



## Insurance

We view the companies that we work with not only as clients for a discrete project but also as business partners over both the short and long term. We focus on providing advice in the context of the insurance sector, as well as looking at clients' existing circumstances and aspirations within the industry.

DLA Piper's Insurance practice is one of the largest and strongest, comprising over 400 lawyers serving the insurance industry globally.

We offer a full range of insurance services, including transactional, regulatory, commercial dispute resolution, claims, competition, restructuring and emergency response.

We represent both startups and established multinational life and non-life (re)insurers, Lloyd's entities, intermediaries, banks, capital providers (including hedge funds, private equity funds and venture capital funds), regulators and other insurance industry participants.

DLA Piper understands the business of insurance as well as the legal issues that underpin the insurance sector. Many of our lawyers previously worked as business executives, in-house counsel, bankers and management consultants within the insurance industry. This combination of legal and industry experience enables us to implement practical and cost effective solutions for our clients. Our strong international network of lawyers provides swift access to knowledge and coordinated cooperation across practice areas and jurisdictions.

We regularly second lawyers to work directly for clients and we welcome the opportunity this gives our people to deepen their understanding of the industry. We believe in building a deep understanding of each client's business to enable us to deliver the appropriate outcome, whether the matter relates to structuring, negotiating and closing sophisticated transactions, litigating complex coverage and commercial disputes or addressing regulatory compliance concerns.

- **Litigation:** We have advised Swiss Re, the world's second-largest reinsurer, in numerous multi-jurisdictional disputes, litigations, arbitrations and important capital markets-related work
- **Arbitration:** Our lawyers have handled several international reinsurance arbitrations (in London and in New York) as well as litigation on behalf of IRB Brazil Re
- **Loss:** As a result of the 2011 floods in Thailand, we were lead counsel for major international insurers and reinsurers involving more than US\$20 billion in alleged losses, economic damage and related claims
- **Finance:** We have advised on highly structured, insurance-linked securities, cross-border capital markets hedging solutions and cross-border insurance risk transformation for major insurance industry clients around the world
- **M&A:** We participated in several significant, price-sensitive M&A transactions for multi-national insurance companies. These public company M&A transactions involve complex insurance/reinsurance and migration arrangements, and in some cases a feasibility analysis in relation to Part VII asset portfolio transfers or FSA change-of-control applications.

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- Litigation, Arbitration and Investigations
- Restructuring
- Tax
- Corporate Disputes

### Publications

#### **Best practice guide – Preparing Pension Schemes for a Bulk Annuity Quotation**

8 September 2022

The bulk annuity market continues to grow and its resilience during the pandemic has been remarkable. Everyone in this market is pleased to see increasing volumes, but for this to be sustainable, efficiency will be key. Insurers want to be able to provide schemes with quotes and meet all de-risking needs.

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#### **eSignature and ePayment News and Trends**

2 August 2022

#### **ESIGNATURE AND EPAYMENT NEWS AND TRENDS**

ULC approves important new amendments to the Uniform Commercial Code for state adoption.

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#### ***Dobbs v. Jackson Women's Health* : Implications for business of a post-Roe landscape**

23 June 2022

*Dobbs* raises a number of important questions for companies and entities.

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#### **Blockchain and Digital Assets News and Trends**

16 June 2022

#### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

Responsible Financial Innovation Act, the new proposed crypto regulation bill, provides some clarity on tax issues.

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#### **Negotiating InsurTech agreements: checklist**

2 June 2022

This checklist highlights the key legal and commercial issues to consider when negotiating and drafting a technology contract for a business in the insurance sector.

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#### **Blockchain and Digital Assets News and Trends**

23 May 2022

#### **BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS**

OECD releases public consultation document on crypto tax reporting in effort to increase transparency.

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#### **Case Note - *Tushita Technologies Ltd v MJ Protective Services Group Pty Ltd* [2022] NSWSC 413**

10 May 2022

DLA Piper's Insurance team in Sydney successfully defended an application by a plaintiff in the Supreme Court of New South Wales to join the insurer of a named defendant (which was in liquidation) to the proceedings under the *Civil Liability (Third Party Claims Against Insurers) Act 2017*.

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## Global M&A Intelligence Report 2022

Updated: 29 June 2022

Our annual Global M&A Intelligence Report is based on an analysis of key deal terms in almost 5,000 private M&A transactions on which we have advised since 2015.

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## Second Australian COVID-19 BI Test Case

4 March 2022

On 21 February 2022, the Full Court of the Federal Court of Australia delivered judgment on appeal in the Second Test Case: *LCA Marrickville Pty Limited v Swiss Re International SE* [2022] FCAFC 17. The appeals were heard over five days in November 2021 before Justices Moshinsky, Derrington and Colvin. The judgment relates to appeal points run by policyholders and insurers in five of the original ten proceedings which comprised the Second Test Case at first instance.

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## Aiscension: an AI tool to ensure effective risk management by detecting anti-competitive practice

24 February 2022

Anti-competitive activity has been rife in companies for centuries and there are many who like to take the ostrich approach and bury their head in the sand. However, it is known that this approach to risk management is ineffective should the regulators come looking, and with fines of up to 10% of global turnover, it is a big risk to take.

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## Business Closure Insurance does not cover for COVID-19-related losses - German Federal Court of Justice confirms insurers' position

1 February 2022

The German Federal Court of Justice for the first time took a position on whether a business closure that occurred in connection with the COVID-19 pandemic is insured under a stand-alone business closure insurance policy maintained by a business owner. The ruling contains some useful information and clarifications.

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## A legal overview

4 January 2022

### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

In episode 2 of our podcast series we discuss the legal context of the regime: how it will operate and the implications for businesses. In particular, the legislation - which comes into force today, 4 January - has wide reaching implications for M&A involving businesses or assets connected with the UK.

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## European Commission's Proposals for reform of AIFMD, UCITS Directive and the ELTIF regime

26 November 2021

Following its review of the scope and functioning of the Alternative Investment Funds Manager Directive<sup>1</sup> (AIFMD), the European Commission (the Commission) has concluded that the AIFMD's standards for ensuring high levels of investor protection are mostly effective, but that amendments are required which are intended to be targeted in scope, but may have far-reaching effects.

The Commission has now published new legislative amendments to AIFMD, the UCITS Directive<sup>2</sup> (UCITSD) and the ELTIF Regulation<sup>3</sup> (ELTIF Regulation) (the Commission Proposal). The proposed amendments set out in the Commission Proposal will be introduced by way of an omnibus directive amending the AIFMD, UCITSD and the ELTIF Regulation.<sup>4</sup>

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## **“But they’re not an Insured!” – NSW Supreme Court reaffirms third party beneficiary principles under the Insurance Contracts Act**

25 November 2021

The NSW Supreme Court held that Brightcity International Pty Ltd, an importer of goods, was entitled to indemnity as a third party beneficiary under an Industrial Special Risks insurance policy issued by CGU Insurance to Admiral International Pty Ltd, a warehouse operator who stored Brightcity's goods.

These proceedings arose after a fire at Admiral's warehouse which damaged Brightcity's goods. A number of claims were made. This article focuses on Brightcity's claim for indemnity under Admiral's ISR Policy as a third party beneficiary.

In arriving at its decision, the Court found that Brightcity fell within the “Interest of Other Parties' clause in the ISR Policy. As such, section 48(1) of the *Insurance Contract Act 1984* (Cth) allowed Brightcity to claim against CGU despite not being a contracting party to the Policy.

This follows the recent and related Full Federal Court decision of *Insurance Australia Ltd t/as CGU Insurance v MOS Beverages Pty Ltd* [2021] FCAFC 165 in which the Court, on Appeal, dealt with a similar claim by another customer of Admiral arising out of the same warehouse fire.

NB: this case note focuses on the Court's consideration of third party beneficiary principles and does not discuss Brightcity's claim for loss and damage against Admiral, or Admiral's claim against CGU for indemnity under its own policy.

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## **The Glasgow Climate Pact: What does it mean for Business?**

23 November 2021

In this article, members of our Sustainability and ESG Steering Committee share their thoughts on eight key themes emerging from COP26 and what they mean for business.

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## **An interview with Aldersgate Funding**

11 October 2021

In this podcast, DLA Piper partner Henry Quinlan interviews Jim Holding and Matthew Lo at Aldersgate Funding Limited, who shed some light on the advantages of litigation and arbitration funding; the types of claims eligible for funding; the process of funding a case; and the jurisdictional constraints on this type of financing.

DLA Piper · Aldersgate Funding on how litigation funding can help your business

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## **Episode 2 - How can insurers contribute to a more sustainable economy?**

30 September 2021

**FUTURE INSURER SERIES**

In this latest episode of our Future Insurer Series we speak to Butch Bacani (Programme Leader, UN Environment Programme's Principles for Sustainable Insurance Initiative) about the Net-Zero Insurance Alliance, the integration of sustainability and ESG on both sides of an insurer's balance sheet and what the industry can do to support the transition to a sustainable future in a way that no one is left behind.

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## **New workplace sexual harassment laws passed – (some) Respect@Work recommendations become law**

8 September 2021

After months of anticipation, the Australian Federal Government's Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 has now passed both houses of Parliament. The amendment contains important reforms to address workplace sexual harassment.

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## **Episode 1 - Embedding ESG principles into the insurance industry**

21 July 2021

### **FUTURE INSURER SERIES**

Episode 1 of our Future Insurer Series features DLA Piper's Heike Schmitz (Counsel, International Insurance SESG Lead) and Fabienne Crisovan (Head of ESG Legal and Corporate Law) at Zurich Insurance Group discussing the role of the legal function in embedding ESG in the insurance industry.

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## **Global M&A Intelligence Report 2021**

23 June 2021

Our annual Global M&A Intelligence Report is based on an analysis of key deal terms in over 3,200 private M&A transactions on which we advised since 2015.

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## **Are SPACs crossing the pond? Implications for D&O insurers**

1 April 2021

### **INSURANCE HORIZONS**

Recent years have seen an explosion in the US in the use of SPACs, short for Special Purpose Acquisition Company, to raise equity capital for the purposes of acquiring another company.

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## **Imminence does not mean haste**

4 March 2020

### **EU SUSTAINABLE FINANCE**

Sustainability and ESG stewardship are at the forefront of investment managers' and investment funds' agendas under the combined pressure of investors and as a result of several important pieces of regulation becoming live. SFDR is one of them. It will become applicable in phases, the first deadline being as early as 10 March 2021.

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## **Corruption Perceptions Index 2020 - a regional perspective**

11 February 2021

Last week Transparency International launched the 2020 edition of its Corruption Perceptions Index (CPI), which ranks 180 countries and territories by their perceived levels of public sector corruption, according to experts and business people, using a scale of zero to 100 (100 being very clean and zero being highly corrupt).

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### **PRA evaluation of the senior managers and certification regime**

27 January 2021

On 15 December 2020, the Prudential Regulation Authority (PRA) published an evaluation of the Senior Managers and Certification Regime (SMCR). The PRA found that the regime has generally been successful in improving conduct and accountability. A large majority (around 95%) of the firms surveyed told the PRA that the SMCR was having a positive effect on individual behaviour. However, the PRA's evaluation also identified some unintended consequences such as a lack of diversity in recruitment.

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### **The Insurance Bill 2020: Update on Hong Kong's new Insurance-Linked Securities (ILS) regime**

21 January 2021

#### **INSURANCE HORIZONS**

The Insurance (Amendment) Bill 2020 (IO Bill) passed on 17 July 2020 provides for a new regime under the Insurance Ordinance (Cap. 41) enabling the issuance of insurance-linked securities (ILS) by special purpose insurers (SPI). Subsequently on 4 September 2020, the Insurance Authority (IA) published a consultation paper on the draft Insurance (Special Purpose Business) Rules (Consultation Paper), which has proposed some draft rules for the ILS scheme, such as the scope of eligible investors, the minimum investment size and relevant offences and penalties (Draft Rules).

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### **Reinsurance implications of the Supreme Court's judgment in the FCA business interruption Test Case**

20 January 2021

#### **INSURANCE HORIZONS**

The Supreme Court's judgment in the FCA business interruption Test Case will have a significant impact on the property insurance market.

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### **UK Supreme Court hands down judgment in the FCA's COVID-19 non-damage business interruption insurance test case**

18 January 2021

#### **INSURANCE HORIZONS**

On Friday 15 January 2021 the UK Supreme Court handed down its important judgment in the FCA's COVID-19 non-damage business interruption insurance test case.

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## Boardroom Brexit: What the deal means for trade in services

31 December 2020

### BOARDROOM BREXIT

The TCA has substantial sectoral coverage, including professional and business services (e.g. legal, auditing, architectural services), delivery and telecommunication services, computer-related and digital services, financial services, research and development services, most transport services and environmental services.

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## Green light for Prudential and Rothesay's transfer

4 December 2020

### INSURANCE HORIZONS

In what is a significant decision for the insurance sector the Court of Appeal has overturned the High Court's refusal to sanction the transfer of a portfolio of annuity policies from Prudential Assurance Company Ltd ("Prudential") to Rothesay Life Plc ("Rothesay") under Part VII of the Financial Services and Markets Act 2000 ("Part VII").

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## Running the orange light: Halliburton v Chubb

2 December 2020

### INSURANCE HORIZONS

On Friday, 27 November 2020, the Supreme Court handed down a long awaited judgment in Halliburton v Chubb that concerned the issue of when an arbitrator should make disclosure of circumstances which may give rise to justifiable doubts as to his/her impartiality.

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## New report on sustainability and ESG issues in the insurance sector

12 November 2020

Our comprehensive new report – *Addressing the Sustainability Imperative* – explains major global initiatives and frameworks, and those at a national level in 19 countries.

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## Contracting for the climate: The Climate Contract Playbook is a trove of climate clauses

11 November 2020

Contracts have become an essential vehicle for companies seek to mitigate their environmental risks and limit their carbon footprints.

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## Coronavirus: Directors' duties and making decisions in a crisis

2 November 2020

Directors need to carefully consider how to address the risks of the ongoing COVID-19 pandemic within their business, given its impact on the global economy. As many companies are continuing to face significant, and increasing, cash flow pressure, directors should carefully consider their actions in the context of the legal framework.

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## China Enforces Tax Collection on Employees Working for Chinese-invested Enterprises Overseas

16 October 2020

With the recent IIT reform in 2019, and the introduction of a number of implementation rules (particularly the tax policy on overseas income), it appears the China tax authorities are taking a harder stance on how overseas income derived by China tax residents will be taxed in China, starting with Chinese expatriates working for Chinese state-owned enterprises.

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## Hong Kong Employment Law Update

16 October 2020

In this article, our Hong Kong Employment team provides an update on the Government's efforts to enforce clawback and penalties in respect of the first tranche of the Employment Support Scheme and statutory maternity leave increasing to 14 weeks from 11 December 2020.

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## Mass layoffs and collective redundancies guide

6 October 2020

As COVID-19 continues to impact the global economy in unprecedented ways, companies that have had to scale back or shut down operations are bracing for what the next few months will bring, and what this means for their workforces. In this guide, we examine key considerations for employers looking to make permanent reductions in force across APAC.

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## Recent Breakthroughs for Foreign Arbitration Institutions in China

5 October 2020

On 7 September 2020, the State Council has further published the "Work Plan for Deepening Comprehensive Pilot and New Round of Opening-Up of Services Sectors in Beijing and Building Comprehensive Demonstrative Area of Opening-Up of State Service Sectors" further allowing foreign arbitration institutions to provide arbitration services in Beijing.

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## New CFIUS regulations change mandatory filing requirements and increase the importance of US export controls

30 September 2020

The new rule modifies the criteria that trigger a mandatory filing with CFIUS, potentially subjecting more transactions to mandatory CFIUS review.

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## China lifts further travel restrictions for certain foreigners

28 September 2020

Effective from 28 September 2020, China will allow foreign nationals holding three categories of valid Chinese residence permits (work, personal matters, and reunion) to enter China with no need for applying for new visas. This is a further lifting of travel restrictions for foreigners who have the need to return to China.

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## Insurance Review May 2016

5 MAY 2016

Welcome to *Insurance Review May 2016*. DLA Piper's annual publication dedicated to the insurance industry. In this issue we look at the following topics:



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## Using representations and warranties insurance in global M&A deals: 8 questions and answers

16 FEB 2016

R&W insurance can offer both buyers and sellers the additional confidence often needed to close the deal. Such insurance may be especially useful in global M&A transactions, particularly in Latin America.

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## EVENTS

### Previous

#### Using AI to monitor your compliance risks

31 March 2022

Webinar

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#### Embracing Digital Evolution

15 September 2021

Webinar

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#### Sustainability – The Year of Action

4 May 2021

Webinar

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#### Addressing the sustainability imperative

9 December 2020 | 1:00 – 2:00 ET

Webinar

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#### EDPB recommendations for safeguarding data transfers after Schrems II

19 November 2020

Webinar

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#### Addressing the Sustainability Imperative

12 November 2020

Webinar

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## NEWS

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### **DLA Piper partner Heng Loong Cheong appointed to Industry Advisory Committee on General Business to the Hong Kong Insurance Authority**

1 July 2021

DLA Piper partner Heng Loong Cheong has been appointed as a non-official member of the Industry Advisory Committee (IAC) on General Business to the Hong Kong Insurance Authority (IA) from July 1, 2021 to May 31, 2022.

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### **DLA Piper boosts global Insurance and Class Action practice with partner hire in Australia**

15 June 2021

Global law firm DLA Piper announces that Insurance and class action specialist Tricia Hobson joins the firm's Sydney office, effective 16 June.

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### **Gitanjali Bajaj and John Gallagher recognised as “Lawyers of the Year” by The Best Lawyers Australia 2022**

23 April 2021

DLA Piper is pleased to announce that Australian Partners Gitanjali Bajaj (Litigation & Regulatory, Sydney) and John Gallagher (Finance, Projects & Restructuring, Melbourne) have separately been recognised as “*Lawyers of the Year*” in the 14th edition of The *Best Lawyers in Australia 2022 Awards*.

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### **DLA Piper publish global report on sustainability for the insurance industry**

13 November 2020

DLA Piper has today published a comprehensive global report on sustainability and the implications on the insurance industry. The report looks at sustainability-related initiatives and frameworks around the world and analyses the current status in 19 countries.

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### **DLA Piper named Law Firm of the Year for Real Estate and Insurance at the JUVE Awards**

30 October 2020

DLA Piper has been named Law Firm of the Year for Real Estate and Insurance at the JUVE Awards, in a ceremony which took place on Thursday 29 October.

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## Sustainability and ESG

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The global insurance sector is more affected than most sectors by Sustainability and Environmental, Social and Governance (ESG) risks such as climate change, social and political unrest and governance failures.

Conversely, however, the insurance sector is uniquely placed to support the world's transition to a sustainable, low-carbon economy. The sector has already taken a lead in integrating sustainability into the business of insurance through its own activities, investee companies and policyholders. The Principles for Responsible Investment has now developed a number of insurance-specific initiatives and commitments, such as the UNEP FI Principles for Sustainable Insurance and the InsuResilience Global Partnership. Insurers are also at the forefront of sustainability initiatives such as the Net-Zero Asset Owner Alliance.

A number of sustainability-related themes affect the insurance sector.

## PRODUCTS

In designing insurance products, ESG risks play an important role. For example, a failure to address climate change means an increase in extreme weather events (floods, storms, heat waves and droughts), challenging insurers' risk assessment models and a reliance on historic data. Insuring businesses that have a negative climate impact can have reputational consequences and also impact insurers' long-term strategy. Innovations in technology also provide insurers with new, proactive ways to meet sustainability challenges - for example, in the context of parametric insurance.

We advise our insurance clients on all legal issues in the context of insurance products (including Insurtech) and place a specific focus on the integration of ESG factors in product design.

## INVESTMENTS

Insurers and pension funds globally hold assets amounting to USD60 trillion, an incredible market power that can be used to address sustainability challenges. Maintaining and promoting sustainability-aligned investment processes contributes to mitigating the sectors' own ESG risks as well as securing stable long-term returns, increasing attractiveness for third-party asset management businesses, supporting existing and upcoming disclosure obligations and contributing to an overall sustainable reputation.

We advise our insurance clients on all aspects of sustainable investments, from the incorporation of ESG factors in investment processes and investment guidelines to the conception of individual green investment products (eg green bonds, green loans, green leases) and the integration of ESG criteria in investment due diligence processes.

## GOVERNANCE

As asset owners and financial market participants, insurers are exposed to increasing governance requirements and sustainability-related disclosure obligations, both to the market and to regulators. Additional duties may arise in the retail insurance business and third-party asset management activities. A focus on sustainable governance and disclosure has led insurers to develop specialized departments and senior sustainability functions, integrate sustainability risks into risk management frameworks and develop new tools, processes and reporting lines.

Legal advice on governance aspects is one of the core competences of our global insurance team and we will support you in navigating and implementing the multitude of new sustainability-related governance requirements in your individual business organization.

## CLAIMS

Claims in all lines of business have the potential to rise significantly in response to ESG risks. For example, more extreme weather events and natural catastrophes are expected to lead to increases in property damage, civil and political unrest and disruption to supply chains, leading to further claims exposure. Certain industries will receive more attention from governments, regulators and claimants as significant shifts in economies occur, the just transition to net-zero decarbonization places a greater focus on social impact and human rights and there is an increase in activism, disputes and litigation. Board members across all sectors are subject to ever increasing duties in connection with sustainability and ESG factors, meaning a greater risk of D&O liability and claims.

Our insurance litigation team of claims professionals works in all major insurance hubs, providing practical advice to insurers, reinsurers and intermediaries. We handle complex large-scale insurance and reinsurance disputes across a wide range of business lines and we are experienced in dealing with ESG activism and related claims.

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To discuss the implications of these issues for your business, please contact our ESG leaders.