

Book Review: Insurance, Climate Change and the Law*

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It is undeniable that climate change is a pressing global issue with widespread effects for all sectors of society, businesses, and governments. There are over 2,000 climate change cases currently being litigated in more than 40 jurisdictions.¹ Alongside a growing awareness of the effects of climate change, there has been a myriad of legal and regulatory commitments from governments and corporates to address this global challenge.² Climate change is a complex, multifaceted risk that requires a collective approach. Insurers are a fundamental part of the climate change dialogue by providing insurance cover for climate-related risks and as institutional investors in assets. Some measures have been taken to require insurers to manage and report on climate change risks where their financial stability may be under threat and where insurers may struggle to provide coverage or pay claims for climate-related risks. As part of the broader discussion on climate change, it is important to frame and position the insurance perspective. Notably, *Insurance, Climate Change and the Law* has managed to explain this important confluence of the tripartite relationship captured by the title.

Insurance, Climate Change and the Law provides a comprehensive account of the relationship between climate change and insurance. The first aim of the book is to systematise the extant legal and regulatory issues for insurance companies arising from climate change. The second and third objectives are more forward-looking as the book examines how insurance contracts and investments can be instrumentalised by the insurance sector to deliver climate action within the confines of the existing legal and regulatory framework. Additionally, it puts forward proposals for innovative insurance products and structures that can support climate action, driven by the key theme of the 'enabling role of insurers'.

The book is structured into ten chapters. Chapters 1-5 address the first aim of the book. Chapter 1 sets the context for the book. Chapter 2 describes the science behind climate change and provides a useful overview of the various regulatory instruments that aims to address climate change. It also clarifies the relationship between sustainability and 'ESG' and other concepts related to climate action. Chapter 3 which is on climate change risks and the role of insurers, explores key insurance concepts such as insurability, protection gaps, the classification of climate risks (i.e. physical, transition, and liability risk), the intersection between insurance and climate change (risk). It further introduces the various conceptions of insurance together with a new 'enabling conception' of insurance. Chapter

* Franziska Arnold-Dwyer, *Insurance, Climate Change and the Law* (Routledge, 2024) ISBN 9781032289595.

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¹ Sabin Centre for Climate Change Law (January 2023) <<http://climatecasechart.com/about/>> accessed on 9th December 2024.

² The Paris Agreement under the United Nations Framework Convention on Climate Change (adopted 12 December 2015; entered into force 4 November 2016). Also, the Climate Change Act 2008, s 1, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, s 2.

4 examines the regulatory dimension of climate change and addresses the approaches of various regulators to climate change (e.g., the Financial Conduct Authority, the European Insurance and Occupational Pensions Authority, International Association of Insurance Supervisors). Chapter 5 discusses the current and emerging climate-related disclosure frameworks, including the recommendations of the Task Force on Climate-Related Financial Disclosures, the UK sustainability-related disclosure regimes, and the EU sustainability-related disclosure regimes.

The second and third aims of the book are addressed from chapter 6 onwards. Chapters 6 and 7 address how insurers can take on a more enabling role through climate-related impact underwriting. It draws a comparison between insuring green and not insuring brown (e.g., withdrawing from fossil fuel markets) and identifies the legal issues that arise therefrom. Chapter 7 is dedicated to the concept of ‘greening insurance’ throughout the insurance value chain. It explores how policyholders’ behaviour can be ‘nudged’ towards more positive climate mitigation and adaptation. Chapter 8 shifts from insurers’ function as risk carriers to their role as investors and examines how their ‘enabling role’ can be fulfilled in climate-related impact investment and stewardship. Hereto, the legal and regulatory issues are examined in this context. Chapter 9 examines the salient topic of the role of government and public-private partnerships by examining case studies, such as, the US National Flood Insurance Program, the UK’s Flood Re, New Zealand’s Toka Tū Ake – Natural Hazards Commission. Finally, chapter 10 draws together the main themes and findings about the enabling role of insurers and the associated legal and regulatory issues.

The breadth of this book is to be commended. It draws together, in one consolidated version, the numerous legal and regulatory issues of climate change which are often scattered across disciplines, and in recognising this fact, adopts a combination of research methodologies. A central claim of the book is why and how insurers can play a role in addressing climate change through their policies and investment. In doing so, the book adopts a forward-looking role (the enabling role of insurers) to investigate potential new insurance products that involve impact underwriting and investment to incentivise more appropriate climate-related behaviours (e.g., withdrawing from certain carbon-intensive market).

Much has been written on the role of insurers in shaping behaviours whether it is in the context of health insurance, cyber risks, climate change.³ This book amplifies that role by examining normative questions about how legal and regulatory frameworks can be leveraged to support the green transition through both climate-related impact underwriting and investment. It explores this through the concept of ‘double materiality’ (in chapter 2), that is, the inward impact of climate change on an insurer’s business and the outward impact that an insurer’s business and operations has on the environment. It recognises that providing coverage to policyholders for climate-related losses only goes so far by providing financial compensation but it is insufficient to address the climate crisis itself. Indeed, the availability of insurance coverage itself can pose a moral hazard issue for insurers as policyholders may lack the incentive to adopt climate mitigation or adaptation measures.

³ Ben-Shahar and Logue, ‘Outsourcing Regulation: How Insurance Reduces Moral Hazard’ (2012) 111 Mich LR 197, 199. Abraham and Schwarcz, ‘The Limits of Regulation by Insurance’ (2022), 98 Ind LJ 215.

A particularly interesting part is how insurers' roles may be re-cast to use the contractual tools at their disposal to shift policyholders' behaviour to address climate change (e.g., by reducing greenhouse gas emissions). This enabling role of insurers is a bold one and one that is not without controversy. Dr Arnold-Dwyer has noted that insurers cannot replace governmental regulation and addresses this point by also including a chapter on public-private partnerships (chapter 9). Rather, in this respect, the role of insurers is limited to raising awareness of climate-related risks and helping to shift perceptions and behaviours of policyholders and investee companies within a legal and regulatory framework (e.g. through disclosure and reporting standards).

As with any review, there is generally a bout of constructive criticism; but this is difficult to do without turning *Insurance, Climate Change and the Law* into a different book. Dr Arnold-Dwyer has provided a comprehensive study that will be an important starting point for scholars, practitioners, and industry professionals who are interested in understanding the central themes and issues at the important intersection of insurance and climate change. Perhaps, in the second edition, readers would benefit from seeing to what extent the theory of insurers as climate enablers aligns with the market response to climate change (admittedly, that data collection could not be done for various reasons as set out at p8), and to examine how the ex post situation of climate litigation risks may influence the ex ante measure of insurers (impact underwriting and investment).