Insurance Horizons

2019

Contents

Introduction

Working on this brochure has provided an opportunity to consider recent developments in the insurance industry and how the industry might change. A speech delivered by Gabriel Bernardino, the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA) in Berlin in October 2018, referred to the huge challenges that the European insurance sector faces of economic uncertainty, digitalisation and climate change. These challenges are no less significant for being well known, but it is the ambitions that Mr Bernardino then outlined for the insurance sector which are more interesting, to be a sector that will:

- be instrumental in closing societal gaps, such as the pension gap and the protection gap for natural catastrophes;
- use its underwriting and investment activities to foster a gradual transition to a more green economy; and
- apply the highest ethical values, acting in a customer friendly manner and achieving increased trust.

M&A trends are often a good indicator of the direction of travel in an industry. Three of the largest deals in the insurance industry were in the reinsurance sector, with AXA acquiring XL, AIG acquiring Validus and Renaissance Re's acquisition of Tokio Millennium from Tokio Marine, reflecting ongoing over-capacity in the reinsurance market, soft rates and record losses in 2018. Then there is the upswing in European life insurance M&A, with sellers looking to move away from costly legacy portfolios and a deeper pool of consolidators active in the market. A number of smaller deals involved acquisitions of, or investment in, tech businesses by insurers – most businesses see the acquisition of technology as the best strategy to stay up-to-date and, not surprisingly, over 25% of deals involving tech businesses involve a counterparty which is not from the tech sector.

Globally, we are facing an economic slowdown and political uncertainty with trade wars and Brexit. China's growth is slowing and faces challenging levels of domestic debt; Germany narrowly avoided recession in 2018 and its export-led economy is exposed to tariffs; and Italy is in recession. We are also seeing increasing protectionism as governments look at foreign investment in key industries. The German Government recently tightened its control over foreign investments in a range of industries following concerns that Chinese state-backed companies were gaining too much access to key technologies. The EU has also introduced a framework for screening foreign direct investment.

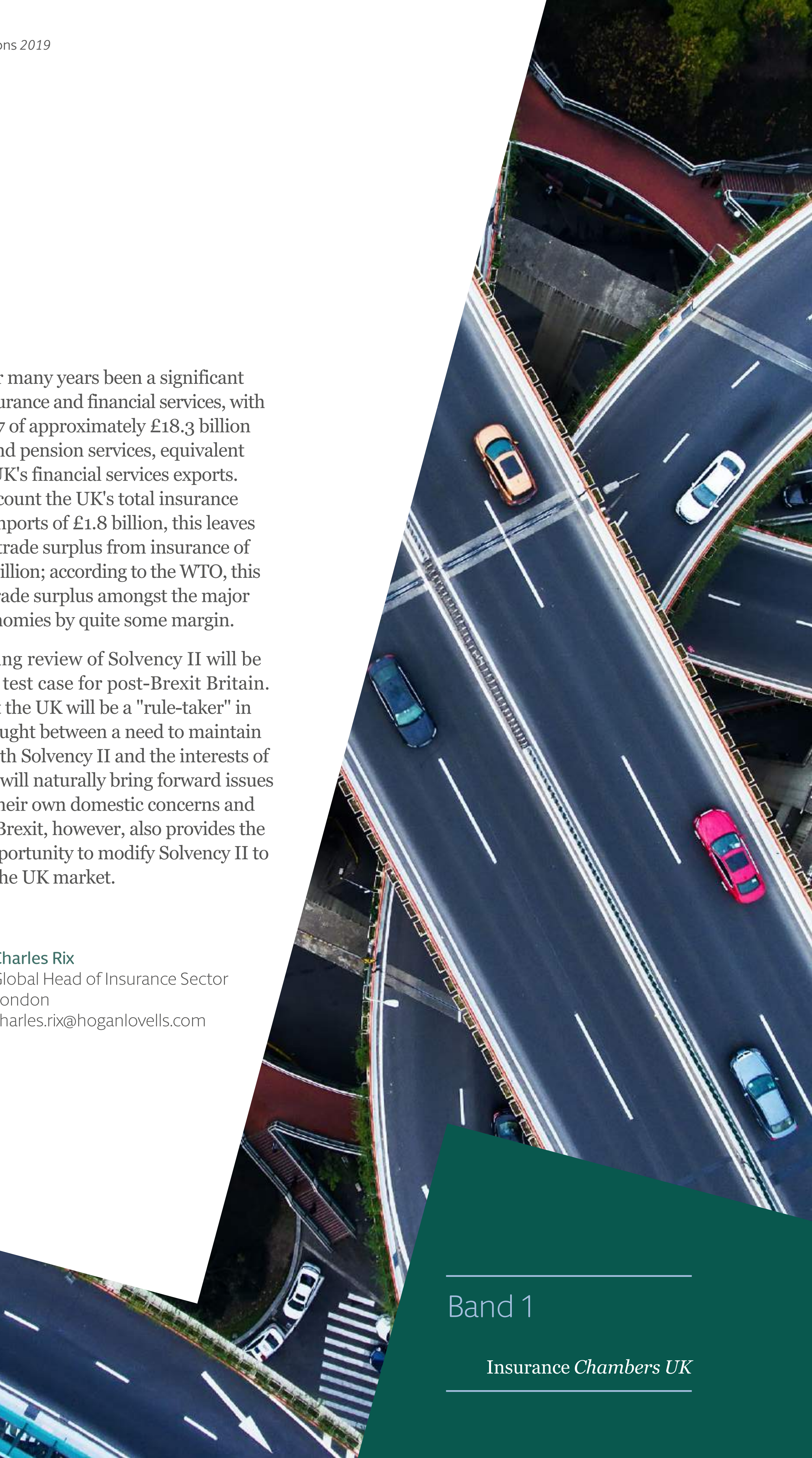
For the insurance industry, there is a case for saying that the trend is towards more liberal, open markets. Whilst a number of countries still retain rules which favour local insurers and reinsurers, the EU/US Covered Agreement and relaxations made by China in relation to foreign investment serve to open up markets. The focus for national regulators is perhaps not protectionism but rather financial stability; put simply, will an insurer be able to pay out on claims when the time comes?

We still don't know what form Brexit will take or even whether it will happen, but the potential implications for the UK are significant. According to the ABI, the UK insurance market is the fourth largest in the world behind the US, China and Japan, with an estimated total premium income of US$283 billion in 2017.

The UK has for many years been a significant exporter of insurance and financial services, with exports in 2017 of approximately £18.3 billion of insurance and pension services, equivalent to 31% of the UK's financial services exports. Taking into account the UK's total insurance and pension imports of £1.8 billion, this leaves the UK with a trade surplus from insurance of around £16.7 billion; according to the WTO, this is the largest trade surplus amongst the major insurance economies by quite some margin.

The forthcoming review of Solvency II will be an interesting test case for post-Brexit Britain. The risk is that the UK will be a "rule-taker" in the process, caught between a need to maintain equivalence with Solvency II and the interests of the EU27 who will naturally bring forward issues which reflect their own domestic concerns and perspectives. Brexit, however, also provides the UK with an opportunity to modify Solvency II to the benefit of the UK market.

Charles Rix
Global Head of Insurance Sector
London
charles.rix@hoganlovells.com



Band 1

Insurance *Chambers UK*

> They're a high-quality firm with a broad geographic approach.
>
> *Chambers UK*, 2019

Another active year for M&A in the insurance industry

2018 was another active year for M&A. Total deal values reached US$3.5 trillion, ranking 2018 as the third largest year since 2001. It was only in Q4 that we saw a downturn, with investor confidence weakened by concerns relating to the US/China trade war, Brexit, central bank policy on interest rates and market volatility.

In the insurance industry, the number and value of deals in 2018 was slightly down on 2017. Care always needs to be taken with comparisons as deal data can be distorted by one-off mega deals, although in this case 2017 and 2018 were both dominated by one mega deal. In 2018, it was Cigna's acquisition of pharmacy company Express Scripts for US$ 67 billion, which closed in December 2018. In 2017, CVS agreed to acquire Aetna for US$77 billion – the deal closed in November last year but remains subject to a highly unusual judicial review.

The insurance industry appears to be going through a period of change, with changes in corporate strategies resulting in disposals of businesses which are no longer regarded as "core". Looking at the European life insurance M&A market, we see Generali involved in the sale of a number of life insurance businesses, most notably its German life insurance business which it sold to Viridium, the biggest run-off deal yet in the German market, and also making acquisitions of asset management businesses as it moves towards its new wealth management strategy. The sale of Standard Life Assurance to Phoenix in the UK is not dissimilar with the seller, Standard Life Aberdeen, moving towards investment management and Phoenix pursuing its consolidation strategy. There is also a deeper pool of consolidators in the European life insurance M&A market comprising trade buyers and private equity as well as Japanese and Chinese investors. The rating agency Fitch forecasts that run-off specialists will manage more than 50% of closed life businesses in Germany by 2022, up from 25% at present, as insurers find the cost of managing shrinking portfolios an increasing burden.

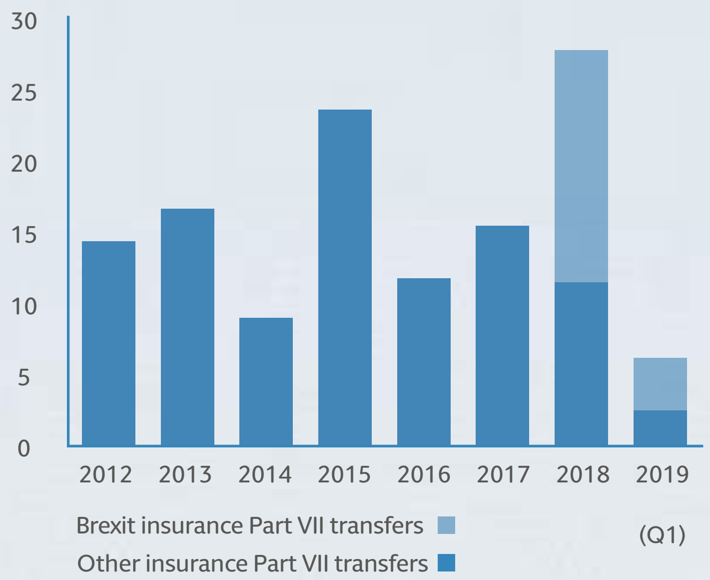
Amongst reinsurers, soft rates, excess capacity fuelled by investment from alternative capital sources, and reinsurance losses have continued to drive M&A. Three of the largest insurance deals of 2018 involved reinsurance businesses: AXA's acquisition of XL for US$15.3 billion; AIG's acquisition of Validus for US$5.6 billion; and Apollo's acquisition of Aspen for US$2.6 billion. The ownership of a number of Lloyd's businesses changed hands in 2018. China Re agreed to acquire Chaucer, but in a number of other deals, Lloyd's businesses were part of larger transactions; for example, Markel's acquisition of Nephilia, Hartford's acquisition of Navigators, China Minsheng's acquisition of Sirius and the three acquisitions made by AXA, AIG and Apollo referred to above. It will be interesting to see whether the new owners of these Lloyd's businesses wish to retain them. This, together with Lloyd's focus on profitability following a year of significant losses, may lead to an upswing in M&A involving Lloyd's businesses.

2018 saw two disposals by Japanese insurers, bucking the trend of Japanese outbound investment over the last few years: Tokio Marine's US$1.5 billion sale of Tokio Millennium to Renaissance Re; and Sompo's disposal of the Lloyd's business, Canopius, to a private equity consortium led by Centerbridge Partners. Although Japanese insurers may no longer be regarded only as buyers, we anticipate further outbound investment by Japanese insurers.

Charles Rix
Global Head of Insurance Sector
London
charles.rix@hoganlovells.com

Developments in UK insurance business transfers

As with much else in the UK, Brexit was the dominant theme for insurance business transfers in 2018 and going into 2019. Uncertainty over the withdrawal terms and the risk around passporting rights associated with a hard Brexit, led many large insurers to separate their EEA operations using an insurance business transfer scheme under Part VII of FSMA (a "**Part VII**"), with 16 Brexit schemes initiated in 2018 and an additional 4 in the first quarter of 2019. This pushed the overall number of Part VIIs to near-record levels.



Note: numbers are based on when court proceedings were started, not when completed.

At the same time, the fact that the number of Part VIIs was not even higher suggests the extent to which many insurers with limited European activities may have adopted a risk-based approach to Brexit, weighing the significant and ongoing costs associated with carrying out a transfer and maintaining a European presence against the extent of the regulatory risks associated with "no deal" and the likelihood of a transition period.

The complexity of many of these schemes raised a range of novel issues for the UK courts to consider, especially in the context of transfers of life insurance business. These included the implications of the loss of compensation scheme (FSCS) and ombudsman (FOS) protection, the differences between conduct regimes in different jurisdictions and complex issues of policyholder benefit expectations and security, particularly where with-profits business was involved. The response to these issues (as well as those raised by the various banking business transfer schemes that were undertaken over the course of 2018) demonstrated the UK courts' willingness to consider potential adverse effects in the round and to extend the scope of what it will order in connection with a Part VII, where this is necessary to ensure a transfer is effectively carried out. Notable examples included giving orders to transfer the business of another group company (which was not, on its own, capable of being transferred under Part VII) alongside a transferring business, on the basis that this business was integral to the transferring business; and making ancillary orders to support and supplement a cross-border merger linked to a Part VII transfer.

To date, therefore, Brexit has tended to reinforce the position of Part VII as among the most flexible and capable portfolio transfer mechanisms worldwide. Its ultimate impact, however, will inevitably depend on what form Brexit finally takes. The main effect of the "no deal" contingency legislation introduced by the UK Government would be to restrict Part VIIs to domestic transfers of business within the UK, removing the ability to transfer UK business to other EEA states and to transfer EEA business into the UK. This may have some inadvertent benefits: for example, it will no longer be necessary to consult with the regulators in other EEA states in which transferring risk are situated, which could help shorten the Part VII timetable. It will also no longer be necessary to publish notices in other EEA states. However, the domestication of Part VII is also likely to reduce the options available to international insurers considering M&A and restructuring in the future, removing one of the best-tested mechanisms for implementing cross-border European insurance transactions.

Jonathan Russell
Senior Associate
London
jonathan.russell@hoganlovells.com

Insurance business transfers in the U.S.

A number of U.S. states have adopted, or are considering adopting, law under which insurance businesses can be transferred to other insurers without the consent of the policyholders ("**IBTs**"). Similar to Part VII transfers under the UK's Financial Services and Markets Act 2000, these transfers require regulatory and court approval. Should the deployment of IBTs gain traction, they may become viable alternative structures to complex reinsurance transactions typically employed in the sale of a block of insurance business to a third party in the U.S.

Widespread acceptance of IBTs may also attract greater interest from non-traditional forms of capital, such as private equity and sovereign wealth funds, seeking to acquire insurance assets, as the regulatory approval process for implementing IBTs may be relatively easier and quicker than with traditional insurance acquisitions. However, the presence of various technical and legal issues which states will need to work through before IBTs achieve widespread acceptance may defer their practical commercial benefits for some period of time.

> They combine an international approach with knowledge of both the national market and the law.
>
> *Chambers Europe*, 2018

Modelled after the highly successful Part VII transfer process in the UK and EU, IBTs provide a unique mechanism for transferring and assuming insurers to transfer blocks of insurance business to another insurance company while also providing the legal finality that has not traditionally been available in the United States outside of a whole company acquisition. The IBT, once approved in accordance with the applicable IBT law, will result in a transfer of contracts of insurance, resulting in the assuming insurer becoming directly liable to the policyholders of the transferring insurer and extinguishing the transferring insurer's insurance obligations or risks under the contracts.

An increasing number of states are adopting, or considering, IBT laws. However, while Connecticut, Oklahoma, Rhode Island, Vermont, Illinois, and, most recently, Michigan, among other states, have passed IBT laws or regulations, there are numerous differences in the transfer process. These differences include: whether the IBT must be approved by the state's insurance regulator and by court order; the types or classes of business that may be transferred; whether the transferring insurer is "divided" into two distinct legal entities; and whether policyholders may "opt out" of the transfer.

For example

- Vermont's Legacy Insurance Management Act allows non-admitted insurers to transfer discontinued commercial business to a third-party company with regulatory approval.
- Rhode Island's "Voluntary Restructuring of Solvent Insurers Act" provides a mechanism for court-sanctioned commutation of policies of commercial property and casualty insurers.
- Connecticut, Illinois, and Michigan have adopted IBT statutes allowing companies domiciled in those states to divide books of business within a company into two or more insurance companies with regulatory approval.
- Oklahoma's IBT law, which some in the industry have called a "game changer", applies to both in-force contracts as well as discontinued or run-off insurance and includes property/casualty, life, health, and any other line of insurance that the Oklahoma Insurance Commissioner finds suitable.

Recently, the NAIC established a restructuring mechanism working group to consider IBT laws. As a first step, the working group will draft a white paper addressing: (a) the perceived need for restructuring statutes and alternatives that insurers are currently employing to achieve similar results; (b) existing state restructuring statutes; and (c) legal issues posed by an Order of a Court (or approval by an Insurance Department) in one state affecting the policyholders of other states.

Robert Fettman
Counsel
New York
robert.fettman@hoganlovells.com

How to collateralise reinsurance agreements using illiquid assets

As is well known, reinsurance is a technique by which an insurer can lay off some or all of the risks arising from its insurance policies. However, the primary liability on the policies is not transferred, so the insurer is still required to pay out to policyholders even if the reinsurer defaults on its reinsurance obligations.

The insurer is therefore exposed to the credit risk of the reinsurer. This risk contains two important features – first, the risk of non-payment, and, second, the risk of a delay in payment.

The need for insurers to protect themselves against this credit risk has long been recognised, and various legal structures have been developed through which the reinsurer can provide collateral for its reinsurance obligations. In recent years, though, three factors have contributed to these arrangements being more complicated.

Increasing size

Reinsurance agreements now often cover very large portfolios of policies, with reinsurance premiums often over £1 billion. Exposures of this size mean that a reinsurer default could be devastating for an insurer if the collateral arrangement were to fail.

More intense regulation

Prior to Solvency II, there were no EU-wide rules covering credit risk for reinsurance, so it was a topic left to national regulators. In the UK, insurers had to demonstrate that they were "safely managing" large reinsurance exposures, and to hold capital against the risk of reinsurer default as part of their individual capital assessment process. Solvency II introduced specific requirements that collateral arrangements must satisfy in order to be eligible, plus adjustments to the value that can be attributed to the collateral arrangement based on the assets that are held as part of it.

Focus on more illiquid assets

Insurers and reinsurers are increasingly searching for greater yield from their investment portfolios, which has led them to invest to a greater extent in illiquid assets such as equity release mortgages, commercial mortgages, loan portfolios and infrastructure assets. There is also a growing desire to hedge liabilities through derivatives, which are also a form of illiquid asset. Naturally, it has followed that reinsurers wish to provide collateral for reinsurance in the form of such assets.

Leaving aside illiquid assets, the typical model for reinsurance collateral is as follows:

- the reinsurer opens a custody account on the books of a reputable highly rated custodian;
- the collateral is held in the custody account in the form of a mixture of cash and government and corporate bonds;
- the reinsurer grants a security interest over the custody account in favour of the insurer, which enables the insurer to recover the assets in priority to any other creditors of the reinsurer; and
- the insurer, reinsurer and custodian enter into an "account control agreement" which allows the insurer to recover the assets directly from the custodian, without the need for any court proceedings, in the event of a default by the reinsurer.

Illiquid assets cannot be held in a custody account, so the above model will not work as a means of using them as collateral. So, assuming that the insurer is willing, as a commercial and regulatory matter, to accept illiquid assets as part of the collateral arrangement, what can be done to ensure that there is security over them? There are three potential solutions:

Funds withheld/deposit-back

The illiquid assets remain owned by the insurer, but subject to an obligation to pass on cashflows from them to the reinsurer, and, within the confines of the reinsurance agreement, to deal with them in accordance with instructions of the reinsurer. The value of these assets is then set off against the payment obligation of the reinsurer if the reinsurance is terminated.

This solution provides strong protection to the insurer, as it already owns the assets in the event that the reinsurer defaults, with no need for any proceedings to recover them from the insolvent estate of the reinsurer.

Commitment from third party trustee

Some types of illiquid asset are legally owned by a third party trustee who holds them on trust for an identified beneficiary. For example, this is often the case for equity release mortgages. One solution is therefore for the reinsurer to grant a security interest over its beneficial interest in the illiquid asset in favour of the insurer, and then for the insurer, the reinsurer and the trustee to enter into an agreement under which the trustee agrees that if it is notified by the insurer that it is enforcing its security interest then it will hold the beneficial interest on trust for the insurer rather than the reinsurer.

Whether this solution can work in a particular context depends on the flexibility of the trustee and the existing documents under which it holds the illiquid assets.

Company or collective investment scheme

The illiquid assets can be transferred to a separate entity, such as a limited company or a collective investment scheme. The shares or units in the entity are initially owned by the reinsurer, and the reinsurer grants a security interest over the shares or units in favour of the insurer. On default of the reinsurer, the insurer can then enforce its security to take ownership of the shares or units, and therefore take indirect control of the illiquid assets, which it can access by liquidating the entity.

These solutions generally require careful thought and more planning than the traditional custody account model. However, in light of the continuing appetite of insurers and reinsurers for higher yielding illiquid assets, we expect to see them being used more frequently on reinsurance transactions.

Steven McEwan
Partner
London
steven.mcewan@hoganlovells.com

Solvency II

Brexit and the forthcoming Solvency II review ("taking back control")

In 2001, the European Commission formally launched the Solvency II project. The negotiations were protracted and complex – 15 years later, on 1 January 2016, the Solvency II Directive came into force. To alleviate concerns that certain elements of Solvency II may have unintended consequences and to allow for improvements, the legislation provided for two reviews: a review in 2018 of the Delegated Regulation; and a review in 2020 of the Directive.

In March 2019, the European Commission published a new Delegated Regulation amending the Solvency II Delegated Regulation including changes to the design and calibration of some elements of the Solvency Capital Requirement (SCR) standard formula. In preparation for the 2020 review, on 11 February 2019 the European Commission asked EIOPA to provide advice on a number of issues including:

- long-term guarantees measures and measures on equity risk (including the functioning of the volatility adjustment and matching adjustment);
- the Solvency Capital Requirement standard formula;
- member states' rules and supervisory authorities' practices on the calculation of the Minimum Capital Requirement; and
- group supervision and capital management within a (re)insurance group.

EIOPA is due to deliver its advice by 30 June 2020 and the Commission is due to finish its review by the end of 2020, but no timetable for consulting on, and then implementing, proposed legislative changes, has been announced.

On the basis that at some point the UK will leave the EU, the UK Government has put in place legislation to ensure that the Solvency II provisions are "on-shored" into UK law, but the UK will have no part in the future discussions about possible changes to Solvency II. The relative size of the UK insurance industry compared to that of other EU member states has, in the past, enabled it to have a significant influence on the shape of insurance regulation.

The risk to the UK in the forthcoming review of Solvency II is that it will be a "rule-taker" in the process, caught between a need to maintain equivalence with Solvency II (and, it must be said, the support for Solvency II from its own regulators) and the interests of the EU27 who will naturally bring forward issues which need to be addressed in their own domestic insurance markets and for their stakeholders. It remains to be seen whether or not that will lead to deviations between the EU and UK regulatory landscape. Insurers and reinsurers with a global reach are likely to prefer a level regulatory playing field rather than a jigsaw of different rules.

Brexit also provides UK regulators with the opportunity to make changes to the Solvency II provisions as implemented in the UK. The Treasury Select Committee's review of Solvency II in 2016/2017 was an opportunity for a transparent exchange of views from a variety of market participants on the operation and shortfalls of Solvency II and the PRA's application of it. One key theme to come out from the evidence submitted was the industry's dissatisfaction with the PRA's interpretation and application of Solvency II, particularly in relation to the risk margin and matching adjustment calculations. The Committee, in its report, concurred and asked the PRA to look again at those issues raised by, among others, the ABI in the context of Brexit and the freedom it may provide. The PRA stated in its response that it is unable to make changes or put forward solutions due to constraints under Solvency II and the lack of a clear view of the future regulatory landscape post-Brexit. Once there is clarity on the terms of the UK's withdrawal from, and future trading relationship with, the EU we should see developments on the PRA's approach to Solvency II.

Kirsten Barber
Senior Knowledge Lawyer
London
kirsten.barber@hoganlovells.com

Data protection after GDPR and preparing for Brexit

2019 is likely to be an eventful year in data protection. The EU General Data Protection Regulation (GDPR) has now been in effect throughout the EU since 25 May 2018 and data protection authorities have been reporting numerous data breach notifications and general awareness of data protection issues. This year is likely to see the first substantial fines being levied, giving an indication of how enforcement will proceed under the new legislation. 2019 will also see judgment being given in some cases before the Court of Justice of the EU concerning data protection and privacy, including cases on the meaning of consent and the scope of the "right to be forgotten". Further guidance is likely to be given about the interpretation of GDPR by the European Data Protection Board (EDPB).

Another big event on the horizon for data protection is the UK's scheduled exit from the EU, although when, and on what basis, remains unclear. While the proposed Withdrawal Agreement would have preserved the status quo in data protection terms, at least until the end of the transition period, if the UK leaves the EU without a deal, cross-border data flows between the UK and the EU will be disrupted. The outcome of the current political crisis in the UK and its dealings with the EU will therefore have an important effect on privacy and data protection.

There has been a lot of media speculation about the potential for fines of up to €20m or 4% of global turnover to be levied under the new legislation, but 2019 is likely to show the true direction of travel of the European regulators. In a similar way, a number of investigations are currently underway following complaints by organisations such as Privacy International and NOYB (the European Centre for Digital Rights). The progress, and perhaps conclusion, of these investigations will give businesses some clues as to the activities where non-compliance with the law will not be tolerated.

In any event, some key issues have already emerged as immediate areas for attention. One of the greatest achievements of the GDPR has been its ability to bring privacy and data protection into the mainstream. That has, in part, led to an unexpectedly high uptake in the exercise of data subjects' rights. Dealing with data subjects' rights is not easy because most of these rights are not absolute rights. They cannot be ignored but they often involve careful thinking about the limits to be applied, the rights of others and the practicalities of honouring those rights. As with many other European data protection matters, having a process in place is key, and following it is essential.

On another important front – international data transfers – Binding Corporate Rules (BCR) have emerged as the go-to solution for any organisation seeking a robust yet flexible approach to legitimising global data flows. BCR top the list of options available in the GDPR for this purpose, and regulators appear sensitive to this situation. As a result, with the coming into effect of the GDPR, the EU regulators are clearly endorsing the role of BCR as the main enabling tool for lawful data transfers worldwide.

On the matter of Brexit, if the UK leaves the EU with a deal, the UK will continue to be treated as part of the EU during the transition period. An adequacy decision would be carried out during this time, and would hopefully be made in the UK's favour, resulting in a preservation of the status quo as far as data protection is concerned. However, if the UK leaves the EU without a deal, the situation will be very different, as the UK will become a third country for the EU's purposes.

If there is no deal, the Government has put in place various measures to ensure that data protection standards will remain the same after exit day (bringing GDPR into UK law via secondary legislation) and that data transfers out of the UK will be able to continue. However, if adequate safeguards are not put in place for data transfers into the UK, these transfers are likely to be disrupted. No-deal preparations for businesses should therefore include examining cross-border EU-UK data flows and putting in place alternative safeguards such as Standard Contractual Clauses or BCR.

> "Use their industry knowledge and expertise to reach sensible commercial positions.
>
> *Legal 500 UK*, 2018"

Nicola Fulford
Partner
London
nicola.fulford@hoganlovells.com

Eduardo Ustaran
Partner
London
eduardo.ustaran@hoganlovells.com

Recent acquisition a 'game changer' for German life run-off market?

On 9 April 2019, the German regulator, BaFin, announced that, after intensive examination, it had concluded that there was no reason for it to object to the sale of 89.9% of the share capital of the German life insurer Generali Leben to the German life insurance run-off platform Viridium. BaFin reviewed the deal under the EU Acquisitions Directive (as implemented in German law) which grants EU insurance regulators the power to review the acquisition of 10% or more of the shares of an insurance company. In order to understand BaFin's approach to the review of such share deal, it is worth noting that a business transfer of a life insurance portfolio would be subject to a full examination and approval by BaFin.

The Generali Leben deal is regarded as a game changer in the German life run-off market; therefore it is worth highlighting a number of aspects:

In relation to a life insurance portfolio transfer, BaFin will normally insist that the value of the contractual entitlements of the policyholders are at least the same after the transfer; and in considering whether that will be the case, BaFin will undertake a comprehensive review of the transfer. At face value, the criteria which an insurance regulator must use when considering an acquisition of shares in an insurance company are different; the new owner needs to have the knowledge and skills (and reputation) required to run the insurance company in a sound and prudent manner. However, in light of recent sales of life companies (such as the Generali Leben and the preceding sale of ARAG Leben to Frankfurter Leben in September 2016, which BaFin cleared in June 2017), it appears that BaFin will review any share deal essentially in the same way that it would review a portfolio transfer. When Generali and Viridium signed their deal in July 2018 for the sale of Generali Leben, BaFin's Chief Executive Director of Insurance Supervision, Dr Grund, stated that "no policyholder may be worse off as a result of a company being sold".

For the purposes of its assessment of an acquisition of shares in an insurance company, BaFin will want to consider the buyer's financial position, its capitalisation and its financial viability. BaFin will also consider the buyer's reputation, its business model and its internal governance structures. A key issue will be the buyer's risk management system and ability to comply with extensive regulatory reporting requirements. In addition, BaFin will consider the buyer's operational plans for the company, including the extent to which existing systems and employees will be retained. As with other EU insurance regulators, BaFin has the power to impose conditions on its approval of an acquisition of shares in an insurance company. This might include a requirement for outsourcing arrangements to ensure that the business is properly managed; the retention of a specified level of capital resources in the company in order to protect the interests of policyholders; and caps on charges which may be extracted from the company by the new owner for administration and other services.

There are three features of the Generali Leben deal worth mentioning:

- Generali has retained a minority stake of 10.1% of the share capital of Generali Leben, with an option granted to Viridium to acquire that stake.
- The consideration paid by Viridium is subject to adjustment if changes are made to rules and regulations governing the contributions to ZZR reserves required to be held for guarantees contained in the terms of the life insurance policies issued by Generali Leben.
- Generali Deutschland will provide asset management services for the investments of Generali Leben for a minimum of five years.

There is certainly the depth of potential buyers in the German life insurance industry but whether the Generali Leben deal is the game changer we expect it to be will obviously depend on businesses being put up for sale by their owners. The rating agency, Fitch, forecasts that run-off specialists will manage more than 50% of closed life businesses in Germany by 2022, up from 25% at present, as insurers find the cost of managing shrinking portfolios an increasing burden. Familiarity with recent deals and BaFin's expectations and approach will clearly have an advantage for both buyers and sellers in the German life run-off market.

Christoph Küppers
Partner
Dusseldorf
christoph.kueppers@hoganlovells.com

The new Dutch resolution legal regime – a solution for Dutch insurers that run into solvency trouble?

Due to the low interest rate climate, the strict Solvency II regime and the unfavourable characteristics of certain legacy insurance products, certain insurers may face increased supervision and scrutiny from their financial regulators. Will the new resolution regime for Dutch insurers provide relief for Dutch insurers facing solvency issues for example as a result of legacy issues in insurance portfolios?

The new Dutch Insurers Recovery and Resolution Act

On 1 January 2019, the new Dutch Insurers Recovery and Resolution Act (**the "Act"**) came into force. The Netherlands is one of the first countries in Europe to implement a resolution regime for insurers. One of the reasons for the Netherlands to move forward at a national level was that the intervention measures available did not provide an effective framework to protect the interests of policyholders. This came to light when the Dutch financial group SNS REAAL ran into problems in 2013 and the whole group (the bank and insurance company) was nationalised by the Dutch Minister of Finance.

The Act is not based on EU legislation; however, the Dutch legislator drew the on the recovery and resolution framework for banks (directive 2014/59/EU BRRD1 and Directive 2017/2399 BRRD2).

Applicable to all insurers

The Act applies to all insurers (life and non-life insurers) under supervision of the Dutch Central Bank ("**DNB**"). This also includes Dutch branches of insurers established in non-EU countries. The Act in addition applies to Dutch parent holding companies and entities performing critical activities for an insurance group. There are a few exceptions and special rules for insurers with a limited risk profile.

The Act distinguishes two phases:

- Planning phase; and
- Resolution phase.

Planning phase

In the planning phase, the insurer will need to draw up a preparatory crisis plan in preparation for a deteriorating financial position. This plan needs to be submitted to DNB, and is comparable to the recovery plan in the banking sector.

The purpose of the preparatory crisis plan is to make clear what recovery measures could be taken if the financial position of the insurer deteriorates. The preparatory crisis plan is drawn up during the normal course of business.

In addition, the DNB will need to draft a resolution plan for every insurer or insurance group. In this resolution plan, the DNB will describe how it intends to deal with the resolution of the insurer or insurance group, the resolution tools and powers it may use and which obstacles are hindering the resolution. The plan also describes the important characteristics of the insurer that are relevant for resolution (for example, the existence of unit-linked policies).

If the DNB takes the view that there are obstacles hindering the resolution, it can require the insurer to take measures to remove these obstacles. These measures can be far-reaching. For example, the DNB can request:

- selling assets;
- limiting existing or proposed activities; and/or
- changing the legal or operational structure.

The DNB is for example not required to draw up a resolution plan if the resolvability of the insurers has been sufficiently safeguarded.

Resolution phase

The DNB must decide to resolve an insurer if the following conditions are met:

1. the insurer is failing or is likely to fail to meet Solvency II capital requirements;
2. there is no reasonable prospect that a private solution will prevent this from happening; and
3. the resolution is in the public interest.

In this phase, the following resolution measures will be available to the DNB:

- **bail-in:** this uses the DNB's power to write down or convert equity or debt, or restructure insurance policies;
- **sale of business:** sell the shares of an insurance group or troubled company within the group;
- **bridge institution:** temporarily transferring either the insurer's shares or its assets and liabilities to a bridge institution. The DNB will use this tool if no alternative solution involving market parties can be found in the short term; and
- **asset separation:** this tool allows the DNB to transfer assets and liabilities to an asset management vehicle. This measure can only be used in combination with one of the other measures

In addition, the Act also grants the DNB supporting resolution powers. These supporting resolution powers are: (i) the DNB can take over control of the insurer in resolution, (ii) the DNB can appoint a special managing director to take control, (iii) the DNB can change the legal form of the insurer, if necessary to apply the bail-in measure and (iv) the DNB can terminate or modify the terms of an agreement to which the insurer is a party.

The Act includes a number of safeguards to protect the interests of creditors and policyholders. For example, the Act underpins the 'no creditor worse off' principle. This means that creditors should not be worse off than they would be in normal bankruptcy proceedings of the insurer.

The Bankruptcy Act

Finally, the Act also amends the Dutch Bankruptcy Act to improve the position of policyholders in cases where the DNB decides not to apply resolution measures but to apply for bankruptcy of the insurer.

Victor De Vlaam
Partner
Amsterdam
victor.devlaam@hoganlovells.com

Carlijn Van Rest
Counsel
Amsterdam
carlijn.vanrest@hoganlovells.com

Focus on vulnerable customers

During 2018, the FCA, the Treasury Select Committee and the Competition and Markets Authority (CMA) each highlighted the potential challenges of dealing with vulnerable customers and emphasised the importance of finding solutions to prevent these customers from being financially excluded.

In July 2018, the CMA held a symposium on the challenges facing vulnerable consumers and the potential solutions. A summary of the symposium explained that, as part of a re-examination of the CMA's legislative framework under the Government Green Paper on modernising consumer markets (April 2018), the CMA has asked for further work on how the regime could be strengthened to better protect the vulnerable. In particular, the CMA is concerned about the issue of price discrimination (experienced by long-standing customers and vulnerable customers) and is focussing on challenges and opportunities for consumers presented by digital technology. The CMA concluded that its mandate could be adjusted to take account of vulnerable consumers specifically.

Then, in September 2018, the FCA held a workshop on "Customers in Vulnerable Circumstances", which focused on its approach to ensuring inclusive and fair treatment of vulnerable consumers in the financial services industry. Much of the focus draws from its Approach to Consumers published in July 2018. Nick Stace (Non-Executive Director, FCA) emphasised the need for firms within the industry to demonstrate that guidelines and policies relating to vulnerable consumers are implemented effectively with their impact and the outcomes measured. Christopher Woolard (Executive Director of Strategy and Competition, FCA) stressed that firms which fail to do so could face FCA intervention. There have already been significant challenges determining how to define and treat vulnerability within financial services but the FCA are proposing to introduce minimum standards with which firms will need to be aligned. There is no doubt more to come from the FCA on the practical impact of its Approach to Consumers, including as part of its discussion paper on a new duty of care (DP18/5). However, it is clear that the FCA expects firms to act now.

Finally, in late 2018 the Treasury Select Committee launched an inquiry into consumers' access to financial services, focussing on the interaction between vulnerable customers and financial services firms and whether certain groups of consumers are excluded from obtaining a basic level of service from financial services providers. As part of this inquiry, the Committee intends to examine the FCA's definition of "vulnerability" and consider whether financial services providers should increase efforts to prevent financial exclusion. The deadline for submissions of evidence was 14 December 2018, and the practical impact of the inquiry remains to be seen.

The insurance industry has already made steps in the right direction. In 2017, the ABI published an industry guide – *Addressing customer vulnerability, a guide to identifying and supporting vulnerable customers in the long-term saving market* – with the aim of proving a reference point to help insurers improve their processes for dealing with vulnerability. The ABI's long-term saving members have committed to implementing a vulnerability policy of strategy, providing regular staff training and sharing examples of good practice through the ABI.

The challenges for firms

While this current focus from the regulators is welcome and will encourage and establish a more inclusive environment for vulnerable customers, there are some key implementation challenges for firms.

- Consideration of the potential conflicts between recording and maintaining sensitive customer information versus meeting strict GDPR requirements.
- The "80/20" rule has been effective in the past in determining policies and processes that work effectively the majority of the time, with robust processes for managing exceptions. However, do firms now need to consider designing and implementing policies, processes, products and services that provide the flexibility to accommodate customers with the greatest needs, rather than assuming them (the "20") to be exceptions?
- Vulnerable circumstances can impact people for differing periods of time given causes can include bereavement, divorce, job loss, long- or short term-illness and so on. With this in mind, firms will need to consider the types of scenarios they need to make provision for within their operating environments.
- Will existing terms and conditions need to be reviewed in light of the need for flexibility to accommodate the changing needs of customers in vulnerable circumstances?
- Does reporting within firms provide the necessary clarity and transparency for Senior Managers to take action where required? For example, do firms analyse data to determine whether causes for declined claims and rejected complaints could be indicative of a need to revise policies and approach to dealing with customers in vulnerable circumstances?

Julie Patient
Counsel
London
julie.patient@hoganlovells.com

Elizabeth Greaves
Senior Associate
London
elizabeth.greaves@hoganlovells.com

Sustainability and climate change

Sustainable or "green" finance (the process of taking environmental, social and governance (ESG) considerations into account in investment decision-making) and a focus on the impact of climate change have risen up the international regulatory agenda over the last few years. Kick-started in 2015 by the adoption of the Paris Agreement on Climate Change and the UN 2030 Agenda for Sustainable Development, national governments, regulators and market bodies have been looking at how the financial services sector can play its part in achieving a more sustainable economy.

The European Commission has been quick to act on its 2018 Action Plan and has published legislative proposals which will introduce:

- an EU classification (taxonomy) for sustainable investments;
- new requirements on certain firms, including insurers who provide insurance-based investment products (IBIPs) and insurance intermediaries providing advice on IBIPs about the integration of sustainability risks in their investment decision-making process and advisory process;
- new categories of benchmarks comprising low-carbon and positive-carbon impact benchmarks; and
- changes to the MiFID II Directive and the Insurance Distribution Directive which will require investment firms and insurance distributors to collect information about their clients' ESG preferences and to take these into account as part of the advisory process.

EIOPA has been asked by the European Commission to give technical advice on the integration of sustainability risks and factors in the Delegated Regulations of the Solvency II Directive and Insurance Distribution Directive (due by 30 April 2019), and provide an Opinion on sustainability in the Solvency II Directive (by 30 September 2019). EIOPA's policy proposals in its draft technical advice will require insurance companies to review and amend their internal policies, processes and compliance procedures to integrate sustainability risks into their investment, risk and capital management functions, which will have cost and infrastructure implications. No timetable for implementation of these proposals has been given but they are likely to be implemented in 2020.

In the UK, the FCA and PRA have published reports considering the impact of climate change on financial services. The reports highlight the financial risks to the markets and firms and the increasing need for adequate disclosure of those risks to investors, consideration of those risks at board level and the development of strategies to ensure (re) insurers manage those risks.

Financial risks from climate change can be divided into physical and transition. Physical risks arise from a number of factors and can be related to specific weather events such as heatwaves, floods, wildfires and storms and longer term shifts in climate such as changes in precipitation and extreme weather variability, and rising sea level and temperatures. These risks can obviously impact insurers and reinsurers through higher claims. Global insured losses from natural disaster events in 2017 were the highest ever recorded. The number of registered weather related natural hazard loss events has tripled since the 1980s and inflation-adjusted insurance losses from these events have increased from an annual average of around US$10 billion in the 1980s to around US$55 billion over the last decade.

Transition risks can arise from the process of adjustment towards a low-carbon economy. This adjustment is influenced by a range of factors including climate-related developments in policy and regulation, the emergence of disruptive technology or business models, and shifting sentiment and social preferences.

Insurers can, of course, make choices over what they underwrite; some risks may come to be seen as too risky or require specific exclusions, such as housing in flood plains or business disruption arising from weather events.

Recognition of the systemic impacts of climate change and the transition to a low carbon economy on the financial services sector has prompted a global response. Through their underwriting and investment activities, insurers are particularly exposed to the risks arising from climate change. Increasingly, some insurers and reinsurers are starting to incorporate sustainability principles into their businesses. We can expect the trend for more regulation in this area to continue. The challenge for regulators, insurers and other stakeholders is to ensure that regulatory initiatives are consistent, proportionate and do not result in constraints stifling the innovation of new products.

Kirsten Barber
Senior Knowledge Lawyer
London
kirsten.barber@hoganlovells.com

International initiatives on sustainability and climate change

	International	European Commission	UK
2015	Paris Agreement and UN 2030 Agenda for Sustainable Development adopted. Financial Stability Board launched its Task Force on Climate related Financial Disclosures (TCFD).		PRA publishes a report on *The impact of climate change on the UK insurance sector*.
2016	Sustainable Insurance Forum (SIF) established – network of insurance supervisors and regulators.	High Level Expert Group on Sustainable Finance (HLEG) established to advise on how to promote the use of public and private capital for sustainable investments and on the protection of the stability of the financial system from environmental risks.	
2017	TCFD recommendations published.		Government established a Green Finance Task-force (GFT) to report on how to make green finance an integral part of the financial system.
2018	IAIS/SIF published Issues Paper on Climate Change Risks to the Insurance Sector.	HLEG final recommendations published. Commission's Action Plan on Sustainable Finance published. Technical expert group on sustainable finance (TEG) established to help the Commission develop legislative proposals. Three legislative proposals published on establishment of a framework to facilitate sustainable investment (taxonomy), regulation of disclosures and amendments to the Benchmark Regulation.	GFT published its report *Accelerating Green Finance*. FCA published a discussion paper on *Climate Change and Green Finance*.
2019		Publication of amendments to provisions on suitability assessments under MiFID II and the Insurance Distribution Directive (IDD) not yet adopted. EIOPA publishes technical advice on integration of sustainability risks and factors in the delegated regulations of Solvency II and IDD. EIOPA due to give its Opinion (by 29 September) on sustainability in the Solvency II Directive.	FCA and PRA hosted the first meeting of the Climate Financial Risk Forum, a new body comprising representatives from across the financial sector, with the aim of developing practical tools and approaches to address climate-related financial risks. PRA published policy and supervisory statements on enhancing banks' and insurers' approaches to managing financial risks from climate change.

Federal Reserve Board preparing insurance group capital requirements

Recent remarks by the U.S. Federal Reserve Board (**FRB**) provided the insurance industry with a high-level overview of the FRB's forthcoming proposal on consolidated capital requirements for insurers supervised by the FRB.

By way of background, the Dodd-Frank Wall Street Reform and Consumer Protection Act gave the FRB regulatory responsibilities both for insurance holding companies that own a federally insured bank or thrift and for insurance companies designated as systemically important by the U.S. Financial Stability Oversight Council (so-called SIFIs), the former of which represent approximately 10 percent of the U.S. insurance industry.

In June 2016, the FRB published an advance notice of proposed rulemaking (ANPR) describing two potential regulatory capital frameworks for FRB-supervised insurers: a capital framework, styled as a "building block approach," to be applied to savings and loan holding companies or bank holding companies with significant insurance activities; and a "consolidated approach" applicable to insurer SIFIs. With Prudential's de-designation in October 2018, no insurer currently has the SIFI label.

The FRB's building block approach (BBA)

In its written remarks, the FRB noted that it: (i) decided against applying FRB bank holding company capital rules to supervised insurers at the enterprise level, in light of the very different business models of insurance and banking; (ii) determined that a capital approach akin to the European Solvency II framework would not adequately incorporate U.S. accounting frameworks and could unintentionally crimp the ability of insurers to provide long-term life insurance and retirement planning products; and (iii) concluded that the insurance capital standard (ICS) being developed by the International Association of Insurance Supervisors (IAIS) for internationally active insurance groups was not an optimal framework for the U.S. insurance market.

Key attributes of the BBA

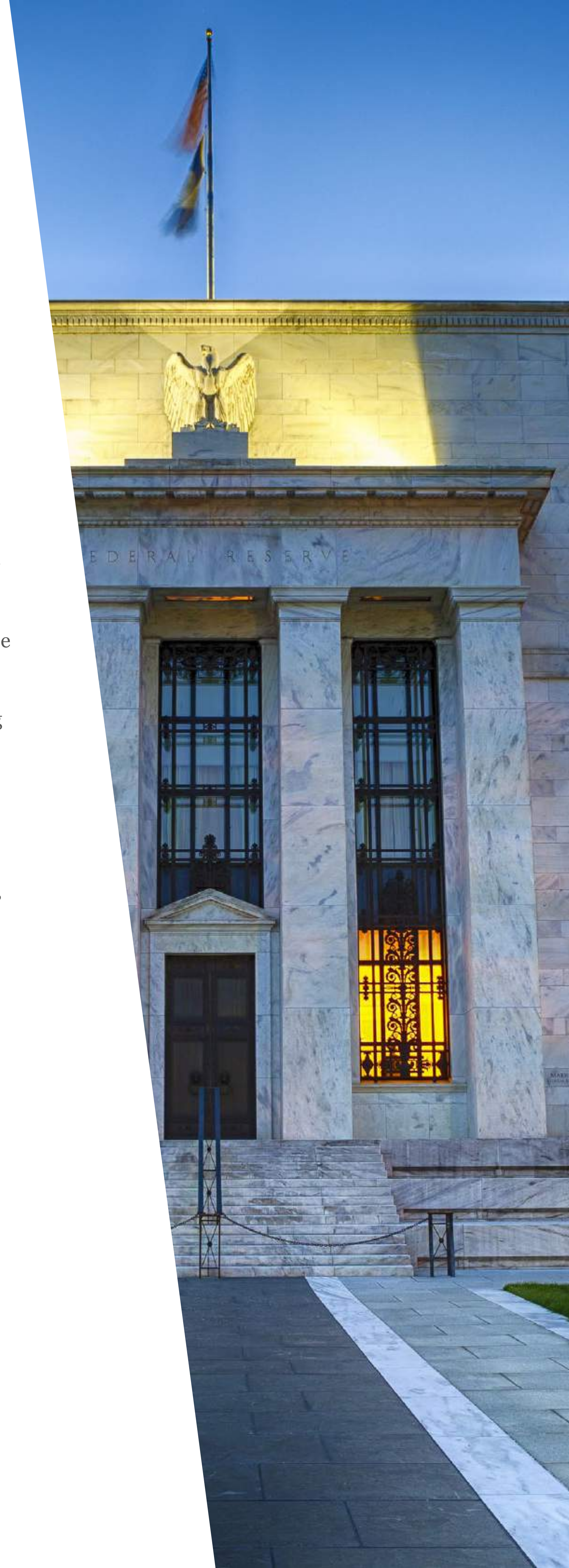
As the name implies, the soon to be published BBA constructs "building blocks" — or groupings of entities in the supervised firm — that are covered under the same capital regime, which are then used to calculate combined, enterprise-level capital resources and requirements. For example, subsidiaries within a life insurance building block would be treated under the BBA the way they would be treated under life insurance capital requirements, while subsidiaries in a depository institution building block would be subject to bank regulatory capital requirements.

To address regulatory gaps and arbitrage risks, the BBA generally would apply bank regulatory capital requirements to nonbank/noninsurance building blocks. Once the enterprise's entities are grouped into building blocks, and capital resources and requirements are computed for each building block, the enterprise's capital position is, subject to certain adjustments and scaling (described below), produced by generally adding up the capital positions of each building block. Finally, the BBA would impose a minimum capital requirement against the holding company's aggregate capital position calibrated to "ensure that the risks of the enterprise do not present undue risk to the safety and soundness of the depository institution".

The FRB also described a number of adjustments that the BBA would need to make to the building blocks in order for the aggregation to function appropriately, including measures designed to avoid double-counting that could arise from inter-company transactions and provisions to comply with the Collins Amendment under Dodd-Frank. Significantly, one adjustment to the building blocks would apply insurance capital rules consistently, without regard to permitted accounting practices granted by an individual state, thus uniformly applying statutory accounting principles as set forth by the National Association of Insurance Commissioners (NAIC).

The FRB also noted the need of the BBA to "scale" capital positions in different regimes through analyzing historical defaults because, as he noted, "two building blocks under two different capital regimes cannot simply be added together if, as is frequently the case, each regime has a different scale for its ratios and thresholds".

Robert Fettman
Counsel
New York
robert.fettman@hoganlovells.com



The U.S. health insurance regulatory landscape

In the United States, the regulatory landscape for health insurers continues to be marked by change and uncertainty, presenting potential risks and opportunities.

Health care reform

Almost a decade after its enactment, the Affordable Care Act (ACA) and the fundamental shifts in federal health care policy that it occasioned continue to be a source of controversy. Existential challenges to the law continue to be prosecuted in the courts and to be considered by the Trump Administration and its Congressional allies. While it is far from clear that these challenges will ultimately succeed, they are representative of the ongoing volatility that health care industry stakeholders face.

The fates of more discrete administrative policies also remain up in the air. From association health plans to short-term limited-duration insurance, and from cost-sharing reductions to risk-corridor payments, the Courts will continue to play a role in determining the direction of health care reform. And qualified health plan issuers appear likely to continue to be buffeted by conflicting signals from the federal policymakers with respect to the vitality of the health insurance exchanges.

Medicaid

The Medicaid eligibility expansion under the ACA also continues to be a source of public policy debate; and new uncertainty has been introduced with federal approvals of expansions conditioned on work requirements, as well as potential approvals of expansions to only a portion of the eligible population, and of block grants. Even as the Trump Administration considers additional state flexibilities, including, potentially, in the Medicaid managed care space, its expansion policies are likely to be tied up in judicial challenges.

Medicare

Ongoing trends under the Medicare Advantage and Medicare Part D prescription drug programs include a continuing focus on innovative payment and service delivery models. Federal policymakers continue to consider greater flexibilities to enable value-based payment methodologies and enhanced coordination of care. Other issues of note include the evolving boundaries of potential False Claims Act liability as well as program compliance priorities.

Drug pricing reform

There is a growing consensus that public policy measures should be adopted to address drug pricing concerns. A wide variety of proposals has been suggested, with some focused on drug manufacturers, but others focused on payors or their pharmacy benefit managers (PBMs). Of particular note, the Trump Administration has proposed to eliminate a regulatory safe harbor for rebates provided by drug manufacturers to Medicare Part D and Medicaid managed care plans or their PBMs, in favor of encouraging discounts for beneficiaries at the point of sale, which would dramatically alter current business models.

The Hogan Lovells team will continue to monitor the regulatory landscape on behalf of its health insurance issuer, Medicare Advantage organization, Medicare Part D prescription drug plan sponsor, and Medicaid managed care organization clients and advise on potential risks or opportunities that developments may present.

Ken Choe
Partner
Washington
ken.choe@hoganlovells.com

> Deep industry knowledge and business acumen.
>
> *Legal 500 UK*, 2018

Reconciling California's new privacy law with the Insurance Information and Privacy Protection Act

The California Consumer Privacy Act ("CCPA"), which becomes effective on 1 January 2020, is in some ways the most comprehensive privacy law currently in the United States. Unlike most other U.S. privacy laws which generally focus on specific sectors or issues, the CCPA applies broadly to qualifying businesses that collect personal information about California residents and aims to create significant new consumer privacy rights. In doing so, this law has created unclearly bounded, and difficult to implement, new obligations, requiring businesses to provide transparency on how consumer personal information is collected, shared, and used.

The broad reach of the CCPA has given some highly regulated industries pause, and raises the question of what happens when a business that is subject to the CCPA is already required by law to undertake similar and overlapping obligations with respect to consumer personal information? The Legislature anticipated the problem of overlapping laws, in some situations. For example, the CCPA does not apply to medical information governed by California's Confidentiality of Medical Information Act, or protected health information collected by a covered entity or business associates governed by the privacy, security, and breach notification rules of the Health Insurance Portability and Accountability Act. However, there was no exemption in the law as initially drafted for insurance entities already governed by California's Insurance Information Privacy and Protection Act ("IIPPA").

The IIPPA and associated regulations provide extensive and long-established privacy protections for personal information collected by insurers, agents, and insurance support institutions from their applicants, insureds, beneficiaries, and claimants. While the CCPA and IIPPA intersect in many areas, the laws are different in scope and particulars. For instance, the CCPA's definition of personal information is broader and more specific than the definition in the IIPPA. The CCPA's protections apply to "consumers" generally (defined as California residents) whereas the IIPPA is focused on the information in connection with insurance transactions pertaining to California residents. The right of deletion is more detailed in the CCPA than in the IIPPA. Further, the CCPA's ultimate enforcement authority is the California Attorney General, whereas the IIPPA's enforcement lies with the Insurance Commissioner. These are only a few differences in the laws.

To eliminate the dual regulation of insurance businesses under the IIPPA and CCPA, Assembly Bill 981 ("AB 981") was introduced in February 2019 by California Assembly Insurance Committee Chairman Tom Daly to exempt covered insurance institutions, agents, and support organizations under the IIPPA from the CCPA (Cal. Civ. Code § 1798.100, *et seq.*) and eliminate a consumer's right to request a business to delete or not sell the consumer's personal information under the CCPA if it is necessary to retain or share to complete an insurance transaction requested by the consumer.

While AB 981 serves to clarify duties for the insurance industry in California and harmonize protections to individuals provided by the CCPA and IIPPA, some consumer groups have opposed this bill. For instance, one well-known activist group, Consumer Watchdog, recently expressed its disapproval of AB 981, calling it an "unnecessary and disingenuous attempt to carve-out the entire insurance and financial services industries from the protection of the [CCPA]". Discussions are underway to identify where and how to strengthen the Insurance Code to provide comparable privacy protections while preserving a functional insurance system in California.

Following an April 23 hearing before the California Assembly's Committee on Privacy and Consumer Protection, AB 981 received unanimous approval. The bill will now advance to the Assembly's Appropriations Committee before being voted on by the full Assembly and potentially advancing to the California Senate for consideration.

Without AB 981, the insurance industry faces a particularly hazardous road to implementation of the CCPA, given the conflicts between IIPPA requirements and CCPA requirements, enforcement by separate regulatory bodies, and the likelihood that future resolution could play out in costly civil litigation.

Vassi Iliadis
Senior Associate
Los Angeles
vassi.iliadis@hoganlovells.com

International sanctions: Breaking rank – stuck in the middle with EU

On 8 May 2018, President Trump announced the withdrawal of the United States from the Iran Nuclear Deal; "*a horrible one-sided deal that should never, ever have been made*" as he put it at the time. By 5 November 2018 the U.S. had re-imposed the sanctions against Iran lifted in 2016 (covering nearly every key industry sector including petroleum, petrochemicals, shipping, (re)insurance and automotive) as well as withdrawing licences authorising non-U.S. subsidiaries of U.S. groups to engage in Iran trade on certain conditions.

In response, the EU "blocked" compliance with U.S. Iran sanctions with effect from 7 August 2018. For entities subject to European jurisdiction, and any other country with similar blocking laws, the result is that they are exposed to directly conflicting laws concerning trade with Iran. The choice is not appealing: decide to cease business with Iran to comply with U.S. law and (despite rare enforcement) face criminal penalties for doing so; continue Iran-related activities and face heavy fines or, worse, disbarment from trading with the U.S. at all.

Nonetheless, it is possible to comply with both regimes: licences to perform otherwise prohibited acts (both on the EU and US sides) can sometimes be obtained; alternatively guidance on the Blocking Regulation makes clear that an EU operator is entitled to make its own commercial decisions concerning business with Iran based on its assessment of the economic situation. Should companies make such decisions, it is important that the basis for them is recorded and properly articulated (internally and externally) to ensure that they comply with the law. In addition, contract terms (such as exclusion clauses) and policies/procedures will need to be reviewed to ensure that they are enforceable and consistent with the decisions that have been made.

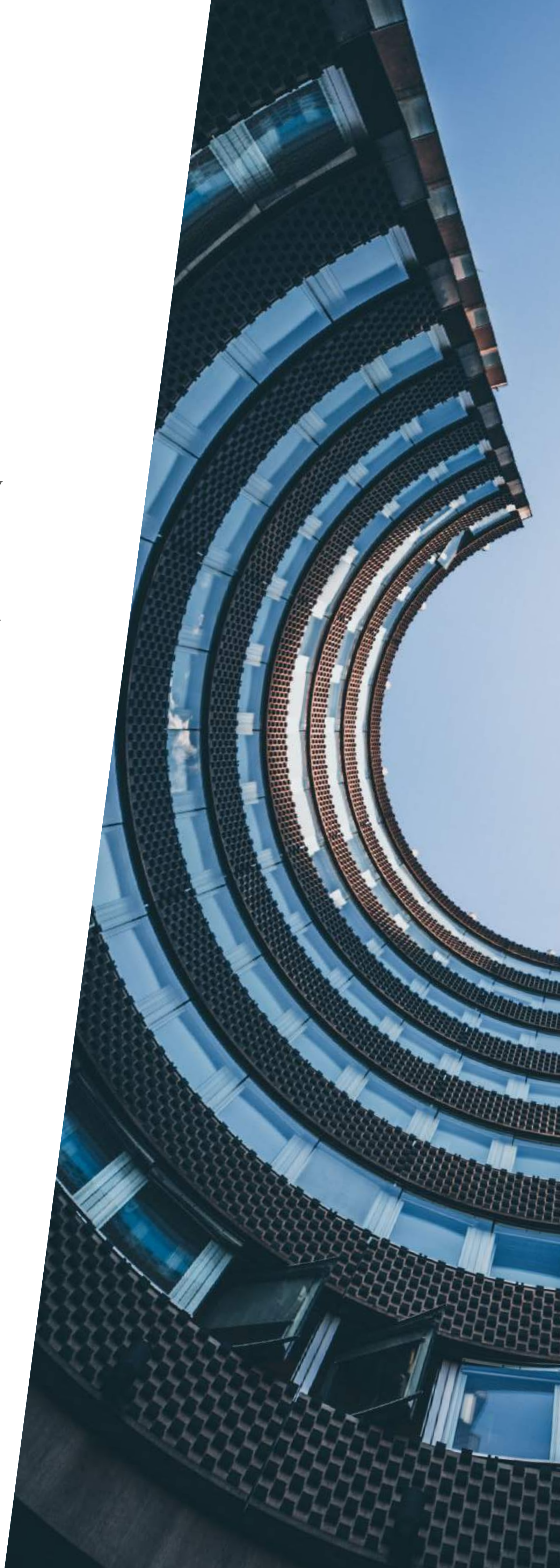
European blocking laws also create fertile ground for disputes, especially in the context of Iran-related business that may have been transacted at a time before the turmoil of 2018. Take the recent UK case of *Mamancochet Mining*, in which the issue arose as to whether or not insurers could rely on sanctions exclusion for a claim with an Iranian nexus without breaching the Blocking Regulation. The judge thought it arguable, but his non-binding comment creates more questions than answers, and highlights the myriad of considerations faced by the industry in light of these conflicting regimes. More litigation around these issues could ensue and (re)insurers are well-advised to do what they can to avoid it.

The subject of regulatory divergence is also ripe for consideration in the context of Brexit. At the time of writing, the future of Brexit is unclear; but the UK has been busily transposing existing European sanctions directly into UK law under the Sanctions and Anti-Money Laundering Act ("SAMLA") implemented last year. Whether or not this has happened in a manner consistent with current law is one question, but another is whether or not UK sanctions will remain aligned with the EU; the UK will certainly have the power under SAMLA (and possibly the political motivation) to deviate if it desires; no doubt more on this in the future.

The divergence between legal obligations also sits uncomfortably with the fact that we live in a time of heightened sanctions enforcement. It remains the case that the U.S. most consistently and aggressively enforces its sanctions, but enforcement trends are increasing across Europe. In the UK, the first civil fine has been issued by the UK Office of Financial Sanctions Implementation for a violation of UK sanctions. In the case in question, a penalty of 2,500% of the value of the offending transaction was imposed, despite the fact that the breach was voluntarily disclosed. Whilst this case does not provide far-reaching insight into OFSI's broader enforcement strategy, it serves to highlight the heated enforcement environment that now exists.

Whilst 2019 will undoubtedly bring further change, competing forces will make sanctions compliance complex for the (re) insurance industry. Careful management of risk is therefore required to ensure that companies continue to tread on the appropriate side of the line.

Jamie Rogers
Partner
London
jamie.rogers@hoganlovells.com



China inbound

Whilst China's growth may be slowing, it remains a fast-developing country with numerous opportunities for international insurers. Most notably, state-backed infrastructure projects and technological advancements offer opportunities for insurers to provide their services to the Chinese market.

The One Belt, One Road project, which envisages the development of trade routes and shipping lanes in an attempt to stimulate the growth of Chinese exports, will require significant investment and insurance. Whilst the Chinese market has typically been inclined towards protectionism, this new project has brought with it indications of movement away from this position. Last year, China Re hosted an insurance forum in London to promote the participation of UK insurers in the project and encourage co-operation between UK and China. This movement away from protectionism has also been seen in China's decision to relax the 50% foreign ownership cap in relation to insurance joint ventures.

Another state-led programme creating an increase in demand for insurance is the "Made in China 2025" industrial policy. This programme is a ten year plan which seeks to develop the country's manufacturing industry by rapidly developing ten wide-ranging high-tech industries, including across sectors such as aerospace engineering and advanced robotics. Swiss Re has said that insurance will be "an indispensable part of the overall risk management framework that will enable Chinese companies to migrate to higher value-added production".

The "Made in China 2025" programme also illustrates another key trend taking place in China: an increased focus on technological development. Whilst its manufacturing industry previously focused on making goods that were cheaper than those from the rest of the world, it is clear that Chinese industry now acknowledges the need to develop sophisticated products to maintain its position in the global trading market. However, as China draws nearer to this technological frontier, new risks arise. EY estimates premiums from the cyber insurance market alone in Asia will increase from $2 billion in 2015 to $7.5 billion in 2020.

These developments all feed into the bigger picture of China's continued economic growth and urbanisation. The country already has at least 15 megacities (defined as cities with more than 10 million residents) and expects this number to continue to rise. However, whilst China's GDP continues to grow, its vulnerability to natural catastrophe remains. In fact, China's vulnerability in relation to storms, droughts and other extreme weather is expected to increase with climate change and yet the country remains under insured in relation to these natural disasters.

According to Lloyd's City Risk Index, China has $95.24 billion of its GDP at risk from a plethora of perils, with natural catastrophe and climate change representing 45.5% of that figure. Whilst there has been an acknowledgment of the growing need for catastrophe insurance and an increase in such coverage, this has not been sufficient. According to Guy Carpenter, GDP in the Asia-Pacific region has shown an annual growth of 7.7% over the past 12 years, whilst the catastrophe reinsurance cover it bought over the same period corresponded to an annual growth rate of roughly 6%. This protection gap provides yet another opportunity for the international market to offer its insurance services to the Chinese market.

Charles Rix
Global Head of Insurance Sector
London
charles.rix@hoganlovells.com

> Broad insight into the different corporate, regulatory and litigation issues.
>
> *Chambers Europe*, 2018

Protectionism and the insurance industry

Effective international insurance and reinsurance markets are vital to diversify risk globally and to promote the growth of the global and national economies. Conversely, barriers increase costs and reduce insurance and reinsurance capacity, hindering economic development. At the same time, individual countries need, as far as possible, to protect their economies and policyholders against the risk of claims not being paid for any reason. Given the need to balance these factors, it is perhaps not surprising to see conflicting trends in the insurance industry – the concern, though, at present is that protectionism is the prevalent trend.

Starting with the US/China trade war and tariffs generally, these have so far had limited impact on the insurance industry. Over time, however, global premium growth could be negatively impacted by higher tariffs, particularly in marine and trade credit lines. Sigma has estimated that a 1% decrease in world trade reduces marine cargo premium growth by 0.89%, and for marine hull premiums by 0.80%. For trade credit, a 1% drop in trade would reduce premiums by 0.67%. Protectionist measures which have a more direct impact on the insurance industry are on the rise, notably in Asia, Latin America and Africa.

Here are a few examples from some significant markets:

India and Brazil maintain a system of order of preference which favours domestic reinsurers over foreign reinsurers. India also restricts foreign ownership in insurance companies to 49% (increased from 26% in 2015).

Argentina requires the use of local reinsurers in some circumstances and localisation of assets.

Indonesian insurers are required to place all reinsurance of motor, health, personal accident, credit, life and surety business with domestic reinsurers. For other risks, a minimum of 25% of reinsurance must be placed with domestic reinsurers. Contrary to commonly accepted practice, the Indonesian tax authorities do not recognise claims as tax deductible for life insurers.

Turkey has a premium cap for motor third party liability ("MTPL") and operates a pooling system for part of MTPL which redistributes underwritten risk to all market players at prescribed shares.

On the other hand, China has raised it's cap on foreign shareholdings in life insurance companies to 51%, the first time foreign companies have been permitted to be a majority shareholder in a life insurance company, with foreign investment restrictions to be removed entirely in 2021.

However, major shareholders in foreign-invested insurance companies are prohibited from transferring their shares within five years of acquisition. In addition, it is also now possible to establish a wholly foreign owned insurance agency or loss adjustment agency in China.

Then there is the EU/US Covered Agreement. Signed in September 2017, the agreement requires U.S. states to eliminate reinsurance collateral and, in return, the EU will not impose local presence requirements on U.S. firms operating in the EU, and must effectively defer to US group capital regulation for U.S. businesses operating in the EU. In addition, if, as contemplated by the agreement, U.S. states take appropriate action to establish group capital standards, the Covered Agreement provides that U.S. insurance groups operating in the EU will be supervised at the worldwide group level only by the relevant U.S. insurance supervisors, and EU insurers operating in the U.S. will be supervised at the worldwide group level only by the relevant EU insurance supervisors, thus establishing the principle of home jurisdiction group supervision. A parallel Covered Agreement has also been signed between the U.S. and UK which will apply once the UK leaves the EU.

Charles Rix
Global Head of Insurance Sector
London
charles.rix@hoganlovells.com

Resilience – a global trend

Cyber resilience is front of mind for regulators across the globe. The last year has seen significant developments in the way insurers are expected to prepare for cyber disruption and attack and we will see this global trend continue.

Regulators are starting to take a much wider and more holistic approach to resilience.

Even as the system of cyber resilience regulation develops, it is becoming clear that cyber is only one aspect of what is needed to achieve broader operational resilience. Increasingly, regulators are going to look at how well insurance firms are prepared to resist whatever kind of disruption occurs – cyber or otherwise.

Cyber resilience: a global priority

The International Association of Insurance Supervisors noted in November last year that cyber resilience must be achieved by all insurers "regardless of their size, speciality, domicile or geographic reach". Regulators are increasingly aware of the risks that a lack of cyber resilience poses, both to customers and, in the worst instances, markets. There is an expectation that firms should be able to protect themselves from disruption, and a regulatory framework is developing to reflect that.

Europe

The message from European regulators has been clear. "Resilience is key; build effective cyber capability" Robin Jones, Head of Technology, Resilience & Cyber at the FCA urged firms. Domestic regulators across Europe seem to be taking a similar approach.

In Germany, BaFIN will begin systematically conducting supervisory IT audits of insurance undertakings; and in France the ACPR published a discussion paper in March 2019 for banks and insurance companies, on IT risk. The paper notes that insurance companies have long relied on IT management principles, such as ISO standards, that do not share the conceptual framework established by banking regulators. The paper indicates the updated approach to cyber resilience that insurance firms need to take.

There has been an increased focus in Europe on the importance of cyber resilience in the context of outsourcing. The Swiss regulator can now carry out on-site inspections of third party outsourcing partners and BaFIN in Germany is conducting supervisory IT audits of insurance undertakings' outsource providers.

One development to watch in European cyber regulation is the harmonization of domestic regulatory regimes. Currently, individual EU member states may enact sector-specific requirements but there are signs that regulators are keen to coordinate their approach to cyber issues. Milestones so far have been the European Central Bank's publication of its European Framework for Threat Intelligence-Based Ethical Red Teaming and the FSB publishing its Cyber Lexicon to facilitate cross-border understanding. As European cyber regulation develops, expect to see further cross-border initiatives.

Asia

Last year saw measures to improve cyber resilience implemented across Asia: Hong Kong, Australia, Japan, India and the Philippines all rolled out new initiatives. However, many Asian regulators have not yet developed the same level of cyber resilience framework as their European counterparts. "Clearly, more needs to be done to strengthen Asia's cyber threat resilience" said Heng Swee Keat, Minister for Finance, and Monetary Authority of Singapore Board Member.

There are certainly signs that this is happening. The Monetary Authority of Singapore, for instance, began consulting on 7 March 2019 on proposed changes to the Technology Risk Management Guidelines and the Business Continuity Management Guidelines.

There are also signs of a move towards cross-border harmonization here. At the Association of Southeast Asian Nations conference on cyber security, it was agreed to establish a mechanism for dealing with Asian inter-related cyber diplomacy, policy and operational issues. It will be interesting to see what form this takes.

America

For U.S. insurers, the phase-in of the New York Department of Financial Services cybersecurity regulation and the National Association of Insurance Commissioners (NAIC) Insurance Data Security Model Law marked a significant change in cyber risk management. One of the key developments in 2019 will be the Model Law being given effect in states across the U.S.

Further initiatives are on the horizon, however, and the Federal Insurance Office established at the end of last year an inter-agency working group on insurance industry cybersecurity and the NAIC is exploring the idea of a Cybersecurity Insurance Institute.

Developments in data privacy may also necessitate change in the way cyber resilience is managed. California has enacted the most comprehensive privacy law to be enacted in the United States so far, the Consumer Privacy Act, which provides similar protection to the GDPR in Europe – further changes to data privacy will likely follow elsewhere in the US. Operational resilience and cybersecurity regulation will have to evolve to keep pace with this changing approach to data privacy.

Angela Greenough
Counsel
London
angela.greenough@hoganlovells.com

Susan McKiernan
Counsel
London
susan.mckiernan@hoganlovells.com

Operational resilience

Cyber security is only one aspect of the broader issue, however. Increasingly there are signs that regulators are moving towards a more holistic view of operational resilience. Insurers should do the same to stay ahead of the curve.

Operational resilience encompasses all aspects of a firm's ability to withstand disruption: the Bank of England describes it as the ability of firms to absorb and adapt to shocks, rather than contribute to them. This is something the banking industry is familiar with, as operational resilience has been a feature of banking regulations as part of the legislative response to Lehman. But now regulators are starting to widen the net.

The UK is leading the way in this respect. A discussion paper published jointly in July 2018 by the PRA, the Financial Conduct Authority (FCA) and the Bank of England, made it very clear that the operational resilience of firms is a priority and "viewed as no less important than financial resilience". The discussion paper included insurance firms alongside banks and other financial institutions.

In Europe there are also signs of this broader approach. The ACPR in France have published a paper considering how cyber risk controls should be incorporated into a more general insurance operational risk management framework. The EBA published in February 2019 final guidelines which set out a new supervisory regime for outsourcing in banking; these could be a bellwether of the way EIPOA is moving.

Get ahead of the game

It is too soon to be clear on the specifics of any new operational resilience regulation, but the better prepared the insurers are, the quicker the business can adapt. Ultimately, what the regulators are aiming for is a change of mindset; assume operational disruptions will occur and be prepared to manage them.

- **Strategy:** assess how resilient your business is; develop a strategy at board level and embed it.
- **Policy and framework:** know your business; identify critical assets and activities, outsourced service providers, and their vulnerabilities; and plan for business continuity. For cyber resilience, this is not only about looking to protect against attacks, but how quickly you can detect an attack, respond and recover.
- **Operating model:** implement an operating model incorporating risk-resilience functions, and deliver mechanisms to support resilience.

Angela Greenough
Counsel
London
angela.greenough@hoganlovells.com

Susan McKiernan
Counsel
London
susan.mckiernan@hoganlovells.com

“

Extremely knowledgeable and responsive.

Legal 500 UK, 2018

”

The rise of insurtech, AI, machine-learning, blockchain, and smart contracts in the U.S.

In the last several years, we have seen a new crop of digital products and services enter the lexicon of the insurance industry. And with these, inevitably comes a myriad array of insurance regulatory issues. Usage-based insurance, peer-to-peer insurance, machine-learning algorithms, robo-advisory insurance processes, blockchain-based insurance, and the Internet of Things present many challenges. Insurtech has permeated virtually every aspect of the insurance industry.

Regulators, technology providers and insurance companies are frequently grappling with questions like:

- Do digital marketing and advertising activities trigger insurance producer licensing requirements?
- Does the provision of value-added services violate state anti-rebating laws?
- How can insurance referrals be compensated without triggering insurance regulations?

The ability of AI and machine-learning to analyze data at very granular levels has regulators concerned about consumer protection. Algorithms that utilize geographical data or other individualized information may effectively create proxies for sensitive characteristics such as race, religion, gender, etc. prohibited from consideration by insurance law.

On the one hand, the application of machine-learning to price risk could help insurers reduce moral hazard and adverse selection inherent in selling insurance broadly. On the other hand, the narrow tailoring of risk and the creation of highly customized policies reflecting unique characteristics of an insured could undermine the risk-pooling function of insurance and lead to groups or categories of risk becoming uninsurable in the private insurance marketplace.

Insurtech firms involved in underwriting and pricing functions must appreciate the regulatory landscape governing insurance product development or risk running afoul of multiple insurance regulations. For example, a company providing a model that impacts rate filings may be acting as an advisory or rating organization that requires licensure under state law. And, even where state law may be unclear how far licensing requirements extend, regulators nevertheless may insist on some degree of oversight as a condition to approving an insurer's rate filings.

Regulators are scrutinizing the potential anticompetitive effects of Insurtech vendors that supply similar data and models to multiple insurers serving a particular market. There is a concern also that non-traditional information sources may provide proxies for prohibited discriminatory factors.

In parallel, the National Association of Insurance Commissioners (NAIC) is compiling best practices for regulators to use in reviewing insurance company filings containing predictive models. And such "best" practices may not be the "most streamlined." One draft under consideration identified 16 best practices to apply and 92 pieces of information a regulator should consider.

The insurance actuarial modelling world is also benefiting from new forms of data collection and analysis, including data-mining, statistical modeling, and machine-learning. It has become increasingly challenging for insurance regulators to evaluate filed rate plans that incorporate sophisticated technology-based predictive models. To address these issues, insurance regulators are considering methods of field-testing the new technologies in controlled environments similar to the FinTech "sandbox" concepts implemented in the UK and other countries. Insurers and Insurtech firms that communicate with regulators early in the development of their offerings will be the ones most likely to achieve compliant success.

Blockchain

Many see tremendous potential for blockchain technology in the insurance industry, especially the ability to bring efficiencies and cost savings to existing insurance processes. Data management and claims administration are ripe for significant improvement. While there may be some ambiguity in the application of state insurance laws to aspects of blockchain technology, there are also opportunities for innovative legal and technical solutions.

Of course, policy information and personal customer data residing on a blockchain will need to comply with existing privacy and data protection regulations. State insurance laws generally require an insurer's books and records to be maintained in state and be available to the state regulator for inspection and audit. It is easy to imagine encrypted blockchain technology that is designed to provide such compliant storage. But even more interesting (and perhaps unsettling to some) is the possibility of significantly streamlining compliance efforts by allowing a state regulator to directly monitor transactions in real-time via a node on the insurer's blockchain.

Smart contracts

Smart contracts implemented in connection with a blockchain offer even more potential benefits to the insurance industry. For insureds, the implementation of smart contracts could remove key pain points in the claims filing process while reducing claims handling expenses for insurers. A good example of smart contracts' potential is in connection with parametric flight delay insurance policies that run on a blockchain. The insurance process can be fully automated with a smart contract both determining whether customers are eligible for indemnification and managing the payments. Customers on a substantially delayed flight would benefit from automatically receiving their payout when they (finally) arrive at their destination. No claim need be filed.

The claims-free, guaranteed-payout features achievable with smart contracts certainly add value for insureds and may provide opportunities for premium pricing for insurers. As smart contracts and blockchain technology reduce administrative, compliance and claims-handling costs, certain traditionally uneconomic insurance products, such as microinsurance, may become realistically viable.

However, the fundamental nature of smart contracts presents a number of regulatory and compliance hurdles under existing insurance laws. At the threshold, a determination, on a case-by-case basis, is needed whether smart contracts with insurance-like features are actually subject to regulation as "insurance" contracts under state law, or are they derivative contracts subject to other regulatory regimes.

If it is a regulated "insurance" product, are automated payments via smart contract allowed, particularly if funds are to be escrowed? And, can those payments be made in a cryptocurrency? Will the answer change if that cryptocurrency is pegged to, or floats against, the U.S. dollar currency used to pay the insurance premiums?

State laws prescribing claims-handling procedures will also need to be considered carefully. Much like other algorithmic approaches, a smart contract's automated claim denial may be challenged as a substantive design flaw or as an inadvertent programming error. Similarly, the immutable and irreversible nature of smart contracts poses an interesting challenge in the context of insurance delinquency proceedings.

Conclusion

The implementation of Insurtech, AI, machine-learning, blockchain technology and smart contracts in insurance is growing. New products, new markets, and new efficiencies are within sight, if not already within grasp. Insurers and regulators will be wrestling with state laws, and looking for ways to collaborate with each other, as each innovation tests the boundaries of existing regulatory regimes.

Ted Mlynar
Partner
New York
ted.mlynar@hoganlovells.com

Robert Fettman
Counsel
New York
robert.fettman@hoganlovells.com

"Quick and knowledgeable service."

Chambers Asia Pacific, 2019

Key legislation and regulatory changes on the horizon for the insurance sector (2019)

UK

Brexit	The latest date on which the UK is due to leave the EU is now 31 October 2019. The date may change subject to ongoing political negotiations in the UK.	The UK Government and regulators are focused on the regulatory and legislative changes needed to ensure a smooth transition. As a result, other non-Brexit regulatory and legislative initiatives have reduced in number.
Extension of the senior managers and certification regime to insurance intermediaries	The new requirements, which were implemented for insurers last year, will apply to insurance intermediaries from 9 December 2019.	

EU (including the UK)

Brexit	The European Commission and EIOPA have published a number of papers about the impact of Brexit. Most recently, in February 2019, EIOPA published its recommendation calling on national supervisory authorities to minimise the detriment to policyholders in the event of a no deal Brexit. Some EU member states such as France, Germany, Ireland, Luxembourg and Spain have now put in place legislation covering contingency measures.
Review of the Solvency II Delegated Regulation (implementing measures)	In March 2019, the European Commission published a new Delegated Regulation amending the Solvency II Delegate Regulation. It will be considered by the European Parliament and Council. It is proposed that some provisions will apply from 1st January 2020.
Review of the Solvency II Directive	The European Commission is due to review and report on the Solvency II Directive by the end of 2020. It has asked EIOPA to provide technical advice by 30 June 2020. No timing for the review process and subsequent implementation has been given.
Review of the Motor Insurance Directive	In May 2018, the European Commission published for consultation draft proposals to amend the Motor Insurance Directive. In February 2019, the European Parliament published its final report on the proposals. The proposals will be subject to final negotiations between the Commission, Parliament and the Council during 2019.

Hong Kong/China

Hong Kong: licensing regime in relation to insurance intermediaries.	The Hong Kong Insurance Authority is expected to assume full regulation of insurance intermediaries by June 2019, and has consulted on draft rules and regulations on the new regime.	The provisions of the Insurance Ordinance implementing the new licensing regime are expected to come into force later this year. The Insurance Authority has issued draft guidelines on continuing professional development, "fit and proper" requirements, pecuniary penalties for breaches and the maximum number of insurers to be represented by a licensed agency.

Hong Kong: risk-based capital regime.	The Insurance Authority is currently consulting on the detailed rules for the development of a risk-based capital regime and Hong Kong insurers are participating in quantitative impact studies. The new regime is likely to come into effect by **2022.**	As part of this project, the Insurance Authority has consulted on a draft Guideline on Enterprise Risk Management. It is expected that the Guideline will come into effect on 1 January 2020 and that insurers will start preparing ORSA reports from 31 December 2020 onwards.
Hong Kong: new initiatives to promote Hong Kong as a regional insurance hub.	Following the development of the Belt and Road Initiative and the Greater Bay Area scheme, new initiatives to regulate the financial services sector, including the insurance sector, will be introduced in the coming years.	The Government plans to introduce legislative amendments to allow the formation of special purpose vehicles in Hong Kong to issue insurance–linked securities, and plans to provide tax relief to promote the development of marine insurance and underwriting of specialty risks in Hong Kong. The aim is to strengthen Hong Kong's role as the risk management centre for Belt and Road projects and as a regional insurance hub.
Mainland China: relaxation of qualification requirements on foreign investors looking to set up an insurance company in China.	Currently, a foreign insurer must maintain a representative office in China for at least two years before it is allowed to establish a foreign-invested insurer in China. This requirement may be abolished soon.	On 30 May 2018, the China Banking and Insurance Regulatory Commission published the Decisions Relating to Amending Regulations Governing Foreign Insurers in China for public consultation which includes a proposal to remove the representative office requirement. The Decisions have not yet become law, but in practice they are already having an impact on foreign insurance applicants.
Mainland China: repeal of restriction on foreign ownership of life insurers.	The Special Measures for Foreign Investment *Access (Negative List) (2018 version)* came into effect on 28 July 2018. Under its terms, the maximum foreign ownership in life insurance companies is lifted from 50% to 51%; the ownership cap will be removed entirely in 2021.	The lifting of the foreign ownership restrictions has also been provided in the draft revised Foreign-invested Insurance Companies Administrative Regulations Implementing Rules which was published for consultation in July 2018. These rules have not yet taken effect.

United States

EU/U.S. Covered Agreement	In April 2018 the Agreement entered into force. The next steps are towards provisional application and to work towards full implementation. The EU is required to begin removing collateral requirements within 24 months and, in the U.S., reinsurance collateral requirements must be fully eliminated within five years.	In March 2019, the NAIC updated, and published for consultation, its proposed revisions to the Credit for Reinsurance Model Law and the Credit for Reinsurance Model Regulations, which addresses the reinsurance collateral provisions of the Covered Agreement.
California Consumer Privacy Act (CCPA)	The CCPA is due to become effective on 1 January 2020 and establishes new extensive consumer privacy rights in California.	Insurance companies will be caught with competing requirements in the CCPA and the Insurance Information Privacy and Protection Act. In February 2019, Assembly Bill 981 was introduced to exempt insurers from the CCPA.

New York: suitability in annuity transactions.	The NY Department of Financial Services has published its final version of Insurance Regulation 187, which requires insurance providers selling annuities and life insurance to ensure the transaction is in the "best interest" of the consumer.	The Regulation comes effective on 1 August 2019 for annuities and on 1 February 2020 for life insurance products.

International

New accounting requirements – IFRS 17 requires all insurance contracts to be accounted for on a consistent basis to enable investors to better compare insurers' risk exposure, profitably and financial position.	IFRS 17 will apply to annual reporting periods from **1 January 2022** (extended from 1 January 2021) but companies may apply it earlier.
The International Association of Insurance Supervisors ("**IAIS**") is developing the Common Framework ("**ComFrame**") for the supervision of Internationally Active Insurance Groups. It will include a global insurance capital standard (ICS).	The IAIS is scheduled to adopt Comframe by the end of 2019. Implementation will be in two phases, a five-year monitoring period with confidential reporting to group-wide supervisors, followed by a second phase implementation of the ICS as a group-wide prescribed capital requirement.

Our global insurance team

Hogan Lovells has one of the leading insurance practices in the world, providing advice on regulation, M&A, dispute resolution, and commercial matters such as reinsurance, outsourcing and distribution arrangements. We advise on all the main segments of the insurance industry, including life and general insurance, Lloyd's of London, and run-off and consolidation businesses, and in relation to all forms of insurance products.

We are one of the largest and most prominent law firms in the world, with over 2,800 lawyers worldwide and significant international coverage in over 45 offices across Europe, the U.S., Latin America, Asia, Africa, Australia and the Middle East. Our transatlantic office coverage and strength in depth is unique among leading global law firms.

With more than 300 lawyers with in-depth knowledge of the insurance industry worldwide, we are one of a few insurance practices which can offer a truly global perspective. Our dedicated sector-focused teams are immersed in the industry, enabling us to keep our clients up to speed with legislative and regulatory changes. Our extensive client base ensures that there are very few issues that we have not come across.

The status of the practice has been recognised by a number of legal directories and we are well-known to regulators and other advisers in many jurisdictions.

300+

Lawyers

We have over 300 lawyers in our insurance sector. Our extensive network ensures that there are very few issues that we have not come across.

10+

Jurisdictions

Ranked for Insurance in 10+ jurisdictions in The Legal 500 and Chambers, including Band 1 rankings in the UK, France, Spain and Poland.

39+

Ranked Lawyers

Our lawyers were recognised as leaders in the insurance sector and awarded top rankings by legal guides in 2018, including Hall of Fame status.

Insurance sector events 2019

February
SMCR webinar

March
International sanctions webinar

May
Insolvency breakfast seminar

June
Reinsurance seminar

July
Insurtech event

September
Insurance finance dinner

September
M&A developments webinar

October
Regulatory investigations breakfast seminar

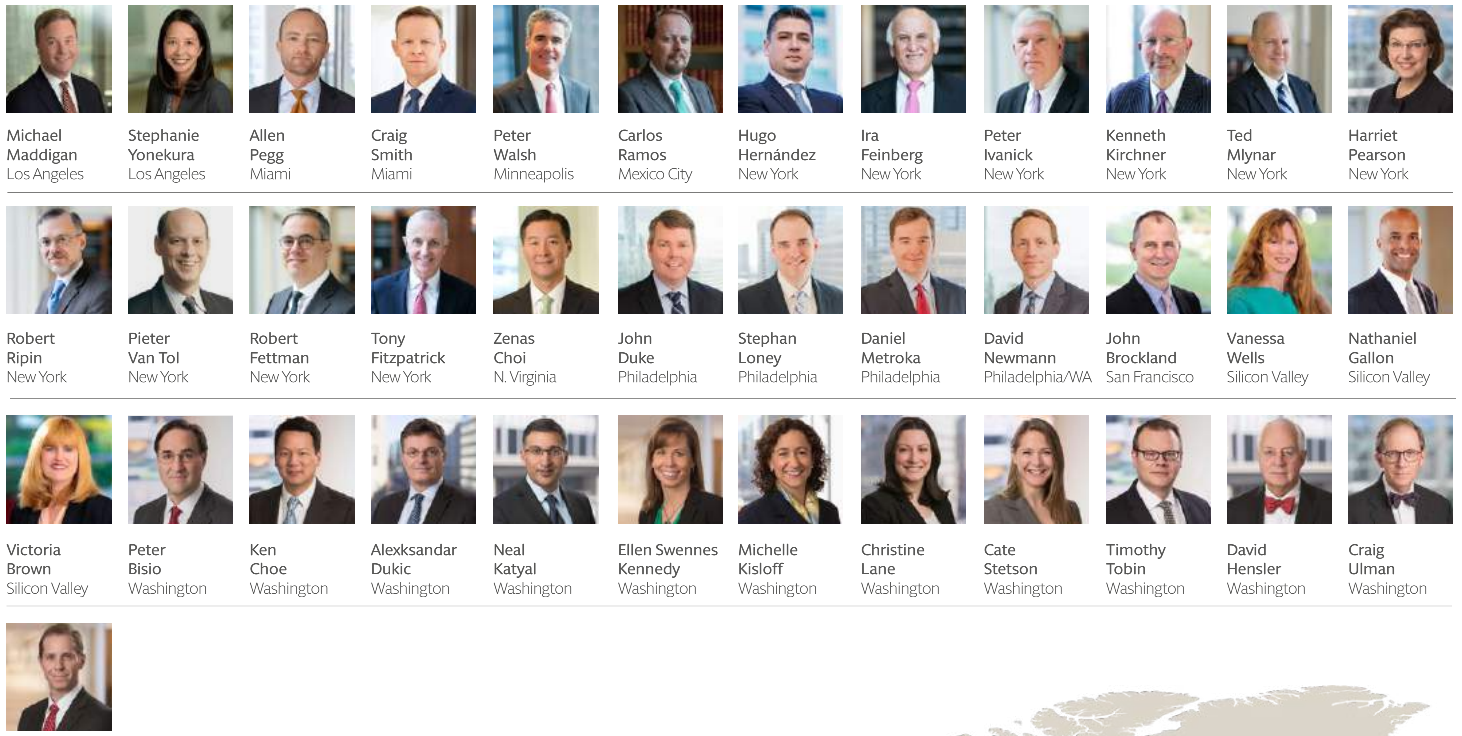
December
Client Christmas lunch

For more information please contact:
insurance@hoganlovells.com

Genuine global reach

Key contacts in our insurance team:

Americas



Michael Maddigan, Los Angeles
Stephanie Yonekura, Los Angeles
Allen Pegg, Miami
Craig Smith, Miami
Peter Walsh, Minneapolis
Carlos Ramos, Mexico City
Hugo Hernández, New York
Ira Feinberg, New York
Peter Ivanick, New York
Kenneth Kirchner, New York
Ted Mlynar, New York
Harriet Pearson, New York

Robert Ripin, New York
Pieter Van Tol, New York
Robert Fettman, New York
Tony Fitzpatrick, New York
Zenas Choi, N. Virginia
John Duke, Philadelphia
Stephan Loney, Philadelphia
Daniel Metroka, Philadelphia
David Newmann, Philadelphia/WA
John Brockland, San Francisco
Vanessa Wells, Silicon Valley
Nathaniel Gallon, Silicon Valley

Victoria Brown, Silicon Valley
Peter Bisio, Washington
Ken Choe, Washington
Alexksandar Dukic, Washington
Neal Katyal, Washington
Ellen Swennes Kennedy, Washington
Michelle Kisloff, Washington
Christine Lane, Washington
Cate Stetson, Washington
Timothy Tobin, Washington
David Hensler, Washington
Craig Ulman, Washington

Douglas Crosno, Washington

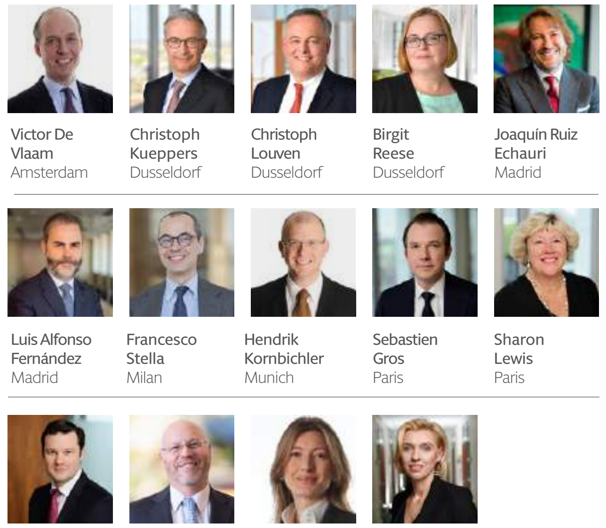
UK

John Allison, London
Nicola Evans, London
Nick Atkins, London
Joe Bannister, London
John Connell, London
Richard Diffenthal, London

James Doyle, London
Jamie Rogers, London
Angela Greenough, London
Victor Fornasier, London
Tim Goggin, London
Dominic Hill, London

Rachel Kent, London
Steven McEwan, London
Charles Rix, London
John Salmon, London
Rupert Shiers, London
Michael Thomas, London

Europe



Victor De Vlaam, Amsterdam
Christoph Kueppers, Dusseldorf
Christoph Louven, Dusseldorf
Birgit Reese, Dusseldorf
Joaquín Ruiz Echauri, Madrid

Luis Alfonso Fernández, Madrid
Francesco Stella, Milan
Hendrik Kornbichler, Munich
Sebastien Gros, Paris
Sharon Lewis, Paris

Alexander Premont, Paris
Jeffrey Greenbaum, Rome
Silvia Lolli, Rome
Beata Balas-Noszczyk, Warsaw

Asia

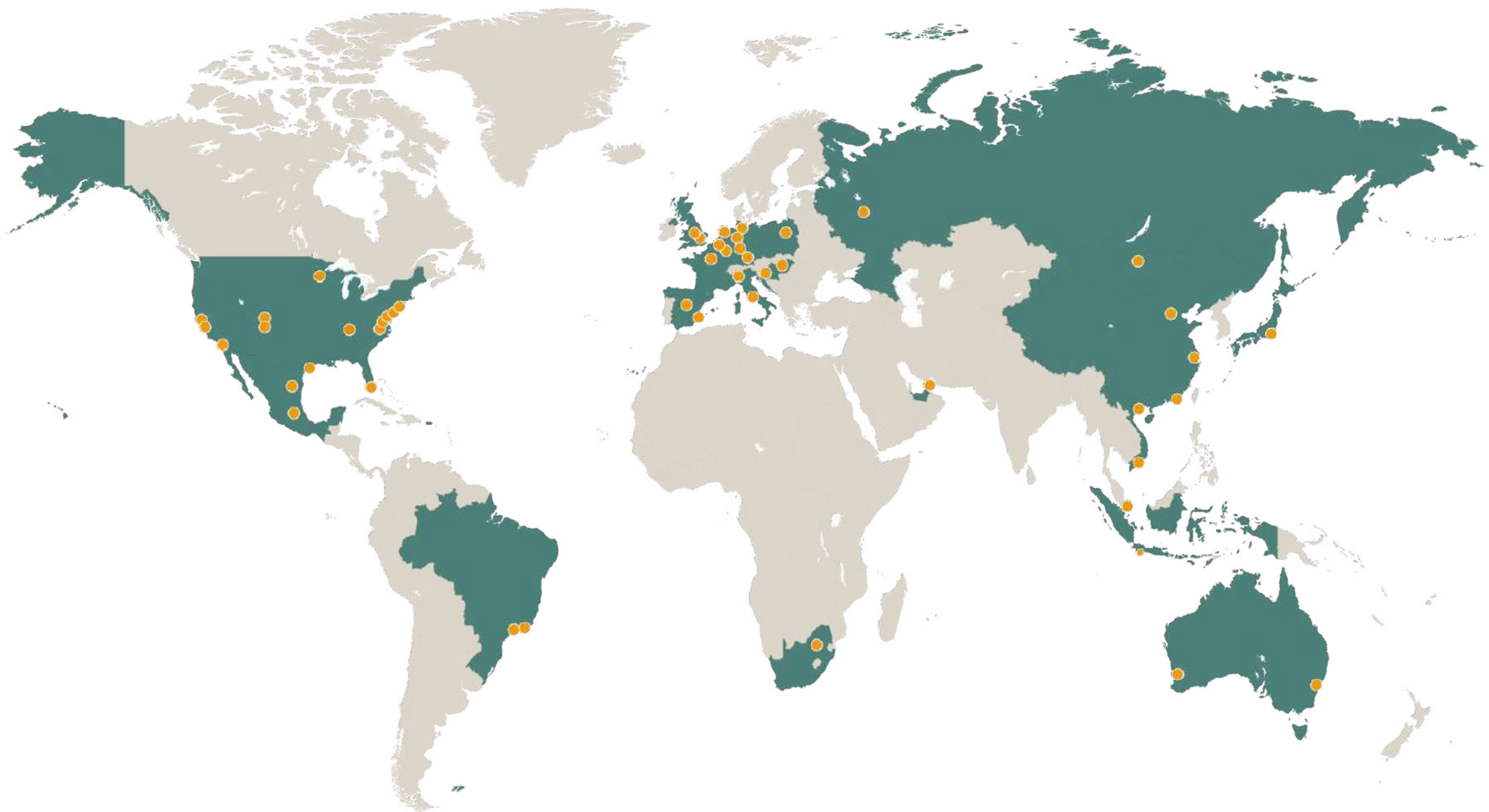
Tim Fletcher, Hong Kong
Mark Parsons, Hong Kong
Mark Lin, Hong Kong
Stephanie Keen, Singapore

South Africa

Christine Rodrigues, Johannesburg
Clive Rumsey, Johannesburg
Ayanda Nondwana, Johannesburg
Tony Canny, Johannesburg

Middle East

Imtiaz Shah, Dubai



Market recognition

8th strongest global brand
(Acritas Global Elite Law Firm Brand Index)

Top 10 strongest brand in the U.S.
(Acritas U.S. Law Firms Brand Index)

6th on "BTI Client Service 30" in 2019
(BTI Consulting Group)

Pro Bono Hot List (The National Law Journal)

100% score on Corporate Equality Index
(Human Rights Campaign [HRC])

50 Best Law Firms for Women (Working Mother Media and Flex-Time Lawyers)

"Top 100 Employers" for LGBTQ inclusivity
(Stonewall)

Citizenship & diversity

Good citizenship means boldly striving to exceed the social and environmental responsibilities we have to our people, our clients, and our local and global communities.

As a truly global law firm, we recognise that our continued success owes much to the diversity of our people. Embracing our cultural differences and recognising our strong local knowledge means we can deliver for our clients all over the world. This recognition of strength in diversity and a sense of togetherness permeates throughout the firm into all our practice areas; and so it is with our commitment to corporate responsibility (CR).

Our global CR strategy is aligned with the United Nation's Sustainable Development Goals (SDGs): 17 goals designed to end poverty, fight inequality, and tackle climate change. This is the ultimate example of what can be achieved if we are willing to work together across sectors and continents on all levels.

Our lawyers and business services professionals are each asked to dedicate 25 hours per year to pro bono legal and skilled non-legal volunteering activities benefiting the world around them. This is delivered through a combination of our five CR strands of Pro Bono, Diversity and Inclusion, Community Investment, Charitable Matched Giving, and Sustainability.

Pro bono - making a world of difference

We challenged ourselves to focus our time, skills, and resources over the past three years on empowering, advancing, and protecting the rights of girls and women.

Through the firm's Empowering Girls and Women Initiative and our Commitment to Action under the Clinton Global Initiative, we pledged to devote at least 56,000 hours of volunteer time and US$1 million in philanthropic contributions to support equality worldwide.

As 2018 came to a close, we went well beyond achieving the original three-year goals we'd set. But our commitment was never just about the numbers. Our people continue to be active and engaged in advocating for women and girls around the world.

We've delivered week long, comprehensive trainings to lawyers in the Balkans to equip them to tackle gender-based violence. We've worked with RAINN every year to review, research, and update six different databases covering all U.S. state laws that impact sexual assault victims and counsellors. We were the first private-sector sponsor for SPRING, a change accelerator for girls in East Africa and South Asia.

These are just a few examples of the many ways our lawyers mobilised in 2018 to bring about change and confront some of society's biggest problems.

US$35+ million

The **value of pro bono legal services** devoted through the Empowering Girls and Women Initiative

75,000+

Pro bono hours dedicated to Empowering Girls and Women initiative matters

50+

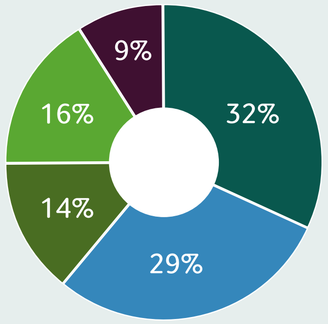
Formal partnerships with non-profits and the legal services

£733,370

Compensation secured in the UK for victims of gender-based violence and human trafficking

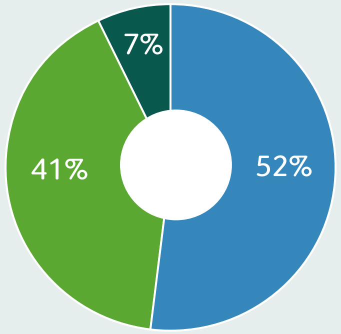
About Hogan Lovells

Lawyers by practice group globally



- Corporate
- Litigation, Arbitration and Employment
- Finance
- Global Regulatory
- Intellectual Property

Well-balanced across jurisdictions



- The Americas
- London and Central Europe
- Asia and Middle East

Top numbers

45+
offices globally

24+
countries

2800+
lawyers

70+
languages

480+
lawyers ranked by
Chambers & Partners

100+
years of history

Sector-focused approach

- Aerospace, Defence, and Government Services
- Automotive and Mobility
- Consumer
- Diversified Industrials
- Education
- Energy and Natural Resources
- Financial Institutions
- Insurance
- Life Sciences and Health Care
- Real Estate
- Technology, Media, Telecommunications

Relied on by the world

Our LAE team advises 50 of the Fortune 100, 34 of the FTSE 100, and 17 of the DAX 30

More than 700 global M&A deals over three years with a total value in excess of US$500bn

Our finance team advises 46 of the top 50 banks listed in the Fortune 500

Our IP team represents more than half of the world's top 100 brands

Rare ability to handle large, complex international trade matters in every major market

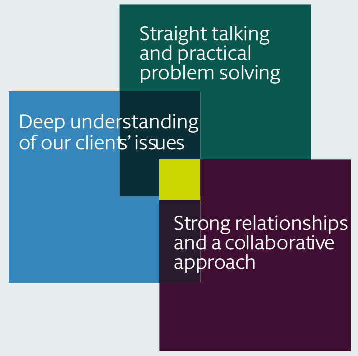
Innovative

Top 10 most innovative law firms in North America, Europe, and Asia (Financial Times) 12th among "2019 Innovation Champions" (BTI Consulting Group)

Trend spotting: FinTech, cyber risk, mobile payments, GDPR compliance, connected cars, digital health, Internet of Things, 3D printing, blockchain, and more.

Using innovative legal service delivery (LPM) and exploring the latest technology (e.g., Artificial Intelligence)

We offer



Our culture

- Ambitious
- Innovative
- Supportive
- Committed
- Responsible

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar
Warsaw
Washington, D.C.
Zagreb

Our offices
Associated offices

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www. hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.