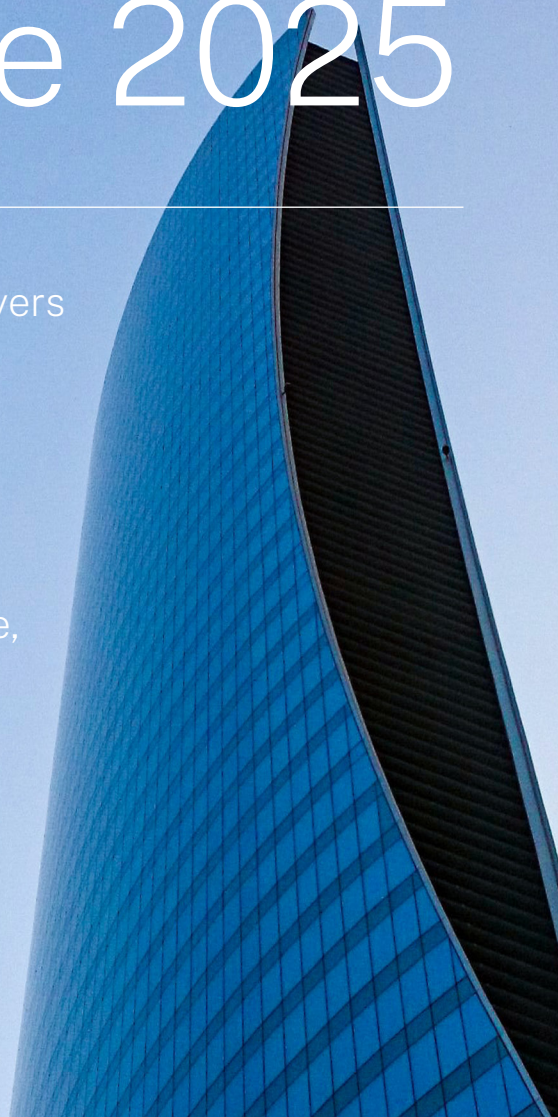

CHAMBERS GLOBAL PRACTICE GUIDES

Insurance & Reinsurance 2025

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UK: Law and Practice

Clare Swirski, E Drew Dutton, Philip Orange,
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Law and Practice

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1. Basis of Insurance and Reinsurance Law

1.1 Sources of Insurance and Reinsurance Law

The Financial Services and Markets Act 2000 (FSMA) is the principal source of law governing (re)insurance in the UK. FSMA and other regulations provide the main framework for the UK's regulatory regime, but a large proportion of the law applicable to (re)insurers in the UK that became law prior to Brexit was influenced by or derived from European Community legislation, with the most significant source being EU Directive 2009/138/EC, commonly known as "Solvency II".

Solvency II has been transposed into UK law in a number of ways: through the FSMA itself, in statutory instruments (the Solvency 2 Regulations 2015 (SI 2015 No 575)) and through new rules in the UK regulators' "rulebooks". Prior to Brexit, as in other European jurisdictions, (re)insurers in the UK were also subject to directly applicable regulations made under Solvency II, notably Commission Delegated Regulation (EU) 2015/35 (the Delegated Regulation), which has been incorporated directly into the Prudential Regulation Authority (PRA) Rulebook. (Re)insurers should continue to comply with relevant EU guidance issued prior to Brexit. References to Solvency II in this article are to the Solvency II Directive and the Delegated Regulation (see **3.1 Overseas-Based Insurers or Reinsurers** for further information about the impact of Brexit).

Prior to Brexit, UK legislation in respect of other specific aspects of insurance business often supplemented these sources, including the Insurance Act 2015, which came into force on 12 August 2016 and reformed insurance contract

law (IA 2015). Post-Brexit, all relevant legislation will derive from the UK.

The UK is a common law jurisdiction, so as well as statute, precedent judicial decisions have an impact on the development of the UK's legal system. In the context of (re)insurance, this may be particularly relevant in the interpretation of insurance contracts and in filling any gaps left by statute.

2. Regulation of Insurance and Reinsurance

2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance

Under the FSMA, (re)insurers in the UK are regulated by the PRA and the Financial Conduct Authority (FCA), which are responsible for authorised firms' prudential regulation and conduct supervision, respectively. UK (re)insurers are therefore often referred to as being "dual-regulated". Insurance intermediaries such as brokers and managing general agents (MGAs) are regulated by the FCA only.

The PRA Rulebook, the FCA Handbook and associated supervisory statements are important sources of rules and guidance for the financial services firms to which they apply, including (re)insurers.

The specialist (re)insurance market, Lloyd's of London (Lloyd's), is also regulated by the PRA and FCA, as are managing agents, and managing agents/underwriters participating in the Lloyd's market are also subject to Lloyd's supervision.

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2.2 Writing of Insurance and Reinsurance

As a result of the “general prohibition” in Section 19 of the FSMA, a firm seeking to conduct (re)insurance business in the UK must obtain authorisation or permissions under Part 4A of the FSMA from the PRA (unless it is exempt – see **3. Overseas Firms Doing Business in the Jurisdiction**). The FCA must consent to the PRA’s granting authorisation. Insurance intermediaries apply to the FCA rather than to the PRA.

To obtain authorisation, a firm must be able to satisfy the “threshold conditions” set out in FSMA on an ongoing basis. These conditions include:

- legal status – ie, being a company, friendly society or member of Lloyd’s;
- demonstrating that the firm’s head office and registered office are in the UK or that it carries out business in the UK;
- being adequately capitalised to conduct the (re)insurance business in question; and
- the individuals who manage the firm being fit and proper and suitably qualified to do so.

The PRA-regulated activities that are referred to broadly as “(re)insurance business” are set out in the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013, and include effecting or carrying out contracts of insurance (in other words, entering into or performing contracts of insurance, respectively) and managing the underwriting capacity of a Lloyd’s syndicate as managing agent at Lloyd’s.

A regulated activity is subject to the general prohibition to the extent that it is carried on “by way of business” in the UK. This restricts the applicability of the rules to persons who undertake the activity in a commercial context and with some degree of regularity. Assuming the

activities themselves are carried out in the UK, it is irrelevant if the underlying risks are located outside the UK or if the contracts are subject to a different governing law. If the activity is not carried on in the UK, authorisation is not required under the FSMA even if policyholders and/or the underlying risks are located in the UK.

Statute does not fully define the term “contract of insurance”. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not set out the features that determine whether a contract is an insurance contract, so it is useful to look to the common law for this analysis. There is also detailed regulatory guidance on the identification of contracts of insurance in the FCA’s Perimeter Guidance manual (PERG 6). Although the regulators may determine whether a contract is a contract of insurance and therefore subject to regulation, this may be challenged in court.

A firm will need to seek PRA authorisation for each class of business it intends to write. The FSMA divides insurance business into 18 classes of general business and ten classes of long-term (or life) business.

Capital and Reserve Requirements Under Solvency II

UK (re)insurance companies are subject to the capital requirements contained in Solvency II, as set out and expanded upon in the PRA Rulebook. There are basic requirements that apply to all authorised (re)insurers, and additional and different requirements for general insurers, life insurers and pure reinsurers. The PRA can impose additional capital requirements on individual firms if deemed necessary to address certain risks, such as operational or conduct risks.

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The capital requirements under Solvency II consist of the minimum capital requirement (MCR – ie, the minimum amount of capital a (re)insurer needs to cover its risks) and the solvency capital requirement (SCR – ie, effectively the amount of capital a (re)insurer needs to operate as a going concern), assessed on a value-at-risk measure. A firm's SCR can be calculated according to a standard formula or, with PRA approval, using its own internal model. Capital requirements apply at the entity and group levels. Lloyd's Solvency II capital requirements are calculated as a whole based on its internal model and apply to the market as a whole across all Lloyd's syndicates. Lloyd's operates its own capital assessment of each syndicate, the Economic Capital Assessment, which is broadly based on Solvency II with an uplift to achieve the Lloyd's market rating.

Solvency II and the PRA Rulebook also provide the requirements as to reserves to be maintained by UK (re)insurance companies. Reserves, or technical provisions, must be calculated in a prudent, reliable and objective manner, with the value of the technical provisions corresponding to the amount the (re)insurer would have to pay if its (re)insurance obligations were immediately transferred to another Solvency II firm. Technical provisions must represent a best estimate, and must include an additional risk margin, calculated in the prescribed manner.

Excess of Loss

There is no different regulation specifically for writing excess of loss (XOL) layers in the UK, and authorisation requirements apply equally to insurers and reinsurers. A contract of insurance includes a contract of reinsurance, although a company may be licensed as a “pure reinsurer” and therefore not permitted to write direct business. Fewer of the conduct rules apply to pure reinsurers, as the insureds are regulated

insurers rather than individuals. Therefore, XOL reinsurance may be subject to lighter regulation – eg, not being subject to all the consumer conduct rules. Since the introduction of the IA 2015, which applies to business insurance and reinsurance contracts and contains the duty of fair representation of the risk, as well as specific remedies the (re)insurer has for a breach, there has been a move away from reinsurers being favoured under the common law on insurance contracts.

Consumers' Rights

The IA 2015 followed on from other changes to amend the common law on insurance contracts in favour of consumers, including the Third Parties (Rights Against Insurers) Act 2010, which made it easier for third parties to claim directly against insurers (on liability insurance) where the insured was insolvent, and the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA 2012), which curtailed an insurer's rights to avoid the contract at common law.

2.3 Taxation of Premium

Insurance premium tax (IPT) derives from European Community law (although it has not changed as a result of Brexit) and was introduced in the UK by the Finance Act 1994 and the Insurance Premium Tax Regulations 1994.

IPT is a tax on premiums paid under all contracts of insurance, wherever written or wherever the insurer or insured is located, except those specifically exempted from IPT (which includes those where the contract relates only to non-UK risks, reinsurance or life assurance). IPT is generally payable to His Majesty's Revenue and Customs (HMRC) by the insurer (or in some cases by a taxable intermediary). In practice, groups of insurers that are UK corporates may account for IPT under a single registration, whilst

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other special registration arrangements apply to Lloyd's syndicate members, non-UK insurers and partners in a partnership.

IPT is chargeable at 12% (standard rate) or 20% (higher rate) of the IPT exclusive amount of the premium paid to the insurer (or taxable intermediary) by the insured, depending on the type of insurance contract and who arranges it.

3. Overseas Firms Doing Business in the Jurisdiction

3.1 Overseas-Based Insurers or Reinsurers

The starting point for firms deemed to be carrying on (re)insurance business in the UK (even if they do not have a permanent establishment in the UK, for example, by acting through agents) is that authorisation under the FSMA is required.

Business Not Carried on in the UK

As noted in 2. **Regulation of Insurance and Reinsurance**, a risk in the UK can be insured without UK authorisation if the regulated activity is not being carried on in the UK. It may be possible for overseas (re)insurers to arrange to carry out their business in such a way that they are not deemed to be doing so in the UK itself, thereby avoiding the need for approval under the FSMA. However, this may not be an entirely straightforward approach. The regulatory position is not entirely certain; there is a significant amount of guidance from the regulators and case law around what activities constitute “effecting” or “carrying out” a contract of insurance and whether business is therefore being carried on “in the UK”. In addition, under the FSMA, permission may still be required for other activities connected to the main regulated insurance activities. For example, making arrangements in the UK in connec-

tion with the “effecting” of a contract of insurance is an FCA-authorised activity and would require authorisation.

Third-Country Branches

Non-UK insurers may apply for authorisation to establish a UK branch if they meet the relevant regulatory requirements to do so. There are certain distinctions under Solvency II; for example, a single branch cannot carry out both life and non-life insurance activities (subject to certain “grandfathering” provisions), and Solvency II sets no particular standards for pure reinsurers to establish a branch.

Effect of Brexit

Post-Brexit, the PRA and FCA implemented a “temporary permissions regime” (TPR) that, under certain conditions, permitted non-UK European Economic Area (EEA) firms to continue to passport into the UK for a limited period. Provisions have also been implemented to preserve the validity of contracts written cross-border into the UK pre-Brexit where the EEA insurer does not intend to apply for UK authorisation. Whilst other EEA member states have implemented broadly similar transitional provisions that allow UK-authorised firms to continue to service policyholders resident in those member states under existing contracts, the respective time periods have been set by each individual member state and vary considerably. The TPR ended on 30 December 2023. Since this date, in order to carry on (re)insurance business in the UK, all firms domiciled outside the UK, Gibraltar and Switzerland will need to apply to the PRA for authorisation to establish a UK subsidiary or to open a UK branch through the normal process.

The PRA's policy statement (PS8/24) sets out its approach to the authorisation and supervision of branches of overseas (re)insurers. Of note is

the PRA's increased focus on the reinsurance arrangements of non-UK firms that seek to open a branch in the UK. The statement also gives guidance on when the establishment and authorisation of a UK subsidiary may be more appropriate than opening a branch.

3.2 Fronting

There is no prohibition on fronting in the UK. Historically, the UK regulators have tended to look unfavourably on the practice, but it is possible and, indeed, a number of financial guaranty firms entered into fronting arrangements, whereby business was written in the UK and 100% reinsured back to the parent entity.

The Financial Services Authority (FSA) – the PRA and FCA's predecessor – had concerns around the counterparty credit risk of the non-UK parent and the possible risk of UK policyholders not being paid, which was perceived as less of an issue for commercial lines such as financial guarantees, particularly where obligations were collateralised. This concern was dealt with in the regulator's rulebook through a presumption that reinsurance above a certain amount of reserves assumed too much credit risk unless it could be justified and mitigated; for example, by collateral or a guarantee. In practice, the regulators would now expect retention of at least 10% of the risk (as a general rule of thumb). This figure has also been raised more recently as "a good referential" by the European Insurance and Occupational Pensions Authority (EIOPA) in its Brexit guidance. Similarly, the PRA has also specifically raised that where aggregate reinsurance cessions to the "home" third-country undertaking by the branch exceeds the amount retained (ie, the reinsurance is of more than 50% of the risk), issues of supervisability may arise.

4. Transaction Activity

4.1 M&A Activities Relating to Insurance Companies

Despite the cooling off of M&A transaction activity in the first half of 2023, particularly in relation to carriers (rather than brokers and other intermediaries), the second half of 2023 saw a rebound in M&A activity that has continued through 2024, with EY reporting a significant increase in M&A deals in the UK insurance industry in H1 2024. There is continued interest from private equity firms and asset managers seeking to explore opportunities across the full spectrum of the insurance market, particularly as insurance business is a form of non-correlated asset.

The hardening of the insurance market in recent years has also been a key driver of deal activity – although this hardening market is currently anticipated to ease during 2025. Until early 2022, the sustained low-interest-rate environment undoubtedly also increased pressure on (re)insurers to refine their business models, increasing the scale and/or exiting classes of unprofitable or non-core business. However, rising interest rates have increased the profitability of life insurance and long-duration property and casualty (P&C) insurance businesses, which has encouraged interest in the acquisition of such targets. This follows considerable activity in the life insurance market following the implementation of Solvency II, with a number of insurers exiting lines of business with higher capital requirements, such as annuities or other products with long-term guarantees. There has also been an impact on the run-off market as firms look to be as capital-efficient as possible and offload non-core business through share sales, reinsurance or business transfers, or often a mixture of the two latter approaches.

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The bulk pension annuity (BPA) market has seen continued growth in 2024, as higher interest rates have improved the funding position of many defined-benefit pension schemes. This has allowed many more trustees to be in a position to offload liabilities and assets to specialised life insurers and has attracted even more interest from offshore reinsurer and asset management groups. However, the recent flurry of activity in this space has drawn the attention of the PRA, which has expressed concern over potential concentration of risk, as well as life insurers' exposure to correlated counterparties, particularly in funded reinsurance arrangements. In PS13/24, the PRA set out a range of new expectations that it has for life insurers entering into funded reinsurance arrangements, particularly as regards cross-border arrangements or arrangements that may expose life insurers to illiquid assets originated by funded reinsurers' alternative asset managers. The PRA is expected to take a more hands-on approach in monitoring this area of the market in the future.

In the non-life sector, a number of acquirers continue to be interested in Lloyd's businesses. Membership of Lloyd's gives a presence in the global (re)insurance and specialty markets using Lloyd's international licences and capital rating, thus avoiding the need for separate authorisations and individual capital requirements in each jurisdiction. The year 2024 has seen the highest number of Lloyd's start-up launches in the last five years (including new syndicates launches by Fidelis, Axis and Helios), as well as a number of acquisitions including Aviva's re-entry into the marketplace (through its acquisition of Probitas).

(Re)insurers have also sought to rebalance their portfolio through M&A. This may result in offloading underperforming and non-essential assets, unlocking capital that can be redeployed.

The broker market is continuing to experience significant consolidation due to regulatory change and the challenging economic environment. In particular, the intermediaries market has recently seen a number of joint venture and partnership arrangements, particularly with existing management of successful intermediaries, providing opportunities to engage with management to protect the critical value proposition.

Deal activity in the insurtech space has remained modest in 2024 but is continuing to present new opportunities for growth for strategic and financial buyers alike. Acquisitions by (re)insurers of insurtech firms may be further motivated by the shift in the insurance sector to digital platforms and innovations such as automation, data analytics and modelling, a trend that was accelerated by the COVID-19 pandemic (see **10. Insurtech**). Much M&A activity has continued to be driven by financial investors with plenty of capital and an interest across the full spectrum of the insurance sector.

5. Distribution

5.1 Distribution of Insurance and Reinsurance Products

(Re)insurance distribution in the UK takes place through a wide variety of channels, including direct sales, brokers acting on behalf of their clients in arranging (re)insurance cover, agents acting on behalf of the (re)insurer, independent intermediaries and banks (through bancassurance or partnership arrangements).

Distribution at Lloyd's takes place through brokers and insurance agents or coverholders holding binding authorities on behalf of the managing agents/syndicates for whom they underwrite. Such intermediaries have to be separately

approved by Lloyd's in addition to receiving any other intermediary authorisation required in the jurisdictions where they operate.

Regulation of distribution in the UK is based on the EU's Insurance Distribution Directive (Directive 2016/97/EU) (IDD), which replaced the Insurance Mediation Directive (Directive 2002/92/EU) (IMD). The IDD aimed to improve intermediary regulation to cover all sellers of insurance, including insurers themselves, and ensure the same level of protection for consumers regardless of the distribution channel used. In the UK, intermediation by (re)insurers was already regulated and, therefore, fewer changes were required to implement the IDD. The IDD is implemented in the UK through the FSMA and associated statutory instruments, as well as through the FCA Handbook.

The FCA is responsible for the authorisation, and both the prudential and conduct regulation, of intermediaries operating in the UK. Every person in the intermediation chain from customer to insurer must be authorised or exempt. Intermediation is defined widely to include arranging a contract of insurance, making arrangements with a view to someone entering into a contract of insurance, dealing in a contract of insurance as agent, advising on a contract of insurance or assisting in the administration and performance of a contract of insurance. A lighter conduct regime applies to reinsurance intermediation.

Rules for intermediaries range from compliance with capital and professional indemnity insurance requirements through training and competence requirements to information required to be provided to potential customers.

6. Making an Insurance Contract

6.1 Obligations of the Insured and Insurer

The IA 2015 reformed UK insurance contract law in relation to misrepresentation and non-disclosure in commercial contracts. It applies to all (re)insurance contracts entered into wholly or mainly for the purposes of trade, business or profession that are entered into or varied after 12 August 2016.

Duty of Fair Presentation

The IA 2015 places the insured's common law duty of full and frank disclosure on a statutory footing, imposing a duty on insureds to make disclosures in a manner that would be reasonably clear and accessible to a prudent insurer. The "accessibility" requirement is intended to prevent "data dumping" – ie, disclosing a mass of data without highlighting material considerations.

Representations of fact by insureds must be "substantially correct", and representations of expectations or belief must be made in good faith. An insured must make a "reasonable search" of the information available to them, including information held by their agents or others who are intended to be covered by the insurance.

An insured will need to disclose every material circumstance they know or ought reasonably to know, or sufficient information to put a prudent insurer on notice that the insurer needs to make further enquiries for the purposes of revealing the material circumstances.

A "material circumstance" for these purposes is anything that would, or is reasonably likely to, influence the judgment of a prudent insurer in

determining whether to take the risk and, if so, on what terms.

6.2 Failure to Comply With Obligations of an Insurance Contract

In the case of commercial contracts, where the breach of the duty of fair presentation by the insured was deliberate or reckless, the insurer can avoid the contract, keep the premium and refuse to pay claims. Where the breach was not deliberate or reckless, the remedy depends on what the insurer would have done if a fair presentation had been made. If the insurer would not have entered into the contract at all, it can return the premium, avoid the contract and refuse to pay claims. If the insurer would have entered into the contract but on different terms, the contract is treated as if the different terms had been agreed. If the insurer would have charged a higher premium, the insurer can proportionately reduce the amount it pays on a claim.

In relation to consumer contracts, CIDRA 2012 requires the insurer's remedies to be proportionate to the failings of the insured.

6.3 Intermediary Involvement in an Insurance Contract

An insurance intermediary may act on behalf of the insurer or the insured. Where an insurance broker is acting on behalf of the insured, its duty is to exercise reasonable care and skill in the fulfilment of its instructions and the performance of its obligations. An insurance broker is also under a duty to carefully ascertain its client's insurance needs and to use reasonable care and skill to obtain insurance that meets those needs, together with carefully reviewing the terms of any quotations or indications given to its clients. An insurance broker must also ensure that it explains to its client the terms of the proposed insurance to ensure the client is fully informed

and satisfied that all its insurance requirements are met. An intermediary acting on behalf of an insurer must comply with the conduct of business requirements applicable to the selling of insurance.

6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

At common law, there is no requirement for a contract of insurance to be in any particular form or even to be in writing, although there is usually a document (called a policy) that evidences the contract. Some insurance contracts, such as contracts for marine insurance, are required by statute to be expressed in a policy.

Insurable Interest

The Marine Insurance Act 1906 and the Life Assurance Act 1774 (which is not restricted to life insurance) require an insured person to have an insurable interest in the subject matter of the insurance. This means that, in order for an insurance contract to be valid, the person taking out the insurance should stand to benefit from the preservation of the subject matter of the insurance or suffer a disadvantage should it be lost.

The law on insurable interest differs depending on whether the contract is for non-indemnity insurance (insurance that pays out a lump sum on the occurrence of a specified event, such as death, personal accident or critical illness, regardless of the loss suffered) or indemnity insurance (which compensates the policyholder for loss suffered). In the case of non-indemnity insurance, the Life Assurance Act 1774 makes null and void any policy on the life or lives of any person(s) or on any event made by any person having no interest.

The English and Scottish Law Commissions have consulted on the topic of insurable interest at various times over the past ten years. The Law Commissions have suggested that the law of insurable interest is complex and uncertain, and not required at all in relation to indemnity insurance. In 2016, the Law Commissions conducted a short consultation on a draft bill to reform the law on insurable interest, and published an updated draft bill on 20 June 2018. At the time of writing, the Law Commissions were analysing responses to the consultation on the updated draft bill and indicated that they will produce a report with final recommendations in due course.

6.5 Multiple Insured or Potential Beneficiaries

Generally, an insurable interest is required for multiple insureds and beneficiaries who are not named in the contract; mortgagees, for example, do have an interest in the relevant policy through their loan secured on the relevant property. For life policies, the position is a little less straightforward – where there are “mid-term beneficiaries” in multi-life policies, the requirement for an insurable interest at the time the policy is taken out means that, in theory, the policyholder lacks an insurable interest in respect of those potential beneficiaries. The Law Commissions’ draft bill (see 6.4 **Legal Requirements and Distinguishing Features of an Insurance Contract**) contains wording intended to clarify the position in favour of such potential beneficiaries.

6.6 Consumer Contracts or Reinsurance Contracts

Consumer contracts tend to have more protection for the insured through regulation. CIDRA 2012 provides clarity to consumers on what information they need to provide to insurers when taking out an insurance policy. It removes

the duty on consumers when buying or renewing insurance to volunteer information, replacing it with a duty to take reasonable care not to make a misrepresentation. Generally, representations will be made by consumers in response to questions raised by the insurer.

In relation to consumer contracts, CIDRA 2012 also requires the insurer’s remedies to be proportionate to the failings of the insured. This means that an insured is not unfairly deprived of all cover in circumstances where an insurer would still have accepted the risk had it known the full facts.

7. Alternative Risk Transfer (ART)

7.1 ART Transactions

The term “alternative risk transfer” (ART) encompasses a number of alternative techniques used to transfer risk as compared with traditional contracts of (re)insurance. As such, the type and structure of an ART transaction will affect its regulatory treatment. (Re)insurers in the UK have used ART for a number of years and where the technique used includes some transfer of risk, regulatory credit will be given for that transfer if it meets certain specific criteria. Solvency II explicitly recognises risk mitigation techniques used to transfer a variety of risks, including underwriting risk, but only if they fulfil the relevant criteria.

The industry loss warranty (ILW) is a type of contract that pays out upon the occurrence of a market loss of agreed severity in response to certain catastrophe events. There might also be a double trigger of loss to the (re)insured in addition to market loss. There can, however, be considerable basis risk – ie, the risk that whatever loss the (re)insured suffers will not be fully compensated by the ILW recovery because the

two do not exactly match or because the market trigger is not reached. They may not therefore attract much Solvency II credit, and for that reason there may be more careful matching of triggers and more payouts based on indemnity rather than fixed-sum payouts.

An onshore insurance-linked securities (ILS) regime was implemented in the UK with effect from 4 December 2017. The UK regime has been set up to be fully compliant with Solvency II rules on special-purpose vehicles; therefore, the appropriate reinsurance credit under Solvency II in the UK should be received.

7.2 Foreign ART Transactions

ART transactions from other jurisdictions will be treated as reinsurance for UK cedents if the contract can be shown to fulfil the common law definition of insurance and also fulfils Solvency II's requirements for recognition as a risk mitigant. ART transactions structured as derivative contracts can also be recognised as a risk mitigant if they fulfil the conditions for derivatives as risk mitigants.

8. Interpreting an Insurance Contract

8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence

Insurance contracts are construed according to the principles of construction generally applicable to all contracts. The following general rules of construction apply:

- words will be given their ordinary meaning, but will be understood in the context of the contract and not in isolation;
- where words have a technical meaning in law, they will be taken to bear that meaning;

- if words are defined in the contract, their own definitions will prevail;
- when construing the contract, the court may consider evidence of background circumstances (the factual matrix);
- if words are ambiguous, they will be construed *contra proferentem* so that any reasonable ambiguity in the wording will be construed in favour of the insured;
- the contract will be construed in accordance with sound commercial principles and good business sense;
- the contract will be construed in a manner that avoids unreasonable results, provided “no violence” is done to the words used; and
- terms may be implied if this is necessary to give business efficacy to the contract; however, no term will be implied unless it is reasonable.

8.2 Warranties

The IA 2015 reformed the law of warranties and remedies for fraudulent claims in relation to consumer and business insureds.

The IA 2015 abolished the “basis of contract” clause in insurance contracts, which turns an insured's representations into warranties. Breaches of warranty that are irrelevant to the loss that occurs will no longer discharge insurers from liability.

Where the insured can demonstrate that a failure to comply with a contractual term, including a warranty, could not have increased the risk of the loss that occurred, insurers will no longer be able to rely on the breach to exclude, limit or discharge their liability. A breach of warranty will discharge the insurer from liability for loss occurring after the breach but not from liability for loss occurring before the breach or after the breach has been remedied.

8.3 Conditions Precedent Contracting Out of the IA 2015

The IA 2015 provides that breaches of warranty that are irrelevant to the loss that occurs will no longer discharge insurers from liability (see **8.2 Warranties**). In consumer contracts, any attempt to contract out of any part of the IA 2015 will be of no effect. In commercial contracts, an insurer seeking to contract out of the provisions of the IA 2015 must take sufficient steps to bring the relevant term to the insured's attention and ensure that the term is clear and unambiguous as to its effect.

Fraudulent Claims

The IA 2015 enables insurers to treat the insurance contract as terminated from the date of the fraudulent act. The previous common law position of insurers not being liable for fraudulent claims and being able to recover payments made to the insured in respect of a fraudulent claim remains unchanged.

9. Insurance Disputes

9.1 Insurance Disputes Over Coverage Coverage Disputes

It is common for an insurance contract to specify a mechanism for dealing with disputes prior to resorting to litigation or arbitration. This may range from an initial attempt to resolve the dispute through nominated senior executives or managers to other dispute resolution mechanisms, such as an independent expert determination or mediation. It is common for commercial insurance contracts and reinsurance contracts to contain an arbitration clause providing for disputes to be settled through arbitration rather than the courts.

Consumer contracts have to contain certain provisions required by law or regulation to protect consumers. Whilst consumer contracts are sometimes litigated, insurers must provide consumers with details of complaints procedures and their right to refer disputes to the financial ombudsman. They are also under a regulatory duty to treat customers fairly. Disputes will therefore often be settled through internal procedures or an ombudsman ruling rather than through the courts.

Limitation Period for Insurance Claims

There is no specific statutory limitation period for making a claim under an insurance or reinsurance contract. Insurance contracts are subject to the normal limitation period under the Limitation Act 1980 for causes of action founded on breach of contract (six years from the date on which the cause of action accrues).

As well as the statutory limitation period, (re) insurance contracts typically include a notification clause requiring the insured to give the insurer notice of claims or losses, or of circumstances that give rise to a claim or loss, in a particular manner (usually in writing) and within a particular period (for example, "as soon as reasonably practicable"). An insured can lose the right to an indemnity for failure to comply with a notification clause where compliance is a condition precedent to bringing the claim. "Claims made" policies provide cover for claims actually made within the policy period – usually a year.

Enforcement of Insurance Contracts by Third Parties

The Contracts (Rights of Third Parties) Act 1999 allows for third-party enforcement in certain circumstances. For example, a third party may be able to enforce a contractual term in an insurance contract if:

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- they are specifically identified in the contract as someone who has rights under the insurance contract; or
- the insurance contract purports to confer a benefit on them.

In practice, however, contracts of insurance usually exclude the Contracts (Rights of Third Parties) Act 1999.

9.2 Insurance Disputes Over Jurisdiction and Choice of Law

The rules applicable to disputes over jurisdiction regarding civil and commercial matters largely depend on the domicile of the defendant and the date when the proceedings were instituted.

The European Regime

The European regime will apply (i) where the defendant is domiciled in an EU or European Free Trade Association (EFTA) state or has a specified connection to one of these states and (ii) where the proceedings were initiated in the UK on or before 31 December 2020. The “European regime” refers to the application of Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, commonly known as the “2001 Brussels Regulation” (applicable to proceedings instituted before 10 January 2015) and Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, commonly known as the “Recast Brussels Regulation” (applicable to proceedings instituted after 10 January 2015). It also refers to the 2007 Lugano Convention.

Common Law Rules

Common law rules (i) will apply where the defendant is domiciled outside the EU and (ii) will also

apply to EU- and EFTA-domiciled defendants for proceedings commenced after 31 December 2020, subject to what is said in the following.

The Hague Convention

The Hague Convention on Choice of Court Agreements (2005) (Hague 2005) applies to contracting states of the Convention and requires the court designated in an exclusive jurisdiction agreement (entered into after the Convention came into force) to hear the case, generally preventing courts of other contracting states from hearing parallel proceedings. As the UK joined the Convention in its own right on 31 December 2020, the view of the European Commission (as of August 2020) was that the Convention will only apply after 31 December 2020. The UK, on the other hand, is of the view that it will apply from October 2015, when the UK became a party to the Convention by virtue of its EU membership. The Hague Conference on Private International Law now states that the Convention entered into force for the UK in October 2015; however, the position in this regard has yet to be definitively clarified.

The Recast Brussels Regulation and Rome I

Where the European regime applies, jurisdiction in matters relating to insurance is determined on the basis of distinct reforms in Chapter II, Section 3 of the Recast Brussels Regulation, which aim to protect the so-called weaker party. Section 3 provides an exception to the general rule that a defendant should be sued in the country in which they are domiciled.

Disputes over the law applicable to contracts concluded after 17 December 2009 are resolved on the basis of the rules set out in Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations, commonly known as “Rome I”. Unlike the previous Euro-

pean regime set out in the Rome Convention on the Law Applicable to Contractual Obligations 1980 (transposed in the UK through the Contracts (Applicable Law) Act 1990), Rome I applies to insurance contracts, with the exception of certain life assurance contracts.

Rome I has been incorporated into UK domestic law through UK Rome I, a retained EU Law version of Rome I with minor operational amendments that do not affect the substance of the law. In practice, this means that the English courts will continue to apply Rome I in respect of contracts entered into on or prior to 31 December 2020 (ie, the end of the transition period), and UK Rome I to contracts entered into after this date.

9.3 Litigation Process

Civil litigation in England and Wales is adversarial in nature. The first stage in typical court proceedings following pre-action correspondence is the issuance of a claim form, which contains the names of the parties, details of the claim and its value. The claimant then serves the claim form on the defendant, and must also prepare and serve the particulars of the claim, stating the facts on which it relies, the remedy sought and any other relevant information. The defendant can then choose to defend against the claim by serving a defence. The claimant can reply to the defence. If the defence includes a counterclaim, the claimant's reply must also include a defence.

The next steps include disclosure, when each party is required to disclose to the other documents within its control that are relevant to the issues in dispute. The disclosure obligation in English litigation is wide and requires each party to disclose documents that support or harm their case or their opponent's case. The High Court has taken steps to reform the disclosure pro-

cess to ensure that it is as targeted and efficient as possible. Parties will also typically exchange witness statements on issues of fact and expert reports.

The case will then proceed to trial. English trials principally involve each party's counsel making oral submissions and drawing the judge's attention to the relevant evidence and law, including calling on the evidence of witnesses and experts upon which they seek to rely and cross-examining opposing witnesses and experts.

The parties must take each step within prescribed periods of time set out in the civil procedure rules, or decided by the court, including in case management conferences (CMCs) where the parties and the judge decide how the case should be conducted, including setting a timetable for all the steps up to trial.

9.4 Enforcement of Judgments

If an unsuccessful party does not voluntarily comply with the judgment of the court, various enforcement procedures are available, including the seizure and sale of that party's assets or the imposition of a charge over certain assets.

There are currently four general regimes for the enforcement of foreign judgments in the UK, and which regime is applicable will depend on when and where the proceedings were initiated.

The UK Regime

Judgments from Scotland or Northern Ireland will follow the UK regime.

The European Regime

Judgments from EU and certain EFTA countries will fall under the European regime if the judgment was handed down on or before 31 December 2020. Under the European regime,

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the judgment creditor requires the leave of the court to enforce a foreign judgment, following which it can be enforced as if it were an English judgment. The enforcement procedure in these cases will still depend on the law of the enforcing state.

For judgments issued after 31 December 2020, the statutory regime or the common law rules that apply to the enforcement of judgments from non-EU/EFTA countries will apply instead. So far, the UK's attempts to accede to the Lugano Convention after 31 December 2020 have proved unsuccessful. The only agreement that the UK has reached in this respect to date is the treaty signed with Norway on 13 October 2020, which provides for the continued application of the enforcement provisions of the 2007 Lugano Convention.

The Statutory Regime

Judgments from most Commonwealth countries and certain other countries covered by statutory instruments, such as the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933, are enforced under the statutory regime. Enforcement under the statutory regime requires a registration of the foreign judgment, without the need to commence a fresh action or to issue notice to the debtor until registration has been ordered. The onus then falls on the debtor to apply to set the registration aside.

The Common Law Regime

Judgments from the rest of the world (ie, countries that are not covered by the European regime after 31 December 2020 or by the statutory regime) are enforced under the common law regime, unless they are subject to other arrangements. When enforcement is sought under the common law regime, the judgment debtor needs

to commence fresh proceedings to enforce the foreign judgment as a debt. The grounds for resisting the enforcement under the statutory regime and common law regime are wider than those under the European regime, and will depend on the country where the judgment was given since a foreign judgment is only enforceable under the common law regime if the original court had jurisdiction according to the rules that English law applies in such cases.

Hague 2005

In addition to the foregoing, if there is an exclusive jurisdiction clause, then Hague 2005 will apply. If the exclusive jurisdiction clause was entered into after 31 December 2020, then Hague 2005 provides for the enforcement of judgments in a similar way to the Recast Brussels Regulation and will apply to the enforcement of judgments from the signatory countries, including the EU member states, Mexico, Singapore, Montenegro, Ukraine, Moldova and Albania.

Hague 2019

An additional regime for enforcing (certain) judgments will come into force in the UK on 1 July 2025. On 12 January 2024, the UK Government signed the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019), a new framework of rules designed to facilitate the recognition and enforcement of commercial and civil judgments. Hague 2019 is considerably wider in scope than Hague 2005, since it applies in circumstances where a contract contains a non-exclusive jurisdiction clause or an asymmetric jurisdiction clause, as well as numerous other circumstances specified in Article 5.

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Hague 2019 is already in effect between EU member states (except Denmark), Ukraine and Uruguay.

Hague 2019 will take effect in England and Wales from 1 July 2025 and will apply to the enforcement of judgments between contracting states and the UK for proceedings that are commenced after this date.

9.5 Enforcement of Arbitration Clauses

Arbitration clauses in commercial insurance and reinsurance contracts can be enforced in the same way as arbitration clauses in other kinds of contracts. Indeed, arbitration is a popular method of resolving insurance disputes. The Insurance and Reinsurance Arbitration Society (ARIAS (UK)) has prepared a recommended arbitration clause, which takes into account the ARIAS Arbitration Rules and the provisions of the Arbitration Act 1996 (1996 Act).

9.6 Enforcement of Awards

Under Section 66 of the 1996 Act, arbitral awards can be enforced in the same manner as a judgment with leave of the court, whether such awards are domestic or foreign.

The UK is a signatory to the New York Convention, which entered into force on 23 December 1975, with a reciprocity reservation. The UK has submitted notifications extending the territorial application of the New York Convention to Gibraltar, the Isle of Man, Bermuda, the Cayman Islands, Guernsey, Jersey and the British Virgin Islands.

For foreign awards governed by the New York Convention, Section 103 of the 1996 Act contains the grounds of review for recognition and enforcement, which are set out in Article V of the New York Convention. In practice, however, the

UK is an “arbitration-friendly” jurisdiction, and the grounds for review of the recognition and enforcement foreign awards are limited.

In addition to the New York Convention, the UK is a party to the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 and numerous other bilateral and multilateral investment treaties.

9.7 Alternative Dispute Resolution

Arbitration is commonly used in insurance and reinsurance disputes, and a clause requiring this form of dispute resolution to be used may be contained in the policy. The International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) are frequently used.

A contract might also require resolution of a dispute through another form of alternative dispute resolution, such as mediation.

The court can encourage or, in certain circumstances, order mediation before litigation for insurance and reinsurance contracts. Failure to attempt mediation may result in cost penalties.

9.8 Penalties for Late Payment of Claims

The Enterprise Act 2016 introduced an implied term to (re)insurance contracts that insurers must pay sums owed to policyholders within a reasonable time. The type of insurance, the size and complexity of the claim, compliance with any relevant statutory or regulatory rules or guidance and factors outside the (re)insurer’s control will be taken into account when assessing what constitutes a reasonable time.

A breach of this implied term could give rise to a claim for damages. The limitation period for the insured to bring the claim for damages is one year from the date of the insurer's last payment in respect of the relevant loss (Limitation Act 1980).

Parties to a non-consumer contract can contract out of the reasonable time obligation, provided they comply with the IA 2015 transparency requirements.

9.9 Insurers' Rights of Subrogation

As a result of the doctrine of subrogation, an insurer may pursue third parties for claims pursuant to which the insurer may be liable to the insured. The insurer can "step into the shoes" of the insured and pursue in the insured's name – or require the insured to pursue – claims that may lie, against third parties in respect of the insured event giving rise to a claim under the policy. To trigger subrogation, at common law it is necessary for the insured to be fully indemnified as a condition to the insurer exercising its subrogation rights. In practice, the extent of – and circumstances for – the exercise of subrogation and procedures applicable are specified in the policy.

10. Insurtech

10.1 Insurtech Developments

An increasing number of start-ups are applying new technologies in the insurance space. Incumbent insurers are focused on partnering with and acquiring these businesses in order to avoid disruption, meet evolving customer demands and capitalise on insurtech's potential. This has led to an increase in capital being deployed into the insurtech space, by an increasing number of investors.

Strategies/Collaboration

Several of the most common strategies are listed below. Importantly, these strategies are not mutually exclusive, and global players typically utilise several in parallel, if not all of them.

- Establish incubator – it is common for insurers to establish incubators with the aim of accelerating seed or early-stage technology ventures. Incubators often take the form of external acceleration programmes that admit and train applicants, though they may equally be internal research and development outfits.
- Venture capital investment – these investments are made directly through a business unit or through a standalone venture capital-focused investment fund.
- Partnerships – by allowing incumbent insurers and disruptors to combine resources, partnerships offer potential benefits to incumbents and start-ups – entrants to the UK market may look to emulate the strategic partnership between Aviva and US-based insurtech Lemonade.
- Licensing technology – rather than incurring the risk and expense of growing or acquiring technology, insurers may seek to licence fully developed technology from third parties.
- M&A – insurers also seek to acquire insurance-oriented technology companies outright and integrate them into their global brand. A continuing increase in general M&A activity in 2025 is also likely to be accompanied by an increase in M&A in the insurtech market.

Products

Below are some of the products involved in insurtech.

- Artificial intelligence and machine learning (together, AI) – AI promises substantial improvements in operational efficiencies, pricing

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ing accuracy and the geographical diversity of insurance coverage. Products in this area vary from drones analysing crop health from aerial images of farms, to companies offering a completely automated claims service, to parametric insurance policies covering farmers whose land is damaged by excessive rainfall (see also **12.1 Significant Legal or Regulatory Developments**).

- Intelligent agents – virtual and digital assistants and chatbots capable of interacting with customers are becoming increasingly common.
- Internet of things (IoT) and big data analytics – IoT refers to the connection of devices to the internet and/or each other. Insurers use data from wearables to project health outcomes, whilst data from automobiles can predict the likelihood of future accidents.
- Add-on tools for incumbent insurers, such as data analytics, claims handling and anti-fraud measures.
- Blockchain – this is a digital peer-to-peer ledger system designed to securely record transactions in digital assets, and ownership thereof. Global and UK insurers remain focused on the technology, as is evidenced by their near-universal participation in the B3i initiative, which involved launching a (re)insurance contract management platform using distributed ledger technology (DLT) and smart contract technology. In April 2022, Allianz and Swiss Re placed the first XOL reinsurance contract using DLT. Despite this, B3i filed for insolvency in July 2022, raising questions about the future of blockchain technology in insurance.

10.2 Regulatory Response

Efforts have been made by regulators to adapt to insurtech. One example is the launch of Project Innovate by the FCA in 2014. A key component

of the project is the regulatory sandbox, which in August 2021 moved to an “always open” model, meaning applications are now accepted all year round, and the FCA has received over 630 applications since its launch and accepted 23 firms. The project involves early, open and honest communication between insurtech firms and their respective regulators, who provide individual guidance, potential modification of rules and letters of no enforcement action for a limited duration. The FCA closely monitors the pilot and receives information regarding current innovations.

Furthermore, the PRA has, as part of its ongoing review of Solvency II, proposed a “mobilisation regime” allowing new insurance firms to operate with business restrictions (for example, limits on the type of business written) for 12 months, during which time the firm would benefit from lower capital requirements.

In March 2022, the UK’s Department for International Trade launched the UK-US Insurtech Corridor with the US Department of Commerce, Connecticut Insurance and Financial Services (among others). The corridor is intended to remove barriers to doing business as an insurtech in the UK and the United States. While it is early days, a number of participants have taken part in the programme to date.

11. Emerging Risks and New Products

11.1 Emerging Risks Affecting the Insurance Market

As a centre for the global (re)insurance industry, the UK industry – particularly Lloyd’s and the London market – is focused on the many emerging risks common to those in the rest of

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the world, including catastrophe and environmental risks from climate change, cybersecurity risk, geopolitical instability, energy risk and the changing risk profile of common types of insurance, such as motor and liability, with the development of automation and AI (see also **12.1 Significant Legal or Regulatory Developments**).

Climate Change

Climate change has in recent years ranked amongst the top emerging risks identified by the UK and global (re)insurance industry. Given the ongoing impacts on global economies arising from the effects of climate change, as well as the impact on (re)insurers in respect of the asset and liability side of the balance sheet, it is unsurprising that climate change remains a key emerging risk affecting the market.

The UK government has indicated its commitment to the green economy, and the PRA and FCA have shown that they are aware of the risks facing the industry from climate change. The UK Solvency II review included specific considerations for supporting the green economy – although stopped short of specific capital treatment for such investments. Similarly, the risks arising from climate change remain a key priority for the International Association of Insurance Supervisors, of which the PRA is a member.

Following on from the Bank of England's (BoE) report on climate-related risks and the regulatory capital frameworks in March 2023, the BoE and the PRA have indicated that they will in the coming years focus on the development of capital frameworks that better capture climate risks and eliminate regime gaps, as well as ensuring that firms address capability gaps in their risk management systems. Further research and dialogue in this area are likely in the coming years.

Cyber-Risk

UK businesses have a heightened awareness of the threat that cybercrime poses, following a number of recent high-profile data breaches. In the government's Cyber Security Breaches Survey 2023, it was reported that 50% of businesses and 32% of charities in the UK suffered a cybersecurity breach or attack in the 12 months to April 2024. The figures were much higher for medium businesses (70%), large businesses (74%) and high-income charities with GBP500,000 or more in annual income (66%). Each of these statistics show year-on-year increases against 2023. Whilst (re)insurers face cyber-risks themselves, there is also an opportunity for them to offer cyber-risk insurance protection to others.

The PRA and FCA are alive to the risks that financial services firms such as (re)insurers face from cyberthreats. The PRA and FCA are engaging with industry and co-operating with each other and the BoE to monitor the use of new technologies, assess emerging regulatory risk and test firms' operational resilience and cyber-resilience through stress tests – and to enforce penalties when regulatory and data breaches occur.

Geopolitical Instability

Ongoing geopolitical instability, most notably in the form of the Russia-Ukraine and Israel-Gaza conflicts, have had significant financial implications for the (re)insurance market, as well as the broader global economy, for example by accelerating the inflationary pressures already in place due to the COVID-19 pandemic. (Re)insurers are particularly focused on the potential resurgence of military conflicts. With such economic pressures affecting global markets, it is expected that demand for taking out insurance contracts will be depressed, and that the financial performance of the insurance industry as a

whole will be affected. The Russia-Ukraine conflict has also created new sanctions compliance regulation across the market that (re)insurance companies have to comply with.

11.2 New Products or Alternative Solutions

Blockchain

Several DLTs, like blockchain, offer a high standard of protection against cybersecurity risk. The ability to protect data from cyber-attacks or malicious tampering is not only beneficial from a business risk point of view, but also makes a product based on DLT more attractive to consumers. However, regulators must balance innovation against risks to markets and customers. For example, weaknesses in DLT have been revealed through a series of cyber-attacks against digital currencies that use DLT.

To manage the policy and regulatory implications of DLT and crypto-assets in financial services, in March 2018, the BoE, the FCA and HM Treasury created the Cryptoassets Taskforce, which published a report in October 2018 detailing specific actions to be taken by regulatory authorities to mitigate the risks that accompany the potential benefits of DLT. In April 2022, HM Treasury published a response to a previous consultation on the UK's regulatory approach to crypto-assets and stablecoins, which sets out, among other things, the UK's approach to stablecoin regulation, the wholesale uses of crypto-assets, and new market developments in the space. The Financial Services and Markets Act 2023 (FSMA 2023) clarified that crypto-assets are within the scope of the regulatory regime in the FSMA 2000, and a new crypto-asset financial promotions regime, created by the FCA, came into force on 8 October 2023.

12. Developments in Insurance Law

12.1 Significant Legislative or Regulatory Developments

UK Solvency II Review

Following the UK's exit from the EU, HM Treasury and the UK regulators have been conducting a review of the Solvency II regime in the UK (referred to as Solvency UK). In April 2022, HM Treasury published a new consultation paper on the UK's Solvency II review setting out a package of proposed reforms. Following this consultation, in November 2022, HM Treasury issued a paper setting out the government's final reform package. Throughout 2023 and the first half of 2024, HM Treasury, the PRA and the FCA published various legislative texts and regulatory guidance, most notably the HM Treasury draft statutory instruments on the risk margin and matching adjustment in June 2023 and the PRA's policy statement in February 2024. The final restatement of the assimilated law was published in November 2024.

The key areas of reform include:

- reducing the risk margin significantly (a 65% reduction for long-term life insurance business and a 30% reduction for general insurance business) and enabling a modified cost of capital approach to its calculation, including by replacing the 6% cost of capital rate with a 4% rate (changes to the risk margin have been a long-time request of the industry, largely in response to the former period of sustained low interest rates and the interest rate sensitivity of the previous calculation methodology);
- maintaining the existing methodology and calibration of the fundamental spread, whilst increasing the risk sensitivity (the Conserva-

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- tive government at the time indicated that this would be reviewed again in five years' time);
- broadening the application of the matching adjustment and its investment flexibility (the PRA's corresponding consultation paper proposed to extend matching adjustment eligibility to other liabilities – eg, the guaranteed portion of with-profits annuities and allowing assets with highly predictable cash flows in place of fixed cash flows; however, such assets are subject to a cap and are only permitted to make up 10% of a life insurer's matching adjustment portfolio, and there are a range of conditions, including that all assets must be capable of being managed in line with the "prudent person principle"); and
 - removing branch capital requirements for foreign firms with "appropriately capitalised" parent companies.

Many of the reforms, including in relation to the risk margin, had been adopted and effective prior to 2024. The reforms of the matching adjustment came into force by the end of June 2024, and the remainder of the Solvency UK regime (to be implemented via the PRA Rulebook) will come into force by the end of 2024.

Funded Reinsurance

In July 2024, the PRA continued its trend of focusing on reinsurance arrangements, particularly in the life sector, by publishing an immediately effective policy statement on funded reinsurance to detail its expectations, with a particular focus on concentration risk, risk of recapture and collateral. In particular, the PRA expressed its concern about the use of such arrangements in the BPA market. Firms are subject to a range of new obligations, including requiring clear collateral policies, internally approved guidelines on contractual features of funded reinsurance transactions and a quantitative risk assessment

process for their funded reinsurance arrangements. Firms will also be required to assume recaptured assets are non-compliant with their matching adjustment permissions, unless they can demonstrate otherwise.

Artificial Intelligence

Unlike the EU, the conservative Government indicated that it did not intend to implement AI-specific laws or regulations. Rather, the government planned to issue non-statutory guiding principles for UK regulators to adapt and implement within their respective sectors. The new Labour Government has not yet indicated whether it intends to deviate from this approach and follow a more-EU style approach to AI regulation. In October 2022, the PRA and FCA published a discussion paper outlining their proposed approach to AI regulation, and in October 2023, the corresponding responses paper was published, which provided certain indications as to how the PRA and FCA may approach AI regulation in the future. Whilst there is still uncertainty over the content of future AI regulation from the UK regulators, it is clear that further regulation in this area is coming.

Brexit

The transitional period ended on 31 December 2020. Although a trade agreement was agreed between the UK and the EU, it contains very few provisions on (re)insurance, and the UK is now treated as a third country (resulting in a loss of passporting rights between the UK and the rest of the EU). The UK and the EU agreed a memorandum of understanding (MoU) on a framework for co-operation between financial regulators in June 2023. The MoU highlighted financial stability, market integrity and the protection of investors and consumers as common objectives, and provided for exchanges of views, information and analysis, transparency, dialogue

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and enhanced co-operation and co-ordination between the regulatory bodies in each jurisdiction.

The UK has granted a package of equivalence decisions to the EU and EEA member states, including for the three equivalence areas under Solvency II, reinsurance, group solvency calculation and group supervision. However, as yet, the EU has not reciprocated, so the UK has not been granted equivalence under Solvency II.

Prior to the end of the transitional period, EU laws and regulations, including those relating to (re)insurance, and in particular Solvency II, were implemented directly into UK law, but without the references to EU institutions and the reciprocal arrangements that come with being a member.

Post-Brexit, the UK government has sought to make the UK insurance industry internationally competitive in part through its relaxation of the Solvency II regime's application in the UK and certain branch requirements. In addition, pursuant to the FSMA 2023, the UK regulators now also have a secondary objective: to facilitate economic growth and international competitiveness.

Notwithstanding the UK's Solvency UK reforms, neither regulators nor the industry have shown any desire to diverge greatly from Solvency II, given the amount of effort, time and money spent on its implementation, and the reforms that have been seen from HM Treasury and the UK regulators in recent years seem to follow this expectation.

Insurance-Linked Securities Regime

The UK ILS regime was implemented after a significant amount of work among the regulators, the industry and HM Treasury to design an onshore regime that would allow the UK to compete with more established ILS jurisdictions, whilst ensuring that ILS issued in the UK would be compliant with Solvency II.

The rules introduced protected cell companies in the UK for the first time, together with an attractive tax regime and a bespoke approach to regulation and supervision to reflect the nature of ILS transactions. The transfer of certain types of bonds issued under the ILS regime is exempted from stamp duty and Stamp Duty Reserve Tax.

Lloyd's has had some success with the ILS regime through the London Bridge structure, which uses a protected cell company structure to introduce new capital into the Lloyd's market.

CHAMBERS GLOBAL PRACTICE GUIDES

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