



somewhat
different

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

Legal Threat

Legal threat can be defined as the risks insurers and reinsurers face in certain jurisdictions due to specific characteristics of those legal systems, namely statutory frameworks and/or unexpected or uncertain judicial or legislative circumstances. Consequently, the (re-)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. The challenges in the United States with respect to legal risk for insurers and reinsurers have increased in the last few years, as there are "new" considerable developments taking place in the legal landscape that still cannot be accurately measured to evaluate the full scope of the impact they will have for many insurance risks. One of the latest developments is the increasing use of multi-district-litigation (MDL) as a highly unpredictable procedural tool for practical problem solving in US mass tort litigation. Additional insecurity is brought by the new wave of social inflation resulting in jury verdicts in civil law suits that reach unexpectedly high amounts, so-called "nuclear verdicts". The use of public nuisance as a theory of liability for mass torts, as currently seen in the context of the opioid crisis in the US, may also become an important threat as it gains traction in the US tort scenario.

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

Due to increased consumer awareness, Italy is one of the most litigious countries in Europe. While complex proceedings can take up to 20 years and cause very high

defense costs, compensation for death and bodily injury is among the highest in Europe.

In contrast, French culture is not as litigious but there is a high consciousness of liability and sense of concern for social justice. In addition, because bodily injury compensations for damages are assessed by the courts individually, on a case-by-case basis, high and unexpected indemnity amounts claimed by insureds are not unusual. Regarding Covid-19 court cases focusing on coverage issues a general tendency for interpretations in favor of the insured can be observed.

In Germany courts have recently awarded unexpectedly high amounts of damages for pain and suffering (up to 1,000,000 EUR) in the area of medical and hospital liability in cases of serious personal injuries. These judgements will have an impact on further liability lines of business.

In the UK, the Insurance Contract Act 2015 is still worth mentioning. Although this law came into force in 2016, there will be some uncertainties for a further period of time as to how certain provisions will apply to and affect the (re-)insurance contracts or how they will be interpreted by courts. While Brexit ultimately occurred on 31st January 2020 and a further transition period was agreed until 31st December 2020, it can now be observed that certain laws which remained in place initially, are now being amended, e.g. regarding Data Protection or the Northern Ireland Back-stop. It therefore remains uncertain as to which changes the future may hold and how this may affect the (re-)insurance market.

In many markets, it can be observed that regulatory measures are leading to an uneven playing field between local and international (re-)insurers. In particular in the Asia-Pacific region foreign (re-)insurers face also an increasingly complex data regulatory environment through recently established or amended data privacy laws.

In summary, it can be stated, that the results of the different legal developments vary from general legal or regulatory restrictions on doing business in certain countries to amendments in coverage, reserving or documentation requirements. Particularly disturbing is, that legal threats tend to remain largely in flux and may become more or less dangerous as time progresses.