 1890
Aldo Ocampo
aldo.ocampo@ocampo.law



Gbf Attorneys-at-law
Lars Gerspacher
gerspacher@gbf-legal.ch

Lee and Li Attorneys-at-Law
CT Chang
ctchang@leeandli.com

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