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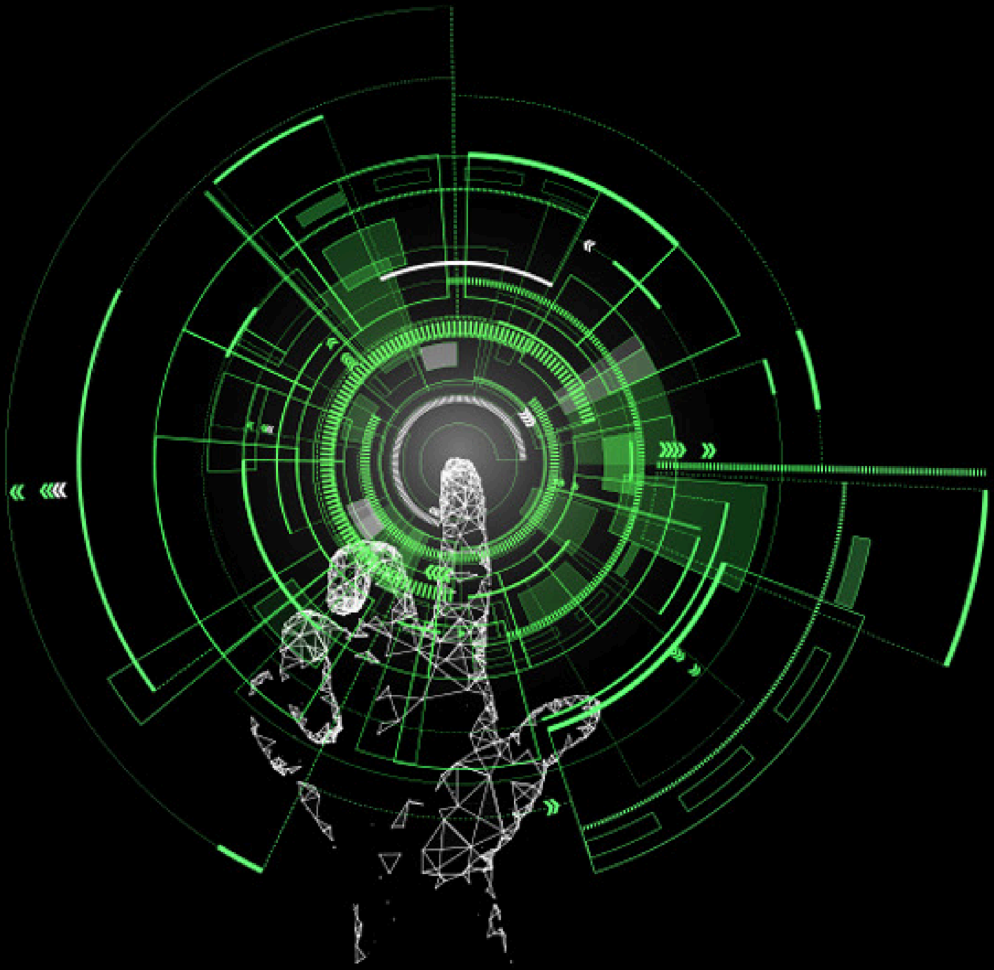

Insurance Sector

Regulatory Update and Industry Trends

February 2021

Introduction

‘As such, it is no surprise that we have covered business interruption COVID-19 matters in this Update.’

As 2021 continues to throw curve balls at us from all directions, our Actuarial & Insurance Solutions (AIS) team are pleased to present you with our first update for the year.

Over the last few months, we have seen unprecedented developments unfold globally and across the insurance industry as well as in our own private and professional lives. As such, it is no surprise that we have covered business interruption COVID-19 matters in this Update.

This Update further provides a number of interesting articles, including insights into the future of reinsurance, the FSCA’s review of motor vehicle add-ons as well as a summary of the recent APN 108 published by ASSA. We also include articles regarding the insurance impact of climate change, the remake of the Life Insurance investment industry and a regulatory outlook on financial markets.

Finally, you will find a bonus note from our Tax experts on recent VAT activities, and how to close the compliance gap.

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Future of Reinsurance – This time it is different

The future of the global non-life reinsurance industry will be shaped by new technologies, alternative capital, capital markets structuring techniques, and the bundling value-added services with reinsurance. In a recent report by Deloitte UK, we look at the impact these changes will have on the industry and how firms can prepare for the future. This report identifies trends that will most likely shape the future of global non-life reinsurance over the next five to ten years. It analyses the impacts of these trends and the barriers that will impede them.

The size trends are:

- Pivoting to risk transfer plus service model
- Hollowing out of the middle-market
- Ongoing influx of alternative capital
- Blurring of the value chain's boundaries
- Rise of automated placement
- Rise of exchange-based secondary markets

Click here to read more.

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Recently, the Actuarial Society released version 3 of APN 108. This Advisory Practice Note (APN) is set out to advise an Independent Actuary on how to assess a transaction under section 50 of the Insurance Act. It clarifies the professional responsibilities inferred by such an appointment. The key points are highlighted below.

The Factors Influencing Acceptance of an Appointment as Independent Actuary

Prior to accepting an Independent Actuary appointment, the actuary must consider:
- **If he/she has the required knowledge** to do the work - both practical and from experience
- If the work is for **a composite insurer**
- Disclosing to all parties if he/she has or had any direct/indirect interest in the insurer

The Independent Actuary must ensure that **appropriate safeguards** are in place to protect independence between the actuary and the firm where they work or had worked for in the past.

Obtaining a brief from the PA (appointing parties of the scheme) providing the necessary details of the appointment and engagement regarding the proposed scheme if the Independent Actuary is appointed by the PA (one or more parties to the proposed scheme)

He/she will be expected to **provide reasons in the event of resignation** prior to the completion of agreed duties

Enquiring if the appointment had previously been accepted and then vacated by another actuary.
If so, it should be clarified as to **what led to the termination of the prior actuary's appointment.**

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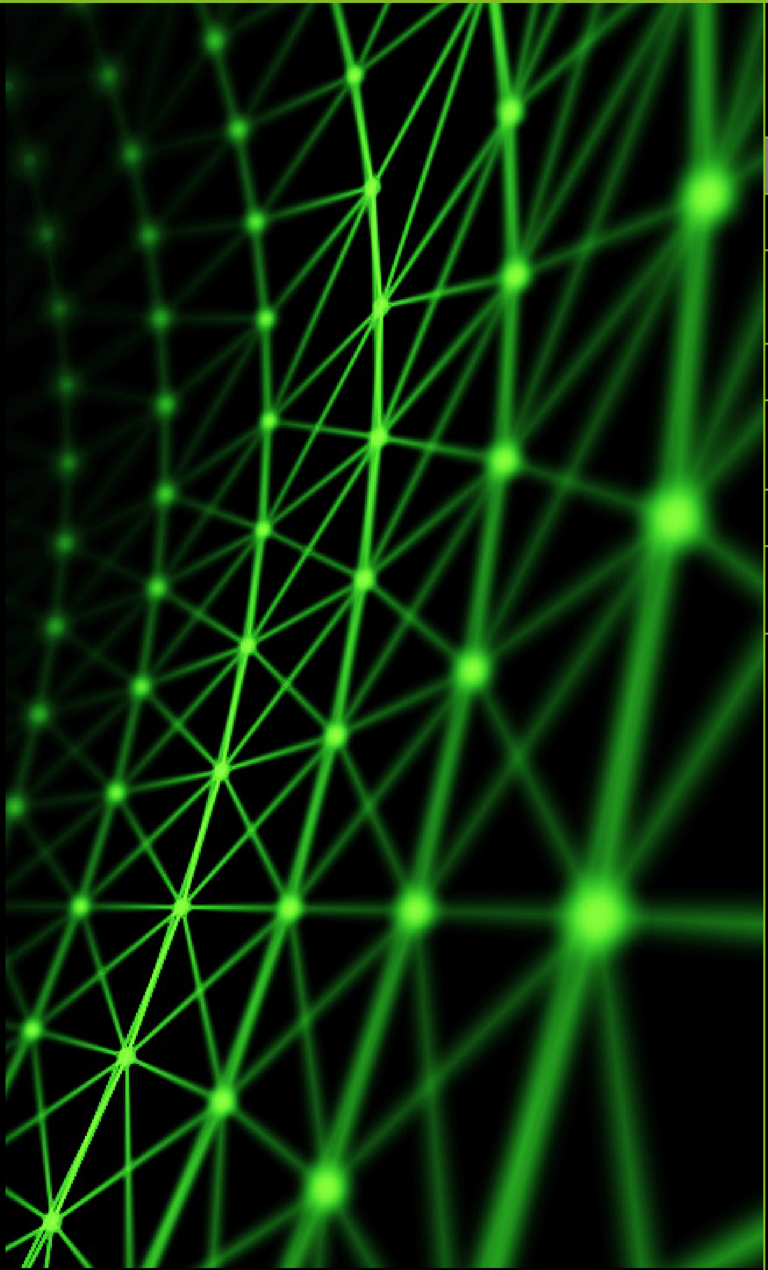
Guidance on the content and likely use of the Independent Actuary's report

- As part of the Independent Actuary's duties, he/she must provide a report. This report is expected to provide a clear impression regarding the findings and should include all key details.

The Extent of the Independent Actuary's Involvement

- The Independent Actuary is encouraged to be informed on issues regarding the proposed scheme at multiple stages.
- The level of investigation carried out by the Independent Actuary will depend on the nature of the case. He/she should consult the Heads of Actuarial Function (HAF) of affected insurers and consider their reports.
- If the Independent Actuary is required by any stakeholder to attend any meeting, he/she should consider if it may give the potential of seeming biased. If he/she attends, their intentions should be clear and impartial.



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Although the national lockdown has been gradually eased and most businesses have been allowed to operate at near optimal levels, the effects of the virus continue to ripple through the economy. The resulting business interruption claims and subsequent flurry of litigative action between insurers and claimants has been one of the most widely discussed industry matters in recent months.

Disputes between insurers and policyholders

The issue of business interruption has centred largely around arguments of definition. Generally, business interruption can be placed into one of two categories:

A Standard business interruption: business interruption losses arising from physical damage to or loss of business property. This is most common in South Africa, and has mostly not been subject to Covid-19 claims.

B Policies with cover for infectious or contagious diseases: this category has seen extensive debate regarding interpretation on aspects of terms of cover, such as proximity of event.

Arguably the three most widely reported cases are Guardrisk vs Café Chameleon, Old Mutual Insure Luggage Warehouse, and Santam vs Ma-Afrika and The Stellenbosch Kitchen. In all three cases, the high court rulings were in favour of the claimants. However, the insurers appealed and took the matter to the Supreme Court of Appeal. The first case to reach the Supreme Court of Appeal – that of Guardrisk vs Café Chameleon – ended in defeat for Guardrisk. It was announced on 17 December 2020 that Guardrisk has to compensate Café Chameleon for revenue lost as a result of lockdown. This ruling sets a precedent for the other cases that are to be appealed.

Many insurers (the above included) also opted to offer affected policyholders with relief payments and in some cases settlement agreements. However, the high degree of uncertainty has left insurers and actuaries scratching their heads around the appropriate level and form of reserves to be set aside. This is compounded by uncertainty regarding the level of possible recoveries from reinsurers, and matters such as the appropriate period of loss indemnification. One thing, however, is certain: the potential adverse outcomes could be devastating to a number of insurers.

UK High Court judgment and its implications

In mid-September 2020, the UK High Court provided a judgment on the clarity of business interruption claims as a result of Covid-19. The Court ruled that the Covid-19 pandemic, the government lockdown and the public response were a single cause of the covered loss. Although this ruling applies outside the jurisdiction of South Africa, the South African insurance industry may have cause for concern as the wording of South African insurance polices is often similar to that in the UK, and the industry trends often mirror those seen in the UK.

FSCA review of motor vehicle add-on insurance products

Overview

The FSCA has indicated its concern with the outcomes customers are receiving through the purchase of add-on insurance policies. These policies are sold at the point of sale by motor dealerships or as part of vehicle financing arrangements. The FCSA has launched an industry investigation into this, and the outcome of this "conduct-based" investigation may have the potential to significantly impact the non-life insurance industry.

Action required

The FSCA requested insurers to declare whether or not they provide such add-on insurance products. In addition, they instructed insurers to provide a range of detailed data on these products for the period 1 January 2017 – 31 December 2019 (inclusive). The submission deadline was 30 November, with a penalty of R1000 per day for late submission. The industry will undoubtedly be monitoring this investigation and its outcomes very closely.

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Value-Added Tax: Closing the compliance gap

There has recently been renewed focus by the South African Revenue Service (on value added tax (in an effort to close the tax revenue gap It is important to ensure that transactions are treated correctly from a VAT perspective to avoid unnecessary disputes and potential assessments for VAT, penalties and interest A summary of the VAT related highlights are set out below For further reading, please click here link

No claim bonus

The treatment of no claims bonuses under IFRS 17 is not fully aligned with the VAT treatment thereof This can causes complications and it is important that contracts be clear around how cash backs/no claim bonuses will be effected

Management of superannuation schemes

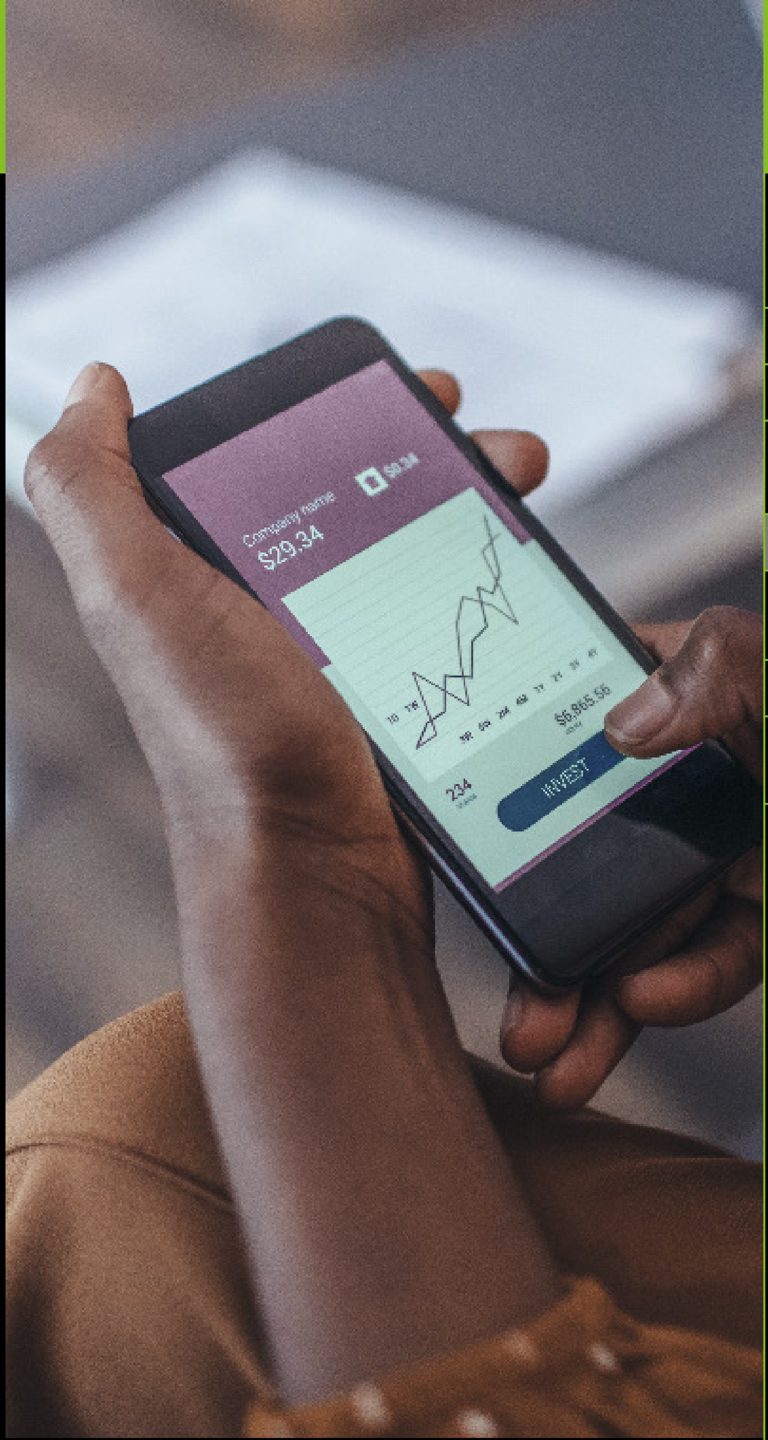
Due to a proposed amendment of Section 10 22 A) of the VAT Act, effective from 1 April 2021 long term insurers may face complications with their VAT on superannuation schemes. The proposed amendment may require insurers to make apportionments on fees embedded in premiums. Where no fee is embedded, this could potentially lead to additional VAT on portions attributable to management service

Apportionment method

The stated policy of SARS is not to make VAT apportionment rulings effective retrospectively to prior financial years As a result, a vendor must apply in the current financial year should it wish to apply an alternative apportionment method This was point was tested during 2019 in VAT Case 2063 and the outcome was not in favour of the insurer

Voluntary disclosures

In order for a voluntary disclosure application to be valid, the disclosure must be truly " In an actual recent case, the High Court found that an application cannot be " if SARS has prior knowledge of the default Prior interactions with SARS should thus be carefully considered as these could negatively impact a later request for relief under the Voluntary Disclosure Programme



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Life insurance and investments industry remade by COVID 19

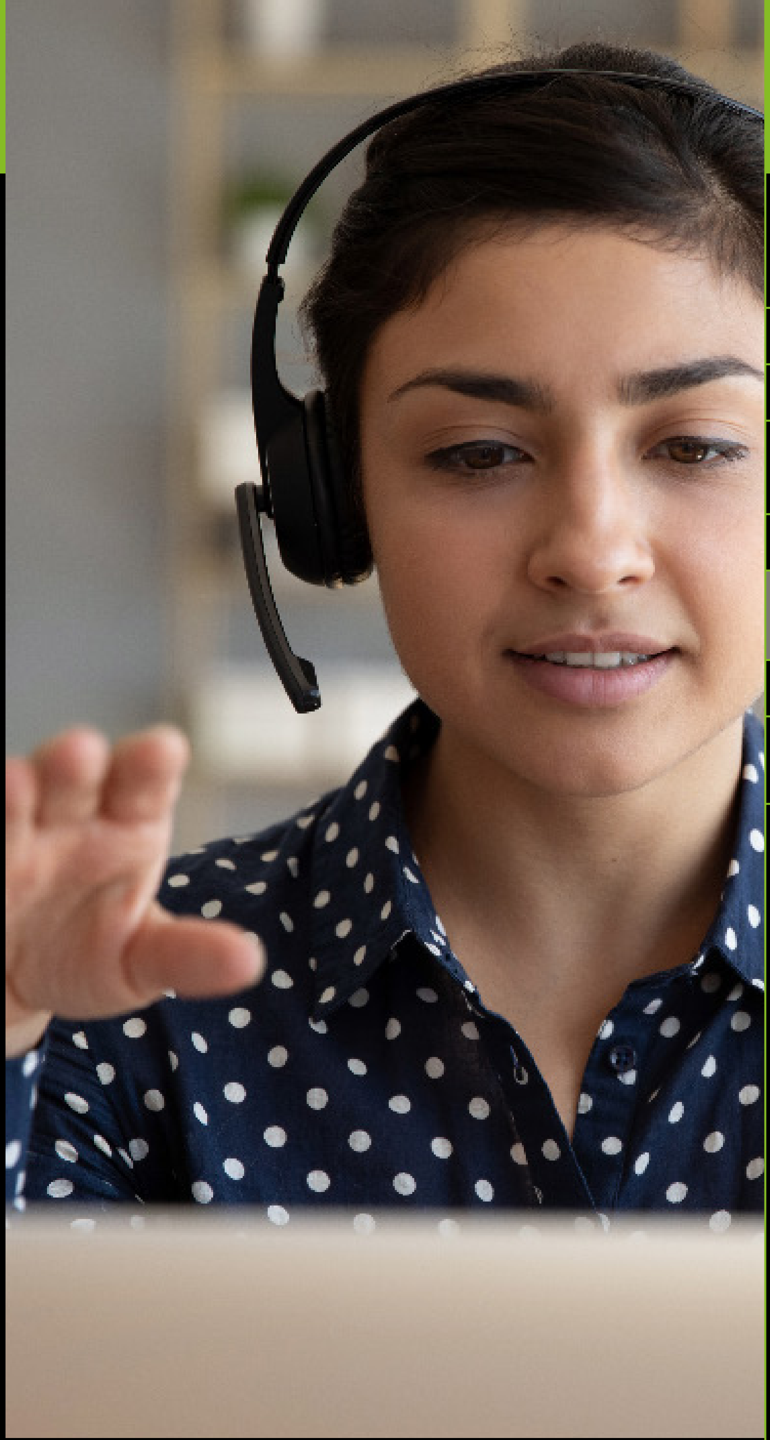
Overview

Global and local uncertainty, spurred on by Covid 19, created a completely different playing field for the life insurance and investment industry in South Africa:

Fundamental uncertainties exist about the:
- Sustained low interest rate environment
- Elevated expectations around customer experience
- Challenging operating environment for agents
- Workforce and workplace uncertainty

In a recently released report, we explore how the Life Insurance and Investment Sector might evolve over the next one to three years to help leaders:
- Explore how current trends could shape life insurance and investments .
- Have productive conversations around the lasting implications and impacts of the crisis.
- Identify decisions and actions that will improve resilience to the rapidly changing landscape.
- Move beyond "responding" to the crisis and towards "recovering" in the medium term.

Click here to read more.



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Climate Change and Insurance

Overview

A new Deloitte report provides an overview of the various ways in which climate change risk may affect insurers and how boards should respond to the emerging regulatory expectations in identifying and managing this risk.

The report covers the following key areas

- risk identification and risk appetite
- strategy and business model
- capital modelling and stress testing
- asset transition
- risk governance, culture and conduct

Click here to read more.

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Financial Markets Regulatory Outlook - Recover, Renew, Rebuild

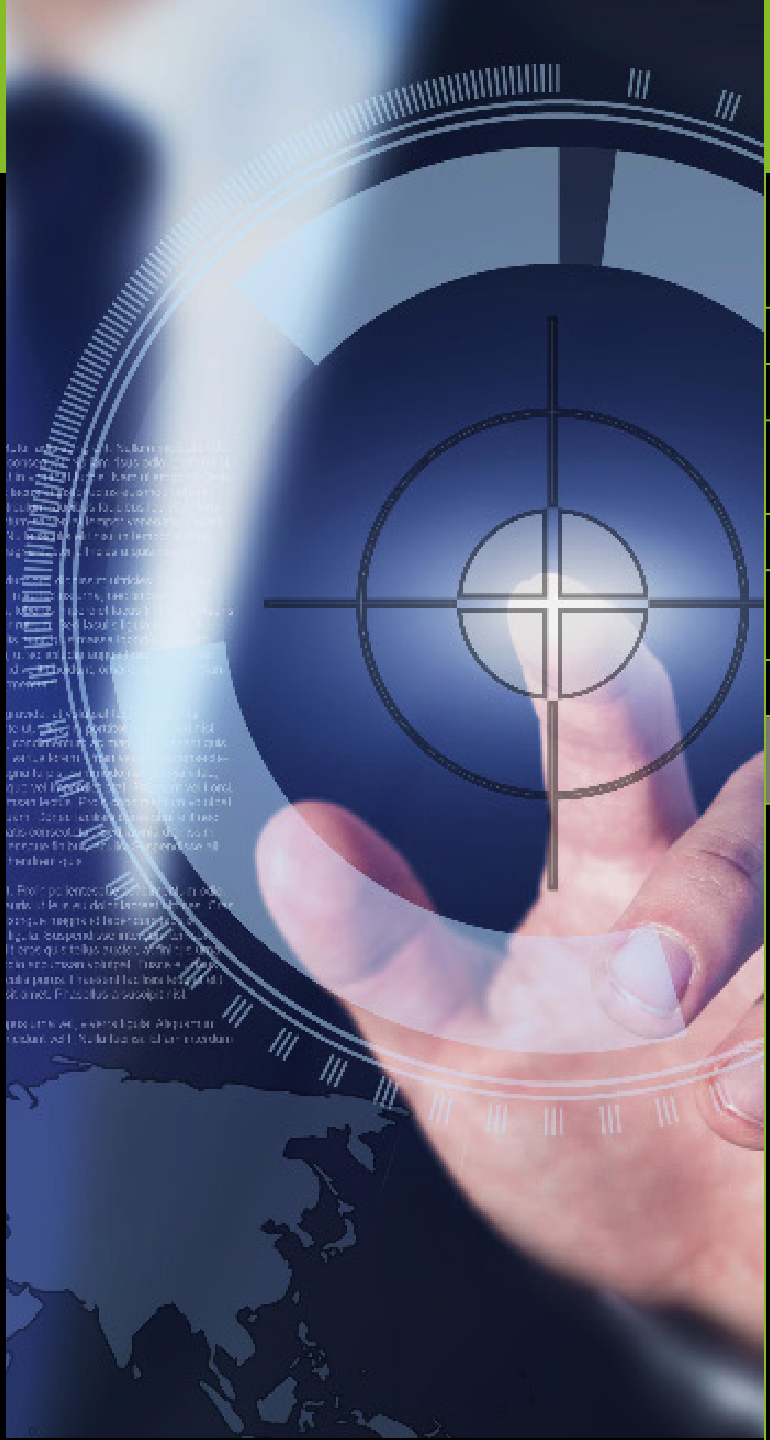
Overview

Due to the continued challenge that COVID 19 presents the world, regulators and financial services have made financial and operational resilience a key priority.

Deloitte's EMEA Centre for Regulatory Strategy explores how major regulatory trends will affect the financial services industry in 2021, and how leaders can anticipate and respond to them effectively.

The 2021 edition of Deloitte's Regulatory Outlook identifies nine cross sector themes of strategic significance, as well as a number of other supervisory priorities in each of the Banking and Capital Markets, Insurance and Investment Management sectors.

Click here to read more.



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