Climate Change and the Insurance Sector

Issue 4, January 2021

Welcome to our monthly new bulletins, providing you with the latest updates on climate change developments as relevant to the insurance market.

This month the UN environment programme, in cooperation with the Sabin Center for Climate Change at New York's Columbia University, published its 2020 Status Review "Global Climate Litigation Report". The report focuses on what is referred to as the "growing tidal wave of climate cases…driving much needed change", referencing that since the last report in 2017, the number of climate litigation cases has doubled with at least 1,550 climate change cases filed in 38 countries. As noted, the increase in the frequency of such actions, means there is a growing body of legal precedent in this field of law. We highly recommend reading this report for a full overview of the types of climate litigation cases being seen across the world, and the emerging trends in these cases, which we will comment on in future bulletins.

We hope you find this bulletin useful, and please do get in touch if there are any areas you would like to discuss in more detail.

Michelle Radcliffe, Senior Associate, CMS

Hot off the press

Financial risks arising from climate change included in the PRA's 2021 insurance supervision priorities

On 15 December 2020, the PRA published its five areas of focus for insurance supervision in 2021 which included financial risks arising from climate change. The PRA reiterated that firms should have fully embedded their approaches to managing climate-related financial risks by the end of 2021.

In June 2021, the Climate Biennial Exploratory Scenario (CBES) will be launched, which will test the resilience of five UK life insurers' and six UK general insurers' current business models to the transition and physical risks of climate change. The results of the CBES will be used to help develop risk management processes and identify gaps in firms' data.

Insurance Europe responds to EIOPA consultation on ORSA climate risk requirements

On 6 January, Insurance Europe (IE) published a response to the consultation launched by the European Insurance and Occupational Pensions Authority (EIOPA) on the use of climate change scenarios in an insurer's own risk and solvency assessment (ORSA).

Although IE agreed that forward-looking management of climate change risk is important, it said that each insurer should consider the climate change risks which are expected to have a future material impact on them: "*the ORSA is the company's own analysis and should remain this way. Therefore, the decision how to perform in practice the forward-looking analysis on climate change risks in the ORSA should remain at the discretion of the specific insurer*".

IE also warned that additional prescriptiveness could result in the materiality of climate risks differing across entities and over time, and uncertainties and limitations in the climate risks analyses. IE asked EIOPA to allow for and encourage the application of proportionality, for example in relation to insurers with negligible exposure to climate risk.

The UN Environmental Programme publishes its Global Climate Litigation Report, 2020 Status Review

The report, published this month, provides an overview of global climate change litigation, documenting the rapid increase in climate litigation across the world. As at 1 July, there were reported to be 1,550 climate change cases in 38 countries. The report looks at litigation, including arguments based on fundamental human rights, and how cases are forcing greater climate disclosures and an end to 'corporate greenwashing' on the topic of climate change and energy transition.

Insurers report increased losses from natural disasters in 2020

Several reports published in recent weeks have highlighted the increasing cost to insurers of natural disasters as a result of climate change.

Munich Re **reported** that, in 2020, natural disasters produced global losses of USD 210 billion, with insured losses of USD 82 billion (a significant increase from 2019, where these figures came to USD 166 billion and USD 67 billion respectively). North America suffered the highest losses with the costliest loss occurring in China as a result of severe flooding during monsoon rains. **Swiss Re** put global insured losses at USD 76 billion (an increase of 40% from 2019).

A **report** published by Aon said that 416 natural catastrophes in 2020 resulted in economic losses of USD 268 billion, 64% of which were uninsured. The report stressed the importance ensuring that there is increased access to affordable insurance products in the future.

Guidance/Consultations

United Nations Environment Programme Finance Initiative (UNEP FI) guidance for insurers on disclosing climate change impacts

Earlier this month, 22 insurers and reinsurers convened by the United Nations Environment Programme Finance Initiative (UNEP FI) published guidance for insurers to identify, assess and disclose climate change impacts.

The group has collaborated to produce methodologies which insurers can use to implement the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosure (TCFD), and disclose climate risks and opportunities to better understand how their business will be impacted by climate change. Risks and opportunities have been classified into the following three categories:

- Physical risks, for example changes in weather patterns
- Transition risk as a result of the movement to net-zero emissions
- Potential litigation risks pertaining to climate change and breach of underlying legal frameworks on both business and corporate levels

The report assessed these three categories in underwriting portfolios, with a focus on scenario analysis, and flagged linking insurance underwriting and investment portfolios as an area for future work.

Climate Change Risks: Consultation on Proposed Legislation

On 27 January, the Department for Work and Pensions published the UK Government's response to its August 2020 consultation, titled "Taking action on climate risk: improving governance and reporting by Occupational Pension Schemes". The Government has now published a consultation on draft Regulations which the Government intends to make under new powers in section 41A of the Pension Schemes Bill (currently awaiting royal assent).

The August 2020 consultation sought views on proposals to require trustees of larger occupational pension schemes, authorised master trusts and collective money purchase schemes to have effective governance, strategy and risk management systems in place to assess and manage climate risks and to disclose these in line with the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations. The Government has now published its consultation on the draft Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, the draft Occupational Pension Schemes (Climate Change Governance and Reporting) (Miscellaneous Provisions and Amendments) Regulations 2021 and draft statutory guidance.

As part of new mandatory requirements under the proposed Regulations, trustees of schemes that are within scope will be required to establish and maintain oversight of climate-related risks and opportunities that are relevant to the scheme and to publish TCFD reports. The reports will have be signed by the chair of trustees. The consultation will close on 10 March 2021.

Claims

Court upholds gas plant approval but sets important climate planning precedent

The UK Court of Appeal has upheld the planning approval for Europe's largest gas-fired power statement in North Yorkshire in R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy.

In July 2019, the UK planning authority recommended that the gas plant be refused permission due to climate impacts outweighing any benefit. However, the Secretary of State for BEIS considered that the proposed development would meet a national need, which outweighed the environmental impacts of the project. ClientEarth's judicial review alleged that the former Secretary of State had acted unlawfully in granting the planning approval, that she had misunderstood the planning policies and misapplied the planning act.

Although the court ultimately dismissed ClientEarth's appeal, CientEarth noted that the ruling set some important legal precedents including "*major energy projects in the UK can be rejected on climate change grounds, and the Government must consider the carbon lock-in risk of each project*". ClientEarth has confirmed that it does not intend to appeal the decision.

US Supreme Court hears Baltimore climate suit

Last week the US Supreme Court heard arguments in *Mayor & City Council of Baltimore v BP plc*, a claim brought by the city of Baltimore which is seeking to hold fossil fuel companies liable for climate change impacts. The claimant alleges that the companies misled the public about the climate threat of burning oil and gas and that the city faces large costs to protect residents, business and infrastructure against the impacts of climate change such as rising sea-levels.

Although only a narrow jurisdictional question is being considered at this stage, it is likely to impact other similar ongoing cases in the US. The defendants argue that the case should be heard in the federal courts, which is often viewed by corporates as a more favourable venue, rather than the state court. If the city of Baltimore is successful, future cases of the same type will likely also be heard in state courts. This lawsuit is the latest attempt to drive action via litigation rather than legislation; a decision is expected later this year.

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