



Regulation Predictions 2021

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Regulation in all its forms continues to be a significant market issue. Here we set out the developments you need to be aware of.

AVIATION

1. UK Spaceflight : on your bike, Baikonur?

The Space Industry Act 2018 promises to usher in a new era in British spaceflight. This will include the expansion of commercial space, sub-orbital and associated activities, bringing additional opportunities for the global space insurance market. That ambition can only be realised if there are UK spaceports with ground or air launch capabilities. The UK's ambition may not be to displace Baikonur or French Guiana. However, the dream is that future annals of commercial spaceflight activity in its broadest sense, will speak of North Uist, Unst, the A' Mhòine peninsular, Prestwick, Campbeltown, Snowdonia and Newquay. The earmarked sites are not without geographical challenge and operations will have to counter seasonal UK weather conditions. Spaceflight operations above the UK skies also have the potential for air traffic control headaches and there are associated environmental concerns (e.g. fuel spillages on sites and noise pollution on launch). In 2021 work will also continue apace to flesh out the regulations for UK spaceflight, to put meat on the bones of the Space Insurance Act 2018. This will include regulations governing licencing, spaceflight accident investigation and, importantly, insurance that will herald a new dawn for UK spaceflight capabilities.

2. Aviation Regulation 2021: all up for grabs?

Aviation regulation is heavily embedded in EU regulation, from flight operations and safety to aviation security, airport slot allocation process to air traffic management, consumer protection to emissions trading. Post-Brexit, we do not foresee major kneejerk reaction and change to the aviation status quo, but instead a gradual review and readjustment to a more UK-centred approach, where required. This is not without risk as anything that provokes the EU could result in restrictions being imposed on UK carriers operating in European airspace.

3. A French perspective: global regulators will consider one-pilot manned aircraft

A few decades ago, cockpit flight crew minima for commercial passenger aircraft operations (20 seats plus) was reduced from three to two. In supporting the resurgence of the industry, airlines, looking to shave their operating costs, may ponder the feasibility of single pilot aircraft. Current regulation does not permit this, primarily from a practical perspective: the cockpit flight deck architecture of commercial aircraft is not designed with single pilot operation in mind. However, single pilot autonomous flight and, beyond that, fully autonomous flight is the future for the next generation of commercial aircraft. Back in January 2020, Airbus achieved an autonomous take-off and in July 2020, an A350 completed a whole flight, unmanned: taxi, take-off and landing. There is still the hurdle of public trust to overcome. If aircraft manufacturers can do that, then the science-fiction of autonomous flight looks set to become a reality.



4. A French perspective: regulatory inquiries will be launched by national regulators over airline ticket refunds

Even in cases of flight cancellation due to 'extraordinary circumstances', while airlines are relieved of their obligation to pay compensation they are still obliged to refund tickets to passengers pursuant to regulation EC261/2004. In the light of flight cancellations due to the COVID-19 pandemic, there has been mixed response by carriers. Some have made prompt refunds, other airlines, finding themselves with significant cash flow issues, have failed to refund tickets in timely fashion and/or urged passengers to accept vouchers in lieu. We predict many national regulators will launch inquiries, with the prospect of fines for recalcitrant airlines, further impacting airlines during the COVID-19 crisis.

CASUALTY

5. HSE action on respiratory health will lead to increased fines and claims

The construction industry will see greater scrutiny from the Health and Safety Executive (HSE) due to the risks of silicosis from processes that create high dust levels. This will be part of the HSE's strategic plan to improve health within the construction industry and maintain a targeted industry awareness campaign for those at risk of developing silicosis. We predict more unannounced HSE inspections and increased prosecutions resulting in significant fines for offending organisations. We are also likely to see a rise in claims for damages by employees who develop silicosis and who may be at an increased risk of lung cancer and further respiratory complications.

6. An Australian and UK perspective: significant long tail exposure and uncertainty for institutional abuse insurers following Royal Commissions

Historical sexual abuse claims show no sign of slowing in Australia following the Royal Commission into Institutional Responses to Child Sexual Abuse and the subsequent abolition of limitation periods for child sexual abuse. Several jurisdictions are considering, or have already enacted, 'rollback' provisions to enable abuse victims to revisit historic settlements. This creates significant long tail exposure and uncertainty for insurers and can pose coverage challenges, including identifying which insurers were at risk for the relevant periods. We anticipate a similar response and increase in abuse and neglect claims following the Aged Care and Disability Royal Commissions. Scotland has also recently abolished the time bar in abuse claims and an influx of claims is anticipated following the introduction of QOCS. In England and Wales the Independent Inquiry into Child Sexual Abuse is ongoing and is expected to make recommendations in respect of the limitation period in abuse claims. The position on limitation has not changed in Northern Ireland.

CONSTRUCTION AND ENGINEERING

7. Insurers should review cover for new building safety obligations

In July 2020 the government published a draft Building Safety Bill. The legislation is set to introduce a new regime of direct accountability for developments throughout the life of a building, at stages of design, construction and occupation. The proposed changes will be felt throughout the construction sector. They include provision for the appointment of a new Building Safety Regulator to oversee building standards and industry competence. The use of products and materials will also be regulated. These duties and obligations will be accompanied by a regime of sanctions. A non-delegable responsibility will fall heavily on an accountable person applying for a Building Assurance certificate. These duties will create potentially significant additional liabilities which insurers will need to duly consider and assess in the future cover they offer.

8. An Australian perspective: digital reform initiatives reboot New South Wales building industry

The New South Wales (NSW) Government is implementing a building reform agenda with the aim of changing the culture and capability of the NSW building industry. The deep, wide-ranging reforms are being implemented in stages from 1 July 2020. The reform is being driven by the capabilities within NSW's new digital platform, which will create 'digital twins' of both buildings and practitioners. These initiatives will give insurers a transparent and accessible way to rate buildings and professionals. This information, combined with other reform initiatives, should result in the building and construction industry being a much better insurance risk in the long run. The projected infrastructure spend and wider building reform agenda throughout Australia should allow insurers to dramatically adjust products and pricing with sophisticated customers.



CYBER AND DATA RISK

9. An Australian perspective: Australian Government will boost cyber security for infrastructure and businesses

Cyber resilience will continue to be a priority for Australia, as outlined in the Government's 2020 Cyber Security Strategy. The strategy includes A\$1.67bn pledged over the next decade to enhance cyber-security capabilities across government, businesses and the community through programmes and regulatory reforms. These are aimed at protecting Australia's critical IT infrastructure and systems of national significance, and building cyber security support and standards for businesses, with tailored support for SMEs. Data extortion will remain a major problem, particularly as the size of ransoms are increasing significantly. The Office of the Australian Information Commissioner (OAIC) has become increasingly proactive over ransomware incidents. The OAIC is expected to take more action against companies for not adequately securing personal information in 2021. This will force companies to reconsider how they secure key customer data and intellectual property.

10. A New Zealand perspective: New Zealand's new Privacy Act 2020 will see privacy breaches taken seriously

New Zealand's long-awaited Privacy Act 2020 took effect on 1 December 2020. The headline reform, the introduction of mandatory notifications for privacy breaches, will impose new obligations on insureds that suffer cyber or data incidents. The Act also introduces a raft of other changes, including increased powers for the Office of the Privacy Commissioner to compel compliance, new cross-border disclosure controls, and various criminal penalties. While not having the significant fining powers of other jurisdictions, the new Act suggests New Zealand will see a more active Privacy Commissioner, increased compliance costs following data breaches and greater market appetite for insurance.

DIRECTORS & OFFICERS AND FINANCIAL INSTITUTIONS

11. Supply chain ethics must be core focus of board directors

The recent Boohoo scandal has highlighted the need for companies to monitor and investigate closely the pay and working conditions, not only of their own employees, but also of those in their global supply chains. Companies will need to ensure full compliance with the provisions of the Modern Slavery Act by the company itself and also by all its sub-contractors. Supply-chain ethics is of growing importance both for regulatory authorities and investors; companies committed to the fair treatment of their workers, providing them with appropriate working environments and adhering to ethical codes, are likely to rise above the rest.

12. With the furlough scheme being extended, will the risk of claims for fraud also be extended?

The Coronavirus Job Retention Scheme has been a life-line for businesses during the COVID-19 pandemic. At its peak to date, over 9m people have been furloughed. There have already been thousands of reports to HMRC of alleged fraud. Apparently £3.5bn of payments may have been claimed fraudulently or in error. Mistakes can be genuine but fraud is not, and HMRC will take a hard line to prosecute directors and companies. Furlough records must be kept for six years, and from December 2020 the names of businesses using the scheme will be published as part of anti-fraud measures. One risk for directors is that companies become insolvent, preventing access to documents, or businesses may simply close down and reopen under a new name. The Financial Conduct Authority has said it will clamp down on 'phoenixing' in these circumstances. Given the scheme has been extended, these risks will not be disappearing any time soon.

13. A German perspective: more CumEx to come

The so called CumEx scandal is probably the biggest financial scandal in Germany's history. An unprecedented number of tax frauds have unfolded over the last few years, involving at least 100 financial institutions, national and international, active in Germany. The alleged financial loss of the state is estimated in a double digit billion Euro amount. Criminal investigations have developed very slowly but picked up speed in the last year. We expect faster outcomes in 2021 combined with financial consequences for many financial institutions and, consequently, for their directors too.



INSURANCE ADVISORY

14. Recognition will be key post Brexit

The UK's departure from the European Union will leave a host of uncertainties hanging over the insurance industry. Many of these will surround the mutual recognition of regulations, especially those governing solvency. The UK Government confirmed in November that it intends to recognise the prudential regimes of EEA states as being 'equivalent' for the limited purposes of the UK rules that will apply after the transition period. However, hopes that this will be reciprocated by the European Commission may be disappointed in the short term. The position is complicated by HM Treasury's call in October 2020 for evidence to review some aspects of the prudential regime for UK insurers, in particular the matching adjustment and solvency capital requirements. The fall-out from Brexit is far from over.

15. FCA plans to implement climate-related disclosure requirements for FCA-regulated pension schemes

The Financial Conduct Authority (FCA) intends to consult in 2021 on implementing client-focused disclosures for asset managers and contract-based pension schemes. The disclosures will be aligned to the Task Force on Climate-related Financial Disclosures (TCFD). The FCA aims to finalise rules by the end of 2021, with new obligations coming into force in 2022. The FCA's plans follow the Department for Work and Pensions proposals on climate-related financial disclosures for Occupational Pension Schemes regulated by the Pensions Regulator. FCA disclosure requirements are considered important to facilitating the government's expectations in the Green Finance Strategy that all listed companies and large asset owners should move to reporting in line with the TCFD.

16. FCA to publish guidance for firms on the fair treatment of vulnerable customers

The Financial Conduct Authority (FCA) will continue its work to ensure vulnerable consumers are treated fairly and consistently across financial services sectors. It will publish guidance for firms that it says is intended to bring about a practical shift in firm behaviour. The FCA's consultation closed in September 2020 and the finalised guidance is expected in early 2021. Industry bodies are working on their own initiatives in this area. In September, the Association of British Insurers launched insurance industry standards to support customers with mental health conditions, with insurers having until 31 December 2021 to implement the standards.

17. FCA consults on further pricing and governance rules

As part of its continuing steps to ensure 'fair value' in the general insurance and protection markets, the Financial Conduct Authority (FCA) is proposing a ban on charging existing customers more than new customers for their home or motor policy. It's also proposing rules to make it easier to stop auto-renewal. The focus on product governance, including plans to apply its rules to all products, not just those manufactured or significantly adapted after 1 October 2018, applies in both the commercial and retail insurance markets. This is linked to the FCA's finding that elongated distribution chains are often associated with poor-value products.

18. A squeeze on capacity will put pressure on MGAs

A hardening insurance market is likely to reduce the flow of capacity to managing general agents (MGAs) and mean insurers look closely at the quality of the underwriting and policy terms. MGAs will need to stay close to their capacity providers and make plans to find alternative capacity should their existing providers indicate they may not renew their binding authority agreement. The Financial Conduct Authority expects firms to plan ahead and ensure they manage their capital and liquidity requirements. They should have a wind-down plan in place, including plans to minimise the potential for customer harm should the business not be able to continue trading.

19. Increased regulatory focus on insurance policy wording

The coronavirus pandemic highlighted a clear mismatch between the expectations of many insureds and insurers as to how their policies should respond to COVID-related claims. As a result, we expect the Financial Conduct Authority and other regulators to address product design, policy wordings and product governance in future regulatory initiatives. In October, Lloyd's published 'Building simpler insurance products to better protect customers', setting out three areas of focus for the insurance industry: product language and presentation; product design; and greater customer involvement to build simpler, more relevant products. Expect these issues to be high on the agenda for the next few years.



20. An Australian perspective: general insurers will feel increasing regulatory pressure in Australia

Following the Hayne Royal Commission, there will be far greater regulation of general insurers in the form of new unfair contract terms legislation, product design obligations, a new executive accountability regime, and claims being regulated as a financial service in 2021. The Australian Securities and Investments Commission and the Australian Prudential Regulation Authority also enjoy new and improved regulatory powers, and an insurer's obligation under its financial services licence to act "honestly, efficiently and fairly" has now been elevated to a civil penalty provision. This new regime, coupled with a pro-consumer environment, will create challenges for insurers in the way they develop, sell and manage their insurance products.

21. A German perspective: 2021 will see a need to balance regulatory requirements with technological developments

The regulatory framework for selling insurance products has been strengthened over the last few years. At the same time, selling insurance contracts via cross selling or stand alone online is becoming more and more important. New technologies such as artificial intelligence are big drivers as well. It is a difficult task for insurers and product distributors to combine both a digital sales path and regulatory compliance and we wait to see in the coming year which market participants will be able to compete with big data specialists like Google or Amazon, who are already focused on this market.

INSURANCE WORDINGS

22. Policy wordings - all change!

Wordings specialists are in high demand. Even before COVID-19, the Lloyd's initiative on providing clarity for cyber exposures was keeping wordings teams busy. During 2020, about 35 new cyber endorsements were published. During the same period there was a comparable number of endorsements for communicable diseases. There will be duplication between these, but also subtle differences which will require care to identify. Over time, the new clauses will fall in or out of favour. Lloyd's has recently launched an initiative to build simpler insurance products to better protect customers, so wordings will require far more attention for some time to come.

MARINE, ENERGY AND TRANSPORT

23. Improper shipbreaking drives continued increase in enforcement action by environmental regulators

Environmental regulations should remain a key consideration for vessel and rig owners hit hard by COVID-19 as they seek to manage the financial impact. Careful planning will be required when opting to reduce costs by scrapping and decommissioning vessels. Cost effective international options for decommissioning - such as those available in developing countries - are likely to attract scrutiny. Marine insurance may not respond to the costs of dealing with enquiries from environmental regulators leaving insured customers to look elsewhere in their wider insurance portfolio (for example to their D&O or environmental cover) for support.

MEDICAL MALPRACTICE

24. New guidance will feature in consent claims

Claims based on an alleged lack of informed consent still continue to feature heavily in clinical negligence claims. 12 years after its first publication, the General Medical Council has issued new regulatory guidance for clinicians on how to obtain a patient's consent to treatment. The new guidance focuses on what it means for the patient and doctor to have a 'meaningful' dialogue when discussing a treatment, and the material risks. We can expect that future claims may focus upon whether a 'meaningful' discussion took place. The new guidance came into force on 9 November 2020.

MOTOR

25. Don't expect claimant representatives to exit the low value motor injury claims space any time soon

The impending move to the new Official Injury Claim portal is predicted to increase the proportion of litigants in person. The current economic environment, furloughing, redundancies and mounting financial hardship for many may also cause an upsurge in litigants in person, particularly for motor claims. However, while the indications are that claimants should find the portal easy to use, are claimant solicitors and their business associates really going to give up their RTA income that easily?



26. Changing mobility habits and the regulation of e-scooters will herald an increase in vulnerable road users

Driven by COVID-19 and supported by an increase in cycle lane infrastructure, there has been an increase in the use of personal forms of transport for shorter journeys. With the threat of further periods of lockdown suppressing car usage, we anticipate a significant increase in vulnerable road users and an acceleration in adoption of more environmentally-friendly electrically-powered transportation solutions. This will be echoed in an increase in demand for flexible and on-demand insurance policies. With current e-scooter trials set to conclude in summer 2021, expect to see legislative change to facilitate their wider adoption and likely regulation akin to electrically assisted pedal cycles.

27. A ban on dual pricing will challenge the aggregator model

The Financial Conduct Authority's proposed ban on dual pricing for motor and household insurance policies will disrupt the existing price comparison website model and see aggregators continue their moves into non-financial services markets, such as utilities. While renewal prices are likely to fall, there is likely to be a commensurate increase in new customer premiums alongside the general hardening of the market.

28. Brexit and COVID-19 double trouble means continuing uncertainty for overseas claims

Claims volumes are likely to reduce significantly following a spike in litigated claims arising from accidents occurring overseas in late 2019. This has been driven by claimants clamouring to protect their right to bring claims in England and Wales pending an agreement with the EU on issues relating to jurisdiction and enforcement of judgments. At the same time, as the fallout from COVID-19 continues there will be fewer UK-registered cars on foreign roads, although those who choose to travel abroad are more likely to do so by private car rather than use public transport, which may increase the need for European cover.

29. A Canadian perspective: arrival of no-fault insurance in British Columbia could increase class actions

The pending arrival of no-fault insurance will have a significant impact on the number of new cases for claimant counsel. As a result, the British Columbian legal industry will see a marked increase in medical malpractice and other class action claims as focus shifts to replace motor vehicle related legal work. According to the Canadian Bar Association's National Class Action Registry, there were 13 new class actions filed in September and October 2020 compared to only four in the same period the previous year.

PRODUCT SAFETY, LIABILITY AND RECALL

30. Heightened obligations for UK importers may alter their risk profile

On 1 January 2021, UK distributors of products imported into the EU became "UK importers" under the strict liability regime of the Consumer Protection Act 1987 (as amended by The Product Safety and Metrology (EU Exit) Regulations 2019). This means they will have primary (rather than secondary) liability for defective products they place in the UK market, irrespective of fault. As UK importers they will also have regulatory compliance obligations, including ensuring the correct information is printed on the products and packaging in accordance with sector-specific regulations, and affixing the new UKCA marking on the products before the end of 2021. Such companies and their insurers should assess whether this will alter their risk profile based on increased exposure arising from product non-conformities or third party liabilities.

31. COVID-19 implications for the life sciences industry

The pandemic has brought the work of the life sciences sector to the public's attention as never before. First, the NHS required increased numbers of ventilators, with several innovative designs being developed. Next, PPE was needed to protect staff and patients received new and repurposed medicines to treat COVID-19 symptoms. Antigen tests determine who has the virus now and help hospitals, workplaces and universities to operate while several vaccine candidates become available. Public confidence is vital. Manufacturers must ensure now that they meet all regulatory standards developed to ensure safety, efficacy and quality. Otherwise, they may face litigation for unintended harm alleged to have been caused by their products.



32. All change with the Medicines and Medical Devices Bill

The Medicines and Medical Devices Bill will create a modern and safe medical regulation regime in the UK. From January 2021, changes to legislation on these issues will no longer flow through from updates at EU level. The legislation creates the structure for the UK Government to legislate for updates or changes to our existing laws on human and veterinary medicines, clinical trials, and medical devices. The Bill aims to strengthen patient safety by strengthening the powers of the UK's medicines and medical devices regulator, the Medicines and Healthcare Products Regulatory Agency. It also aims to facilitate the sharing of information to support public health and the creation of mechanisms to track the use of medical devices or medicines against a patient record. The Government considers the new legislation will support its goal to empower what were only recently unimaginable medical innovations in treatment and diagnostics in areas such as biotechnology, artificial intelligence and robotics, which have huge potential to extend the quality and length of patients' lives.

33. A US perspective: regulating the cosmetics industry in 2025

California's Toxic-Free Cosmetics Act is aimed at 24 chemicals often linked to cancer, reproductive harm, birth defects and endocrine disruption. Effective from 1 January 2025, cosmetics and personal care products manufactured or sold in California may not contain these 24 toxic chemicals, all of which are currently banned by the European Union. Many of the chemicals are currently commonly employed in manufacturing and packaging or as processing aids or preservatives in cosmetic and personal care products. This law will significantly impact various aspects of the industry, including global supply chains, and will help to synchronize industry regulations.

34. A US perspective: FDA policies will change post-pandemic

In 2021, after the pandemic ends, the US Food and Drug Administration (FDA) will transition certain COVID-related Emergency Use Authorization (EUA) devices to more conventional review. Some reclassification of risks is possible. The FDA will also make some COVID-related temporary policies permanent, including regulations on the development of clinical tests. Outside COVID-19, site inspections and adverse event reporting will resume, both suspended during the pandemic, under a new risk assessment system. Manufacturers and distributors should closely monitor FDA publications and announcements for policy changes that may affect their products.

35. A US perspective: more US states will legalise marijuana but efforts to legalise on a federal level may stall

The individual state-regulated markets in marijuana are set to expand with new voter initiatives approved in New Jersey, Arizona, South Dakota, Montana and Mississippi. The number of medical marijuana states has increased to 35 and the number of adult-use states to 15, plus Washington DC. With two Senate seats in Georgia to be decided by a run-off in January, it is likely that Republicans will continue to control the Senate so broad federal legislation on legalisation is unlikely. It is somewhat more likely that we may see passage of limited banking protections.

36. A German perspective: the new market surveillance regulation will come into force

On 16 July 2021, the new Regulation on Market Surveillance will come into full force. It contains clearly extended powers in favour of the market surveillance authorities and co-operation obligations for the supervised market participants. The increased general level of product safety is meant to remove distortions in competition at the expense of companies that act in conformity with the law. In addition, the regulation will impact online trade and global supply chains.

PROFESSIONAL LIABILITY

37. Accountants: accounting exposures increased by COVID-led recession

2021 will usher in an increase in audit negligence actions. Fraud is often the bedfellow of companies that teeter on the brink of insolvency and auditors that fail to uncover fraud make obvious targets for those who suffer losses as a result of corporate failures. The recent Financial Reporting Council formal consultation on changes to accounting standards to impose a new duty on auditors to uncover fraud will only encourage claimants, even though the new standards will not apply retrospectively.



38. Accountants: FRC increasing its investigations of challenger accountancy firms in its mission to raise audit standards

The recently enlarged Financial Reporting Council (FRC) enforcement team will look beyond the Big Six, increasing its investigations of challenger firms. The new Audit Enforcement Procedure lowers the threshold for investigations, and the FRC is now investigating audits which would not previously have been on their radar. Insurers should expect to see an increase in the number of notified regulatory claims and should note that challenger firms, lacking the experience and resourcing of the Big Six, may need to lean heavily on external advisors.

39. Brokers: business interruption losses will drive claims in 2021

As predicted last year, the hardening market across many commercial lines has already increased risks for insurance brokers, as they have been faced by reductions in capacity and available markets for their clients' insurance requirements. The risk of E&O claims will be increased by COVID-19; in particular claims by commercial customers (many being SMEs) facing business interruption losses caused by the measures taken to prevent the spread of the virus. While the Supreme Court decision in the FCA test case seeks to bring clarity to this very complex area, there will be customers who will claim they should have been advised to take out business interruption cover that would have responded to the pandemic.

40. Pensions Investment: new social and moral obligations on investing for pensions funds could leave trustees vulnerable

Environmental, social and corporate governance (ESG) concerns have not historically been at the heart of pension investing decisions. This is changing. Since October 2020 new obligations have come into force requiring all pension trustees to publish annual implementation statements explaining how they have complied with their ESG and stewardship policies. Contract based providers also have new requirements that came into force in 2020. Taking these important issues properly into account and investing appropriately is important for future generations. Now not doing so leaves the trustees more vulnerable to claims from members and sponsoring employers.

41. Surveyors and Valuers: the challenge of legislative and regulatory change in 2021

Government initiatives abound for surveyors and valuers, but until most are advanced it is impossible to predict what the full impact will be. The Regulation of Property Agents' working group has called for an independent regulator, licensing for all agents, a new code of practice, mandatory qualifications and more powerful forms of redress. Wholesale reforms in the leasehold sector have been recommended by the Law Commission. The Independent Expert Advisory Panel has issued several advice notes around building safety. Finally, the Government has announced the intention to relax planning requirements to facilitate the repurposing of defunct commercial and retail properties into housing. Uncertainty surrounding the extent of these changes makes it difficult for property professionals to fully prepare. Tighter professional regulation will inevitably create risks for even the best run practices, particularly when linked to the ever-growing raft of legislation on safety and space requirements. The loosening of planning constraints will require extra vigilance to ensure building regulation requirements are satisfied. And with thousands of leaseholders finding themselves unable to sell or remortgage their homes if external wall systems are present or adverse ground rents exist, clarity cannot come soon enough. All of this will require robust systems to ensure additional risk is not carried through to PI insurers.

PROPERTY

42. A French perspective: the French Treasury is working on a new insurance regime to be implemented in 2021

The French Treasury will announce the creation of a new insurance regime to cover business interruption losses, following the increase in disputes between insurers and insureds in relation to COVID-19. This plan would benefit small and medium-sized companies and would take the form of a capped lump sum, not covering all losses. Two regimes are being discussed. The first is a public-private collective and compulsory insurance regime (similar to the existing 'CatNat' for acts of god losses), where the insured would pay a flat-rate premium that the State would top up and insurers would compensate for business interruption losses by paying a lump sum calculated individually. The second is an optional regime, encouraging companies to pay premiums for health risks in return for a tax advantage. The new regime should be introduced in spring 2021. However, at this stage there is no certainty as to the nature, form and scope of coverage.



REINSURANCE

43. Brexit leads to increased reinsurance activity

At the time of writing, the details of post-Brexit arrangements across many financial services remain to be resolved. There will be key issues to consider in a reinsurance contract which were largely irrelevant during the passporting era. In particular, UK reinsurers accepting risks from the EU, or EU reinsurers protecting business in the UK, will need to ensure their underwriting and claims activities do not cross borders. Claims control is often assumed by reinsurers, in both facultative and treaty reinsurance. This is a single example of an activity that may no longer be permissible. Reinsurance contracts should provide for Brexit as best they can, with clauses providing for contracts to be revised if necessary.



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