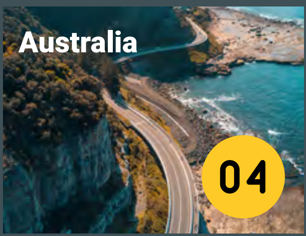
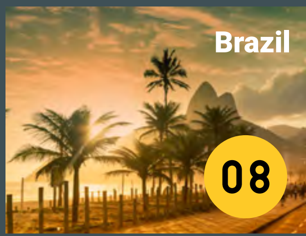
RISK RADAR

MAY 2022

GLOBAL INSURANCE LAW CONNECT

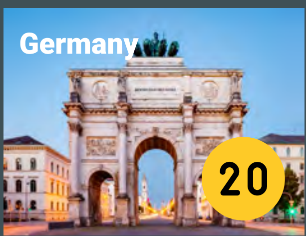
IN THIS ISSUE







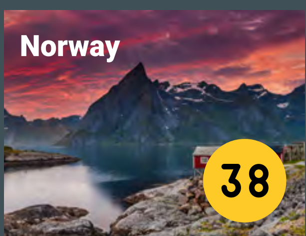






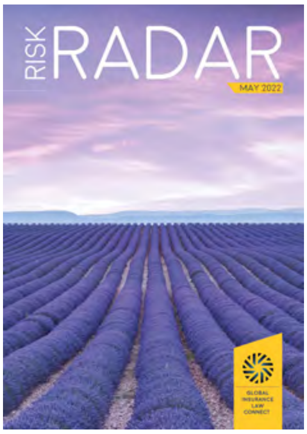







RADAR
MAY 2022



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

Welcome to the fourth edition of the Global Insurance Law Connect RADAR report. As our network grows, each edition becomes more comprehensive than the last and this year is no exception. We are excited to be able to offer contributions from our new member firms, ARK Law and Duncan Cotterill, from Denmark and New Zealand respectively. These additions mean that the network now makes up 20 firms spanning four continents, so our reach and ability to share expertise is greater than ever before.

What makes the network so valuable is each member's specialist expertise in their local insurance market. It means that we combine detailed, granular knowledge with a broad, global perspective. Recent events – whether they be the pandemic, or floods – have shown that our perspective is the right one, and that only a coordinated global approach can solve our most pressing domestic issues. We are delighted that our perspective has attracted international relationships with a number of new clients this year.

This year has been no less eventful than the last few, and our clients have had to continue to adapt. Many of the areas of focus from last year continue to be at the forefront of members' minds: the rise of digitalisation and cyber risk, increased climate risk, and regulatory change are all themes that run through this year's report. With the pandemic largely seen as receding, many members are now considering its longer-term implications. Of particular concern is the risk that senior management's decisions made during the pandemic may come under the spotlight, which will have consequences for the D&O market.

Given that the challenges we face are increasingly universal, it is all the more important that we do all we can to share expertise, best practice and innovations with each other. The Global Insurance Law Connect Risk RADAR report is, of course, an excellent place to start – we hope it will prove to be an informative and useful guide to the state of the industry around the world.

As ever, we look forward to engaging with members and clients around the topics discussed in this report, no matter where in the world they are.

Best wishes

The Board of Global Insurance Law Connect

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TOP ISSUES:

Climate change – insurability or affordability of insurance in flood prone areas

Regulation – Australian insurers have been subject to sweeping regulatory reforms

Class actions – increasing restrictions for third party litigated funders

SPARKE HELMORE LAWYERS

AUSTRALIA

Although many in the insurance industry are predicting positive growth in Australia over the coming year, many issues that defined 2021 remain front of mind for 2022 (some of which are also global insurance trends). ESG considerations remain prominent, with Australian insurers focused on sustainability and D&I.

Risk management is high on the agenda due to increasing regulation and cyber security concerns. These issues are coupled with commercial drivers such as accelerated digitisation, changing consumer preferences and a war on talent within an evolving work environment. We have seen limited traction in the Australian market from key global insurance trends such as M&A activity, disruptor insurtechs and the social inflation phenomenon—although climate change and class actions if left unchecked could potentially be a major contributor to rising insurance costs.

In the current local market, the three primary areas on the radar are climate change, class actions and increased regulation.

INSURANCE INDUSTRY AT A GLANCE

94

Registered firms

AUD$ 57.5 BILLION

Value of premia

(Gross Earned Premium for year ending 31 December 2021)

Clifton, Australia

CLIMATE CHANGE – INSURABILITY OR AFFORDABILITY OF INSURANCE IN FLOOD PRONE AREAS

With a current annual cost of AUD$38B attributed to natural disasters, climate change is expected to result in more severe cyclones, droughts, bushfires and floods in Australia. The insurance industry is committed to a proactive approach to climate resilience, with the affordability and availability of insurance an area of focus. This has been exemplified by the devastating flood catastrophes throughout Queensland and NSW in February/March 2022. "Flood exclusions" in insurance policies have been front of mind, with many individuals and businesses who were unable to afford expensive flood cover premiums left uninsured. With losses already exceeding $4B, the Insurance Council of Australia has called upon the Australian Government to do more to protect Australian people and businesses against extreme weather events.

> **"FLOOD CATASTROPHES AND EXCLUSIONS: WHO SHOULD FOOT THE BILL?"**
>
> KILEY HODGES, PARTNER, SPARKE HELMORE LAWYERS

REGULATION – AUSTRALIAN INSURERS HAVE BEEN SUBJECT TO SWEEPING REGULATORY REFORMS

2021 was marked by the introduction of a new Insurance Code of Practice and sweeping regulatory reforms for Australian insurers, including the introduction of a deferred sales model, anti-hawking, breach reporting and unfair contract terms. The final raft of changes released in late 2021 comprised new targeted and principles-based design and distribution obligations for product issuers, product intervention powers for the regulator, and new licensing requirements introduced for claims handlers (effective January 2022). 2022 promises a plethora of new reforms including: a new Insurance Brokers Code of Practice (effective November 2022); a prudential guide on climate change financial risks; a prudential standard on remuneration practices (effective January 2023); and new financial contingency planning and resolution planning standards for insurers (currently under consultation).

> **"REGULATORY REFORM FOR INSURERS: IS THERE MORE TO COME?"**
>
> MALCOLM CAMERON, PARTNER, SPARKE HELMORE LAWYERS

CLASS ACTIONS – INCREASING RESTRICTIONS FOR THIRD PARTY LITIGATED FUNDERS

Class actions reforms since late 2020 have focused on third party litigation funding, requiring funders to hold an Australian financial services licence and for litigation funding schemes to be registered as managed investment schemes and comply with all associated laws (including the provision of a Product Disclosure Statement to members). Current legislative reforms seek to introduce a cap on the amount funders can recover from the settlement proceeds. The reforms also require a funder to "sign up" group members to the scheme or risk having its costs unpaid. Late 2021 saw a swift rise in class actions, but this is expected to decline in 2022 if the legislation is passed. However, an impending Federal election could potentially delay or de-rail the proposed reforms.

> **"CLASS ACTIONS – TO FUND OR NOT TO FUND? THIRD PARTY LITIGATION FUNDERS FACE INCREASING REGULATION IN AUSTRALIA."**
>
> DINO LIISTRO, PARTNER, SPARKE HELMORE LAWYERS

TOP ISSUES:

- Sustainable finance
- Digitalisation and innovation
- Insurance distribution through third party providers

LYDIAN

BELGIUM

Insurers in the Belgian insurance market are innovating both in terms of techniques and processes for distributing insurance policies and in developing new insurance products.

In terms of the distribution process, it is remarkable that more insurance contracts are no longer concluded exclusively through the traditional channels. More and more companies whose main activity is not insurance distribution, such as travel agencies, tour operators, car dealers, leasing companies, supermarkets, sports shops, funeral undertakings, opticians, banks, and health insurance funds are offering insurance products on the Belgian market.

Furthermore, more and more insurance products are offered through websites or apps, with no physical contact with the policyholders.

Meanwhile the regulator prioritises its supervision on new technologies. While there is no overall approach to insurtech or digitisation, the regulator regularly issues specific guidance.

Finally, there has been an increased focus on sustainability on all policy levels. These developments should be monitored closely, as the new regulatory initiatives may have a large impact on various aspects of insurance business (capital requirements, disclosures, investments, risk management, reporting, internal trainings, etc).

Ghent, old town, Belgium

INSURANCE INDUSTRY AT A GLANCE

650

Registered firms

€28.5 MILLION

Value of Premia

SUSTAINABLE FINANCE

Sustainable financing remains an absolute priority in 2022. The three basic regulations (Regulation (EU) 2020/852, Regulation (EU) 2019/2089 and Regulation 2019/2088) are further elaborated on delegated regulations and technical regulation standards by the European Commission.

The Commission's Delegated Regulation (EU) 2021/2139 and the Commission's Delegated Regulation (EU) 2021/2178 were published in the Official Journal of the EU in December of 2021. The European Commission published the FAQs on Article 8 of the Delegated Regulation in December 2021. This provides non-binding guidance from the Commission on the implementation of the obligations.

There is not yet a final version of technical regulatory standards of certain obligations under the Sustainable Finance Disclosure Regulation. The entry into force of the regulatory technical standards was postponed until January 1, 2023. The lack of definitive regulatory technical standards clarifying how the new obligations should be implemented forms a challenge for the industry.

> **"THE IMPACT OF THE SUSTAINABLE FINANCE REGULATIONS WILL EXTEND TO INSURERS' OPERATIONAL ACTIVITIES, SUCH AS INVESTMENT POLICY, UNDERWRITING POLICY AND THE IMPACT ON THE PERFORMANCE OF THE INSURANCE PORTFOLIO."**
>
> SANDRA LODEWIJCKX, PARTNER, LYDIAN

DIGITALISATION AND INNOVATION

Digital innovation in the insurance sector increased in 2021. Insurers innovate by applying digital techniques for the distribution of their insurance policies (e.g. smart phone apps), by partnering with (supporting) insurance intermediaries with innovative distribution models, by implementing advanced internal processes (e.g. cloud computing) and by developing new insurance products (e.g. cyber cover). This trend will undoubtedly continue in 2022.

The regulatory authority pays particular attention to the monitoring of new technologies. The regulatory authority regularly issues specific guidelines. For instance, the National Bank of Belgium has published guidelines on outsourcing to cloud service providers and cloud computing. The European Insurance and Occupational Pensions Authority (EIOPA) also indicates in its annual work programme that it will support the market and regulators in the digital transformation in 2022.

> **"IN 2022 NEW PRODUCTS OR DISTRIBUTION CHANNELS WILL BE BROUGHT TO THE MARKET BY EXISTING AND NEW PLAYERS AND WILL RECEIVE DUE ATTENTION FROM THE REGULATOR."**
>
> SANDRA LODEWIJCKX, PARTNER, LYDIAN

INSURANCE DISTRIBUTION THROUGH THIRD PARTY PROVIDERS

More and more insurance products are no longer sold solely through traditional channels. More and more companies, whose main professional activity is different from selling insurance products, are offering the possibility of concluding an insurance contract through them, or are directing their customers towards an insurer or insurance intermediary with a view to concluding an insurance contract. The legislator anticipated this by introducing the new status of an ancillary insurance intermediary. Like other insurance intermediaries, ancillary insurance intermediaries are subject to a registration requirement. The majority of the applicable obligations that rest on other insurance intermediaries also apply to ancillary insurance intermediaries. The main criterion for determining whether or not the third party qualifies as an (ancillary) insurance intermediary relates to the performance of insurance distribution activities.

> **"INSURERS AND INSURANCE INTERMEDIARIES COOPERATING WITH THIRD PARTY PROVIDERS SHOULD PAY ATTENTION TO A CLEAR DELINEATION OF THE ACTIVITIES OF THIRD PARTIES THEY RELY ON IN THE DISTRIBUTION PROCESS."**
>
> CHARLOTTE HENSKENS, SENIOR ASSOCIATE, LYDIAN

TOP ISSUES:

- Political
- Claims in rural insurance
- Regulatory stagnation

INSURANCE INDUSTRY AT A GLANCE

Registered firms

124
insurers (not health insurance)

106
licensed foreign reinsurance companies (2020 data).

18
capitalization companies

13
local reinsurers

13
open supplementary pension companies

Premia income and contributions

US$ 53 BILLION
(excluding health insurance) (2020 data).

SANTOS BEVILAQUA ADVOGADOS

BRAZIL

The Brazilian economy has been showing good results, with overall increases in premia and contributions collection. Insurance market class entities point to an average growth of 10% in 2021 premia income, exceeding 2020 and pre-pandemic levels.

Despite this being an election year, which is marked by general stagnation, the insurance market, as a general rule, indicates that it will maintain its upward trend in premia and contributions collection in 2022, the result of a dynamic that started 2021, associated with a general increase in loss ratios.

A deacceleration in the ongoing deregulation process (initiated in 2020) of the insurance market is expected, due to the election year and changes to the board of directors of the insurance supervisor (SUSEP). It may impact, on different levels, open finance, the insurance regulatory sandbox, the freedom to develop innovative products and the ability to implement remote selling operations.

While commodity exports drive this period of growth in Brazil, the rural insurance market is experiencing a significant increase in claims, due to the prolonged drought that occurred in south-central Brazil during 2021.

Furthermore, we did not see in Brazil many important issues related to claims associated to the pandemic. Business interruption coverages, for example, are almost always clearly linked to physical damages. In the life side, all the insurers decided to cover Covid-19 losses, without discussing the wording of the contracts.

Ipanema Beach, Rio de Janeiro, Brazil

POLITICAL

Election years in Brazil are admittedly marked by economic, operational, and regulatory stagnation or instability, which is a risk to be economically accounted for, even more in the insurance market.

Some insurance lines, like performance bonds associated with government contracts, are more negatively impacted by elections. However, because of the polarisation between left and right, it has been difficult to predict the future of the economy under the government to be elected. In this regard, insurance lines highly associated with Government actions, like rural insurance (because of the rural financing dynamic) and reinsurance (because of IRB, the largest, in practice state owned, local reinsurer) tend to be more affected by changes of Government policies.

> **"2022 WILL BE A TRANSITION YEAR THAT WILL DEFINE IMPORTANT ASPECTS OF THE FUTURE OF THE BRAZILIAN INSURANCE MARKET AND ITS ECONOMIC AND REGULATORY TRENDS."**
>
> JOÃO MARCELO SANTOS, PARTNER, SANTOS BEVILAQUA

CLAIMS IN RURAL INSURANCE

The rural insurance sector was and is still being impacted by a huge loss ratio, given the climate situation that affected the south-central Brazil in 2021.

It is expected that such changes will lead to a wide-ranging repricing and reassessment of risks, which could impact the price of commodities and affect the economic performance of Brazil in 2022.

Operational changes are expected in the rural insurance market, even with a greater presence of new insurance and reinsurance companies capable of adapting to the conditions of the market and the risks to be covered. There will be space for players that offer different products and employ new methods of underwriting.

> **"THE CURRENT STATE OF THE RURAL INSURANCE INCENTIVISES NEW PLAYERS TO INVEST HERE, ESPECIALLY INSURERS AND SERVICE PROVIDERS ABLE TO USE INNOVATIVE UNDERWRITING AND OPERATIONAL SOLUTIONS."**
>
> KEILA MANANGÃO, PARTNER, SANTOS BEVILAQUA

REGULATORY STAGNATION

The deregulation that has been implemented in the last two years is an incentive for expansion of the insurance market.

Innovation, in the case of the insurance market, has been a major factor in the adaptation of insurance products and techniques to the changing demands of new and old clients. Without innovation, the insurance market could lose relevance in competition with other risk management tools.

But the innovation process is difficult, with different winners and losers, and events like recent changes to the board of directors of the insurance supervisor (SUSEP) may delay the regulatory deregulation process, and the implementation of rules to incentivise innovation, like open finance, the insurance regulatory sandbox, remote selling processes, different selling channels and the freedom to develop new products.

> **"POLITICAL EVENTS MAY DELAY THE IMPLEMENTATION OF THE DEREGULATION AND INNOVATION AGENDA THAT HAS BEEN THE FOCUS OF SUSEP."**
>
> ANA PAULA COSTA, PARTNER, SANTOS BEVILAQUA

TOP ISSUES:

The banking industry and insurance industry fully support the preparation of spring plowing

The General Office of the China Banking and Insurance Regulatory Commission issued a notice on the expansion of the scope of the pilot of pension wealth management products

The Department of Life Insurance of the CBIRC has issued a new version of the negative list, the "Negative List of Life Insurance Products 2022 Edition", to all insurers

INSURANCE INDUSTRY AT A GLANCE

Registered firms

377

Members of the Insurance Association of China

Value of Premia

RMB 979.3 BILLION

January, 2022

BUREN

CHINA

According to the China Banking and Insurance Regulatory Commission, the regulator of Chinese insurance companies, premium income in China reached 979.3 billion RMB in January 2022, with total insurance payouts of 190.1 billion RMB.

The Chinese insurance market is moving forward at a steady pace towards the goal of high-quality development. From the perspective of customer groups, the expansion of middle-income groups brought by the "common wealth" strategy will bring huge opportunities for wealth management and risk protection for the insurance industry. From the perspective of market potential, the new urbanisation and key regional development strategies will bring huge market development opportunities for the insurance industry. From the perspective of operational changes, digital transformation will help the insurance industry improve its efficiency and even change its business model. From the perspective of an aging population, commercial pension insurance and pension services will usher in a golden opportunity for rapid development.

Tai Lake at Wuxi, China

THE DEPARTMENT OF LIFE INSURANCE OF THE CBIRC HAS ISSUED A NEW VERSION OF THE NEGATIVE LIST. THE "NEGATIVE LIST OF LIFE INSURANCE PRODUCTS 2022 EDITION" TO ALL INSURERS

The 2022 version of the 'Negative List of Life Insurance' listed a total of 82 articles. Compared to the 'Negative List of Life Insurance' 2021 version, issued on 20 January last year, it added 9 new items, and 2 articles have been fine-tuned, adjusting a total of 11 items.

Currently, there are two main types of risks in life insurance products on the market: first, unreasonable product design and pricing, which brings business risks to insurers, including unreasonable risk incidence, expense ratio, surrender rate, interest rate assumptions, etc. Second, improperly expressed terms or content, leading to the risk of misleading sales and consumer disputes. The 22nd edition of the Negative List also focuses on the formulation of product terms, product liability design, product rate determination and actuarial assumptions.

> "IN THE FACE OF VARIOUS CHAOTIC PHENOMENA IN THE LIFE INSURANCE MARKET, STRICT REGULATION IS A NORMALIZED TREND. THE REGULATOR CAN REDUCE THE FREQUENCY AND CONSEQUENCES OF THE SALE OF MISLEADING PRODUCTS BY CONTINUOUSLY OPTIMIZING THE REGULATORY MECHANISM, CUTTING OFF THE TRANSMISSION CHANNEL OF MORAL RISKS AT SOURCE, IMPROVING THE INCENTIVE MECHANISM AND INCREASING THE COST OF MISLEADING SALES."
>
> JING WANG, SENIOR ADVISOR, BUREN

THE GENERAL OFFICE OF THE CHINA BANKING AND INSURANCE REGULATORY COMMISSION ISSUED A NOTICE ON THE EXPANSION OF THE SCOPE OF THE PILOT OF PENSION WEALTH MANAGEMENT PRODUCTS

Since the launch of the pilot of pension financial products, the overall operation is smooth, the market response is positive, and a good start has been made, playing a positive role in enriching commercial pension financial products and meeting the diversified needs of people for retirement. In order to further improve the pilot and increase the supply of pension products, the CBIRC has now decided to expand the scope of the pilot from March 1, 2022.

The pilot areas of the pension products expanded to ten places: Beijing, Shenyang, Changchun, Shanghai, Wuhan, Guangzhou, Chongqing, Chengdu, Qingdao, and Shenzhen. After the expansion of the pilot scope, the pilot wealth management company should independently choose one or more pilot areas to sell pension wealth management products and implement effective measures to strictly control the scope of sales, and shall not sell beyond the pilot area.

> "AT PRESENT, THE AGING OF CHINA'S POPULATION IS ACCELERATING, BUT THE MAJORITY OF PEOPLE'S PENSIONS RELY ONLY ON THE FIRST PILLAR OF EMPLOYEE PENSION INSURANCE, WHILE PENSION INSURANCE AND PENSION FINANCE ARE RELATIVELY SMALL, THE POPULARITY OF THE FIRST PILOT PENSION FINANCE PRODUCT FULLY ILLUSTRATES THE DEMAND FOR PENSION PRODUCTS, SO THE PROCESS OF PROMOTING PENSION FINANCE IN CHINA NEEDS TO BE ACCELERATED."
>
> LI JIAO, PARTNER, BUREN

THE BANKING INDUSTRY AND INSURANCE INDUSTRY FULLY SUPPORT THE PREPARATION OF SPRING PLOWING

On February 17, 2022, CBIRC held its 280th regular press conference for the banking and insurance industry, with the theme of "The banking and insurance industry fully supports the preparation for spring plowing".The CBIRC has attached great importance to agricultural and rural production and spring plowing preparation, guiding banks and insurance institutions to do their best to ensure food security and financial services for agricultural and rural production. It has formulated differentiated support measures around the whole industry supply chain, such as good seed breeding, high-standard farmland construction, spring plowing preparation, agricultural machinery and equipment, grain circulation, storage and processing, etc.

Meanwhile, China Agricultural Reinsurance Company said that it is their mission and responsibility to cooperate on the promotion of high-quality development of agricultural insurance. At present, it is the critical period of spring plowing and cultivation preparation, and they will take it as a major task to help protect the national supply of primary products such as grain and oil, and actively use the role of agricultural reinsurance to disperse the risk of agricultural catastrophes, build the bottom line of risk prevention, and fully support spring plowing and cultivation preparation.

> "PERFORMING THE BASIC FUNCTION OF AGRICULTURAL INSURANCE CATASTROPHE RISK IS CONDUCIVE TO CONTINUOUSLY IMPROVING THE LEVEL OF AGRICULTURAL INSURANCE PROTECTION AND THE ABILITY TO RESIST EXTREME AGRICULTURAL DISASTERS.
>
> JAN HOLTHUIS, PARTNER, BUREN

TOP ISSUES:

- Cyber Insurance
- Vehicle identity theft (car cloning)
- D&O insurance in light of Covid-19 pandemic

INSURANCE INDUSTRY AT A GLANCE

Registered firms

60

insurers (not health insurance)

28

life and pensions insurers

Value of Premia

DKK 70 BILLION

(Excluding life)

ARK

DENMARK

A review of the accounts of the leading insurers in the Danish market shows that many managed to secure growth in 2021 – a year subject to mild weather and Covid-19.

Of the bigger insurers on the Danish market, the top performer had growth of 6.9%, whereas the lowest performer shrank by 0.4% compared to 2020.

The Danish insurance market experienced greater competition for small and medium-sized companies.

The consolidation trend of recent years in the Danish insurance market continued in 2021. Most notably 2021 saw the Danish insurer Alm. Brand's acquisition of Codan Forsikring, making Alm. Brand the second largest Danish insurer. The biggest Danish insurer is Tryg Forsikring, which also a few years back acquired ALKA Forsikring.

Most recently the Danish Bank of Nordea acquired Topdanmark's life and pension insurance department, with more than 225,000 customers. This is a significant level of M&A for a small market.

Copenhagen old town, Denmark

CYBER INSURANCE

Since Maersk A/S was subject to the NotPetya cyber-attack, cyber insurance has been subject to increased focus. Covid-19 and the war in Ukraine have caused cyber insurance prices to increase. Due to the development of higher levels of cyber risk, insurers now require that insureds have a certain standard of cyber security, and make it a condition for the insurer to offer them cyber insurance. The guidelines on cyber security for companies, issued by the Danish Cyber Security Centre, are expected to play a role when deciding on the adequacy of a company's cyber security.

When obtaining cyber insurance, the insured must be aware of coverage gaps, which the interplay between cyber insurance, D&O insurance and other liability insurances can lead to. Such gaps may be expensive to cover in the current market.

> **"CYBER-ATTACKS NOW CONSTITUTE AN UNAVOIDABLE BUSINESS RISK, WHICH COMPANIES MUST BE PREPARED FOR, INCLUDING FROM AN INSURANCE PERSPECTIVE."**
>
> JESPER RAVN, MANAGING PARTNER, ARK LAW FIRM

D&O INSURANCE IN LIGHT OF COVID-19 PANDEMIC

In the aftermath of Covid-19, it is expected that some of the judgements and decisions made by directors & officers in various companies may be questioned as things return to "normal". This may trigger D&O claims if a company's directors and officers have failed to respond adequately to the Covid-19 situation. It will be interesting to see how strictly a court will apply the usual legal concept of the so-called Danish "Business Judgement Rule", subject to which management can be held liable if they do not exercise a rational business judgement, and if a specific duty has been breached by management.

Depending on the court's application of the above concept, D&O policies may prove vital to many in the time to come.

> **"IT WILL BE INTERESTING TO SEE HOW THE COURTS WILL INTERPRET THE BUSINESS JUDGEMENT RULE IN A COVID-19 SETTING."**
>
> JESPER RAVN, MANAGING PARTNER, ARK LAW FIRM

VEHICLE IDENTITY THEFT (CAR CLONING)

As a result of a rise in cases concerning vehicle identity theft, this topic seems to continue as a hot topic in 2022. The fundamental question, yet to be answered be a Danish court, is if the insurance of a vehicle which has been subject to identity theft, constitutes a "lawful interest" in accordance with section 35 of the Danish Insurance Contracts Act.

The Insurance Complaints Board, the City Court and most recently the Eastern High Court, were all given the opportunity to answer this fundamental question. However, the facts in the cases did not render it necessary for them to decide on the question of "lawful interest". It is expected that the Supreme Court may get the chance to answer the question during 2022.

> **"CAR CLONING CREATES A SERIOUS CHALLENGE FOR A LESSEE IN SALE AND LEASEBACK SET-UPS AS THE LESSEE IS NOT THE CAR-OWNER."**
>
> JESPER RAVN, MANAGING PARTNER, ARK LAW FIRM

TOP ISSUES:

- The climate agenda
- A changing motor insurance market
- Customer service post-Covid

BLM

ENGLAND AND WALES

As in so many countries, the focus of the UK's political and economic debate over the last two years or so has been the response to the pandemic and securing the post-Covid recovery. Insurers, whether life and pensions or in general insurance, will have an important role in helping shape the UK's transition towards a lower carbon economy and adjusting to the 'new normal' of life after the first waves of coronavirus. The government's next legislative programme will be announced in May – via the formality of the Queen's Speech to Parliament – and could include new challenges for the sector.

Menai Suspension Bridge, Anglesey, Wales

UK INSURANCE INDUSTRY AT A GLANCE

920

Registered firms

£366 BILLION

Value of Premia

CUSTOMER SERVICE POST-COVID

Just as in so many other sectors, insurers' response to the pandemic saw a step-change in digital service provision for customers and commercial service providers alike. Remote ways of working and of managing stakeholder relationships are now an important part of the business-to-business side. For consumers, digital channels and service options have been significantly enhanced, whether in sales and policy administration, or in claims reporting and fulfilment. Obviously, these are areas for competitive advantage, meaning that levels of service innovation vary across the market.

In significant parts of civil litigation, court proceedings must be commenced online. The OIC service mentioned above is a notable example, but many other types of civil claim will migrate to on-line proceedings. The experience of the Court Service in managing remote hearings during the pandemic - in the higher courts in particular - has been reasonably positive overall. The Ministry of Justice and senior judiciary are actively collaborating on plans to develop and expand online dispute resolution and to design procedural codes for the 'virtual' court. The Head of Civil Justice has set out the possibility in the next few years of a "holistic integrated digital justice system operating for civil, family and tribunals."

> **"WHAT WE HAVE LEARNED FROM OPERATING DURING THE PANDEMIC IS THAT THE 'DIGITAL FIRST' APPROACH IS ABSOLUTELY BUSINESS-CRITICAL. INSURER CLIENTS ENGAGE WITH THEIR CUSTOMERS THAT WAY AND THEY INSIST ON IT IN DEALING WITH THEIR LEGAL PANELS. IN ADDITION, THE CIVIL COURTS ARE NOW MOVING FAIRLY QUICKLY IN THE SAME DIRECTION."**
>
> DAVID CASWELL, PARTNER AND HEAD OF CLAIMS SOLUTIONS, BLM

A CHANGING MOTOR INSURANCE MARKET

Compensation for whiplash injuries has been reduced significantly from May 2021 and set in statutory tariffs and legal fees in injury claims of less than £5,000 in value are no longer recoverable from insurers. Additionally, all such low value claims must be processed wholly on-line, via the new Official Injury Claim (OIC) service. Insurers are obliged to prepare reports for the regulator setting out costs and savings arising from these reforms.

Steps have been taken post Brexit to remove the effect of the *Vnuk v Zararovalnica* decision from UK motor insurance law. The liability imposed by that case – to meet claims from non-road vehicles and from road vehicles used off roads – was estimated at around £2 billion annually (around £50 per UK motor insurance policy). The relevant legislation is expected to be in place around the middle of 2022. The UK's regulatory approach to e-scooters is still unclear. Estimates suggest there may be as many as 1 million privately owned e-scooters being used completely illegally around the country, with at least 15 fatalities to date. In January 2022, the Law Commission completed a three-year project examining all aspects of law reform necessary to enable the safe deployment of automated vehicles (AVs) on the UK's roads. Over 70 recommendations are addressed to the UK government, covering important issues such as type-approval, civil liability and access to data within AV systems.

> **"THE MAY 2021 WHIPLASH REFORMS SEEM TO HAVE HAD THE GOVERNMENT'S DESIRED EFFECT OF REDUCING CLAIMS, BUT IT'S TOO EARLY TO TELL WHAT ULTIMATE SAVINGS THERE MIGHT BE FOR CONSUMERS. THE LACK OF ANY CLEAR DIRECTION FROM GOVERNMENT ON E-SCOOTER POLICY IS A WORRY GIVEN THE INCREASING NUMBERS OF ACCIDENTS."**
>
> KERRIS DALE, PARTNER AND HEAD OF MOTOR PRACTICE GROUP, BLM

THE CLIMATE AGENDA

COP 26, the United Nations Climate Change Conference, was held in Glasgow in Autumn 2021. The month-long event further raised the profile of the climate crisis and brought a renewed focus to policy options for adaptation and mitigation as part of the drive to net zero emissions. Despite cynicism from some quarters around so-called 'green-washing', the insurance sector - in particular in its role as investor - has sought to play a key role in developing approaches and solutions to facilitate innovation in the fight against climate change. Not only does the UK Government's "Greening Finance" road map outline expectations on environmental, social and governance (ESG) reporting and disclosure by financial services firms, there is also significant customer pressure on ESG measurement and performance.

At a more operational level, general insurers are increasingly exploring sustainable repair and reinstatement processes in both property and motor damage claims. Procurement and vendor management teams now routinely scrutinise ESG metrics as an integral part of supplier selection and performance monitoring.

> **"SUSTAINABILITY, THE CLIMATE CRISIS AND THE SOCIETAL RESPONSE ARE DEFINITELY NO LONGER THE PRESERVE OF POLICYMAKERS AND SCIENTISTS. ESG ACCOUNTABILITY HAS BECOME A KEY STRAND OF COMMERCIAL RELATIONSHIPS RIGHT ACROSS THE SECTOR."**
>
> ALISTAIR KINLEY, DIRECTOR OF POLICY & GOVERNMENT AFFAIRS, BLM

TOP ISSUES:

- The war and insurance – early implications
- Anti bribery campaign
- Product liability rules adapted to digital age?

INSURANCE INDUSTRY AT A GLANCE

64

Registered firms (2020)

€23.1 BILLION

Value of Premia (2020)

SOCRATES ATTORNEYS LTD

FINLAND

The insurance market has been quite stable during the past year, although worldwide challenges like the Covid pandemic, and most recently the war in Ukraine, caused some uncertainty.

Finland has a specific interest in both Russia's military actions and economic development, as Finland shares a more than 1300 km border with Russia, as well as being Russia's only EU neighbour that is not a member of NATO.

The direct and indirect impacts of the Russian invasion remain to be seen. Direct financial risk to the Finnish insurance sector is limited, as only around 0.3% of the investments of Finnish insurance companies are located in the Russian market, only slightly more than the respective figure for Finnish banks. As a neighbouring market, the general risk level in Finland has all the same somewhat increased because of the war. It is still low by international standards, but is, for example, higher than in the other Nordic Countries.

Ranua, Finland

THE WAR AND INSURANCE – EARLY IMPLICATIONS

The war in Ukraine could have an impact on the insurance sector in various ways. In particular, an increase in cyber risk has been observed – some attacks on financial institutions, assumed to be war-related, have already been faced. This is of interest for insurers, both in terms of coverable risks, and in terms of the risks to the financial institutions themselves.

In addition to cyber, discussion on insurance products has primarily concerned the impact on standard products, such as travel insurance and traffic insurance, but to a lesser extent also non-life policies that are designed to cover Finnish companies' businesses in Ukraine. Even if war in the modern era has been mostly limited to conflicts outside Europe, the chance of a war has generally been well accounted for in many types of insurance policies, either expressly or indirectly in the policy wording. Recent discussions, largely led by the national association of the Finnish financial sector, have accordingly been focused on how these policies function in practice. Some more critical debates have nevertheless also emerged, for example because some insurers have terminated war cover in their policies as an immediate response to Russian's invasion.

"WAR HAS MOSTLY BEEN AN EXTREME SCENARIO IN POLICY WORDINGS, WITH NO PRACTICAL IMPORTANCE. NOW WAR MAY HAVE A SIGNIFICANT IMPACT NOT ONLY ON FINANCIAL MARKETS AROUND THE INSURANCE BUSINESS BUT ALSO ON INSURANCE PRODUCTS."

JUSTUS KÖNKKÖLÄ, PARTNER, SOCRATES ATTORNEYS LTD

PRODUCT LIABILITY RULES ADAPTED TO DIGITAL AGE?

For all lawyers dealing with PL claims, there are interesting ongoing developments as the EU considers the need for amendments to the Product Liability Directive in light of the specific challenges that digital products and artificial intelligence may bring to the liability scheme. In particular, it is of interest whether the current liability rules sufficiently observe the modern era's needs, given the evidential challenges that a private claimant may face in this context. Due to the actions of the European Commission, a variety of potential legislative amendments have also recently been discussed by the Finnish insurance sector. Overall, the position of the Finnish financial sector seems to be that no further harmonisation, nor any stricter rules, are needed to tackle these problems.

"IT REMAINS TO BE SEEN IF THE CHALLENGE DIGITALISATION POSES TO PRODUCT LIABILITY RULES WILL BE FOUND TO BE SO SIGNIFICANT THAT THEY NEED LEGAL HARMONISATION WITHIN THE EU."

ROBERT BÜTZOW, SENIOR ASSOCIATE, SOCRATES ATTORNEYS LTD

ANTI BRIBERY CAMPAIGN

Nordic countries have generally been considered as having transparent business sectors with low levels of corruption. This is not always the case though, and a project aimed at improvement, financed by the Nordic Council of Ministers, is ongoing. A very recent report indicates that punishments, or rather the lack of them, are among the key problems the Nordic countries share in this area. For Finland's part, it was noted in the report that pre-trial investigations, and charges brought for suspected international, business-related corruption have had very limited success in the Finnish courts. It is suspected that this has had an impact on how actively the fight against this kind of crime has been pursued. Reflecting this official background work, there are visible signs that local insurers pay more attention to bribery risks and good governance in their underwriting standards and due diligence processes for business clients.

"ACTIONS AGAINST BRIBERY WILL POTENTIALLY CONCERN THE INSURANCE SECTOR ON SEVERAL LEVELS. ESPECIALLY IF METHODS TO FIGHT IT ARE COMBINED WITH NEW REGULATIONS ON MONEY LAUNDERING, SOMETHING THAT THE RECENT REPORT SUGGESTS."

JUSTUS KÖNKKÖLÄ, PARTNER, SOCRATES ATTORNEYS LTD

TOP ISSUES:

- The impact of the war in Ukraine on French insurers
- The impact of climate risks on French insurers
- The reform of the law of securities

INSURANCE INDUSTRY AT A GLANCE

247

Registered firms

€200.7 BILLION

Value of Premia

BYRD & ASSOCIATES

FRANCE

The consequences of the war in Ukraine will certainly be one of the most important concerns in 2022 for French insurers because of the high number of French companies operating in Ukraine. The first question that arises is whether their insurance policies cover the losses caused by the outbreak of war. The second, no less important, question related to the war in Ukraine concerns the insurance of cyber-attacks. Indeed, following the economic sanctions against Russia, the risk of cyber-attacks is very high, and cyber regulation will necessarily have to evolve.

Climate risks will also be a major concern for insurers in 2022. Indeed, an increase in natural disasters, such as storms and floods, is to be expected, which will lead insurers to reflect on how to better take into account climate risks in insurance contracts.

The consequences of the reform of the law on securities will also be a subject of particular attention to French insurers in 2022. As it has only recently come into force, questions relating to its application could emerge.

Bay of Mont Saint-Michel, Normandy, France

THE IMPACT OF THE WAR IN UKRAINE ON FRENCH INSURERS

About 160 French companies operate in Ukraine. The main risk is of course property damage. The question then arises as to whether losses caused by the outbreak of war are covered by a standard property loss insurance contract. The answer is most likely no, as losses due to war are typically excluded from property policies. However, in order to protect tangible and intangible assets located in a geopolitically unstable country such as Ukraine, two policies have been created by the insurance market: the political risk policy and the political violence policy.

The political risk policy covers losses caused by economic sanctions, i.e. losses without material damage, whereas the political violence policy covers material damage following a violent act, although the line between the two is sometimes blurred. The only exclusion under these two policies is related to a war involving two of the five permanent members of the UN Security Council. The other main risk arising out of the war in Ukraine is cyber risk. For example, the French digital privacy firm Anozr Way released a study in March 2022 concerning the war in Ukraine, which reported that French firms had been caught in the crossfire of "an information war, or rather disinformation war, by cyber activists who have multiplied false or inflated claimed attacks". The study also warned that businesses based in other countries opposed to Russia could find themselves in a similar position.

Nevertheless, there is an insurance gap relating to cyber risks, because insurers typically exclude acts of cyber warfare. For this reason, the National Agency for Information Systems Security has published recommendations to prevent these threats, such as strengthening authentication on information systems. The "Cybermalveillance.gouv.fr" website provides companies with a practical sheet that provides a cyber crisis management method for managers.

> **"THE OUTBREAK OF THE WAR IN UKRAINE SHOULD LEAD INSURANCE COMPANIES TO FILL THE INSURANCE GAP IN THE CYBER SECTOR, DUE TO THE INCREASE IN THE RISK OF CYBER-ATTACKS."**
>
> ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

THE IMPACT OF CLIMATE RISKS ON FRENCH INSURERS

France Assureurs (a Federation whose members represent all the major insurance and reinsurance companies operating in France) published a report in January 2022 on the prospective mapping of short-term risks, which showed that cyber risks were the top of the list of concerns for French insurers. Climate disruption was seen as the second-most important threat in the next five years, and the risk of exceptional natural catastrophes was the third.

France Assureurs also published a study in October 2021 on the "Impact of climate change on insurance by 2050", which underlined that the cost of natural catastrophes could double over the next thirty years. By 2050, the cumulative damage caused by natural hazards could reach €143 billion, which represents an increase of €69 billion compared to the equivalent period in the past.

These types of claims are frequently covered by the natural disaster guarantee in France, which was recently amended by a law passed in December 2021, the purpose of which is to facilitate claims and accelerate indemnities in cases of natural disasters.

> **"CLIMATE RISK TO BE EXPECTED IN THE COMING YEARS WILL LEAD INSURERS TO ADAPT THEIR COVERAGE TO BETTER TAKE INTO ACCOUNT THIS RISK."**
>
> ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

THE REFORM OF THE LAW OF SECURITIES

The French law of securities was reformed by the Ordinance n°2021-1192 of 15 September 2021 to make it more readable, more accessible and more efficient, while reinforcing its attractiveness. Certain provisions of the law of securities had not been modified since 1804 and no longer reflected the reality of positive law. The new security law is applicable to contracts entered into on or after 1 January 2022.

The main features of this reforms are: the overhaul of the regime of surety bonds; the protection of the grantor of a security interest for third parties; the disappearance of special pledges and the strengthening of the common law pledge; the strengthening of the regime of pledges of receivables; and the creation of new security interests in property.

The main change in the law of securities concerns surety bonds. As an illustration, the guarantor can now raise all the same defences as the principal debtor, whether they are personal to the latter or inherent to the debt, except in the case of incapacity. Moreover, to reduce formal disputes over declarations in the case of a guarantee granted by a natural person to a creditor, it is now sufficient for the latter to have affixed a declaration, the content of which must simply reveal awareness of the scope and extent of his commitment. Nevertheless, as regards the application of these new provisions, this reform is too recent to ascertain its impact on the surety market.

> **"THE RECENT REFORM OF THE LAW OF SECURITIES SHOULD LEAD TO A REDUCTION IN LITIGATION IN THE YEARS TO COME."**
>
> ROBERT BYRD, FOUNDING PARTNER, BYRD & ASSOCIATES

TOP ISSUES:

- Group insurance and insurance intermediation
- Cyber insurance and war exclusion
- LkSG and insurance

INSURANCE INDUSTRY AT A GLANCE

523

Registered firms

Value of Premia

CA. €221 MILLION

Excluding reinsurance

ARNECKE SIBETH DABELSTEIN

GERMANY

In the German insurance market, the beginning of 2022 was still dominated by the Covid-19 pandemic. Among other things, all eyes were on the Federal Supreme Court (BGH), which on 26 January delivered a landmark ruling on the coverage of Covid-19-related business shutdown (N° IV ZR 144/21), which led to great relief among insurers and equally great disappointment among policyholders.

However, the priorities of the insurance industry also changed fundamentally on 24 February, as the start of the Ukraine war brought entirely different risks into focus. The immediate effects on the insurance industry are still considered manageable by the market. At the same time, however, this event is expected to have a wide range of implications for the insurance industry, for example in regard to supply chain disruptions or cyber risks. It remains to be seen whether the war will end soon, and if the insurance market can return to other more positive topics (for example, the legal treatment of group insurance) in 2022.

Siegestor, Munich, Germany

GROUP INSURANCE AND INSURANCE INTERMEDIATION

Insurance mediation is highly regulated in Germany, as in all other European countries. Anyone wishing to engage in insurance intermediation requires a licence (with a few exceptions). This is often circumvented by a group insurance construction, in which the head of the group is the policyholder. The group members then pay remuneration for the insurance cover to the group head, who retains part of the remuneration and then pays the rest to the insurer as a premium. Up to now, the head of the group was not considered as an insurance intermediary, as the legislation provides that one cannot be an intermediary for insurance contracts for which one is the policyholder. The Federal Supreme Court had doubts about this construction, and it referred this to the European Court of Justice (ECJ) with the question of whether the group head can nevertheless be an insurance intermediary, within the meaning of the European Insurance Mediation Directives, even though they are also the policyholder. The ECJ has not yet ruled, but the Advocate General has argued that such a constellation of a group insurance policy with voluntary members can also be regarded as insurance mediation by the head of the group, if the head of the group receives remuneration for the mediation.

> **"ON THE ONE HAND, THE REQUIREMENTS FOR CONSUMER PROTECTION IN INSURANCE MEDIATION CANNOT BE INCREASED FURTHER AND FURTHER. ON THE OTHER HAND, IT IS POSSIBLE TO CIRCUMVENT THE OBLIGATION TO OBTAIN A LICENCE AND THUS ALSO CONSUMER PROTECTION BY MEANS OF A GROUP INSURANCE CONSTRUCTION."**
>
> DR. CAROLIN SCHILLING-SCHULZ, PARTNER, ARNECKE SIBETH DABELSTEIN

LKSG AND INSURANCE

In Germany, the new Supply Chain Sourcing Obligations Act (LkSG) becomes effective on 1 January 2023, initially for companies with 3,000 or more employees and from 1 January 2024 for companies with 1,000 or more employees. These companies must then check their supply chains for both their products and their services to determine whether human rights or environmental rights are being violated. Non-compliance will result in particularly high fines. This applies to all companies, including those in the insurance industry. As a first step, it will be necessary to define how far the service chain goes, i.e. who provides the services for whom; for example, the policing or the premium collection by the broker should be borne in mind. As a secondary point, this will also certainly become an issue for the D&O insurers if an insured company has been fined heavily due to a failure on the part of its executives.

> **"DUE TO THE LKSG, OUTSOURCING, ESPECIALLY TO THIRD COUNTRIES, MUST BE THOROUGHLY RECONSIDERED."**
>
> DR. CAROLIN SCHILLING-SCHULZ, PARTNER, ARNECKE SIBETH DABELSTEIN

CYBER INSURANCE AND WAR EXCLUSION

The development of cyber insurance will be of particular importance in the German insurance market in 2022. The market is still in a phase of transition after there was an increase in claims in 2020 and 2021 - not least due to the Covid-19 pandemic, which led to rising premiums and to adjustments in conditions. One example of this is the discussion about the insurability of ransom payments, which continues to concern the market.

Recently, however, cyber insurance has come into focus for a different reason. The war exclusion contained in most cyber wordings, some of which also contain a special cyber war exclusion. In the course of the Ukraine war and the cyber operations attributed to both Russia and Ukraine, the question of the applicability of the exclusion naturally arises. However, the insurance industry is very cautious in this respect, as it is aware that it would have to prove the applicability of the exclusion and thus, as a rule, the authorship of a state for a cyber-operation. Since this proof is often very difficult in practice, the exclusion will not be of great practical importance if the insurers do not succeed in substantiating the authorship of a state in a different way.

> **"CYBER WAR EXCLUSION CLAUSES WILL NOT BE OF GREAT PRACTICAL IMPORTANCE IF INSURERS DO NOT SUCCEED IN CREATING A RECOGNISED SYSTEM FOR PROVING THE AUTHORSHIP OF A STATE FOR A CYBER-OPERATION."**
>
> DR. QUIRIN VERGHO, PARTNER AND HEAD OF THE INSURANCE PRACTICE GROUP, ARNECKE SIBETH DABELSTEIN

TOP ISSUES:

Evolving insurance regulatory framework - establishment of Insurance services in IFSCA

Introduction of new insurance product - surety insurance Contract

Disruptors - market players driven by innovations, technology, and systems

INSURANCE INDUSTRY AT A GLANCE

58

Registered firms

USD$ 110.3 BILLION

Value of Premia

KHAITAN LEGAL ASSOCIATES

INDIA

The insurance industry in India is still developing and is highly regulated by the regulator, the Insurance Regulatory and Development Authority of India. The Indian regulator is proactive in creating an ecosystem that develops the economy and protects the consumers of insurance services. The insurance industry in India is still an emerging industry and new insurtech disruptions mean that the sophistication of the industry is rapidly increasing.

To facilitate ease of access for international businesses and increase insurance penetration in Indian market, the regulator has allowed 74% foreign direct investment in India. Further, the International Financial Services Center Authority has also released guidelines on insurance business operations in GIFT City, which focuses on strong global connections. The Indian insurance industry has seen the introduction of new and dynamic insurance products that facilitate business in India, such as surety contract insurances.

Ganga Ghat, Varanasi, India

EVOLVING INSURANCE REGULATORY FRAMEWORK - ESTABLISHMENT OF INSURANCE SERVICES IN IFSCA

In late 2021, the International Financial Services Center Authority (IFSCA) published their regulations for the operation of the insurance industry within the IFSCA. The IFSCA is a unified authority for the development and regulation of financial products, services and institutions in GIFT City. IFSCA has provided guidelines for setting up offices in GIFT City, for Indian insurers, foreign insurers and reinsurers, the society of Lloyd's and managing general agents. Few nationalised insurance companies have already opened offices in India. The offices in IFSCA can transact their business in foreign currency and can also perform activities from other SEZ's inside and outside India. The creation of IFSCA for insurance services is a new development in the Indian regulatory regime.

> "NEWER ESTABLISHMENTS WILL BRING GLOBAL EXPERTISE AND EXPAND THE HORIZON FOR INSURANCE SERVICES IN INDIA. THE MARKET WILL WITNESS INCREASED EASE OF DOING BUSINESS AND EXPONENTIAL ECONOMIC GROWTH."
>
> SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

DISRUPTORS - MARKET PLAYERS DRIVEN BY INNOVATIONS, TECHNOLOGY, AND SYSTEMS

The insurance industry has undergone major development in past few years with the introduction of technological solutions and innovations. Insurtechs are tapping into undiscovered markets. Several outfits have introduced solutions in India that enhance customer experience, create AI-driven underwriting or claims processing, or even introduce innovative products. Technological disruption is enhancing insurance solutions throughout the value chain. The startup boom in India has also acted as a catalyst, and in a post-Covid world, investments in insurance are of more relevance.

> "TECHNOLOGICAL INTERVENTIONS IN THE INSURANCE INDUSTRY ARE GROWING DRAMATICALLY. CUSTOMER EXPECTATIONS ARE SHIFTING TO GLOBAL TRENDS AND THE INDIAN MARKET IS RESPONDING RAPIDLY. WE ARE AT A CRITICAL STAGE IN OUR GROWTH JOURNEY, AND THE INDUSTRY, AND ITS CONSUMERS, HAVE RE-EMERGED FROM A COVID WORLD WITH RIGOUR AND RESILIENCE."
>
> SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

INTRODUCTION OF NEW INSURANCE PRODUCT - SURETY INSURANCE CONTRACT

Several unique risk mitigation strategies are becoming prevalent in India, including the recently-notified surety insurance contract. The product is typically an insurance solution for a tripartite contract with an insurance company. The Surety Insurance Guidelines govern insurance contracts that deal with a contract to perform a promise or to discharge the liability of a third person in case of any default. It is a tripartite agreement between a creditor, debtor and insurance company, intended to protect the creditor from any default by the debtor. Surety insurance could be a favourable option for various industries as it intends to take away the hassle of a bank guarantee.

> "AS THE INDUSTRY IS GEARING TOWARDS MORE HYBRID RISK MITIGATION METHODS, COMBINING TRADITIONAL AND NON-TRADITIONAL PRODUCTS CAN DIVERSIFY RISK."
>
> SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

TOP ISSUES:

Judicial Guidelines on Personal Injury Awards

The Government has approved the *Personal Injuries Resolution Board Bill*

Defamation Law Reform Report approved by Cabinet

IRISH INSURANCE INDUSTRY AT A GLANCE

Registered firms

133

Members of Insurance Ireland

€15.5 BILLION

Value of Premia (2019)

BLM

IRELAND

With the successful deployment of the vaccine programme leading to the end of pandemic-related restrictions, there is a rapid growth in the economy increasing the demand for insurance products in line with anticipated global trends.

However, there are remaining threats to the economy; Covid-19, the war in Ukraine and rising inflation, resulting in a level of uncertainty which may hamper economic growth going forward.

With the return to full economic activity, we have seen an increase in claims. Courts have returned to full operation, and we will see the implementation of the Judicial Guidelines for Personal Injuries which in mid-2021 replaced existing value of injuries with awards more in line with European counterparts. The reporting of lower personal injury awards should lead to the acceptance of more awards, deter fraudulent claims and result in a lower value award environment. Irish defamation law is to be reformed this year which should significantly reduce costs and restrictions in this area.

County Donegal, Ireland

JUDICIAL GUIDELINES ON PERSONAL INJURY AWARDS

The Judicial Personal Injury Guidelines overhauled the assessment of personal injury awards in Ireland, replacing the existing Booklet of Quantum. The guidelines greatly reduce the value of general damages for injuries particularly for "soft tissue" type injuries. This reduction in values will lead to only serious injuries being litigated in the high court.

The Guidelines apply to the assessment of damages in personal injuries actions commenced on or after 24 April 2021, however the Book of Quantum will continue to apply to proceedings commenced prior to this date or assessed by the Injuries Board.

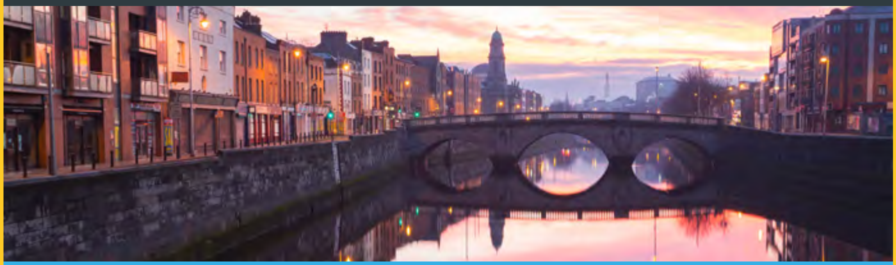
For a period there will be a two-tier system in place where both will be in use. The guidelines will ensure consistency in awards a criticism in Irish personal injury claims.

> **"THIS MUCH WELCOMED REFORM HELPS BRINGS GENERAL DAMAGES FOR INJURIES IN IRELAND MUCH MORE IN LINE WITH OTHER JURISDICTIONS."**
>
> OLIVIA TRESTON, PARTNER, JOINT HEAD OF DUBLIN, BLM

THE GOVERNMENT HAS APPROVED THE *PERSONAL INJURIES RESOLUTION BOARD BILL*

The Irish government has approved the general Scheme of the *Personal Injuries Resolution Board Bill*. It proposes to amend the Personal Injuries Assessment Board Act 2003-2019 to increase the number of personal injury claims settled through The Injuries Board process and to seek to avoid the expense and time associated with litigation.

The proposed PIRB will offer mediation as a means of resolving a claim; retain claims of a wholly psychological nature; have additional time to assess claims where an injury is yet to settle rather than releasing to litigation; seek proof of identity on application and disclose information to the police to reduce fraud; and will deepen its analysis and public information roles. The court's discretion regarding costs in litigation will also be tightened.



> **"THIS WELCOME EXPANSION OF THE ROLE OF INJURIES BOARD IN PERSONAL INJURIES WILL REDUCE RECOURSE TO TIME CONSUMING AND EXPENSIVE LITIGATION."**
>
> SINEAD CONNOLLY, PARTNER, JOINT HEAD OF DUBLIN, BLM

DEFAMATION LAW REFORM REPORT APPROVED BY CABINET

The Defamation Act 2009 is our existing legislation which came into force in 2010. Section 5 provided that it should be reviewed by Government within 5 years. Later than planned a review was started and a government report on reform has now been approved by Cabinet and the Minister has agreed to legislate the findings by the end of 2022.

Currently Defamation cases are heard by a judge sitting with a jury. The new report recommends that high court defamation cases be heard by judge alone with the Judge deciding the amount of any damages which should be awarded as well as whether a defamation has occurred. Removing this would reduce the cost and length of court hearings and the number of disproportionate awards of damages.

There is a recommendation that there be a statutory obligation that the parties in any defamation claim must consider mediation and other alternative dispute resolution options. Another aim is for clearer protection for responsible public interest journalism and investigative reporting.

> **"THIS WELCOME REFORM SHOULD BRING IRISH DEFAMATION LAW IN LINE WITH OTHER JURISDICTIONS ALONG WITH REDUCING LEGAL COSTS AND DELAYS."**
>
> SINEAD CONNOLLY, PARTNER, JOINT HEAD OF DUBLIN, BLM

TOP ISSUES:

- Climate change
- Cyber risk
- Sustainable mobility

INSURANCE INDUSTRY AT A GLANCE

210
Registered firms

€144 BILLION
Value of Premia

BTG LEGAL

ITALY

Despite the persistence of uncertainty over the course of the pandemic (stemming mainly from the spread of variants of the virus), the progress of the vaccination campaign, the removal of restrictions on mobility at a national and international level, and the recovery in economic activity should all contribute to the expected return to premium growth, both in the life sector (+8.5%) and in the non-life sector (+2.8%).

Following the contraction of previous years due to the pandemic, which curtailed the operations of insurance companies (especially during the lockdown in the early part of the year), and a decline in the subscription of contracts in major classes (such as motor insurance), the forecast for 2022 is a return to growth, reflecting the economic recovery.

Procida island, Gulf of Naples, Italy

CLIMATE CHANGE

The last couple of years will not only be remembered for the pandemic, but also as being some of the hottest years ever recorded. More intense rainfall, increases in temperatures, more consecutive days without rain, heat waves, will all affect the Italian territory, with negative effects for agriculture, forests, and even the hydrological system. And, of course, will bring social, economic and health risks. The whole country is exposed, but with differences depending on the geographical area. Despite significant intervention from the insurance sector, the protection gap is still wide in terms of exposure both to primary and secondary perils.

"THE INSURANCE AND REINSURANCE SECTORS CAN CONTRIBUTE SIGNIFICANTLY TO HELP FAMILIES AND BUSINESSES NEW DATA SOURCES, ENHANCED EXPERIENCE AND GREATER EXPERTISE ARE BEING USED TO DESIGN PARAMETRIC INSURANCE COVERAGES THAT ARE COST-EFFECTIVE, PRECISELY TAILORED AND RELEVANT FOR DIVERSE CLIENTS AND PERILS."

ALBERTO BATINI, SENIOR PARTNER, BTG LEGAL

CYBER RISK

The massive growth of remote working in the last year is bound to become increasingly important, as workers move from professional infrastructure (servers, personal computers, antivirus software) to devices that are normally designed for private use. This phenomenon has increased the vulnerability of information systems to cyber threats.

Italian cyber risk is not yet mitigated because corporations are far from understanding the real impact of cyber and intermediaries are not well prepared to explain the real benefits of such coverage. We predict that the increasing number of incidents will lead to more demand for cyber coverage.

"IN 2022, INSURERS SHOULD BE PREPARED TO OFFER (I) SIMPLE POLICY WORDINGS AND (II) GOOD SERVICES IN RESPONSE TO A DATA BREACH, THROUGH A TESTED PANEL OF VENDORS (LEGAL CONSULTANCY, EXPERT FORENSICS, NOTIFICATION PLAYERS, PR, ETC.)"

GIORGIO GRASSO, SENIOR PARTNER, BTG LEGAL

SUSTAINABLE MOBILITY

The last few years have seen an extraordinary process of integration, interconnection, and rapid technological change in modes of mobility, due to the success of alternative means of transport and of “shared” services.

The motor liability insurance market is bound to change radically with the emergence of new forms of mobility (intermodal, smart, connected and shared, including self-driving cars, which are already being tested on Italian roads). In our view, a key priority in regulating the circulation of these vehicles is the identification of the driver/person responsible for the circulation of e-bikes and electric scooters (e-scooters).

As for liability insurance against damages to third parties, Italy makes it mandatory only for the companies that now rent the “light” e-vehicles circulating on designated thoroughfares on an experimental basis. As a consequence, apart from rental vehicles and outside the experimental areas, to date liability for damages in case of an accident falls entirely on the driver of the vehicle that causes the accident, unless they have stipulated, voluntarily, optional general liability insurance for damages to third parties.

"CONSIDERING THE HIGH RISK OF SMART MOBILITY, WE BELIEVE IT IS ADVISABLE TO INTRODUCE MANDATORY LIABILITY INSURANCE FOR LIGHT VEHICLES, SO AS TO PROTECT ROAD USERS."

SILVIA TRAVERSO, SENIOR PARTNER, BTG LEGAL

TOP ISSUES:

- Unshell Directive Proposal: Possible impact for unit-linked insurance policies with non-traditional assets
- FATF's visit
- Natural disasters

MOLITOR AVOCATS À LA COUR

LUXEMBOURG

The EU Commission published a Directive proposal, setting out rules aimed at tackling the abusive use of shell companies. Unlisted companies kept in unit-linked insurance companies may be impacted, hence life-insurers dealing with non-traditional assets are invited to review their portfolios.

Despite the Covid-19 crisis, the fourth quarter of 2021 was characterised by an outstanding performance in the insurance sector, with an overall collection of direct insurance premiums of about 42 billion euros.

The pandemic once again resulted in the cancellation of the FATF's (Financial Action Task Force) visit in 2021, but this was not the only reason for rescheduling the visit for 2022. The aim was also to have additional time to be well-prepared for the FATF's visit and evaluation. Indeed, this visit is important for Luxembourg, which has, since the FATF's last evaluation in 2014, implemented various measures to improve its practices to avoid a negative assessment.

Another important development in the Luxembourg insurance market is in relation to the floods that occurred in Luxembourg during July 2021. Damage caused by the floods amounted to more than 120 million euros. As Luxembourg does not have a specific legal framework for natural disasters, other solutions had to be found.

Luxembourg City

INSURANCE INDUSTRY AT A GLANCE

737

Registered firms

€47 BILLION

Value of Premia

UNSHELL DIRECTIVE PROPOSAL: POSSIBLE IMPACT FOR UNIT-LINKED INSURANCE POLICIES WITH NON-TRADITIONAL ASSETS

On 22 December 2021, the European Commission published a Directive proposal setting out rules aimed at tackling the abusive use of shell companies. This proposal set off alarm bells for Luxembourg life insurance undertakings that have significantly developed non-traditional asset classes over the last years.

Whereas some assets, such as listed securities and regulated (private equity or real estate) funds should benefit from a carve-out, non-traditional assets, namely unlisted companies, are likely to be concerned and return may be adversely impacted by additional taxation.

While awaiting the vote on and the transposition of the proposal, including possible variations of the current draft, life insurance players should review their alternative asset portfolios and, to the extent it is possible, inform concerned policy holders.

The proposal should be implemented into Member States' national law by 30 June 2023 and become effective from 1 January 2024.

"INSURANCE POLICIES WITH NON-TRADITIONAL ASSET CLASSES, SPECIFICALLY UNLISTED COMPANIES, MAY BE IMPACTED BY THE UPCOMING EU DIRECTIVE AIMING AT ENDING THE MISUSE OF SHELL ENTITIES."

PIERRE-JEAN ESTAGERIE, SENIOR COUNSEL, MOLITOR AVOCATS À LA COUR

FATF'S VISIT

2020 was supposed to see the much-anticipated visit of the FATF to Luxembourg; however, the visit was cancelled due to the pandemic and rescheduled for 2021 before again being postponed to November 2022.

The aim is to avoid a negative assessment that would be detrimental to the sector. Luxembourg has made important progress since the last report in 2014, especially regarding the adoption or updating of legislation to the standards of the FATF, not to forget the key supervisory role played by Luxembourg's insurance regulator, the CAA (Commissariat aux Assurances). Also, the ACA (Association des Compagnies d'Assurances et de Réassurances, i.e. the Luxembourg insurance and reinsurance association) has issued a series of recommendations for its members to set up appropriate supervisory procedures, particularly for companies that do not fall within the scope of AML legislation. In February 2022, Luxembourg finalised its first vertical assessment of money laundering and terrorist financing risks related to legal persons and legal arrangements. This work is in line with FATF Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and arrangements.

"LUXEMBOURG DID NOT OPT FOR AN ON-SITE VISIT WITH FATF IN A HYBRID FORMAT: INSTEAD, ITS PREFERENCE IS FOR A FACE-TO-FACE VISIT, ALLOWING MORE TIME FOR ALL STAKEHOLDERS TO PREPARE FOR THE VISIT THIS YEAR, AND TO SHOWCASE THE PROGRESS THAT HAS BEEN MADE IN PERSON."

JACQUES WOLTER, PARTNER, MOLITOR AVOCATS À LA COUR

NATURAL DISASTERS

2021 was marked by severe floods which caused significant damage across the country, and resulted in the reimbursement of a record 125 million euros by insurance companies in Luxembourg. According to experts, this natural disaster resulted in insurance payouts 10 times higher than the premiums collected for the insured risk. There is no legal framework in Luxembourg specifically covering risks arising from natural disasters. Consequently, for the time being, one must exclusively rely on existing contractual offers (bearing in mind that optional flood cover only became available in Luxembourg among members of the Luxembourg Insurance and Reinsurance Association from 1 June 2017, and is often only intended for private individuals) and ad hoc aid that may be put in place by the government.

It is expected that premiums for the coverage of such risks will increase as well as the number of subscriptions to such policies. The repetition and intensification of such meteorological phenomena will lead Luxembourg to question the appropriateness of legislating on natural disasters.

"THE GREATER THE EXTENT OF INSURANCE COVER THAT IS AVAILABLE, THE FEWER PREVENTIVE MEASURES ARE IMPLEMENTED BY POLICYHOLDERS, WHICH IS PARTLY WHY INSURERS ARE MORE CAUTIOUS ABOUT INSURING AGAINST NATURAL DISASTERS."

SOPHIE LAMOTHE, COUNSEL, MOLITOR AVOCATS À LA COUR

TOP ISSUES:

- Technological revolution
- Discrimination and human rights
- Judicial trend to extend the statute of limitations period in liability insurance

OCAMPO 1890

MEXICO

Mexico's market is always challenging firms to develop new ideas, products, and solutions.

Rapid technological change and a rather passive regulator means that cyberattacks are rising exponentially.

An important insurance trend is the increasing influence of legislation to protect human rights. This legislation has been extended to insurance contracts and courts are now resolving insurance cases by taking human rights protection issues into account. Discrimination is an important part of that, and Congress is preparing to amend the law to avoid discrimination.

Finally, in the field of liability insurance, the courts have created the precedent that an insurance contract can remain valid after the statute of limitations has ended, even if the type of claim is time barred. This can be interpreted to mean that insurers and reinsurers will be obliged to pay claims after valid policy dates have expired, for an unlimited period.

Reforma Avenue Promenade, Mexico

INSURANCE INDUSTRY AT A GLANCE

113

Registered firms

USD$ 35.1 BILLION

Value of Premia

TECHNOLOGICAL REVOLUTION

Currently, the Mexican insurance market is no exception to a global trend that is impacting the world at large, namely technological change. The use of electronic platforms for insurance contracts is becoming more and more common, together with a growing customer preference to have a more direct relationship with the insurer, without the need for intermediaries.

In addition, the use of artificial intelligence and big data are becoming a necessity for the optimal management of information in the market. Blockchain is being looked at for its applications in the insurance market.

All of the above has an impact on the insurance market in general, so a new level of competitiveness and new lines of business are expected.

Consequently, different challenges arise, such as the need for smart contracts, regulation, blockchain and cyber-attack prevention.

> "TECHNOLOGICAL REVOLUTION MAKES CLEAR THE NEED TO REVIEW ALL LEGAL PRACTICE AROUND SMART CONTRACTS AND BLOCK CHAIN ISSUES."
>
> MARCO ANTONIO TAPIA, LAWYER, OCAMPO 1890

DISCRIMINATION AND HUMAN RIGHTS

Insurance companies have received multiple judicial claims concerning two subjects. The first is related to refusals to include disabled people (e.g. Downs Syndrome sufferers) in medical insurance policies, and the second concerns the non-payment of claims if disabled people feature on the claim. Court claims are based the discriminatory violation of the human rights of disabled people, and plaintiffs are claiming moral and punitive damages through constitutional trials as well as through tort law. What is striking is that they are asking the courts to consider insurers' acts as being equivalent to those of an official or public authority. Plaintiffs are using these claims to remedy insurance company omissions by winning court orders for the company to issue a new policy, or to pay damages. Regarding discrimination, Congress has approved an amendment to the Insurance and Bonding Institutions Law that obliges insurers to create and develop special products of insurance to cover people with any sort of disabilities. The amendment is yet to be signed into law by the President.

> "INSURERS HAVE TRADITIONALLY BEEN SELECTIVE ABOUT THE RISKS THEY ASSUME. UNDERWRITING AND CLAIMS DEPARTMENTS SHOULD NOW FOLLOW SPECIFIC PROTOCOLS TO PREVENT DISCRIMINATION."
>
> ABRAHAM ESTRADA, ASSOCIATE, OCAMPO 1890

JUDICIAL TREND TO EXTEND THE STATUTE OF LIMITATIONS PERIOD IN LIABILITY INSURANCE

A current problem is the extension of the time period during which claims can be made for liability claims. The law states that the period for the statute of limitation will start from the date that the claimant is aware of the insurance contract. The courts have ruled that the statute of limitations will start to count down from the claimant's knowledge of the policy, thereby creating a situation where insurers' liability can be extended indefinitely.

This can create a severe impact for insurers and reinsurers who may have considered a historic policy to be closed, as victims are filing claims for damages which occurred almost a decade ago, alleging that they only have recent knowledge of the existence of a policy covering the liability. This will surely affect insurers' and reinsurers' reserves. In several current cases it has been alleged that as this is a civil matter, the term of prescription is two years after the damage occurred, and that because the claim was not filed in time the insurer is released from the contract. If this is accepted, then the claim on the insurance contract may be effective, but the insurer's obligation to compensate the claimant no longer exists.

> "THIS ISSUE MUST BE REVIEWED BY THE INSURANCE SECTOR IN ORDER TO ACHIEVE LEGISLATIVE REFORM TO ARTICLE 82 OF THE LEY SOBRE EL CONTRATO DE SEGURO."
>
> DIANA ÁNGELES, ASSOCIATE, OCAMPO 1890

TOP ISSUES:

- Climate change
- ESG
- Cyber

WIJ ADVOCATEN

NETHERLANDS

In last year's Radar Report, Covid-19 was a top-three issue. The insurance industry appears to have weathered the pandemic well, but it should be noted that it had a negative effect on the life segment. The results were better in the non-life business, among other reasons because there were fewer claims in some portfolios (there was less traffic, fewer people went on vacation, etc.).

An important question for 2022 is how the recent geopolitical developments in Russia and Ukraine will impact the insurance market. For companies with people, operations and assets in Central Europe, the risks will change and coverage problems may arise. Sanctions and other measures in connection with the crisis will impact business and might affect premium income.

For 2022, the consequences of climate change, and legislation and case law (Impact Litigation) on that subject, are still relevant, in which respect there will be more and more attention paid to subjects related to ESG in general.

Krabbendam, Netherlands

INSURANCE INDUSTRY AT A GLANCE

115

Registered firms (2020)

€80.9 BILLION

Value of Premia (2020)

CLIMATE CHANGE

The Netherlands was confronted with the consequences of climate change both in 2021 and at the start of 2022. There was severe flooding in the south of the Netherlands in 2021, which resulted in an enormous amount of damage. A number of storms in 2021 and already in 2022 have also resulted in a large amount of damage.

In the autumn of 2021, the Netherlands Authority for the Financial Markets published a report on the impact of climate change on non-life insurance. Damage due to major floods is often not or only partially covered and the Netherlands Authority for the Financial Markets wants consumers to be more aware of this. According to the Netherlands Authority for the Financial Markets, insurers should communicate clearly about cover conditions and the government should contribute ideas towards finding solutions for uninsurable damage.

There are insurance solutions for most of the consequences of climate change, but proper risk analysis and prevention is also important. Insurers are therefore also focusing on, and contributing ideas towards, finding solutions that could reduce the risk of damage resulting from extreme weather events. For example, insurers are taking climate-conscious actions by offering their customers new, innovative products.

> **"THE NUMBER OF DISCUSSIONS ABOUT POLICY INTERPRETATION IS EXPECTED TO INCREASE. THE TEXT AND INTERPRETATION OF POLICY PROVISIONS AND THE POSITION OF INSURERS IN THE EVENT OF, FOR EXAMPLE, MAJOR FLOODS OR STORMS WILL COME UNDER SCRUTINY. A RECENT EXAMPLE WOULD BE THE SO-CALLED SUPERCELL CASES WHICH, PUT BRIEFLY, CONCERNED THE QUESTION OF WHETHER DAMAGE CAUSED BY EXCEPTIONALLY LARGE HAILSTONES WAS COVERED."**
>
> SUZANNE BORDEWIJK, WIJ ADVOCATEN

CYBER

More and more companies are worried about cyber security and are consequently interested in cyber insurance. In cyber crime, the risks are complex, especially now that many people work from home on various devices and different networks. The risk can even be so complex that cyber insurance becomes too expensive and/or cyber insurance is refused when small companies apply it. Applying the correct security measures and making a risk analysis are important for assessing whether cyber insurance is a suitable solution.

The increase in cyber attacks is making insurers more critical about insuring cyber risks. The Dutch cyber insurance market is small, and insurers are adopting different stances and making their own assessments. Cyber risks are elusive, there is a lack of data and the possibility exists that incidents will accumulate, which has consequences for the damage. This could mean that insurers will impose extra prevention requirements, cap payments and adjust premiums.

> **"RUSSIA IS EXPECTED TO RAMP UP THE NUMBER OF CYBER ATTACKS CARRIED OUT AGAINST COUNTRIES AND BODIES WHICH THEY EXPECT TO SUPPORT UKRAINE. THIS BRINGS WITH IT GREAT RISKS FOR CYBER INSURERS. IN ADDITION, THE DISCUSSION OF THE DESIRABILITY OF INSURING RANSOMS WARRANTS ATTENTION."**
>
> MARIJKE LOHMAN, WIJ ADVOCATEN

ESG

The abbreviation ESG stands for Environmental, Social and Governance and refers to the three key factors for measuring the sustainability of a company or an investment therein. The environmental criteria check how a company contributes to and performs on environmental challenges. The social criteria check how a company treats its people (e.g. diversity and equal opportunity, working conditions, health and safety) and the governance criteria check how a company is governed.

ESG matters to insurers because they are expected to apply this to their investments. The environmental impact of their investments is becoming more and more important for insurers. On the other hand, ESG criteria also have a major impact on claim payment, as discussed in the context of climate change on the left.

Related to this topic are the Urgenda proceedings, in which the Dutch government has been ordered to take measures against climate change. Following the success in these proceedings, other proceedings were instituted as well, and with success, such as the proceedings against Shell on CO2 reduction. It was announced recently that the Dutch State has not complied with the Urgenda judgment in 2021. It was also announced recently that an environmental organisation seeks to hold Shell executives personally liable for failing to adequately prepare for the energy transition. In the Netherlands, the music industry has recently been rocked by #metoo revelations and it is not inconceivable that these or similar developments will lead to proceedings regarding employer's liability or other forms of liability.

> **"PROCEEDINGS ON ESG SUBJECTS, WHETHER IN THE FORM OF IMPACT LITIGATION AND/OR MASS CLAIMS ARE EXPECTED TO INCREASE AND INSURERS WILL HAVE TO FOLLOW THESE CLOSELY."**
>
> HARRIET DELHAAS, WIJ ADVOCATEN

TOP ISSUES:

- New legislation governing insurance contracts
- Directors and Officers insurance in the Covid environment
- The insurance response to trade and supply problems

INSURANCE INDUSTRY AT A GLANCE

90

Registered firms

$7.4 BILLION

Value of Premia

DUNCAN COTTERILL

NEW ZEALAND

For the past decade the New Zealand insurance market has been dealing with the effects of the Canterbury Earthquakes of 2010 and 2011. These events affected not only the domestic insurance market, but also business insurance, particularly in the areas of material damage and business interruption. The lessons gleaned from litigation in a range of areas has resulted in the Government reviewing the underpinning legislation, and the recent release of a draft Insurance Contracts Bill.

More recently, the effects of Covid-19 and, of late, war in Eastern Europe have had significant effects on the New Zealand economy through restrictions on the mobility of individuals, trade implications, and considerable supply chain issues. In common with many countries, New Zealand is experiencing a period of high inflation and economic uncertainty. More and more blame is being placed on people who have run failed companies, leaving Directors and Officers insurance to be both vital and increasingly difficult to obtain.

Mt Taranaki, New Zealand

DIRECTORS AND OFFICERS INSURANCE IN THE COVID ENVIRONMENT

Directors and Officers' Insurance has been in the news recently, as litigation surrounding the collapse of one of New Zealand's largest construction companies reached the Supreme Court.

The case considered whether the directors breached their duties as set out in the Companies Act, to not trade recklessly and to not incur obligations when they did not have reasonable grounds for believing the company would be able to perform those obligations. In this case the directors relied on promises for aid from their parent company, although the promises were not legally enforceable.

There has been a steady increase in class actions, proceedings backed by litigation funders, and claims pursued by liquidators. Claims against directors are also likely to increase as a result of the downturn in the economy. As a result, D&O policies are becoming more important, while at the same time attracting higher premiums.

> "THERE IS A PERFECT STORM OF CONDITIONS FOR POTENTIAL CLAIMS ON D&O POLICIES, BUT WHETHER CLAIMS EVENTUALLY RESULT IS ANOTHER QUESTION."
>
> AARON SHERRIFF, PARTNER, DUNCAN COTTERILL

NEW LEGISLATION GOVERNING INSURANCE CONTRACTS

The New Zealand Government is currently consulting on a draft Insurance Contracts Bill, which aims to consolidate and modernise existing insurance legislation in New Zealand. There are four main areas of change.

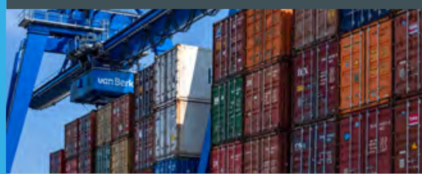
1. Insureds' duty of disclosure. Currently, all insureds (both consumers and businesses) must, before entering into an insurance contract, disclose to the insurer all material information (that which would influence the insurer in deciding whether or not to insure the risk, and what premium to charge). The Bill will instead require consumers to "take reasonable care not to make a misrepresentation", putting the responsibility on insurers to ask questions of the insureds to obtain all material information, while the insured will simply be required to answer any questions asked by the insurer truthfully and accurately.
2. Unfair contract terms. Insurance contracts are currently exempted from prohibitions on unfair terms in standard form consumer contracts. This will change, so the only terms that cannot be declared unfair are those that apply to all consumer contracts: clauses that define the main subject matter of the contract and the price of the contract.
3. Plain language policy documents. Consumer insurance policies will be required to be presented and worded clearly. There will be specific presentation requirements, and specific information that insurers must make publicly available.
4. Utmost good faith. This will be codified in the Bill and will apply to both parties in an insurance contract. However, there are no pecuniary penalties for breach of the duty.

> "THIS IS A ONCE IN A GENERATION MODERNISATION OF INSURANCE LAW THAT MAKES NZ ONE OF THE FIRST JURISDICTIONS TO ALIGN WITH DEVELOPMENTS IN THE UK."
>
> PROFESSOR ROB MERKIN QC, SPECIAL COUNSEL, DUNCAN COTTERILL

THE INSURANCE RESPONSE TO TRADE AND SUPPLY PROBLEMS

Global uncertainty, caused by pandemic and war, have created significant trade and supply chain issues. These are exacerbated for New Zealand because of the physical distance to our trading partners, and increasing transport costs due to rising fuel prices worldwide.

New Zealand's geographical isolation means that there is little physical risk to exports and imports. However, the potential for freight transporters to bypass our shores can create significant risks that goods may not be delivered, or not delivered on time. To date there has been little effect on exports, but, in common with many other countries, imports can have very long delays. These are creating strains on the manufacturing and building industries, which have historically operated on a just-in-time delivery approach.



> "THE CONFLUENCE OF POLITICAL AND WAR RISK ARISING OUT OF THE CONFLICT IN EASTERN EUROPE, TOGETHER WITH GLOBAL SUPPLY CHAIN ISSUES FOLLOWING ON FROM THE COVID-19 PANDEMIC IMPACTS ON NEW ZEALAND'S PRIMARY PRODUCE EXPORTERS (AMONG OTHERS). THE INSURANCE ISSUES RAISED ARE BROAD AND FAST-MOVING. THEY ARE ESPECIALLY PERTINENT TO INSURERS' MARINE, AVIATION AND TRADE CREDIT PORTFOLIOS. THE SECTOR RESPONSE IS STILL EVOLVING."
>
> ROB COLTMAN, PARTNER, DUNCAN COTTERILL

TOP ISSUES:

- Personal injury discount rate (PIDR)
- Overarching political uncertainty
- Jurisdiction levels in the county court

UK INSURANCE INDUSTRY AT A GLANCE

920

Registered firms

£366 BILLION

Value of Premia

BLM

NORTHERN IRELAND

The general insurance market in Northern Ireland is still a relatively 'hard' market and continues to experience premium increase for business and consumers. The five-year mandate of the devolved legislature, the Northern Ireland Assembly, came to an end in March 2022 and the next election will be held in May. Before dissolution, there was significant tension in the cross-party power-sharing arrangement; something that could readily escalate depending on the particular outcome of the election.

As in 2021, the question of the discount rate in personal injury claims remains of key importance.

Giants Causeway, Northern Ireland

PERSONAL INJURY DISCOUNT RATE (PIDR)

In 2021 the statutory discount rate in NI dropped by 400 basis points, from =2.5% to -1.75%. The attendant increase in claims costs incurred by compensators hit not only the insurance sector but also the state, in relation to its liabilities to infants seriously injured during birth in National Health Service hospitals. Lump sum damages for future losses in certain cases increased as much as four- fold. The Department for Justice brought forward new legislation to reform how the discount rate was set. The approach was very similar to that in Scotland where its legislation, in 2019, had produced a discount rate of -0.75%. Market expectations were that the new NI rate might be slightly lower than that, given changes in economy since then. However, the new rate set by the Government Actuary on 22 March was -1.5%. This is lower than widely anticipated and will not provide much by way of a softening of market conditions.

"THE MODEST CHANGE TO THE DISCOUNT RATE IS PROBABLY LESS THAN EXPECTED AND MEANS NI STILL HAS THE LOWEST RATE, AND HIGHEST AWARDS, IN THE UK. ANY CERTAINTY THAT THE NEW -1.5% RATE BRINGS IS VERY LIMITED, BECAUSE IT MUST BE REVIEWED AGAIN IN 2024 AND IT'S CLEAR THAT SOME ONGOING CASES WON'T BE RESOLVED BY THEN."

ALISTAIR KINLEY, DIRECTOR OF POLICY AND GOVERNMENT AFFAIRS, BLM

OVERARCHING POLITICAL UNCERTAINTY

Power-sharing arrangements in NI had previously been suspended, from 2017 to 2020. The May 2022 election could produce a challenging outcome and it is not at all clear that power-sharing will readily resume. Although the Westminster government has put in place legislation to attempt to ameliorate this, the prospect of a form of 'stalemate' following the election coupled with ongoing controversy over Brexit arrangements and the Northern Ireland Protocol could lead to heightened political volatility that would damage NI's economic recovery from the pandemic.

"REGULATORY REFORM AND FURTHER IMPROVEMENT IN THE NI MARKET WOULD BE FRUSTRATED BY A PROLONGED POLITICAL STAND-OFF FOLLOWING THE ELECTION."

GRAEME MOORE, PARTNER, BLM

JURISDICTION LEVELS IN THE COUNTY COURT

Following consultation, the Department of Justice intends to increase the financial jurisdiction of the county court from £30,000 to £60,000. It has already increased the small claims limit from £3,000 to £5,000. The change in jurisdiction levels will be taken forward by a working group which will examine the practical implications and judicial and other resources required to bring the changes about at the same time as the NI Court Service is - as in other parts of the United Kingdom - stretched by dealing with the backlog in cases caused by the Covid-19 pandemic.

"THE PROPOSED INCREASE IN JURISDICTION LEVELS IS NOT AS AMBITIOUS AS IT MIGHT HAVE BEEN BUT, IF IMPLEMENTED EFFECTIVELY, SHOULD LEAD TO SMOOTHER PROCESSING OF CLAIMS IN THE COUNTY COURT AND SHOULD SEE ONLY THE MOST COMPLEX CASES BEING RESERVED TO THE HIGH COURT. IT'S IMPORTANT TO GET THIS RIGHT RATHER THAN RUSH IT, SO WE WELCOME THE SETTING UP OF A GROUP TO STEER IT THROUGH."

PATRICK CONNOLLY, PARTNER, BLM

TOP ISSUES:

- Increased damage costs due to weather and natural damages
- Regulatory changes to the Norwegian Natural Perils Pool
- Cooperation between authorities and insurance companies to adapt to climate change

INSURANCE INDUSTRY AT A GLANCE

25

Registered firms

KR72.3 BILLION NOK

Value of Premia

RIISA & CO

NORWAY

This year marks several changes in the insurance law framework, as both the Insurance Distribution Act and the Insurance Contract Act have seen changes due to the implementation of the EU directive 2016-97 (IDD). This will of course have a huge impact on the regulations for how insurance companies sell their products. The amendments were sadly not a complete review of the Insurance Contracts Act, which is still not well-suited to new and modern insurance products.

We will focus on the increased costs of damages, due to climate change and heavier weather. The statistics show a significant increase in damages, mostly due to water damage. Seven of the ten worst-recorded years occurred between 2011 and 2021.

In Norway, insurance companies are obliged to take part in the Norwegian Natural Perils Pool. The management of surplus premiums in the pool has been a topic of discussion for several years. The government has now proposed a new structure, which the parliament will most likely pass in 2022.

Due to an increase in extreme weather, the risks and costs of damages are increasing. We must take into account that the costs are likely to continue to increase drastically. With increased risks, it is more cost efficient to take preventative measures. The government should take responsibility for the costs of these measures, but with input from insurance companies so that funding is properly prioritised and measures are more efficient.

Lofoten, Norway

INCREASED DAMAGE COSTS DUE TO WEATHER AND NATURAL DAMAGES

The damage caused by weather and natural disasters has drastically increased. In the last ten years, the costs relating to housing and household contents have been more than 28 billion NOK– about €2.5 billion.

The statistics show that, since 1980, seven of the ten most expensive years in terms of damages have occurred in the last ten years. The most significant cause of damage is heavy rain fall and flooding, with 30 percent of the cost directly caused by water intrusion and 19 percent caused by blockages to drainage or sewage systems.

Rainfall and floods also erode the terrain, which leads to an increased risk of landslides. During Christmas 2020 there was a big clay landslide just outside of Oslo, where sadly ten people lost their lives, and with massive destruction to infrastructure.

> **"INCREASING OCCURRENCES OF HEAVY RAINFALLS ARE CAUSING GREATER DAMAGE COSTS AND INCREASING THE RISK OF MAJOR INCIDENTS WITH FATAL OUTCOMES."**
>
> JOACHIM SKJELSBAEK, PARTNER, RIISA

COOPERATION BETWEEN AUTHORITIES AND INSURANCE COMPANIES TO ADAPT TO CLIMATE CHANGE

The costs relating to damage from weather and natural disasters to houses and belongings has surpassed €2.5 billion Euros in the last ten years. In addition, there are damages and costs relating to cars, boats, people, roads, infrastructure, forests, public building and uninsured properties.

Manon Economics and NGI has been asked to report on the prevention of climate risks. Finance Norway states that the result of the report will show that the cost of prevention is lower than the expected cost of repairing. The Norwegian Water Resources and Energy Directorate has calculated that it will cost more than €8 billion to secure buildings against landslides, flood, erosion and quick clay landslides.

The expectation is that the government will provide the funding for preventative measures. Insurance companies can provide much-needed knowledge of where and how damage occurs, which will provide a strong basis for targeting preventive measures.

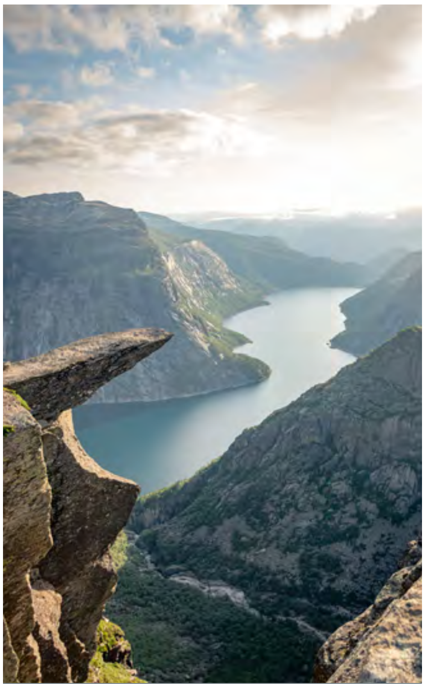
> **"FACING CLIMATE CHANGE, GOVERNMENTS AND COMPANIES MUST ACKNOWLEDGE THAT PREVENTING DAMAGES IS MORE COST EFFICIENT THAN REPAIRING THEM."**
>
> YNGVE SKOGRAND, PARTNER, RIISA

REGULATORY CHANGES TO THE NORWEGIAN NATURAL PERILS POOL

In Norway, natural perils insurance is based on compulsory cover through a pool, linked to fire insurance. All insurers providing fire coverage in Norway must be members of the Pool. The individual premium is set as a percentage of the premium for the fire insurance, currently 0.0065 percent.

When the damage costs are lower than the premiums, the surplus is held by the separate insurance companies. There is a discussion in the sector regarding the effects of this structure. Some companies and organisations claim that it is distorting the competition between insurance providers.

The government has now proposed legislative changes to the parliament, where the surplus shall be put in a fund belonging to the Pool itself.



> **"A POSSIBLE NEW FUND FOR THE NORWEGIAN NATURAL PERILS POOL IS A SIGNIFICANT CHANGE TO THE WAY COMPANIES' SURPLUSES ARE CURRENTLY MANAGED."**
>
> YNGVE SKOGRAND, PARTNER, RIISA

TOP ISSUES:

- The continuing question of Scottish independence
- Continuing differences between Scotland and England & Wales in personal injury claims
- Ongoing differences between Scotland and England & Wales in property damage and professional negligence claims

UK INSURANCE INDUSTRY AT A GLANCE

920

Registered firms

£366 BILLION

Value of Premia

BLM

SCOTLAND

Scotland is not only emerging from the Covid-19 pandemic but also from a 2021 election of members to form the sixth session of the Scottish Parliament and from the 2021 hosting of COP26. At this time and in many respects, Scotland could be described as on a "knife-edge" in terms of what the future may hold. It is probably more difficult than ever to make Scottish predictions with meaningful accuracy.

On these pages we consider constitutional matters, then certain specific continuing differences between Scotland and England & Wales in particular fields. Over the next few years, Scotland could drift further apart from England & Wales in constitutional and legal terms although the direction of travel is not yet certain. The ultimate court of civil appeal for Scotland remains the United Kingdom Supreme Court, presently presided over by a Scottish Justice, Lord Reed, with another Scottish Justice, Lord Hodge, the deputy president.

Glen Affric, Highlands, Scotland

THE CONTINUING QUESTION OF SCOTTISH INDEPENDENCE

All other things being equal, the current sixth session of the Scottish Parliament will run until 2026. The Scottish Government is presently constituted on the basis of a co-operation agreement between the Scottish National Party and the Scottish Green Party. In 2014, the Scottish electorate answered the question "Should Scotland be an independent country?" no, by a 10% margin. Subsequent and recent polling suggests that the answer to this question may not now be as clear-cut. The current stated intention of Scottish Government is to hold another referendum on the question of independence in 2023. The precise terms of any such question and any such referendum remain to be seen. The consequences of any vote in favour of Scottish independence are hard to predict.

> **"THE CONSTITUTIONAL FUTURE FOR SCOTLAND IS ALMOST IMPOSSIBLE TO PREDICT AT THIS TIME."**
>
> KAREN DANCE, HEAD OF BUSINESS, BLM

CONTINUING DIFFERENCES BETWEEN SCOTLAND AND ENGLAND & WALES IN PERSONAL INJURY CLAIMS

The first statutory review of the Scottish personal injury discount rate (PIDR) will take place in 2024 though Scottish Ministers have power to require a prior ad hoc review. Under the Scottish legislative methodology, the Scottish PIDR was re-affirmed at minus 0.75% in October 2019, half a per cent lower than the minus 0.25% PIDR set for England & Wales in August 2019. This difference can cause a massive, upwards, increase in damages for serious personal injury claims in Scotland compared to England & Wales. The impact of this difference can be exacerbated by the ongoing absence in Scotland of periodical payment orders (PPOs) imposable by the courts. The Scottish PIDR legislation provides for imposable PPOs but these provisions remain to be implemented.

> **"SCOTLAND GENERALLY REMAINS A MORE EXPENSIVE JURISDICTION THAN ENGLAND & WALES FOR INSURERS IN PERSONAL INJURY LITIGATION."**
>
> RACHEL HENRY, PARTNER AND HEAD OF CATASTROPHIC INJURY, BLM

ONGOING DIFFERENCES BETWEEN SCOTLAND AND ENGLAND & WALES IN PROPERTY DAMAGE AND PROFESSIONAL NEGLIGENCE CLAIMS

The Limitation Act 1980 does not apply in Scotland. Scottish time-bar in many property damage and professional negligence claims is instead regulated by the Scottish doctrine of prescription, commonly on a five year period. The method for calculating the five year period is changing from 1 June 2022 with the addition of two stages to be reached before the time-bar clock starts ticking. Broadly, for obligations prescribing on or after 1 June 2022, knowledge of (1) loss, (2) that the loss was caused by a person's act or omission, and (3) the identity of that person, will be needed to start the clock ticking. Knowledge of loss is the sole trigger for the clock to start ticking for obligations prescribing before 1 June 2022.

> **"THE FULL IMPLICATIONS OF THE SCOTTISH PRESCRIPTION CHANGES EFFECTIVE FROM 1 JUNE 2022 MIGHT ONLY BECOME APPARENT ON JUDICIAL EXPLANATION."**
>
> SHIRLEY WYLES, HEAD OF PROPERTY TEAM, BLM

TOP ISSUES:

- Economic issues (inflation rate and energy shortage)
- Cyber risk and digitalisation
- Logistics

B&A BLANCO Y ASOCIADOS ABOGADOS

SPAIN

The income of insurers from premiums at the end of 2021 stood at 61,835 million euros, 5% more than in 2020. However, if the comparison is made with 2019, it is still 3.65% lower. Insurance therefore shows signs of recovery after the outbreak of the Covid-19 pandemic in Spain, and the measures adopted to contain it, but it has not yet recovered all the lost ground.

Added to the above, the war between Ukraine and Russia has caused a shock in the markets. Spain, dependent in terms of energy on third countries such as Russia, has suffered a vertiginous increase in energy prices (electricity, gas and oil) that has caused a rise in inflation and of the prices of essential products. Likewise, the narrowing in the supply chain due to Covid-19 continues to be felt, with a lack of certain raw materials such as aluminum and nickel. In short, logistical problems have increased and have caused indefinite strikes in the transport sector.

All this has resulted in a direct increase in the premiums of certain insurance such as credit lines, D&O and cybersecurity.

Plaza de Espana, Seville, Spain

INSURANCE INDUSTRY AT A GLANCE

203

Registered firms

€61.8 MILLION

Value of Premia (2021)

ECONOMIC ISSUES (INFLATION RATE AND ENERGY SHORTAGE)

The latest complete data from the CPI reveals that the biggest price increases are occurring in energy and food - goods with a relatively rigid demand in the short term (they do not have comparable short-term substitutes). To name a few, flour and grain rose by 10%, lamb by 12%, olive oil by 30%... but electricity took the biscuit (+46%), as did fuels (+65%).

The situation seems doomed to worsen. Russia and Ukraine are the granary of Europe, in addition to being large producers of fertilisers. Everything indicates that the basic ingredients of many of the foods we eat every day will continue to get more expensive. Inflation comtinues to be a problem for the Spanish and for all Europeans. To the above we must add that oil (+100 $ dollars a barrel) and gas are at their most expensive and rising.

Consequently, inflation has become the main risk for the Spanish economy. The rise in inflation will cause, first of all, a slowdown in household consumption, investment, and exports, and therefore in the economy, with a direct impact in contracting all insurance lines.

"LOWER-INCOME HOUSEHOLDS WILL BE HIT THE HARDEST BY RISING OIL AND GAS PRICES. AS THEIR ENERGY BILLS TEND TO ACCOUNT FOR A LARGER SHARE OF THEIR HOUSEHOLD BILLS. THIS, ADDED TO THE INFLATION RATE, WILL CAUSE A NOTABLE DECREASE IN CERTAIN LINES OF INSURANCE (HOME, TRAVEL, CAR...)."

FERNANDO BLANCO GAMELLA, ASSOCIATE, B&A BLANCOS Y ASOCIADOS ABOGADOS

LOGISTICS

The rise in the price of raw materials has caused problems in the road transport network between EU countries. In addition to this, several strikes have been called since the beginning of the year in this sector, which has caused the immediate intervention of the Government to guarantee safety and thus avoid a possible shortage of supplies. There are several routes that are shut due to the indefinite strikes that have caused a break in the supply chain.

This has caused certain insurance lines, such as goods transport and credit, to be affected, with the result in the short term of an increase in claims for these lines of business, which were already affected after the return to normality post-Covid-19.

"WE EXPECT A YEAR OF INCREASES IN PREMIUMS IN MANY LINES OF INSURANCE, ESPECIALLY IN THE TRANSPORT AND LOGISTICS SECTORS."

ADRIAN MARTÍNEZ DE VELASCO, PRINCIPAL ASSOCIATE, B&A BLANCOS Y ASOCIADOS ABOGADOS

CYBER RISK AND DIGITALISATION

The Covid-19 pandemic changed our way of working. The use of new technologies is more frequent, not only in the personal sphere but in the working one.

Currently, four out of five companies have teleworking integrated into their organisational structures, and employees have changed their habits and prefer, in many cases, to work from home. This new scenario leads to two fundamental and observed problems: productivity and cyber-attacks.

Companies (both large and small) have been observing a reduction in worker productivity when working from home, so they have had to limit this practice to certain days of the week or month. Another effect is the massive increase in cyber-attacks on personal computers, forcing companies to invest money in electronic equipment for employees. This brings the need to increase the costs of protection against viruses (ransomware, backdoors, grayware, etc.), and also having to hire people who specialise in this type of threat. Ultimately, the great beneficiaries are the insurers who offer cyber policies, whose contracts and premiums continue to grow.

"IN NO MORE THAN TWO OR THREE YEARS WE WILL REALIZE THAT CYBERSECURITY PROTECTION IS A REAL NEED IN OUR DAILY LIVES."

FERNANDO BLANCO GIRALDO, MANAGING DIRECTOR, B&A BLANCOS Y ASOCIADOS ABOGADOS

TOP ISSUES:

- Economic sanctions against Russia
- Revised Federal Data Protection Act
- Cyber Risks and Loss Aggregation

GBF ATTORNEYS-AT-LAW LTD

SWITZERLAND

The Swiss insurance market coped well with the Covid-19 pandemic. It was not a black swan event. However, at the same time the pandemic subsided, economic sanctions were taken against Russia on an unprecedented scale, which will have a noticeable impact on the insurance market as a whole, and especially on the day-to-day operations of insurance companies. Concurrently, changes postponed by the pandemic are now waiting to be implemented. The new Swiss Data Protection Act, for example, is just around the corner, and insurers need to start adjusting now. And finally, in light of countless cyber-attacks during working from home, FINMA has formulated new expectations for the insurance of cyber risks that must now be met.

Chiesa Bianca, Switzerland

INSURANCE INDUSTRY AT A GLANCE

192

Registered firms

CHF230 BILLION

Value of Premia

ECONOMIC SANCTIONS AGAINST RUSSIA

The US, the European Union, and even neutral Switzerland have imposed economic sanctions on Russian companies and individuals in response to Russia's invasion of Ukraine.

Some of these sanctions are directly aimed at blocking Russian companies' access to global insurance markets. The sanctions force insurers to keep up with a deluge of new regulations within a very short timeframe. For example, the sanctions against Russian banks will affect the ability of insurers to receive premiums and pay claims through these banks, even if the business is otherwise permitted.

The changing sanctions landscape poses a major challenge for insurers' legal and compliance departments. Sanctions-related processes need to be robustly designed and enforced.

Insurers may be protected from claims by sanctions clauses, which essentially remove insurance cover if sanctions are in place. However, it is questionable whether all clauses would pass judicial scrutiny. Finally, Russian entities of foreign insurers could find themselves in a particularly awkward position: foreign parent companies could ask subsidiaries to comply with Swiss and EU sanctions, while Russian authorities insist that these sanctions are ignored. It is likely that regulators will take a closer look.

> **"ECONOMIC SANCTIONS AGAINST RUSSIA WILL KEEP PANDEMIC-WEARY INSURERS ON THEIR TOES."**
>
> DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

CYBER RISKS AND LOSS AGGREGATION

With the advent of cyber insurance, many insurers have underwritten risks without conducting a thorough risk appraisal to quickly tap into new commercial lines.

Various cyber-attacks on established companies in Switzerland and worldwide have made headlines. In 2021 alone, eighty cyber-attacks by supervised entities were reported to the Swiss Financial Market Supervisory Authority (FINMA). FINMA saw this as an opportunity to conduct a comprehensive market survey on cyber risks with insurers, in order to assess, among other things, whether insurers are exposing themselves to significant solvency risks through inadequate risk premiums and reserving strategies, in connection with the aggregation of cyber losses.

Following the survey, FINMA formulated its expectations for the insurance market regarding cyber risks. Among other factors, plausible and well-founded premium calculations based on recognised models and methods must be introduced, and premium components related to cyber risks should be separately identifiable. Insurers would be well advised to implement these expectations, as FINMA will keep monitoring developments in cyber insurance.

> **"FINMA SEES CYBER RISKS AS A MAJOR CHALLENGE FOR THE INSURANCE MARKET."**
>
> DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

REVISED FEDERAL DATA PROTECTION ACT

The revised Federal Data Protection Act (DPA) changes important regulations for the processing of personal data. Insurers will have to comply with stricter rules and should therefore adapt their existing guidelines, data protection declarations, and processes by the time these rules come into force on 1 September 2023.

The aim of the revision is, firstly, to strengthen the control of data subjects over their data. Secondly, the revision aligns the DPA with European data protection law, so that the EU continues to recognise Switzerland as a third country with an adequate level of data protection.

The powers of the Federal Data Protection and Information Commissioner (FDPIC) to enforce the revised DPA will be expanded. Data security breaches must now be reported to the FDPIC as soon as possible if they are likely to put the data subjects at high risk. As a rule, the data controller must also inform the data subject if this is necessary for his or her protection, or if required to do so by the FDPIC.

In the case of intentional violations of the revised DPA, in addition to companies private individuals can be punished, with a fine of up to CHF 250,000. This is a major difference from the GDPR, which does not provide for fines for natural persons, but imposes high fines on companies.

> **"SWISS DATA PROTECTION LAW IS FACING MAJOR CHANGES, THE IMPLEMENTATION OF WHICH MUST BEGIN NOW."**
>
> DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

TOP ISSUES:

The opportunity of insurance industry brought by Internet of Vehicle (IoV)

How the value proposition of insurance changes in smart home industry

Spillover policies in respect of health industry

INSURANCE INDUSTRY AT A GLANCE

Registered firms

22 Life

17 Non-life

Value of Premia

Life:

NTD 3.163 BILLION

Non-life:

NTD 188[1] BILLION

LEE AND LI ATTORNEYS-AT-LAW

TAIWAN

The impact of COVID-19 continues to accelerate the development of insurtech in Taiwan's insurance industry. It can be seen in the increasing variety of circumstances where insurtech is applied. In 2020, insurtech was mainly applied within businesses to improve operational efficiency. In 2021, inspired by the prolonged lockdown, insurance firms have focused more on expanding the digital channels through which they reach out to clients.

A wave of digitalisation has meant that insurance firms have not only developed new insurtechs on their own, but have also worked with technology companies, including startups, to form an eco-system through which they can provide value-added services other than traditional insurance products. The major fields of the "insurance eco system" include: Internet of Vehicle, Smart Home and Big Health.

This article briefly discusses the current status of Taiwan insurance industry in these three fields and the prospect in the near future.

New Taipei City, Taiwan

1. This is the aggregate premium for life and non-life value from January 1, 2020 to December 31, 2020.

THE OPPORTUNITY OF INSURANCE INDUSTRY BROUGHT BY INTERNET OF VEHICLE (IOV)

The rise of self-driving cars and carpooling has reduced the number of car accidents and claims, and affected demand for traditional car insurance, meaning insurance companies have had to redesign their products and services to meet their customers' expectations. In respond to this, UBI (User Based Insurance) car insurance has been developing for a few years in the Taiwanese insurance market, which can collect data such as mileage, driving hours, and driving habits through in-car devices and applications and customise premiums and discounts accordingly. However, in Taiwan, UBI car insurance is still facing the challenge of insufficient incentives for the public to use it, and therefore there is not sufficient information for accurate pricing. Looking forward, if the "vehicle-to-everything (V2X)" ecosystem, connecting cars with peripheral services such as parking and roadside assistance, can be established, it would enhance the added value of car insurance. This would then be an opportunity to seel more UBI car insurance, and for the market to grow further.

HOW THE VALUE PROPOSITION OF INSURANCE CHANGES IN SMART HOME INDUSTRY

The growing 'smart home' market, has seen more and more insurers cooperate with smart device companies to collect data on home safety and residents' health, allowing them to accurately assess risk in advance and respond to accidents after they occur. Examples of this type of cooperation include that between AXA and Philips, which has resulted in a mobile application allowing policyholders to control energy use and lighting anytime and anywhere to avoid theft and other dangerous situations. Another example is the collaboration between SCOR Global Life and Garmin, who developed a wearable device which collect insureds' biometrics data and thus effectively helps the insurer to more accurately access risk and price their products more competitively. The value and positioning of the insurance industry has gradually been transformed and this evolution has been driven by the development of Insurtech; while traditional insurance was designed to compensate for risk, now insurance can effectively eliminate it. Similarly to UBI car insurance, the penetration of smart homes in Taiwan market has been relatively low. Therefore, we see a lot more potential for insurers to work with smart technology companies to develop specialised products.

SPILLOVER POLICIES IN RESPECT OF HEALTH INDUSTRY

The onset of increasingly aging populations, the rise of public awareness of health care, and the advancement of smart medical technologies, has encouraged a new type of insurance product: health spillover policies. Insurance companies can cooperate with gyms and hospitals to collect exercise data on their customers and then provide incentives, feedback, or medical consultations to encourage people to better manage their health conditions, thereby reducing the risk of claims. There are several life insurance companies in Taiwan currently offering spillover policies, and amongst them all, we noted that "walking" spillover policies accounted for the majority. We expect that the insurance industry will find new opportunities in this big health ecosystem, along with changes in the insurer-insured relationship from the customer as a payer to a partner who works with the insurer to prevent risks, thereby transforming the role of insurers from being passive to active.

TOP ISSUES:

- Pressures created by inflation
- ESG-related risks
- Talent retention

INSURANCE INDUSTRY AT A GLANCE

5929

Registered firms (2020)

$1.28 TRILLION

Value of Premia (2020)

UNITED STATES

2021 was a tough year for the insurance industry in the US, between battles over BI cover, increased cyber risks, and major natural catastrophes such as Hurricane Ida. This year looks like it will be one of transition, as the sector grapples with emerging trends and their consequences. Inflation has returned to the US economy, posing challenges for insurers as they prepare themselves for claims inflation and it subsequent impact on pricing, capital setting and reserving.

The emphasis on ESG remains strong, and now that regulators are catching up, insurers will need to spend the next year ensuring they are ready for new regulations on emissions disclosures.

Finally, insurers have work to do to ensure that as the "Big Quit" continues, they retain the talent needed to meet these challenges, as a tightening job market and changing expectations from workers mean the risk of losing staff will be high.

Manhattan, USA

PRESSURES CREATED BY INFLATION

Inflation has not been on the minds of those in the insurance industry, or in any other industry for that matter, for decades. However, the US Bureau of Labor Statistics found that the 12-month change for the CPI was 6.2% as of 31 October – and it no longer seems likely to be a transitory phenomenon. If inflation persists that it will start to have upwards pressures on claims values, which could fall outside the range of predictions established when insurers sold policies.

In the immediate term, insurers will have to re-learn how to assess and mitigate the risks of ongoing inflation. If they don't, they risk eating away at their reserves and eroding their underwriting profits. Longer term, the industry will have to navigate higher reinsurance costs, and may have to look at their portfolios with a view to managing their exposure in the lines most affected by inflation.

> **"INFLATION SEEMS LIKE IT WILL BE A FEATURE OF THE AMERICAN ECONOMY FOR SOME TIME. THE IMPACT ON CLAIMS COULD IMPACT PRICING AND RESERVING."**

TALENT RETENTION

The 'Big Quit' appears not to be a short term phenomenon. In November last year 4.5m Americans left their jobs, a drop in workforce participation sure to have a significant effect in what remains a tight labor market.

Insurers have struggled to recruit and retain high-level talent owing to an increasingly competitive job market. They are faced with difficult choices this year, as workers return to their offices, sometimes reluctantly. Flexible policies on working from home will likely be key to staff retention, which will require some thinking about operating models. Given that insurance is rarely a destination career, the industry needs to give this due consideration.

> **"AS WE ENTER THE 'NEW NORMAL' INSURERS WILL HAVE TO DECIDE WHAT THIS LOOKS LIKE FOR THEIR STAFF. GETTING THIS RIGHT WILL DETERMINE THEIR ABILITY RECRUIT THE TALENT THEY NEED TO REMAIN COMPETITIVE."**

ESG-RELATED RISKS

The focus on ESG has accelerated in the last 12 months and seems likely to maintain momentum in 2022. For insurers this will require them not only to effectively incorporate ESG goals and policies into their operations and their investments, but will also mean more action is needed on helping clients to transition towards net-zero. Insurers will need to be alive to all three aspects of the ESG agenda.

If insurers don't adapt, then the regulators will make them. The SEC has proposed new rules requiring US-listed companies to disclose their direct and indirect emissions, which are set to be implemented in 2023. Preparation for this will take place throughout the coming year, as firms will have to create new procedures for data collection.

> **"THE ESG LANDSCAPE IS RAPIDLY EVOLVING, AND INSURERS WILL HAVE TO COME TO TERMS WITH THE IMMEDIATE AND LONGER-TERM IMPLICATIONS OF THIS."**

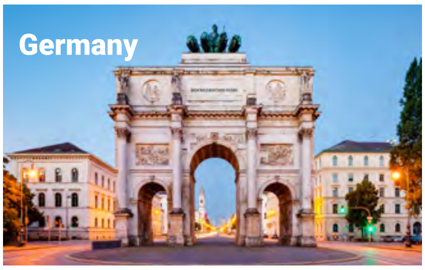
RADAR: CONTACTS

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

Byrd & Associates
Robert Byrd
robertbyrd@byrdassociates.net



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

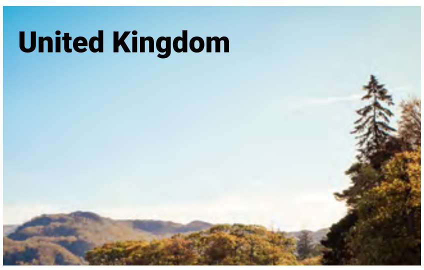
Khaitan Legal Associates
Sakate Khaitan
sakate.khaitan@khaitanlegal.com

Ocampo 1890
Aldo Ocampo
aldo.ocampo@ocampo.law

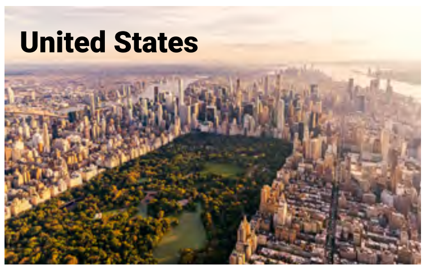
WIJ Advocaten
Suzanne Bordewijk and Harriët Delhaas
bordewijk@wijadvocaten.nl
delhaas@wijadvocaten.nl

Duncan Cotterill
Rob Coltman
rob.coltman@duncancotterill.com

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



BLM
Jim Sherwood
Jim.sherwood@blmlaw.com



info@globalinsurancelaw.com

Buren
Jan Holthuis
J.Holthuis@burenlegal.com

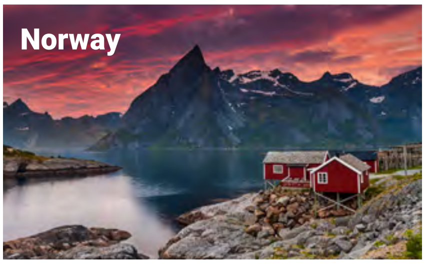
Ark Law
Jesper Ravn
jra@arklaw.dk

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

BLM Ireland
Garrett Cormican
garrett.cormican@blmlaw.com

BTG Legal
Alberto Batini
a.batini@btglegal.it

MOLITOR Avocats à la Cour
Michel Molitor
michel.molitor@molitorlegal.lu



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

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

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

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