

# **Insurance Claims & Coverage Directors & Officers | Exposures in a recessionary environment**

**13 September 2022**

---

**Simon Garrett  
Chris Bradshaw  
Thomas Böhm**

**Virginie Frémat  
Bart-Adriaan de Ruijter  
Giorgio Valentini**

# CMS Panel



**Simon Garrett | Partner**

T: +44 20 7367 2786

E: [simon.garrett@cms-cmno.com](mailto:simon.garrett@cms-cmno.com)

---



**Thomas Böhm | Partner**

T: +43 1 40443 3600

E: [thomas.boehm@cms-rrh.com](mailto:thomas.boehm@cms-rrh.com)

---



**Chris Bradshaw | Partner**

T: +44 20 7367 3832

E: [chris.bradshaw2@cms-cmno.com](mailto:chris.bradshaw2@cms-cmno.com)

---



**Virginie Fremat | Partner**

T: +32 3 206 01 57

E: [virginie.fremat@cms-db.com](mailto:virginie.fremat@cms-db.com)

---



**Bart-Adriaan de Ruijter | Partner**

T: +31 20 3016 426

E: [bart-adriaan.deruijter@cms-dsb.com](mailto:bart-adriaan.deruijter@cms-dsb.com)

---



**Giorgio Valentini | Senior Associate**

T: +39 06 47815 1

E: [giorgio.valentini@cms-aacs.com](mailto:giorgio.valentini@cms-aacs.com)

---

# Objective

1

The seminar will explore the exposures of directors & officers in a recessionary environment.

2

In particular the types of claims that directors may face where their company becomes insolvent and the steps that they can take to mitigate against such claims.

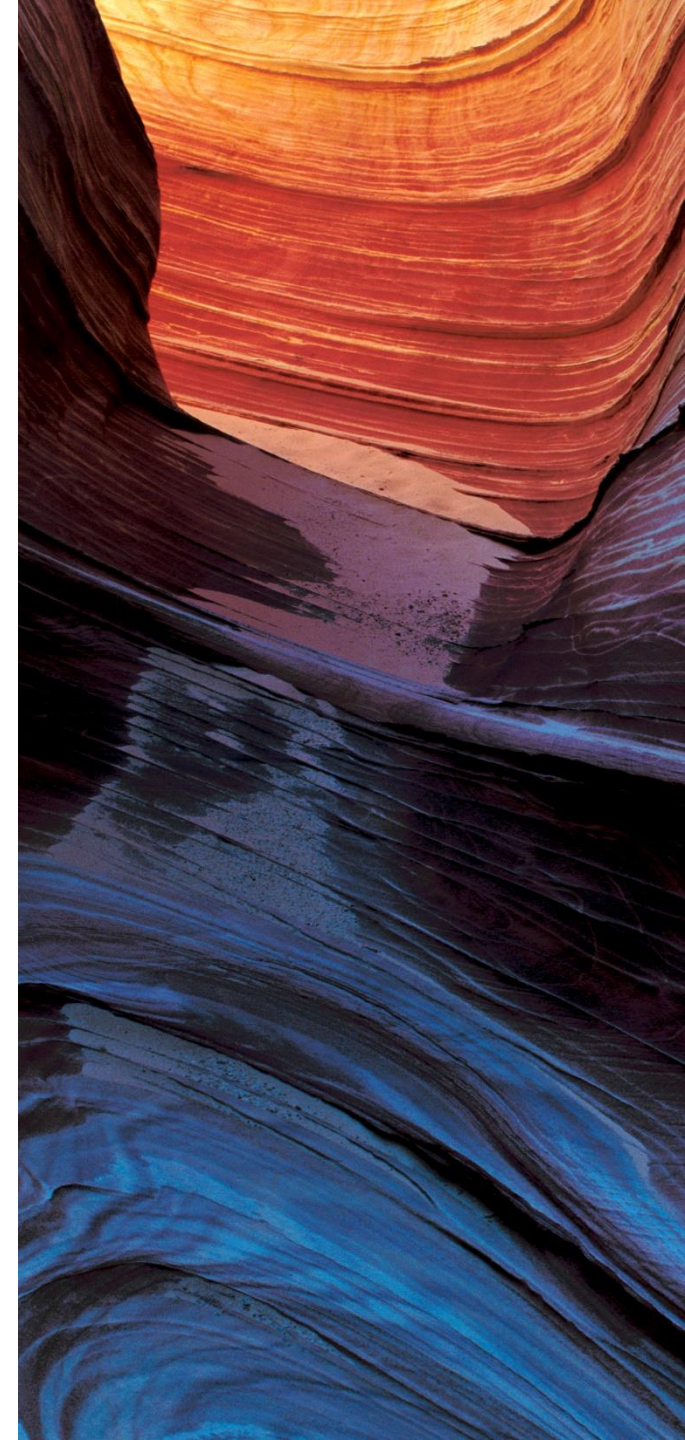
3

The panel will look at the exposures in England, Italy, Austria, Belgium and the Netherlands to provide a multi-jurisdictional overview.

# Case Study

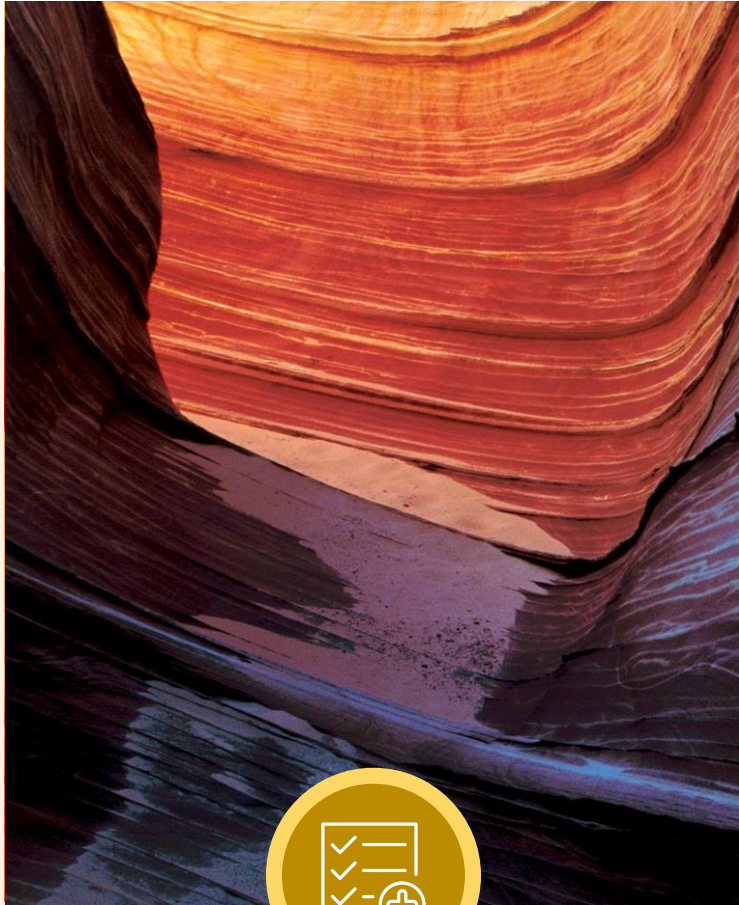
---

- Listed multinational; listed on LSE (London) and Euronext (Amsterdam). Trading subsidiaries in Italy, Austria & Belgium
- Long term fraud at Group & subsidiary level unearthed by new auditor
- Allegations that fraud orchestrated by CEO/CFO
- Fictitious revenue recognised; unauthorised payments to associated companies
- Group & subsidiary accounts need to be restated; banks withdraw funding
- Group/subsidiaries seek protection through insolvency procedures in UK, Netherlands, Belgium, Italy and Austria
- Insolvency office holders investigate & consider claims



# Agenda

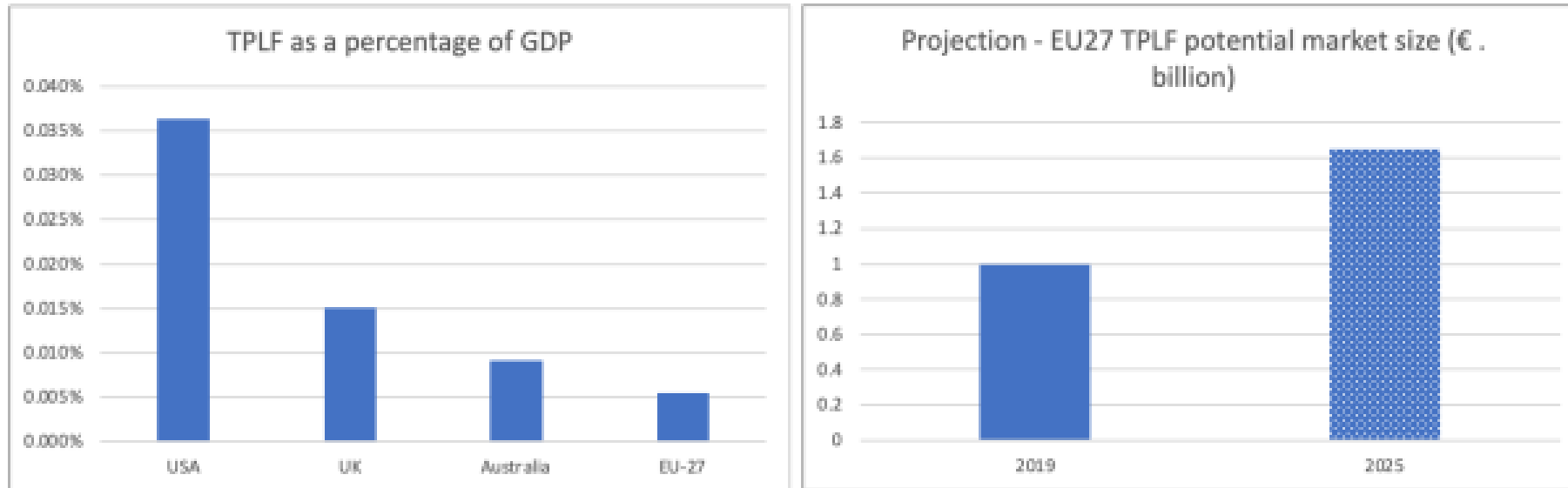
---



- Basis for claims against directors of insolvent companies
- Availability of litigation funding/ability to 'sell' such claims
- What defences can directors advance
- Disqualification of directors
- Directors of listed & regulated companies
- D&O policies

# Litigation funding on the rise

Figure 3 – EU TPLF market size and market size projection



(figure from report  
European Parliamentary  
Research Service dated  
March 2021)

## Funding Trends:

- Class Actions to companies and directors: consumer, investor, competition, ESG
- Trustee litigation and actions towards D&O
- Commercial litigation to counterparties and D&O (also well-capitalised claimants)
- Enforcement of foreign (arbitral) judgments



**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.

**[cms-lawnow.com](http://cms-lawnow.com)**

---

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice. It was prepared in co-operation with local attorneys.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

#### **CMS Locations**

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Strasbourg, Stuttgart, Tel Aviv, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

---

**[cms.law](http://cms.law)**