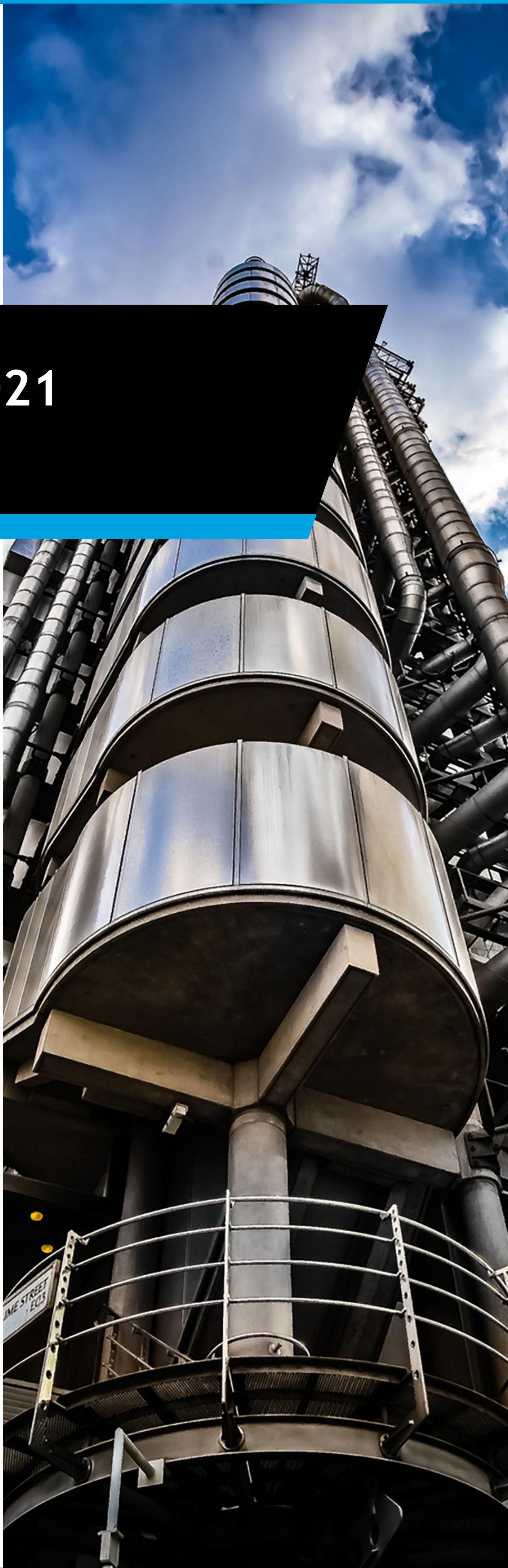
London Market forecast 2021

January 2021



On the surface, the London Market enters 2021 looking very different to its 2020 version. Underwriting rooms lay empty, offices unoccupied, pubs eerily quiet. But beyond the physical stillness, this world leading hub has not paused for breath. Digital systems and solutions have taken centre stage as the London Market has responded to a seismic shift in working patterns and insurance risks.

As this report demonstrates, the impacts and related losses of the COVID-19 pandemic touched almost every sector within the London Market, either directly – with business interruption becoming mainstream news – or indirectly – such as the reported insolvencies brought on or accelerated by the pandemic's effect. As we enter 2021, there has been a shift towards more positive messaging; the Supreme Court has provided a degree of certainty by expediting the FCA test case and the global vaccine roll out is hoped to revive stuttering economies and industry sectors. But the long-term COVID-19 impacts will continue to be felt for months, if not years to come.

Amid the COVID-19 challenges, the UK/EU transition period came to an end and the new Trade and Cooperation Agreement came into force on 1 January 2021, bringing with it new regulations to grapple with and unresolved issues to be negotiated.

As well as these headline topics, cyber risks continue to increase and ESG issues sit high on boardroom agendas, with climate related risks leading the charge with an increased sense of urgency.

2021 promises to be a year dominated by evolution, transformation and resilience, and against this background we offer our predictions on some of the London Market's priority areas.

Kennedys

Background

Unsurprisingly, ‘infectious diseases’ was a new entry in the top five risks by likelihood in this week’s World Economic Forum’s Global Risks Report. The other risks, equally unsurprisingly, were all climate related: extreme weather, human environmental damage, biodiversity loss and natural resource crises.

Pandemics were previously considered a ‘low likelihood’ risk. It is now, somewhat reluctantly, accepted that as well as dealing with the long term impact of COVID-19 (which is considered in more detail in our recent report), pandemic risks cannot be excluded from future strategic planning, and the London Market is uniquely placed to respond to such challenges.

While the streets of EC3 were empty, innovation, technological initiatives and digital solutions came into their own, evidenced by new products, such as insurance cover for the global transportation of the COVID-19 vaccine launched using Lloyd's new "syndicate in a box" process. These innovative responses will be key to ensuring the most important of intangible business assets – its reputation.

2021 is also likely to bring with it a change of political emphasis, including a greater collaboration between business and government. Following messages of ‘taking back control’ and ‘cutting red tape’, government will be looking to the private sector to tell them how they can benefit from this new regulatory landscape. New committees made up of prominent business leaders have already been formed and we expect to see a slew of consultations and calls for evidence as the government seeks input into how to thrive in a post Brexit world.

> “Alongside these headline dominating events, business, environmental and societal drivers continue to rise in their influence and, as such, are front and centre of all strategic business planning.”

Alongside these headline dominating events, business, environmental and societal drivers continue to rise in their influence and, as such, are front and centre of all strategic business planning.

This is evidenced by Lloyd’s publishing its first Environmental, Social and Governance Report in December 2020, setting out its ambitions on embedding sustainability into its business activities, and the IUA placing climate change risk as the key focus area of its 2021 business plan. With Glasgow hosting the United Nations COP26 conference in November, we can expect to see an increase in political and business initiatives to tackle the associated risks.

The physical London Market may never look quite the same again, but it is well placed to reassert its ability to adapt and manage the constant evolution of global risk. Against this background, we consider the key priorities for the London Market in 2021.

Aviation

2020 was a year of polarity for aviation - the sky had become still, but the global demand to distribute vaccines gave a hope for a resurgence of air traffic in 2021. Initially, passenger traffic suffered a 60% drop in 2020 as a result of the pandemic. Bilateral agreements between the UK and various other countries allow for ‘transport bubbles’, but travel restrictions remain rife. The International Civil Aviation Organisation expects any improvement in the global picture to appear in the second quarter of 2021, but this is subject to the effectiveness of pandemic management and vaccination roll out. It is anticipated that by June 2021, passenger numbers will recover to approximately 70% of their 2019 levels.

The main focus of the first half of 2021 will likely be ensuring cooperation between airlines, ground handlers, governments and pharmaceutical centres to ensure that distribution of the vaccine is both efficient and safe. Measures such as altering the accepted levels of dry ice on aircraft could have a large impact of the volume of vaccines transported in any given flight.

The Kennedys 2020 Climate Change survey results ranked aviation as the most significant industry that contributed to lowering carbon emissions during lockdown. Many airlines have pledged to cut their net carbon emissions to zero by 2050 despite planning for 70% more flights. We can expect to see a range of market based measures, such as carbon offsetting legislation implemented to help achieve this goal. This, alongside improvements in aircraft and the introduction of biofuel, is set to make a series of improvements to the aviation industry’s carbon footprint. Navigating this goal alongside the fall out of COVID-19 presents a range of challenges. However, it is clear the aviation industry has a key role to play in addressing climate change.

The UK leaving the European Union has meant a time for great potential changes for aviation law. Thankfully, the biggest fears of the airline industry have been allayed as an Air Services Agreement, which is part of the Trade and Cooperation Agreement, preserves traffic rights for UK and EU carriers between the UK and the EU. It appears that the two sides are aiming for close cooperation on safety and security. The most obvious change to market access rules is the removal of cabotage rights. However, in practice this change makes little difference to networks already in operation. Any airlines that took advantage of these rights previously have subsidiaries to preserve them.

The vast majority of EU aviation law and regulation will now become part of UK law. This includes consumer protection, air carrier liability and accident investigation. Thus, for the rest of 2021 we are likely to see little change. However, in terms of consumer legislation the UK courts will no longer be bound by CJEU decisions. There is therefore a potential that the UK courts could depart from some of the CJEU decisions in certain cases.

Contacts: Simon Balls and Phoebe Penman

Casualty coverage

Climate change litigation continues to develop, predominantly in the US but also in other jurisdictions. In the US, the number of liability suits filed by public authorities notably increased during 2020.

General liability insurers will be watching these developments with particular interest because the US claims to date, which seek multi-billion dollar compensation for the rising costs of climate change (including the cost of state actors making improvements to flood defences, employing additional firefighters to tackle wildfires and upgrading municipal drainage) have been presented as product liability claims - mainly against carbon majors - on the basis that petroleum is a “defective product”. The most recent claims also make allegations of nuisance and that the defendants deceived the public.

Some claims continue in Europe against utility companies and oil majors either for positive action tantamount to enforcement of climate change standards (France) or for damages claimed for flood prevention measures alleged to be necessary as a result of global warming (Germany).

This has already spawned the argument that the claims attract cover under the defendant energy companies’ general liability insurance. The number of climate change liability claims is only likely to increase over the coming decade, as climate science improves and extreme weather events become more frequent, resulting in potentially massive liabilities for the insurance sector and posing new challenges for the insurability of climate-related events.

The election of Joe Biden is a significant moment. In addition to putting climate change at the centre of his approach, President Biden plans to take action against fossil fuel companies who harm the environment or conceal risks, and will reverse a number of his predecessor’s climate and environmental policies.

“The election of Joe Biden is a significant moment. In addition to putting climate change at the centre of his approach, President Biden plans to take action against fossil fuel companies who harm the environment or conceal risks.”

As we discussed last year, the multi-billion dollar opioids crisis continues to dominate litigation headlines with interesting ramifications for excess liability (and D&O) insurers and reinsurers in the London and Bermuda markets as to the nature of coverage on account of personal injury. Although addiction to prescribed medication is a problem across the developed world, it has not (so far) translated into group litigation in the UK, where the nature of the predominantly publicly funded health service does not provide the same climate for diversion of medication for non-therapeutic purposes. Time will tell whether there will be UK group litigation and this remains in our view an area to watch.

Contacts: Tim McCaw and Carole Vernon

Construction

Global supply chains have come under renewed pressure as a result of the global COVID-19 pandemic. This has unfortunately been exacerbated by Brexit and we have begun to see an increase in supply chain and material resourcing issues leading to developers and contractors switching to an all UK based supply chain (where possible) to reduce the risk of Brexit and COVID-19 delays.

Modern methods of construction (offsite manufacture of construction components) will continue to be a growing area, along with associated “new” sustainable products (particularly timber products) and technology such as mist sprinkler systems now used in blocks of flats which has reduced the risk of fire spread, a risk associated with MMC new builds. Whilst we are still seeing claims with issues around offsite construction, we are also seeing more warranty and insurance products for MMC which will help to address this issue. This approach by all stakeholders to make MMC work will continue in 2021.

> “Over the last year, we have seen an increase of claims involving renewable energy due to component vulnerability, defective design and lack of maintenance.”

As COP26 approaches, there has been a significant increase of zero carbon target pledges which will see fruition via green construction projects utilising green materials. Over the last year, we have seen an increase of claims involving renewable energy due to component vulnerability, defective design and lack of maintenance. To combat this, the industry is developing data sharing processes, infrastructure and standards for all stakeholders. It is anticipated that this will also help to produce more realistic underwriting and contribute to the softening of the renewable insurance market.

COVID-19 has contributed to the hardening of the professional indemnity insurance market and big contractors are finding it extremely difficult to purchase insurance on an “each and every” basis.

As a result, there will be a rise in project specific professional indemnity insurance and we may see the return of the Clerk of Works on more projects. Indemnity for approved inspectors (building regulation compliance) has also been reduced which could lead to certification delays.

Contacts: Iain Corbett, Helen Johnson, Caitlin Gallagher, Conrad Chidzey and Michael Smale

Cyber

Brexit and data protection

As of 1 January 2021, there are essentially two versions of the GDPR: the UK GDPR and the EU GDPR. The UK version remains substantively same as the EU version, and will need to be read alongside the Data Protection Act 2018 (DPA), but the UK will have the ability to amend the UK GDPR in the future.

The EU has agreed a grace period of four to six months, to allow time for the certain parts of the transition to take effect. During this bridge period, transfers of personal data between the UK and the EEA are not restricted. However, if the EU does not formally accept the UK as an "adequate" country for the purpose of data transfers before the end of this period, data transfers from the EEA to the UK will subsequently need to comply with transfer restrictions in the EU GDPR and specific contractual arrangements may be required. It remains to be seen whether the EU will provide an adequacy in relation the UK, but there is already a number of countries awaiting such a decision and it is unclear whether there will be any desire to allow the UK to skip the queue.

Loss of the "one stop shop" mechanism

Brexit has also caused some crucial changes in the data breach regulatory landscape. Perhaps the most impactful of these is the UK's loss of the "one stop shop" (OSS) mechanism afforded under the EU GPDR. Prior to Brexit, when a data breach affecting individuals across Europe was suffered by a UK organisation, the OSS mechanism allowed them to identify the ICO as the designated supervisory authority across the EU. This mechanism is no longer in operation, so unless the organisation has a primary place of business within an EU country, each and every relevant regulatory authority will need to be notified within 72 hours of awareness of a breach.

"Brexit has also caused some crucial changes in the data breach regulatory landscape. Perhaps the most impactful of these is the UK's loss of the "one stop shop" mechanism afforded under the EU GPDR."

This will have clear cost implications for personal data breaches where the ICO is recognised as the appropriate supervisory authority and data subjects are scattered across the EU, as all applicable EU regulators will now need to notified.

***Lloyd v Google* [2019]**

The Court of Appeal judgment in Lloyd v Google, handed down in October 2019, held that claimants can recover damages for loss of control of their data under s.13 of the DPA 1998 without proving pecuniary loss or distress, thereby removing causation defences commonly available. The judgment is the first time a UK court has held that a uniform sum may be payable to individuals affected by a loss of control of their personal information without establishing pecuniary loss or damage, and also permitted the individual to pursue his claim against Google as a representative action on behalf of four million other iPhone users. The decision may pave the way for US style mass "opt-out" type litigation following cyber incidents leading to data breaches.

This judgment, however, will face challenge in 2021, as a result of Google's appeal to the Supreme Court.

Emerging trends and COVID-19

Threat actors continue to exploit the COVID-19 crisis. Issues include vulnerabilities caused by enterprise computers being connected to home routers, staff being granted extended privileges in order to monitor furloughed staff mailboxes, and IT support being furloughed resulting in reduced capacity to recognise threats. Claims are likely to peak in the second quarter of 2021 as workers start to return to office working.

The industrialisation of ransomware is likely to continue into 2021 as threat groups seek to monetise personal data and target corporate assets. There has been a recent emergence of new strands of ransomware and threat groups (such as Egregor) looking to exploit the pandemic.

The move towards remote working arrangements as a result of the pandemic has led to an increase in targeted social engineering attacks on remote workers. There has been a reported 72% increase of phishing, vishing and smishing.

Cryptocurrency

The FCA has recently produced guidance on investing in cryptocurrency. In particular, the FCA are concerned about the market volatility and the lack of regulation over marketing, charges and a lack of other consumer protection. The FCA is currently consulting on the extension of financial promotions regulations to cryptoassets.

Bitcoin continues to be the most traded cryptocurrency with Ethereum closing the gap and even partially overtaking bitcoin briefly in 2020. The market continues to be volatile with prices increasing and decreasing very quickly.

Ripple is facing a class action lawsuit in the US and a lawsuit from the Securities and Exchange Commission. This has led to a suspension in trading in their cryptocurrency XRP. The lawsuits all centre around whether XRP is a security and whether it was marketed as such. This case is likely to have wider implications for cryptocurrencies both in the US and worldwide.

Contacts: Tom Pelham, Ollie Dent and Michael Parrick

Financial lines

The requirement on entities and individuals in the financial sector, including directors and officers, to navigate the impacts of COVID-19, emerging technologies, changing regulation, and the demand for diversity, will continue to prove challenging.

The COVID-19 pandemic not only exposed the vulnerabilities of a modern globalised world but also amplified existing risks such as cyber threats and rising insolvencies. The unexpected shift to home working has already led to an increase in fidelity claims, in part as a direct result of the weakening of internal controls.

Another direct result of COVID-19 has been an increase in insolvencies, despite the government assistance provided, with the bulk still to come. A record high for bankruptcies is predicted, up by 35% by the end of the year.

“The increase of insolvencies will be exacerbated further as the number of litigation funders entering the UK market is rising.”

The increase of insolvencies will be exacerbated further as the number of litigation funders entering the UK market is rising. Their fuelling of stakeholders’ expectations will be an additional driver of high profile claims instigated by large groups of claimants against corporate defendants and D&O’s in 2021.

Advancing technology continues to present both opportunities and challenges, and cyber risks remain a concern for all businesses. Cybercrime and data breaches have risen during COVID-19 as criminals take advantage of the reduced security and disruption. The responsibility for complying with GDPR falls on directors. Directors must be vigilant about cyber protection and ensure training and monitoring of risks is adequate, especially with the increased vulnerabilities when working from home. They must also have processes in place to mitigate loss in the event of attack. Failure to do so is likely to result in derivative and direct action as D&O’s are held to account.

A sharp rise in climate change litigation against companies and their executives is expected in 2021. Consumers and shareholders are increasingly demanding “green” finance/action. Shareholder activists in the UK are now focussing on financial institutions who provide financial services to ‘carbon majors’ (i.e. oil and gas companies). Prudent D&Os will need to assess and manage a company’s activities from an environmental perspective. We have already seen an increase in the US in the filing of claims seeking remediation from those companies who have allegedly contributed to climate change.

A failure to acknowledge or prepare for the impending requirement of mandatory disclosures related to climate change in the UK by 2025 could result in solvency issues or regulatory intervention and penalties.

The pressure for diversity and equality within companies and on their boards is also increasing. Large corporations such as Facebook and Oracle have been subjected to board diversity derivative law suits, where shareholders are alleging the board has breached its fiduciary duties by inaction on diversity issues. Whilst the financial impact of such lawsuits is yet to be seen, the defence costs spend alone will be significant. These types of actions could impact underwriters of both D&O and employment practices liability insurance, as a boards failure to demonstrate adequate systems are in place to ensure equality is delivered may lead to liability.

In addition to these challenges, many uncertainties and concerns remain amongst those in financial services regarding Brexit. The free trade agreement entered by the UK and the EU did not expressly cover financial services. Service providers for UK financial institutions can no longer use the passport under the EU single market directives, therefore compliance with the local legal obligations on market access is required. Whilst these obligations do not apply if the EU and UK authorities make equivalence determinations for the specific sector of operation, businesses need to be aware that equivalence can be revoked unilaterally if the EU or UK changes it regulations. It is hoped the MoU expected by March 2021 will provide transparency around how and when equivalence decisions may be revoked, thereby giving businesses sufficient safety and reliability to react and adapt in time.

Furthermore, UK asset managers are navigating the risk of changes to the delegation rules that enable MIFID investment firms, alternative investment fund managers and UCITS management firms, to delegate to UK-based investment managers. The UK Government's willingness to diverge from the EU on certain regulatory matters has also been a concern for those in financial institutions, whilst there is no indication of a radical exit from the EU regulatory framework, key questions regarding the probability of any future equivalence decisions are raised.

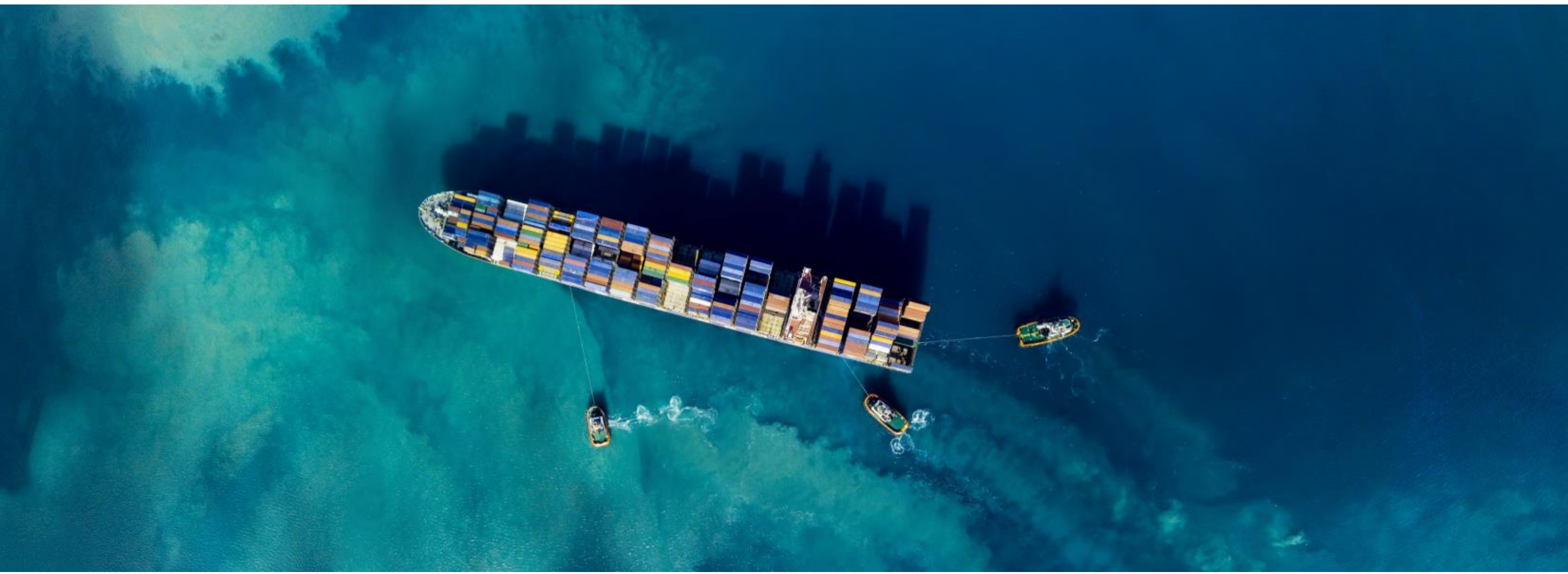
Contacts: John Bruce, Alex Nurse and Courtney Burrell-Eade

Marine

The impact on shipping and supply chain disruption resulting from the COVID-19 worldwide pandemic and the economic fallout following the UK's withdrawal from the EU single market following Brexit will be keenly felt in 2021 as insolvency and bankruptcy rates are expected to rise around the world, generating losses in the marine market.

Replacing geopolitical risks as the main market concern following the anticipated de-escalation in tensions between the US and Iran in 2021, COVID-19 and Brexit were the two words on everyone's lips in 2020 and the publication of data relating to the UK's trade in goods and services across international borders will be widely anticipated when published by the Office of National Statistics. Reduced trading, rejected deliveries, and cancelled orders from traditional European customers in industries such as fishing have already been widely reported, and increased delays in cargo movements and associated claims as businesses, hauliers, freight forwarders, and customs agents struggle to come to terms with the new trading regime are anticipated until familiarity with the required paperwork becomes part of the 'new normal'.

The UK Government's proposed plan to establish up to 10 'freeports' may act as a much needed 'shot in the arm' to assist the country in rediscovering its maritime capabilities and offer a real solution to facilitation of trade and infrastructure post-Brexit. Under the plans, the designated areas (which could be sea ports, airports or rail hubs) will be coupled with special economic 'enterprise zones' able to operate outside the custom's borders and benefit from tax concessions to encourage businesses and provide a stimulus for economic activity. It is hoped that the freeports will create thousands of jobs and the bidding process was launched in November last year.



> It is expected that there will be an accelerated shift towards the use of autonomous technology, vessels, and vehicles in 2021 as the world and the shipping industry continues to grapple with the effect of COVID-19.

It is expected that there will be an accelerated shift towards the use of autonomous technology, vessels, and vehicles in 2021 as the world and the shipping industry continues to grapple with the effect of COVID-19. An estimated 100,000 crew members are discharged worldwide every month for shore side leave, and the pandemic has caused huge logistical and financial issues in repatriating seafarers safely.

The cost benefit of adapting to remote operations and autonomous digital technologies will continue to drive down the number of crew required to operate vessels as more owners and charterers seek to modernise their fleets. Significant numbers of class surveys are now conducted remotely, and even if fully autonomous shipping might not yet be on the horizon given the wider delays in innovation and production as a result of the pandemic, continued developments in artificial intelligence and significantly better connectivity at sea are positive steps in the right direction. As previously forecast, changes will come with many challenges and the supporting legal frameworks will be tested, especially given the increased reliance on automation will expose the shipping industry to more ‘cyber’ incidents.

Contacts: Chris Dunn, Andy Purssell and Craig Boyle-Smith

Product liability and life sciences

Life sciences was thrust into the international spotlight by the pandemic in 2020. Having started 2021 with a newly signed Brexit trade deal and COVID-19 vaccination programmes underway globally, it is expected that the sector will remain centre stage during the course of 2021 and beyond.

Industry stakeholders will continue to play a leading role in combatting the COVID-19 pandemic by developing personal protective wear, diagnostics, medical equipment, potential treatments and vaccines on a global scale and at rapid speed. The race to develop a vaccine in unprecedented circumstances has forced an immediate shift towards the use of new technologies, such as telemedicine and AI in the drug discovery process.

Increased use of AI powered analytics such as natural language processing to process voluminous text-based data and precision imaging analytics technology, known as radiomics, personalised medicine, genomics, as well as the emergence of virtual clinical trials could all give rise to large scale data protection and cybersecurity breaches. Similarly, with social distancing and remote working measures likely to be in place for some time, manufacturers and their insurers should remain alive to similar risks arising from the ever increasing reliance upon data-driven technologies such as smart/connected devices and apps and the potential for product liability claims where injury results and it can be shown that such risks may render a product not as safe “as persons are generally entitled to expect”.

> The race to develop a vaccine in unprecedented circumstances has forced an immediate shift towards the use of new technologies, such as telemedicine and AI in the drug discovery process.

The exposure to such risks arising from AI and emerging digital technologies was acknowledged by the European Commission (EC) in its AI white paper of February 2020 and has opened up debate about the effectiveness of the current product liability legal framework. 61% of respondents to the EC’s subsequent public consultation on the white paper supported a revision of the EU Product Liability Directive to cover particular risks engendered by certain AI applications.

The increasingly digitised and technological global market within which businesses are operating is particularly conducive to group actions, which are expected to increase following the recent endorsement of the EU’s directive on collective redress (the Directive) which, once implemented, will provide European consumers with a mechanism to bring collective actions in respect of infringements of EU law. Although the Directive will not apply to the UK following its departure from the EU, it would appear that the UK is following the same direction of travel as that of the EU, noting the Supreme Court’s recent judgment in *Merricks v Mastercard* [11.12.20] and the introduction of The

Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 which introduces a legal framework for group actions.

With the UK having officially cut all ties with the EU, it is key for manufacturers and their insurers to keep a close eye on the developments and changes to the regulatory frameworks in Europe and the UK. The delayed implementation of the EU's new regulations on medical devices and in vitro diagnostic medical devices has meant that they will not automatically apply to the UK following its departure from the EU although The Medicines and Medical Devices Bill, which continues its passage through parliament, seeks to address this regulatory gap. The MHRA also recently published updated guidance on the regulation of medical devices and medicinal products, effective from 1 January 2021, which sets out a timeline for a new UK medical device regulation framework from July 2023.

Contacts: Samantha Silver, Paula Margolis, Karishma Paroha and Caroline Speight

Professions

When we prepared this report in January 2020, none of us predicted the tumultuous year that waited in the wings. One of the few things that seems clear now, however, is that 2021 has more of the same in store. To survive, businesses operating in every arena are being forced to adapt. Inevitably, change of any kind involves a degree of risk.

We expect to see an increase in professional indemnity and negligence claims, as employers grapple to find new ways to manage their staff. In financial services, 44% of people who worked from home in the first UK lockdown said they had made more mistakes in their everyday job.

When the government's financial support is withdrawn and businesses (particularly SMEs) are left to fend for themselves, many will be focussed purely on survival. Indeed, many have already failed or teeter on the precipice of insolvency, even with government help.

It seems clear then that those involved in advising struggling or failing businesses will face more claims. Increased PI exposure for insolvency practitioners, auditors, accountants and solicitors is inevitable, especially with the emergence of novel issues such as furlough schemes. The ICAEW, for example, has warned members to be vigilant in relation to furlough fraud, including ineligible claims under the Coronavirus Job Retention Scheme, the Self-Employment Income Support Scheme, the Bounce Back Loan Scheme, the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme, the Future Fund or Kickstart Scheme. In 2020, we saw more claims against those advising distressed businesses for alleged negligence in advising on broader commercial issues and we expect this trend to continue.

> “Brokers can still expect to see an increase in claims – whether in the near future from clients with an axe to grind or a failure to take into account the changed risk profile of a business post COVID-19.”

The news is better for brokers, who might have expected a slew of claims from disgruntled assureds had the FCA business interruption (BI) test case been decided in insurers' favour. Brokers can still expect to see an increase in claims - whether in the near future from clients with an axe to grind (perhaps because they had no or no adequate BI cover, or in relation to advice on the submission of BI claims), or further down the line arising from the broker's advice on the scope of new policy wordings or a failure to take into account the changed risk profile of a business post COVID-19. We have not yet seen an influx of claims from brokers placing event cover, whether for failing to advise on the implication of exclusions, the availability of communicable disease extensions and the limitations of any available cover.

Of course, the decision in the FCA BI test case (which created new law on causation) could lead to new types of claim against any (and possibly all) professionals arising from the Supreme Court's conclusions in relation to concurrent proximate causes and, in particular, the fact that, to establish causation where there is a series of concurrent proximate causes of a loss, claimants no longer have to satisfy the “but for” test.

Since Grenfell, the claims landscape has been bleak for construction professionals. Many have faced the perfect storm: a hard market with tighter policy terms, combined with a lack of capacity following the 2018 Lloyd's Thematic Review and, more recently, closed sites, canned projects and issues with the supply of materials and a skills shortage arising from Brexit. Many contractors and consultants must be wondering what else 2021 can throw at them? Understandably, cash flow crises are leading to increased numbers of “rough justice” adjudications, which can be difficult to manage, even without lockdown conditions. Numbers of complaints and disciplinary investigations in the construction industry are also rising.

An ambitious “net zero” by 2050 UK carbon emission target brings its own risks for those in the construction sector, as buildings are retrofitted for energy efficiency and modern methods of construction (including modular housing) are adopted.

Property professionals, including conveyancers, always suffer in recession. Whilst lenders’ claims are less likely than in the last two recessions (1990 and 2008), we are already starting to see significant claims in relation to commercial property, where demand has plummeted and businesses are looking to exercise break clauses. Of course, the current end of the Stamp Duty break in March 2021 is expected to lead to a sharp dip in property prices. If that happens, those acting in the residential sphere are likely to be impacted. Insurers are looking carefully at coverage issues.

Contacts: Fleur Rochester, Jeremy Riley and Paul Castellani

Political risks

The obvious factor affecting the political risk market (and most other insurance markets) during the coming year, and potentially beyond, is the global COVID-19 pandemic. As the economic impacts of the pandemic, and the measures put in place to control the pandemic manifest themselves, the potential for civil unrest and political violence driven by increasing levels of poverty and wealth inequality is likely to increase.

“As the economic impacts of the pandemic, and the measures put in place to control the pandemic manifest themselves, the potential for civil unrest and political violence driven by increasing levels of poverty and wealth inequality is likely to increase.”

During the course of the pandemic, companies with extended global supply chains have found themselves exposed, and in many cases there have been shortages of the goods and materials those companies require in order to carry on business. This may lead such companies to reconfigure their supply chains so that they are more localised, reducing the demand for transport. This, and the potential long-term change in working patterns for many, may well reduce the demand for fossil fuels. Such a reduction in demand would be felt most keenly in those developing countries, such as in sub-Saharan Africa, whose economies rely very heavily on the income derived from the sale of crude oil and its refined products. This not only gives rise to the prospect of sovereign debt defaults, but also political instability, again due to consequent economic turbulence.

Alongside the pandemic, the other major issue that is likely to have a long-term impact on the political risk market is climate change. Here the potential consequences include a reduction in the use of fossil fuels due to increasing reliance on renewable forms of energy, which would again hit hardest in developing countries that are reliant on the sale of oil and petroleum products, and an increased threat of civil unrest due to large-scale migration as people move to more climatically stable areas.

Other developments to watch carefully include China's transition from 'the world's factory' to international pariah due to its actions in Hong Kong and its suppression of its Uighur minority. The political fallout from these actions could well have knock-on effects for businesses caught in the crossfire. On the flip-side, the advent of a new administration in the US could see a return to a more internationalist approach from the White House, lessening the potential for trade wars and further political instability.

Contacts: David Chadwick and Graham Gowland

Property damage

This year will continue to be dominated by the effect of the worldwide COVID-19 pandemic. Whilst vaccines bring hope that life may get back to some kind of normality this year, the economic effects are likely be felt for years to come.

The pandemic has resulted in many insurers facing claims under their BI wordings. These claims came as a shock to many insurers who never intended their policy to respond to this kind of pandemic. In the UK, further claims are likely following the recent Supreme Court judgment in the FCA BI test case.

Understandably insurers are reviewing their policies and we envisage will attempt to provide more restrictive cover to avoid liability for future pandemics.

Also, the decision by the Supreme Court to overturn the decision in *Orient-Express Hotels Ltd v Assicurazioni Generali SpA* [2010] is likely to result in increased exposure for insurers not only in respect of COVID-19 but also insured events involving widespread damage.

Despite lockdowns the pandemic did not subside any civil unrest in 2020 and, in fact, contributed to protests in a few countries. In the US, property damage headlines mainly stemmed from political unrest. The Black Lives Matter riots occurred from 26 May to 8 June 2020 over the death of George Floyd. Protests that took place in 140 cities were mostly peaceful. However, the arson, looting and vandalism resulted in the most expensive in insurance US civil disorder history, costing US$1-2 billion across 20 states in the US.

Civil and violent protests in Kenya, Ethiopia, Nigeria, Bangladesh and Manila have continued in 2020 despite COVID-19. As the pandemic prolongs, it will continue to cause civil unrest, as evidenced by the food protests in Manila and the garment industry protest in Bangladesh, both of which were COVID-19 related.

> “As the pandemic prolongs, it will continue to cause civil unrest, as evidenced by the food protests in Manila and the garment industry protest in Bangladesh, both of which were COVID-19 related.”

Climate change also continued to dominate 2020. A rare climatic event occurred in the Atlantic Ocean on 14 September 2020: five storm systems – hurricanes, storms and depressions – were brewing in the ocean at the same time for only the second time on record. The five active storms were Hurricane Paulette, Hurricane Sally, tropical storm Teddy, tropical storm Vicky and tropical depression Rene. The total damage costed over US$35 billion.

Closer to home, in February 2020, Storm Ciara caused flooding in the UK and over a third (27.2 million) of UK homes were affected, costing property owners over £7.75 billion.

Storm Dennis closely followed. The two storms combined required insurers to make payments to customers of over £425 million for flood and windstorm claims.

However, the government is taking steps to respond to these risks. In the March 2020 Budget, the UK Government committed to doubling expenditure on flood and coastal risk management to £5.2 billion between 2021 and 2027, saying this will better protect a further 336,000 homes and properties as well as avoid £32 billion of wider economic damages to the nation. In addition, in July, the government laid the Revised National Flood and Coastal Erosion Risk Management Strategy for England before parliament which set out strategic objectives and measures (with target dates up to 2050) for achieving its long-term vision, namely: “a nation ready for, and resilient to, flooding and coastal change today, tomorrow and to the year 2100.”.

Climate change and socio-economic factors will continue to dominate the rest of the year. With the world’s seven biggest economies shouldering a record US$13 trillion debt, 2021 will be another unpredictable year.

Contact: Will Brown

Further information

To find out more about our services and expertise, and key contacts, go to: **kennedyslaw.com**

Key contacts

Simon Balls
Partner, London
t +44 20 7667 9753
e simon.balls@kennedyslaw.com

Craig Boyle-Smith
Senior Associate, London
t +44 20 7667 9618
e craig.boyle-smith@kennedyslaw.com

Will Brown
Partner, London
t +44 20 7667 9044
e william.brown@kennedyslaw.com

John Bruce
Partner, London
t +44 20 7667 9459
e john.bruce@kennedyslaw.com

Courtney Burrell-Eade
Litigation Assistant, London
t +44 20 7667 9105
e courtney.burrell-eade@kennedyslaw.com

Paul Castellani
Partner, London
t +44 20 7667 9695
e paul.castellani@kennedyslaw.com

David Chadwick
Partner, London
t +44 20 7667 9488
e david.chadwick@kennedyslaw.com

Conrad Chidzey
Associate, London
t +44 20 7667 9464
e conrad.chidzey@kennedyslaw.com

Iain Corbett
Partner, London
t +44 20 7667 9065
e iain.corbett@kennedyslaw.com

Ollie Dent
Partner, Manchester
t +44 161 829 7462
e oliver.dent@kennedyslaw.com

Chris Dunn
Partner, London
t +44 20 7667 9855
e christopher.dunn@kennedyslaw.com

Caitlin Gallagher
Senior Associate (Solicitor Advocate), London
t +44 20 7667 9290
e caitlin.gallagher@kennedyslaw.com

Graham Gowland
Senior Associate, London
t +44 20 7667 9150
e graham.gowland@kennedyslaw.com

Helen Johnson
Partner, Sheffield
t +44 114 253 2052
e helen.johnson@kennedyslaw.com

Joanna Manthorpe
Corporate Affairs Lawyer, London
t +44 20 7667 9863
e joanna.manthorpe@kennedyslaw.com

Paula Margolis
Senior Associate, London
t +44 20 7667 9367
e paula.margolis@kennedyslaw.com

Tim McCaw
Partner, London
t +44 20 7667 9631
e tim.mccaw@kennedyslaw.com

Alex Nurse
Partner, London
t +44 20 7667 9391
e alex.nurse@kennedyslaw.com

Karishma Paroha
Senior Associate, London
t +44 20 7667 9163
e karishma.paroha@kennedyslaw.com

Michael Parrack
Associate, Manchester
t +44 161 829 2561
e michael.parrack@kennedyslaw.com

Tom Pelham
Partner, Manchester
t +44 161 829 7453
e tom.pelham@kennedyslaw.com

Phoebe Penman
Trainee Solicitor, London
t +44 20 7667 9893
e phoebe.penman@kennedyslaw.com

Andy Purssell
Partner, London
t +44 20 7667 9857
e andrew.purssell@kennedyslaw.com

Jeremy Riley
Partner, London
t +44 161 829 2590
e jeremy.riley@kennedyslaw.com

Fleur Rochester
Partner, London
t +44 20 7667 9766
e fleur.rochester@kennedyslaw.com

Samantha Silver
Partner, London
t +44 20 7667 9358
e samantha.silver@kennedyslaw.com

Michael Smale
Senior Associate, Taunton
t +44 1823 624 389
e michael.smale@kennedyslaw.com

Caroline Speight
Senior Associate, London
t +44 20 7667 9479
e caroline.speight@kennedyslaw.com

Carole Vernon
Partner, London
t +44 20 7667 9312
e carole.vernon@kennedyslaw.com

Edited by

Joanna Manthorpe
Corporate Affairs Lawyer, London
t +44 20 7667 9863
e joanna.manthorpe@kennedyslaw.com