Exposures Explained: Emerging Risks For 2026

Insurance Recovery UK & EMEA

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Introduction

This guide addresses five emerging coverage risks that we are seeing: PFAS, AI, ESG, Product Liability and Geopolitical Instability. For each risk, we provide an overview of the exposure, look at how the legal and regulatory landscape is adapting and consider what it means for business risk transfer. We also provide you with a practical checklist of points to consider as you navigate these risks.

Follow the links in the guide for more detailed analysis on the topics discussed.

If you would like to receive our regular client alerts and event announcements please sign up here.

Capabilities

The UK insurance team specialises in acting for policyholders on insurance coverage issues relating to a tremendous variety of policies, including Aviation and Space, Bankers' Blanket Bond (BBB), Bermuda form excess, Commercial General Liability, (CGL), Commercial Crime/Fidelity, Cyber, D&O/E&O, Employment Practices, Marine/Stock Throughput, Political Risk, Professional Indemnity (PI), Property Damage and Business Interruption (PDBI), PFAS, Tax Liability, Trade Credit and W&I Policies. We also advise on related Global Insurance Programme and Risk Management Issues.

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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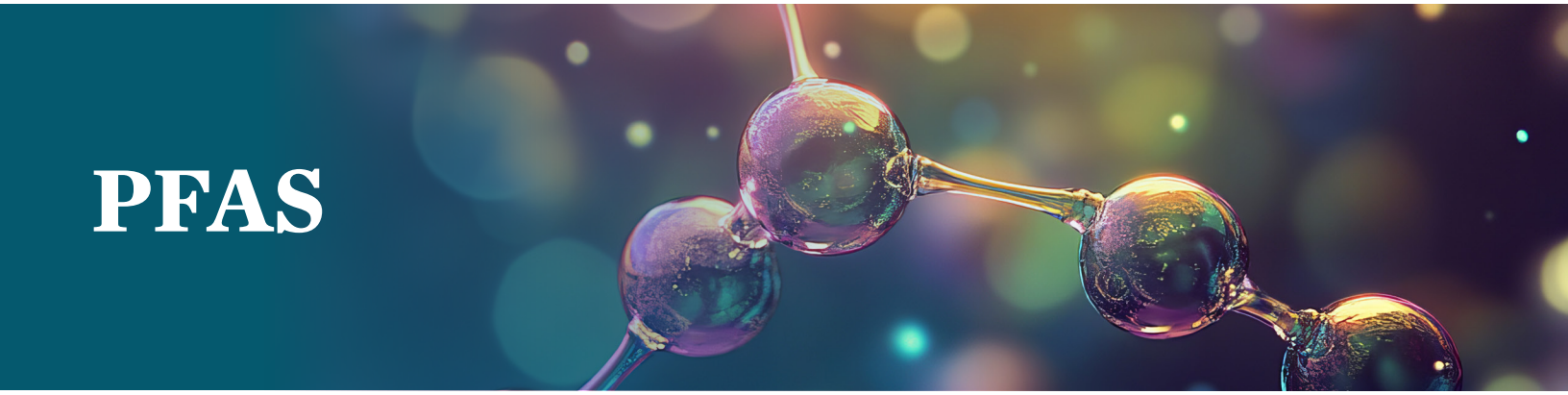
PFAS



The Exposure

Per-and polyfluoroalkyl substances (PFAS) are a class of around 15,000 man-made chemicals, which have recently come under global scrutiny. Since the 1950s they have been widely used across consumer products, commercial applications and manufacturing industries because of their useful technical properties: they are oil- and water-resistant and are also resistant to degradation. In recent years, PFAS have become the focus of investigation, litigation, criminal proceedings and regulatory scrutiny around the world. Whilst litigation has primarily been in the US to date, UK claimant law firms are investigating potential claims and seeking potential claimants: we therefore also expect claims against potentially exposed organisations may be brought in the UK.

US Litigation Landscape

Mass-tort litigation has targeted many industries including manufacturing, chemical, consumer product, retail, food and agriculture companies, with some settlements exceeding $billions to date. For example, AFFF class actions have been brought by firefighters alleging their exposure to PFAS chemicals in firefighting foam resulted in bodily injuries; with producers facing false advertising claims in relation to products ranging from lip balm to fruit juice.

EU Litigation Landscape

Claims have been filed in Belgium, the Netherlands, Sweden, France and Italy seeking to hold manufacturers liable for alleged environmental contamination and/or personal injury. For example, the Swedish Supreme Court ruled in December 2023 that residents exposed to certain PFAS levels in drinking water had suffered personal injury within the meaning of the Product Liability Act. Criminal liability of executives has also been established in Italy in certain circumstances.

Insurance Coverage

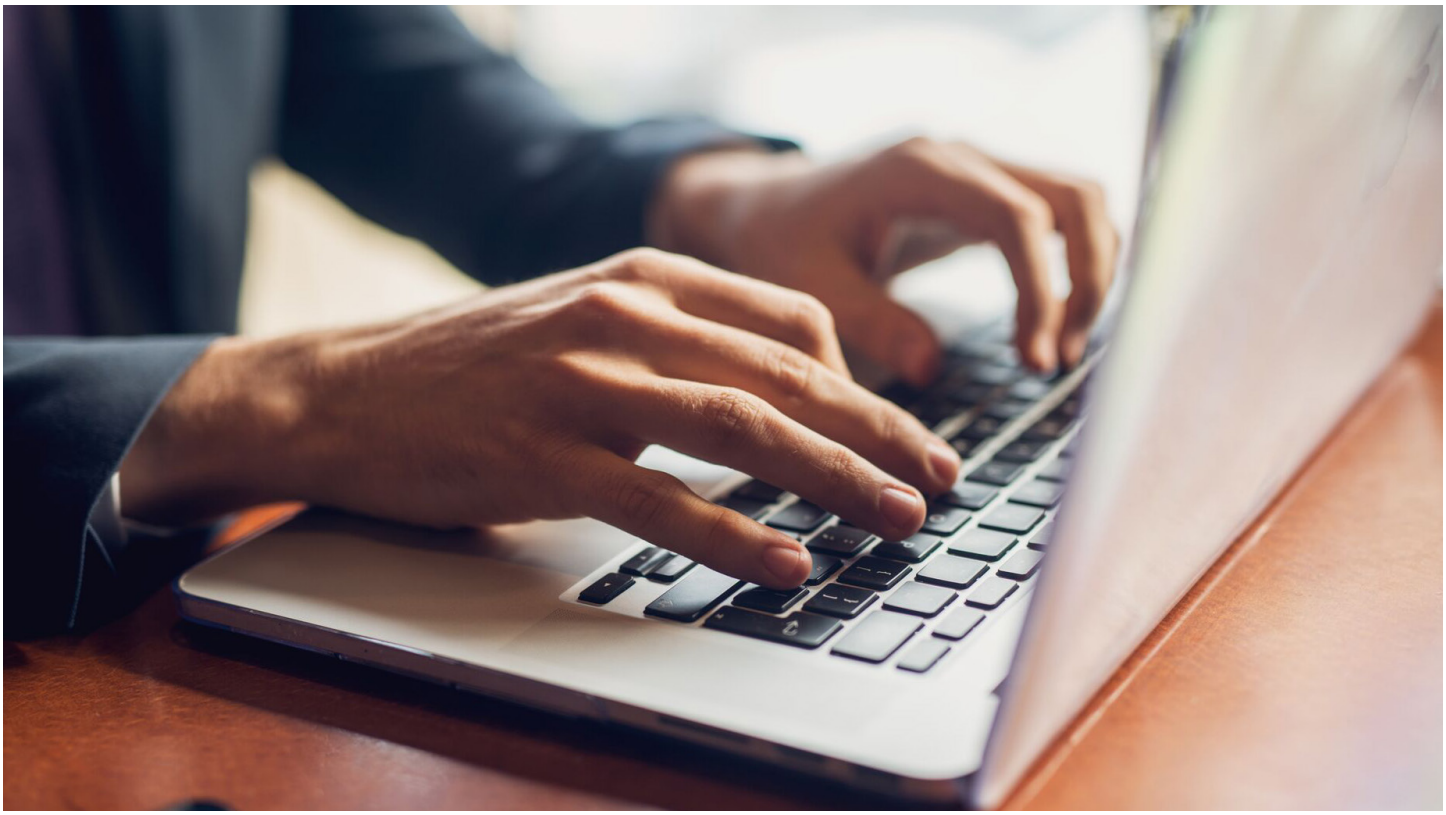
Corporates faced with potential PFAS exposures are looking to their liability insurers for coverage. Key coverage issues concern how losses should be allocated across multiple policy years, the number of occurrences, the applicability of contamination and pollution exclusions, and whether insurers can rely on knowledge-based defences. PFAS coverage claims in the UK remain in the early stages, but we anticipate similar coverage issues will be raised as policyholders look to their insurers for support with defence costs, investigation costs and any potential public, environmental and product-related liabilities.

In November 2023, the Lloyd's Market Association ("LMA") published two model PFAS exclusion clauses (LMA5595A and LMA5596A). Both model exclusions are broadly drafted, with LMA5596A specifically seeking to reverse the ordinary evidential burden of proof – and unusually – placing the obligation on policyholders to prove the exclusion does not apply. Policyholders should seek to resist the inclusion of PFAS exclusions in their policy wordings. However, even if such exclusions are added at renewal, they will not affect coverage under legacy occurrence-based policies that may respond to current exposures. Indeed, policyholders in the UK and EMEA who anticipate PFAS exposures, should prepare themselves by locating and reviewing copies of (potentially responsive) legacy liability policies.

PFAS Coverage Checklist

Our checklist of priority steps for policyholders wishing to mitigate PFAS risks and maximise potential insurance coverage. It is important to ascertain in the first instance whether and how various steps you may take are protected by applicable legal privilege.

RISK AWARENESS	1. How are PFAS used in your business today? 2. When / how has PFAS been used in your business in the past? 3. By virtue of its corporate history, has your business assumed any potential PFAS-related liabilities? 4. Where may PFAS be present in your current or historic supply chains?
RISK MANAGEMENT	5. Do your operations comply with any current – and proposed – PFAS regulations? 6. Who within your organisation has oversight of PFAS compliance and risk mitigation?
INSURANCE COVERAGE	7. Locate relevant current and legacy insurance policies (including through brokers/insurance archaeologists). 8. Identify policies where you have “additional insured” cover – such as those purchased by vendors or other counterparties. 9. Review the policies to understand the scope of cover available and notification obligations. 10. Seek to narrow or negotiate PFAS exclusions at renewal.



Artificial Intelligence

The Exposure

AI adoption continues at a frenetic pace across virtually all sectors and industries. In the legal sector alone, for example, 2025 saw the launch of an 'AI Arbitrator' by the American Arbitration Association and the deployment of several law/litigation focused AI tools and platforms. As use and development proliferates, the associated risks have multiplied and some have come into sharper focus.

Litigation Landscape

Much of the AI-related litigation over the last few years has targeted AI-developers for intellectual property breaches linked to the materials used to train AI models. However, in 2025 we observed two emerging trends:

- **A rise in litigation and enforcement relating to alleged online harms.** On 6 November 2025, the parents of a 23-year-old young man, Zane Shamblin, issued proceedings in California alleging that ChatGPT encouraged their son to kill himself. Several similar lawsuits since have been filed. In the UK, in November 2025, Ofcom exercised its regulatory powers under the Online Safety Act 2023 to fine the AI deepfake site, Undress.cc, £50,000 for failing to implement age checks.
- **An increase in AI-washing claims holding executives to account.** In April 2025 the US Securities and Exchange Commission filed securities and wire fraud charges against the founder and CEO of Nate, an AI-powered shopping app, which raised US$42 million on the basis that the app used automated technology to complete purchases. It is alleged that investors were misled because, in reality, orders were processed manually by overseas contractors.

UK Legal Landscape

In the UK, there is currently no comprehensive legislative or regulatory framework for AI. In January 2026, the UK Jurisdiction Taskforce published an "authoritative" Legal Statement on Liability for non-deliberate AI harms under English law – and called for responses from industry experts by 13 February 2026. This follows the Law Commission's AI and the Law: A Discussion Paper published in July 2025. Both papers grapple with the essential question of who will be liable when autonomous actions of AI tools cause harm. Whilst these questions remain under discussion, regulators are continuing to supervise the use of AI within their sectors.

EU Legal Landscape

In the EU, the AI Act started to come into force in 2025 – with the provisions relating to General-Purpose AI Models now in force. Further provisions of the AI Act are due to come into force in 2026 subject to timeline changes that could be made by the Digital Omnibus (see briefing). The exterritorial effect of the EU AI Act means that businesses based outside the EU must comply if their activities bring them within scope.

Insurance Coverage

From a coverage perspective, 'silent AI' cover continues to be the main source of insurance cover for AI risks. This means that policyholders will be looking to their existing policies for cover in the event of AI-related losses. For example:

- Professional Indemnity or Public & Products Liability/CGL and Bermuda form excess cover will be relevant in case of compensation claims by customers or members of the public arising from alleged AI-related harms.
- D&O cover will be relevant for AI-washing claims and securities class actions which allege that the board or management has been remiss in its handling of or failure to handle AI.
- Cyber, Crime and Bankers Bond policies will be relevant in addition to D&O where threat actors use AI to harm the business.
- Property Damage/Business Interruption ("PDBI") and Cyber policies may be a first port of call for first-party AI-related losses.

Absent a specific AI exclusion, the starting point is that existing policies should respond to AI-related loss. However, application of existing policies will depend on the circumstances of the loss or claim and how AI is (or is not) used by or affects your business. Policyholders should review their policies to ensure the wordings continue to reflect new ways of working with AI.

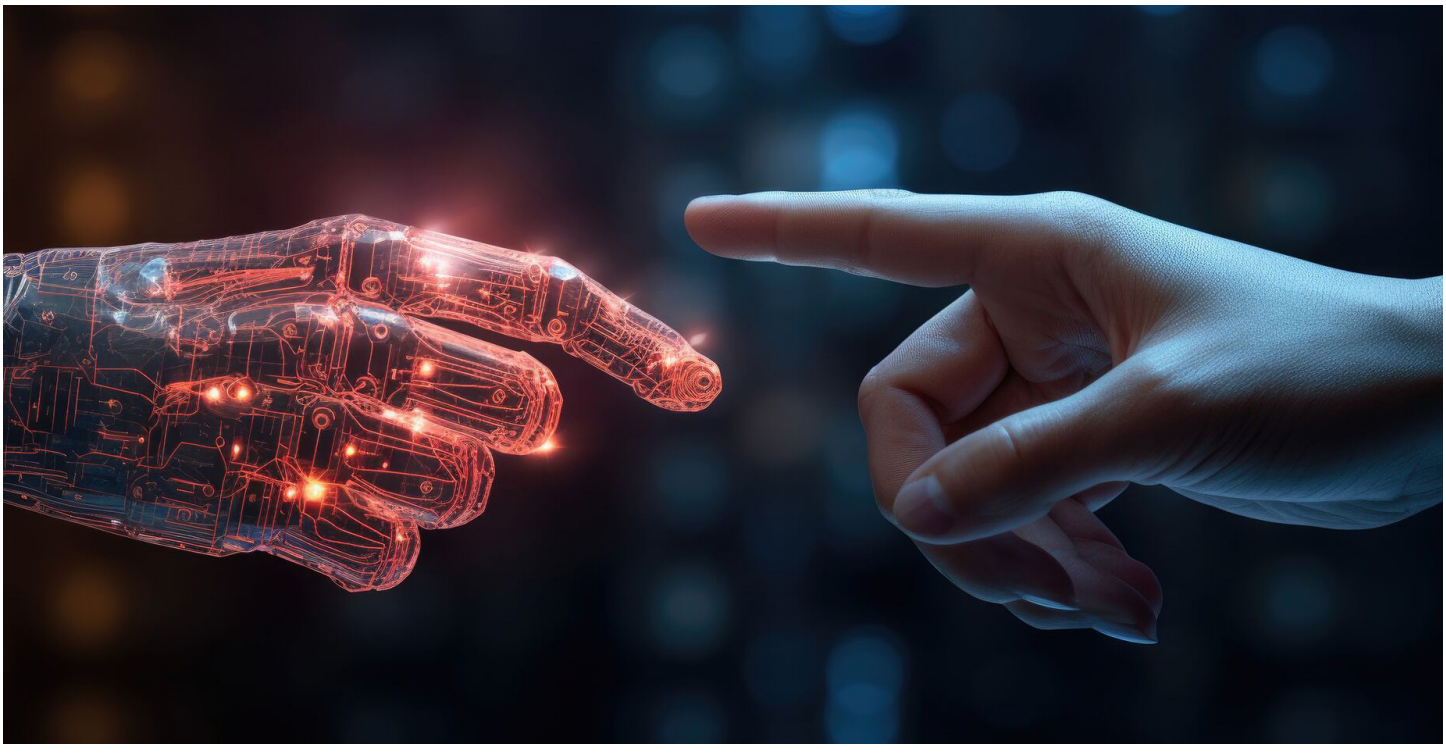
Whilst still nascent, 2025 saw an increase in the number of

affirmative AI insurance policies available in the market for AI developers and enterprise users. Policies are designed to provide cover where an AI model does not perform as intended. Increased capital has been injected into the market for this class of cover, with corresponding decreases in premiums. On the flip side, policyholders should remain vigilant for additional AI exclusions proposed or added at renewal. Last year it was reported that at least one insurer, Berkeley, added a so-called 'Absolute AI Exclusion' into certain lines of insurance.

AI Coverage Checklist

Our checklist of priority questions for policyholders wishing to protect and maximise their insurance coverage for AI risks. It is important to ascertain in the first instance whether and how various steps you may take are protected by applicable legal privilege.

RISK AWARENESS	1. How is AI being used within your business? 2. Have any operations or processes been fully automated via AI? 3. Have you assumed contractual AI-related liabilities to third parties? 4. Can you ascertain how AI may be used in your critical supply chains?
RISK MANAGEMENT	5. Have you implemented an AI utilisation framework (especially if potentially required by applicable law)? 6. Is a Senior Manager responsible for AI risks?
INSURANCE COVERAGE	7. Have you made any requested/required disclosures of AI use/risks to your insurers? 8. Is the "silent AI" cover within your existing insurance programmes fit for purpose or could your policy wordings benefit significantly from future-proofing? 9. Have any AI exclusions been added or proposed to your existing policy wordings at renewal? 10. Is affirmative AI insurance worthwhile?



ESG and Greenwashing

The Exposure

Corporates across a range of industries and sectors are increasingly being held to account for their environmental, social and human rights impacts – irrespective of whether those impacts are felt in the UK or abroad. This can include, for example, liability for discharge of toxic waste, allegations of forced labour or human rights abuses, allegations of misleading corporate sustainability reporting or misleading packaging claims.

Litigation Landscape

In 2025 the English courts demonstrated their willingness to accept jurisdiction for claims against UK-based defendants relating to ESG issues overseas – a trend which we anticipate will continue into 2026.

- **First,** in May 2025 the Supreme Court declined permission to appeal the Court of Appeal's decision in *Limbu & Ors v Dyson Technology & Ors* [2024] EWCA Civ 1564 which held that England was the appropriate forum to hear claims relating to allegations of human rights abuses against workers during the manufacturing of parts for the Dyson group between 2011 and 2022.
- **Second,** in November 2025 the High Court handed down its judgment in the high-profile case of *Municipio de Mariana v BHP Group (UK) Ltd*, 2025 WL 03187647 [2025] – a group claim which sought to hold a UK-domiciled parent company legally responsible for environmental damage arising from acts in Brazil. The Court found BHP strictly liable in respect of damage caused by the collapse of the Mariana dam in Brazil pursuant to provisions of Brazilian Environmental Law.

These judgments build on the Supreme Court's decision in *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC 20, which confirmed that a parent company can owe a duty of care to individuals harmed by its subsidiary.

In *Dyson* this duty of care was expanded and extended to individuals harmed by a company's third-party suppliers. We are aware that the Court's willingness to expand liability will be relevant to other corporate policyholder clients, including in the context of increasing ESG/climate-related claims.

UK Regulatory Landscape

The UK's transition from a 'guidance-based' regime to an enforcement-based regime gathered pace in 2025.

- Since April 2025, the Competition and Markets Authority ("CMA") can exercise new powers under the Digital Markets, Competition and Consumers Act 2024 to investigate suspected breaches of consumer protection law – including making misleading environmental claims – and require businesses to cease or modify offending conduct or fine companies up to 10% of their global turnover.
- In 2025, the Financial Conduct Authority ("FCA") introduced:
  - an anti-greenwashing rule into the FCA Handbook (ESG 4.3 Naming and marketing) which requires firms to ensure any sustainability marketing of their products and services is 'fair, clear and not misleading'; and
  - new listing rules (in force since 19 January 2026) which include new requirements for climate-related disclosures (PRM 4.6 and 4.7).
- The PRA issued Supervisory Statement 5/25 (in force since 3 December 2025) which sets out the PRA's expectations for how banks and insurers approach climate-related risks.

EU Regulatory Landscape

Similarly, for businesses with operations in Europe, there is a complex legislative framework taking shape which will apply to businesses across a variety of sectors. This includes: the Empowering Consumers for the Green Transition Directive (coming into force in September 2026); the Corporate Sustainability Reporting Directive; the Corporate Sustainability Due Diligence Directive; the Urban Wastewater Treatment Directive; the Packaging and Packaging Waste Regulation; the Forced Labour Regulation; and the Deforestation Regulation.

Insurance Coverage

Corporate liability for ESG group claims is typically covered through a combination of standard and specialist insurance policies, tailored to cover different aspects of a parent company's "duty of care" and

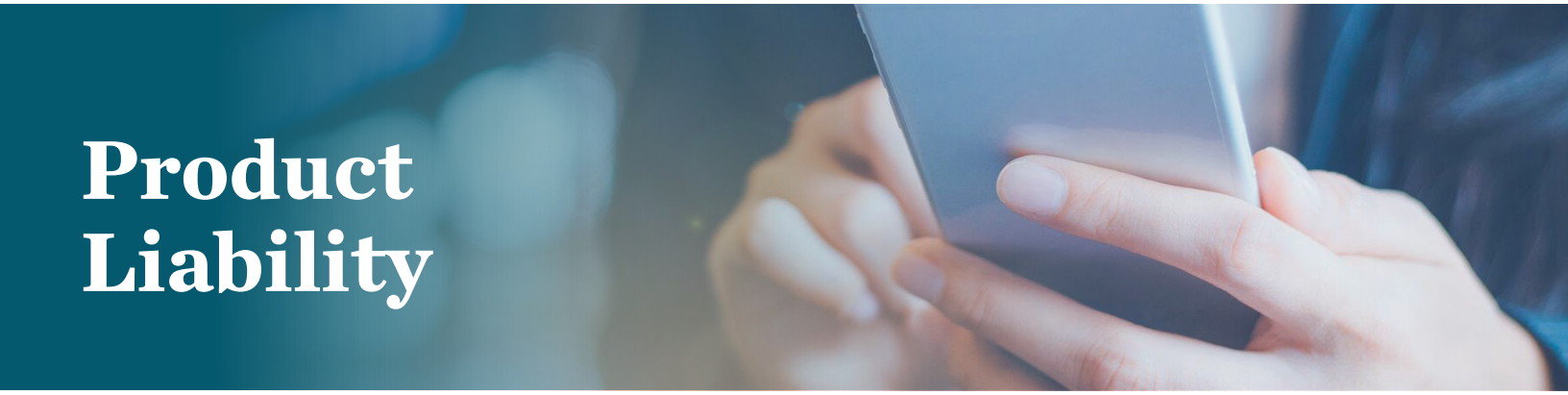
its oversight of foreign subsidiaries or supply chains. Policyholders should evaluate the extent to which their CGL, D&O, Environmental, Public & Products Liability, Bermuda form excess, Property Damage and Business Interruption insurance, Contingent BI cover and/or Professional Indemnity policies provide adequate cover for alleged: (i) shareholder and derivative claims, (ii) reporting and disclosure breaches, (iii) regulatory investigations, and (iv) pollution exposures.

Policyholders also should be mindful of climate change-related exclusions that may be inserted into wordings at renewal. In November 2021, the Lloyd's Market Associate published a model Climate Change Exclusion clause: LMA5570. It excludes "any loss, liability, cost or expense arising out of any allegation or claim that the (Re)Insured caused or contributed to Climate Change or its consequences". For the purposes of this clause Climate Change means "a change of climate which is attributed directly or indirectly to human activity."

ESG Coverage Checklist

Our checklist of priority steps for policyholders wishing to mitigate ESG risks and maximise potential insurance coverage. It is important to ascertain in the first instance whether and how various steps you may take are protected by applicable legal privilege.

RISK AWARENESS	1. Have you evaluated your organisation's vulnerability to climate change risks (e.g., due to the risk of severe weather incidents at key locations)? 2. Have you considered risks in your global supply chain for ESG and labour law/human rights compliance?
RISK MANAGEMENT	3. Have you implemented an ESG governance framework (especially if required by applicable law or regulation)? 4. Do you have contractual protections for ESG risk in your supplier and customer contracts? 5. Is there a Senior Manager responsible for ESG risks?
INSURANCE COVERAGE	6. Is the cover within your existing liability insurance programmes fit for purpose or could your policy wordings benefit significantly from future-proofing? 7. Should you consider additional cover to protect your business against revenue loss arising from damage affecting a key supplier or customer or production site? 8. Have any climate change or ESG exclusions been added or proposed to your existing policy wordings at renewal?



Product Liability

The Exposure

Revisions to the UK's and EU's product liability regimes may portend an expansion of liability for defective products. Policyholders who now fall within the scope of the regulations – especially technology product-based businesses – should consider the adequacy of their insurance coverage for potential third-party product liability exposures in advance of their next insurance renewal.

UK Regulatory Landscape

On 21 July 2025, the UK Product Regulation and Metrology Act came into force. This creates a flexible framework designed to facilitate the efficient adoption of secondary legislation / regulations to adapt to pressing threats and technological advances. The Act covers the design, production, marketing, use, resale, recycling and disposal of products. The Government has put forward areas for potential further reform including online marketplaces, digital labelling, automation of machinery, 3D printing, augmented reality and information sharing. The Government has also highlighted the need to consider diverging from or mirroring EU requirements.

The Law Commission has also announced a comprehensive review of the existing product liability regime, particularly in relation to digital products and emerging technologies to determine whether to adopt some law reforms. A public consultation is due to take place in the second half of 2026.

It therefore remains to be seen how the UK product safety and liability regimes will be further impacted, and whether there will be more alignment with, or divergence from, EU standards.

EU Regulatory Landscape

The new EU Directive on Liability for Defective Products (the "New PLD") is due to replace the existing EU Product Liability Directive from December 2026. This will result in a substantial change in the EU product liability landscape as it has existed for the last 40 years (see detailed briefing).

The New PLD establishes a framework to make it easier for individuals to bring claims for certain damages they allege due to a defect in a product. The New PLD defines "product" very broadly to include raw materials and stand-alone software, including AI software, although free and open-source software developed or supplied outside the course of a commercial activity is excluded. A "component" is any item, raw material, or any related service that is integrated into or inter-connected with a product. The New PLD will apply to companies supplying into the EU market. It establishes certain situations where a product may be presumed defective or it can be presumed that there is a causal link between an asserted defect and damage. It also introduces a simplified disclosure regime for claimants.

Taken together, the changes made under the New PLD are likely to result in an increase in product liability litigation across the EU.

Insurance Coverage

In light of increased exposure, corporate policyholders should review their insurance programmes to check whether their insurance cover remains fit for purpose (see detailed briefing).

Product Liability Coverage Checklist

Our checklist of priority steps for policyholders wishing to mitigate the risks of product liability and maximise potential insurance coverage. It is important to ascertain in the first instance whether and how various steps you may take are protected by applicable legal privilege.

RISK AWARENESS	1. Audit your product portfolio to identify products (including digital asset products) which fall within scope of the New PLD.
RISK MANAGEMENT	2. Have you considered a product liability framework in accordance with the new UK/EU regulations? 3. Do you have contractual indemnity and insurance protections in your supplier and customer contracts to protect against potential new exposures?
INSURANCE COVERAGE	4. Companies within the scope of the New PLD (e.g., certain importers and distributors) may wish to ascertain whether their Public and Product Liability and Bermuda form excess insurance coverages to respond to potential exposures. 5. Review the adequacy of the limits under your Public and Product Liability and Bermuda form excess cover resulting from the potential expansion of liability and easing of burden of proof requirements for claimants. 6. Ensure your Public and Product Liability and Bermuda form excess cover, Cyber cover and Professional Indemnity cover include software and digital assets, including as "Product" or "Covered Property" – to reflect the extension of liability under the New PLD to standalone software. 7. Ensure the definition of "Bodily Injury" or “Personal Injury” in your Public and Product Liability and Bermuda form excess cover encompasses mental health/psychological injuries in line with the expansion of liability under the New PLD to medically recognised psychological injury. 8. Review your Cyber cover and Public and Product Liability cover for clarity and consistency in the event that: (i) a software defect causes a consumer to lose personal data, or (ii) a product’s cybersecurity suffers from an alleged defect. 9. Review coverage periods under your policies for sufficiency: the New PLD extends the liability long-stop period for latent injuries from 10 to 25 years. 10. Consider whether to disclose additional facts to your insurers at renewal to address the expanded product liability regime.

Geopolitical Instability

The Exposure

In the last 12 months, the world has witnessed global developments that could hardly have been predicted. For example, substantial and widespread tariffs and disruptions in international trade and actions in the Caribbean have caused significant economic and political instability. In his Special Address at the World Economic Forum in Davos, Mark Carney, the Prime Minister of Canada, spoke of "a rupture in the world order" and of how the old rules-based international order "is not coming back". The World Economic Forum's own Global Risks Report 2026 concluded that: "Uncertainty is the defining theme of the global risks outlook in 2026". For corporates, this gives rise to countless new challenges from supply chain disruption, to cost and pricing volatility, through to regulatory changes.

Insurance Coverage

A wide range of insurance policies may respond to and mitigate direct/indirect consequences of tariffs and other trade-related and political disruptions (see briefing). Key policies to consider are:

- **Trade Disruption Insurance** – this is a specialised type of insurance which can cover losses (including lost profits, costs, expenses, liquidated damages, and contractual penalties) due to unexpected occurrences that disrupt trade operations, like supply chain interruptions, regulatory changes, or political events.
- **Trade Credit Insurance** – this typically covers the risk of non-payment by customers due to (1) their financial insolvency, or (2) political risks outside the customer's control, such as war, government requisition, export bans or civil disturbances.
- **Political Risk Insurance** – this is designed to protect a business' assets and financial interests against damage and loss caused by political actions such as government expropriation, political violence and currency inconvertibility.
- **Cargo, Warehouse and Stock Throughput Insurance** – this primarily covers physical loss or damage to goods during transit or in storage due to events like theft, accidents, or natural disasters. Whilst coverage may not respond to financial risks such as tariffs, duties, or other regulatory charges imposed on goods, policyholders should consider whether they are protected against the late arrival of goods to their destination due to rerouting caused by geopolitical instability.

- **Directors' & Officers' Insurance** – this might be relevant if a company's alleged response (or lack of response) to global trade-related activity leads, directly or indirectly, to Claims, especially those against individual directors or officers, including those from government investigations. Further, D&O coverage may respond if a regulatory body or government entity investigates the company for compliance with international trade laws.
- **Kidnap & Ransom Insurance** – this protects individuals and organisations from financial losses associated with kidnapping, extortion, and ransom demands, including ransomware.
- **Contingent / Dependency Business Interruption Insurance** – this protects a business from income losses due to disruptions in the operations of key external partners, such as suppliers or customers.

For most effective utilisation of these insurance assets, companies can identify relevant policies, identify the scope of cover (and exclusions), and work out whether insurers need to be notified of circumstances that could give rise to claims. Policyholders should take particular care over the scope of any war and sanctions exclusion clauses. Companies may wish proactively to reevaluate their corporate insurance coverage programmes with their brokers (at least annually) to ensure coverage continues to address these rapidly developing exposures.

Geopolitical Instability Coverage Checklist

Our checklist of priority steps for policyholders wishing to mitigate the risks of geopolitical instability and maximise potential insurance coverage. It is important to ascertain in the first instance whether and how various steps you may take are protected by applicable legal privilege.

RISK AWARENESS	1. In what ways is your business vulnerable to geopolitical instability risks?
RISK MANAGEMENT	2. Do you have crisis or Enterprise Risk Management plans to address relevant scenarios? 3. Consider your risk escalation communication protocol. 4. Do you have contractual insurance and indemnity protections built into your supplier and customer contracts to address geopolitical instability risks?
INSURANCE COVERAGE	5. Review the insuring clauses and exclusions (e.g., War, Terrorism, Civil Commotion/SRCC) in your existing policies with geopolitical instability risks in mind. 6. Review any sanctions exclusions in your existing policies. 7. Consider whether specialist cover may be preferable – e.g., Contingent/Dependency Business Interruption cover, Political Risk Insurance or Trade Credit Insurance. 8. Consider contingency planning within your organisation in line with any loss mitigation / minimisation conditions in your policies. 9. Consider whether there are material facts about your business' geopolitical risks that may be disclosed to insurers at renewal.