



somewhat
different

**Uncertainties and changes in the differing legal framework
can have damaging implications for (re)insurers**

Legal Treat

Legal threat can be defined as the risks insurers and reinsurers face in certain (sometimes less developed) jurisdictions due to specific characteristics of those legal systems, namely statutory frameworks and/or unexpected or uncertain judicial or legislative circumstances.

Consequently, the insurance industry has to be aware of those differing features and developments and hence always needs to be prepared to adjust their contracts and the way they conduct business in those legal environments.

Especially the United States, the largest insurance market worldwide, is known for considerable uncertainties in the measurability of many insurance risks. Traditionally the United States have been a great legal risk for insurers and reinsurers. The fact that the general US torts system in place is rather broad compared to the systems for example in Europe and the fact that the system provides for punitive damages and contingency fees have made it difficult to assess legal risks. Another issue for the development of the torts cases in the United States is the fact that there is not one synchronized system in place, but rather 50 state systems plus a federal tort regulation. Case law can differ tremendously from state to state.

In the Continental European markets, one can observe a more conservative and stable legal development without very high risks of legal changes. Nevertheless, amendments of legislation and/or jurisdiction can also affect negatively the size of potential claims and the parameters of a reserving policy.

In this vein, particular attention should be paid to the potential impact of the “Dieselgate” scandal on collective redress or even class actions in Germany, which may have an adverse impact on the German insurance industry.

In Italy a recent court decision shows interesting tendencies in respect of the possibility to enforce punitive damages without violating the public order. Furthermore, the High Civil Court in Italy recognized in general the validity of the claims made trigger in insurance policies and emphasizes that the respective courts may decide on a case-by-case basis.

In the UK three interesting examples should be mentioned: The changes introduced by the Insurance Act 2015 and Enterprise Act will affect (re)insurance contract provisions and will diversify the types of remedies available in the event of a misrepresentation or non-disclosure by the (re)insured. In the same vein of uncertainty, the Brexit may lead to a number of changes in the (re)insurance landscape for the European Union and the UK. Finally, the adjustment of the discount rate has had and will have a significant inflationary effect on reserves for personal injury claims.

In Russia developments can be observed that legal acts have come into force, which stipulate compulsory insurance for fulfilment of contractual obligations. Based on these legislative acts the insurers are developing products, which do not comply with the standards existing on an international level. Furthermore, the trend to protect the domestic markets is beginning to emerge which is shown by the Russian National Reinsurance Company (RNRC) being established in 2016. By creating of the RNRC the legislator endowed the state-owned reinsurer with some advantages - the obligation to cede at least 10% of each reinsurance cession to the RNRC has been imposed on local insurers and RNRC will provide exclusively 100% reinsurance in natural catastrophe perils for private households, when the draft law on this class of business passes the Duma.

In Latin America a general trend is that regulatory bodies increasingly interfere in existing and well-established insurance practices, favouring locally based and taxed insurance and reinsurance companies.

Some Asian jurisdictions also face regulatory developments to protect local reinsurance companies, or the local (re)insurance industry in general.

In summary, it can be said that the results of the different legal developments vary from general restrictions on doing business in certain countries to amendments in coverage, reserving or documentation requirements. More disturbingly, legal threats tend to remain largely in flux and may become more (or less) dangerous over time.