CLIFFORD CHANCE

# GLOBAL INSURANCE TRENDS 2024

– THOUGHT LEADERSHIP

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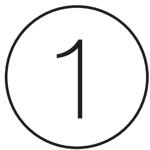
"Innovation, evolving regulatory frameworks and strategic adaptations are driving change in the global insurance markets. In the life insurance sector, we will see the continued growth of Pensions Risk Transfer (PRT) activity in new jurisdictions and with new structures. Additionally, cross-border reinsurance has become a critical component of capital management strategies. In the general insurance sector, opportunities in specialty lines, for Managing General Agents (MGAs) and for alternative capital solutions are driving change against the backdrop of increased regulatory oversight growth in sectors such as Managing General Agents (MGAs), and the exploration of alternative capital solutions to address rising demand. Collectively, these trends indicate resilience, adaptation, and potential opportunities within the global insurance landscape. Here we examine key legal trends shaping the life and general insurance sectors in 2024.



## Life insurance trends – continued pace of PRT

The pensions risk transfer market continues to grow in the UK and US as well as in new jurisdictions, including the Netherlands and Asia.

In the UK, for example, with full buyouts becoming more affordable, more megadeals are expected to take place. Whilst smaller PRT transactions have in recent years become commoditised, megadeals will necessarily need to be bespoke to the parties and transaction at hand and should more closely resemble an M&A transaction. "We continue to see insurers looking to work collaboratively with schemes to develop innovative structures, for example, around deferred premiums and increased interest in secondary market transactions. For schemes, preparation remains key – it is those schemes which have undergone a thorough preparatory job and are transaction-ready which will have the best chance of achieving their buyout aims", says Hilary Evenett, Senior Director, London.

Cheng Li Yow, a Partner in London, adds: "Whilst longevity risk transfer transactions are commonplace in the UK and the US, as new markets for longevity risk transfer develop, the legal technology we have developed is being well-used and tailored for transactions in new jurisdictions. In those new jurisdictions, it is important to understand that different regulators may have different approaches and areas of focus. For example, what would happen – in a resolution of either the cedant or the reinsurer – to the longevity risk transfer, needing to understand the collateral arrangements, and where the collateral sits that supports reinsurance transactions?"

In Germany, the market for pension risk transfer is developing, albeit on a smaller scale and to some extent under the radar outside of large M&A transactions or press coverage. "Nevertheless, we have recently seen new providers enter the market and established (predominantly German) market participants making a strong effort to promote this tool in Germany, where many companies hold significant pension liabilities on their books," says Moritz Petersen, a Partner based in Frankfurt.

Meanwhile in the EU, collateral arrangements used to cover fees and/or longevity experience are likely to be a combination of different structures under different governing laws. "Thinking through their qualification as a 'financial collateral arrangement' under the local law implementing the Financial Collateral Directive and foreseeing the consequences of insolvency scenarios is critical, not only for the parties but also to avoid regulatory concerns," says Isadora Rousselle, Senior Associate, Luxembourg.

In addition to new jurisdictions, a range of structures continue to be used in the UK and the US. For example, in the UK, cedants are entering into a range of reinsurance structures to support their PRT business. These include longevity swaps, where the longevity risk is transferred through periodic premium and claim payments. Funded reinsurance transactions are also used, where both the asset and longevity risk are transferred to the reinsurer because a lump sum single premium, consisting of assets supporting the liabilities, is transferred to the reinsurer. Captive arrangements, where risk is transferred through reinsurance to an offshore captive entity, and flow reinsurance structures, where the reinsurer commits to reinsurance provided the underlying policy meets the relevant criteria are also used.

The popularity of asset-backed reinsurance (for example, funded reinsurance), particularly among reinsurers outside the cedant's jurisdiction has, however, caught the attention of regulators. In the UK, for example, in 2022 and 2023 the PRA focused on funded reinsurance structures given their perceived concentration risks. This culminated in a consultation paper on Funded Reinsurance from the PRA. You can find more information in our briefing, "Navigating Funded Reinsurance in the UK: insights from the PRA's CP24/23 consultation paper."

## Life insurance – focus on cross-border reinsurance

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Regulators are focused on the role of cross-border reinsurance, in particular within the life insurance sector, given the long-term nature of the liabilities, the asset-backed structures used (meaning that assets supporting the liabilities assumed by the cedant which would have otherwise sat in the cedant's balance sheet are transferred to the jurisdiction of the reinsurer) and the perceived practical issues with such structures should they need to be unwound (for example, upon insolvency). Whilst there is regulatory scrutiny of such structures, there is an overwhelming understanding that cross-border reinsurance is fundamental to insurers' capital management and plays an important role in the life insurance sector.

“The international regulatory community is aware of the risk that diverging approaches to capital and collateral requirements in different jurisdictions could result in a concentration of risk in certain jurisdictions and the potential systemic risk resulting if the capital requirements in those jurisdictions are not adequate,” says Imogen Ainsworth, a Partner in London. The IAIS intends to examine jurisdictional approaches in capital and collateral requirements, reserving, and asset valuation for such arrangements in the course of 2024. Similar to the approach taken by the PRA on funded reinsurance, the IAIS intends to assess the extent to which asset-backed reinsurance is adequately covered under the ICP and may consider additional supervisory measures. “As a result, we expect that asset-backed reinsurance structures will need to be designed with these issues and concerns in mind,” she says.

Alongside cross-border reinsurance, insurers are likely to continue to use special-purpose reinsurers and other capital management structures, including sidecars and ILS structures, which are similarly often cross-border in nature.

“In addition to insurers using special-purpose offshore reinsurers, we continue to see an influx of other financial institutions leveraging these structures as an opportunity to access insurance and reinsurance assets and liabilities through capital investments and asset management opportunities,” says Dennis Manfredi, a Partner based in New York.

## Life insurance – investment in alternative assets

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Life insurers are increasingly investing in different types of assets. Whilst the definition of “alternative assets” will mean different things to different regulators (for example, US insurers tend to invest in securitisation structures more than their counterparts in Europe and Asia), insurers are showing growing interest in structured products, private credit and infrastructure investments. This is a positive development, especially when viewed from the perspective of governments keen to encourage investment by asset-rich insurers in sectors with significant funding gaps, such as infrastructure. The Solvency UK reforms include changes to the matching adjustment requirements intended to help increase insurers' ability to invest in longer-dated assets. At the same

time, however, regulators may view these asset classes as new and alternative and are keen to ensure that insurers themselves fully understand the structures and the underlying assets. For example, in the UK and EU, insurers are reminded of the prudent person principle in assessing such investments.

“There are exciting opportunities for both insurers and arrangers of alternative investment products as the appetite and incentives for insurers to invest in these products evolves. The enhanced yield potential needs to be balanced with a thorough understanding of the structures being used and the risks embedded in the products, in a variety of market conditions. This is an area where we have been supporting clients in other sectors for many years and can bring our extensive experience to bear,” says William Winterton, a Partner in London. And Julia Tsybina, a Partner in London adds: “Tapping into the potential of structured products eligible for matching adjustment should help unlock access to diversified risk which is currently under-represented in insurance companies' investment portfolios.”

This convergence of the worlds of private equity, structured finance, asset management and insurance may also lead to increased consolidation within the sectors, with, for example, private equity houses acquiring or establishing life insurance entities and life insurers looking for opportunities to bolster their expertise in the alternative investment and private credit space.

US insurance regulators are continuing to review the capital charges imposed on insurers for investing in structured secsurities and are moving away from reliance on ratings issued by credit rating agencies. Although regulators are furthest along in developing internal resources to model CLO losses, as an interim step, the capital charges for investing in residual tranches of all structured securities have already been increased by 50%. “We expect that other structured securities will not be far behind, and are closely monitoring the impact of these changes on our capital markets, insurance and private equity clients,” says Eugene Benger, a Counsel in New York.

## General insurance – increased regulatory pressure

“General insurance markets are dealing with the impact of claims inflation on their balance sheets at the same time that an increased regulatory focus is forcing firms to reconsider key components of their business models” says James Cashier.

In 2023, the Consumer Duty was introduced in the UK and EIOPA'S supervisory statement on differential pricing practices for GI businesses was introduced in the EU. However, this appears to be only the beginning of a renewed focus on consumer protection issues, as concerns about financial inclusion and addressing the protection gap are gaining political attention. In the UK, the FCA is reviewing its recent 2022 study on pricing reforms to examine factors affecting affordability, such as the use of premium finance products.

In the EU, the insurance distribution directive is currently planned to be reviewed during the next commission (2024-2029), while changes to inducements rules are already contemplated as part of the EU retail investment strategy review. “Firms will need to tread carefully to assess the potential impacts on their business models, identify any weaknesses in the product governance and distribution chains and be proactive in remediating any concerns, in order to mitigate the risk of enforcement action,” says Paris-based Avocat, Louis-Auguste Barthout.

In addition to consumer protection matters, operational resilience, including cyber resilience, and recovery and resolution are global trends. Both the UK and EU are expected to introduce insurance resolution regimes in 2024, and the recently published D-SII regulatory framework in Singapore subjects relevant firms to higher capital requirements and requirements in relation to recovery and resolution.

In the UK, firms will be expected to comply with the PRA's supervisory statement 'Operational resilience: Impact tolerances for important business services SS1/21' by March 2025, while in the EU the Digital Operations Resilience Act (DORA) will come

into effect in 2025. Firms will need to review their processes and dependencies and ensure that they have the necessary tools available to ensure operational resilience or manage a recovery or resolution process. They must also have plans in place to act when required and be able to demonstrate this to regulators.

## General insurance – growth of the MGA model

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The MGA model is well-established but in recent years has changed from being a vehicle primarily used by start-ups to one which is used by sophisticated large businesses. The appeal is clear; it is a 'balance sheet light' business model without the costs of capital or regulatory burdens of a fully authorised risk carrier; MGAs also benefit in this increasingly competitive market due to their commission-based remuneration structure. This has allowed MGAs to focus their investments on products, technology and people, and MGA businesses have proved to be among the most innovative in the sector, with strong representation in the cyber, credit and political risk markets.

“We expect to see this trend continue with MGAs attracting increased capital from financial investors, in particular private equity, and consolidation within sectors,” says Ashley Prebble, a Partner based in London. “Recent examples include Permira's acquisition of GGW in Germany, and EQT and Vitruvian's investment in CFC in the UK. However, we also anticipate increased regulatory scrutiny on operational resilience (including outsourcing and cyber resilience) and product governance. It is worth remembering that although MGAs are capital "light" they are not necessarily regulatory "light", they face conduct risk challenges similar to those of insurers, given their role in the distribution chain.”

## General insurance – alternative capital solutions

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Insurers play a multifaceted role in the capital markets. Insurance is a capital-intensive industry and demand for cover in areas such as cyber risk, catastrophe risk, political risk, credit risk and pandemic risk appears to be a trend that will continue for the foreseeable future. Finding the capital to meet this demand requires innovative solutions and, as a result, we have seen an increased trend in alternative structures and capital solutions. In particular, the Insurance-Linked Securities (ILS), which has long been dominated by “catastrophe bond” investments, is taking tentative steps into the cyber market with the recent “cyber bond” issuances. In addition, Lloyd's establishment of its London Bridge ILS platforms has increased the flow of capital into the Lloyd's market through quota share structures as well as traditional catastrophe bonds.

Meanwhile, global corporates are increasingly turning to captives to manage their insurance needs in response to the hard reinsurance markets. International competition to attract captive business is also increasing, following recent announcements such as Google's new captive syndicate at Lloyd's and the introduction of changes to the captive prudential legislation in France, which resulted in five captives being licensed in France in 2023.

“In Singapore, which is Asia's leading reinsurance hub with a market share of around 24% in that region, the Monetary Authority of Singapore is focusing on growing transactions in alternative risk transfer initiatives such as ILS (particularly in relation to Asia-Pacific risks), captive insurance and sovereign catastrophe risk pools. Developments are expected through a possible introduction of corporate structures that can facilitate multiple ILS issuances using segregated cells, while efforts are being made to encourage a wider ILS investor base (including private wealth and family office segments) through investor education. The MAS ILS Grant scheme to support ILS issuances has also been renewed until end-2025.” says Lena Ng, Partner, Singapore.

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