GLOBAL FINEX - PROFESSIONAL LIABILITY
CONSTRUCTION

Global Construction

Professional Liability Review 2022

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This update analyses our observations of the current market conditions for global construction, Professional Liability (PL) insurance and is based on our observations of the market with our WTW clients and not a whole of market review.

Introduction

Welcome to our 2022, global construction, professional liability (PL) insurance review. As the industry adapts to the COVID-19 / post COVID-19 environment, insurance market conditions continue to be challenging in several geographies.

As in previous editions, this document breaks down PL market conditions region by region, highlighting the local nuances that exist. Continuing to access insurers in the most favorable geography remains a sensible tactic for insureds to utilise.

In those markets where securing coverage remains challenging and abnormally high levels of scrutiny persist, construction purchasers of PL insurance coverage must continue to plan well and engage with exceptional underwriting information.

With regard to regional compliance admittance, construction purchases of PL must not overlook local insurance regulation in addition to commercial ease of doing business. As a result where risks are present on a global basis 'Global Master Programs' continue to be popular solutions, via those carriers that are able to leverage their international networks to deliver their product in this way.

Thank you for reading. Our global subject experts are available to assist in respect of any queries you may have.

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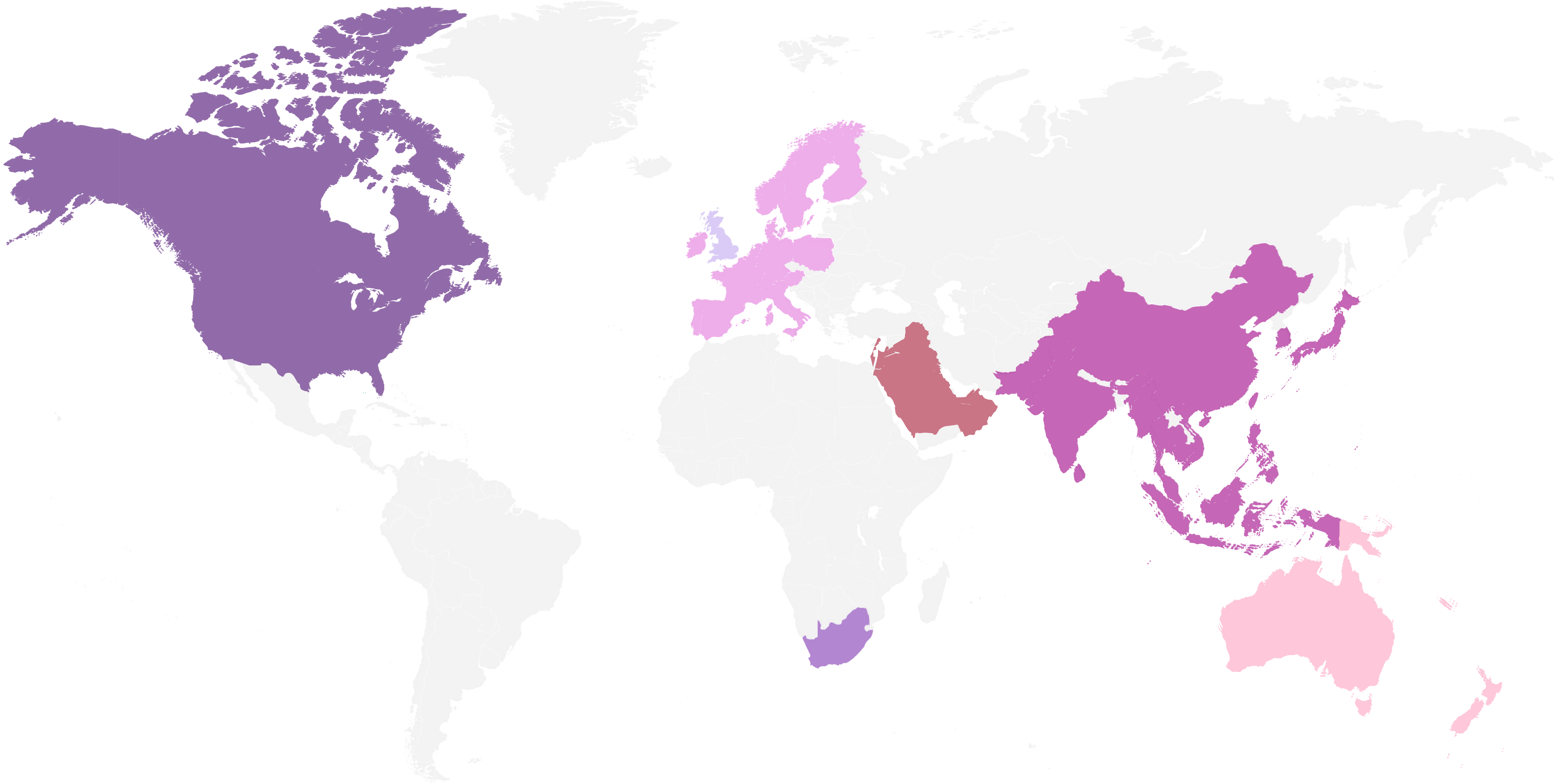
Key Market Analysis | Regions



Great Britain

Capacity

- There has been a general stabilization in capacity availability. Average line size remains at around £2.5 million per insurer, per risk.
- Some large vertical placements have managed to secure additional coverage limit, however securing adequate vertical limit remains a challenge for clients that purchase significant 'towers' of coverage, particularly for adverse risk profiles.
- The technique of ventilation, where capacity is deployed with a 'gap', to act as a fire break in the event of a large loss, remains common practice.

Rating

- Primary rating has stabilized. Clients perceived as lower risk can expect flat to low double-digit rate increases. However, placements with adverse risk profiles are not benefiting from this. Excess layers continue to be re-priced with pressure around aggregate limit outlay.

Coverage

- Fire safety continues to cause concern for the market, with insurers continuing to limit coverage in this area. Insurers are anxiously awaiting the effects of the Building Safety Act 2022 which received Royal Ascent on the 28 April 2022[1].
- Concerns also exist in respect of additional legislative instruments. The Department for Levelling Up, Housing and Communities' 'developer pledge', is creating a commitment from developers and materials manufacturers to fund the remediation of unsafe properties. Insurers remain concerned that this will create a new wave of claims relating to building safety in the construction industry.
- Any one claim limits continue to be difficult to obtain and aggregate placement for contractors continues to be the norm. Some larger contracts will purchase 'round the clock' reinstatements, however this continues to apply pressure to excess layer pricing and still requires a significant vertical tower of coverage to be purchased.
- Insureds expected to take more active participation – higher retentions and co-insurance.

1. Source: Article from UK Parliament: https://www.parliament.uk/business/news/2022/january-2022/lords-debates-building-safety-bill2/

Claims environment

- UK Government policy relating to building safety, post the Grenfell Tower disaster, continue to affect claims acceptance.
- Insureds should expect a heightened level of scrutiny from coverage lawyers, particularly when notifying claims relating to building safety.
- Insureds should take extra care when disclosing details of their risk profile to insurers at each renewal. This heightened scrutiny can manifest as suggestions from an insurer that they were not made aware of an aspect of an insureds risk profile and that the omission is material in terms of whether they would have written the risk or not.

Steps to mitigate

- Renewal placement planning remains critical, due to high levels of underwriter scrutiny in the PI underwriting process.
- Insureds meeting insurers remains an important part of a renewal negotiation. However, these meetings can include pitfalls. Make sure you're adequately prepared – the question-and-answer section of these meetings is important. Consider meeting insurers for less time on an individual basis rather than large group sessions, where interaction is more difficult to encourage.
- Some insurers can be accessed in different places, internationally. Ensure your access point is correct to maximize the chance of a successful interaction.

Single project policies

- This continues to be a very challenging portion of the PI market with an acute shortage of capacity.
- Projects need to fit exactly within insurers' appetite. Large infrastructure projects and projects with habitational exposures remain exceptionally challenging.
- Market conditions more suited to excess layer participation. Any primary capacity will need significant levels of self-insured retention. International projects are often better placed domestically.

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Western Europe

Capacity

- Reduced capacity continues, however the small number of insurers are at the same level as late 2020.
- More attention to ventilation of programmes.
- Stricter underwriting discipline — some key insurers expect detailed information before offering terms.

Rating

- **▲ +30% to +100%**
- On a case by case basis, markets are still imposing rate increases.

Coverage

- Decreasing extended reporting periods (ERP) maximum overall coverage limited to 10 years'
- Higher retention levels.

Claims environment

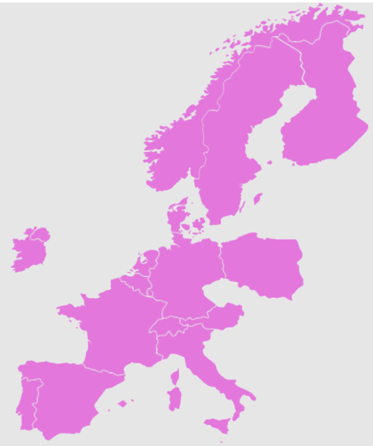
- Increase in frequency and severity of construction professional liability claims.
- Large losses in the areas of infrastructure and sea locks, some claims are valued in excess of €100 million.

Steps to mitigate

- Early face-to-face engagement with the client and insurers.
- Clear understanding of risks to the business and how these are reduced (e.g. supply chain risk).
- Restructuring the programme and creative broking.

Single project policies

- Very limited appetite for single project policies.



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Australasia

Capacity

- The correction in the last 24 months has slowed and individual market risk appetites are now more predictable.
- Further material loss of capacity in respect of primary carrier options. Primary line sizes offered now AU $5-10 million.
- New excess capacity is emerging in line with revised underwriting guidelines & risk appetite.
- Limited market appetite for clients whose portfolios are heavily weighted to high rise residential and renewable energy projects.

Rating

- ▲ **0% to 30%**
- Insurers are still seeking to achieve renewal outcomes of between +5%-30% but are also offering flat (or rate reductions) to their clients who they perceive as a good risk and whose account is at or around technical pricing.
- Under-priced risks will still experience correction at the top end of the range.
- Accounts with poor claims experience will experience rate pressure multiples of the upper range and material increases in their deductible.

Coverage

- Breadth of cover remains broad as compared to other parts of the world with policy trigger generally based upon a broad “Civil Liability” insuring clause.
- Extensions in respect of specific contractual clauses such as hold harmless/indemnity provisions are still available, however are subject to much more underwriting scrutiny.
- Non-compliant building material exclusions reapplied as standard.

Claims environment

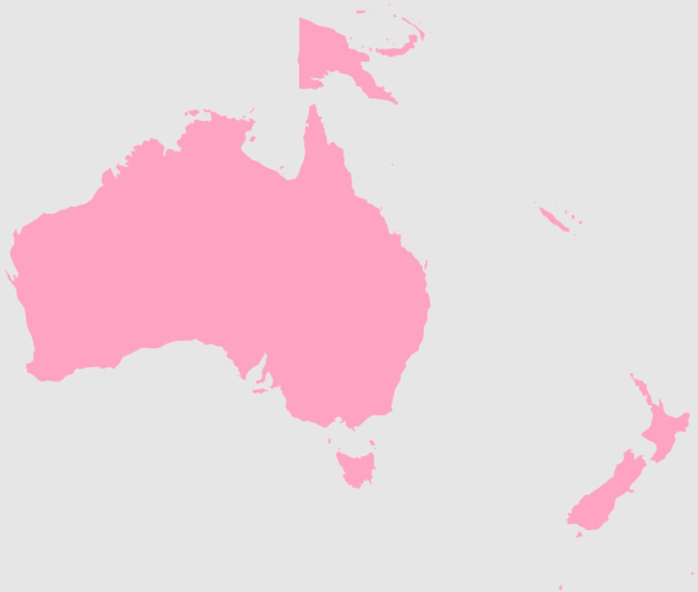
- Deterioration of historical claim notifications are still affecting insurers and dampening the prospects of an expeditious improvement in market conditions.
- Timely notification of claims or circumstances that could give rise to a claim is critical with insurers taking a hardening line on claims reporting conditions within the policy.

Steps to mitigate

- Early engagement with insurers remains vital to differentiate and highlight risk management positives.
- Direct client involvement in explaining and selling their business risk to insurers has never been more valuable.
- Firms large and small would be well advised on undertaking a review on the level of self-insurance they could tolerate.

Single project policies

- Available lead market capacity has reduced further within the past 12 months. This challenge is enhanced by the varying risk appetites of the remaining lead markets leaving some projects with limited lead appetite. Lead lines are now AU $5-10 million.
- New entrants to the market are starting to emerge but in an excess capacity only with their desired attachment points often materially higher than the available lead lines.
- Key areas of coverage such as loss mitigation, tender phase activities and amendment to the related parties' exclusion are now being restricted.



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North America

Capacity

- Capacity deployment remains relatively competitive and sustainable in the U.S. construction professional liability market. While some insurers have reduced limits on specific coverage parts or on an overall book portfolio basis, the marketplace continues to see insurers offer at least $10 million per risk to insureds, with others able to offer up to $25 million.
- Despite these reductions to capacity, most insureds have access to as much vertical limit as needed.
- Total market capacity for contractor's professional annual practice programs is estimated to be $350 million to $400 million, while project specific placements is reduced to $250 million as insurers have reserved this capacity for those practice program clients placements.

Rating

- ▶ **Flat to +15%** (depending on risk profile).
- Insureds performing solar, industrial, and heavy infrastructure work are facing heavier underwriting scrutiny, as well as insureds with adverse loss experiences.
- Growing pressure on insurers to report rate increases due to macro elements of U.S. inflation and micro elements of mergers/acquisitions by the insurers parent company.

Coverage

- Insurers are underwriting each risk on a case-by-case basis and, while there is no consensus amongst insurers, they are advocating for firms focusing on third party design, in-house and subcontracted design build to consider higher retentions.
- More recently the coverage of first party rectification/mitigation has become a focal point for insurers, especially on project-specific placements. Depending on a project's delivery method, we are now seeing requests for a percentage of design completion greater than 30%, and push for no limitations of liability in designers' subcontracts with the insured.
- Continued competition and presence of new entrants in the marketplace has alleviated past concerns of rectification being sub-limited on annually renewable practice programs.

Claims environment

- Insurers continue to report of significant and severe first party rectification claims, as well as claims derived from solar and heavy infrastructure.
- Additional concern is being detected from heavy EPC, IPD and P3 project exposures.

Steps to mitigate

- Despite the relatively competitive environment, insureds should plan their renewal process early and factor in additional insurer review.
- This planning is particularly important for insureds who work in select higher risk areas as a way to keep any potential changes to terms, conditions, or increases in rate manageable.

Single project policies

- Generally speaking, there is ample capacity available for project-specific placements for contractors. Some insurers are reserving project capacity on specific placements exclusively for clients who are buyers of their renewable practice programs.
- Total terms (policy period plus extended reporting period) of 15 years are widely available, although some insurers are starting to limit extended reporting periods to applicable projects state statute of repose or contractual requirement, whichever is less.
- Design professionals in the architects and engineer's industry have seen project capacity leave their marketplace thereby rendering these placements more difficult to secure on large project placements, especially on design/build infrastructure projects.
- Reduced available capacity for design professionals has adversely affected contractual negotiations that design build contractors have with owners. This, coupled with the push for limitations of liability from design professionals, is in turn making contractor-purchased project placements more expensive and difficult to structure.

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Asia

Capacity

- Capacity is largely stable. Insureds do not buy large limits, but capacity up to $100 million is generally available.
- Insurers prefer to offer smaller lines (generally $5 million) on primary and prefer to ventilate capacity.
- Stricter underwriting discipline – some key markets expect a detailed engineering review before offering terms.
- Insurers expect clear and detailed commentary around COVID-19 impact on projects and we are seeing more scrutiny around contractual terms related to 'force majeure'.

Rating

- ▲ **Generally +10% to +15%**
- Excess layer pricing has gone up by over 50% in certain cases.
- Price increases very much dependent upon the type of project, loss history and location. Singapore projects are still competitively priced versus other South East Asian countries.

Coverage

- Higher retention levels.
- Explicit exclusion around cladding and cyber.
- Sub-limits are being introduced for coverage which were usually available for full limits.
- Some insurers are imposing COVID-19-specific exclusions where they see significant business impact of COVID-19.

Claims environment

- The claims environment is relatively benign. We have seen few circumstances reported, but no large known claims in past 12 months.

Steps to mitigate

- Early engagement with insurers.
- Detailed submission – we have seen the value of involving diverse group of experts from client side (Legal, Quality etc.) to address insurers' concerns.
- Newer excess layer capacity is available from China and Hong Kong, which can be used to balance the impact of hardening of primary markets.

Single project policies

- Capacity is available for most types of projects. Limited appetite for renewables, projects with offshore component and waste-to-energy projects.
- Higher appetite for policy duration of less than 10 years.
- We are seeing a pushback from consultants/ subcontractors to maintain project-specific insurance owing to difficult market conditions.

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Middle East

Capacity

- Growing amount of capacity in the regional PI markets (especially in the UAE).
- Up to $50 million of capacity per risk, if not more, depending on the risk itself. There is an increasing amount of capacity offered by regional reinsurance markets and Managing General Agents (MGAs).
- Broad appetite across various types of construction projects.

Rating

- ▶ **Flat**
- No significant increases seen since 2020; in some cases competition has increased.

Coverage

- Coverage provided is still market-standard, with negligence-based insuring clauses and several standard exclusions. We are seeing the introduction of a few new exclusions, namely contagious disease, cyber and aluminium cladding exclusions.
- Innovation and expansion of wordings and coverage is infrequent – insurers' standard wordings prevail.
- Almost all policies now written on an 'aggregate' basis with little appetite for writing 'any one claim' limits.

Claims environment

- Benign claims environment — there are a few claims in the market that we are aware of but at much lower volumes than seen in other parts of the world.

Steps to mitigate

- Understanding of insurer appetites and whether a placement will be insurance — (i.e. in-country) or reinsurance-driven is key.
- Restrictive insurance regulations mean that local insurers must be involved in the transaction in some capacity.
- On projects there are still contractual insurance obligations that contractors and engineers must adhere to which are not actually available in the market on project-specific policies (such as an 'any one claim' limit).
- It is important to engage at an early stage of the project to be able to discuss the necessary requirements.

Single project policies

- Capacity remains readily available and rates on-line are around 3% on average.

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South Africa

Capacity

- Reduction in capacity continues, as well as reduction in line size offering.
- Obtaining limits remains an issue, added to these aggregated limits are becoming standard practice.
- Insurers insisting on ventilation of large programmes.

Rating

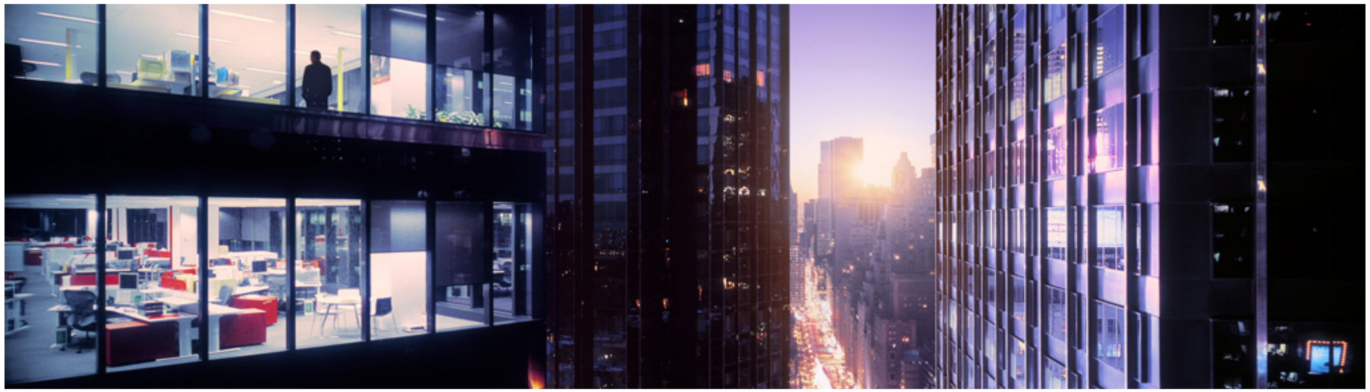
- ▲ **+50% to +100%**
- Alternatively +50% with reduced limits and coverage.

Coverage

- 'Any one claim' limits increasingly difficult to secure – aggregate limits more prevalent.
- Continued drive for higher deductibles and increased exclusions.
- Insurers restricting scope of cover – detailed information will be required on all projects.
- Insurers focused on understanding supply chain risks.

Claims environment

- Increase in frequency and severity of construction professional liability claims – large infrastructure projects and renewable technologies specifically.
- Continued concern regarding the economic migration and impact on claims.
- Claims are taking longer to conclude.

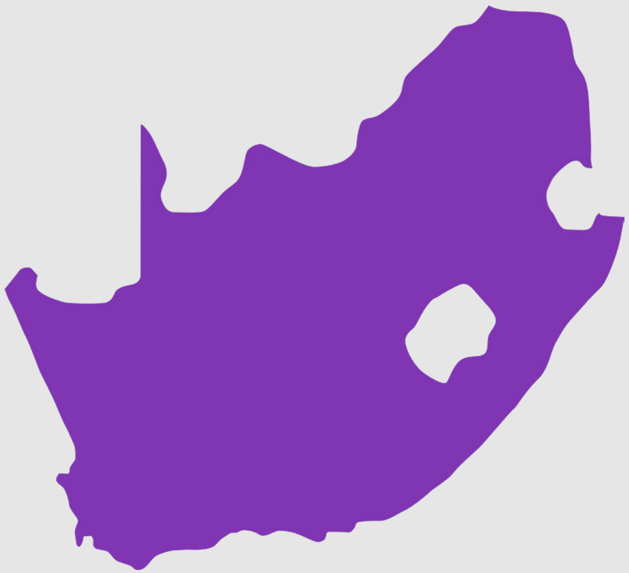


Steps to mitigate

- Provide a detailed submission and a clear engagement plan. Speak with insurers as soon as possible.
- Understand the risk and be prepared to answer insurers questions and alleviate concerns.
- Limited capacity/markets require creative solutions.

Single project policies

- Markets have shown little appetite and certain risks will be declined.
- Primary capacity is reduced, and rates have increased substantially.
- Understand the risk and be prepared to tackle insurers questions.



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