



Global Parametric Insurance Law Guide

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Foreword

In today's rapidly changing landscape, climatic events have taken centre stage, causing unprecedented turmoil across the globe. As the frequency and intensity of these events continue to escalate, traditional insurance models are facing significant challenges in providing timely and effective coverage. This is where parametric insurance offers innovative and adaptive solutions in the face of such uncertainties. In response to the current climatic upheaval, parametric insurance offers a transformative solution that transcends geographical boundaries, enabling the insurance industry not only to navigate the complexities of a worldwide environment but also provide proactive and swift responses to the evolving nature of climatic risks. In this guide, we explore the pivotal role of parametric insurance and how it addresses the limitations of conventional approaches, paving the way for a more resilient and responsive global insurance ecosystem.

DLA Piper insurance lawyers and DLA Piper regular contact firms from over 40 jurisdictions put together this global guide. As parametric insurance rapidly expands, extending its influence beyond its original scope, our aim was to create a comprehensive resource that serves as both a foundational tool for clients developing new insurance products and a platform to share our expertise in this evolving field. As parametric insurance experiences its exponential growth, and branches into varied economic sectors, we remain dedicated to exploring these emerging frontiers with our clients.

If you have questions after reading this guide – our colleagues will be happy to discuss them with you. You will find their contacts in each country section.

We hope you enjoy the read



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Parametric Insurance: an introduction

Elegantly simple in concept, yet remarkably effective and swift in action, parametric insurance has garnered significant attention, propelled by the European Commission's endorsement in response to the escalating prevalence of climatic uncertainties.

This dynamic approach is especially appealing as it aligns seamlessly with the overarching goal of safeguarding interests within an ever-shifting climatic landscape. In essence, parametric insurance rejuvenates the essence of insurance, reinvigorating its fundamental purpose: safeguarding the well-being of policyholders.

In practice, the use of statistical datasets facilitates the assessment of evolving risks that warrant insurance coverage – ranging from rainfall patterns in specific regions to the frequency and intensity of hurricanes, and even the growth cycles of crops. Companies diligently monitor these phenomena, culminating in the creation of indices, often spearheaded by meteorological services. This information fuels the construction of risk models, enabling the delineation of foundational risks (such as prolonged drought periods or diminished crop growth relative to statistical norms). The subsequent determination of indemnity follows suit, accounting for variable rates that hinge upon factors like delayed biomass growth or the proximity of cyclones or hurricanes to covered assets. The valuation of covered assets (be it crops, structures, hotels, and the like), along with possible losses, also shapes the indemnity framework.

“Parametric insurance, while revolutionizing traditional insurance paradigms, also introduces novel challenges, some seemingly more apparent than substantive.”

The inherent legal hurdle revolves around the cornerstone principle of indemnification, as this form of insurance occasionally relies solely on probabilities rather than tangible claims or actual damage. The construction and interpretation of policies become pivotal in ensuring fairness and equity.

While the legal terrain is undoubtedly significant, the choice and application of indices assume equal importance, often underpinning the financial equilibrium and feasibility of this insurance model. It's worth noting that parametric insurance falls within the purview of the Solvency II directive's licensing and supervisory regulations, particularly within the European context.

Beyond these facets, an array of legal intricacies arises, encompassing topics such as the amalgamation of insurance within expansive corporate programs, indemnity transfers, potential conflicts of interest, and subrogation considerations. Furthermore, the expansive realm of parametric insurance necessitates an understanding of reinsurers' roles, distribution mechanisms, and the role of calculating agents.

Crucially, the global nature of parametric insurance introduces a plethora of issues surrounding approval processes, adherence to local laws, distribution dynamics, and the integration of international insurance initiatives – challenges that lawyers and clients must collaboratively address.

As parametric insurance boasts both foundational simplicity and remarkable versatility, it enters an expansive frontier. While big data is in its nascent stages, the precision achievable through parametric insurance holds the promise of rivalling, and potentially surpassing, that seen in traditional insurance practice. This technological evolution, already underway, inevitably shapes a pragmatic and sensible evolution of legal frameworks, ensuring the continued resonance of parametric insurance in an ever-evolving world.



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Africa

Burundi

The Burundian insurance sector is underdeveloped. There's a lack of products that would help it play a greater role in the national economy. Parametric insurance, like other innovative products, is not provided for under insurance law no1/06 of 17 July 2020 revising the law no1/02 of 7 January 2014.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

No. There is no specific qualification as parametric insurance in Burundi.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. The main law governing insurance in Burundi is Insurance law n°1/06 of 17 July 2020 revising the law no 1/02 of 7 January 2014 and it does not cover the subject of parametric insurance.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

No. There is no provision on parametric insurance.

Would the calculation agent be qualified as an insurance intermediary?

See previous answer.

Main challenges of parametric insurance

See previous answer.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no litigation in this regard since parametric insurance is not provided for by law.

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Ethiopia

Ethiopia often experiences droughts and severe famines, so any scheme that addresses such problems is very critical. Due to very small coverage of even the mainline financial services in the country, many risks in Ethiopia are not covered. Parametric insurance has the potential to cover the risks of a significant number of the country's population.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

No. In the mainline insurance industry, Insurance in Ethiopia is defined in the sense of indemnity as an undertaking by an insurance to indemnify another person, in exchange for consideration called premium against damage. However, micro-finance law recognizes insurance coverages for weather risks.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. The general principle is that any insurable interest can be insured. In addition to that, a recent micro-insurance directive recognizes weather index insurance on a condition that a reinsurance arrangement is already in place. Yet there are no detailed rules.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. A reinsurance arrangement is a necessary requirement to provide parametric insurance according to the Licensing, License Renewal and Product Approval for Micro insurance Providers Directive No. SMIB/3/2020.

Would the calculation agent be qualified as an insurance intermediary?

The abovementioned directive does not have a detailed provision regulating this matter.

Main challenges of parametric insurance

Lack of comprehensive legal framework, lack of technological advancement, lack of awareness, limited support and subsidization from the government, its limiting scope that limits to micro-insurance only and the price of insurance premiums are the major challenges in Ethiopia.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Since parametric insurance is only in a micro-insurance level and is not well developed, there is no significant litigation at this stage. Regarding whether arbitration or litigation is preferable, we are of the opinion that arbitration is preferable than litigation since it is business friendly, cost and time effective.

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Mauritius

With climate change, supply chain disruptions and economic uncertainty, having insurance that offers the advantage of claim payments based on pre-defined triggers and independently reported event parameters (without the need for on-site verification of loss and damages, as per conventional insurance), may certainly be an alternative risk solution for Mauritius.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Although parametric insurance has not yet been addressed by statute in Mauritius or tested by local courts, there is, in our view, nothing in the Insurance Act 2005 that would prevent the implementation of a contract based on a parametric trigger.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. As mentioned above, our domestic legislation does not specifically provide for the concept of parametric insurance and it is not explicitly catered for under the Insurance Act 2005.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

The concept of reinsurance of parametric insurance has not yet been addressed by statute in Mauritius or tested by local courts. The Insurance Act 2005 defines a “reinsurance contract” as a contract whereby an insurer reinsures the risk insured by it, or part of that risk, with another insurer or reinsurer. There is, in our view, nothing within this definition to preclude reinsurance of parametric insurance.

Would the calculation agent be qualified as an insurance intermediary?

As the concept of parametric insurance has not yet been addressed by statute in Mauritius, we are unable, at this stage, to address this query.

Main challenges of parametric insurance

In our view, the main challenges of parametric insurance would be the lack of knowledge (both foundation and practicality), familiarity or awareness to parametric insurance (compared to traditional insurance products) and access to accurate/localized data and analytics, particularly through innovation.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

To the best of our knowledge, there is no current or anticipated litigation in Mauritius concerning parametric insurance. Case law has yet to be established which would provide understanding of how parametric insurance will be classified from a regulatory perspective and be legally enforced. Arbitration would certainly be preferred for the area of parametric insurance for reasons such as confidentiality, complexity and reputation of the parties.

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Mozambique

In Mozambique agriculture is the main source of livelihood, however, with climate change, in recent years the agriculture sector has been devastated by several natural disasters, which showed the fragility of traditional insurance and the need for a more comprehensive and easily operable insurance.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

No. This insurance does not specifically qualify as an insurance contract. Per the list of type of insurance provided in Mozambican law, under non-life insurance there is a reference to an insurance covering risks resulting from elements of nature, which can be written with the same terms of parametric insurance.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. Decree Law No. 1/2010 of 31 December – Insurance Legal Regime and Creates the Institute of Insurance Supervision of Mozambique (ISSM), Decree No. 30/2011 of 11 August – Regulation of the Decree Law No. 1/2010 of 31 December.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. In Mozambique there is no legal provision specific for parametric insurance. As such, under the above referred legislation, we consider that reinsurance in a general manner is authorized.

Would the calculation agent be qualified as an insurance intermediary?

No. In Mozambique there is no such figure. However, we believe that this would be an employee from the insurance company designated to do this specific work.

Main challenges of parametric insurance

In principle the law should be amended to include parametric insurance and give more certainty of its acceptance. The Instituto de Supervisão de Seguros de Moçambique needs to better understand this insurance to determine if it can be applicable under the current legislation. Having institutions with capacity to provide accurate information to be used as parameters.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no litigation at this stage. This is fairly new in Mozambique. However, the wording of the insurance agreements in general must be aligned with the law to avoid problems in the future.



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Nigeria

Nigeria is highly susceptible to hazards and disaster events triggered by climate change (such as rise in sea-levels and droughts) and poor urban planning among others.

Parametric insurance provides insurance cover for a policyholder when a pre-defined event occurs irrespective of the magnitude of the peculiar losses to the policy holder. In Nigeria, this form of insurance contract is often used to protect farmers against the risks associated with weather events, such as droughts, floods, wind erosion and storms, which have become quite frequent, with complex resultant risks. These risks are generally underinsured in Nigeria and due to their impact in business interruption and losses, there is an increasing need for parametric insurance policies to aid the stability of a sustainable food production system.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric insurance contracts are recognized as valid insurance contracts by the National Insurance Commission. Parametric insurance in Nigeria operates based on the indemnity principle, which is a fundamental principle of insurance law. However, it insures a policyholder against the occurrence of a specific event, as opposed to the loss arising from the occurrence of the event.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, there are no laws specific to parametric insurance in Nigeria. However, insurance contracts are primarily regulated by the National Insurance Commission with powers given by the Insurance Act and its relevant regulations.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, Parametric re-insurance products are not prohibited, subject to the approval of the National Insurance Commission of the products.

Would the calculation agent be qualified as an insurance intermediary?

Yes, an agent is duly licensed as an insurance broker or insurance agent under Nigerian Law.

Main challenges of parametric insurance

Parametric insurance is still a relatively new concept in Nigeria, and as such, there is a lack of specific laws and rules regulating it. Only duly licensed

businesses registered in Nigeria may carry on insurance business in Nigeria and all newly developed insurance products require the prior approval of the National Insurance Commission.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There are currently no known litigation claims in Nigeria that specifically relate to parametric insurance. However, like with any type of insurance, there is always the possibility of legal disputes arising between policyholders and insurance companies regarding the interpretation and enforcement of the policy terms and conditions.

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Senegal

In Senegal the rainy season is relatively short and the harvest – and therefore the annual income – of most farmers depend strongly on the rainfall of each season.

By acting to reduce this risk, parametric insurance would considerably reduce precariousness in this sector, and could be a lever for funding.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. the indemnity principle of damage contracts should be respected.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, there is no prohibition.

Would the calculation agent be qualified as an insurance intermediary?

No, if they are an employee of the insurance company.

Main challenges of parametric insurance

The main challenge faced is the lack of knowledge and awareness of the opportunities available.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Parametric insurance is not very well known at

the national level. As far as we know the few existing parametric insurance policies are underwritten under the leadership of African organizations. It is therefore more likely that any dispute might be solved through confidential arbitration proceedings.

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Tanzania

Parametric insurance is a class of insurance that's still developing in Tanzania. It's mainly available to farmers, especially small hold farmers. This class of insurance is currently provided in bundles with loans provided to farmers to foster their farming activities and insure them against weather changes and other likely catastrophes. Ultimately, parametric insurance promotes financial inclusion of small farmers and agricultural development at large. Although it has not received much attention by insurance actors, regulator and legislators in Tanzania, parametric insurance has the potential to serve a significant developmental role in Tanzania.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. The law requires every insurance to have an insurable interest, otherwise the insurance contract will be null and void *ab initio*.¹ So, provided the person on whose use or account the parametric insurance contract is made/taken, has an insurance interest over the insured person, asset or event, the contract qualifies as insurance contract in Tanzania.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. There is no dedicated law defining parametric contracts in Tanzania. However, the law allows any class of insurance, whether defined under the law or not, provided that the same is not declared to be exempt by the law and there is an insurance interest by the person for whose use or account the insurance is taken.² Parametric insurance is not declared exempt by the law.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. The law defines an insurance business to include reinsurance.³ As advised in the first question above, parametric contracts are allowed in Tanzania, provided the requirements of the law are met. Similarly, reinsurance of parametric insurance contracts will be allowed based on the same premises. However, it will not be possible to conclude reinsurance contracts with insurers domiciled in Tanzania on non-admitted basis.

For a foreign reinsurer to transact reinsurance business with a local insurance company in Tanzania, it must be formally admitted by the Tanzania Insurance Regulatory Authority (TIRA) via an accreditation process.

Would the calculation agent be qualified as an insurance intermediary?

Yes. An insurance intermediary is defined as an insurance agent, broker, surveyor, loss adjustor, settling agent, risk surveyor and members of the insurance institute of Tanzania.⁴ Therefore, in our view, based on the role described above, a calculation agent would be qualified as an insurance intermediary in Tanzania.

Main challenges of parametric insurance

As stated above, parametric insurance is not popular in Tanzania, it is mainly active in the agriculture sector for smallholder farmers. Some of the challenges include a lack of knowledge on the nature and operations of parametric insurances (for instance understanding pay-out when the policy holder has not experienced any financial loss and basis of indemnity), difficulty in collecting premiums, if the same is not bundled with a loan (this is because small-scale farmers may find it challenging to pay a premium when faced with the choice between paying a premium (for a loss they have never experienced) and other expenses (e.g. food, shelter, clothing, and transport); setting of the insurable risk and/or triggering events/parameters under parametric insurance policy due to the limited data and technology in Tanzania.

¹ Section 130(1) of the Insurance Act, No. 10 of 2009 (Insurance Act)

² *ibid*

³ Section 3 of the Insurance Act

⁴ Regulation 2 of the Insurance Regulations, 2009

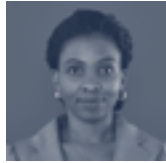
What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

In case of any dispute related to a parametric insurance concluded in Tanzania, a holder of the insurance policy is entitled to enforce their rights under the policy against the insurer in any court of law with jurisdiction in Tanzania, notwithstanding the contrary provisions in the policy.⁵ However, we are not aware of any litigation related to parametric insurance in Tanzania.

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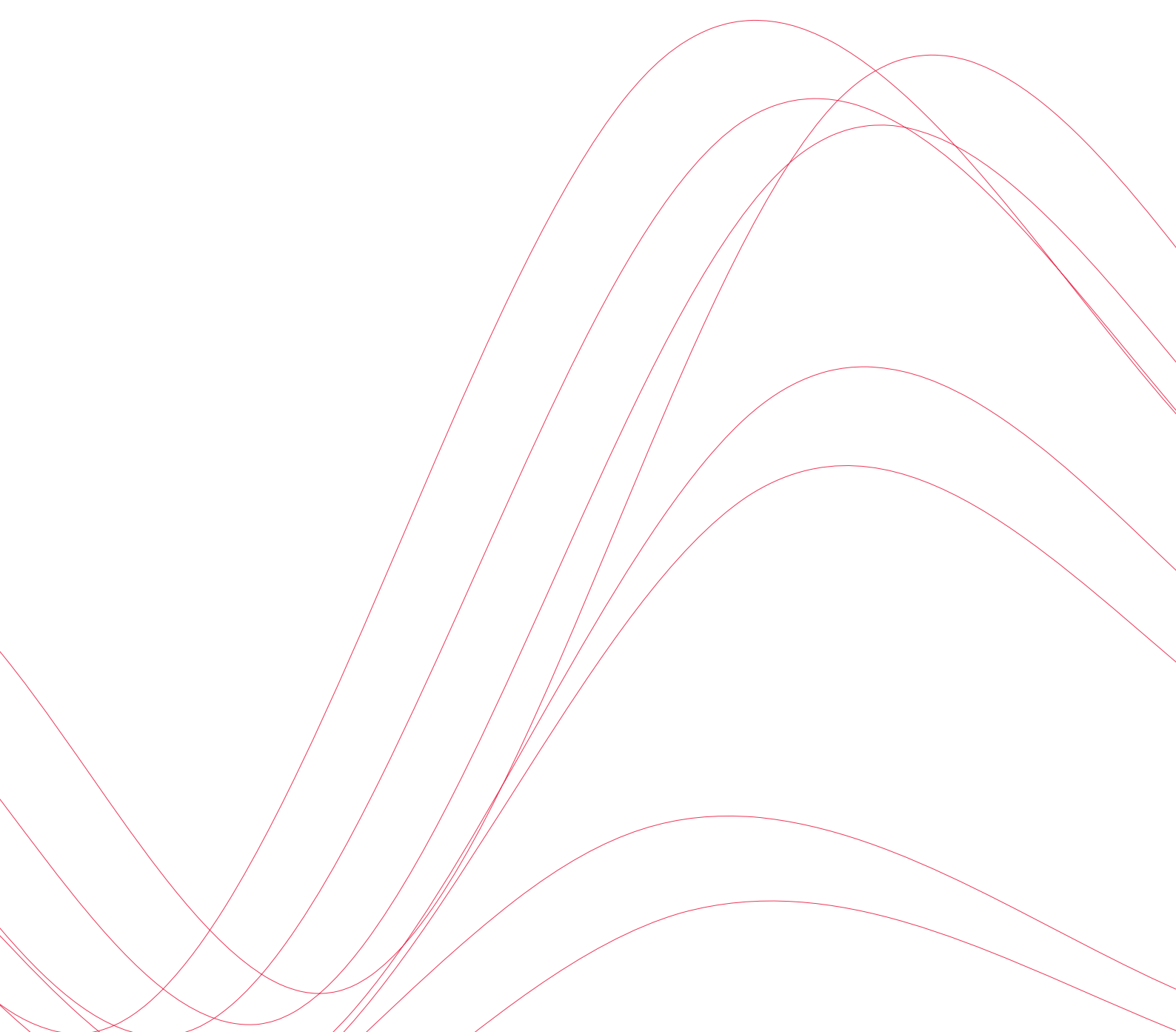


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⁵ Section 148 of the Insurance Act



Uganda

As an agriculture-driven economy frequently affected by extreme weather conditions like drought and excessive rainfall (in some instances escalating to wildfires and floods), Uganda's need for "parametric" or "index-based" insurance is apparent. In 2016, the government of Uganda established the Uganda Agriculture Insurance Scheme as a pilot. The objective was to cushion farmers from risks associated with natural disasters. One of the products offered by the scheme is drought index insurance, where payout is based on the level of a pre-determined drought index monitored by satellite. Similar developments followed shortly in the private sector, including the extension of *Kilimo Salama* to the Ugandan market. First established in Kenya, *Kilimo Salama* is a micro insurance product that covers crops against identified weather perils measured using a computerized weather station. It is now one of the few parametric insurance products in Uganda's insurance space.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Parametric insurance contracts (termed "index insurance contracts") are defined as insurance contracts under which the liability of an insurer to make a payment in respect of a stated insured risk is triggered by, and the amount of that payment is determined in accordance with, one or more indexes, rather than on an assessment of the policy holder's actual loss. And the payment is designed to provide a level of compensation, though not necessarily an indemnity, to the policy holder in respect of losses or costs that the policy holder is expected to suffer or incur as a result of the occurrence of the insured risk.

Is there any dedicated law defining parametric contracts in your jurisdiction?

Yes. Index insurance contracts are specially defined and regulated by the Insurance (Index Contracts) Regulations 2020, which prescribe their form and minimum content requirements. These Regulations also define insurable interest in the context of parametric contracts and require that every index insurance policy or proposal be approved by the regulator.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Reinsurance applies to parametric insurance contracts in Uganda as it does to traditional insurance. An applicant for approval to provide index insurance products in Uganda must indicate the expenses and commissions for reinsurance and must attach a reinsurance agreement or statement to their application.

Would the calculation agent be qualified as an insurance intermediary?

Yes. Whereas the law does not provide for calculation agents, their role is similar to that performed by loss assessors under traditional insurance. The index by which the amount payable under a parametric insurance contract is determined must be produced or verified by an independent third party, who would be qualified as an insurance intermediary.

Main challenges of parametric insurance

By its nature, parametric insurance applies different rules to the fundamentals of insurance like indemnity and insurable interest. This poses an obligation on insurers, insurance intermediaries and policyholders to understand risk and liability from a preemptive rather than reactive point of view. Secondly, the additional regulatory checks and approvals required for parametric insurance products, policies and contracts – though necessary – are bound to stifle the growth of parametric insurance in Uganda.



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What are the main (anticipated or not) litigation points that might concern parametric insurance in your jurisdiction?

There has not been any significant litigation around parametric insurance in Uganda at this stage. However, we foresee tension around basis risk especially where payments are significantly less than an insured's actual losses due to inaccurate indexes or faulty product design. The law requires that every insurance contract specify the mechanism for resolution of any resulting disputes. As in any commercial arrangement, arbitration would be preferred.



Zimbabwe

In Zimbabwe, parametric insurance makes sense due to the country's exposure to natural disasters such as droughts and floods, which have a significant impact on the agricultural sector. Additionally, the underdeveloped traditional insurance market presents opportunities for innovative parametric insurance products to address these risks.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Parametric insurance contracts qualify as insurance contracts in Zimbabwe, as they provide compensation based on predefined triggers rather than indemnification for actual losses. The contracts are considered insurance products rather than financial contracts due to their risk transfer and risk management functions.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. There is no dedicated law specifically defining parametric contracts in Zimbabwe. The main legal source applicable to parametric insurance contracts is the Insurance Act (Chapter 24:07), which governs the insurance industry in general.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Reinsurance of parametric insurance contracts is allowed in Zimbabwe, as the Insurance Act (Chapter 24:07) does not specifically prohibit or limit the reinsurance of such contracts.

Would the calculation agent be qualified as an insurance intermediary?

No. The calculation agent responsible for determining the payout under a parametric insurance contract is not considered an insurance intermediary in Zimbabwe. Their role is limited to calculating the amount to be paid and does not include activities related to the distribution or administration of insurance products.

Main challenges of parametric insurance

Some of the main challenges in Zimbabwe include a lack of understanding and awareness of parametric insurance among potential clients, potential conflicts of interest between parties involved in parametric insurance contracts, and the need for licensing and regulation of parametric insurance providers.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no significant litigation concerning parametric insurance in Zimbabwe at this stage. However, potential disputes may arise from ambiguities in the definitions of triggering events, disagreements regarding the calculation of payouts, or disputes over policy terms and conditions. To minimize litigation risks, parties may opt for alternative dispute resolution methods, such as arbitration.



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Asia Pacific

Australia

Although still a non-traditional method of risk-transfer in the Australian market, parametric insurance is likely to become more prolific as the country is directly affected by the increasing severity and frequency of severe weather events (such as fire, flood and cyclones). There is an appetite in the Australian market to explore non-climate related event triggers, particularly in the well-established resources, agriculture and tourism industries.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes they can, but it will depend on the terms of the contract. The view is that a parametric insurance product designed to respond on an indemnity basis will be an insurance contract; whereas a product designed to respond to a set event with a fixed pre-agreed sum (irrespective of the level of actual loss) will most likely be a financial product.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. The ability to offer parametric insurance products in the Australian market is governed by established laws. Further, established laws relating to insurance contracts, such as the Insurance Contracts Act 1984 (Cth) and the General Insurance Code of Practice, may apply to certain parametric insurance contracts depending on their terms.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

There is no specific prohibition on the reinsurance of parametric insurance contracts in Australia.

Would the calculation agent be qualified as an insurance intermediary?

Whether the entity/person calculating the amount to be paid under a parametric insurance contract is an insurance intermediary depends on the specific terms of engagement between the parties and is to be assessed on a case-by-case basis.

Main challenges of parametric insurance

- Setting suitable triggers and limits where there is an absence of quality, localised data.
- Developing parametric insurance for broader application beyond climate-related matters and natural disasters in the Australian market. The absence of quality modelling and indexes across non-climate related subject matter has inhibited growth.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Australia has not yet seen litigation resulting from claims on parametric insurance contracts. However, it is foreseeable that litigation may result in those instances where a policyholder suffers a loss but the trigger is not reached. In such instances, a contest on the quality or interpretation of data surrounding the trigger can be reasonably expected.

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China

China has long been affected by natural disasters and the government has focused on disaster prevention and disaster risk management, including establishing and developing a catastrophe insurance system. The first parametric insurance policy was an agricultural weather-index insurance written by Anxin Agricultural Insurance Co., Ltd. in 2007.¹ Since then, the Chinese government has been encouraging the development of agriculture and natural disaster-related parametric insurance in China.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric insurance contracts qualify as insurance contracts in China. Unlike financial instruments, the insurable interest and indemnity principle apply to parametric insurance contracts, though the basis risk would exist as the amount being claimed is assessed according to the disaster index specified in the policy without on-site inspection to assess the losses. Depending on the parametric insurance policies, policyholders may still be required to provide proof of loss statements to insurers to self-certify that the payout does not exceed the actual loss suffered by the policy holder.

The insurance clauses and insurance rates of parametric insurance products have to be registered with the China Banking and Insurance Regulatory Commission or its local counterpart.²

Is there any dedicated law defining parametric contracts in your jurisdiction?

There is no legislation specifically defining parametric contracts in China.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, the reinsurance of parametric insurance contracts is allowed in China on the same basis as traditional reinsurance contracts.

Would the calculation agent be qualified as an insurance intermediary?

In China, the role of calculation agents is often carried out by employees of the insurer or contracted out to licensed insurance assessor entities. In the former case, employees are not subject to license requirements pursuant to section 23 of the Insurance Law of the PRC, as it is the legal obligation of an insurer to process any claim lodged under an insurance contract issued by the insurer.

Main challenges of parametric insurance

Although climate disaster insurance has been implemented in China for many years, there is still a lack of in-depth integration between the meteorological department and insurance companies on the design of insurance products.

Currently, foreign insurance companies have to be properly licensed in China to provide insurance services (other than reinsurance services) to Chinese insureds.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no known significant litigation at this stage.

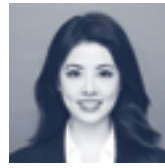
¹ 安信农险 (aaic.com.cn)

² Administrative Measures for the Insurance Clauses and Insurance Rates of Property Insurance Companies (Order of the China Banking and Insurance Regulatory Commission (2021) No.10)

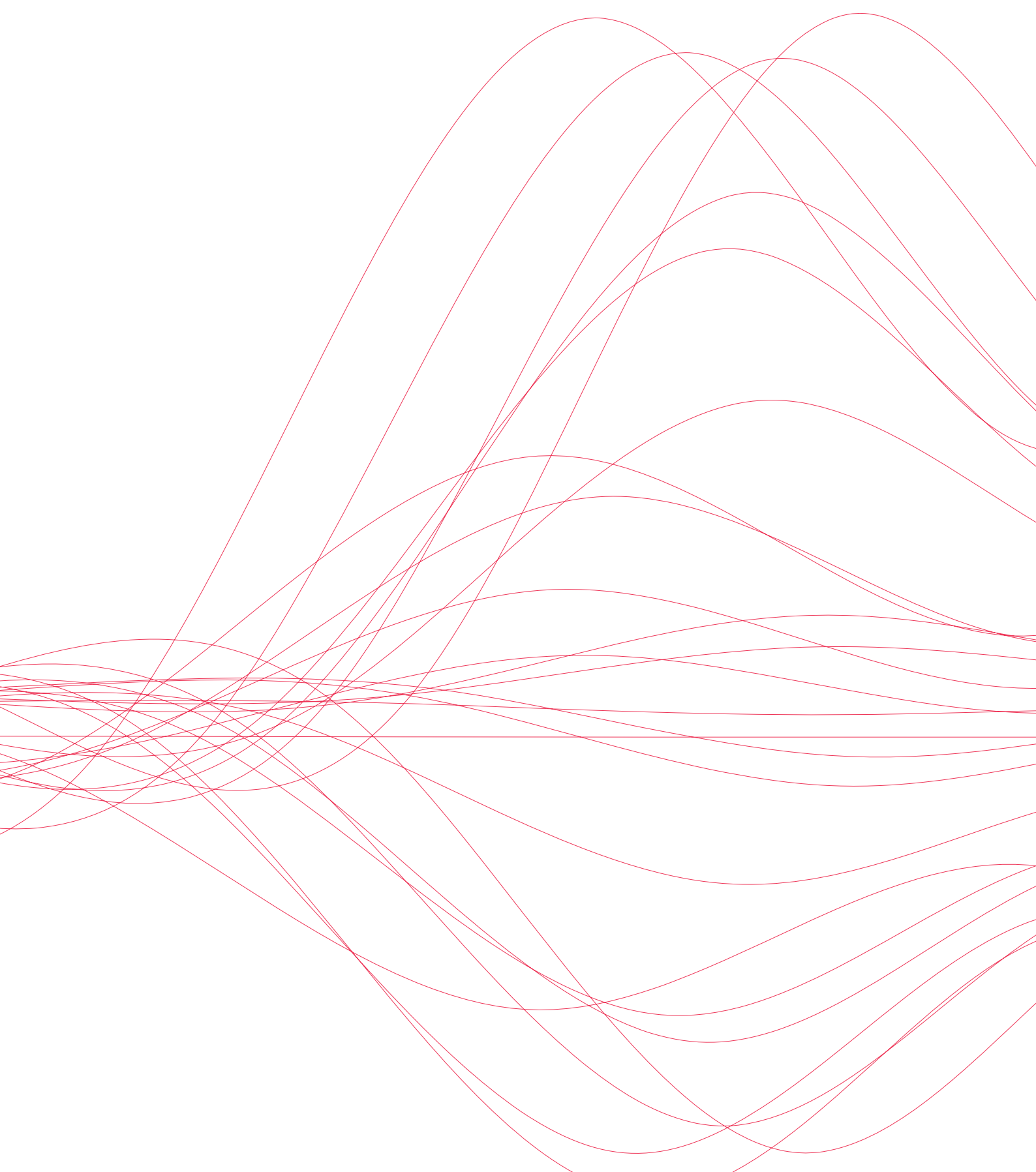
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Hong Kong

In the APAC region, Hong Kong has been relatively flexible and open to the idea of parametric insurance. For example, Swiss Re Corporate Solutions developed a typhoon warning insurance solution which indemnifies local businesses in Hong Kong against loss of earnings and additional operating costs stemming from a typhoon warning signal 8 or above. We expect to see increased growth in this area in coming years.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric insurance contracts qualify as insurance contracts. Unlike financial instruments, the indemnity principle applies to parametric insurance contracts. Proof of loss statements will still have to be provided to insurers under parametric insurance to self-certify that the payout a policyholder receives does not exceed the actual loss suffered.

Is there any dedicated law defining parametric contracts in your jurisdiction?

There is no legislation specifically defining parametric contracts in Hong Kong.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, the reinsurance of parametric insurance contracts is allowed in Hong Kong on the same basis as that for traditional reinsurance contracts.

Would the calculation agent be qualified as an insurance intermediary?

In Hong Kong, the role of calculation agents is often carried out by employees of the insurer or contracted out to professional loss adjustment agents. As such, calculation agents would usually be exempt from license requirements pursuant to section 123 of the

Insurance Ordinance (IO), whereby an employee of an authorized insurer is not prohibited from carrying on a regulated activity.¹ If doing so only involves processing any claim lodged under an insurance contract issued by the insurer or giving regulated advice.² In the course of carrying on the business of loss assessment on behalf of the authorized insurer/policy holder/ insurance claimant.

However, to the extent that a calculation agent is not an employee of an authorized insurer or carrying out loss adjustment business, they would need to be separately licensed as an insurance intermediary.

Main challenges of the parametric insurance

There are no significant challenges in this regard at this stage.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no known significant litigation at this stage.

¹ Defined in the IO as including any of the following: (a) the act of negotiating or arranging a contract of insurance; (b) the act of inviting or inducing, or attempting to invite or induce, a person to enter into a contract of insurance; (c) the act of inviting or inducing, or attempting to invite or induce, a person to make a material decision; (d) the act of giving regulated advice.

² Under the IO, a person gives regulated advice if they give an opinion in relation to any of the following matters: (a) the making of an application or proposal for a contract of insurance; (b) the issuance, continuance or renewal of a contract of insurance; (c) the cancellation, termination, surrender or assignment of a contract of insurance; (d) the exercise of a right under a contract of insurance; (e) the change in any term or condition of a contract of insurance; (f) the making or settlement of an insurance claim.

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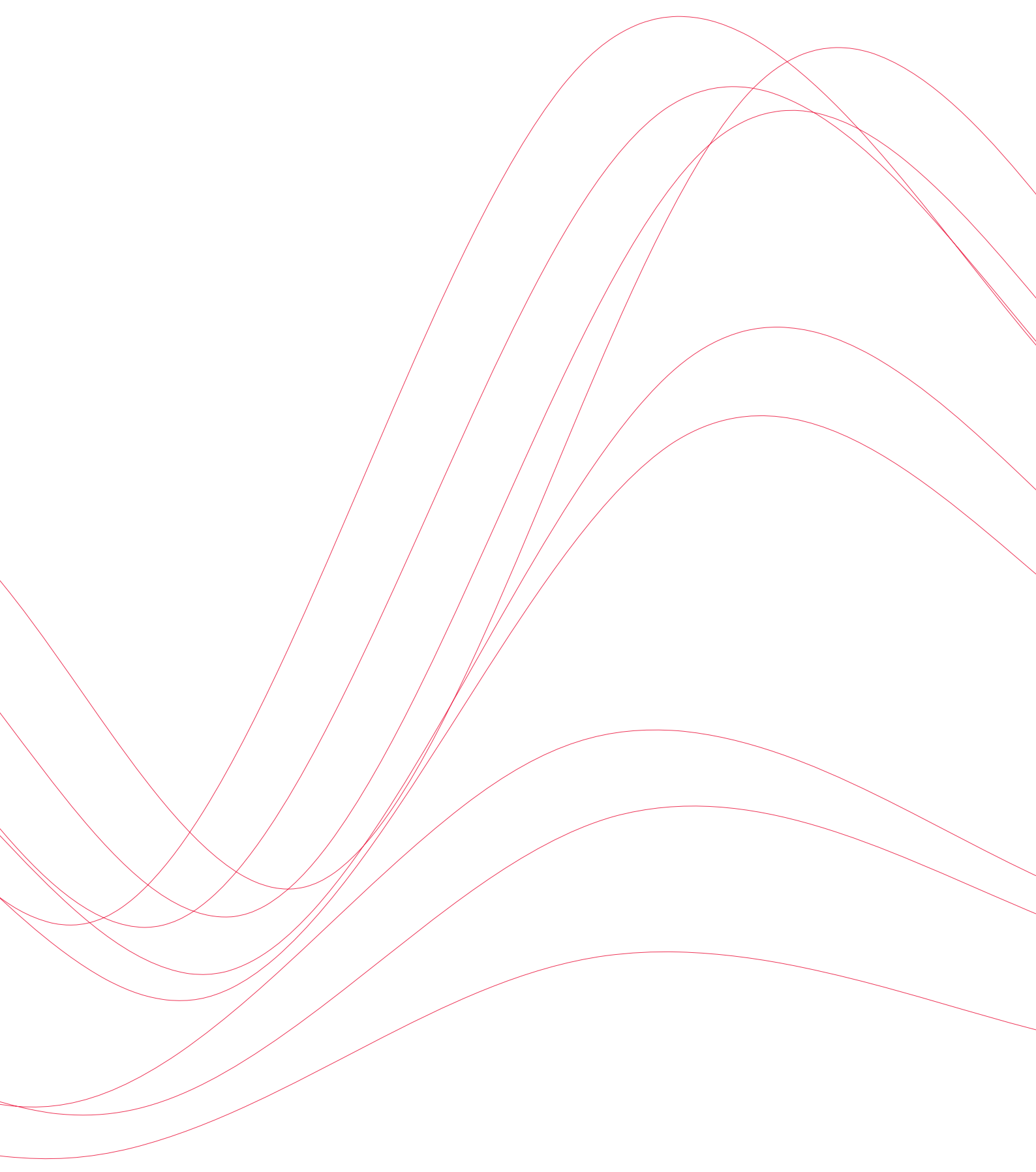


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New Zealand

While not yet common in New Zealand, products are available, and commentators have noted that natural disasters like the Canterbury earthquakes of 2011 and 2012 make parametric cover a sensible option, as does New Zealand's reliance on agribusiness.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Under the Insurance (Prudential Supervision) Act 2010 (IPSA), a contract of insurance requires a transfer of risk under which the insurer, in return for a premium, agrees to pay a sum of money whether by way of indemnity or otherwise, on the happening of an uncertain event.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. They are covered by the general provisions of IPSA. All insurers (including those offering parametric cover) are required to be licensed by the Reserve Bank of New Zealand and comply with IPSA and their license conditions (which will include applicable solvency standards).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes – no distinction is made between parametric and other insurance.

Would the calculation agent be qualified as an insurance intermediary?

Insurance intermediaries for the purposes of the Insurance Intermediaries Act 1994 are persons who, for reward, arrange policies between an insurer and insureds. Under the Financial Markets (Conduct of Financial Institutions) Act 2022, an intermediary is involved in arranging the insurance contract (or provides advice on it). Calculating amounts payable under a parametric insurance contract will not make the agent an intermediary for New Zealand law purposes.

Main challenges of parametric insurance

A key challenge to parametric insurance in New Zealand (which is also an opportunity for insurers) is that it is not well known and there are few providers. Drafting of policy and selling documents will need to ensure that the product is not a derivative for the purposes of financial services law, and neither is it gambling. In addition, the circumstances in which the product responds must be clearly conveyed to customers.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Areas of potential litigation may include:

- Indemnity disputes given this product is relatively new and untested in the New Zealand market
- Regulatory investigations by the Financial Markets Authority
- Contribution or double recovery claims given the potential interface with conventional insurance
- Claims management

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Singapore

In Asia, insurance protection against natural catastrophes has not kept pace with its economic development. There is a significant protection gap. The frequency and severity of natural catastrophes hitting the region make parametric cover a sensible option.

Parametric insurance products are slowly gaining popularity in Singapore and Asia generally. The insurance industry regulator in Singapore, the Monetary Authority of Singapore (MAS), has been actively supporting academic, industry, governmental and regional initiatives to foster the development of parametric insurance cover.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes.

There is no statutory definition of a contract of insurance in Singapore. Under common law, as applied in Singapore, a contract of insurance is a contract under which an insurer agrees to indemnify an insured against the occurrence of a specified event for a premium.

Generally, a contract of insurance includes the three following features:

- On the occurrence of an event, the insured must become entitled to a specified benefit.
- The event must involve an element of uncertainty (as to time or occurrence).
- The insured must have an insurable interest.

Parametric insurance covers, among other things, the occurrence of a predefined event of uncertainty and pays out the insured with reference to the probability of the event. As such, parametric insurance contracts qualify as insurance contracts in Singapore.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. Parametric insurance contracts (as a type of insurance contract) will be governed by the provisions of the Insurance Act 1966 of Singapore (IA).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, provided the appropriate license/authorization has been obtained from the MAS. All insurers (including those offering solely parametric cover) must be licensed/authorized by the MAS under the IA in respect of the class of insurance business for which they are licensed.

Would the calculation agent be qualified as an insurance intermediary?

An "Insurance intermediary" as defined under Section 2 of the IA is basically a person who, as an agent for one or more insurers or as an agent for insureds or intending insureds, arranges contracts of insurance in Singapore, and includes insurance agents or insurance brokers.

An "Insurance agent" as defined under the IA is basically a person who, as an agent for one or more *insurers*, is or has been carrying on the business of: (i) receiving proposals for, or issuing, policies in Singapore; (ii) collecting or receiving premiums on policies in Singapore; or (iii) arranging contracts of insurance in Singapore.

On the other hand, an "insurance broker" as defined under the IA is essentially a person who is or has been carrying on the business of (i) receiving proposals for, or issuing, policies in Singapore; (ii) collecting or receiving premiums on policies in Singapore; or (iii) arranging contracts of insurance in Singapore, as an agent for *insureds* or intending insureds in respect of such policies.

Assuming a calculation agent merely calculates (on the parametric insurer's behalf) amounts payable under a parametric insurance contract, it does not appear that a calculation agent will be regulated as an insurance intermediary under Singapore law.

Main challenges of parametric insurance

A key challenge for parametric insurance in Singapore is that it is not yet a well known product and the necessary infrastructure in support of it (eg credible reporting and modelling agencies) is still being established.

In Singapore, the following principal factors play an important role in supporting the development of parametric insurance:

- the existing tax incentive (e.g. the "Insurance Business Development" (IBD) scheme) extended to traditional insurance business also applies to parametric insurance;
- the MAS has been supportive of insurance-linked securities and launched an ILS grant scheme in February 2018 that allows sponsors to receive a cost saving on the issuance of their ILS transactions;
- the MAS is supporting the development of NatCatDax which aims to provide independent market loss estimates that will help to encourage the development of parametric (re)insurance covers;
- the MAS contributed to the establishment of the ASEAN Cross Sectoral Co-ordinating Committee on Disaster Risk Financing and Insurance so as to strengthen regional co-ordination of disaster risk management; and
- the ASEAN+3 countries have come together to establish the Southeast Asia Disaster Risk Insurance Facility (SEADRIF) to provide participating ASEAN countries with climate and disaster risk solutions. SEADRIF Insurance Company Pte. Ltd. is licensed with the MAS as a general insurer.

What are the main potential litigation exposures for parametric insurance in your jurisdiction?

Areas of potential litigation exposure for parametric insurance include:

- indemnity disputes given this product is relatively new and untested in the Singapore market;
- regulatory investigations by the MAS;
- contribution or double recovery claims given the potential interface with conventional insurance; and
- claims management.



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Thailand

Thailand's main economic drivers are the agricultural, manufacturing and hospitality sectors. These sectors have historically been vulnerable to the effects of climate change type disasters (e.g. floods) and other natural catastrophes (e.g. tsunamis). Parametric insurance is unique in that it offers predefined payouts when a trigger event occurs. Parametric insurance is a promising new insurance product that can help mitigate the impacts of natural catastrophes in Thailand.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric insurance contracts fall under the definition of an insurance contract under the Thai Civil and Commercial Code. In Thailand, insurance contracts are formed on the basis of the indemnity principle, meaning that insurance contracts are designed to compensate an insured person for their loss, not enrich them.

Is there any dedicated law defining parametric contracts in your jurisdiction?

There is no specific law governing parametric insurance. As parametric insurance contracts are considered insurance contracts, the general principle of insurance law under the Thai Civil and Commercial Code would apply. The Office of the Insurance Commission is the Thai insurance regulator. Its role includes approving new insurance products and policy wordings.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

As parametric insurance contracts are considered insurance contracts under the Thai Civil and Commercial Code and the undertaking of insurance business includes the reinsurance business, all laws applying to insurance contracts will apply to reinsurance contracts and parametric insurance contracts. Therefore, a non-admitted insurer seeking to reinsure parametric insurance contracts would not be permitted to do so in Thailand. Similarly, a licensed intermediary would not be permitted to offer any parametric insurance product provided by a non-admitted insurer (unless the intermediary has obtained a specific brokerage license to offer reinsurance products).

Would the calculation agent be qualified as an insurance intermediary?

In Thailand, insurance intermediaries include agents and brokers. As the role of the calculation agent is different from an agent or a broker, the calculation agent would not qualify as an insurance intermediary.

Main challenges of parametric insurance

Given that payouts in parametric insurance policies are calculated using an objective formula, these payouts may differ from the actual loss or damage suffered by an insured. Payouts may exceed the actual loss or damage suffered by an insured. This raises some legal questions because, although insurance contracts are based on the principle of indemnity, parametric insurance payouts may exceed an insured's economic loss.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Records of civil cases are generally kept private between the parties to a case. However, the Supreme Court publishes summaries of select Supreme Court judgments. Based on our review of these cases, there is no significant litigation concerning parametric insurance currently taking place in Thailand. Given the relative novelty of parametric insurance on the Thai insurance market, we believe that litigation may arise in the context of:

- Trigger event wordings – insured v insurer
- Misrepresentation claims – insured v brokers
- Negligence claims – insured v calculation agents.

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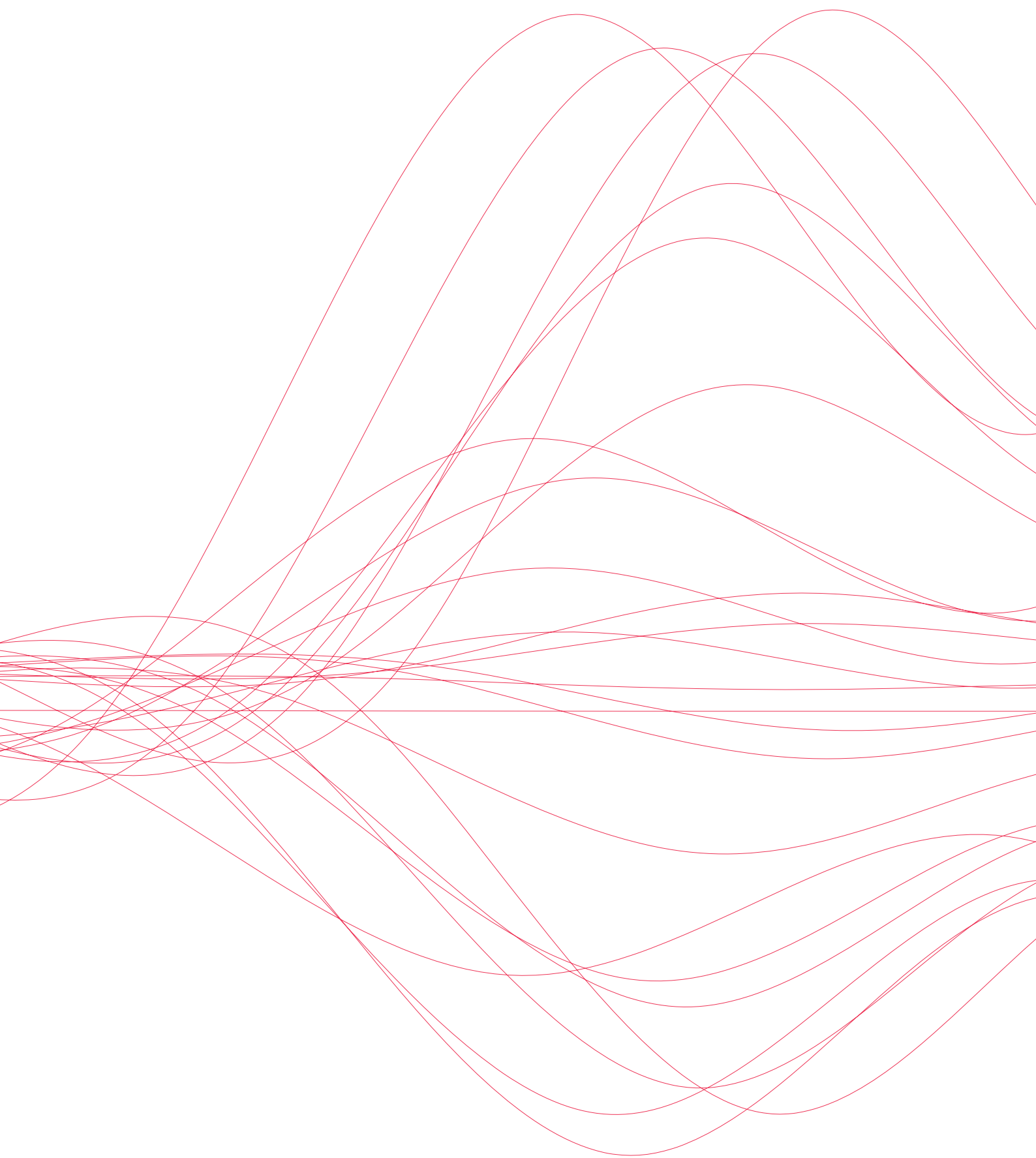


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An aerial night view of a city skyline, likely London, featuring numerous illuminated buildings and a prominent river. The sky is a mix of deep blue and orange from the setting or rising sun. A dark blue horizontal bar is overlaid on the right side of the image, containing the word "Europe" in white serif font.

Europe

Austria

The market for parametric insurance is not very mature in Austria. Some insurers offer parametric insurance to companies. And some insurers have partnered with companies offering devices that are able to measure the relevant parameter. The most prominent type of parametric insurance appears to be parametric weather insurance.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. In Austria, parametric insurance contracts are considered insurance contracts. Parametric insurance contracts are defined as insurance products for which no claim assessment is required. The insurer already provides coverage to the policyholder when certain markers (or “triggers”) are reached.

Is there any dedicated law defining parametric contracts in your jurisdiction?

Yes. Since parametric insurance contracts are considered an insurance product in Austria, they are not subject to a separate regime. Therefore, the general regulations for insurance contracts are applicable. These are:

- General Conditions of Insurance
- Insurance Supervision Act
- Insurance Contract Act
- General civil law regulations (General Civil Code, Distance Financial Services Act; etc.)

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Since parametric insurance contracts are considered ordinary insurance products in Austria, the regulations of reinsurance are also applicable on them.

Would the calculation agent be qualified as an insurance intermediary?

Under Austrian law it is not entirely clear whether a calculation agent could be classified as an insurance intermediary. The Austrian legislator transposed the definition of insurance distribution contained in the Regulation (EU) 2016/97 almost verbatim.

So the definition of insurance distribution also contains the phrase “assisting in the administration and performance of such contracts, in particular in the event of a claim.”

If interpreted literally, calculation agents could arguably also be encompassed in the definition of insurance distribution under Austrian law. Usually experts engaged to assist to determine whether an insured event occurred or a damage was suffered are not considered insurance intermediaries.

We’d say that calculation agents are not insurance intermediaries. But so far there is no published case law or guidance that would determine whether calculation agents are insurance intermediaries.

Main challenges of the parametric insurance

Parametric insurance is still a novelty in Austria so corresponding case law does not exist. We consider the precise definition of the “markers” or “triggers” that trigger an automatic obligation to pay on the part of the insurer to be one of the greatest factors of uncertainty (for both the insured and the insured). In the case of international groups, for example, it may occur that a business interruption in the course of the failure of a “third party” (e.g. cloud provider) in a group company is insured, but not the downstream business interruption of a sister company in the group structure, which occurred as a result of the business interruption of the originally affected sister company. Such chain damages are only one immanent risk.

In the area of weather or catastrophe insurance, the selection of the wrong “marker” or “trigger” can also lead to a lapse of the insurance coverage or to an unjustified obligation to pay benefits. For example, linking the obligation to pay benefits to a certain amount of precipitation can lead to an obligation to

pay benefits on the part of the insurer to an insured, even though no damage occurs in the areas where the precipitation occurred. Conversely, the insured who has suffered damage due to flooding may not be entitled to payment because the precipitation in the relevant region has not hit the agreed threshold.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Parametric insurance is not yet very widespread in Austria, so typical issues are not yet reflected in published case law. However, based on the analyses so far, we believe that insufficient clarity in the definition(s) of triggers or thresholds may lead to frustration both on the part of the insured and the insurer.

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Belgium

Parametric insurance is a novelty on the Belgian market. While it's still in its early stages, we anticipate a growing interest where protection gaps increase. The surge of catastrophic risks, such as climate-related events (e.g. flooding, hail, drought) and cyber incidents, may affect the availability of general insurance capacity on the market and accelerate the development of parametric insurance products.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

An insurance contract is defined by Article 5. 14° of the Act of 4 April 2016 on Insurances (Insurance Act) as "an agreement, whereby one party, the insurer, undertakes towards another party, the policyholder, in return for payment of a fixed or variable premium, to provide a service specified in the agreement in the event of the occurrence of an uncertain event in which, as the case may be, the insured or the beneficiary has an interest in it not occurring."

In principle, parametric insurance falls within the scope of this definition, provided that the insured has an insurable interest in the insured event not occurring.

Is there any dedicated law defining parametric contracts in your jurisdiction?

There are no specific rules applicable to parametric insurance. Instead, the general framework on insurance contracts, as set out in the Insurance Act and its implementing Royal Decrees, is applied.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, there are no specific regulatory limitations on reinsuring parametric insurance contracts.

Would the calculation agent be qualified as an insurance intermediary?

Article 5, 20° of the Insurance Act defines an "insurance intermediary" as "any legal entity or any self-employed natural person within the meaning of social legislation who is not an insurance or reinsurance undertaking and not an ancillary insurance intermediary and who, against remuneration, has access to the insurance distribution business or carries on the insurance distribution business."

Article 5, 46° of the Insurance Act defines "insurance distribution" as "the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim."

While the Insurance Act does not provide for an explicit exemption of the activities of calculation agents, there are reasonable arguments to say that they fall, in principle, outside the scope of the definition of insurance distribution. In that case, the calculation agent does not qualify, as such, as an insurance intermediary.

The Belgian competent regulator for supervision on insurance distribution, the Financial Services and Markets Authority (FSMA), interprets the definition of insurance distribution broadly. The parties should carefully consider the activities of the calculation agent on a case-by-case basis to determine whether any of its activities fall within the scope of the definition of insurance distribution.

Main challenges of parametric insurance

To avoid a requalification into a prohibited probability contract (*kanscontract/contrat aléatoire*), a regulated derivative contract or another regulated financial product – leading to a possible nullity of the contract – the parties to parametric insurance should carefully consider whether the insured or beneficiary has an insurable interest.

As this product is not common on the Belgian market, the regulators' position towards parametric insurance is unknown. This regulatory uncertainty makes it difficult to assess whether the calculation methods and actuarial models used, as well as the precontractual disclosures when distributing the product, are permissible.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

We are not aware of any litigation concerning parametric insurance on the Belgian market.

Any possible litigation may concern the qualification of the product, precontractual disclosures and the interpretation of policy wording.

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Bulgaria

Parametric insurance is a fitting option for some of the most prominent industries in Bulgaria. In particular, the large agricultural sector in Bulgaria, much like other Southern European countries, has expressed concerns over the growing number of severe climate change-related events, which are expected to persist in the coming years. Although parametric insurance schemes remain relatively new in Bulgaria, they have generated growing interest, particularly among agricultural circles. Additionally, the tourism sector is a priority area of the economy and given the pandemic's adverse impact on the industry, many tourism businesses are looking for optimal protection. Parametric insurance is a viable solution that provides these and many other businesses with much-needed financial security.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. While parametric insurance contracts are not explicitly regulated in Bulgaria, they can be categorized under general insurance per Section II, Annex 1 to the Bulgarian Insurance Code. This is because Art. 387 of the Code permits the adoption of a *contractual insurance value* whereby a fixed monetary amount is paid out in the realization of the given insurance risk regardless of actual damages realized.

The agreed value is not disputable by the parties, and different insurance values may be stipulated for the different insurance risks under the same insurance contract. Therefore, the law permits the specification of different contractual insurance values for varying magnitudes (parameters) of a given insured risk.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. As indicated above, parametric insurance contracts are not an explicitly regulated category of insurance contracts under Bulgarian law. The Insurance Code (Promulgated, SG No. 102/29.12.2015, last amended, SG No. 25/29.03.2022) is a codifying law, regulating all types of insurance contracts in the country, including special and mandatory classes of insurance. Parametric insurance can fall under the many different classes of general insurance, listed in Section II, Annex 1 to the Insurance Code (e.g. climate events, fires, pandemics).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Reinsurance of parametric insurance contracts would follow the same rules as for general insurance. Crucially, Art. 202(3) of the Insurance Code does not permit the regulator (the Bulgarian Financial Supervision Commission, FSC) to prohibit the conclusion of a reinsurance contract with a reinsurer licensed under the Bulgarian Insurance Code or with a reinsurer from another EU Member State.

Would the calculation agent be qualified as an insurance intermediary?

No. Insurance and reinsurance intermediaries are regulated exhaustively in Title II, Chapter 29 of the Insurance Code and are defined as persons who pursue the activity of insurance distribution for remuneration. The activity consisting of solely calculating insurance indemnities is not explicitly regulated. While this activity is under the ambit of the insurer/reinsurer, using third-party services to calculate the size of an owed indemnity is a rather common practice in other types of insurance.

Main challenges of parametric insurance

A key concern regarding the implementation of parametric insurance in Bulgaria is the lack of specific legal provisions governing it. Although most parametric insurance contracts can be classified under general insurance per the existing provisions in the Insurance Code, the Bulgarian regulator may exhibit conservatism towards innovative products. Despite the growing global interest in parametric insurance, its adoption is limited in Bulgaria. Public discussion of this insurance type has been primarily restricted to large agricultural producers and associations, and environmental organizations. To mitigate potential regulatory backlash, clear communication with the Financial Supervision Commission (FSC) is essential before distributing parametric policies. This is particularly crucial during the initial phase of parametric insurance events, where clear understanding and approval from the FSC may be necessary in potential disputes over indemnity amounts.

The absence of specific parametric regulations could lead to potential issues when applying complex parameter calculation mechanisms to contracts, particularly in light of the general rule on fixed contractual insurance values.

Lastly, and equally significant, Bulgaria's geographical position in Southern Europe may expose it to heightened cumulative insurance risks, particularly those related to climate.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

A pertinent risk would be the attempted annulment of the insurance policy as non-compliant with the rules of the Insurance Code, or the attempt to challenge the indemnity amounts. This is connected to two of the issues identified in the previous question – a lack of specific legal basis and the limits of the general contractual insurance value concept. Insured persons who have suffered higher damages than the indemnity given per the applicable parameter may attempt to challenge the validity of the parametric contract as a whole or argue that the mechanism used to calculate the indemnity cannot be construed as a contractual insurance value (the amount of which cannot be disputed if the clause is valid).

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Croatia

The local insurance market is small and largely standardized product-wise. However, recent developments show a tendency towards the introduction of new and innovative products that could indicate the market's readiness for new types of insurance coverage.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. However, parametric insurance contracts are not specifically regulated under the local legal framework as such.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. However, all insurance activities conducted locally must be in line with the Insurance Act and its pertaining secondary legislation, while the Civil Obligations Act is primarily relevant for insurance contracts.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, presuming that the entity has been recognized as a reinsurance company before the local regulator.

Would the calculation agent be qualified as an insurance intermediary?

The calculation agent could be qualified as an insurance intermediary, depending on the scope of its activities. In such an event, the calculation agent would have to be recognized as an intermediary before the local regulator.

Main challenges of parametric insurance

The main challenge will likely be the lack of regulatory guidance and/or soft law, which could prove problematic for introducing new models or products such as parametric insurance.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Parametric insurance is still relatively new on the Croatian market, so there is a lack of practice (both regulatory and court) before local bodies. This could negatively impact market players' decisions when opting for this type of insurance.

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Czech Republic

While at an international level, parametric insurance is a developing, growing type of insurance service, its use on the Czech insurance market is, to our knowledge, at a minimum level.

Nevertheless, one can expect that in accordance with general global trends, parametric insurance will enjoy growing awareness on the Czech insurance market and find interested parties – insurers and policyholders/the insured, taking this opportunity where it serves their needs.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, the concept of parametric insurance falls under insurance as a contractual type defined by Czech Civil Code.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, there is no specific regulation of parametric insurance. It is just a permissible means of structuring an insurance contract (policy) in general.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, this should be possible – in principle, where an insurance contract is concluded (which as said above is possible for parametric insurance under Czech law), it can also be reinsured.

Would the calculation agent be qualified as an insurance intermediary?

No, calculation agents in parametric insurance (like loss/claim adjusters/handlers in standard insurance) do not qualify as insurance intermediaries from a Czech insurance law regulatory perspective.

Main challenges of parametric insurance

There is generally extremely low awareness about the product across the market. Consequently, its introduction would require considering whether relevant contracts can be governed by non-Czech laws, or otherwise transforming the contractual documentation for parametric insurance to Czech law in the first place.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Given the situation on the Czech market, as described above, this is extremely difficult to anticipate.

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Denmark

In Denmark, climate change's escalating effects and focus on renewable energy prompt a budding interest in parametric insurance. Parametric insurance aims at providing an innovative alternative risk solution to businesses to complement traditional insurances. While still in its early stages, it is anticipated that the interest will rise as part of businesses' global outreach, ESG agenda and associated risk management strategies.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. However, according to Danish law the insurance company may be entitled to (only) indemnify the suffered loss provided that the insurance company can prove that the agreed insurance sum exceeds the loss.

Is there any dedicated law defining parametric contracts in your jurisdiction?

Yes, the Danish Act on Insurance Contracts clause 39.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, but please see above.

Would the calculation agent be qualified as an insurance intermediary?

No, the calculation agent does not have to register as an insurance intermediary.

Main challenges of parametric insurance

Please see above.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

To our knowledge there is no litigation regarding parametric insurance in Denmark.

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Finland

According to our understanding, parametric insurance products have not as of yet been (widely) offered by private insurance companies on the Finnish market. This might be due to private insurers' presumed cautiousness in underwriting systemic risks, and the public's general lack of awareness regarding such products. The general global trends relating to e.g. environmental uncertainties could result in increased demand for such products.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, provided that the products adhere to the general indemnity principle. The types of risks that can be insured are not very strictly regulated and freedom of contract is broad, especially in non-consumer insurance contracts.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. The Finnish Insurance Contracts Act (543/1994), which is the general insurance statute in Finland, will apply.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Rights and obligations under reinsurance are determined according to general (re)insurance law practices and principles.

Would the calculation agent be qualified as an insurance intermediary?

No, if the tasks are limited to carrying out the calculations.

Main challenges of parametric insurance

Different types of government support measures and EU regulations may cause unwillingness to take out parametric insurances in some sectors. For example, in respect of crop failures the government hands out

emergency aid which might lower the willingness to pay for parametric insurance. Awareness of the existence and characteristics of parametric insurance is low.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

So far there have been no court cases regarding parametric insurance. The main issues in litigation would probably concern the threshold and interpretation of the relevant parameter and related evidentiary issues.

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France

France is at the forefront of parametric insurance solutions with key players having developed the model. There is a strong demand for parametric in France as it is somewhat more tailor-made. The regulator has also confirmed that this type of insurance is an insurance service. There are many legal challenges; from policy drafting to distribution.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric contracts will qualify as insurance contracts as long as the indemnity principle (*principe indemnitaire*) can be satisfied.

A parametric contract will qualify as an insurance contract where it is a requirement of the contract that the insured party is exposed to the risk of loss upon occurrence of the reference event (i.e. has an insurable interest in the subject matter of the insurance).

Conversely, a parametric contract might qualify as a financial/derivative contract where the payout is not dependent on whether the receiving party suffers a loss or is exposed to a loss on the occurrence of the reference event.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. Parametric insurance contracts are subject to the same laws and regulations governing general insurance contracts. Various issues arise in managing and setting up parametric insurance (regulated distribution, conflict of interest issues, indemnity principle) but they should be analyzed via common insurance law principles.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Reinsurers carrying on insurance business in France require authorization, but reinsurers may alternatively reinsure risks located in France on a non-admitted basis, if they do so in a way that falls outside the French regulatory framework.

Would the calculation agent be qualified as an insurance intermediary?

This would depend on the circumstances. A calculation agent might conduct regulated activities of arranging deals in investments, making arrangements with a view to transactions in investments, or assisting in the administration and performance of a contract of insurance, in which case they might need to be authorized to carry on insurance distribution activities in France. But alternatively, if the calculation agent only manages losses, they will not be deemed as a regulated insurance intermediary. This would need to be assessed on a case-by-case basis.

Main challenges of parametric insurance

Parametric insurance contracts should be structured carefully to ensure they respect the indemnity principle and cannot be characterized as financial derivative products rather than insurance. Insurers operating in France are restricted to offering insurance products and would be in breach of French law and regulation if their products did not qualify as such and they do not hold the appropriate license.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

At the time of publication, there has been no notable litigation in France concerning parametric insurance.

Based on previous litigation in the (re)insurance market (on non-parametric issues), we anticipate potential litigation by (re)insurers seeking to avoid liability under (re)insurance policies on the ground that the policyholder had no insurable interest or reinsured loss and so the (re)insurance policy is unenforceable.

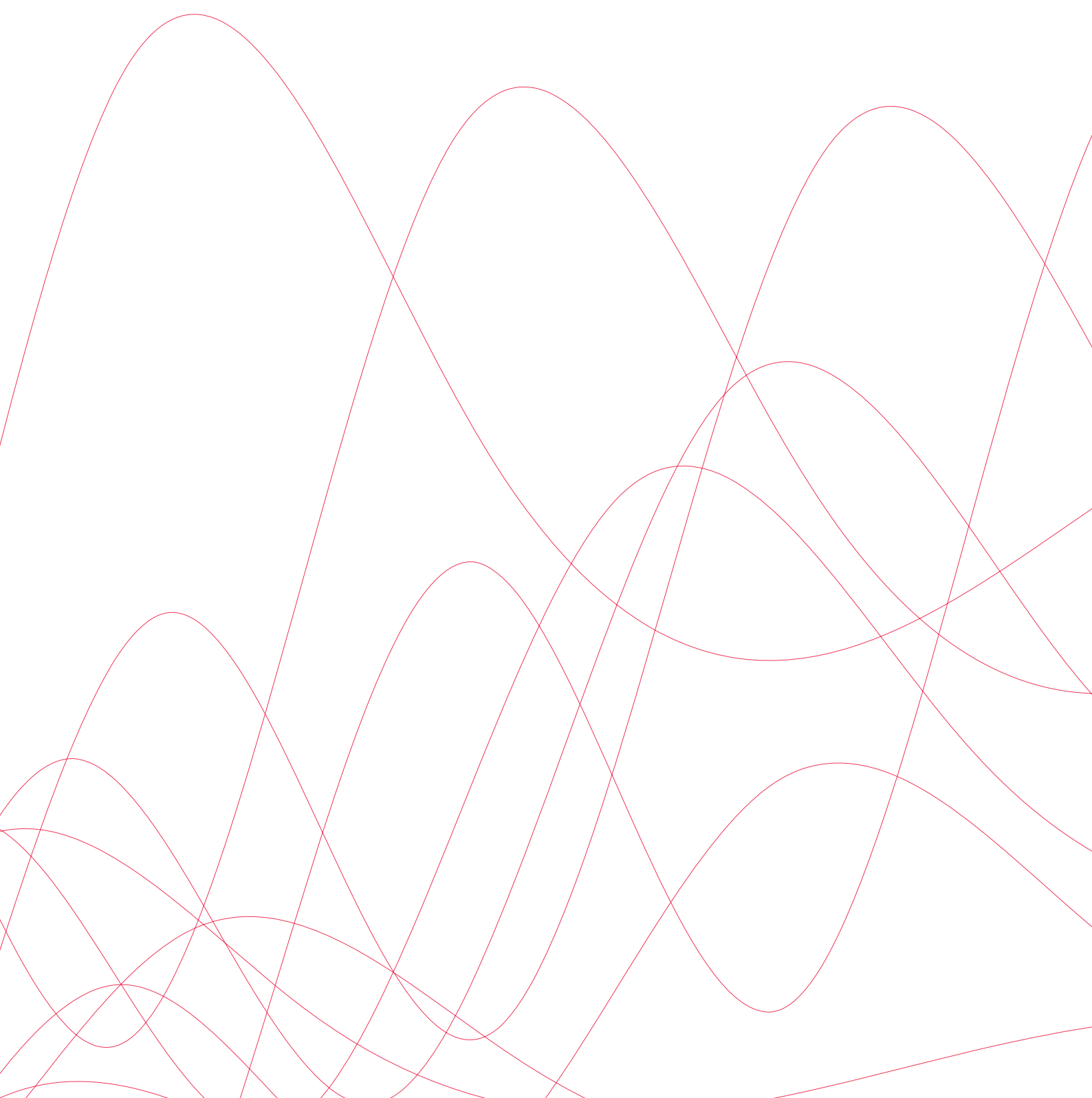
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Germany

The concept of parametric risk coverage can facilitate or even sustain insurance business, especially in the context of the increase in climate-related events of damage or loss. Furthermore, in times of digitalization, it offers the possibility of handling claims almost in real time, which makes the offer of technology-based insurance solutions and, therefore, the insurance market for insurtechs even more attractive.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

The coverage of parametric risks is not specifically regulated under German law. The crucial point with regard to covering parametric risks is whether actually a certain risk is covered if the insured receives an insurance benefit even if they do not necessarily suffer a loss or damage.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. However, it is allowed under German insurance contract law to determine the insurance value by agreement of a certain amount (agreed value), cf. Sec 76 German Insurance Contract Act (*Versicherungsvertragsgesetz, VVG*). Therefore, if a contract/policy covering a parametric risk meets the requirements for agreeing on a fixed amount in accordance with Sec. 76 VVG to be paid when a specific trigger occurs (e.g. a natural event that reaches/exceeds a certain threshold on a certain scale or a train/flight delay) this could be considered insurance under German law.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, if and to the extent covering parametric risks on the primary level concerned is considered insurance and/or the non-admitted principle is complied with.

Would the calculation agent be qualified as an insurance intermediary?

Based on the understanding that the calculation agent is the entity/person calculating the amount to be paid under the parametric insurance, in our view the better reasons speak for the calculating agents not being considered as insurance intermediary, but rather as an expert used. Though also assisting in the administration and performance of insurance contracts, in particular in the event of a claim, will be considered as an insurance distribution activity.

Main challenges of parametric insurance

To (still) qualify as insurance, the risk that the agreed value of the parametric risk insurance deviates from the actual amount of loss or damage should be minimized to the most possible extent, for example by using weighted parametric triggers. This is, of course, somewhat diametrically opposed to the approach of parametric insurance to make it less complex. Further aspects to be considered when setting up parametric insurance policies are potential conflicts of interests, inclusion of parametric in a global insurance programs in large corporate groups and licensing issues.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

So far, there is no specific parametric related litigation known or anticipated. However, it could be the case that the concept of parametric insurance as a whole and, therefore, the validity of the product will be challenged by a court dealing with parametric insurance aspects in future.

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Greece

Parametric insurance is not currently common in Greece. It is mostly offered by foreign insurers doing business in Greece for natural catastrophes and financial losses. There is no specific regulation or known court precedents regarding parametric insurance.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Parametric insurance is not specifically regulated under Greek laws. However, as long as the element of indemnity is present and respected, parametric insurance should be construed as an insurance product. Ad hoc assessment of specific products is strongly recommended.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, there is no specific law defining parametric contracts. The main legal source applicable to insurance contracts is the Insurance Contract Law embedded in Law 2496/1997 as in force.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, it is. Generally, reinsurance is a contract that follows the insurance contract and there is wide contractual freedom of the parties, subject to limitations like the non-admitted principle.

Would the calculation agent be qualified as an insurance intermediary?

No, the mere calculation of the amount payable under an insurance contract, would not *per se* amount to insurance intermediation.

Main challenges of parametric insurance

Parametric insurance is currently very limited and only for climate-related insurance risks. Therefore, the main challenge would be the regulation of its particular features in a manner that will also make it more comprehensible for insureds and policyholders. This, in turn, would enable its spread in other areas of risk such as business interruption and motor liability.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no known litigation regarding parametric insurance in Greece. Litigation on parametric should be expected on its recognition as a form that meets the basic element of insurance.



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Ireland

In spite of the relatively small size of the country, Ireland is the fourth largest insurance market in the EU and is also the third largest reinsurance market in the EU. Ireland is also home to a thriving tech sector; all of the top 10 global software companies and the top 10 'born-on-the-internet' companies are based in Ireland. The combined presence of many leading insurers along with the world's leading tech firms, means that Ireland, as an EU Member State, is well-placed to be at the forefront of developments in parametric insurance and insurtech more generally.

Ireland also has a regulator who understands parametric insurance and just one proof point of this is the fact that the Central Bank of Ireland has granted authorisation to a newly established wholly parametric insurer.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. In Ireland parametric contracts tend to adopt a form which in which the main characteristics of insurance are present.

It is possible that a parametric contract might fall outside the scope of insurance, and thus be regarded as a non-insurance derivative, where one or more of the key characteristics of insurance is not present.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No laws have been introduced to specifically address parametric insurance. Parametric insurance contracts are subject to the same laws and regulatory requirements that apply to traditional insurance.

While the characteristics of insurance have been identified in case-law, the activities of insurance undertakings are subject to the regulations that transposed Solvency II into Irish law. Insurers are also subject to many additional pieces of legislation, including the Consumer Insurance Contracts Act 2019. The activities of those firms engaged in the distribution of insurance are primarily subject to the Irish Regulations that transposed the Insurance Distribution Directive into Irish law. In addition, insurers and intermediaries are required to comply with a series of codes and rules that have been introduced by the Central Bank of Ireland, such as the Consumer Protection Code.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. However, non-admitted insurance is not permitted in Ireland unless the (re)insurer holds authorisation from an EEA Member State.

Would the calculation agent be qualified as an insurance intermediary?

Insurance intermediaries are subject to the Irish Regulations that transposed IDD into Irish law. Those Regulations regulate "insurance distribution" activities. This term is defined in very broad way, and it is quite possible that the calculation agent's activities could fall within the scope of that term. However, a legal analysis would need to be carried out by reference to a specific set of circumstances.

Main challenges of parametric insurance

The use and availability of parametric insurance is continuing to grow. Much of the legislation governing the insurance sector in Ireland pre-dates the introduction of parametric insurance. This means that parametric insurers are required to adhere to the same requirements that apply to more traditional insurers. While the Central Bank of Ireland understands parametric insurance, the application process for the authorisation of a parametric firm is the same as that applicable to a regular insurer. In a similar vein, the Central Bank of Ireland tends to apply the same approach to the regulation and oversight of parametric firms as it would to a regular insurer.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

At the time of publication, we're not aware of any litigation in Ireland concerning parametric insurance.

We note that the business model of some of the parametric insurers is on low-value, high-volume parametric products. Therefore, disputes arising from the sale of those particular policies are unlikely to give rise to litigation. In those instances, any unresolved disputes are more likely to be presented to the Financial Services and Pensions Ombudsman for resolution.

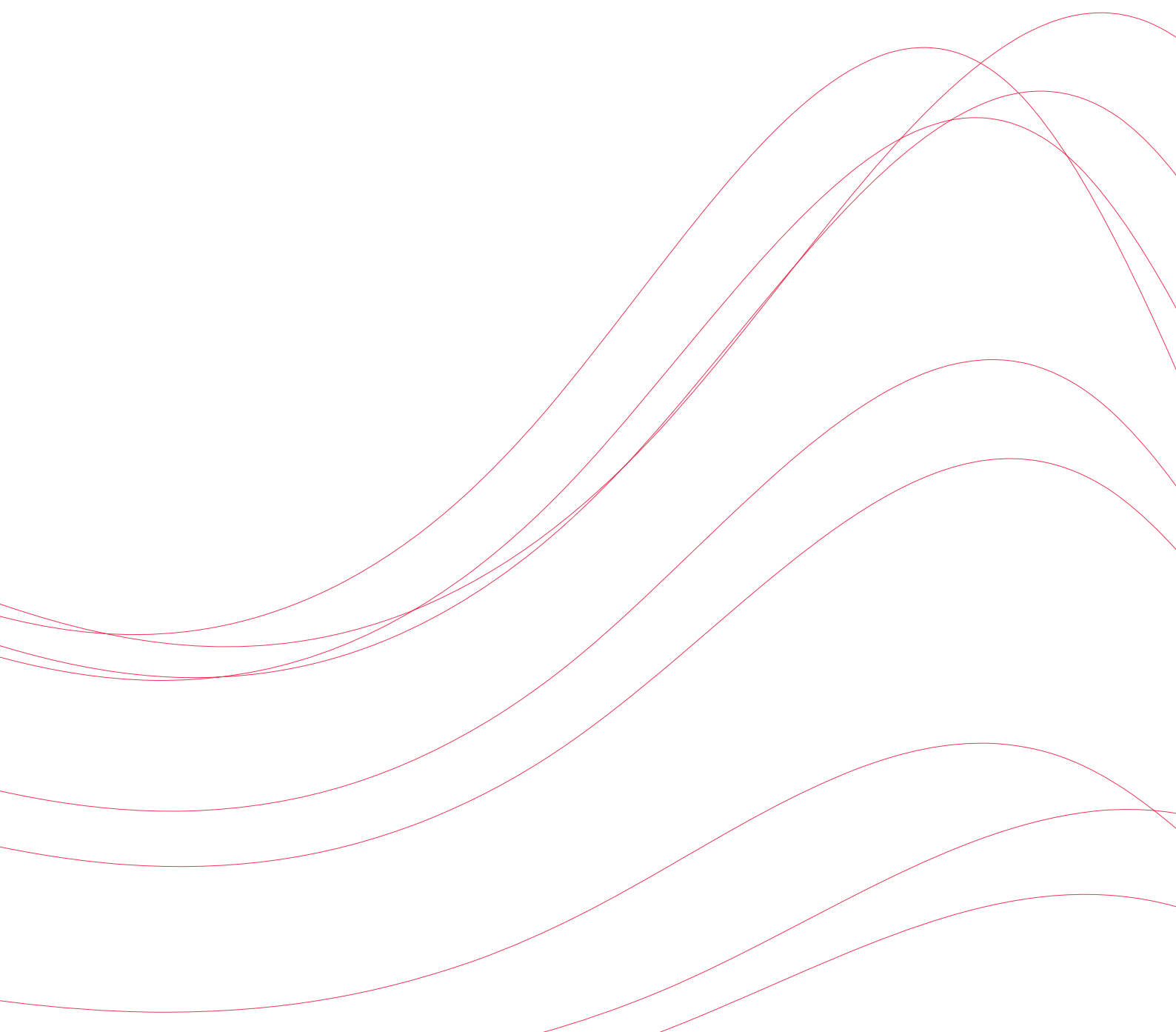
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Italy

Parametric insurance policies have recently become common in the Italian market, particularly with a view to limiting the impact of adverse weather events or other external agents with consequences that are potentially catastrophic. The Italian regulator (IVASS) stated that parametric insurance may provide several benefits, for both the insurance company and the insured, including lower management costs and fast liquidation of damages. IVASS also stressed that, since parametric policies are based on objective data provided by third parties, there should be no risk of fraudulent disputes or claims.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

In the absence of specific legal sources on the matter, according to scholars, parametric policies may be considered lawful insurance contracts falling within the category of “estimated policies” as referred to in Article 1908(2) of the Civil Code, where “estimate” meaning not “the insurable value in view of the payment of compensation” but rather “a contractual provision that makes it possible to determine such value *per relationem* by establishing unequivocal criteria based on pre-established quantitative parameters” and, as a result, compliant with the indemnity principle.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No there are not. See above.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

There are no provisions preventing re-insurance of risks underwritten under parametric insurance.

Would the calculation agent be qualified as an insurance intermediary?

Not necessarily. The qualification of the calculation agent as an insurance intermediary depends on whether they perform at the same time distribution activity, subject to compliance with the applicable rules in the matter of conflict of interests.

Main challenges of parametric insurance

The main challenge seems to be the one relating to the basis risk, i.e. the possible divergence between the insurance pay-out (i.e. indemnification) and the actual loss suffered by the insured. For the purpose of minimizing such possible divergence, specific measures can be taken at the contractual level and at the level of the definition of policy triggers. Also, the identification of the right indexes and their application to the risks to be covered may be a challenge.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

One of the main envisaged advantages of parametric policies should be the reduction of complaints/claims given that the pay-out is predetermined upon the occurrence of certain “mathematical” conditions agreed upon by the parties. A possible litigation scenario may come from the erroneous set up of the triggers, i.e. in such a way that payment is (almost) always precluded so that clients’ expectations are not met.

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Lithuania

Although parametric insurance is not yet widespread in the Lithuanian insurance market, there is a noticeable rapid development of this product in Europe. So it's likely that parametric insurance soon may also take a large market share in the Lithuanian insurance market by offering faster indemnity payments compared to other types of insurance.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

The parametric insurance contract would be considered an insurance contract in Lithuania if it matches the key criteria of insurance contracts under Lithuanian law, i.e.: one party (insurer) undertaking to pay the insurance indemnity in return to a premium; the indemnity is calculated in accordance with the methods set in the insurance contract; the indemnity is paid only if the insured event specified in the insurance contract has occurred.

Is there any dedicated law defining parametric contracts in your jurisdiction?

There is no specific legal act regulating parametric insurance in the Republic of Lithuania. However, in general insurance legal relations in Lithuania are regulated by the Civil code of the Republic of Lithuania, Law on Insurance of the Republic of Lithuania and Resolutions and Recommendations of the Board of the Bank of Lithuania (Financial Supervisory Authority).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

The reinsurance of parametric insurance contracts are not specifically regulated in Lithuania but are not prohibited either.

Would the calculation agent be qualified as an insurance intermediary?

If the calculation agent's activities were only limited to claims administration, i.e. gathering evidence about the occurrence of the insured event and determining the insurance indemnity according to the parameters set in the insurance contract, such activity would be considered as claims handling activities so it wouldn't qualify as insurance distribution services under Lithuanian law.

Main challenges of parametric insurance?

Considering that parametric insurance is a relatively new type of insurance product in Lithuania, there are no disputes and complaints regarding this product yet, so it's difficult to assess the possible risks and the regulator's approach towards it. However, due to the complex nature of parametric products, it may be difficult for insurers to properly define the insured events, provide clear and accurate information on the product to the policyholders (especially if the product is distributed to the consumers) as required under the local law.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Considering the fact that parametric insurance issues have not been examined in Lithuanian courts yet, it may be difficult to predict possible issues. However, like in other insurance-related disputes, the main concerns will possibly be related to sufficiently clearly and timely disclosed pre-contractual information as well as insurance conditions in the insurance contracts and the proper familiarization of the policyholder with the insurance conditions and the special nature of the parametric insurance.

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Luxembourg

The design and distribution of parametric insurance contracts is not well developed in Luxembourg. Nevertheless, this type of insurance has a bright future as climatic risks (e.g. floods, crop damage, hail) intensify and there is a need to cover certain risks or to protect them even better. Innovation will slowly but surely come to the rescue of insurance and offer new products. Insurers are investing in innovation and new parametric insurance products will gradually emerge to meet a variety of insurance needs.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, a parametric insurance contract should fall within the definition of an insurance contract given in Luxembourg by the law of 27 July 1997, as amended (the Law).

The Law defines an insurance contract as: “a contract under which, in return for the payment of a fixed or variable premium, one party, the insurer, undertakes to provide a benefit stipulated in the contract in the event that: in non-life insurance, an uncertain event occurs which the insured has an interest in not having happen.”

In the light of this legal definition, parametric insurance would seem to meet these conditions. Indeed, there is a risk of gain or loss depending on an event.

Subject to the contractual provisions of the product, parametric insurance would fall into the category of indemnity insurance. As a result, the amount to be paid by the insurance company may not exceed the loss suffered by the policyholder. Therefore, the parametric contract should provide for a ceiling on the lump sum to be paid so it does not exceed the loss suffered by the policyholder. Failing this, the product could qualify as a financial product.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. The principles of the Law and the Civil Code regarding insurance must be respected. The law of 7 December 2015 on the insurance sector, as amended, must also be complied with by the insurer/distributor of the insurance product.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, reinsurance activity in Luxembourg, which consists in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking, is authorized provided that the reinsurer, if based in Luxembourg, is approved/licensed by the Commissariat aux Assurances.

Would the calculation agent be qualified as an insurance intermediary?

No, the calculation agent would not be qualified as an insurance intermediary provided that it is not regarded as contributing to the management and performance of insurance contracts. However, the calculating agent could possibly fall into a category regulated by the CAA: that of claims adjusters, i.e. natural and legal persons whose usual activity is to provide services related to the compensation of beneficiaries of insurance contracts.

Main challenges of parametric insurance

Many legal challenges undoubtedly hinder the development of parametric insurance contracts in Luxembourg. These include the difficulty sometimes linked to the design of the product which can lead to the product being reclassified as a financial product if certain requirements are not met, the practical difficulty of finding independent paying agents who can settle quickly and efficiently if the insurer must settle in the event of a claim a policyholder, and the lack of knowledge of specialists in the sector about this specific type of insurance.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Insurance disputes are quite rare in Luxembourg. To avoid them, it is possible to submit disputes to the ombudsman of the Association of insurance and reinsurance companies (ACA) to seek an extra-judicial settlement of the dispute. Notwithstanding this, the best way to avoid disputes is to have a well-written insurance product that is clear and understandable to the consumer and complies with all regulations applicable to the insurance product and its distribution.



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Netherlands

Parametric insurance is an innovative solution in the Dutch market, offering flexibility that is different from traditional insurance. The benefits of parametric insurance are often related to the payment when certain parameters are met, and this meets the growing need for alternative insurance where traditional insurance does not suffice or cover. As the Netherlands is one of the largest agricultural exporters in Europe, the most applicable type of parametric insurance is coverage for weather-related events. Also, climate and cyber related risks are widely discussed because of their growing importance.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. An insurance contract is defined in the Dutch Civil Code (*Burgerlijk Wetboek*, DCC) and includes four key elements. The general insurance definition in article 7:925 DCC is as follows: "an agreement under which one of the parties (the insurer) engages itself towards its counterpart (the policyholder) to pay one or more insurance benefits in exchange for an insurance premium, while neither party, at the moment they enter such an agreement, knows for certain if, when or to what amount any insurance benefits have to be paid, nor how long the agreed payment of insurance premiums will last." Parametric insurance includes all four elements that should be present to qualify as insurance. In relation to the indemnity principle, it is considered a general risk inherent to parametric insurance that the payment does not correspond to the actual loss suffered.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. There is no dedicated law for parametric insurance. In general, parametric insurance is viewed as a general (non-life) insurance contract addressed in a specific title in the DCC (Book 7, Title 17 DCC). The general provisions on information for policyholders in the European directives applicable to insurance undertakings and implemented in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, FSA) also apply to parametric insurance.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. There is no prohibition of reinsurance of parametric insurances.

Would the calculation agent be qualified as an insurance intermediary?

To the extent relevant for insurance distribution, according to Article 1:1 of the Dutch Financial Supervision Act (*Wet op het Financieel Toezicht*, the FSA), "intermediating" means all business activities that are aimed at, as an intermediary, concluding an insurance agreement between a consumer or client and an insurer and the execution thereof. According to guidance provided by the AFM, remitting relevant client information and any information consisting of more than name and contact details, is considered as intermediating. If not solely performed, assisting in the management and performance of the insurance agreement, including collecting premiums on behalf of the insurer or assisting a client in the event of a claim, could also be considered as intermediating.

The FSA is limited in its scope and therefore, as laid down in Article 1:21 (1) FSA, the FSA does not apply to insurance intermediation, to the extent that someone is professionally handling claims for an insurer or it involves claims settlement and claims expertise.

While there is no specific guidance on this exclusion in relation to parametric insurance or calculation agents and an assessment will always have to be made taking into account the specific circumstances at hand, it may be argued that there is room for a calculation agent that it does not meet the intermediary definition or would be otherwise excluded from regulation.

Main challenges of parametric insurance

In the Netherlands, like in many other jurisdictions, typical parametric risks tend to change during the insurance period. Furthermore, parametric insurance seems to be most interesting for risks that would lead to a total loss (e.g. climate related catastrophes) which are expected to occur more and more often, resulting in higher premiums. The high premium, undefined risk (to a certain extent) and it being a new type of insurance relying on new (often externally managed) mechanisms, such as data sets and weather reports, means that the regulator may raise concerns.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

In the Netherlands, insurance litigation covers a wide range of issues varying from disputes. We are not aware of pending significant litigation involving parametric insurance specifically. We do however expect litigation in relation to the elements of (high) premium and the dynamic risks. Also the growing awareness of climate-related risks will likely be a source of litigation.

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Poland

Parametric insurance products have started to appear especially in the agriculture and energy sectors and supplementary to BI insurance. They are offered by several insurance companies.

This insurance is not popular in Poland, although there are products on offer, not only to big enterprises but also for physical persons (tourist insurance). We've seen increased interest in this insurance (seminars organized, publications).

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, there is no other approach than in the case of "classic property insurance."

There is a main principle in Polish insurance law that in property insurance the compensation should not exceed the value of the damage and should not be a source of enrichment for the injured party, and there is a need to demonstrate the interest of the insured.

So far, this product is not treated differently than "classic property insurance."

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, the main rules regarding the insurance law apply i.e. civil code and Act on Insurance and Reinsurance Activity.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, there is no other treatment than other kinds of reinsurance.

Would the calculation agent be qualified as an insurance intermediary?

There is no established practice in this respect, so it's difficult to determine whether it falls within the scope of agency activities or is out of scope. In practice, separate entities are sometimes involved in defining the parameters, which may be a regulatory risk.

Main challenges of parametric insurance

Parametric insurance may not be considered as insurance due to the process of determining compensation in the event of an insured event (in practice such an activity is like the loss adjustment process).

Additional complications may arise in the presence of more than one insurance contract with a similar scope, and one of the contracts will be "classic," i.e. the compensation is the value of the damage. Normally, the payment of compensation is shared between the insurers, but in this case it is difficult to assess which of them pays and how much and if there is a settlement between them regarding the amounts paid as compensation.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Fundamental issues may concern the classification of this contract – whether it is an insurance contract or an unnamed contract (i.e. financial instrument other than insurance) because the payment of compensation is unrelated to the damage.

If it is an unnamed contract, the Civil Code rules regarding insurance contracts do not apply, only contractual provisions. The question may arise whether the insurance company was entitled to conclude such a contract.

An issue may also arise if the insured has several insurance contracts with various insurers with a similar scope and how to settle the claim in such a situation. If the compensation is paid out of the parametric insurance, then it's unclear if the insurer is obliged to pay the compensation out of the "classic insurance property contract" and if yes, how much.

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Portugal

Due to sun-exposure hours throughout the year and wind conditions, Portugal is an appealing market for renewable energies; parametric insurance is generally very much associated with climatic events, which makes Portugal a market with fast-growing potential for such an insurance product.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Parametric insurance is not specifically regulated under Portuguese law. The typical content of an insurance contract is that an insurance undertaking covers a pre-determined risk of the policyholder/ insurance beneficiary, by paying for an indemnity that is event-triggered and provided the relevant premium has been paid. As a result, and subject to specific product analysis, the rule should be that parametric insurance contracts qualify as insurance contracts.

Is there any dedicated law defining parametric contracts in your jurisdiction?

There is no law specifically dedicated to parametric insurance, nor any orientations from the Portuguese Insurance Authority on the matter. As a result, the general rules of the Portuguese Legal Framework on Insurance Agreements apply to parametric insurance, though some additional legal interpretation may be required.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

There is no legal provision or instructions from the supervisory authority on reinsurance of parametric insurance; as a result, the general rule should be that provided the legal framework on reinsurance is complied with, reinsurance of parametric insurance is allowed in Portugal.

Would the calculation agent be qualified as an insurance intermediary?

A person exclusively dedicated to the calculation of the insurance indemnity does not qualify as an insurance intermediary in Portugal.

Main challenges of parametric insurance

Lack of regulation opens up an opportunity for market players, but also adds to the challenge of navigating what is straightforward, allowed and acceptable, and what goes beyond that. Also, parametric insurance could be a great insurance product, but seldom requiring a conjugation with “traditional” insurance, which raises challenges on how to join these approaches in one single insurance program.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Insurance litigation in Portugal still revolves around “traditional” insurance matters. Courts are generally not prepared to discuss and decide on recent insurance products and the complexity attached to it. “Recent” or barely tested products, such as parametric insurance, raise questions, particularly the question around its qualification as insurance. As a result, arbitration is generally advisable.

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Romania

While parametric insurance is yet to be regulated on the Romanian market, such products appear to have stirred interest, particularly in the agribusiness sector. As such, there are currently broker offerings of the sort, designed to cover matters such as drought, although the conditions under which they are made or the underlying insurer are not specifically indicated. The market for such products is prone to fast development, also considering the significant relevance of the agribusiness sector in Romania, and the position to be taken by the local regulator in context should be monitored accordingly.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Parametric insurance is not regulated under Romanian law. However, any potential terms would need to comply with the general rules applicable to insurance contracts. Under Romanian law, insurance compensation is determined according to the condition of the asset as at the time of occurrence of the insured risk. Over-insurance is expressly forbidden under the Romanian legislation and it is provided that the value of compensation cannot exceed the value of the asset at the time of occurrence of the insured risk, the amount of the damage, nor the insured amount. Therefore, the terms of parametric insurance would need to be established in such way as to comply with these rules.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Our considerations above apply *mutatis mutandis* to reinsurance of parametric insurance.

Would the calculation agent be qualified as an insurance intermediary?

Insofar as Romania is concerned, such qualifications cannot be made as parametric insurance contracts are not regulated so this category of potential intermediary is not in itself regulated.

Main challenges of parametric insurance

The lack of a regulatory framework hinders an appropriate development of parametric insurance offerings on the Romanian market. Even assuming this is addressed, including by the local regulator taking a position on the topic, it is difficult to anticipate how the product could develop beyond pure climatic events, limiting its relevance to the agribusiness for the time being.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

From a litigation perspective, given the lack of a regulatory framework, the main concern would be the position taken by the competent courts on the validity of the product altogether and their interpretation of the clauses.



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Slovenia

Parametric insurance is an enticing option in Slovenia due to the country's exposure to natural disasters such as floods, earthquakes, and landslides. Efficient payouts in the event of such disasters could reduce their financial impact. The availability of advanced technology and data analysis tools could help insurers develop more accurate and effective parametric insurance products tailored to the specific risks.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, pursuant to the Obligations Code an insurance contract is a contract where the policyholder undertakes to pay an insurance premium to the insurance agency, and the insurance agency undertakes, in an insurance case, to pay the insurance pay out to the policyholder.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, but general provisions of the Obligations Code in relation to the Insurance Act apply. The Obligations Code governs most insurance contracts and its provisions must be complied with – in case a different arrangement is not expressly permitted.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, the provisions of the Obligations Code governing insurance contracts do not apply. Only admitted reinsurance undertakings can conduct reinsurance business.

Would the calculation agent be qualified as an insurance intermediary?

No, it is unlikely that a calculation agent would be considered an insurance agent/broker. However, depending on the scope of involvement, the actions could be seen as distribution of insurance products in a wide sense, which can only be carried out by a licensed insurance agent/broker.

Main challenges of parametric insurance

In addition to the technical challenges (risk assessment, determining appropriate payout formulas) the heart of the challenges lies in regulatory compliance. As parametric insurance is not governed by a dedicated law, the extent of strict licensing and transparency requirements is hard to determine generally and should be assessed on case-by-case basis.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There is no significant litigation at this stage.

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Spain

Currently the most common parametric insurance covers natural catastrophe and climate events. This type of insurance is usually designed and marketed as a complement to traditional coverage. Interest in the product is growing since the product is very versatile and coverage exclusions are usually quite limited.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Parametric products are usually designed as insurance products (i.e. insurance contracts which payments are made depending on the intensity of a certain event and the amount of loss calculated according to a model on the basis of foreseen data). Note however that the parametric products can also be designed as a financial derivative product (such as a catastrophe bond).

Is there any dedicated law defining parametric contracts in your jurisdiction?

No; if the parametric contract is designed as an insurance, it will be subject to general insurance regulations (including Law 50/1980, of 8 October, on Insurance Contracts).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, like any other insurance contract.

Would the calculation agent be qualified as an insurance intermediary?

In principle, the calculation agent would not qualify as an insurance intermediary provided that its activity is limited exclusively to calculate the amounts payable under the parametric insurance; however, due to the broad definition of intermediation under Spanish law, potential qualification should be assessed on a case-by-case basis, taking into account the activities effectively carried out by the agent.

Main challenges of parametric insurance

There is broad room for versatility in the parametrization of risks – the insurance products should be developed beyond climate events.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There has been no significant litigation at this stage. In any case, due to the sophistication of the product, we understand that arbitration proceedings would be preferable to submission to ordinary courts.



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United Kingdom

The London insurance market continues to see an increase in the availability of – and demand for – parametric insurance solutions. Alongside parametric offerings from traditional insurers, new insurtech intermediaries are partnering with capacity providers to offer parametric insurance through innovative technological solutions across both the Lloyd’s and Company markets.

In the UK, it is important that parametric insurance products are structured correctly to qualify as insurance products, and that they are distributed in a way which complies with UK insurance regulation.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, parametric contracts can qualify either as contracts of insurance or as non-insurance derivative contracts, depending on how they are structured.

A parametric contract will qualify as a contract of insurance where it is a requirement of the contract that insured party is exposed to the risk of loss upon occurrence of the reference event – i.e., has an insurable interest in subject matter of the insurance.

A parametric contract will be a non-insurance derivative where the payout is not dependent on whether the receiving party suffers a loss or is exposed to a loss on the occurrence of the reference event.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. Parametric insurance contracts are subject to the same laws and regulations governing general insurance contracts; the question of what constitutes a contract of insurance under English law, as well as the concept of insurable interest, is addressed primarily in case law.

However, the Law Commission of England and Wales and the Scottish Law Commission have been consulting on the law of insurable interest and have issued a [note specifically addressing this concept in the context of parametric insurance](#).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Reinsurers carrying on insurance business in the UK require authorization, but reinsurers may alternatively reinsure risks located in the UK on a non-admitted basis, if they do so in a way which falls outside the UK regulatory framework.

Would the calculation agent be qualified as an insurance intermediary?

This would depend on the circumstances. It is possible that a calculation agent might be conducting the regulated activities of arranging deals in investments, making arrangements with a view to transactions in investments, or assisting in the administration and performance of a contract of insurance, in which case it might need to be authorized to carry on insurance distribution activities in the UK, or to establish that it qualifies from an exemption from the requirement to be authorized. This would need to be assessed on a case-by-case basis.

Main challenges of parametric insurance

Parametric insurance contracts should be structured carefully to ensure that they cover an insurable interest of the insured party and cannot be characterized as financial derivative products rather than insurance. Insurers operating in the UK are restricted to offering insurance products and would be in breach of UK law and regulation if their products did not qualify as such.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

At the time of publication, there has been no notable litigation in the UK concerning parametric insurance.

Based on previous litigation in the (re)insurance market (on non-parametric issues), we anticipate potential litigation by (re)insurers seeking to avoid liability under (re)insurance policies on the ground that the policyholder had no insurable interest or reinsured loss and so the (re)insurance policy is unenforceable.

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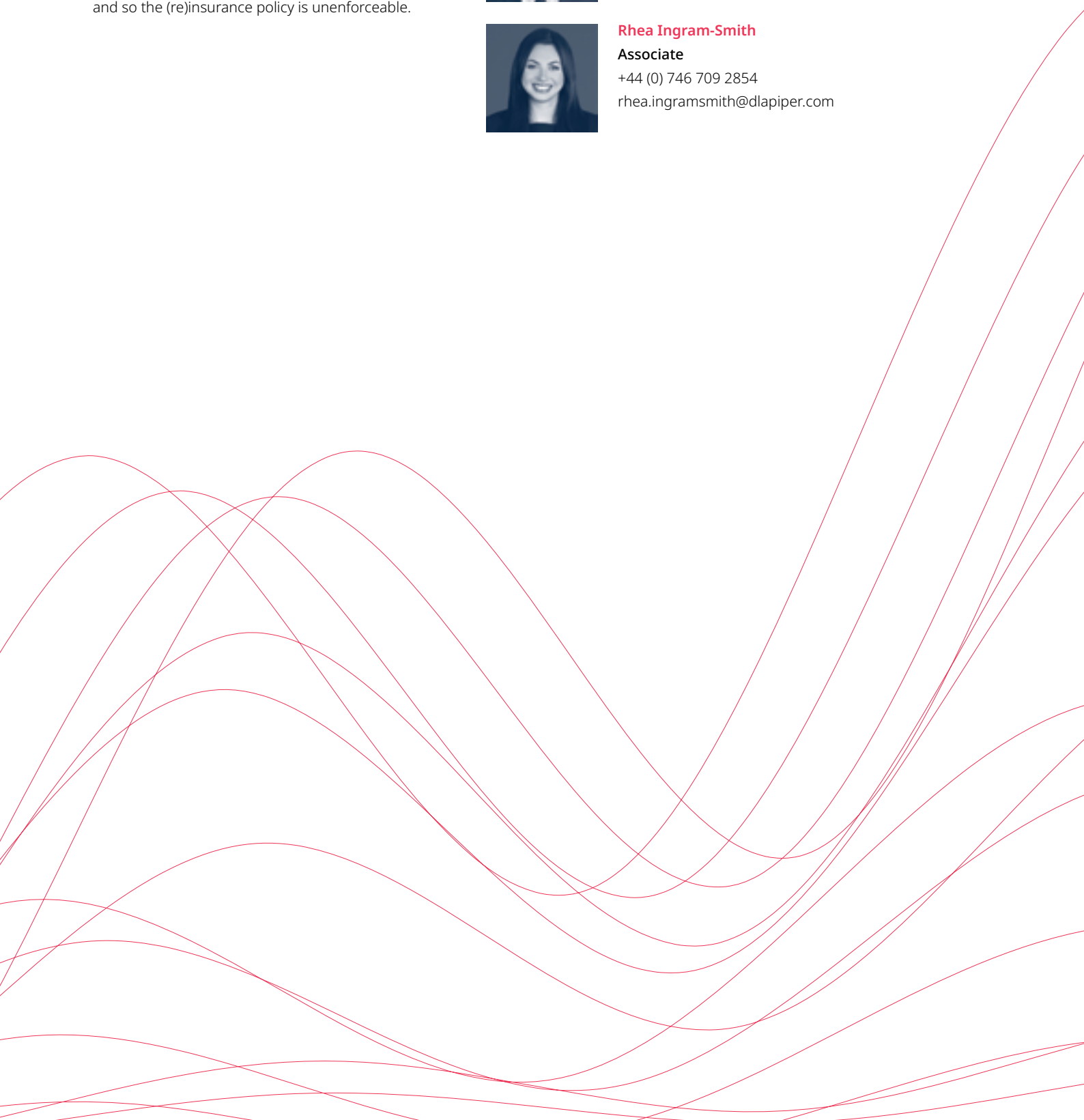


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Latin America

Argentina

Argentina has been developing parametric insurance coverage since 2016, but the challenge of defining adequate parameters or parametric triggers delayed its implementation to 2020. In Argentina the agribusiness sector is one of the most important sectors of the economy, so parametric insurance policies are related to climate events (drought and hail), and give greater certainty of the occurrence of claims in certain areas. Since 2021 the demand for parametric insurance in Argentina grew enormously. Due to the drought that has plagued part of Argentina since the end of 2022, this product has been discontinued by most insurance companies, specifically regarding this risk. The development of parametric insurance in Argentina will be conditioned to the tax benefits that the national and province administrations could grant.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Parametric insurance contracts qualify as insurance products under Argentinian regulation and are subject to all rules and conditions applied to insurance.

Some experts argue that parametric contracts may not qualify as insurance contracts because compensation is not related to whether the insured suffers a loss or is exposed to a loss on the occurrence of the event.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. There is no specific regulation in parametric insurance in Argentina. In any case, the insurance program or standard policy must be approved by the Regulator (Superintendencia de Seguros de la Nación).

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Any risks insured in the country can be subject of a reinsurance agreement.

Would the calculation agent be qualified as an insurance intermediary?

No, the calculation should be performed by the insurance company based on objective data provided by reliable third parties. To avoid conflicts the data provider must be determined in the insurance contract.

Main challenges of parametric insurance

To develop adequate and reliable parameters or parametric triggers.

The possibility to obtain tax benefits to promote this kind of product.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

As this is a new product in Argentina, we are not aware of precedents related to this matter.

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Brazil

Once one of the main pillars of the Brazilian economy is agribusiness. Most parametric insurance policies issued in the country are related to climate events and crop losses. For the same reason, it is highly probable that the Brazilian market is going to experience an increase in parametric insurance products, since climate change and more severe events are, year after year, showcasing the necessity for this kind of insurance coverage. In addition, the Brazilian Agroindustry Ministry recently published some rules with financial incentives for reductions in the insurance premium especially for parametric insurances related to the agribusiness.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, the nature and characteristics of the parametric contracts qualify them as an insurance product under Brazilian law and are subject to all rules and conditions applied to insurance. It qualifies as an insurance agreement in Brazil.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No, there is no specific Brazilian law or regulations on parametric insurance.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. Any risks insured in the country can be the subject of a reinsurance coverage/agreement.

Would the calculation agent be qualified as an insurance intermediary?

No, underwriting of any insurance in Brazil must be conducted by an authorized insurance company. Intermediaries, i.e. insurance brokers, can assist parties in the risk assessment and other relevant information related to the risk, but the calculation should be performed by the insurance company, even with the assistance of a third-party contractor.

Main challenges of parametric insurance

Specialized insurance companies with an appetite for such risks and/or qualified personnel capable of accurate underwriting are key issues for parametric insurance to grow as a business in Brazil. Also, regulatory burden and persistent difficulties in filing different insurance products before insurance regulator might jeopardize the access of parametric insurance.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

We do not yet have precedents related to the matter, as this kind of insurance is not very common in Brazil and parametric insurance litigation is still new in Brazil.

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Chile

Chile has high seismic activity. In agriculture there are risks of frost and drought and summers threaten forest fires, so parametric insurance is an interesting solution. In the private sector there are already examples in the agricultural, forestry and port area, with growth potential.

This type of insurance has boomed after the Ministry of Finance finalized contracting parametric insurance against earthquakes for USD630 million with the World Bank through the International Bank for Reconstruction and Development.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes, it qualifies as insurance and is expressly contemplated in the recently published law N° 21.521 that promotes competition and financial inclusion through innovation and technology. It is known as Fintech law.

Is there any dedicated law defining parametric contracts in your jurisdiction?

The new Law 21,521 of January 2023, allows the development of parametric insurance, inclusive insurance and micro insurance, making the regulation more flexible in terms of formalities, distribution channels, claims settlement processes and other aspects, in which the use of technology and data processing allows the design of new insurance products.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes, but it should be noted that the issuance of a legal regulation is pending complementary to Law 21.521 that seeks to more rigorously detail parametric insurance regulation. But this regulation is not expected to be ready until late 2023 or early 2024.

Would the calculation agent be qualified as an insurance intermediary?

Insurance brokers in Chile must comply with a series of requirements, including the registration in a special registry maintained by the regulator; however, insurance brokerage is not an exclusive business in Chile, so although a calculation agent cannot work as an insurance broker, they could do so if they register as an insurance broker.

It should be noted that to date, the issuance of a legal regulation that seeks to more rigorously detail parametric insurance is pending, but this regulation is not expected to be ready until the beginning of 2024, so it is not possible to know if it will establish some incompatibilities between intermediary and calculation agents.

Main challenges of parametric insurance

The first challenge is the issuance of the regulation on parametric insurance that is pending, however it is not expected to be a factor that affects its commercialization.

Chile is still an developing market in parametric insurance, however they already have experiences in the private sector, especially in the forestry, port and agricultural fields, so the challenge is to promote the advantages among companies.

It will always be a challenge to carry out a good structuring of parametric insurance and in Chile there are no professionals with experience in structuring and calculating parametric insurance. Qualified professionals will be needed.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

There are no litigations on this matter, so there is no experience on parametric insurance litigation.



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Colombia

The legal development in Colombia regarding parametric insurance relates to the agricultural and livestock industry (agribusiness or agroindustry), particularly for the management of catastrophic risk. Colombia has taken special interest in this insurance line of business, as an effort to encourage and protect food production, and to seek the organization and economic improvement of the agroindustry, as a strategy to contribute to the overall development of the country.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Parametric insurance is legally typified as an insurance contract. However, it does not follow the general principles traditionally governing insurance agreements. Specifically, parametric insurance is not placed under a strict indemnity basis, which is the main characteristic of traditional damages insurance in Colombia. It has been argued that this line of business is a very *sui generis* type of insurance contract.

To mitigate the discussion, the current Colombian regulation states that, even though under parametric insurance a predefined amount will be paid to the insured in the event of loss, the claim trigger should be correlated with an actual damage of the insured, usually associated to an specific index or indicator.

Is there any dedicated law defining parametric contracts in your jurisdiction?

Yes. Regarding the agroindustry parametric insurance, the Law 1955/2019, Decree 211/2020 and Law 2178/2012, regulate the matter, particularly, in relation to: whom the policyholder, insured or beneficiary may be, the scope of its coverage and the determination of the indemnity parameters and the trigger of the loss.

However, the laws must be complemented by the general insurance laws on non-regulated subjects.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. As long as there is no prohibition to place reinsurance agreements to cover parametric insurance, it is an allowed activity provided that it is placed pursuant to the applicable regulations (i.e. reinsurance should be placed by an authorized company and under the principles applicable to reinsurance agreements).

Would the calculation agent be qualified as an insurance intermediary?

No, considering that the calculation agent is not enlisted as an insurance intermediary pursuant to articles 40 and 41 of Decree- Law 663/1993.

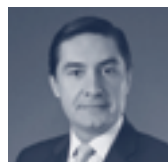
Main challenges of parametric insurance

Given the debate about the indemnity principle requirement, parametric insurance contracts will probably be highly discussed from the perspective of their indemnification nature and the index or indicators used to trigger the claim. Domestic regulation is quite confusing on this matter, so we anticipate that there will be a huge debate about what is permitted and what is not, especially once claims arise.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Considering parametric insurance regulation is relatively new in Colombia, at this stage there has been no significant litigation about this subject.

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North America



Canada

Parametric insurance is new in Canada, but certain insurance companies are expanding their parametric offerings in Canada. Targets include the agriculture industry and other resource-based companies concerned about climate change and weather-related natural catastrophes. We have heard that some companies are working through the regulatory approval process for their parametric insurance products. Given Canada's extreme climate (in most regions) and recent severe weather systems, we anticipate that many insurers will consider this product as a business opportunity.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. Although there is currently no specific class of insurance for parametric insurance, the definition of insurance in each provincial jurisdiction is sufficiently broad to incorporate it. The provincial legislation defines insurance in the respective provincial Insurance Acts as an undertaking by a party to indemnify another party against loss or liability in respect of a certain risk or peril that the party is exposed to, or to pay a sum of money upon the happening of a certain event (i.e. [Ontario Insurance Act s.1](#) or [Quebec Insurers Act, s. 2](#) and [Civil Code of Quebec, art. 2389](#)).

While parametric insurance contracts differ from traditional indemnity insurance contracts in the way the payout is triggered, they still involve the transfer of risk from the insured to the insurer in exchange for a premium. As such, they would be considered to be insurance contracts under Canadian law, and subject to the same regulatory requirements as traditional indemnity insurance contracts.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. We are not aware of any specific legislation having been introduced that defines parametric agreements. This is not unexpected given that a parametric agreement is still new in the Canadian insurance market. Parametric agreements would be subject to the applicable Insurance Act in each province.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Unknown. Although we are not aware of prohibitions against reinsurance of parametric insurance contracts, it is still unknown at this stage whether reinsurance of parametric insurance contracts would be allowed in Canada. Reinsurance of standard insurance contracts is permitted and regulated.

Would the calculation agent be qualified as an insurance intermediary?

Yes, likely. In most provinces, it appears that the term "insurance intermediary" is broadly defined and encompasses a number of intermediate activities and interactions between the insured and the insurer (i.e. [Financial Services Regulatory Authority of Ontario Proposed Principles of Conduct for Insurance Intermediaries](#)). Since surveyors or third-party administrators are usually included under the scope of insurance intermediary, it is likely that a calculation agent may be qualified as an insurance intermediary.

In Quebec, claims adjusters and claims examiners must hold a representative certificate issued by the Autorité des Marchés financiers and comply with the [Act respecting the distribution of financial products and services](#). In complex cases, third-party experts are mandated by the claims adjuster to calculate payout. It is likely that a calculation agent in Quebec would qualify as an "insurance intermediary" and be subject to the requirements under the [Act respecting the distribution of financial products and services](#).

Main challenges of parametric insurance

The design of parametric insurance may be complex, especially when it comes to defining the coverage triggers based on specific events or data points. Insurers may need to create nuanced structures (i.e. step-fashioned payout mechanism rather than all-or-nothing scheme) to provide the insured with some protection even when the parametric coverage is not triggered. This complexity may create challenges in effectively managing claims, which can lead to disputes or delays in the claims process. Further, parametric insurance will be subject to price volatility based on changes in the underlying risk factors. It will also be important to ensure that any parametric coverage is regularly reconciled against the insured's business risks.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Since the availability of parametric insurance remains in its infancy in Canada, there is no known litigation at this stage. One potential area where legal disputes may occur is triggers and payout calculations. Disputes may arise if the clients consider that the trigger was not accurately defined, or that the payout amount was incorrectly calculated or undervalued.

The novelty of parametric insurance may render it vulnerable to class action lawsuits, especially in Canadian provinces or jurisdictions where plaintiffs face a low threshold to obtain the certification or authorization of class actions. As was the case when insurers issued denials of claims following business interruption losses due to the COVID-19 pandemic, insurers are likely to have their policies tested by insureds following any widespread or catastrophic event.

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United States

Parametric contracts are well-suited for the unique (and varying) weather and natural events occurring in the US. Of course, certain forms of triggering events that make sense in one state (for instance, an earthquake in California or a hurricane in Florida) may not in others. And each state's insurance laws and regulations must also be taken into consideration. As a result, the use of parametric contracts, as well as their formation and their triggering events, will be accompanied by distinct considerations moving state-to-state. This poses a unique challenge to the use of parametric contracts in the US but does not diminish their validity or usefulness in this jurisdiction.

Do parametric insurance contracts qualify as insurance contracts in your jurisdiction?

Yes. In earlier years, uncertainty surrounded whether a parametric contract was a valid insurance contract if it "triggered" regardless of loss. However, parametric insurance contracts are now well-recognized insurance products in the US. Parametric contracts may potentially be structured as non-insurance swap agreements depending on the circumstances of the transaction. If structured in this way, certain tax implications may arise.

Is there any dedicated law defining parametric contracts in your jurisdiction?

No. However, general insurance and reinsurance laws and regulations in the US will apply.

Is reinsurance of parametric insurance contracts allowed in your jurisdiction?

Yes. A noteworthy example is the reinsurance of parametric contracts paid out after Hurricane Ian's landfall in 2022 (a Category 4 storm affecting Florida). Arbol, an insurtech platform, was reported as having delivered a USD10 million parametric insurance payout under its reinsurance contract with property and casualty company Centauri Insurance. In sum, reinsurance of parametric contracts is permitted and appears not to be uncommon.

Would the calculation agent be qualified as an insurance intermediary?

It's unclear whether the calculation agent would be qualified as an insurance intermediary. However, there are third-party calculation agents that specialize in parametric products in the US and that tout their expertise in analyzing weather and other events for which parametric products are designed.

Main challenges of parametric insurance

The principal challenge is that a parametric insurance contract (like with any other insurance product in this jurisdiction) must operate within and comply with the laws and regulations of 50 states. Certain states, for instance, have shown interest in regulating parametric insurance products more closely. Additionally, regulators in most jurisdictions will require the insured to incur an "insurable loss." This may present compliance challenges as parametric coverage is often designed to avoid the need for an insured to prove a specific amount of loss. An insurer or reinsurer of a parametric product must therefore be mindful of the specific laws that govern it, and how those laws vary from state-to-state.

What are the main (anticipated or not) litigation that might concern parametric insurance in your jurisdiction?

Parametric insurance has not been a common source of litigation in the US (there appears to be only one reported case and the nature of the product was not at issue). Like with any insurance product, disputes may arise over whether the triggering event occurred, or whether policy complies with relevant state laws and regulations.

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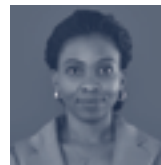


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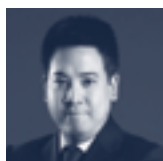


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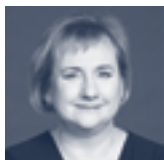


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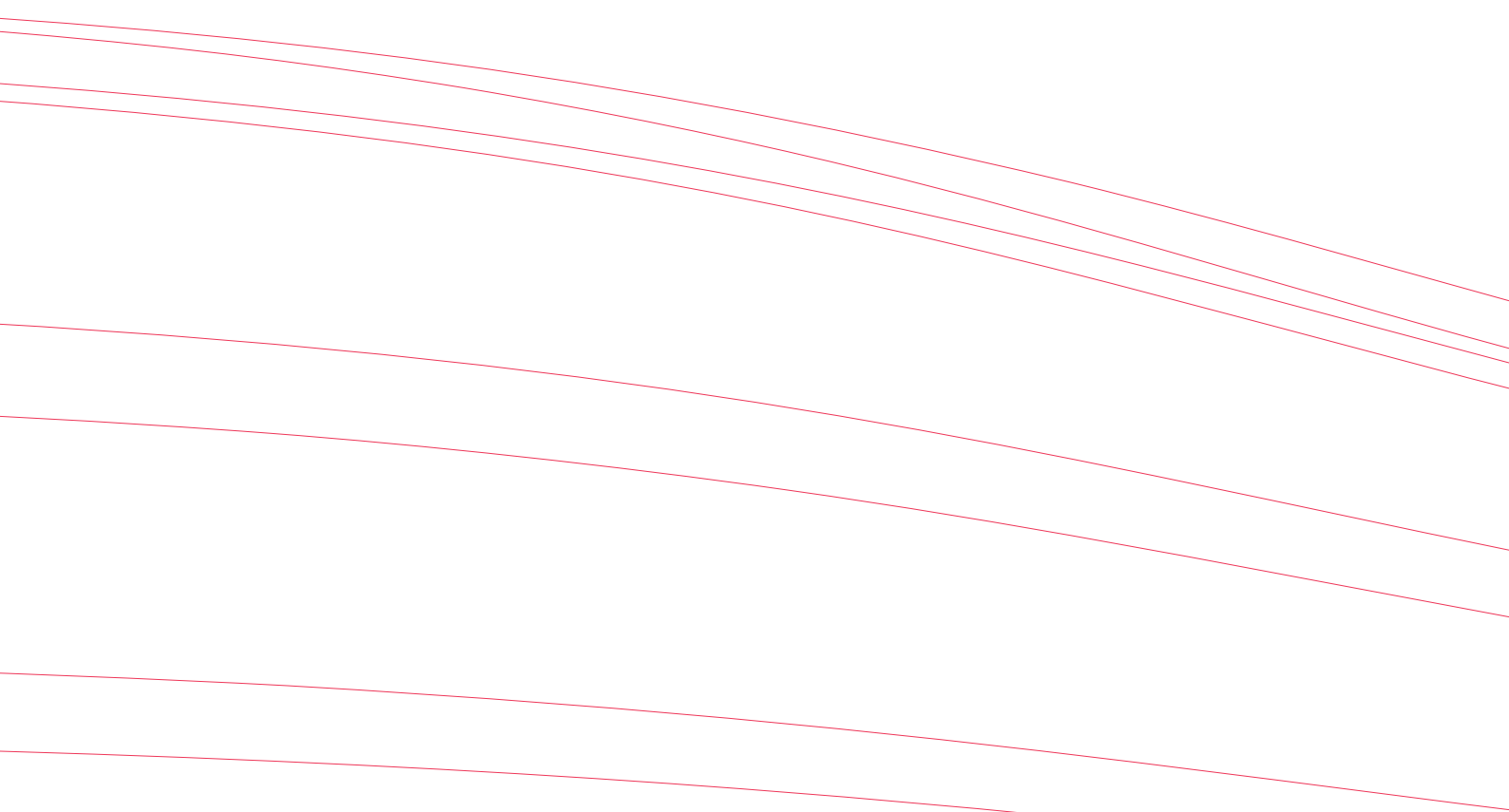
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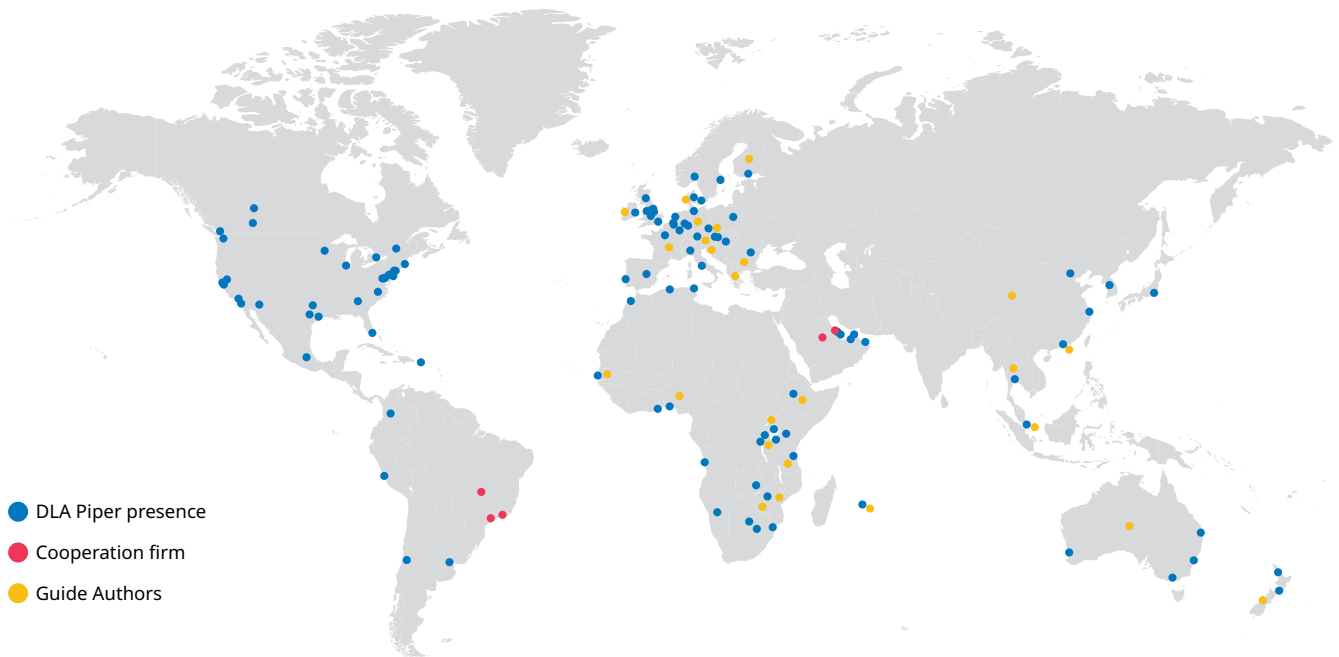
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