

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

## Legal Threat

Legal Threat can be defined as the risks insurers and reinsurers face in certain (sometimes less developed) jurisdictions due to specific characteristics of those legal systems, namely statutory frameworks and/or unexpected or uncertain judicial or legislative circumstances.

Consequently, the insurance industry has to be aware of those differing features and developments and hence always needs to be prepared to adjust their contracts and the way they conduct business in those legal environments.

Especially the United States, the largest insurance market worldwide, is known for considerable uncertainties in the measurability of many insurance risks. Traditionally the United States have been a great legal risk for insurers and reinsurers. The fact that the general US torts system in place is rather broad compared to the systems for example in Europe and the fact that the system provides for punitive damages and contingency fees have made it difficult to assess legal risks prevalent in the United States. Another issue for the development of the torts cases in the United States is the fact that there is not one synchronized system in place, but rather 50 state systems plus a federal tort regulation. Case law can differ tremendously from state to state. This situation further makes it very hard to estimate a certain legal risk.

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

In the UK two important rules were introduced during the last decade: The Bribery Act 2010 and the so called PPO's (Periodical Payment Orders).

The Bribery Act 2010 shows a new attitude within the UK as it exposes foreign entities to the risk of prosecution in the UK. This is also especially important for reinsurers acting in the UK because of the low threshold for the applicability of this

Act. Therefore this should result in heightened awareness of the possible danger.

The PPO's are still a relatively new instrument in the UK and are increasingly being applied by the courts after a change in the Courts Act 2003. As they are linked to the cost of caring staff they will significantly increase the costs of future care and therefore personal injury claims in general.

Contrary to the more developed countries the Eastern European markets face the situation that legislation in general and the relevant insurance regulations in specific countries are partly still under development.

In the Czech market a new annuity clause has been introduced into the reinsurance contract which puts in questions the established principle that the reinsurer only pays if the payment has already been made by the primary insurer.

In Russia developments can be observed that risks which are normally uninsurable in other markets might be covered even by compulsory insurance concepts.

In Latin America a general trend is that regulatory bodies increasingly interfere in existing and well established insurance practices favouring locally based and taxed insurance and reinsurance companies.

A slightly varying type of legal threat often encountered in Asia, especially in India, is the risk of lengthy legal proceedings and the corruption found throughout the legal system. This could also have an effect on insurance business.

Summing up, one can say that the results of the different legal developments vary from general restrictions on doing business in certain countries to amendments in coverage, reserving or documentation requirements.

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