RISK RADAR

MAY 2023

THE ESG EDITION

GLOBAL INSURANCE LAW CONNECT

IN THIS EDITION

KEY TAKEAWAYS

THE TREND IS UNDENIABLE

Although the perspectives from our members differ depending on location, there is an overall consensus that as ESG becomes an increasingly important issue for business and for insurers, clients have to be closely engaged with the latest developments. Our firms are reporting that in nearly every market they operate in, whether emerging or developed, there are twin pressures from regulators and a demanding customer base that wants to see more transparency.

DIFFERING GLOBAL POSITIONS

The variation in those pressures to be more transparent and prescriptive in their thinking impacts our member firms in different ways. Nor is it always the obvious candidates who are leading the way. Our members in China, Brazil and India report increasing public and government pressure on insurers to move away from carbonised industries, while in the EU countries like Poland and Denmark are perhaps surprisingly telling us that public awareness of ESG issues remains limited.

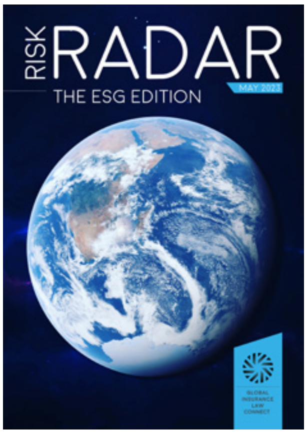
CLIMATE CHANGE IS A UNIVERSAL PROBLEM

Many of our members as far apart as New Zealand and Belgium, Australia and the United States outline the terrible cost of recent natural catastrophes in their countries, how the industry is coping with ever higher claims and how insurers are a key part of the solution to curbing some of the most climate-damaging practices..

THE RISE OF NEW INSURANCE SOLUTIONS

Our French and Swiss member firms have selected the arrival of parametric insurance solutions as one of their key ESG initiatives, and they are also mentioned by our firms in Australia, China and Poland. While it offers an innovative solution to rapidly evolving climate risks, there are still concerns around the specifics of how to determine the proper compensation as and when the parameters are met.

RADAR
MAY 2023



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 clients of Global Insurance Law Connect. Specialist legal advice should always be sought in any particular case.

The Economist Intelligence Unit's (EIU) full list of ESG rankings can be found here: https://www.eiu.com/n/solutions/esg-rating-service/

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Dear Clients

Welcome to the fifth edition of the Global Insurance Law Connect RADAR report. This year, our report has changed its focus onto a single, critical topic: the impact that ESG is having on the insurance industry and the need for all our members to support our clients to achieve their net zero ambitions wherever they are in the world. We have focused on this area because it has increasingly become a national and international priority, and we recognised that it had become a dominant theme across almost all geographies and insurance areas. Put simply, this is the single most critical insurance and legal issue of our time, making it a natural focus for the RADAR report this year.

A global view from the legal sector is also helpful, we believe; and yet is rarely delivered to insurers. And the insurance industry is an important stakeholder in those discussions in every country. Our member firms have unsurprisingly reported that awareness of ESG risks has grown significantly among their clients, but there is still a great deal to be done to educate and incorporate best practice.

Globally, a number of issues have emerged as significant. These include a growing pressure on insurance companies to be more transparent on sustainability, which comes both from stakeholders and in the form of more strenuous reporting requirements. There is also a trend towards increased regulation on every front, from measurement of the impact of climate change to understanding of supply chains in increasing levels of detail. Meanwhile, related claims are rising and insurers are also grappling with increasingly frequent and severe natural catastrophes, which are impacting insurability in a number of regions and insurance classes of business.

This challenge comes against a backdrop of geopolitical risks, supply chain disruptions and inflationary pressures globally. The combination of these three factors is putting further pressure on many of our clients, as they are forced to strike a balance between investing in ESG best practice, while trying to manage increasing costs.

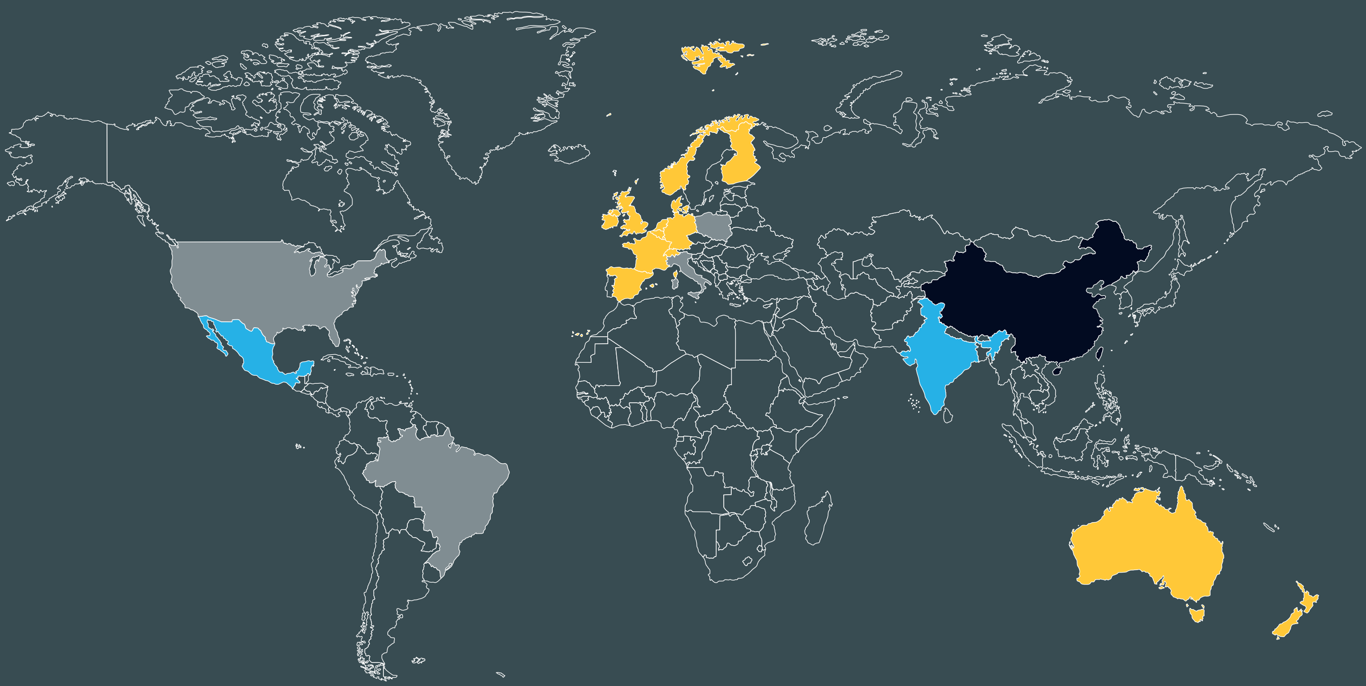
Given that the environmental challenges we are facing are universal, it is more important than ever that we share expertise, best practice, and innovations, and we hope this year's report does just that. We look forward to connecting with you around the topics contained within this report over the coming year, no matter what country you live in, and which member of our network represents your interests.

This report has our widest geographical spread yet. Once again our network has expanded and this year we have included contributions from our two new member firms, Beale & Co from the United Kingdom, and WKB Lawyers from Poland. These additions mean that the network now comprises 22 firms spread over five continents, giving us an even wider reach, and a deeper pool of expertise from which to share legal and insurance insights. We have also been most recently joined by Prieto Abogados from Chile.

Best wishes,

The Board of Global Insurance Law Connect

SNAPSHOT: THE GLOBAL INSURANCE INDUSTRY – EIU'S ESG RATINGS

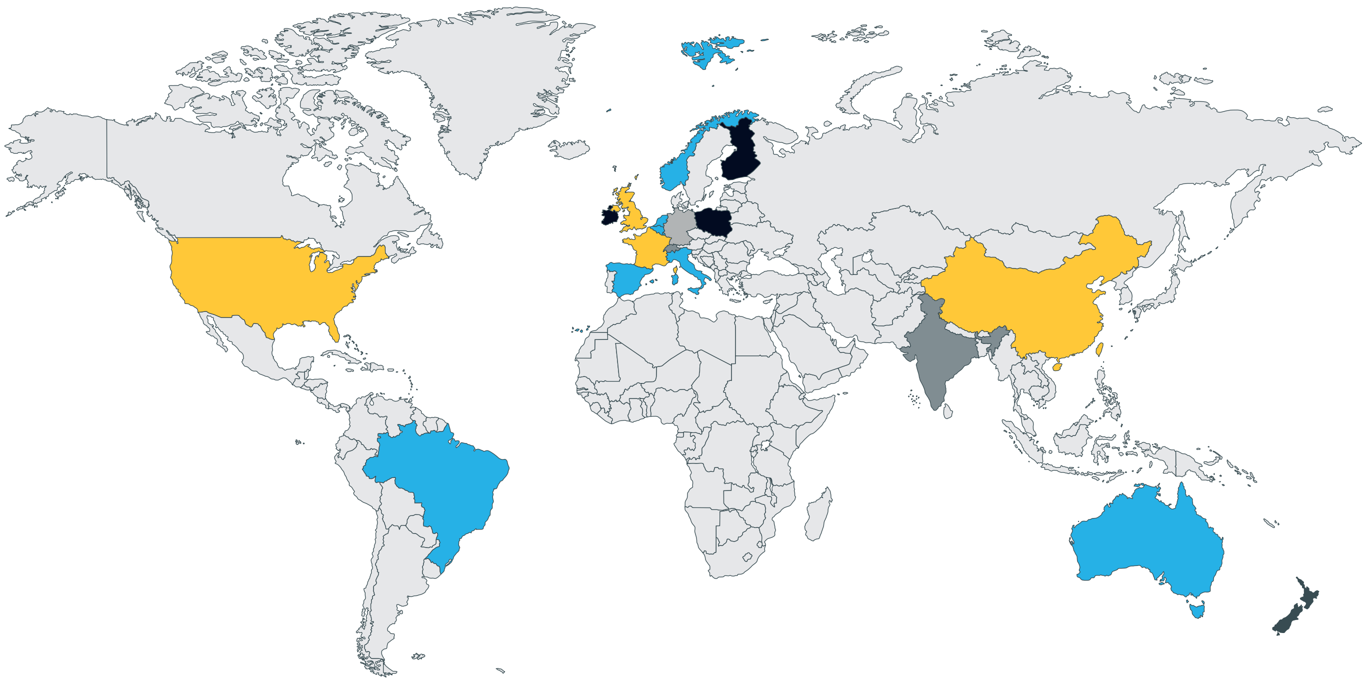


ESG EIU RATINGS

The rankings *'understand country risks from the environmental, social and governance (ESG) environment with EIU's expert analysis and rating of qualitative indicators and extensive official data.'* – www.EIU.com

- Very low
- Low
- Moderate
- High

SNAPSHOT: THE GLOBAL INSURANCE INDUSTRY – SIZE OF MAJOR MARKETS



SIZE OF THE INSURANCE MARKET

- Mega >$250bn
- Very large >$100bn
- Moderate >$25bn
- Small >$1bn
- Very small <$1bn

KEY ESG ISSUES:

Environment – climate change

Social – inflation

Governance – modern slavery

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

91
Registered firms

$55.6 AUD BILLION
(Gross)

$39.3 AUD BILLION
(net)
as at September 2022

SPARKE HELMORE LAWYERS

AUSTRALIA

The Australian Prudential Regulation Authority recently released performance statistics for the year ended 31 December 2022, with the local insurance market reporting a $2.3B AUD net profit and 7.2% return on net assets. This represents an uplift on prior year profit results, stemming from stronger underwriting results and an increase in gross earned premiums, countered by $1.7BN AUD of investment losses and an increase in gross claims expenses.

It is expected ESG concerns will continue to put downward pressure on margins with frequent local natural disasters forcing insurers to raise premiums to accommodate spiraling claims volumes and exposures. Inflationary pressures resulting from the higher cost of living and supply chain issues have significantly increased replacement costs for insureds. Insurers have also been subject to an increasing regulatory burden including the introduction of modern slavery laws and mandatory disclosure requirements, and with these laws currently under review, increases in non-compliance penalties are anticipated.

Melbourne, Australia

ENVIRONMENT – CLIMATE CHANGE

Climate change continues to have a considerable impact on the Australian insurance market. While the country escaped the usual bushfire season in 2022, it continued to see horrendous floods causing wide-spread residential and commercial property damage and destroying agricultural crops with anticipated losses of $5 billion AUD. Associated costs have been passed onto policyholders through higher premiums. However, in some disaster-prone areas like Queensland, underinsurance remains an issue for many consumers. In response, the Australian Reinsurance Pool Corporation has been expanded to include cyclone losses and related flood damage; we understand that one weather-related claim has already been made. It remains to be seen whether the Pool will be extended to all flood loss around Australia. In the interim, parametric insurance solutions have emerged in the Australian market (particularly in agriculture), which address issues such as flood damage and, once triggered, pay out according to a pre-agreed rate.

> **“CLIMATE CHANGE: WITH INCREASING NATURAL DISASTERS IN AUSTRALIA, INSURANCE COVERAGE REMAINS BOTH A CHALLENGE AND OPPORTUNITY FOR INNOVATION FOR THE INDUSTRY.”**
>
> KILEY HODGES, PARTNER, SPARKE HELMORE LAWYERS

SOCIAL – INFLATION

Inflationary pressures continue to weigh heavily on the national economy. Inflation is of great concern in the insurance sector particularly in respect to property damage claims, with insurers finding it difficult to adequately provision for escalating construction costs. Global conflicts have also had a direct impact on inflation and the cost of insurance cover. In particular, the COVID-19 pandemic and the war in the Ukraine have led to significant supply chain issues, while sanctions on Russia have increased replacement costs as insureds have sought alternative markets for products. Health claims resulting from the postponement of “non-essential” procedures during the COVID-19 pandemic have also resulted in costlier procedures and claims for insureds. Social inflation may also be compounded by anticipated regulatory changes allowing contingency fees for class action proceedings and the increasing prevalence of the litigated funder.

> **“SOCIAL INFLATION: A RISING TIDE OF LIVING COSTS, SUPPLY CHAIN ISSUES AND CLASS ACTIONS COSTS: SOCIAL INFLATION IS A KEY ISSUE FOR THE INDUSTRY.”**
>
> BELINDA MICHALK, PARTNER, SPARKE HELMORE LAWYERS

GOVERNANCE – MODERN SLAVERY

The Australian Modern Slavery Act 2018 (Cth) is undergoing a statutory review, which commenced in March 2022 and is due for completion in the first half of 2023. It is anticipated one outcome will be an increase in non-compliance penalties. The Act requires entities in Australia with an annual revenue of $100 million or more to report annually on the risks of modern slavery practices across operations and supply chains as well as on mitigating actions. As one of the sectors with the highest number of reports under the Act, the insurance industry will need to be vigilant in managing risks. In response to the anticipated outcomes, the Insurance Council of Australia has established a modern slavery working group and strategy to encourage best practice, identifying the management of numerous claims with respect to natural disasters (particularly dealing with small businesses in remote and regional areas) as an area of particular concern.

> **“MODERN SLAVERY: RISK MANAGEMENT IS FRONT OF MIND FOR THE INSURANCE SECTOR AND THE INSURANCE COUNCIL OF AUSTRALIA.”**
>
> MARK DOEPEL, SPARKE HELMORE LAWYERS

KEY ESG ISSUES:

- Increased property claims due to climate risks and climate-driven portfolio changes
- Regulatory concerns and greenwashing
- The importance of cyber risk management policies in ESG

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

92
Registered firms

€30.484 MILLION
Value of Premia

LYDIAN
BELGIUM

Sustainability is a hot topic in Belgium and is moving forward at full speed. There has been an explosion of net-zero commitments worldwide, and Belgium is no exception. Belgium is being flooded with ESG regulation.

Catastrophes ranging from devastating floods and storms (e.g. the floods which hit Belgium in 2021, and multiple storms in 2022 that caused significant damage), are driving the journey to net zero, with businesses rethinking their objectives, strategies and risk assumptions. Climate risks will remain a major concern for insurers. An increase in natural disasters will lead insurers to reflect on how to better take climate risks into account in insurance contracts. In particular for insurers, the growing focus on climate change and ESG more broadly is reshaping insurance and investment portfolios.

With the risk of 'greenwashing' exposure, soft law standards tend to tighten, and EU-wide legal or regulatory provisions are increasingly introduced or considered. EU laws and regulation, including the Taxonomy Regulation and the Corporate Sustainability Reporting Directive (CSRD), will have an increasing influence on market behaviour and deal appetite of market participants.

Bruges Belgium

REGULATORY CONCERNS AND GREENWASHING

The Regulatory Technical Standards (RTS) for the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation, which set out the details of the new sustainability disclosure requirements for in-scope financial products and undertakings, finally came into force on 1 January 2023. Until then, companies had taken various approaches to disclosure on sustainability features, leading to potential risks of greenwashing.

Since 1 January, however, reporting via the detailed disclosure templates of the RTS is mandatory. These have already been updated in early 2023 to incorporate investments in specific fossil fuels and nuclear activities and are set to be amended further in the course of the year. Full regulatory compliance with these continually evolving requirements remains a challenge. Since August 2022, under the revised Insurance Distribution Directive guidelines, insurers or intermediaries are also required to take clients' sustainability preferences into account when giving insurance advice.

In view of these developments, transparency on ESG and sustainability factors takes on an increased importance. The FSMA, the Belgian supervisory authority, has already indicated that it considers the fight against greenwashing a key priority, which has led to a sense of urgency in the sector and increased scrutiny of relevant products, many of which have seen their classification revised to avoid potential greenwashing charges.

INCREASED PROPERTY CLAIMS DUE TO CLIMATE RISKS AND CLIMATE-DRIVEN PORTFOLIO CHANGES

Floods, storms, and other climate risks are becoming ever more frequent and are among the fastest escalating threats facing the insurance industry. Large-scale losses due to such events demand an overhaul of risk models and pricing assumptions, while also providing an opportunity to boost relevance and revenues by developing innovative new approaches to protection. 2022 proved a record year in terms of storm damage claims, with Belgium among the hardest hit areas when successive storms hit Europe in February. The floods of 2021 already represented one of the biggest natural disasters ever, with insurers paying out more than EUR 2 billion in damages through a one-off protocol worked out with governments. Never before have storms led to as many claims as filed in 2022: 257,319 in all, for a total claim burden of EUR 725.6 million.

The industry is pressing for coordinated actions on prevention and a clear legal framework for collaboration between the (re)insurance sector and governments following major natural disasters. This should also ensure that it remains affordable for individuals and companies to insure such risks. This emphasizes insurers' unique position in climate change mitigation: as both risk underwriters and large institutional investors, they play a critical role.

A related trend is an increased focus on personal responsibility, with the potential for more claims to be filed by shareholders eager to hold directors accountable for the (mis) management of climate-related risks.

"THE INSURANCE SECTOR HAS AN INCREASED INTEREST IN CLIMATE RISKS, FOLLOWING THE FLOODS OF JULY 2021 AND THE STORMS OF FEBRUARY 2022. TOGETHER WITH THE BELGIAN GOVERNMENT, INSURERS ARE AIMING TO HELP VICTIMS OF NATURAL DISASTERS, RESULTING IN A DIALOGUE ABOUT AFFORDABLE RISK ALLOCATION."

SANDRA LODEWIJCKX, PARTNER / HEAD OF INSURANCE & REINSURANCE PRACTICE, LYDIAN

THE IMPORTANCE OF CYBER RISK MANAGEMENT POLICIES IN ESG

Cyber risk management policies represent an aspect of ESG that is often overlooked but is no less important than the more visible environmental topics. Theft of personal information during a cybersecurity breach erodes stakeholders' trust, highlighting how cyber risk can be a social risk. As cyberattacks increase in size and frequency (and even become a primary concern to businesses), the direct and indirect damage to companies touches all aspects of ESG.

The rapid rate of digital innovation in 2023 was accompanied by the development of new insurance products in Belgium, notably cyber cover. With cyberattacks counting as a major emerging risk, cyber insurance is one of the main areas of potential growth – surprisingly, while almost every company has a fire insurance policy, to date nearly 80 % of Belgian SMEs still do not have a cyber policy.

Further to recent cybersecurity legislation such as the NIS2 Directive (Network and Information Security Directive) and the Digital Operational Resilience Act for financial institutions (incl. (re) insurers), as well as standards on ICT security such as ISO 27001, responsibility for ICT risk management is allocated to the board of directors. Aside from the growing need for compliance with these and other regulations, the increasing number of sophisticated cyberattacks and fear of financial losses and liability are major factors driving the market.

KEY ESG ISSUES:

- Decarbonisation of investments and underwriting portfolios
- Stakeholder pressure
- Regulation

INSURANCE INDUSTRY AT A GLANCE

LOW
The Economist Intelligence Unit's ESG Rating

Registered firms
291

Value of Premia
US$ 31.1 BILLION

R$ 161 BILLION
Data of 2021-2022

SANTOS BEVILAQUA ADVOGADOS

BRAZIL

In recent years, both societal and individual awareness of ESG risks have increased, requiring the development and enforcement of preventive measures by individuals and governments, especially in sectors such as the insurance industry that are heavily exposed to the risks.

In Brazil, awareness of ESG has grown and it has become a significant trend in some sectors of the economy. In addition to some individual measures adopted by the market, ESG has been put in the spotlight with the publication of the Brazilian regulator SUSEP's Circular No. 666 in July 2022 that imposed ESG practices on the insurance market.

As a result of the Circular there will be some changes in insurance coverage for sectors with high environmental exposure, such as agriculture and heavy industry (a significant proportion of Brazilian GDP), as ESG factors will affect not only the insurers, value/product chains, but also the insureds' operations. Consideration of ESG is becoming an important criteria both for accepting risks and pricing, which can impact unsustainable production chains.

The Circular is the start of a trend towards ensuring adequacy and sustainability in production chains, which also includes insurance. Nonetheless, considering Brazil's sensitivity to the world's climate and to human activity itself, there could be greater pressure placed on enforcing ESG practices on the Brazilian insurance market.

Botafogo bay, Rio de Janeiro, Brazil

DECARBONISATION OF INVESTMENTS AND UNDERWRITING PORTFOLIOS

Decarbonisation of investments is a current and growing trend in the insurance market in Brazil. Insurance is present in all sectors of the economy, as a means of transferring business risks, so any risks, including environmental, has a wide impact.

Due to a growing demand from the markets for clean and decarbonised production chains, there is a need for greater control by the insurance market over the risks assumed, in accordance with new environmental guidelines.

Brazil is constantly the target of environmental dumping practices from abroad so the Brazilian market has become the focus of ESG requirements. As a result, insurers involved in these processes, both for demand and regulatory purposes, need to ensure that they adopt practices to correctly price or cover those risks involving highly polluting sectors that are harmful to the environment.

> **“THE DECARBONISATION OF THE UNDERWRITING PORTFOLIO IS ESPECIALLY USEFUL TO PREVENT THE INSURANCE MARKET FROM THE RISKS OF ENVIRONMENTAL DUMPING.”**
>
> JOÃO MARCELO SANTOS, FOUNDING PARTNER, SANTOS BEVILAQUA

STAKEHOLDER PRESSURE

ESG demands run through the entire social and economic environment, so the adequacy of practices has become an open question from employees, investors, and customers alike. The insurance market is also seeing the effects of this same dynamic. The sophistication of the Brazilian financial sector and capital markets adds an additional element of pressure.

Brazilian business also pays special attention to climate issues. A large portion of Brazilian economic activity is directly or indirectly linked to environmental risks, which is what brings them to the attention of market players.

Therefore, there are significant demands placed on the insurance industry, urging it to be environmentally friendly and to not accept risks or to price environmentally harmful risks appropriately, so that it does not contribute to environmentally inadequate practices.

> **“ESG PRACTICES INDICATE A GREATER PERMISSIVENESS OF THE MARKET TO SOCIO-ENVIRONMENTAL DEMANDS, AN ISSUE THAT IS RISING AND GAINING PARTICULAR ECONOMIC RELEVANCE.”**
>
> JOÃO MARCELO SANTOS, FOUNDING PARTNER, SANTOS BEVILAQUA

REGULATION

The Brazilian insurance market is subject to SUSEP Circular No. 666, which provides sustainability requirements for supervised entities.

The Circular details several requirements in line with the most recent international ESG practices, requiring the internal management of social and environmental risks and the development of external mechanisms for the analysis and evaluation of risks to be subscribed.

The Circular states that the insurance company’s risk portfolio should not involve risks harmful to the environment, which could affect its entire production chain, undermine its image, or even affect operations with sanctions.

Even though it is a trend that is already attracting special attention from the market, the adoption of the regulatory model involves internal adaptations and changes, which will impact on pricing and capital availability. The Circular sets a final compliance deadline of 2025.

> **“SUSEP CIRCULAR NO. 666 IS IN LINE WITH THE BEST INTERNATIONAL ESG PRACTICES. IT TAKES THE FORM OF REGULATORY OBLIGATIONS AND IS NO LONGER OPTIONAL. IT IS A NEW PARADIGM.”**
>
> ANA PAULA COSTA, PARTNER, SANTOS BEVILAQUA

BUREN

CHINA

China's insurance market has been experiencing rapid growth and expansion, making it the second-largest insurance market globally, with the increasing variety of insurance products reflective of the market's dynamism. By June 2022, insurance companies had also become the second-largest players in the equity markets in China.

Recently, ESG factors have been gaining prominence among financial regulators and insurance companies. In 2022, the China Banking and Insurance Regulatory Commission (CBIRC) (to be incorporated into the National Financial Regulatory Administration) released the Green Finance Guidelines for the banking and insurance industry. These guidelines emphasise the importance of promoting green finance from a strategic perspective, with one of the objectives being to improve ESG performance.

The guidelines lay out policy requirements for insurance companies in various areas, such as policy and system construction, investment and financing process management, and information disclosure. While regulators are currently only advocating for ESG-related responsibilities for insurance companies, the scale of green investment by insurance funds continues to expand. As insurance institutions explore new avenues for green investment, ESG is becoming an increasingly crucial tool for promoting sustainable development within Chinese financial institutions.

Laojun Mountain, China

KEY ESG ISSUES:

- Regulatory compliance
- Decarbonisation of investments and underwriting portfolios
- New insurance products

INSURANCE INDUSTRY AT A GLANCE

HIGH
The Economist Intelligence Unit's ESG Rating

Registered firms over
230

Value of Premia
RMB 4.7 TRILLION
US$ 680 BILLION
2022

REGULATORY COMPLIANCE

In response to the Green Finance Guidelines for the banking and insurance industry, Chinese insurers are required to adapt their practices and ensure compliance with these continuously evolving regulations. These guidelines aim to promote sustainable development by encouraging the integration of ESG factors into business operations, investment decisions, and risk management processes. Chinese insurers must pay close attention to these guidelines and work proactively to meet the expectations set by regulators.

In addition to the domestic guidelines, Chinese insurers should also consider global frameworks, such as the Taskforce on Climate-related Financial Disclosures (TCFD), which offers a standardised approach to disclosing climate-related financial risks and opportunities. By aligning with international guidelines and best practices, Chinese insurers can demonstrate their commitment to global ESG standards and improve their credibility in the international market.

Moreover, staying informed about and adhering to regional or international ESG guidelines is essential for Chinese insurers to effectively manage risks and capitalise on opportunities arising from the global transition to a low-carbon and sustainable economy.

"CHINESE INSURERS ARE COMPELLED TO ADEPTLY NAVIGATE THE COMPLEX LANDSCAPE OF DOMESTIC AND INTERNATIONAL ESG REGULATIONS, ENABLING THEM TO EFFECTIVELY MITIGATE POTENTIAL RISKS WHILE SIMULTANEOUSLY CAPITALISING ON EMERGING SUSTAINABLE OPPORTUNITIES."

JAN HOLTHUIS, PARTNER, BUREN

DECARBONISATION OF INVESTMENTS AND UNDERWRITING PORTFOLIOS

The CBIRC has issued policy guidance for the decarbonisation of investment and underwriting portfolios. Within the Green Finance Guidelines for the banking and insurance industry, insurance companies are urged to bolster their support for green, low-carbon, and circular economies. The board of directors or council of an insurance company is accountable for the company's green finance initiatives.

Insurance companies should refine their investment policies, focusing on promoting carbon peaking and neutrality, backing clean and low-carbon energy systems, and advocating green and low-carbon technologies. In asset management, projects with high energy consumption and emissions should be restricted to avoid indiscriminate development. The identification, assessment, and management of risks associated with high carbon assets must be reinforced, with the ultimate aim of achieving a carbon-neutral asset portfolio.

On the underwriting side, green insurance products are being employed to promote sustainable development. For instance, China Pacific Insurance has underwritten clean energy projects such as offshore wind power and photovoltaic power facilities, demonstrating how the industry is adapting to encourage environmentally responsible practices.

"CHINA'S INSURERS ARE INSTRUMENTAL IN DRIVING GREEN FINANCE AND CARBON-NEUTRAL INVESTMENTS, SHAPING A MORE SUSTAINABLE ECONOMY."

LI JIAO, PARTNER, BUREN

NEW INSURANCE PRODUCTS

As the Chinese insurance market evolves, the demand for innovative products addressing emerging ESG-related risks and opportunities is set to grow. This includes parametric products, which provide pay-outs based on predefined climate event triggers, offering swift financial relief to those affected by natural disasters or climate-related incidents. Such products are particularly relevant in China, where the impacts of climate change are increasingly evident, and effective risk management solutions are essential.

Furthermore, insurance products tailored to emerging technologies, such as renewable energy and electric vehicles, are gaining prominence in China. For instance, insurers may develop specialised coverage for solar panel installations, wind farms, or electric vehicle charging infrastructure. As the country pursues its ambitious carbon neutrality targets, insurers have a unique opportunity to develop and offer these cutting-edge insurance solutions catering to the burgeoning renewable energy sector and the rapidly expanding electric vehicle market.

"CHINESE INSURERS NEED TO ADAPT TO THE CHANGING LEGAL ENVIRONMENT, CREATING ESG-ALIGNED PRODUCTS TO MEET SUSTAINABILITY DEMANDS."

LI JIAO, PARTNER, BUREN

KEY ESG ISSUES:

Stricter underwriting guidelines for carbon-heavy industries

Guidelines for using sustainable products in property insurance

Pricing of insurance for electrical vehicles

INSURANCE INDUSTRY AT A GLANCE

VERY LOW

The Economist Intelligence Unit's ESG Rating

35

Registered firms

DKK65 BILLION

€8.7 BILLION

(Non-life)

Value of Premia

ARK

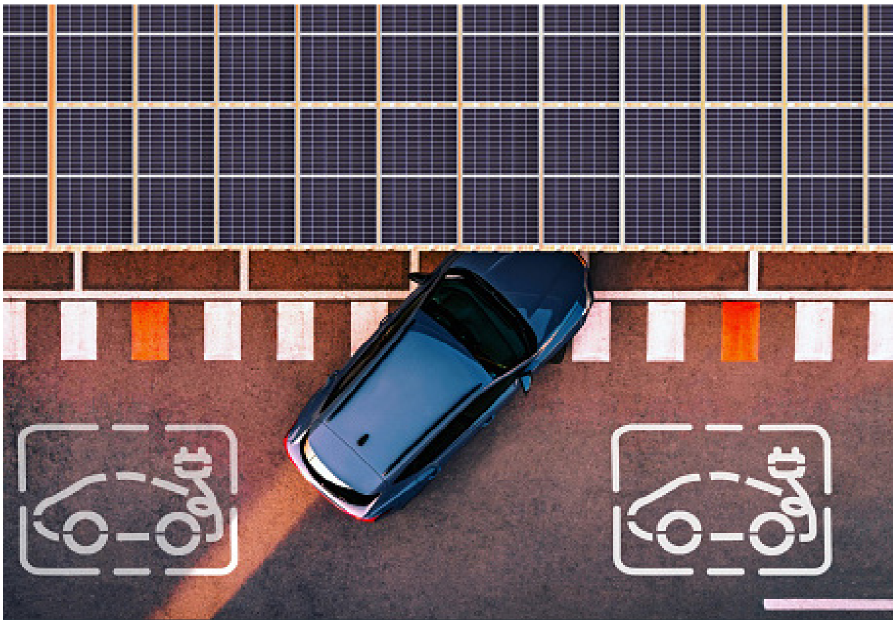
DENMARK

Currently in Denmark, the public impact and knowledge of ESG is still limited. However, ESG has begun to grow in importance for the larger insurers with regard to adjusting strategy towards investments as well as underwriting.

In underwriting specifically, this has, for example, resulted in insurers setting the premia for electric cars at a comparably lower rate than petrol or diesel cars in order to support the transition towards electric vehicles, even if repairs on electric cars are (in general and on average) more expensive.

Further ESG requirements have led insurers to become stricter with underwriting policies, particularly for heavily energy-dependent industries and carbon heavy manufacturers. This has – on the other hand – prompted a push-back from brokers, stating that there is a de facto "ban" on underwriting certain lines, leading to the policyholders having to either accept large premium increases (non-claims related) or going abroad for cover.

Copenhagen, Denmark



PRICING OF INSURANCE FOR ELECTRICAL VEHICLES

After the introduction of steep taxation for electric cars above DKK 400.000, their sales slowed quickly, while insurers were setting premia for electric cars based on "normal" principles. This meant that premia were set to reflect the claims, which were often very high for electric cars (partial damage as well as total loss).

However, to support sales of electric cars, several of the major insurers have introduced special (reduced) premia that do not actually reflect the risk for this segment of vehicles.

"INSURANCE FOR ELECTRIC CARS HAS BECOME COMPETITIVE IN DENMARK, WITH SEVERAL INSURERS GIVING SPECIAL DISCOUNTS ON PREMIA NOT REFLECTING THE COST OF ACTUAL CLAIMS."

JESPER RAVN, PARTNER, ARK LAW FIRM

GUIDELINES FOR USING SUSTAINABLE PRODUCTS IN PROPERTY INSURANCE

High inflation and massive increases in costs for construction due to the Russian invasion of Ukraine have, along with already adapted policies for sustainability, prompted further guidelines for insurers and contractors to use climate-friendly materials and reusable materials for construction.

This has led to significant short-term price increases for property insurance. However, in the long-term it is expected to lead to a reduction of prices and premia.

"INSURERS ARE IN A DILEMMA AT A TIME OF INFLATION AND WAR, THEY WONDER WHETHER TO STILL FOLLOW GUIDELINES FOR USING SUSTAINABLE PRODUCTS IN CONSTRUCTION CLAIMS."

JESPER RAVN, PARTNER, ARK LAW FIRM

STRICTER UNDERWRITING GUIDELINES FOR CARBON-HEAVY INDUSTRIES

In March 2023, WTW issued a sharp criticism of the Danish insurance industry due to it experiencing major difficulties in obtaining cover for carbon-heavy industries such as power plants and plastic manufacturers. WTW stated that these lines of business were met with either an unwillingness to underwrite these types of risk or exorbitant increases in premium based on the insurers referring to their ESG goals.

The insurers reacted differently to the criticism. Although one large insurer admitted that some lines were excluded from underwriting due to ESG guidelines, other insurers denied that this was the case.

It is still a dilemma for insurers and brokers whether ESG guidelines and policies can exclude entire businesses from (locally underwritten) insurance. This is particularly the case during a time of rising energy prices and inflation.

"DANISH INSURERS ARE UNDER PRESSURE FROM BROKERS FOR NOT ACCEPTING CARBON HEAVY INDUSTRIES DUE TO ESG GOALS, FORCING ENTIRE LINES OF INDUSTRIES TO LOOK ABROAD FOR COVER."

JESPER RAVN, PARTNER, ARK LAW FIRM

KEY ESG ISSUES:

- First climate claim
- ESG and D&O
- Implementing the Whistleblowing Directive

SOCRATES ATTORNEYS LTD

FINLAND

It has been a turbulent year for Finland with a change in government, inflation, interest rates, the looming banking crisis, the war in Ukraine, and Finland's NATO bid making the headlines. The insurance sector has remained stable and is locally expected to do well even in hard times. A relatively large part of the domestic product in the insurance sector is in statutory insurance which makes the sector somewhat less vulnerable to some financial risk scenarios.

ESG related topics have become increasingly present in all levels of society. Larger Finnish insurers have recently taken visible steps in that regard including implementing new client guidance and incorporating new policy wordings to exclude clients who do not fulfill their ESG criteria, based on factors such as the UN Principles of Sustainable Insurance. Very recently, a Finnish insurance company organised an extensive cross-border study on ESG development in European insurance practice to improve and adjust its own program.

The window for ESG-related claims against the private sector is still quite narrow, as only a few situations allow definite legal remedies against violations of ESG obligations, let alone moral demands surrounding ESG. This may change when EU-level regulation comes into force in the near future.

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

64
Registered firms

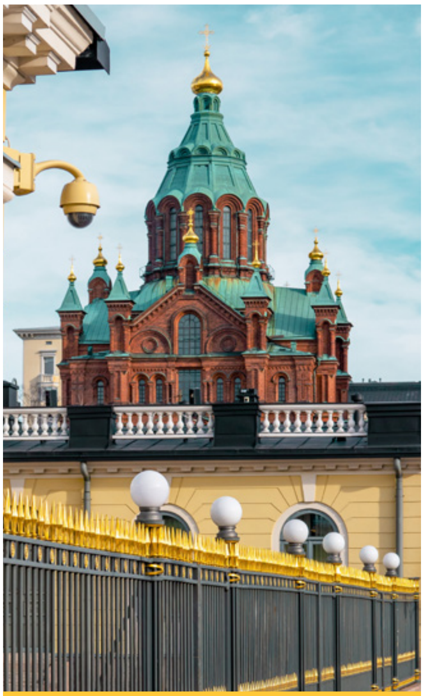
€23.1 BILLION
Value of Premia

Päijänne lake, Finland

FIRST CLIMATE CLAIM

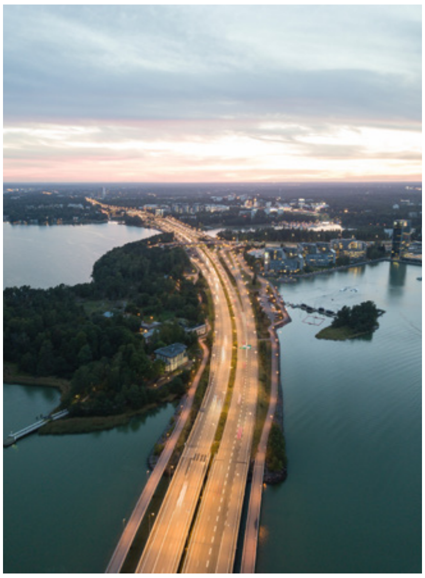
Greenpeace and The Finnish Association for Nature Conservation have very recently filed a claim against the Finnish Government, on the grounds that the target set in the legislation to be fully carbon neutral by 2035 is threatened by government failings. This is the first true climate inaction court case in Finland.

It may become a short one, though, as the court needs to first consider whether the relevant decision of the government can be subject to such a claim in the first place. Similar processes against private individuals are yet to be seen. They would also face apparent legal obstacles at least until the Corporate Sustainability Due Diligence Directive is enacted, as there are quite few legal norms on which such claims can be effectively based.



“A VISIBLE CHANGE IN MINDSET IS CLEAR, AND CASES AGAINST THE PUBLIC SECTOR MAY WELL BE JUST THE START, WITH PRIVATE SECTOR CLAIMS TO FOLLOW, AT LEAST FOR PUBLICITY PURPOSES.”

SILJA TÖYRÄLÄ, ASSOCIATE, SOCRATES ATTORNEYS LTD



IMPLEMENTING THE WHISTLEBLOWING DIRECTIVE

In Finland, national legislation implementing the Whistleblowing Directive entered into force on 1 January 2023. There is a transition period relating to company size, with all companies covered by the legislation set to comply with the legislation by 17 December 2023.

The reporting topics contain not only those mentioned in the directive but also breaches of national law, with certain limitations regarding public procurement and public health. Companies with fewer than 50 workers are not obliged to establish internal reporting channels. However, an internal reporting channel must always be in place if the entity operates within the scope of the Anti-Money Laundering Act (444/2017).

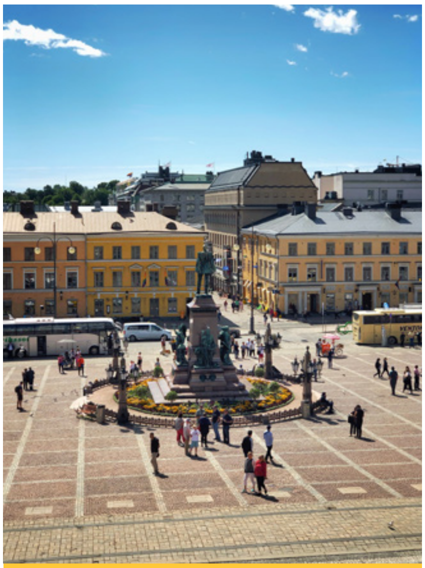
“NEW REGULATION REPRESENTS ANOTHER HURDLE FOR CORPORATIONS AND THEIR DIRECTORS – AGAIN SOMETHING TO BE DISCUSSED FROM A D&O PERSPECTIVE.”

ROBERT BÜTZOW, ATTORNEY AT LAW, SOCRATES ATTORNEYS LTD

ESG AND D&O

Finnish companies have increasingly been implementing ESG-related factors into their business operations and governance. As a director of a limited company is only liable in certain situations under the Limited Liability Companies Act, the impact of ESG in the core area of D&O liability has still been somewhat restricted. It is also notable that the level of shareholder activism is low, and group claims are practically non existent in Finland.

On D&O, a variety of risks are still relevant as the EU and the Finnish government are rapidly introducing regulation, which also increases the personal risk to directors of becoming subjects of ESG-connected investigations. Aside from the more traditional crimes, such as employment offences relating to work safety, there have recently been many landmark investigations and proceedings against directors personally concerning discrimination, data protection and environmental crimes.



“THERE IS GENERALLY A BIG DIFFERENCE IN RELEVANCE OF D&O COVERAGE FOR ESG RISKS BETWEEN SIMPLE SME PRODUCTS AND MORE TAILOR-MADE D&O PROTECTION.”

JUSTUS KÖNKKÖLÄ, PARTNER, SOCRATES ATTORNEYS LTD

KEY ESG ISSUES:

- Decarbonisation of underwriting portfolios
- New insurance products – parametric insurance
- Diversity – ongoing measures against the gender gap in French companies

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

740
Registered firms

€260 BILLION
Value of Premia

BYRD & ASSOCIATES

FRANCE

In France, the Energy Transition for Green Growth Act of August 2015, as well as the PACTE Law for Growth and Transformation of Companies of May 2019, initiated the consideration of social and environmental issues into the economic and legal landscape. Market participants were encouraged to become more responsible and transparent about their social and environmental impact in order to adopt a more sustainable strategy.

This wave of "para-economic" responsibility has major implications for the insurance sector. It has had to readjust its business strategy and promote ethics in line with the fundamentals of corporate social responsibility in order to be more in tune with present-day values.

French insurers have adopted new commitments known as "RSE" – the French equivalent of the international acronym ESG, albeit with some nuances. These commitments are based on the implementation of mechanisms which promote environmental protection and ecological transition and increase diversity and social inclusion.

Whilst these new commitments may at first sight appear economically "restrictive" for insurers, they are actually a real instrument for risk anticipation.

Menton, Cote d'Azur, South of France

DIVERSITY – ONGOING MEASURES AGAINST THE GENDER GAP IN FRENCH COMPANIES

Since 2011, France has been promoting a range of laws on gender balance and professional equality: the law of 27 January 2011 targets equal representation of women and men on boards of directors, supervisory boards and on professional equality. Listed companies with more than 500 employees or with a turnover of more than 50 million euros must have a 40% quota of women on their board of directors and supervisory boards. This law has been extended to included mutual insurance companies governed by the French Insurance Code.

The law of 4 August 2014 for real equality between women and men introduced the principle that companies must strengthen their company and branch negotiations to promote professional equality. They must also respect the reform of parental leave and promote the sharing of parental responsibilities.The law of 5 September 2018 on the freedom to choose one's professional future states that companies must ensure equal pay for men and women for the same work or work of equal value. Companies with 50 or more employees must publish annually a "gender equality index" and the actions implemented to promote it. And finally, Law no. 2021-1774 of 24 December 2021 is aimed at accelerating economic and professional equality. Every year, companies with more than 1,000 employees have to publish any gaps in representation between women and men among their senior executives and members of their governing bodies on their websites. These requirements are now set out in the French Labour Code. This law imposes quotas of 30% of female executives and 30% of female members of management bodies by 2027, with quotas expected to reach 40% by 2030. Failure to comply is subject to a financial penalty.

> **"FRANCE HAS IMPLEMENTED A NUMBER OF LEGAL INSTRUMENTS IN THE PAST FEW YEARS TO PROMOTE DIVERSITY AND ACHIEVE FULL PROFESSIONAL EQUALITY ON GENDER. HOWEVER, INEQUALITIES STILL EXIST."**
>
> ROBERT BYRD, PARTNER, BYRD & ASSOCIATES

NEW INSURANCE PRODUCTS – PARAMETRIC INSURANCE

Climate change and the increase of natural disasters have led French insurers to adapt their products. Therefore in France, new insurance products, such as parametric insurance, are emerging. Thanks to their simplicity, efficiency of execution, and avoidance of costly intervention of loss adjustors, parametric insurance policies are being promoted in France. This is particularly true in the substantial agricultural and wine sectors, which are especially subject to adverse climate and weather conditions. Nevertheless, parametric insurance products are still not well developed in France and lack statutory guidance. According to some commentators, in the absence of any specific regulations, the general principles of insurance law would apply to these policies.

> **"PARAMETRIC INSURANCE PRODUCTS ARE BEING INCREASINGLY PROMOTED BY FRENCH INSURERS, PARTICULARLY IN THE AGRICULTURAL AND WINE SECTORS WHICH REFLECTS INSURERS' DETERMINATION TO ADAPT THEIR PRODUCTS TO THE INCREASE IN CLIMATE-RELATED RISKS."**
>
> ROBERT BYRD, PARTNER, BYRD & ASSOCIATES

DECARBONISATION OF UNDERWRITING PORTFOLIOS

In light of the recent international and national measures, such as the Paris Agreement (in force since 2016) and the IPCC reports (Synthesis Report has appeared in March 2023), French insurers have developed more "decarbonised" investments.

These new ways of investing are mainly reflected in increasing investment in renewable energy/green bonds and in the significant decline, even the total exclusion, of investment in fossil fuel companies or others with a high carbon footprint.

This has resulted in a new approach in insurers' investment portfolios. For example, the French insurer AXA had committed not to invest in mining companies with carbon production exceeding 20 million tons or that supported petroleum exploration projects.

The French insurance giant also announced its desire to make 26 billion euros of green investments by the end of 2023. For its part, the insurer MAIF announced the inclusion of ESG criteria for more than 82% of its assets from 2019. Alliance France has also taken similar measures.

However, in France, these "decarbonised" investments are still considered weak.

In 2022, the French supervisory authorities for banking and insurance and financial markets (ACPR and AMF respectively) reported the lack of carbon neutrality of insurers, a phenomenon probably linked to the inclusion of gas and nuclear power in the EU's list of "sustainable" activities.

> **"FRENCH INSURERS' INVESTMENT PORTFOLIOS INCREASINGLY REFLECT A MOVE AWAY FROM HIGH CARBON EMITTING ACTIVITIES AND A MOVE TOWARDS WHAT ARE BROADLY REFERRED TO AS "GREEN" INVESTMENTS."**
>
> ROBERT BYRD, PARTNER, BYRD & ASSOCIATES

KEY ESG ISSUES:

- Stakeholder pressure
- Regulation such as Taxonomy and Supply Chain Act
- Claims

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

591
Registered firms

Value of Premia
€225.87 BILLION
Excluding reinsurance

ARNECKE SIBETH DABELSTEIN

GERMANY

Market developments show that sustainability aspects are becoming increasingly relevant. Insurance companies that are already directly affected by ESG regulation must report on defined sustainability criteria in their products and in their company.

In a world increasingly shaped by sustainable values, the value of a company and its product will increasingly depend on its ability to provide transparent and credible information about the sustainability of the company and its service. As a result, sustainability and sustainability-related disclosure already play a decisive role that will become ever-more important.

For companies in the insurance industry, the inclusion of sustainability criteria in their core areas of activity is essential for future competitiveness, not least to avoid reputational damage.

A clear example of this is the ever-increasing number of stakeholders who are committing to the Poseidon Principles for marine insurance. These principles create a common global baseline that is consistent with and supportive of society's goals to better enable insurers to quantitatively measure and assess the carbon footprint of their marine underwriting portfolio.

Insurance intermediation is also directly affected. Since August 2022 in Germany, the customer's sustainability commitment must be clarified before intermediation of insurance-based investment products can begin. Although initially the details of this were unclear, the German Institute for Standardisation (DIN) has recently produced guidelines that provide seven questions by which intermediaries can meet these requirements.

The German Supply Chain Act (effective 1 January 2023), must also be obeyed by the insurance industry, but all stakeholders were easily able to adapt to it.

Hamburg, Germany

CLAIMS

Sustainability risks associated with ESG must be considered holistically and equally. The EU taxonomy and disclosure regulations lay out how to apply them in risk analysis and strategy.

In terms of environmental sustainability risks, changing climate conditions are the primary consideration. Extreme weather events such as heavy rainfall or storms must be considered especially when dealing with traditionally insured property such as real estate. It is important to assess which risks are increasing in which areas. As such, insurance companies must continue to be sensitive to scientific findings to continuously adapt their internal models, with consideration of climate forecasts impacting possible loss scenarios.

"IN RECENT YEARS, THERE HAS BEEN A MASSIVE INCREASE IN ENVIRONMENTAL LITIGATION IN GERMANY (E.G. A PERUVIAN FARMER'S LAWSUIT AGAINST RWE). THIS TREND HAS HAD A SIGNIFICANT IMPACT ON INSURERS, FOR EXAMPLE IN D&O INSURANCE."

DR. QUIRIN VERGHO, PARTNER, ARNECKE SIBETH DABELSTEIN

STAKEHOLDER PRESSURE

The attention from all stakeholders on sustainability issues relating to investments such as life insurance will increase the indirect pressure on insurance companies to act.

In parallel to the requirements for sustainable products, greater clarity on the commitment to ecological and social impacts is anticipated, starting with the insurance company itself. It is important to note that sustainability must be considered in two directions: of the product and of the company itself.

Sustainability is increasingly becoming an important decision criterion for investors. The future success of insurance products will be increasingly linked to how these incorporate environmental and social aspects.

"CUSTOMERS AND POLICYHOLDERS FIND THE ESG COMPLIANCE OF PRODUCTS IMPORTANT, BUT SUSTAINABLE INSURANCE PRODUCTS ARE STILL LAGGING FAR BEHIND TRADITIONAL PRODUCTS. THIS IS LARGELY DUE TO THE LACK OF A CLEAR DEFINITION OF 'SUSTAINABILITY'."

DR. CAROLIN SCHILLING-SCHULZ, PARTNER, ARNECKE SIBETH DABELSTEIN

REGULATION SUCH AS TAXONOMY AND SUPPLY CHAIN ACT

The increasing regulatory and supervisory requirements from EU regulations and directives, which prescribe the disclosure of certain sustainability-related information (quantitative and qualitative), are already directly affecting insurance companies. The Sustainable Finance Disclosure Regulation (SFDR) requires insurance companies to make publicly available information on their strategies for incorporating sustainability risks into their investment decisions.

Sustainability risks are any ESG event or condition which could have a material adverse effect, actual or potential, on the value of the investment. Examples include natural disasters or violations of human rights.

In 2023 the German Supply Chain Act came into effect, with its direct environmental and human rights obligations for every company with more than 3,000 employees. The insurance industry has adapted well to this legislation. The Taxonomy Ordinance, with its obligation to ask the customer for their sustainability preference, was not as easily introduced as it was originally unclear how to comply with its obligations for insurance (based investment products) intermediaries.

"REGULATORY REQUIREMENTS ARE TOO VAGUE AND OFTEN LEAVE MARKET PARTICIPANTS IN THE DARK ABOUT THEIR CONCRETE OBLIGATIONS. GUIDELINES AND CERTIFICATIONS ARE BECOMING INCREASINGLY IMPORTANT."

DR. CAROLIN SCHILLING-SCHULZ, PARTNER, ARNECKE SIBETH DABELSTEIN

KEY ESG ISSUES:

- Stakeholder pressure
- Environmental risks
- Underwriting sustainability

INSURANCE INDUSTRY AT A GLANCE

MODERATE
The Economist Intelligence Unit's ESG Rating

56
Insurance companies

12
Reinsurance companies

USD$ 110 BILLION
Value of Premia

KHAITAN LEGAL ASSOCIATES

INDIA

The insurance industry has a pivotal and influential position in promoting ESG in India. Insurance companies are now aiming to achieve a competitive edge through sustainable products. In India, there is a clear opportunity for insurance companies to use their sustainability credentials to accelerate growth and attract new clients.

War risks, risks from climate change, issues emerging from working from home, moonlighting jobs, and increasing liability of directors, officers and auditors – are all risks that potentially arise in the ESG space.

With ESG issues needing widespread and long-term action, ESG must be treated as more than just a secondary activity. For example, as per Global Reporting Initiative (GRI) standards and United Nations Sustainable Development Goals, insurers too are now required to publish an ESG report annually stating ESG related initiatives they have undertaken. This brings a sense of accountability among the Indian insurers and paves the way for adequate ESG measures.

Rajasthan, Jodhpur, the blue city, India

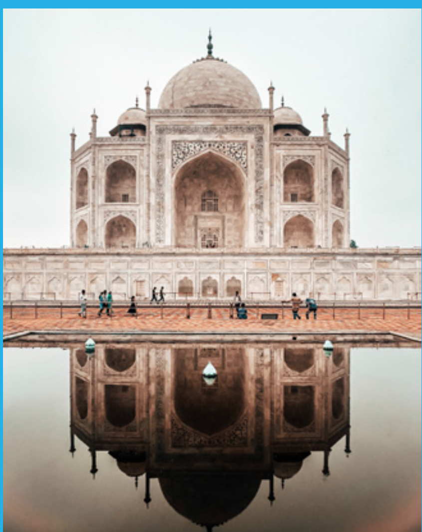
STAKEHOLDER PRESSURE

The insurance industry is witnessing increasing pressure from the stakeholders (i.e., regulators, investors, insurance intermediaries, policyholders etc.) to fully integrate ESG factors, including societal impact, environmental sustainability, inclusive growth, and healthy working environments, into their businesses.

The Insurance Regulatory and Development Authority of India (IRDAI) has been proactive in its approach to push insurance companies to implement ESG specific requirements. Insurers are required under specific guidelines to regularly monitor their internal policies and it must include safeguarding ESG risks involved.

There is also increasing pressure on insurers at a board level, as the priority of management is shifting towards treating data privacy as an important indicator of a company's ability to provide sustainable and ethical growth.

The Indian insurance industry must take a multistakeholder approach to ESG, looking at it with a 360-degree view.



"ESG IS MORE THAN TICKING BOXES. IT'S ABOUT MAKING A DIFFERENCE – FOR THE BUSINESS AND ALL ITS STAKEHOLDERS."

SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

UNDERWRITING SUSTAINABILITY

According to the Climate Risk Index 2023, India is among the top three most exposed countries in the world to extreme weather events.

The Indian insurance market also has been affected by various environmental and social factors in recent times. Issues ranging from water scarcity to reducing CO_2 emissions and meeting demands to create renewable sources of energy have paved the way for efficient and empathetic insurance underwriting.

There is a perception that the traditional underwriting approaches are not enough to identify complex risks that come with climate change and that it is hard to assess the wide range of risks from climate change.

As a result, underwriters are now expected to change their underwriting standards according to ESG principles, and are now required to focus on reducing insurers' exposure.

"INSURERS' WILL NEED TO TRANSITION FROM THE TRADITIONAL UNDERWRITING APPROACH AND BASE UNDERWRITING DECISIONS WHILE KEEPING ESG IN MIND."

SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

ENVIRONMENTAL RISKS

Climate change is one of the most potent challenges the Indian insurance industry has faced in recent times.

Insurers in India are now moving towards incorporating climate-related risks in underwriting and investment policies, for example the reduction of Greenhouse Gases (GHG) emissions from thermal coal will facilitate the transition towards a cleaner future.

Many insurers in India intend to stop providing insurance or risk management services for new thermal coal mines or major pollutants, and for prospective clients that derive a significant amount of revenue from mining thermal coal. There is also a growing shift towards renewable energy. This emphasises the changing priorities for insurance companies, who are now actively pursuing environmental and social benefits in under writing as well as in their investment decisions.

"INSURERS' ESG STRATEGIES NEED TO REVOLVE AROUND IMPROVING THE CLIMATE RISK RESILIENCE OF INSURED CUSTOMERS, BUSINESSES, AND PROPERTIES."

SAKATE KHAITAN, SENIOR PARTNER, KHAITAN LEGAL ASSOCIATES

KEY ESG ISSUES:

- Regulation
- Stakeholder pressure
- Social inequality

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

133
Registered firms

€15.5 BILLION
Value of Premia

BEALE & CO
IRELAND

There is a growing awareness of ESG as an important topic within the Irish insurance market. As well as the impact on profitability, insurers are being forced to meet tighter regulatory requirements. The largest difference for organisations has come from regulatory costs, pressure for profitability, and reporting requirements.

As the fifth largest market for insurance in the EU, Ireland is a well-regarded international hub for the industry. Ireland's regulatory bodies are informed on ESG-related issues by developments at the EU level. There is a strong awareness of ESG issues at certain levels of the industry, but this varies significantly by role.

One key challenge (and opportunity) for the industry is how insurers respond to the changing and emerging risk landscape, and begin investing in a transition towards sustainable businesses, economies and societies.

Blasket Island, County Kerry, Ireland

ESG REGULATION

Regulation of ESG matters is becoming an increasingly important consideration for Irish insurers. In November 2021, the Governor of the Central Bank of Ireland outlined their supervisory expectations on climate and other ESG issues, which include:

- Governance – Firms should openly demonstrate board ownership of risks that impact their firm and promote a culture that focuses on ESG-related issues
- Risk Management Framework – Firms need to understand the impact that ESG-related issues can have on the risk profile of the firm, and need to enhance their existing risk management frameworks to ensure robust risk identification, measurement, monitoring and mitigation
- Disclosures – Insurers must be particularly wary of practices such as "greenwashing" where a company exaggerates its environmental credentials to attract investment.

The Governor noted that these key areas may evolve with international developments and would also be informed by individual experience.

> "THE GOVERNOR OF THE CENTRAL BANK OF IRELAND HAS MADE IT CLEAR THAT INSURANCE COMPANIES MUST TAKE AN INCREASINGLY ACTIVE ROLE ON ESG."
>
> SARAH CONROY, PARTNER, BEALE & CO

STAKEHOLDER PRESSURE

Insurers are facing increased pressure from stakeholders, according to a report from Sustainable Finance Ireland (SFI) released in March 2023. The report also acknowledged the scale of regulatory change at a local and European level and recognised the need to improve awareness of ESG matters within the insurance industry.

According to the report, 59% of Irish insurers stated that stakeholders had started asking them about their ESG performance, while 37% had lost work due to ESG issues within the business.

A key observation in the report is that reporting should cover both the risks posed to the company by sustainability, and the risks posed to society and the environment by the company's actions. Above all, communication should prioritise important stakeholder concerns.

THE IMPORTANCE OF SOCIAL RESPONSIBILITY

In mid-2017, Ireland's first National Plan on Business and Human Rights was released, in which it outlined legislation to support the CSR frameworks within the insurance industry. There is a clear shift of responsibility to respond to social inequality onto businesses, that are likely to come under greater scrutiny from an ESG perspective.

The SFI report stated that the number of insurers that expect that social issues will be incorporated into company policy and strategy reached 69% in March 2023. This reflects their clients' desire for these firms to consider social issues when making investment decisions. The report shows that 53% of consumers believe it is important that a company has a positive record of social responsibility and good corporate governance.

> "IT HAS NEVER BEEN MORE IMPORTANT FOR INSURANCE COMPANIES TO RECOGNISE THE ROLE THEY PLAY AND TO UNDERSTAND HOW ISSUES OF SOCIAL INEQUALITY MUST IMPACT THEIR ASSESSMENT OF THEIR INSURED'S RESPONSE TO THESE ISSUES."
>
> SARAH CONROY, PARTNER, BEALE & CO

KEY ESG ISSUES:

- Regulation
- Climate risk management
- Sustainable investments

INSURANCE INDUSTRY AT A GLANCE

LOW
The Economist Intelligence Unit's ESG Rating

250
Registered firms

€110 BILLION
Life insurance

€40 BILLION
Value of Premia

BTG LEGAL

ITALY

The EY Sustainable Finance Index (the global benchmark that compares more than 1,100 financial services companies worldwide in relation to ESG parameters) ranked Italian insurance companies first in the world for reducing and limiting their environmental impact (8.4 out of 10) and for energy management and climate change.

The role of companies, and insurance companies specifically, is crucial to the process of ecological transition, as they provide a strong incentive to increase "green" choices. Italy was one of the first countries in the world to focus on ESG issues. According to a 2022 estimate, about 78% of people in Italy declared that their choice of insurance company was based on its environmental impact and about 62% would be willing to pay a higher premium for products with a positive environmental impact. Moreover, those most interested in sustainability appear to be women and young people. However, only 11% of Italians held investments in ESG-related products in 2022. Although, this percentage is expected to increase.

Amalfi coast, Italy

CLIMATE RISK MANAGEMENT

Climate change is leading to an increased number of extreme weather events such as floods, fires, storms and droughts. Insurance companies need to adopt a climate risk management strategy that includes assessing the risk, mitigating it, diversifying investments and spreading the risk through reinsurance. A growing number of consumers want to make lifestyle choices that help mitigate environmental impact and adapt to its consequences in Italy and elsewhere. This could include weather alerts, a 'repair rather than replace' programme for home appliances and mobile phones, or even discounts on insurance premiums for homeowners who reduce the energy consumption of their homes. Consumers are also expected to be willing to pay more for insurance products that have a positive impact on the environment.

"ITALIAN INSURANCE COMPANIES COULD ADOPT A STRATEGY OF INVESTMENT DIVERSIFICATION AND RISK SPREADING THROUGH REINSURANCE."

ALBERTO BATINI, SENIOR PARTNER, BTG LEGAL

SUSTAINABLE INVESTMENTS

Most Italian insurance companies have incorporated sustainability criteria into their investment decisions. The ability to combine social and environmental impact with a fair financial return is the main motivation for insurance companies to invest in ESG.

As expected, the regulatory environment is also evolving and requires European companies to declare how their assets align to regulation. Indeed, in the EU, investment in financial instruments that meet high ESG standards is becoming increasingly important, as is the disclosure of climate-related information about the underlying assets in structured financial instruments.

Indeed, most Italian insurance companies include products classified as Articles 8 or 9 of the SFDR in their offerings. Sustainable investment policies cover the majority of total investments and are applied through various ESG strategies, with a prevalence of exclusions. Less widespread, but still relevant, is the engagement strategy, promoted through the numerous national and international initiatives.

"FOR ITALIAN INSURANCE COMPANIES, SUSTAINABLE INVESTMENTS REPRESENT AN OPPORTUNITY TO ACHIEVE FINANCIAL AND RISK MANAGEMENT BENEFITS."

SILVIA TRAVERSO, SENIOR PARTNER, BTG LEGAL

REGULATION

In Italy, there is no national legislation on ESG. On the contrary, such legislation is provided at European level, with the adoption of regulations on sustainability reporting in the financial services sector (SFDR – Sustainable Finance Disclosure Regulation), subsequently integrated and amended by Regulation (EC) No. 2020/2852 (TR – Taxonomy Regulation). The new Article 8 defines adequate disclosure without duplication of other requirements and with due regard to the availability of data.

Regulation (EC) No. 2020/2852 introduced a new structure of eco-friendly economic activities into the European regulatory system, which consists of a classification of activities that can be considered sustainable on the basis of EU environmental objectives and other social clauses.

Most Italian insurance companies have included in their offering products classified as Articles 8 or 9 according to SFDR (the former "promotes" ESG characteristics and the latter establishes measurable ESG "objectives").

Moreover, a proposal for an amendment to the ITS (Implementing Technical Standards) on the integration of ESG indicators into quantitative solvency reporting models is currently being drafted by the EIOPA for European institutions.

"ITALIAN INSURANCE COMPANIES WILL HAVE TO ADOPT MEASURES TO ENSURE COMPLIANCE WITH THE REGULATION, AND IMPLEMENT NEW ESG REPORTING SYSTEMS."

GIORGIO GRASSO, SENIOR PARTNER, BTG LEGAL

KEY ESG ISSUES:

Avoiding overregulation and the 'gold plating' effect

Proposal for a new sustainable pension product

Implementation of scenarios related to climate change risks in the ORSA report

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

280
Registered firms

€57 BILLION
Value of Premia

MOLITOR AVOCATS À LA COUR

LUXEMBOURG

Legislative elections will be held in Luxembourg in October of this year. In light of this, the Association of Insurance and Reinsurance Companies of the Grand Duchy of Luxembourg (ACA) published a document entitled "Legislative elections 2023: the nine priorities of Luxembourg (re) insurance" in which it brings the key issues for the (re)insurance industry to the attention of the political parties in view of the upcoming elections.

In this document, the ACA uses the example of ESG regulation to illustrate the risk of overregulation and gold plating. One of the ACA's demands is to also set up a sustainable Luxembourg pension product in order to increase the use of collective and individual pensions.

Adolphe bridge, Luxembourg City

AVOIDING OVERREGULATION AND THE 'GOLD PLATING' EFFECT

As the ACA points out, overregulation is becoming an increasing challenge for (re)insurance companies operating in Luxembourg. One example is the implementation of ESG criteria and codes of conduct. In light of this, the Luxembourg regulator (the CAA) published an information note dedicated to the regulatory issues relating to sustainable finance. The CAA wanted to highlight to the national operators, new and upcoming regulations that would have an impact on them. It noted the numerous challenges for integrating sustainability elements into the activities of the insurance sector and the evolution of regulation related to climate-change risks.

The regulator drew up a table summarising the texts on sustainable finance that should be considered by the Luxembourg insurance operators, while also revealing what the CAA's expectations are towards these operators. The note additionally specifies that the CAA will gradually take steps towards including checks and ensuring compliance with these regulatory developments.

> "THE PRESERVATION OF THE INTERNATIONAL COMPETITIVENESS OF THE LUXEMBOURG INSURANCE SECTOR, AND THEREFORE OF THE COMPANIES AND JOBS LINKED TO IT, DEPENDS ON THE RAPID IMPLEMENTATION OF THE EUROPEAN DIRECTIVES AT NATIONAL LEVEL AND THE AVOIDANCE OF GOLD PLATING."
>
> MICHEL MOLITOR, MANAGING PARTNER, MOLITOR AVOCATS À LA COUR

IMPLEMENTATION OF SCENARIOS RELATED TO CLIMATE CHANGE RISKS IN THE ORSA REPORT

The CAA recently published a state of play on the implementation of sustainability aspects in the ORSA report of national operators. Analysis of the ORSA report confirmed the growing awareness of climate change risks by companies between 2019 and 2021. When the ORSA report was carried out in 2019, life, non-life, and large reinsurance companies dealing with these risks represented only between 19% and 33% of the panel depending on the sector of activity, compared with between 42% and 76% during the 2021 exercise. However, the CAA notes that there is still room for improvement, particularly with regard to the climate change risk scenarios specific to each company, and the consideration of sustainability elements as an overall solvency requirement. Following the recent publications from EIOPA and the CAA, the CAA expects a deeper integration of these risks in the next ORSA reports from all national operators and encourages all operators under its supervision to make the necessary efforts to improve this coverage rate.

Finally, the CAA emphasises that the ORSA must include an analysis of the impacts of climate change on all activities and specific stress tests for the companies concerned (depending on their level of exposure). In this context, the CAA warns that the prospective long-term analyses required for this exercise may lead to developments that the CAA asks companies to anticipate, particularly with regard to actuarial projection models and related technical expertise.

> "EFFORTS HAVE BEEN MADE BY OPERATORS, BUT MORE NEEDS TO BE DONE TO COMPLY WITH GOVERNANCE AND CLIMATE CHANGE RISK ASSESSMENT OBLIGATIONS."
>
> ARIANE WOURWOUKAS, SENIOR ASSOCIATE, MOLITOR AVOCATS À LA COUR

PROPOSAL FOR A NEW SUSTAINABLE PENSION PRODUCT

The ACA has urged the government to actively encourage the use of group supplementary pensions and individual retirement plans. Concerning this last pension pillar, the ACA is particularly supportive of the implementation of a sustainable Luxembourg pension product. It specifies that "the transition to a low-carbon, climate-resilient economy over the next 20 years will require significant investment and, therefore, sources of private capital on a much larger scale than before."

Therefore, a more sustainable approach to finance should be developed by helping individuals achieve their long-term financial goals, including through personal pension savings plans (premiums paid into a private pension plan, at the initiative of the taxpayer).

The ACA proposes the creation of a Luxembourg green pension product for its residents and taxpayers. The product should have the following characteristics: (a) a flexible investment strategy; (b) be composed of long-term savings products; and (c) management that operates under the principle of sustainable investment.

> "AN AGING POPULATION AND THE RESULTING SUSTAINABILITY OF PENSIONS IS A MAJOR CHALLENGE FOR LUXEMBOURG. RELYING SOLELY ON THE STATUTORY PENSION MAY NOT BE SUFFICIENT AND AWARENESS OF THE OTHER TWO PENSION PILLARS MUST BE RAISED IN ANTICIPATION OF DEFICITS FOR FUTURE GENERATIONS."
>
> SOPHIE LAMOTHE, COUNSEL, MOLITOR AVOCATS À LA COUR

KEY ESG ISSUES:

Human rights and non-discrimination

Measures to track environmental impact

The expectations of the Taskforce on Climate-Related Financial Disclosures (TCFD) for Mexico

INSURANCE INDUSTRY AT A GLANCE

MODERATE
The Economist Intelligence Unit's ESG Rating

114
Registered firms

$35.1 BILLION
Value of Premia (2021)

OCAMPO 1890

MEXICO

ESG guidelines and criteria are playing an increasingly important part in the Mexican insurance market.

The ESG trend with the greatest impact relates to the companies' attitudes to socially responsible conduct, while their environmental responsibility is increasingly considered in settling disputes. This increased scrutiny on insurers has repercussions in Mexico for underwriters, who are paying more attention to ESG concerns.

Mexico is entering a phase where insurers' decision making in this area is increasingly traceable because of the digitisation of stakeholder information.

Tulum Mayan Ruins, Mexico

MEASURES TO TRACK ENVIRONMENTAL IMPACT

Given the increasing relevance of ESG criteria in the insurance market, insurers in the energy space and energy companies will have to prioritise their reporting of their environmental impact. There will also be increased focus on developing alternatives that represent sustainable practices for the insurance industry to better underwrite climate risks.

Furthermore, the reduction of methane emissions and care of protected areas from energy practices will be more important and subject to a greater level of scrutiny. As several insurers are already beginning to issue internal policies not to insure companies with unsustainable practices, reporting and data measuring environmental impact and carbon footprint will become more relevant in the sector.

"THE REQUIREMENT FOR DATA TO MEASURE THE ENVIRONMENTAL IMPACT OF COMPANIES WILL BECOME INCREASINGLY IMPORTANT FOR INSURERS' DECISION MAKING."

MARCO ANTONIO TAPIA, OCAMPO 1890

THE EXPECTATIONS OF THE TASKFORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES (TCFD) FOR MEXICO

As more ESG criteria continue to appear, the Mexican regulatory environment is also taking off. Nowhere is this more true than in the space around the Taskforce on Climate-related Financial Disclosures (TCFD). Insurance companies are issuing more and more guidelines and public knowledge reports containing the risks and the taxonomy of risks in environmental matters.

The arrival of better reports and regulation in this sector will be welcomed, with the leading firms gaining a competitive underwriting advantage. We are also likely to see more frequent innovation in products relating to the management of climate change risk.

"THE ISSUANCE OF TCFD GUIDELINES AND REPORTS IN MEXICO WILL BECOME MORE IMPORTANT AS ENVIRONMENTAL RISK PRODUCTS BECOME MORE INNOVATIVE."

MARCO ANTONIO TAPIA, OCAMPO 1890

HUMAN RIGHTS AND NON-DISCRIMINATION

In Mexico, as in the rest of the world, human rights are becoming an increasingly important consideration for companies who want to be seen as socially responsible. There is also the added complication of the judicial system's protectionist tendency to safeguard individuals against bad practice, which is having a significant impact on the insurance market.

As a result, there is an additional requirement for insurers to provide guidance on good social practices when engaging with insurers, to ensure that they select suitable risks that match the insureds' priorities. The end result of this is that insurers are more cautious in their selection of risks, especially within the liability sector.

"CORPORATE DUE DILIGENCE IS AN INCREASINGLY IMPORTANT ELEMENT OF ESG THAT INSUREDS MUST COMPLY WITH TO INCREASE THEIR PROFITABILITY AND INSURABILITY."

MARCO ANTONIO TAPIA, OCAMPO 1890

KEY ESG ISSUES:

- Climate Change
- Decarbonisation of investments
- Stakeholder pressure

WIJ ADVOCATEN

NETHERLANDS

The Dutch insurance sector was the first in the world to enter into a broad and ambitious agreement with the government, unions and NGOs to commit to themes in the areas of both environmental and social conditions and corporate governance (IMVO Convenant Verzekeringssector 2018). This insurance industry agreement is based on the OECD Guidelines for Multinational Organisations and UN Guiding Principles on Business and Human Rights, among other things.

The integration of ESG into the investment policy, strategy, underwriting and risk management cycle of insurers is also something that is now closely monitored by the Dutch Financial Supervisory Authority (DNB). In 2022, DNB carried out its first onsite investigations into how insurers integrate ESG-related risks into their risk management. DNB found that all insurers are pursuing a positive impact on ESG-related themes and have strategic (investment) tools in place, but the biggest hurdle seems to be the development and implementation of unified and quantifiable performance indicators and reporting systems (even with additional national and European rules and regulations).

Keizersgracht Canal, Amsterdam, Netherlands

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

136
Registered firms

€82.5 BILLION
Value of Premia

CLIMATE CHANGE

Climate change brings more than one challenge to the insurance market. In its financial report on the Dutch insurance market in 2021, the Dutch association of insurers (Verbond van Verzekeraars) points out that 2021 was "mainly dominated by climate-related damage claims" including claims resulting from "excessive precipitation, (fall) winds and floods in the southern part of the country".

The Netherlands has seen a rise in climate change litigation in recent years. The Urgenda (2019) and Shell (2021) judgments have received international attention as landmark cases showing new ways in which climate activists pursue their goals. These judgments make clear that insurers and other companies should be aware of the potential impact of these developments and in particular their exposure from a liability perspective.

"IT IS DIFFICULT TO OVERSTATE THE IMPACT THAT CLIMATE CHANGE HAS, AND WILL CONTINUE TO HAVE, ON THE OVERALL PERFORMANCE OF THE INSURANCE MARKET IN THE NETHERLANDS."

MARIJKE LOHMAN, PARTNER, WIJ ADVOCATEN

STAKEHOLDER PRESSURE

Dutch corporations are experiencing higher levels of public scrutiny on ESG-related themes. Insurance companies are no exception. Insurers are also actively marketing greener aspects of their business. At the same time, insurance companies are also expected to use their influence (such as pricing mechanisms) to stimulate their insureds to be on their best behaviour when it comes to ESG-related themes.

"INSURERS RECOGNISE THAT THE ESG TRANSITION OFFERS OPPORTUNITIES FOR LONG-TERM VALUE CREATION."

SUZANNE BORDEWIJK, PARTNER, WIJ ADVOCATEN

DECARBONISATION OF INVESTMENTS

In 2018, the insurance industry agreement (IMVO Convenant Verzekeringssector) underlined the responsibility of insurers to safeguard ESG themes when making investment decisions.

Additionally, most participants in the Dutch financial sector, including the Dutch association of insurers (Verbond van Verzekeraars), signed the so-called Climate Commitment (Klimaatcommittment) in 2019.

The Climate Commitment formed part of the Dutch Climate Agreement (Klimaatakkoord) aiming to reach the goals set by the Paris Agreement in 2015.

These industry initiatives are designed to have an impact on insurers' investment decisions and to contribute to cleaner and greener investments.

"INSURERS ARE MORE THAN AWARE OF THEIR RESPONSIBILITY TO SAFEGUARD ESG THEMES, INCLUDING THE IMPORTANCE OF DECARBONISATION, WHEN MAKING INVESTMENT DECISIONS. THE IMPLEMENTATION OF UNIFIED AND QUANTIFIABLE PERFORMANCE INDICATORS AND REPORTING SYSTEMS WILL HELP INSURERS TO TAKE ON THAT RESPONSIBILITY."

MARIJKE LOHMAN, PARTNER, WIJ ADVOCATEN

KEY ESG ISSUES:

- Social responsibility and community – climate change
- Fairness – MBIE changes (regulatory)
- Privacy – (regulatory)

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

89
Licensed insurers

NZD$ 8751 MILLION
Value of Premia

DUNCAN COTTERILL

NEW ZEALAND

ESG has been at the forefront of many discussions, legal and business changes in the New Zealand insurance sector. Following the Royal Australian Insurance Inquiry in 2020, New Zealand launched its own reforms to ensure governance practices reflected those issues identified as problematic. The Insurance Contracts Law Reform Bill is the latest in this process, supported by the recent passing of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021, which imposes mandatory climate-related disclosures for all insurers.

But more pressing are the recent extreme weather events New Zealand has experienced in the past year. Starting with flooding and slips in Nelson in August 2022, through to the damage caused by Cyclone Gabrielle to large sections of the North Island, particularly Gisborne and Hawkes Bay. This is a direct impact of climate change.

Queenstown, New Zealand

SOCIAL RESPONSIBILITY AND COMMUNITY – CLIMATE CHANGE

Climate change is front and centre for the industry. Two extreme weather events in January and February 2023 have seen a significant number of commercial and residential insurance claims. Insurers are now looking beyond the influx of claims to preventative measures. This includes changes at central and local government levels to ensure houses are built in appropriate areas, those involved in changing the land for profit are managing resources appropriately, and coastal protection zones are increased. Insurers and industry bodies have been vocal about the need for a change in approach.

There has been a rise in local authorities prosecuting companies for damage caused to land and property during weather events. There has also been a claim by a private citizen against "high emitting" companies for the adverse impacts that climate change has had on his ancestral lands, which was recently heard by the Supreme Court. These actions reflect a growing trend that holds companies responsible for practices that are seen to contribute to climate change. We expect there will be geographical areas and work practices that will become uninsurable, or will require increased premia and case-by-case underwriting, and this is where we expect insurers will take a lead to account for climate risks.

"IT'S NOT JUST MITIGATION ANYMORE, IT IS ADAPTATION. IT'S NOT JUST ENCOURAGING CARBON CREDITS, IT'S ADAPTING THE WAY WE LIVE. CHANGES BY INSURERS TO THEIR POLICIES AND THEIR PROFILE IN THIS SPACE CAN BE PART OF THE TRANSFORMATION ON HOW WE LIVE."

AARON SHERRIFF, PARTNER, DUNCAN COTTERILL

PRIVACY – (REGULATORY)

Changes to New Zealand's privacy law, while not as stringent as the GDPR, still require businesses to take ownership of the storage of data. This is a key factor considered in the coverage of cyber policies. While cyber insurance uptake is slow in New Zealand, there is an increasing demand on businesses to also now be socially responsible.

Status checks on the New Zealand situation have demonstrated that there are insufficient processes in many businesses for cyber policies to proceed. However, when a breach does occur, there is a higher level of social responsibility placed on the insurer with regards to the privacy of the impacted parties. In particular, during the underwriting assessment, insurers are asking if a business has appropriate systems in place to manage and store data correctly, and whether the insured respond quickly and with the appropriate process when there is a breach. Insurers are then often fully involved while a data breach is still occurring.

Insurers are now therefore holding some of the responsibility to ensure that businesses are acting appropriately with information they hold.

"COMMUNICATING CHANGES AND ENSURING CLIENTS UNDERSTAND THE IMPORTANCE OF KEY CONTROLS AND PRESENTING THESE CONTROLS TO INSURERS IN THE BEST LIGHT REMAINS THE NUMBER ONE CHALLENGE TO OBTAINING MEANINGFUL CYBER INSURANCE TERMS."

TANYA WOOD, PARTNER, DUNCAN COTTERILL

FAIRNESS – MBIE CHANGES (REGULATORY)

Reports from the Financial Markets Authority and the Reserve Bank of New Zealand highlighted failures in how conduct risk is managed in the financial sector, particularly among banks and life insurers. The Ministry of Business, Innovation and Employment (MBIE) is now reviewing New Zealand's insurance contract law to ensure it is playing an effective role in facilitating well-functioning insurance markets.

A well-functioning insurance system is integral to ensuring insurance continues to serve all New Zealanders. MBIE wants to safeguard the regulation of insurance contracts to ensure that consumers, businesses and insurers can transact with confidence in a fair, efficient and transparent way.

We have been assisting many insurers with their policy reviews in this process, a step above the "plain English" approach moving to now ensure there is real transparency.

"THE UNDERLYING THEME OF THE PROPOSAL BY MBIE IS TO CREATE PROPORTIONALITY BETWEEN THE INSURANCE CONTRACT AND THE RIGHT TO RECOVER."

PROFESSOR ROB MERKIN KC (HON), CONSULTANT, DUNCAN COTTERILL

KEY ESG ISSUES:

- Regulation and responsibility in listed companies
- Gender equality
- Circular insurance – sustainable claims handling

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

28
Registered firms

78 BILLION NOK
Value of Premia

RIISA & CO
NORWAY

ESG factors have had a strong impact on the Norwegian insurance market. Norway has committed to the Paris Agreement to reduce greenhouse gas emissions by between 50% and 55% between 1990 and 2030.

Norway also aims to become climate neutral by 2030 through the EU quota system and international collaboration. Norway has already implemented the Non-Financial Reporting Directive (NFRD) and based on political signals it is expected that it will also follow the Corporate Sustainability Reporting Directive (CSRD) on obligatory reporting.

Many Norwegian listed companies introduced in 2023 are leading the way in terms of ESG compliance. According to the Dow Jones Index, Storebrand is a leader in sustainability due to its sustainable investments in companies that are committed to fulfilling the UN's Sustainable Development Goals. Insurer If Skadeförsäkring has committed to implementing ESG regulations under the UN Global Compact and the Science Based Target Initiative that provides guidance on how to pursue their Net Zero targets.

The concept of *circular insurance* has specifically been incorporated into claims handling. Repairing and recycling are increasingly chosen over replacing with new products, as damage of cars and mobile phones is so frequent.

Tromso Bridge Tromsobrua, Norway

REGULATION AND RESPONSIBILITY IN LISTED COMPANIES

It is expected that Norway will implement the CSRD and therefore require sustainability reporting from large and listed companies. Annual reporting from listed insurance companies already proves that they are ahead of the curve and are carrying out their responsibilities. Reporting to stakeholders requires very specific and long-term goals for reducing CO_2 emissions, responsible procurement and investments, and a diverse and green workplace.

"MANY NORWEGIAN INSURANCE COMPANIES ARE ALREADY COMMITTED TO UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS, AND ARE TARGETING GREEN INVESTMENTS."

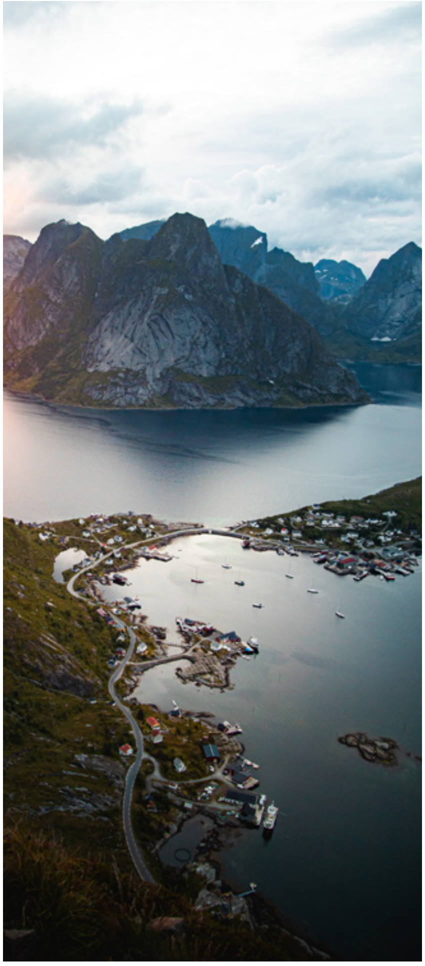
JOACHIM MIKKELBORG SKJELSBÆK, PARTNER, ADVOKATFIRMAET RIISA

GENDER EQUALITY

Gender equality has been a key topic for many years. Listed Norwegian insurance companies report around 18-25% female representation on their board of directors, 15-30% in senior management positions and 40% in middle management positions. Reporting proves that insurers are targeting everything from 33% representation at board level, 40% in management positions, 50:50 for all managers, directors and employees. Insurance companies are also demanding that their suppliers and providers have gender equality.

"PRIORITISING GENDER BALANCE NO LONGER ONLY PROVIDES A COMPETITIVE ADVANTAGE, BUT IS NOW CONSIDERED A NECESSITY IN THE NORWEGIAN INSURANCE MARKET."

JOACHIM MIKKELBORG SKJELSBÆK, PARTNER, ADVOKATFIRMAET RIISA



CIRCULAR INSURANCE – SUSTAINABLE CLAIMS HANDLING

Insurers have previously reported that millions of claims are made annually for car repairs and replacement of spare parts, car windows and mobile phone screens making it a very carbon-intensive process. However, under the new circular insurance concept, companies have reported lower CO_2 emissions due to changing attitudes towards 'green' claims handling.

"CIRCULAR INSURANCE IS INCREASINGLY BECOMING A PART OF STANDARD CLAIMS-HANDLING PROCEDURE."

JOACHIM MIKKELBORG SKJELSBÆK, PARTNER, ADVOKATFIRMAET RIISA

KEY ESG ISSUES:

- Regulation
- New insurance products
- Social awareness

INSURANCE INDUSTRY AT A GLANCE

LOW
The Economist Intelligence Unit's ESG Rating

31
Registered firms

€14.7 BILLION

PLN 69.2 BILLION
Value of Premia

WKB LAWYERS

POLAND

The local Polish insurance market is relatively well developed. There are companies belonging to European/international capital groups such as Allianz, Talanx and Chubb. There are also big local market players, the biggest of which is PZU Group, a state-owned company offering life and non-life insurance. Additionally, there are EU-based insurers underwriting insurance under the freedom of services in Poland. The most competitive segment of the local market is motor insurance including motor third party liability.

Currently, ESG seems to have a limited impact on the insurance sector in Poland. However, insurance companies are beginning to implement ESG into their activities. Importantly, one of the market players promoting its ESG oriented approach is PZU Group (the market leader in Poland).

The most significant ESG regulation is applied on unit-linked life insurance, where there is a binding law (EU PRIIP Regulation) regarding the adequate assessment of unit-linked insurance products.

Cloth Hall, Krakow, Poland

REGULATION

Regulatory developments regarding ESG are not currently taking place at the national level but at the EU level, so insurance companies operating in Poland are adapting to EU law requirements.

The main change is the Corporate Sustainability Reporting Directive (CSRD), a new guideline that has been in force since 5 January 2023. The aim of the new directive is to improve the reporting of companies on sustainability. Insurers have well-developed non-financial reporting, so the implementation of additional ESG criteria into reporting seems to be the next step in that development.

Additionally, the ESG-related changes in the Delegated Regulation (EU) 2015/35 have been in force since 2 August 2022. This has an impact on Polish life insurers offering PRIIPs – the new law requires changes in the documentation used in the process of offering such products.

As far as new products based specifically on "green" investments are concerned, the challenge is to avoid greenwashing.

"IN POLAND, ESG REGULATIONS STILL HAVE A LIMITED IMPACT ON INSURERS. THE MOST SIGNIFICANT CHANGE IS TO UNIT-LINKED POLICIES (PRIIPS)."

JAKUB POKRZYWNIAK,
PARTNER, WKB LAWYERS

NEW INSURANCE PRODUCTS

Recently, Polish insurers have been increasingly developing the decarbonised products sector, which can support energy transition. Insurance companies are offering new insurance products for renewable energy source (RES) installations, including wind farms and hydroelectric power plants.

They are increasingly creating investment products and strategies for this purpose. For example, PZU has introduced the Green Energy Sector Shares Index Fund this year.

Recently, two new unique insurance products, PZU Energia Wiatru and PZU Energia Słońca, have been introduced for corporate customers who want to be part of the transformation.

Similar measures are already in place with some other insurers operating in the market investing in transformational projects (e.g. wind farms) and corporate bonds of companies developing green projects.

Such topics are being addressed by the Polish Chamber of Insurance.

"POLISH INSURERS ARE STARTING TO DEVELOP AND INTRODUCE NEW TAILORED INSURANCE PRODUCTS DEDICATED FOR THE RES SECTOR."

JAKUB POKRZYWNIAK,
PARTNER, WKB LAWYERS

SOCIAL AWARENESS

Consumers in Poland are becoming increasingly aware of climate issues and are beginning to look for ESG-conscious insurance companies. This is providing a catalyst for insurers to implement ESG into their daily business operations. It also provides the opportunity to offer sustainable solutions to individual customers.

For example, Credit Agricole Assurances offers life and endowment insurance investing in European companies that are preparing to lower their carbon footprint.

Parametric insurance has also started to develop in Poland. However, such products are not yet offered on a large scale and it is difficult to predict whether they will be successful. The first attempts to promote it in Poland have not been very promising unlike in France and Switzerland.

"CONSUMERS IN POLAND ARE BECOMING MORE AND MORE AWARE OF CLIMATE ISSUES AND THE YOUNGER GENERATION, IN PARTICULAR, ARE LOOKING FOR ESG-CONSCIOUS INSURANCE COMPANIES."

JAKUB POKRZYWNIAK,
PARTNER, WKB LAWYERS

KEY ESG ISSUES:

- Sustainability
- Climate change
- Impact of Solvency II

B&A BLANCO Y ASOCIADOS ABOGADOS

SPAIN

The Spanish insurance market has been committed to ESG policies for many years due to the increasing demands of society to acquire sustainability-minded insurance contracts.

The commitment of the sector is so deep that in 2022 UNESPA (Spanish Union of Insurance and Reinsurance Entities) presented its Estamos Seguros Report, which gave a comprehensive overview of all ESG matters.

However, the lack of a definition of sustainability still poses a real problem to insurance companies who have, since August 2022, been required to integrate it into their operations.

The industry must also implement measures to assess risks in adverse sectors such as oil and gas.

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

199
Registered firms

€64.67 BILLION
Value of Premia

Barcelona, Spain

SUSTAINABILITY

Since August 2022, insurance companies have been required to integrate sustainability into their operations.

The main challenge of these regulations is the lack of a specific definition as to when an activity is sustainable. The requirement comes from two regulations approved in 2021 that encourage companies to progressively adopt measures to combat climate challenge. This includes sectors of the economy exposed to natural disasters and those that could benefit from investing in sustainable projects.

"IF INSURERS DO NOT FORM WORKING GROUPS TO ACHIEVE THIS GOAL. THEY WILL LAG BEHIND OTHER BUSINESS SECTORS."

SANTIAGO MARTÍN, PARTNER, BLANCO Y ASOCIADOS

IMPACT OF SOLVENCY II

With the introduction of Solvency II, insurers are required to implement internal systems with the aim of integrating sustainability requirements into their internal remuneration structures and product governance systems.

This regulation is crucial to improve underwriting and the make up of reserves and provisions, while simultaneously implementing measures to assess risks in adverse sectors (waste management, oil, gas, etc.).

Insurance companies are confident this will generate synergies and cost savings that will translate into offering new environmentally conscious insurance products.

"IF REGULATORS AND INSURANCE COMPANIES JOIN FORCES, ESG GOALS WILL BE ACHIEVED AHEAD OF SCHEDULE."

ADRIÁN MARTINEZ DE VELASCO, SENIOR ASSOCIATE, BLANCO Y ASOCIADOS

CLIMATE CHANGE

Spanish insurers and reinsurers are facing increasing pressure to integrate climate change into their commercial strategy and their risk management.

Employees need to be made aware of products and services of specific companies to ensure that they meet ESG requirements. Insurance companies should know and understand the risks and business policy of insureds to ensure that they are ESG compliant.

Many insurers are already beginning to implement systems (such as artificial intelligence) in order to get to know their policyholders better. This will have a direct impact on climate change, as knowing the insured's risks means that environmentally conscious products can be offered.

"THE INSURANCE SECTOR IS CUTTING-EDGE, LEADING THE WAY IN ALL ITS POLICIES. CLIMATE CHANGE IS NO DIFFERENT, WITH ENTITIES ALREADY BEGINNING TO INTEGRATE CUSTOMER AWARENESS INTO THEIR BUSINESS STRATEGY."

FERNANDO BLANCO GAMELLA, PRINCIPAL ASSOCIATE, BLANCO Y ASOCIADOS

KEY ESG ISSUES:

- Public disclosure on climate-related financial risks
- Incorporation of ESG factors into the insurers culture
- Compliance of parametric insurance solutions

INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

188
Registered firms

CHF115 BILLION
Value of Premia

GBF ATTORNEYS-AT-LAW LTD

SWITZERLAND

As the importance of environmental, social and governance (ESG) factors continues to grow, Swiss insurers are adapting their strategies to navigate this new landscape. Although uncertain, ESG risks have potentially far-reaching implications for the insurance industry. Swiss insurers have focused primarily on climate risks, but now need to broaden their analysis to include other ESG risk categories.

Incorporating ESG factors into decision-making is challenging due to complex interdependencies, non-linearities, externalities and long time horizons. To effectively manage and mitigate ESG risks, Swiss insurers need to align their risk culture, policies, appetite and tolerance frameworks, while defining and reviewing processes and responsibilities.

In addition, risk managers must play a dual role: managing and mitigating their own risks, and working with underwriters to engage and advise clients on their risks. This approach offers opportunities for Swiss insurers to innovate and develop new products, such as parametric insurance and other sustainable insurance solutions.

Finally, from 2022, Swiss insurers are required to report and disclose climate-related financial risks as part of their disclosure obligations, which are being closely monitored by the Swiss Financial Market Supervisory Authority (FINMA).

Lauterbrunnen valley, Switzerland

INCORPORATION OF ESG FACTORS INTO THE INSURERS CULTURE

Although uncertain, ESG risks have a potentially far-reaching impact and are becoming increasingly important for insurers. While climate risks are a focus, insurers also need to analyse other ESG risk categories. Pricing these risks is challenging due to complex interdependencies, non-linearities, externalities and extended time horizons.

Beyond quantifying impacts, a proactive approach to managing and mitigating ESG risks is essential. This involves aligning risk culture, policies, appetite, and tolerance frameworks, as well as defining and reviewing processes to address ESG risks in a consistent and transparent manner across the organisation. Risk management should play a dual role: managing and mitigating internal risks, while working with underwriters to engage and advise clients on their risks.

"INSURERS NEED TO INTEGRATE ESG INTO THEIR DNA AND ACROSS THEIR ENTIRE VALUE CHAIN TO BECOME FUTURE-PROOF."

DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

PUBLIC DISCLOSURE ON CLIMATE-RELATED FINANCIAL RISKS

In May 2021, FINMA defined the disclosure requirements for significant financial institutions in the area of climate-related financial risks. The content is based on the widely accepted international recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The requirements are designed to increase the transparency and comparability of climate-related risks in the balance sheets of significant financial institutions.

The largest banks and insurance companies (supervisory categories 1 and 2) must describe their material climate-related financial risks and their impact on their business strategy, business model and financial planning. They must also disclose the process for identifying, measuring and managing these risks, as well as quantitative data, including a description of the methodology used to collect it. Finally, institutions must describe the key features of their governance structure in relation to climate related financial risks.

These ESG-related declarations now form part of the Public Disclosure Report, which must be published on the insurers' website and submitted to FINMA on an annual basis.

"NEW DISCLOSURE REQUIREMENTS FOR INSURANCE COMPANIES ON ESG RISK PRACTICES LEAD TO COMPARABILITY AND NEW COMPETITIVE CRITERIA."

DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

COMPLIANCE OF PARAMETRIC INSURANCE SOLUTIONS

Parametric insurance offers innovative opportunities in product development, underwriting and claims management. It uses pre-defined measures based on specific parameters or independent indices (e.g. climate and other environmental parameters) to determine insured events. If the metric is exceeded or not met, a lump sum indemnity is paid, regardless of the actual loss incurred. However, there are challenges in determining the appropriate insurance payout, and there's a risk of over- or under-compensation. Parametric insurance can be designed as fixed benefit or indemnity insurance, depending on the intentions of the parties. Under the revised Swiss Insurance Contract Act, insurers are required to inform policyholders of the nature of the cover. Failure to do so may give the policyholder the right to terminate the contract.

"PARAMETRIC INSURANCE PRODUCTS SHOULD BE REVIEWED FOR COMPLIANCE WITH THE REVISED INSURANCE CONTRACT ACT."

DOMINIK SKROBALA, PARTNER, GBF ATTORNEYS-AT-LAW

KEY ESG ISSUES:

- Regulation
- Stakeholder pressure
- Social inequality

UK INSURANCE INDUSTRY AT A GLANCE

VERY LOW
The Economist Intelligence Unit's ESG Rating

920
Registered firms

£366 BILLION
Value of Premia

BEALE & CO

UNITED KINGDOM

After a lengthy hard market, there has been some softening over the last year with increased capacity entering the market for certain lines of business, particularly D&O. This has led to a decrease in rates as competition has increased.

The scrutiny on ESG is likely to give rise to insurers looking carefully at proposal forms and the due diligence they carry out to assess their insured's response to ESG. This is likely to primarily affect D&O and financial institutions insurance, but also the professional indemnity policies of firms advising companies on issues such as climate-related financial disclosures. There will therefore be pressures on accountants and auditors who carry out these functions.

Insurers are grappling with a tension between a hesitancy to stop writing business in particular sectors (and for underwriters to consider individual proposals on their merits and facts) and the undoubted heightened risk which comes with the public's growing awareness of ESG-related issues.

Clifton Suspension Bridge, Bristol, England

REGULATION

Governments and regulators in the UK are increasingly focussed on personal, rather than corporate, liability in relation to many issues, including ESG-related matters. As matters stand, the main focus of the regulators is the financial sector (which falls under the purview of the Financial Conduct Authority (the FCA)), however, other sectors also need to be aware of the risks in this regard. Some of the key regulatory risks include:

- Greenwashing – where a company makes misleading statements about its environmental credentials to attract investment.
- Corporate disclosures – in December 2020, the FCA introduced rules for large companies to make financial disclosures in line with the Taskforce for Climate-Related Financial Disclosures (TCFD).
- The FCA's principle 3 requires companies to identify ESG risks relevant to the business and to make the senior management aware of these risks.
- The senior managers and certification regime introduced by the FCA aims to reduce potential harm to customers and to strengthen the integrity of the market by making individuals responsible for identifying and managing ESG risks.

"THE UNPRECEDENTED REGULATORY PENALTIES, AND DRIVE FOR PERSONAL RESPONSIBILITY, SHOULD BE OF CONCERN TO ANYONE CARRYING OUT BUSINESS IN THE UK WITHOUT DUE REGARD TO ESG ISSUES."

ROSS BAKER, PARTNER, BEALE & CO

STAKEHOLDER PRESSURE

On 9 February 2023, ClientEarth, a minority shareholder of Shell, issued proceedings against 11 directors of the company for failure to implement a climate change strategy which was capable of ensuring that Shell could comply with the requirements of the Paris Agreement in relation to global warming.

Whilst ClientEarth will need to persuade the court in the first instance that it has a prima facie case, if this derivative action is allowed to continue it will be the first of its kind in the UK.

These types of derivative action are common in jurisdictions such as the US and Australia. Insurers will be keen to learn whether this case will be allowed to continue in order to assess whether this costly category of litigation might become more typical in the UK Courts.

"IF THIS CLAIM IS PERMITTED TO CONTINUE, OTHER ISSUES, SUCH AS EQUALITY IN THE BOARDROOM AND SOCIAL VALUE PROVISIONS THAT COMPANIES PROVIDE TO THEIR EMPLOYEES MIGHT ALSO BECOME THE FOCUS OF SHAREHOLDER AND / OR EMPLOYEE ACTIONS."

NATHAN PENNY-LARTER, PARTNER, BEALE & CO

SOCIAL INEQUALITY

Claims relating to social inequality can take many forms, whether that be a lack of diversity in the boardroom, issues with harassment or failure to implement working conditions which allow employees appropriately to manage their social wellbeing. This can lead to claims against the company or against its directors and officers.

In addition, professional firms can be placed under the spotlight (as can their professional indemnity insurers) when they are engaged to advise on such measures. This therefore means that consultants such as construction professionals (architects and engineers, for example), accountants and auditors, recruitment consultants, and IT professionals might face more claims from their clients for alleged failures to implement their systems and policies in an appropriate manner.

This could take the form of, for example, an architect failing to follow its client's brief to design a building which is green and energy-efficient.

"ENVIRONMENTAL FACTORS HAVE BEEN THE FOCUS OF ESG. THE COST-OF-LIVING CRISIS AND CONTINUED INEQUALITY MEAN THAT SOCIAL FACTORS NOW REPRESENT INCREASING RISK FOR INSUREDS AND INSURERS."

NATHAN MODELL, PARTNER, BEALE & CO

KEY ESG ISSUES:

- Regulation
- Physical climate risks
- The D&O market at risk from financial instability

INSURANCE INDUSTRY AT A GLANCE

LOW
The Economist Intelligence Unit's ESG Rating

5929
Registered firms

USD$1.4 TRILLION
Value of Premia

UNITED STATES

The US insurance industry is facing a number of ESG-related risks.

In 2022, the US saw one of the costliest storms that it had ever experienced, and it is likely that events of this magnitude will become more frequent. Higher numbers of climate-related natural catastrophes are making parts of the country very high risk to insure or, in some cases (Hurricane Ian), uninsurable. This is causing major challenges, particularly for property insurers.

New regulations are also being put in place to enhance and standardise climate-related disclosures, with the Securities and Exchange Commission (SEC) due to finalise new rules in May 2023. However, there is growing anti-ESG sentiment in particular States, which may ultimately lead to legal challenges.

The recent demise of Silicon Valley Bank has also highlighted the 'G' in ESG as key for insurers, with many market commentators asking how regulators could have improved governance to prevent the collapse, as well as what might be the impact on subsequent litigation.

Golden gate bridge, San Francisco, USA

THE D&O MARKET AT RISK FROM FINANCIAL INSTABILITY

The recent collapse of Silicon Valley Bank has once again raised the issue of governance within financial services. The challenges of the global high interest rate and high-inflation economic environment are increasing the risks for all banks and lenders; and the IMF has met to discuss how to avoid further bank collapses, as well as how to reduce the risks.

The likelihood of further bank defaults also throws up challenges for providers of directors' and officers' insurance; a sector that is only just returning to a more sustainable pricing structure after years of double-digit rate rises. In the case of Silicon Valley Bank, it is likely that if the federal government had not stepped in to guarantee deposits, D&O insurers would have faced a number of significant claims, and there may yet be banks that actually do default. This is a huge looming concern to insurers, one over which they have little control.

It could yet be possible that the entire D&O market sees impacts from financial services defaults that have not yet happened; and this could in turn call into question the governance and reserves of some insurers themselves.

PHYSICAL CLIMATE RISKS

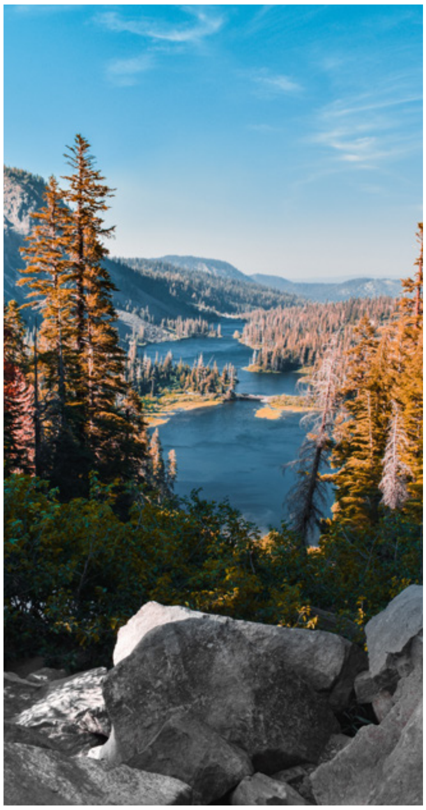
In 2022, the US experienced an astonishing 18 separate weather – or climate-related disasters – that each resulted in at least $1bn in damages. The increasing frequency and severity of natural catastrophes is the major risk for insurers in the US, and its impacts are already being felt. Several of the major hurricanes and wildfires led to insurers increasing prices and, in some cases, exiting high-risk areas.

However, the US remains a heavily insured nation. Currently the 'protection gap' (the difference between total economic losses and the amount that is covered by insurance) is just 58%, one of the lowest on global record. Put simply, the US is a heavy buyer of insurance, and its population expects to be able to buy cover to protect them from major risks. With availability reducing, more needs to be done to deliver protection to at-risk communities, starting with more investment in technology and infrastructure to mitigate extreme weather-related risks.

REGULATION

ESG regulations for the entire financial services sector in the United States are rapidly evolving. In March 2022, the SEC released proposed rules on mandating certain climate-related disclosure for listed companies. Those rules include disclosure of Scope 3 emissions, carbon offsets, and climate-related risks for relevant companies. Insurers will need to ensure that they have adequate internal controls to accurately report climate change-related information.

The final SEC rules, which will soon be published, are likely to include more flexibility than previously expected, which may lead to increased litigation. This in part reflects the growing divergence within the US about ESG policies, with vocal lobbies making the case passionately both for and against adopting ESG-led strategies for businesses and individuals. There is also divergence between state and government in many territories. As a result, many industries, and particularly those that are carbon intensive, are keen for climate litigation cases to be heard in federal rather than state courts as they anticipate a more favourable decision at federal level.



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