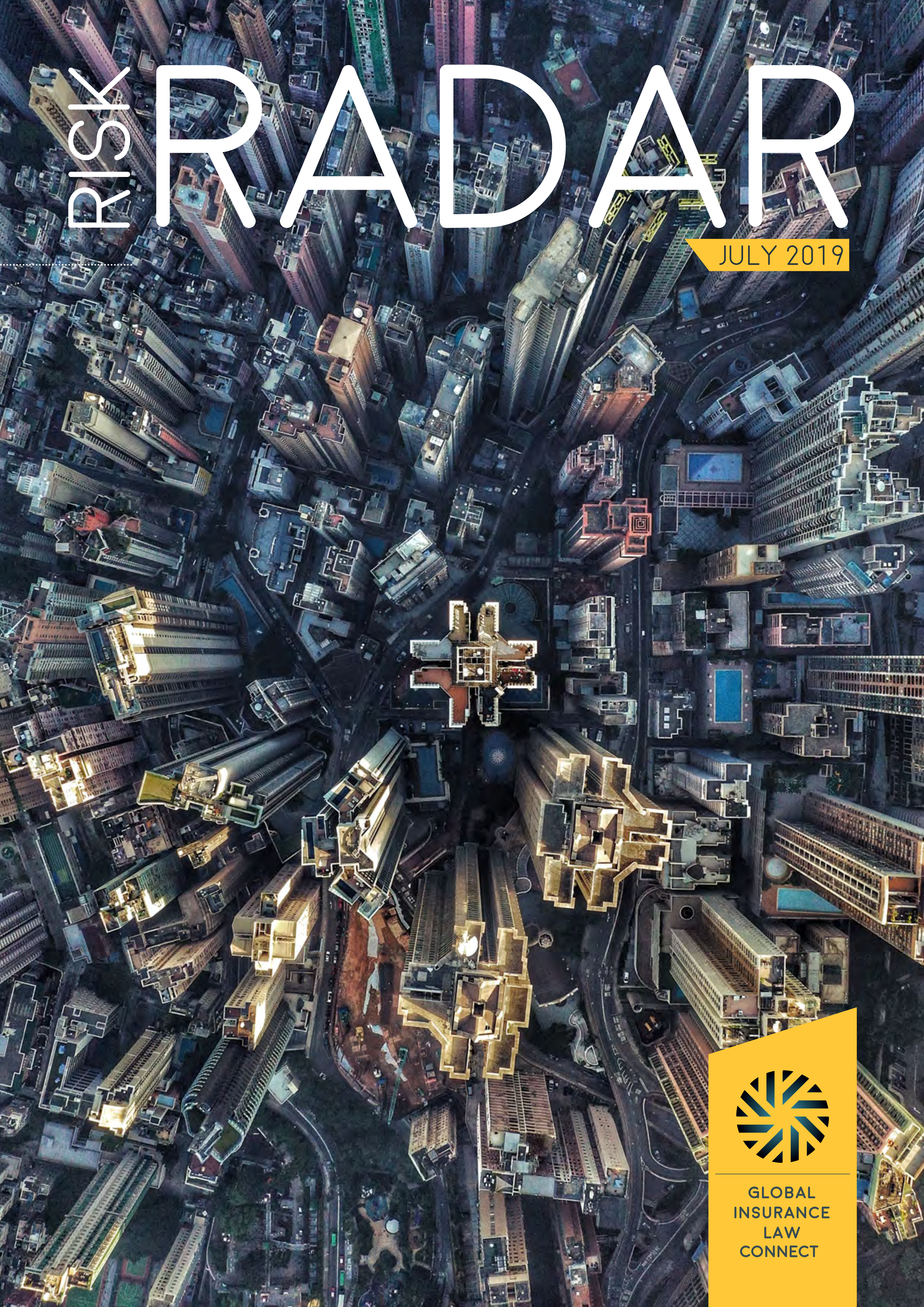
RISK RADAR

JULY 2019



GLOBAL INSURANCE LAW CONNECT

IN THIS ISSUE

RADAR
JULY 2019

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.

Dear Clients

In an interconnected world, risk and its associated insurance solutions continue to become ever more global. As multinational clients seek global solutions to new risks such as cyber attacks and data breaches, it becomes ever more important for us all to be able to take a view across international markets.

That is why we created Global Insurance Law Connect, a network of like-minded specialist firms, many with a unique and well-recognised expertise in insurance law in their own markets. Together we provide clients with unrivalled expertise and a personal service that we think few other networks can match.

We know that you will often use our lawyers to help you navigate the multiple legal changes that occur each year in local insurance markets. But sometimes the bigger and more important question is not 'how do I deal with this?', but 'what changes are coming?', and how do you spot them ahead of time from a frequently physically remote central team?

With this problem in mind, we wanted to use our network's expertise to give you, our clients, a reference tool that highlights the key insurance issues across many countries. As a result, we've created the first GILC Risk Radar Report. It gives a snapshot of the major issues that are currently bubbling in the pot in each major insurance destination where we have a presence.

Some themes in the 2019 edition have a global resonance: many countries are struggling with regulatory issues, for example; and natural catastrophe is also a dominant global theme. But our report also gives insight into some of the critical by-country issues, such as governmental change in Belgium and Mexico, and changes to the corporate code in Belgium and Italy which will impact insurers significantly.

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,
Chairman, Global Insurance Law Connect

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www.doublelix.com

TOP ISSUES:

- Building and construction claims
- Directors' liability
- Climate risk

SPARKE HELMORE LAWYERS

AUSTRALIA

The Australian insurance market is in the midst of volatile times, a reflection of the hardening global market but also of the renewed focus on "doing the right thing" and restoring trust post the recent Financial Services Royal Commission. When this regulatory and societal scrutiny is combined with the fast pace of change around AI-related technologies, customer behaviours, cybercrime and data protection, the local industry is under unprecedented pressures and constraints.

A number of issues stand out as having a significant impact on the insurance industry and the way it operates. The top three issues – the subject of much conjecture in the local market – focus around the ripple effect of the construction boom on the insurance industry particularly amid the rising incidence of building failures such as non-compliant combustible cladding, the pain-points being experienced by insurers around D&O insurance with record numbers of class actions and "event" based claims, as well as the increasing frequency of climate-driven disasters in this country.

Sydney Opera House during night time.

INSURANCE INDUSTRY AT A GLANCE

97

General and Re insurance businesses

A$65.7 BILLION

in revenue

BUILDING AND CONSTRUCTION CLAIMS

In the wake of the Grenfell Tower disaster in London and Australia's first-ever combustible cladding class action underway, a number of States – most notably Victoria, Queensland and New South Wales – have instigated rigorous investigations of buildings that may be impacted by non-compliant combustible cladding. To date these investigations have seen a ban on the use of aluminium cladding panels with a polyethylene core and expanded polystyrene products.

With rectification cost figures nationally potentially running to seven figures, and with significant public indignation over fragmented government remedial strategies, insurers are faced with challenges around managing the fall-out from both sides of the argument – the developers, builders and relevant building professionals versus the residents of affected properties.

The flow-on effect for the insurance industry into the future could be significant – premiums on affected properties will rise, broader liability exclusions and higher excesses around these types of risks will be introduced, and there will be greater emphasis on undertaking comprehensive risk audits to assess risk upfront with many more hoops for insureds to jump through than currently.

"WE ANTICIPATE THERE WILL BE MORE CLAIMS MADE IN RELATION TO NON-COMPLIANT COMBUSTIBLE CLADDING. A RECENT DECISION HAS SIGNALLED RESPONSIBILITY LIES WITH THE OWNER IN TERMS OF ANY UNDAMAGED NON-COMPLIANT CLADDING. WE WATCH THIS SPACE VERY CAREFULLY."

WES ROSE, PARTNER,
SPARKE HELMORE

DIRECTORS' LIABILITY

Exposures for D&O have been steadily growing in Australia as organisations and the senior individuals who head them up are increasingly feeling the weight of expectations and accountabilities post the Royal Commission. And with the continued shift from corporate to personal responsibility, mitigation strategies including insurances are top of the agenda.

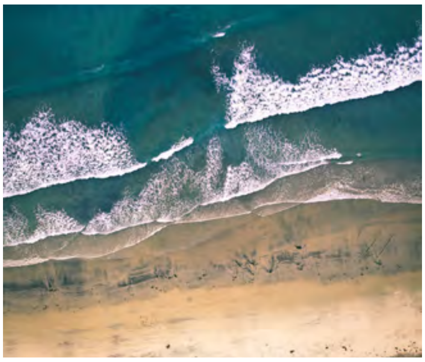
Whether questionable sales tactics, malicious cyber-attacks, Board implosions or dubious fee-for-service arrangements, the local market has had a shake-up and that adds up to a hard market for D&O liability insurance. And with the average claim size, complexity and frequency as well as class actions on the rise, insurers need to reassess and potentially shift their strategies while keeping an eye on the bottom line. Rate increases, larger retentions and deductibles – everything will need to be considered including around the as yet unknown legislative implications coming out the Royal Commission.

Insurers will need to take the lead in educating their clients about the relationship between these shifting market dynamics and the costs they see coming through.

"I'M PROUD WE ARE RELIED UPON BY INSURERS TO HELP THEM TACKLE THEIR RISKS AND FORMULATE STRATEGIES FOR DEALING WITH LEGAL EXPOSURE AND REPUTATIONAL DAMAGE POSED BY THE DYNAMIC D&O SPACE."

MALCOLM CAMERON, PARTNER,
SPARKE HELMORE

CLIMATE RISK



Natural disasters – bushfire, flood, storm, cyclone and earthquake – are part of the fabric of life in Australia. But with climate-driven disasters impacting more of the population than ever before, there is intense debate about whether Australia is becoming uninsurable – with some places already considered too disaster-prone to insure.

While State and Territory Governments do have relief strategies in place, these are not intended to replace the need for individuals to have appropriate insurances. But with recent public outcry around the affordability and availability of cover, skyrocketing premiums as well as the perceived conduct of insurers, many insurers face a tough future - with some considering it so tough they are deciding to leave the climate risk space altogether. And with class actions on the rise, costs are being driven up – and that could translate into more departures from the market.

The Government stepping in as the "insurer of last resort" is becoming more frequent. Will this option become the new norm for climate risk?

"THE URGENCY FACTOR HAS INCREASED ON CLIMATE RISK IN BOARDROOMS. AND FOR INSURERS, THE SYSTEMIC RISK IT POSES IS HUGE. WE CAN'T OVERSTATE THE IMPORTANCE OF THE CONVERSATIONS WE HAVE WITH INSURERS ON THESE MATTERS."

CHRIS WOOD, PARTNER,
SPARKE HELMORE

TOP ISSUES:

- Belgian government elections
- The new Belgian Company Code (BCC)
- Brexit

INSURANCE INDUSTRY AT A GLANCE

240

Registered firms

€30 BILLION

Value of Premia

LYDIAN

BELGIUM

Belgium faces two political and one legislative challenge in the coming year – two of which will transform the corporate and political landscapes respectively. The first is the direct consequence of the May elections.

The federal and regional elections of May 2019 brought some controversy and as a consequence of that legislation is held back in the local parliament. Secondly, in common with other European countries, Brexit brings significant challenges – particularly so for Belgium, which has some of the closest trade links with the UK within the EU bloc. However, there is opportunity too, given that Lloyd's has chosen Brussels as the location of its post-Brexit EU hub.

Finally, and most important of all, Belgium is in the middle of implementing a completely new Company Code, which introduced big changes for corporates, as well as impacting D&O coverage and liability.

Empty Footpath Amidst Buildings In Antwerp.

"INSURERS NEED TO BE CAUTIOUS IN THEIR PLANNING FOR THE COMING YEAR. THE POLITICAL UNCERTAINTY WILL BRING CHALLENGE ECONOMICALLY, AND THIS COULD LIMIT GROWTH."

YVES LENDERS, LYDIAN

BELGIAN GOVERNMENT ELECTIONS

Belgium held federal, regional and European elections at the end of May 2019. Negotiations are currently ongoing between political groups, which may last for a while. If negotiations turn out to be inconclusive, meaning that a majority government cannot be formed, uncertainty may hold back economic growth during the whole of 2019. A lack of government could result in a delay in the adoption of new legislation, or implementing regulations, including the long awaited new Insurance Code.

THE NEW BELGIAN COMPANY CODE (BCC)

The new Belgian Company Code came into force on 1st May 2019. It will modernise and transform company law in Belgium, bringing it up to date and in line with a global economy. It brings considerable benefits, simplifying the number of legal corporate structures from 17 to 4, for example; but the challenges of implementation will be distracting and time-consuming for all companies this year. In addition, the new law changes the levels of liability for Directors and Officers, directly impacting D&O insurance provision and coverage.

"THE NEW CODE IS A HUGE CHALLENGE FOR ALL COMPANIES. IT IMPACTS THEIR LEGAL STRUCTURES, OWNERSHIP, ACCOUNTING AND REPORTING REQUIREMENTS. EVERY FIRM WITH A BELGIAN OPERATION NEEDS TO FOCUS ON THIS."

SANDRA LODEWIJCKX, LYDIAN

BREXIT

Brexit may, or may not, occur in 2019. However, it is an issue of great importance for UK insurers operating in Belgium as well as for Belgian insurers operating in the UK. Insurers need to be aware of issues regarding contract continuity for their clients and must comply with relevant legislation and regulation issued by the Belgian control authorities. Following Brexit the Belgian insurance distribution landscape is evolving, as the category of managing general agents has been recently created under Belgian law (the so-called “mandated underwriters”).

"BREXIT CHALLENGES THE WHOLE BELGIAN ECONOMY, BUT FOR INSURANCE IT IS PARTICULARLY DIFFICULT, GIVEN THE UNCERTAINTY OVER CONTINUATION OF COVERAGE AND PASSPORTING."

SANDRA LODEWIJCKX, , LYDIAN

TOP ISSUES:

- Implementation of a more liberal and flexible regulatory regime by the new government
- Impacts of new investments and privatizations after a three- year economic recession
- Public pensions system reform

SANTOS BEVILAQUA ADVOGADOS

BRAZIL

The Brazilian insurance market is, like Brazil, living with the likelihood of important changes to be implemented by the new right-wing and economically liberal government elected in 2019, including the possibility of much more liberal regulation (possibly impacting, for example, the freedom for insurers to develop new products and selling channels and new opportunities for foreign reinsurers).

We also expect important impacts from the resumption of economic growth in Brazil, after almost three years of recession, which should grow both public and private investments.

Octávio Frias de Oliveira Bridge - Ponte Estaiada, Sao Paulo.

INSURANCE INDUSTRY AT A GLANCE

313

Registered firms

R$ 226.5 BILLION

Value of Premia

“OUR CLIENTS WILL NEED MORE SOPHISTICATED ASSISTANCE IN A MARKET WHERE THEY WILL SEE INCREASING OPPORTUNITIES TO DIFFERENTIATE THEMSELVES FROM THEIR COMPETITORS.”

JOÃO MARCELO DOS SANTOS, SANTOS BEVILAQUA ADVOGADOS

IMPLEMENTATION OF A MORE LIBERAL AND FLEXIBLE REGULATORY REGIME BY THE NEW GOVERNMENT

The current very bureaucratic regulatory regime is moving towards becoming more liberal and open to innovation, with less intervention by the government, although it still controls the IRB, the largest local reinsurer authorized to operate in Brazil.

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

The property and casualty insurance markets and the Brazilian reinsurance market seem likely to be highly 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 CHANGING INSURANCE AND REINSURANCE REGULATION TO BE READY TO TAKE ADVANTAGE OF NEW BUSINESS OPPORTUNITIES IN BRAZIL. THEY NEED TO ARM THEMSELVES WITH THE FULL KNOWLEDGE OF THE RISKS TO BE COVERED, THE REGULATORY AND CONTRACT RISKS AND TO HAVE AT THEIR DISPOSAL THE BEST ASSISTANCE REGARDING CLAIMS.”

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 GROWN HUGELY IN THE LAST 20 YEARS, SINCE OUR FIRST TAX INCENTIVES WERE CREATED. NOW, MORE THAN EVER, COMPANIES WILL BE ASKED TO MAKE AVAILABLE TO THEIR CLIENTS ACCESSIBLE AND EFFICIENT PRODUCTS.”

JOÃO MARCELO DOS SANTOS, SANTOS BEVILAQUA ADVOGADOS

TOP ISSUES:

- New FDI rules
- A growing reinsurance market
- The great clean-up – regulatory pressure increases in China

BUREN

CHINA

The Chinese insurance market is living through a period of profound change, as domestic insurers come to maturity and the government looks to encourage their growth as well as adopt international financial and reserving standards. This results in a period of mixed messages for foreign insurers and brokers in the coming year.

While the 'Foreign Investment Law' will come into force in January 2020, which emphasizes equal national treatment of foreign investment in China, it specifically stipulates that special rules on foreign investment in financial sectors including insurance shall prevail over the Foreign Investment Law. One or two companies have already taken advantage of changes which allow majority ownership by a foreign insurer, but we wait to see if this becomes a significant trend, given the challenges in taking a stake in a Chinese enterprise (and the barriers imposed by the existing part-ownership structures which many foreign companies already have in place).

Meanwhile, the Chinese government is actively encouraging the growth of the reinsurance market in China. We expect that over the coming year we will see innovation, as well as more international players coming into this sector of the market.

Shanghai, China.

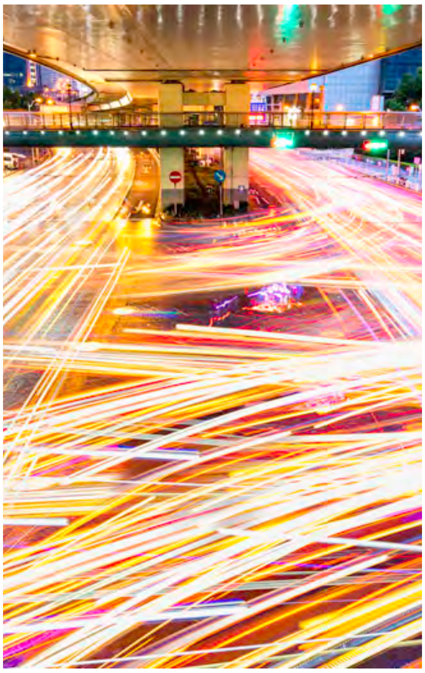
INSURANCE INDUSTRY AT A GLANCE

215

Registered firms

RMB3.8 TRILLION

Total premium income 2018



NEW FDI RULES

The 'Foreign Investment Law' will come into force in January 2020, but already the foreign ownership rules have been relaxed enough to allow foreign firms to take majority stakes in local partners. Firms looking to invest face risks – as many Chinese insurers have only partial capitalisation, or other non-standard issues with their books. Moving past these to free up the potential of these firms to grow in a huge potential market will be the key challenge for foreign firms coming into this market. In order to gain a strong foothold in the Chinese market, apart from the market knowledge, foreign firms should also align their business strategies and objectives with the Chinese government's policy-driven goals.

> "THE NEW FDI RULES ARE SIGNIFICANT BUT INSURERS LOOKING TO INVEST ARE HAMPERED BY ADDITIONAL PROVISIONS AS WELL AS FINANCIAL WEAKNESSES WITHIN LOCAL PLAYERS. HOWEVER, THERE IS GREAT GOVERNMENT INTEREST IN GROWING THIS SECTOR."
>
> LI JIAO, COUNSEL, BUREN

A GROWING REINSURANCE MARKET

The Chinese reinsurance market is dominated by China Re, which has more than 70% market share. There are 11 other players, including some internationals, such as Munich Re, SCOR, Swiss Re and Hannover Re. However, it has not seen the growth of the booming primary market, and it is commonly perceived as being somewhat sluggish and undynamic. The government will look to change that over the coming year through the further implementation of Phase II of China Risk Oriented Solvency System (C-ROSS) which is believed to drive the primary insurance market to seek more sophisticated reinsurance protection.

> "THERE IS AN OPPORTUNITY FOR INNOVATION IN THIS SECTOR, AND WE LOOK FORWARD TO SEEING WHICH FIRMS TAKE UP THE CHALLENGE."
>
> LI JIAO. COUNSEL, BUREN

THE GREAT CLEAN-UP – REGULATORY PRESSURE INCREASES IN CHINA

The Chinese market has some significantly sized domestic insurers, including the big five. At the level below this there are a group of large companies with historic accounting challenges, many of which would not bear the scrutiny of an international regulator. The Chinese government is moving to improve standards, and bringing great pressure to bear on firms to clean up their record-keeping and capital management. The government believes foreign owners may have a role to play in buying and transforming some of these firms, although the success of this approach is yet to be tested.

> "IT IS HEARTENING TO SEE A MAJOR STEP FORWARD IN REGULATION FOR INSURANCE, WHICH WILL BENEFIT CONSUMERS, INCREASE THE LONG-TERM HEALTH OF THE LOCAL MARKET, AND MAKE IT MORE ATTRACTIVE TO FOREIGN INVESTORS."
>
> JAN HOLTHUIS, PARTNER, BUREN

TOP ISSUES:

- Contract law
- National Catastrophe regime
- New Brokerage Regulation

BYRD & ASSOCIATES

FRANCE

The French insurance industry will see continuing challenge and settlement of the issues around the recent reform of contract law. At the same time, significant changes to the regulation of brokers are looming, and look likely to come into effect on 1 January, 2020.

Brokers, and insurers, will have to spend time analysing the impacts of this and preparing for transition throughout 2019. Meanwhile, France is also considering a long-term structural change to its insurance against natural catastrophe (known as CAT NAT in France), and debate continues about how best to frame this to benefit all parties and yet cap uncontrollable costs.

Place Ronde, Financial district of La Défense, Paris, France.

INSURANCE INDUSTRY AT A GLANCE

716

Registered firms

€211 BILLION

Value of Premia

CONTRACT LAW

The impact on insurance contracts resulting from the major reform of contract law which took effect on 1 October 2016 is still being questioned by insurance professionals and will certainly give rise to numerous case law interpretations in the coming months as the French courts begin to render their rulings on contract issues under the new regime.

The main points which are likely to pose interpretation issues in the context of insurance contracts are the following:

Pre-contractual information: The new Article 1112-1 of the French Civil Code provides that any party to a contract who has information which would be a determining factor in obtaining the agreement of the other party must be disclosed to the other party.

Validity of the insurance contract: Under the reform, the traditional requirement for the validity of a contract based on the object of the contract and adequate consideration (cause), has been replaced by a new criteria that the content of the contract must be "certain and lawful".

Abusive clauses: The new regime provides that a clause is abusive where it creates as "material imbalance" (*déséquilibre significatif*) between the rights of the parties under the contract (Article 1171, Civil Code). Whilst the French Insurance Code already contains a number of provisions concerning abusive clauses, it remains to be seen how the courts will interpret the new notion in the context of insurance contacts.

Unforeseen circumstances: The new regime specifically provides that "if a change in circumstances which was unforeseeable at the time of the conclusion of the contract renders the performance of the contract excessively costly for a party who had not accepted to assume the risk, this party has the right to re-negotiate the contract" (Article 1195, Civil Code). It is clear that in insurance related disputes, this Article may be invoked in a number of situations, in particular concerning issues of aggravation of risk, which the French courts will have to deal with.

Subrogation: The new regime maintains the distinction between "conventional" subrogation and legal subrogation (Article 1346, Civil Code) but the new wording will again have to be interpreted by the courts.

"THE POSITION FOR INSURERS AS REGARDS TO CONTRACT LAW REMAINS UNSETTLED, AND STILL REQUIRES MUCH MORE TESTING BY THE COURTS."

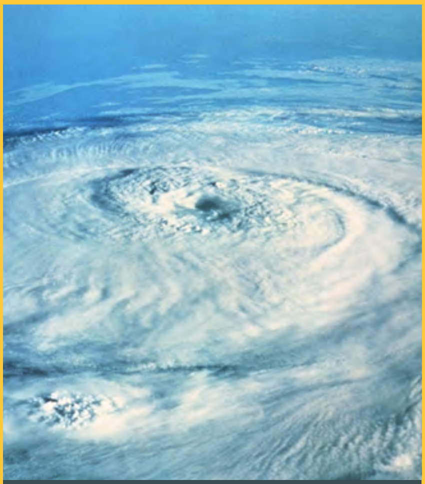
ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

NEW BROKERAGE REGULATION

The anticipated new regulation of the broker profession has been introduced by way of an amendment in the context of a major new general statute, the Loi Pacte, which was approved by the French General Assembly in March 2019 and is now before the Senate for discussion. The reform is scheduled to take effect on the 1st of January 2020. This new regulation will provide for the creation of professional organizations which will represent brokers and their agents and will have disciplinary powers over their members. These organizations will define the rules for access to the profession, membership in the organization and sanctions for breaking the rules. The implications are yet to be worked through, but could be significant for the French broking market.

"A WAVE OF NEW REGULATION FOR BROKERS IS RIPPLING AROUND THE WORLD, AND THE IMPACT HERE IN FRANCE WILL BRING CHALLENGES TO BOTH GLOBAL AND LOCAL FIRMS."

ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES



NATURAL CATASTROPHE REGIME

The French President, Emmanuel Macron, during a trip to the West Indies at the end of September 2018, one year after the passage of Hurricane Irma, promised that a reform of the natural disaster regime should occur "before summer 2019" and that this would assure quicker indemnity payments and more generous insurance cover for overseas territories.

Introduced in metropolitan France in 1982 and extended to overseas territories in 1990, the mechanism of indemnification for CAT NAT losses has not been modified since its creation.

The French Insurance Federation (FFA) proposes, in particular, the coverage of relocation costs, the capping of deductibles for craftsmen and small and medium size companies or the introduction of more "incentive" deductibles.

Discussions are still on-going within the government. A reform during summer 2019 now seems rather optimistic.

"NATURAL CATASTROPHE IS A GLOBAL ISSUE FOR INSURERS, INDIVIDUALS AND MANY NATION STATES. FRANCE IS NOT ALONE IN GRAPPLING WITH HOW BEST TO REGROUP ITS CAT NAT COVER FOR THE BEST."

ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

TOP ISSUES:

- Government financial services reforms
- Cyber claims, digitisation and data protection
- M&A

INSURANCE INDUSTRY AT A GLANCE

72

Registered firms

$98 BILLION

Value of Premia

KHAITAN LEGAL ASSOCIATES

INDIA

A clear mandate for the incumbent Government is a validation of its policies and programmes. The pro-incumbency landslide majority for Narendra Modi's NDA in the 2019 Indian elections is an endorsement of his governance and leadership style.

The NDA government is also credited with introducing second generation reforms in the Indian insurance industry.

City Bus-stand (Majestic), Kempegowda Metro Station.

GOVERNMENT FINANCIAL SERVICES REFORMS

The Indian financial system has been the focus of reforms over the past few years with relaxation of foreign direct investment norms, demonetisation of currency, introduction of the insolvency and bankruptcy code etc. with specific focus on the insurance and banking industry. With the re-election of the incumbent government, we can now expect continuity and ongoing reform.

"INDIA STANDS AT AN INTERESTING POINT IN HISTORY WITH AN UNPRECEDENTED WIN BY AN INCUMBENT GOVERNMENT. THE COUNTRY IS HOPEFUL THAT THE PACE AND DIRECTION OF ECONOMIC REFORMS CONTINUES. THE EARLIER REGIME RECOGNISED THE URGENT NEED OF REFORMS IN THE FINANCIAL SERVICES SECTOR AND WE HOPE THAT THE NEW GOVERNMENT SUSTAINS THE FOCUS AND ATTENTION ON SUCH REFORMS."

SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

CYBER CLAIMS, DIGITISATION AND DATA PROTECTION

Cyber insurance is expected to grow to protect institutions in relation to their IT infrastructure and business conducted via the internet. Such evolving needs would warrant newer products and product feature enhancement. With growth in digitisation through mechanisms such as intelligent virtual assistants/chatbots, artificial intelligence and wearable devices, while productivity and innovation increases, the risk of cyberattacks will also exponentially rise.

Further, a revised data protection law is currently waiting to be ratified. This will create immense opportunities for insurers in India to launch products that would allow 'data fiduciaries' to limit their liability.

"IN SYNC WITH THE GLOBAL TRENDS, EVEN INDIA FACES THE THREAT OF CYBER RISKS. THE MARKET, AND SPECIFICALLY THE INSURANCE INDUSTRY, WILL NEED TO RESPOND TO EMERGING CYBER RISKS."

SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

M&A

The insurance industry is witnessing an accelerating wave of global mergers in insurance companies and insurance intermediaries, and it is safe to say that India will respond quickly to such structural changes. At the local level, a possible consolidation or merger of India's public sector general insurers could impact the general insurance space in India by creating the largest general insurance service provider.

"CONSOLIDATION IS EXPECTED IN THE INDIAN INSURANCE INDUSTRY. SEVERAL INSURERS ARE IN POOR FINANCIAL HEALTH AND RADICAL MEASURE MAY BE NEEDED FOR THEIR REVIVAL. WHILE CONSOLIDATION IS ONE SUCH OPTION, ALTERNATE RISK TRANSFER (ART) SOLUTIONS AND DEBT, OR DEBT-BASED INSTRUMENTS HAVE THE POTENTIAL TO INJECT A FRESH LEASE OF LIFE TO THE TROUBLED INSURERS."

SAKATE KHAITAN, KHAITAN LEGAL ASSOCIATES

TOP ISSUES:

- Brexit
- Personal injury reform
- Fraud tourism

INSURANCE INDUSTRY AT A GLANCE

130

Insurance businesses

€12.9 BILLION

Value of Premia

BLM

IRELAND

Ireland experiences different market pressures and pinch points than those seen across the Irish Sea in the UK. While many of the underlying drivers are the same, the Irish market responds in its own manner to the challenges. Despite statutory reforms in the early 2000s, the legal process associated with personal injury claims in particular remains a concern and a candidate for further modernisation.

Although Brexit has clear pluses and minuses for the Irish economy as a whole, it has led to an influx of operations in the financial services sector.

Cliffs of Moher, Liscannor, Ireland

BREXIT

Ireland has been among the top destinations of choice for UK financial services firms making post-Brexit contingency plans for servicing business in the remaining 27 EU member states. The Irish Government has made comprehensive plans around likely Brexit scenarios and their impact on the economy as a whole. Whatever the outturn, the financial services sector in Ireland will be affected in the medium to the longer term. A key challenge is ensuring that the influx of businesses does more than merely buying a Dublin name plate for delivering services across the EU and contributes to the Irish economy in a meaningful way.

"THE IRISH ECONOMY WILL BE THE MOST AFFECTED BY BREXIT OF ALL THE EU 27. DESPITE THE INFLUX OF UK LAWYERS TO REGISTER FOR IRISH PRACTICING CERTIFICATES LOOKING SUPERFICIALLY POSITIVE, THE BUSINESS OUTLOOK FOR US AND OUR INSURER CLIENTS IN IRELAND REMAINS TROUBLINGLY UNCERTAIN."

GAVIN CAMPBELL, PARTNER AND HEAD OF BLM DUBLIN

PERSONAL INJURY REFORM

Political focus on the compensation culture in Ireland has been a constant in recent years. Reports for Government Departments have examined drivers of cost, adverse impacts on Irish business sectors and floated options for law reform. Further judicial analysis and reports covered personal injury claims in particular and there have been calls to reform the state-sponsored Board which advises on claims values. There are emerging moves towards having legislative controls on damages - a first in Ireland and a constitutional conundrum - in order to manage premium levels and other negative effects of the 'compo culture'.

"THE SENIOR JUDICIARY IS TAKING A SERIOUS AND DETAILED LOOK AT THE IRISH PERSONAL INJURY SYSTEM. WE ARE OPTIMISTIC THAT THEIR LEADERSHIP WILL DELIVER REAL REFORM AND TACKLE THE WORST EXCESSES AND ABUSES. IT'S NOT ABOUT PLAINTIFF-BASHING - FAR FROM IT. THE GOAL IS A FAIRER AND MORE EFFICIENT SYSTEM FOR ALL THE STAKEHOLDERS."

GARRETT CORMICAN, PARTNER, BLM

FRAUD TOURISM

Fraud doesn't respect borders. The concern is that hardening of the claims environment in England & Wales will cause fraudulent claims enablers to displace to Ireland and to indulge in further claims harvesting in this country. The lack of a special unit within An Garda Síochána (the Irish police force), dedicated to insurance fraud detection and prevention, has been called out as a real gap. There are concerns that the legislative reforms of the early 2000s which aimed to punish fraudulent claims are, a decade and a half on, now capable of being circumvented by sophisticated fraudsters and/or may be falling into disuse.

"FRAUDS AND TRY-ON CLAIMS ARE A REAL DRAIN ON RESOURCES. THE IRISH LEGAL SYSTEM NEEDS FURTHER IMPROVEMENT TO MAKE IRISH BUSINESSES HARDER TARGETS, TO DETER FRAUD TOURISM AND TO PUNISH APPROPRIATELY THOSE WHO THINK IT'S OK TO TRY AND PROFIT FROM FRAUD."

GAVIN CAMPBELL, PARTNER AND HEAD OF BLM DUBLIN

TOP ISSUES:

- Internationalisation of the Italian insurance market
- The war for talent
- Multinational brokers

BTG LEGAL

ITALY

Italy's insurance market is among the largest and most developed in Europe. This is particularly true of the life segment, as Italian consumers see life insurance as an important conduit for savings and investment.

The country's often volatile political and economic climate has created obstacles for Italian insurers in recent years, added to low take-up and a tendency to avoid buying required cover in certain sections of the market, including motor insurance. Although economic activity may surprise, weak demand and limited growth in incomes will provide a headwind in most sub-sectors of the non-life segment. Ageing demographics mean that net new business - and growth in overall premiums - will likely be minimal in the life segment. In this context internalization and the role of multinational brokers will become key to benefitting from new market opportunities and gain insight on emerging trends.

Italy's insurance market is among the largest and most developed in Europe.

INSURANCE INDUSTRY AT A GLANCE

194

Registered firms

€135 BILLION

Value of Premia

INTERNATIONALISATION OF THE ITALIAN INSURANCE MARKET

The insurance industry has been slow to integrate operations across geographies and some early business models have not been particularly successful. In some countries, protectionist regulations have been a major constraint on both the entry of foreign insurers and on any subsequent cross-border integration. Language and cultural differences have constrained customer-servicing activities across borders. Although they do exist in insurance, scale economies related to fixed cost structures have perhaps been more limited than in other, faster globalizing industries. Large insurers have incrementally extended their presence globally over many years, often through acquisition. But other than slowly unifying their brand names, they had maintained fully integrated, nationally-based operations. Historically, these companies had not sought to globalize many aspects of their operating model or leverage insurance manufacturing capabilities across borders. However, change is unfolding. Continuing competitive pressures are now driving insurers to leverage costs across multi-country operations. Many of the largest insurers now have well-established international operations which represent a large proportion of their overall income and value.

“A "NEW NORMAL" – SLOWER GROWTH AND LOWER MARGINS IN A NEW FINANCIAL SERVICES LANDSCAPE – WILL EMERGE IN THE POST FINANCIAL-CRISIS WORLD AND INSURERS WILL HAVE TO QUICKLY ADAPT BOTH AT HOME AND INTERNATIONALLY.”

ALBERTO BATINI,
SENIOR PARTNER, BTG LEGAL

THE WAR FOR TALENT

Insurance companies will be suffering from a shortage of experienced professionals at all levels, from senior leadership with the vision, innovation and cost-management skills to lead the company to achieve its goals, to middle management experienced enough to take over from long-serving executives moving toward retirement.

Companies spend 50 times more on recruitment than they do on training. Deployment and development of employees do not get their due attention. Not until employees are at risk of leaving do retention initiatives and bonuses kick in.

Insurance companies must rethink the ways they engage their key people. To begin, they must identify the segments of the workforce that drive their current and future growth. Then, rather than focus on metrics and outcomes (“acquisition” and “retention”), they must concentrate on the things that employees care about most: being deployed in ways that engage their heads and hearts, developing (and stretching) their capabilities, and connecting to the people who will help them achieve their objectives.

“INSURANCE COMPANIES WILL NEED TO ASK WHETHER THEY ARE EFFECTIVELY DEVELOPING, DEPLOYING, AND CONNECTING KEY EMPLOYEE GROUPS.”

SILVIA TRAVERSO,
PARTNER, BTG LEGAL

MULTINATIONAL BROKERS

Multinational brokers receive higher remuneration rates from placing risks into their own facilities and MGAs than in the open market. Using these placement methods can be in the interest of the client, particularly where the risks are less specialised and hence easier to commoditise. But the higher remuneration may also incentivise the broker to use a facility or MGA when this is not the case. Research shows that most clients can get the information they need to help make informed decisions, which helps minimise the potential harmful impact of conflicts. The issues listed above could be mitigated through effective conflicts of interest policies to reduce the possibility of harm. The Regulator has reviewed brokers’ conflicts of interest policies to assess their impact on competition and to assess the impact on clients of possible broker conflicts. The Regulator found that not all of them demonstrate the same level of completeness in identifying the relevant conflicts inherent to their business models.

“AS BROKING FIRMS CONTINUE TO MERGE, THE MARKET MAY BE BECOMING INCREASINGLY CONSOLIDATED AND THIS IS LIKELY TO CHANGE THE WAY COMPETITION IN THE MARKET WORKS.”

GIORGIO GRASSO,
PARTNER, BTG LEGAL

TOP ISSUES:

- Impact of new government policies
- Regulatory changes to open up insurance to lower earners
- Insurtech

INSURANCE INDUSTRY AT A GLANCE

105

Registered firms

$28.6 BILLION

Value of Premia

OCAMPO 1890

MEXICO

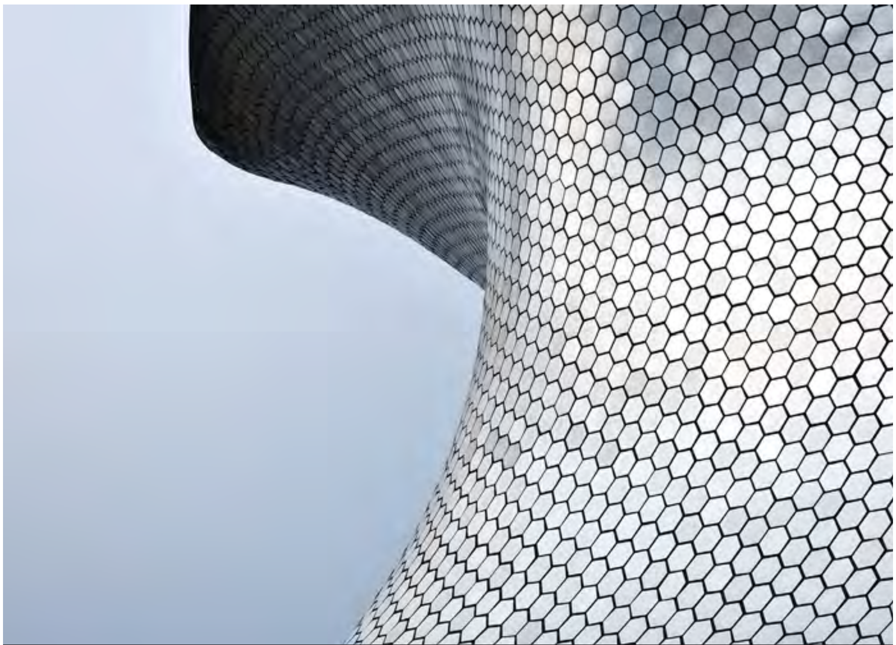
Mexico as a whole is undergoing profound change, following the appointment of a new socialist president, Andrés Manuel López Obrador, in December 2018. So far his changes include wholesale changes to the management team of the Mexican insurance regulator; and a raft of proposals around nationalisation of industry.

His appointment has also brought a renewed focus on insurance solutions for lower earners in Mexico. Insurtech may be one solution and the regulator is looking to insurers to propose low-cost insurance ideas that cut costs through the application of innovative technologies.

The Angel of Independence, Mexico City.

IMPACT OF NEW GOVERNMENT POLICIES

Mexico's new President is governing under austerity policies. Inspired in such policies, Federal Government retired health and life insurers to employees (they now have access to public health services), and the state is undertaking the erection and development of public infrastructure. Insurers then must create insurance programs to fit the new state requirements.



"THE MEXICAN INSURANCE INDUSTRY IS UNDERGOING ONCE-IN-A-GENERATION CHANGE UNDER THE DIRECTION OF THE NEW GOVERNMENT. INSURERS MUST SEIZE OPPORTUNITIES, AS WELL AS BE AWARE OF SOME POSSIBLE STATE-LED PITFALLS FOR THEIR BUSINESSES."

ALDO OCAMPO, PARTNER OCAMPO LAW

INSURTECH

Mexico's insurance market is still analysing surrounding technologies to develop Insurtech. Thus, the regulator is waiting for the industry to propose Insurtech based insurance programs to analyse them. Huge opportunities are here for insurance entrepeneurs.

"THE OPPORTUNITY FOR INSURTECH IN MEXICO IS IMMENSE. ENTREPRENEURS ARE SET TO REVOLUTIONISE THIS MARKET, AND MAY ALSO DELIVER SOME SOLUTIONS THAT WORK FOR THE NEW MEXICAN GOVERNMENT'S REQUIREMENT TO PRIORITISE SOCIALLY INCLUSIVE INSURANCE FOR THE UNDERPRIVILEGED."

MITCHELL ESQUEDA, PARTNER, OCAMPO LAW

REGULATORY CHANGES TO OPEN UP INSURANCE TO LOWER EARNERS

The policies of the new administration are to provide financial services (insurance included) to lower earners. That is a defining challenge for insurers as they must create accessible insurance programs.

"INSURERS WILL NEED TO CONSIDER HOW TO DELIVER SOCIALLY-RESPONSIBLE INSURANCE PROGRAMMES WITHOUT COMPROMISING PROFIT. NEW APPROACHES WILL BE NEEDED FROM ALL SIDES."

ALEJANDRO OCAMPO, PARTNER, OCAMPO LAW

TOP ISSUES:

- Changes to the Norwegian Natural Perils Pool
- Changes in the Sale of Real Estate Act
- Digitalisation in the market

RIISA & CO

NORWAY

Insurance companies play an important role in society as the repairers of damage caused by natural disasters. In a world where we see an increase in extreme weather, with more and larger damages, the role of insurance as 'just' the repairer has changed and insurers will become more of an important player in preventing and reducing the risk of damages.

In this changing landscape, the natural perils pool will play an important part. For several years, the non-life insurance market has been dominated by four companies. In recent years, however, several other players have come in and some of the smaller ones have grown.

Given the current funding of the pool, the dominant companies in the market have been able to set aside natural capital in profit years. Over time, this capital has accumulated and today constitutes a considerable sum which provides a profit that many of the smaller companies feel is anti-competitive.

Light trails on the Trollstigen road in Norway at night.

INSURANCE INDUSTRY AT A GLANCE

25

Registered firms

54NOK BILLION

Value of Premia

CHANGES TO THE NORWEGIAN NATURAL PERILS POOL

The proposed changes in the Natural Perils Pool in NOU 2019-4, presented in February this year should be studied carefully by all insurance companies, as the suggested changes in structure, ownership and funding will significantly influence the market, and could be distortive.

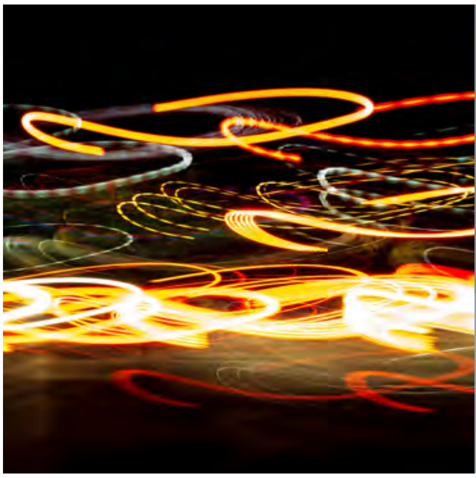
The proposal has now been sent for consideration to affected parties, and insurance companies need to be active in this process. Changes are expected to be made by the end of the year.

> "OUR CLIENTS WILL NEED TO STUDY THE PROPOSAL CAREFULLY."
>
> JOACHIM SKJELSBAEK, LAWYER/PARTNER, RIISA

CHANGES IN THE SALE OF REAL ESTATE ACT

The market for sellers of liability insurance and buyers of legal assistance insurance has been increasing in recent years. This year has, however, seen turmoil as the bug "skjeggkre" led to huge losses for insurers, forcing some companies to withdraw from the market. The proposed changes to the Sale of Real Estate Act will be of the same importance to the market. The absence of opportunity to sell "as is" and the introduction of a near strict liability for all damages over NOK 10 000 will – in our view – give ground for a huge increase in disputes. This will affect the products, premium and payments.

> "THE PROPOSED CHANGES WILL GIVE GROUNDS FOR A HUGE INCREASE IN DISPUTES."
>
> JOACHIM SKJELSBAEK, LAWYER/PARTNER, RIISA



DIGITALISATION IN THE MARKET

Many companies in the Norwegian market are still using old policy and claims management systems. A key issue to maintain and develop position in an increasingly competitive market will be for them to introduce and develop new and modern platforms. On this issue insurers are way behind the banks, and the ones who will succeed in the future are the ones who already understand the need to change and adapt.

> "INSURANCE COMPANIES NEED TO UNDERSTAND THAT EVERYTHING CAN AND WILL BE DIGITALISED."
>
> JOACHIM SKJELSBAEK, LAWYER/PARTNER, RIISA

TOP ISSUES:

Financial Accounting
Liability of public officials

Civil liability for confidential business information

The inclusion of tax debt insurance in D&O policies

B&A BLANCO Y ASOCIADOS ABOGADOS

SPAIN

The Spanish insurance sector represents around 5% of the gross domestic product, having increased its income by 1.34% during the 2018 financial year. Within these results we should highlight the premium growth for life insurance, which grew 12% in the year.

On the other hand, turnover of the non-life branch reached revenues of €35.3bn, an increase of 3.94%, driven in particular by health policies and the so-called "non-living insurance", which increased their income by 5.59% and 4.93%, up to €8.5bn and €8.4bn, respectively. In general, the insurance market will continue growing in Spain in 2019, not only overall, but also through specialised areas such as D&O, as well as other new lines of business related to new risks, including cyber attacks and data protection, environmental damage and of course, the risks resulting from mergers and acquisitions in a world that is increasingly global.

Sunset over city, Madrid, Spain.

INSURANCE INDUSTRY AT A GLANCE

228

Registered firms

€64.2 BILLION

Value of Premia

FINANCIAL ACCOUNTING LIABILITY OF PUBLIC OFFICIALS

Reviewing the increase of the different liabilities incurred by public officials (managers, etc) who undertake their roles in a public context, many insurers are now offering coverage for unknown financial accounting liabilities, a product very often compared to professional liability cover but with clear differentiations. The concept of Financial Accounting Liability, closely related to the concept of extra-contractual civil liability, appears in the Spanish Organic Law of the Court of Auditors, a completely independent Court, separate to other Spanish courts, being the supreme controlling body for the accounts and of the economic management of the state and of the public sector. In summary, Financial Accounting Liability means that anyone who, by action or omission, infringes the budgetary or accounting regulations and causes a reduction of public funds or assets, is obliged to compensate for the damages that such infringement creates. In Spain, the number of bodies in which this risk could materialize is approximately 13,000 across the state, autonomous communities, city councils, autonomous organizations, public business entities, public corporate companies and public sector foundations and consortiums.

The number of potential insureds affected by this risk is difficult to quantify, since it includes all those who collect, intervene, manage, have custody of, or handle, public funds or assets. The type of insurance offered in the Spanish market is called "Insurance for the Liability of Authorities and Personnel of Public Administrations" and, although it does not yet see significant demand, there are currently five insurance companies that offer this type of specific insurance, while others include this coverage at the request of any public entity within patrimonial insurances or general civil liability insurance of public administrations policies.

> "IN GENERAL, ONLY THOSE WHO ARE LIABLE FOR THE MANAGEMENT OF PUBLIC FUNDS OR EFFECTS CAN INCUR A FINANCIAL ACCOUNTING LIABILITY, BY COMMITTING SERIOUS FRAUD, FAULT OR NEGLIGENCE."
>
> FERNANDO BLANCO GIRALDO, MANAGING PARTNER AT B&A

THE INCLUSION OF TAX DEBT INSURANCE IN D&O POLICIES

Last January, the Spanish Supreme Court established that civil liability insurance could cover the tax debts incurred by the administrators and officers of a company. The Court ordered the insurer in the case to pay the debt owed by its insureds to the Tax Agency in addition to the legal expenses. By covering both the civil liability regulated in Spanish Corporation Law and the General Tax Law, it maintains that the natural scope of a liability insurance contract for managers and officers is to safeguard their personal assets against personal claims arising from acts committed during their corporate management. Excluding the declaration of subsidiary liability for tax debts from the scope of coverage leaves the insured orphaned without a guarantee even though tax is an inherent element of their job. Although this development is alarming, it is important to analyse each case individually and carry out an exhaustive study of the conditions of the policy.

> "IT IS A RELATIVELY COMMON LIABILITY. SO MUCH SO THAT, OBJECTIVELY, IN THE FORECAST OF WHO ARRANGES THE INSURANCE, IT IS LOGICAL THAT THE COVERAGE OF THIS RISK IS ALSO FOUND."
>
> SUPREME COURT JUDGEMENT NO 58/2019

CIVIL LIABILITY FOR CONFIDENTIAL BUSINESS INFORMATION

On February 21st 2019 the new Law on professional secrets was published in Spain (Law 1/2019), which makes it illegal to obtain professional secrets without the consent of their owner when it is carried out through access, appropriation or unauthorized copying of documents, objects, materials, substances, electronic files or other media that contain confidential business information or from which it can be deduced; and for any other action that, in the circumstances of the case, is considered contrary to fair commercial practices. This law is closely related to Article 197 and follows the Criminal Code, which deals with the crime of revealing secrets with prison rulings of one to four years as well as fines.

Without a doubt, it is increasingly common that many of the assets of a company are intangible (in certain cases, it can reach up to 70% in technological or digital companies), so this type of insurance is now a growing area for local insurance companies. In Spain, three years ago, the first policy aimed to protect innovation was also presented, covering worldwide key assets for companies, such as patents, copyright, designs, brands, domain names and trade secrets.

> "THE NEW TECHNOLOGIES ARE NOT ONLY CHANGING THE WAY OF WORKING FOR INSURANCE COMPANIES BUT ALSO GIVE RISE TO THE CREATION OF NEW BUSINESS ROUTES. THE USE OF BIG DATA OR STUDY TOOLS AND ANALYSIS OF SOCIAL BEHAVIOURS HELP TO OFFER PERSONALIZED PRODUCTS WITH PRICES THAT ARE AS COMPETITIVE AS POSSIBLE."
>
> SANTIAGO MARTIN,
> PARTNER AT B&A

TOP ISSUES:

- 2020 Swiss Financial Services Act (FinSA)
- New framework agreement with the EU
- UK-Switzerland Agreement on Direct Insurance other than Life Insurance

INSURANCE INDUSTRY AT A GLANCE

200
Supervised insurances undertakings

CHF50 BILLION
Value of non-life premia

GBF ATTORNEYS-AT-LAW LTD

SWITZERLAND

The Swiss insurance market has high-impact developments ahead. Not only will it enter into new agreements with two of its biggest trading partners, but Switzerland is also engaged in the ongoing end-to-end reform of its own financial services system.

Switzerland has seen a tightening of supervision by the Swiss Financial Market Supervisory Authority (FINMA) in the recent year, and we expect FINMA to increase the number of its on-site visits, following up on recently introduced requirements regarding compliance, risk management, corporate governance and business continuity planning. Insurers are therefore well advised to assess their structures and processes, including compliance of distribution channels and outsourcing setups. We also expect new insurers entering the Swiss market and others exiting due to ongoing Brexit restructurings.

Beautiful dawn in Lucerne city, Switzerland.

2020 SWISS FINANCIAL SERVICES ACT (FINSA)

Switzerland will implement a new Financial Services Act in January 2020 which will completely change the framework for financial services provision in Switzerland. The FinSA contains rules of conduct which financial services providers will need to conform to in their relations with their clients:

Pursuant to the FinSA, the current register of insurance intermediaries will be replaced with a general register of client advisors, in which client advisors of Swiss or foreign financial services providers that are not subject to financial market supervision in Switzerland will have to register (tied insurance intermediaries will however not be subject to this registration duty).

Insurance intermediaries will have a duty to ensure the training of their client advisors, who must have sufficient knowledge of the rules of conduct set out in the Insurance Supervision Act as well as the necessary skills, knowledge and experience to perform their activity.

Prior to concluding an insurance contract, insurance intermediaries will in principle be under the obligation to conduct a suitability and appropriateness assessment of a product to the insured's needs. Furthermore, the existing information duty of insurance intermediaries shall be broadened so as to reflect the corresponding duty of information rules under the FinSA (art. 9 FinSA).

Non-tied insurance intermediaries may only accept compensation from third parties in connection with the provision of their services, if they: a. have expressly informed the clients of benefits and the clients waive such benefits in advance; or b. pass on the benefits to the clients in full. This will not apply to tied intermediaries, as they do not have a fiduciary duty to the insured and are therefore not obliged to prioritise their interests.

Redeemable life insurance policies, the savings portion of which is linked to the performance of financial instruments, assets or indices, shall be deemed financial products under the FinSA, thereby bringing the concerned insurers and insurance intermediaries within the scope of the FinSA with respect to these products. As a consequence, insurers would need to prepare a key information document, which should contain the essential information for the insured to make a well-founded decision regarding these products.

Finally, all insurance companies and non-tied intermediaries will have to become affiliated to an ombudsman. While most Swiss insurance companies already fulfil this requirement, many insurance intermediaries would need to adjust to this new requirement.

> **"OUR CLIENTS WILL NEED TO BE PREPARED TO INVEST TIME IN PLANNING FOR THE ACT, PARTICULARLY IN REGARD TO DISTRIBUTION ACTIVITIES."**
>
> DOMINIK SKROBALA, GBF ATTORNEYS AT LAW

UK-SWITZERLAND AGREEMENT ON DIRECT INSURANCE OTHER THAN LIFE INSURANCE

The UK and Switzerland signed a bilateral Agreement on Direct Insurance other than Life Insurance on 25 January 2019, which replicates the effects of the existing EU-Swiss Agreement on Direct Insurance other than Life Insurance. While the EU-Swiss Agreement does not provide for full freedom of services (e.g. passporting rights), it is nevertheless very useful and has facilitated business in Switzerland not least because it allows the home state supervisor to continue supervising solvency (i.e. Swiss branches of UK insurers are not subject to solvency-supervision by the Swiss Financial Market Supervisory Authority, FINMA). It has also ensured that the Solvency II risk location principles apply, which is of paramount importance when structuring international programs. By mirroring the EU-Swiss Agreement, the UK and Switzerland have ensured planning certainty and continuity for UK insurers accessing the Swiss market. The UK-Swiss Agreement will immediately enter into force in case of a No Deal scenario and, in the alternative, after a transition period.

> **"BY MIRRORING THE EU-SWISS AGREEMENT, THE UK AND SWITZERLAND HAVE ENSURED PLANNING CERTAINTY AND CONTINUITY FOR UK INSURERS ACCESSING THE SWISS MARKET."**
>
> DOMINIK SKROBALA, GBF ATTORNEYS AT LAW

NEW FRAMEWORK AGREEMENT WITH THE EU

The new framework agreement, which has been under development since 2002, allows for the consistent adoption of selected EU laws into Switzerland and facilitates the secondment of workers between EU and Switzerland. The framework agreement currently contains no elements covering financial services. The EU and Switzerland have however added a joint declaration to the draft agreement, by which they acknowledge the necessity to modernise the trade related agreements. This modernisation would cover the rules liberalising the trade of services and investments, while maintaining the relevant general exceptions, including in the financial services sector, and the right of each party to adopt regulations in line with domestic policy objectives.

> **"THE DEVELOPMENT OF THE FRAMEWORK AGREEMENT SHOULD BE WATCHED CLOSELY, AS IT COULD OPEN UP NEW OPPORTUNITIES, IN PARTICULAR REGARDING THE EUROPEAN OPERATING STRUCTURE AND STAFFING OF INSURERS."**
>
> DOMINIK SKROBALA, GBF ATTORNEYS AT LAW

TOP ISSUES:

- Major amendment introduced to the Insurance Act
- Insurtech-driven new insurance products
- Lifting restrictions on e-commerce

INSURANCE INDUSTRY AT A GLANCE

44

Registered firms (life and non-life)

NTD 3.67 BILLION

Value of Premia (life and non-life)

LEE AND LI ATTORNEYS-AT-LAW

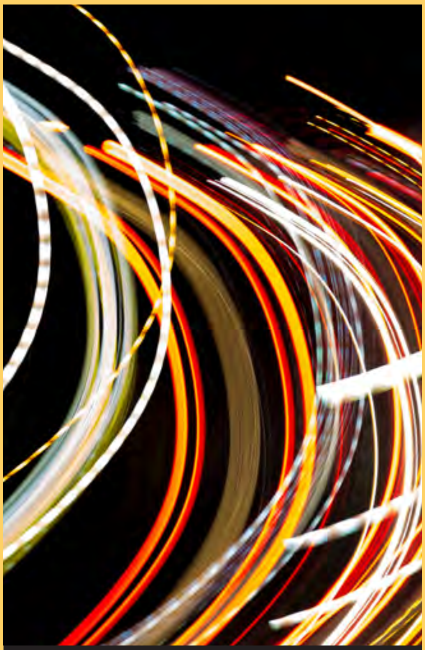
TAIWAN

While the regulatory environment is relatively conservative, the Taiwan insurance market is changing slowly under the inexorable trend of Fintech.

View Of Wet Street In Downtown Taipei.

MAJOR AMENDMENT INTRODUCED TO THE INSURANCE ACT

The Financial Supervisory Commission of Taiwan has proposed a major reform of the Insurance Act which generally inclines towards consumer protection, such as extending the insureds' rescission period, requiring delivery of policy and insurers' obligation to inform. On the other hand, the proposed reform also intends to build a more technology-friendly business environment for insurance enterprises, such as permitting multiple ways to deliver policies and allowing the authority to appoint third party service providers to provide data processing and exchange services to insurance enterprises. The proposed draft is yet to be passed, but the public review period is now expired and no substantially different comments have been raised.



"FACING THE CHALLENGES ARISING OUT OF REGULATORY RELAXATION, OUR CLIENTS SHOULD IMPROVE EFFICIENCY BY LEVERAGING NEW TECHNOLOGY SUCH AS CLOUD SERVICES AND AI AND, IN THE MEANWHILE, DIVERSIFY THEIR BUSINESS."

CT CHANG, LEE & LI

INSURTECH-DRIVEN NEW INSURANCE PRODUCTS

Some new insurance products driven by technology development will be introduced to the Taiwan market. One example is Usage Based Insurance.

It is expected that more new types of insurance products based on smart connected devices will be commercialized.

"THE PRESSURE OF COMPETITION IN THIS FINTECH ERA IS AN INEVITABLE ISSUE FOR EVERY FINANCIAL INDUSTRY BUSINESS."

CT CHANG, LEE & LI

LIFTING RESTRICTIONS ON E-COMMERCE

The Financial Supervisory Commission has enacted in late 2018 the new "Regulations Governing Online Insurance Business and Online Insurance Services of Insurance Agent Companies and Insurance Broker Companies". The enactment of the Regulations is a step forward in lifting the restriction on insurance brokers and insurance agents conducting online business.

"THE RELAXATION OF E-COMMERCE REGIME COULD CONTRIBUTE TO THE GROWTH OF THE INSURANCE MARKET"

CT CHANG, LEE & LI

TOP ISSUES:

- Profitability
- Regulation
- Hiring and keeping top talent
- The role of technology

FORAN GLENNON

UNITED STATES

The US insurance market has been buffeted by multiple winds of change over the last two to three years. P&C markets are only now recovering from the huge losses related to the multiple 2017 hurricanes which devastated parts of the Americas. Meanwhile, commercial and business insurance products are seeing wholesale changes from the implementation of AI and blockchain technology.

The result is an overall challenge to profitability, as insurers struggle to fight multiple challenges: to rein in costs, implement rapid change, evolve their workforces and deliver profitability all at one time. No wonder M&A has been a feature of this market and looks set to continue to be so over the coming year.

City traffic at night, New York.

INSURANCE INDUSTRY AT A GLANCE

5,954
Registered firms

$1.2 TRILLION
Value of Premia

PROFITABILITY

Insurance companies must analyze and determine how to be profitable. While profitability is improving in the P&C sector, following the natural catastrophes experienced in 2017, the commercial sectors continue to struggle to improve rates and deliver growth in the US. Most recently, insurers have turned to mergers and acquisitions as a way to increase market share and revenue, and to expand their scale, geographic reach and product lines. We expect to see more of this as 2019 develops.

> "COMPETITIVE MARKETS, AN INCREASE IN LOSSES, BOTH IN NUMBER AND IN SIZE, CREATE A CHALLENGING ENVIRONMENT FOR INSURERS. CARRIERS ARE FOCUSED ON MANAGING COSTS, AND WITH PLENTY OF CAPITAL AVAILABLE, CONTINUE TO LOOK AT M&A TO INCREASE MARKET SHARE AND PROFITABILITY."
>
> SUSAN NK GUMMOW, ATTORNEY-AT-LAW, FORAN GLENNON

REGULATION

Insurers are currently in an environment of increased rules and regulations, as regulators in the US follow a global trend of broadening their attention from solvency to include market conduct oversight. In the coming year there seems little doubt there will be a rule governing sales of US insurance products and especially cyber related risks. However, insurers don't yet know whether regulation will come at the federal or state level (or both), or the impact of such regulation. The US Securities and Exchange Commission has also set out plans for a "best interest" rule for broker-dealers working with retail customers, and this looks likely to be implemented across a number of states.

> "US STATE REGULATORS ARE LOOKING INCREASINGLY AT CONDUCT ISSUES, FOLLOWING MAJOR REVIEWS IN AUSTRALIA AND ELSEWHERE AROUND THE GLOBE. REGULATION WILL FOLLOW AND BROKER-DEALERS WILL BEAR THE BRUNT OF IT."
>
> THOMAS B. ORLANDO, ATTORNEY-AT-LAW, FORAN GLENNON

HIRING AND KEEPING TOP TALENT

Insurers are currently facing shortages of experienced talent in the industry, part of a general trend in the US where the labor market is the tightest that it has been in a decade, and where unemployment sits at 3.7%. This impacts many areas including the ability to innovate, cost of hiring talent and concerns regarding how to inspire and retain talent. In addition, insurers implementing AI solutions have large numbers of employees to repurpose and retrain – a huge challenge, but one that must be addressed rapidly.

Overall insurers, in common with many other sectors, are coping with drastic changes to their workforce and people economics, and must adapt accordingly.

> "THE SHORTAGE OF TALENT IS ONLY BEGINNING, BUT IT IS ALSO ONLY HALF OF THE STORY. INSURERS MUST ALSO RE-SKILL THEIR KNOWLEDGEABLE TEAMS TO WORK IN THE AI ENVIRONMENT."
>
> JAMES B. GLENNON, ATTORNEY-AT-LAW, FORAN GLENNON

THE ROLE OF TECHNOLOGY

Insurers are increasingly implementing artificial intelligence into their operations. This can include improving the customer experience and reducing costs; loss anticipation; compensation; more proactive risk detention and preventions; carriers are also using aerial surveillance and drones in the claim adjustment process.

Blockchain is developing too, stepping from the test phase and starting to take a real place in insurers business plans. The Deloitte US 'Insurance Industry Outlook' for 2019 predicts that 2019 will be the year that many insurers move beyond proof of concept for blockchain and begin to launch live products based on distributed ledger technologies.

> "TECHNOLOGY IS AN OVER-USED WORD, BUT ITS EFFECTS CANNOT BE OVER-ESTIMATED. IT IS BRINGING FUNDAMENTAL CHANGE TO INSURANCE PRODUCTS, TO THE WAY THEY ARE DELIVERED, AND TO THE DISTRIBUTION CHANNELS OF THIS INDUSTRY – NOT IN FIVE YEARS, BUT NOW."
>
> THOMAS B. ORLANDO, ATTORNEY-AT-LAW, FORAN GLENNON

TOP ISSUES:

- Brexit
- Pressure in the Directors & Officers market
- Changes to the structure of the Lloyd's market
- Personal lines insurance: renewal pricing
- Focus on Scotland

BLM

UNITED KINGDOM

The UK is in the grip of an unavoidable and dominating issue in 2019. Brexit, Brexit, Brexit: when will the uncertainty end? Whilst most will be aware of changes leaving the EU will bring, and most insurers already have their Brexit provisions in place, the impacts of the never-ending process of negotiating departure are now also being felt, both in terms of reducing the flow of investors into the insurance market, and an overall economic stagnation caused by uncertainty.

Meanwhile the London market has, for the last year been in the grip of its own mini-financial crisis, with many syndicates exiting classes of business or being forced to shrink by Lloyd's. At least there is now a plan to reduce costs and return the Lloyd's market to profitability, albeit by splitting the market in two. The effects of this will ripple throughout 2019 and 2020. Elsewhere external pressures (legislative and regulatory) impact two significant markets: D&O and personal lines.

Cityscape of London - The Gherkin (30 St Mary Axe), Lloyds of London, Tower 42, Heron Tower.

INSURANCE INDUSTRY AT A GLANCE

924
Registered firms

£225 BILLION
Value of Premia

BREXIT

The Financial Supervisory Commission of Brexit has already caused considerable structural costs for insurers, and most of these were spent and accounted for in 2018. Firms have completed their plans for an exit, and now await its delivery by the UK government. The failure to do so now brings a new wave of issues, reducing willingness to invest, putting off global capital, and bringing uncertainty to the UK economy which impacts opportunities to grow. Until Brexit is resolved, expect the market to remain risk-averse and M&A wary.

> **"BREXIT FEELS LIKE THE NEVER-ENDING STORY FOR BRITISH BUSINESS AT PRESENT. IT CONTINUES TO GIVE ALMOST ALL UK FIRMS – NOT JUST INSURERS AND BROKERS – A PERMANENT HEADACHE AND A DISMAL SENSE THAT THE FUTURE WILL UNFOLD IN AN UNKNOWN AND POSSIBLY UNCONTROLLABLE WAY."**
>
> ALASTAIR KINLEY, DIRECTOR OF POLICY & GOVERNMENT AFFAIRS, BLM

PRESSURE IN THE DIRECTORS & OFFICERS MARKET

There is a global stress on D&O insurance, and this is reflected in the UK too. Put simply a trend by governments and regulators to place a greater legal and regulatory focus on pursuing directors personally in cases of corporate misadventure or misconduct has led directly to increased pressure on their insurance policies.

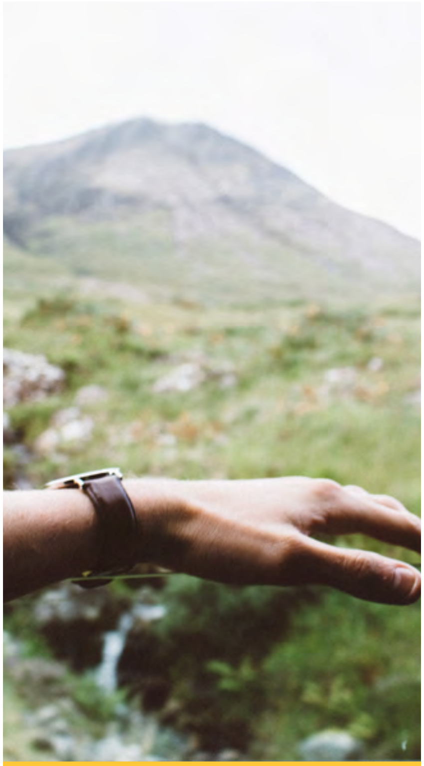
The involvement of activist shareholders has played its part in this trend, and the result is that prices and policy wordings are both in the spotlight. Expect to see price shocks and some clarifications in cover over the coming year.

> **"D&O INSURANCE IS MORE IMPORTANT FOR CORPORATES THAN EVER, AND THIS MAKES IT CONTINGENT ON INSURERS TO PROVIDE COVER THAT IS PRICED AND FIT FOR PURPOSE. THE CHALLENGE IS TO DO THIS PROFITABLY."**
>
> ALEX TRAILL, PARTNER, BLM

CHANGES TO THE STRUCTURE OF THE LLOYD'S MARKET

Two years of disastrous natural catastrophes have highlighted some major structural issues for the Lloyd's market, particularly a high level of costs, set against low levels of claims service quality. The CEO of Lloyd's, John Neal, has taken decisive action, and plans to split the market in two, looking to automate standard risks; and retain customized approaches only for significant and specialized risks, which make up around 50% of the Lloyd's market. The plan is currently in consultation, but look out for major changes at the end of summer 2019, when the consultation period ends and action will be expected to begin.

> **"THIS IS A PERIOD OF POSITIVE CHANGE FOR THE LLOYD'S MARKET, WHICH NEEDS TO EMBRACE TECHNOLOGY AND USE IT TO CUT COSTS. THE ISSUES, AS JOHN NEAL HAS ALREADY POINTED OUT, ARE BOTH ADMINISTRATIVE AND HUMAN. WILL THE LONDON MARKET WANT TO CHANGE THE WAY IT DOES BUSINESS?"**
>
> DAMIAN CLEARLY, PARTNER AND HEAD OF LONDON MARKET, BLM



PERSONAL LINES INSURANCE: RENEWAL PRICING

The FCA is currently investigating how insurers price personal lines insurance: home and motor, as well as SME. The suspicion is that vulnerable customers are not being treated fairly in terms of pricing, particularly when renewing an existing policy. Insurers will need to work with the FCA to increase trust and combat such accusations; while industry bodies have a role in helping to drive bad practice out of the market.

"THE PUBLIC HAVE A POWERFUL ALLY IN THE FORM OF THE FCA. ITS FOCUS ON PRICING IN HOME AND MOTOR INSURANCE MEANS THAT INSURERS WILL ALSO NEED TO SPEND TIME AND RESOURCES MEETING THE FCA REQUIREMENTS, ONCE THESE ARE SET OUT."

KERRIS DALE, PARTNER AND HEAD OF MOTOR, BLM

FOCUS: SCOTLAND

Scotland, like England, is in the middle of recalculating the discount rate: the insignificant-seeming but critical number which sets out how much insurers have to pay someone with a traumatic issue which will require a lifetime of care. In Scotland the issues are somewhat different to the UK, as the mechanism set up to calculate the rate follows a different logic. The impact of the new rate will be enormous in terms of claims reserves required by Scottish insurers – and could therefore impact insureds, via increased premia and lower thresholds of cover.

"THE DISCOUNT RATE SOUNDS UNIMPORTANT, BUT IS PROBABLY THE MOST SIGNIFICANT FACTOR IN INSURANCE PRICING IN SCOTLAND AT PRESENT. MILLIONS OF SMALL FIRMS AND INDIVIDUALS WILL BE IMPACTED BY IT, VIA RAISED INSURANCE PREMIA, ALTHOUGH MANY MAY NEVER UNDERSTAND THE MECHANICS OF THE CHANGED CALCULATIONS."

IAN LEACH, PARTNER AND HEAD OF EDINBURGH OFFICE, BLM

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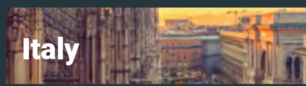

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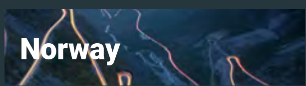

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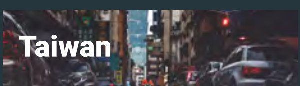

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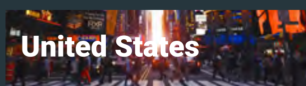

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